



Republic v Mutunga, Senior Resident Magistrate, Mombasa & 3 others; Bandari Investments Company Limited (Interested Party); Chigamba & another (Ex parte) (Application 7 of 2017) [2025] KEHC 16851 (KLR) (17 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16851 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
APPLICATION 7 OF 2017
J NGAAH, J
NOVEMBER 17, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**HON E MUTUNGA, SENIOR RESIDENT MAGISTRATE,
MOMBASA 1ST RESPONDENT**

HON ATTORNEY GENERAL 2ND RESPONDENT

**OFFICER COMMANDING POLICE DIVISION KISAUNI MOMBASA 3RD
RESPONDENT**

KIEMBENI POLICE STATION 4TH RESPONDENT

AND

BANDARI INVESTMENT COMPANY LIMITED INTERESTED PARTY

AND

DALU CHIGAMBA EX PARTE

EPHRAIM KITSAO BAYA (DECEASED) EX PARTE



RULING

1. This ruling is on the ex parte applicants' application dated 25 November 2024 and the interested party's application dated 24 September 2024. The interested party's application is a motion seeking three main prayers:
 - “2. That honourable court be pleased to issue temporary stay of taxation of the Ex Parte Applicants' Party & Party Bill of Costs dated 7th June, 2018 which is now scheduled for mention on 3rd October, 2024 pending the hearing and determination of this application.
 3. That the honourable court be pleased to grant a stay of taxation of the Bill of costs dated 7th June, 2018 pending hearing & determination of High Court Civil Case No. E007 of 2024 Bandari Investments Company Limited =vs=Egunza Goerge Gaylord T/A George Egunza & Associates Advocates & Ano.
 4. That honourable court do vary its Ruling delivered on 18th October, 2017 by setting aside the said Ruling, the entire proceedings herein, the resultant taxation of Ex Parte Applicants' Party & Party Bill of Costs dated 7th June, 2018 and dismiss the instant JR Misc. Application No. 7 of 2017 Ex parte Applicants =vs= Hon. E. Mutunga (SRM), AG, OCPD & OCS and the Interested Party (herein the "Applicant") for being nullity ab initio.”
2. The application is supported by the affidavit of Ken Tobias Odero Sungu who has introduced himself in the affidavit as the chairperson of the interested party. The interested party's case is that the stratum of a case in the magistrates' court, civil case no. 1686 of 2016, Bandari Investment Co. Ltd versus Hashim Loma & 6 Others, was anchored on the authority to plead dated 8 September 2016 and filed in court on 9 September 2024. However, the Directorate of Criminal Investigations has established that the said authority to plead was forged and that it lacked the interested party's seal.
3. According to the interested party, since the interest party's authority to plead is a nullity, all other proceedings including the taxation of the ex parte applicants' party and party bill of costs dated 7 June 2018 arising from Judicial Review Miscellaneous Application No. 7 of 2017 in which the impugned authority to plead was invoked are nullities. Moreso, the advocates acting for the interested party did not have instructions or authority to act on behalf of the interested party.
4. Against this background, the interested party has contended that it has filed a separate suit High Court Civil Case No. E007 of 2024 Bandari Investments Company Limited versus Egunza George Gaylord T/A George Egunza & Associates Advocates & Another that is now pending for determination.
5. As far as the taxation of the party and party bill of costs is concerned, it is the interested party's contention that it should be stayed to “preserve the subject in HCCC No. E007 of 2024.”
6. In response to the application, the ex parte applicants filed grounds of objection in which they have cited Para. 765, Halsbury's Laws of England, 3rd Ed. Vol. 30, (p. 406) for the argument that in incidental proceedings taken out after an order determining a Judicial Review application on merit, the court does not have statutory power or inherent jurisdiction to stay or restrain further proceedings.



7. They have also contended that the complaint in a separate suit that the firm of advocates (M/s. Egunza and Associates, Advocates and DN Omari and Co., Advocates), did not have instructions; and that the documents of authority to plead and appear, and affidavits in reply filed in previously determined proceedings in Mombasa Chief Magistrates' Civil Case No. 1686 of 2016 and Mombasa High Court Judicial Review No. 7 of 2017, are a nullity for forgery, or any other alleged infraction of counsel, is not a basis to stay the taxation of the bill of costs.
8. The taxation, it is contended, has been remanded twice to the deputy registrar for taxation at the instance of the interested party's successful application, which set aside the consent letter and order adopting it, for want of appearance of erstwhile interested party's counsel. According to the ex parte applicants, the application is yet another gimmick to buy time and delay as much as possible the taxation and realization of the taxed costs.
9. It is their position that the application is an abuse of the court's process, coming after the interested party's present counsel snubbed and refused to participate in the process of taxation of costs before the deputy registrar, even after causing the same court to arrest its ruling on taxation, and thereafter grant leave to the interested party to file notice of grounds of opposition and submissions in response, out of time.
10. It is further pleaded on behalf of the ex parte applicants that the application for stay of taxation proceedings for any just or a valid cause should be made at the first instance before the taxing officer, as the court seized of the taxation.
11. Speaking of "the interested party snubbing and refusing to participate in the process of taxation of costs before the deputy registrar, even after causing the same court to arrest its ruling on taxation, and there after grant leave to the interested party to file notice of grounds of opposition and submissions in response, out of time", I note from the record an application by the interested party dated 5 March 2024 in which the interested party prayed for orders, inter alia:
 - “2. That pending hearing and determination of this application, the court be pleased to arrest its Judgment in respect to Ex parte Applicant's Party & Party Bill of Costs dated 7.06.2018.
 3. That the court be pleased to grant leave to the Interested Party to file its grounds of opposition, submissions and any other response in respect to Ex parte Applicant's Party & Party Bill of Costs dated 7.06.2018.”
12. The interested party succeeded in its endeavour for, by a ruling delivered by the deputy registrar on 12 September 2024, the application was allowed. In particular, the application was allowed on terms that:
 - “(i) The ruling slated for delivery on 29/2/24 is hereby arrested.
 - (ii) The Interested party to file and serve their grounds of opposition and written submission within 14 days from the date of this ruling.
 - (iii) The Ex parte applicant is granted 7 days after service to file response/written submission if need be.
 - (iv) Failure of the interested party to comply with order (ii) above, the court will proceed to tax the Bill of costs.
 - (v) I will award costs to the ex p arte applicant at Kshs. 10,000/=



(vi) The matter will be mentioned on 3/10/2024 for compliance.”

13. The interested party did not comply with any of the conditions upon which the application was allowed. It neither filed grounds of opposition nor written submissions either as directed by the deputy registrar or at all. The default clause in that order was that if the interested party failed to file the grounds of opposition and written submissions as directed, the taxation of the interested party’s bill of cost would proceed.
14. The order is clear and unambiguous. It has not been set aside or vacated and, to date, it obtains as a valid court order by which the interested party is bound. Having failed to comply with conditions upon which its own application was granted, the interested party cannot avoid the consequences of such failure by purporting to seek for a fresh order seeking to, among other things, impeach the same proceedings which it successfully sought opportunity to participate in.
15. Without spending much time on the interested party application, I would conclude that in the wake of the ruling of the deputy registrar’s ruling of 12 September 2024 and, following the interested party’s disregard of the court’s order, its application dated 24 September 2024 is classic case of not only abuse of the process of court but also it is a misconceived application.
16. As far the prayer for setting aside of the ruling made 2017 is concerned, I am not satisfied that it had to take seven years to make such an application, assuming that the application for review was open to the interested party. Under section 8(5) of the *Law Reform Act*, cap. 26 any person aggrieved by an order made in the exercise of this Honourable Court’s civil jurisdiction in an application for judicial review has the liberty to appeal to the Court of Appeal. There is no provision for review of judgments made in judicial review proceedings.
17. That notwithstanding, the interested party appears to have abandoned its application because by yet another application dated 3 October 2024, it was pleaded in the certificate of urgency under which the application was filed, as follows:
 - “ 1) That the Interested/Party/Applicant filed Notice of Motion Application dated 24th September, 2024 under certificate of urgency (herein referred as “Application”) with intention to stay taxation proceedings slated for mention for directions today the 3rd day of October, 2024.
 - 2) That unfortunately, the taxation cause proceeded on the said 3rd October, 2024 as no orders were issued to stay the taxation proceedings herein.
 - 3) That subsequently the taxing master set the Taxation cause to proceed for hearing on 31st October, 2024.
 - 4) That therefore this instant application has been filed to stay the hearing set for 31st October, 2024 pending the hearing and determination of the Application dated 24th September, 2024 that is awaiting directions, hearing and determination by the duty Judge.”
18. Just like the application of 24 September 2024, this was another instance of abuse of the process of court. Needless to say, the interested party could not purport to file the subsequent application seeking to stop the taxation proceedings when a previous application seeking the same orders was still on record. Assuming the earlier application was properly before court, a proper course would have been to withdraw the earlier application before filing the second one or amend the previous application.



Properly crafted, it would have been unnecessary either to file a fresh application every time the taxation proceedings were deferred or amend the application from time to time.

19. Turning to the ex parte applicants' application dated 25 November 2025, the applicants seek to strike out the interested party's application with costs on the higher scale, and an order for payment of interest at 14 per centum on the costs ultimately taxed in the judicial review proceedings with effect from 18 July 2017. The application is expressed to be brought "under the principle enunciated by Hon. Mativo, J. in MSA. JR. No. 4 of 2020 (2021] KEHC 133 (klr) 21.10.2021) ruling."
20. I have already found the interested party's application wanting and, therefore, it is not necessary to interrogate the ex parte applicants' application any further. For the reasons I have given, the interested party's application dated 24 September 2024 is dismissed with costs to the ex parte applicants. To that extent only, the ex parte applicants' application dated 25 November 2025 is allowed.

SIGNED, DATED AND DELIVERED ON 17 NOVEMBER 2025

NGAAH JAIRUS

JUDGE

