



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mathenge & another v Belle Holdings Limited & 2 others (Environment and Land Case 74 of 2021) [2025] KEELC 8605 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8605 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 74 OF 2021  
SM KIBUNJA, J  
DECEMBER 10, 2025**

**BETWEEN**

**DOMINIC MUREITHI MATHENGE ..... 1<sup>ST</sup> PLAINTIFF**

**PRISCILLA WANGECI NJOROGE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**BELLE HOLDINGS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**WIRELESS CELL CONNECT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**BALALA & ABED ADVOCATES ..... 3<sup>RD</sup> DEFENDANT**

*(CHAMBER SUMMONS & NOTICE OF MOTION BOTH DATED 23RD MAY 2025, AND NOTICES OF MOTION DATED 29TH MAY 2025 & 3RD JUNE 2025)*

**RULING**

1. Through the chamber summons dated 23<sup>rd</sup> May 2025, the plaintiffs seek for inter alia:
  - a. Stay of execution of taxation ruling of 10<sup>th</sup> April 2025, pending inter parties hearing and determination of the reference.
  - b. That upon hearing of the reference, the court do find that;
    - i. the Respondent's party to party bill of costs and or instruction fees was grossly exaggerated;
    - ii. the ruling of 10<sup>th</sup> April 2025 be set aside;
    - iii. the court assesses the bill of costs dated 8<sup>th</sup> January 2025 or alternatively directs that it be re-assessed by another deputy registrar other than the Hon. Christopher L. Yalwala; and



iv. costs.

The application is based on the twelve (12) grounds on its face marked (a) to (l), and supported by the affidavit of Dominic Mureithi Mathenge, the 1<sup>st</sup> plaintiff, sworn on the 23<sup>rd</sup> May 2025, inter alia deposing that they were denied their constitutional right to defend themselves as the bill of costs was taxed on 10<sup>th</sup> April 2025 at Kshs. 666,058 without establishing that they had been served with the bill of costs or notice of taxation; that the deputy registrar erred in allowing instruction fees at Kshs.855,301 that was excessive, and in allowing the various items listed without supporting documents being availed; and that Ndutumi Auctioneers will proceed with the sale of the proclaimed goods unless stay order is granted.

2. The notices of motion dated 23<sup>rd</sup> May 2025, and 29<sup>th</sup> May 2025, have similar prayers (1) to (3) to those in the chamber summons dated 23<sup>rd</sup> May 2025. The two applications have an additional prayer (4), in which the plaintiffs seeks for the court “to extend the period for the issuance by the applicant of the notice of objection to the taxing officer Hon. Christopher L. Yalwala.” The applications are based on the eleven (11) grounds on their face marked (a) to (k) and supported by the affidavit of Dominic Mureithi Mathenge, the 1<sup>st</sup> defendant, sworn on the 23<sup>rd</sup> May 2025 and 29<sup>th</sup> May 2025 respectively. The depositions are more or less similar to those in the affidavit in support of the chamber summons, with additional depositions inter alia that, the plaintiffs were aggrieved by the taxation ruling, and wishes to file an appeal on the ground that:
  - a. they had not been served with the bill of costs;
  - b. the taxation was done under the wrong provisions of the Advocate Remuneration Order; and
  - c. the respondent was executing for Kshs.1,286,424.42 as opposed to the amount assessed after taxation of Kshs.666,058.
3. Vide the notice of motion dated 3<sup>rd</sup> June 2025, the plaintiffs seek for stay of execution pending an intended appeal on the decision of Hon. Noelyne Reuben delivered by the deputy registrar on 30<sup>th</sup> May 2025. The application is based on the seven (7) grounds on its face marked (1) to (7) and supported by the affidavit of Dominic Mureithi Mathenge, 1<sup>st</sup> plaintiff, sworn on the 3<sup>rd</sup> June 2025, deposing inter alia that they had filed an application for stay of execution under certificate dated 23<sup>rd</sup> May 2025 that was fixed for hearing on 29<sup>th</sup> May 2025; that the hearing did not take place as Hon. Yalwala, the Deputy Registrar, was away on compassionate leave; that they filed another application for stay of execution under certificate of urgency dated 29<sup>th</sup> May 2025 which Hon. Noelyne Reuben certified urgent on 30<sup>th</sup> May 2025, but did not fix a date for its hearing; that the plaintiffs are aggrieved by the ruling of 30<sup>th</sup> May 2025 and wishes to file an appeal; that they were served with warrants of sale of property in execution of money decree dated 5<sup>th</sup> May 2025, proclamation of attachment dated 22<sup>nd</sup> May 2025 and Ndutumi Auctioneers will proceed to attach their assets in settlement of Kshs.1,287,924.42 unless stay order are issued.
4. The four applications are opposed by the defendants through the replying affidavit of Twaha Abdulhakim, director with 1<sup>st</sup> defendant, sworn on 27<sup>th</sup> June 2025, in which he inter alia deposed that the prayers (1) to (4) are spent as the court has already stay of execution orders dated 5<sup>th</sup> June 2025; that contrary to the plaintiffs were physically served with bill of costs and notice of taxation on 11<sup>th</sup> February 2025, and that they acknowledged and stamped the documents, as evinced on the affidavit of service; that the plaintiffs were also served with ruling notice for 9<sup>th</sup> April 2025 and an affidavit of service was filed; that upon taxation ruling being delivered on 9<sup>th</sup> April 2025, the defendants wrote 30<sup>th</sup> April 2025 to the plaintiffs asking for payment of the taxed costs, interests and VAT; that there are no



valid reasons given to warrant extension of time to file an appeal or objection as they were aware of the processes leading to the taxation ruling; that the bill of costs was drawn to scale and not having been opposed, the taxing master did not err in awarding the items therein; that the applications are without merit and should be dismissed with costs.

5. The record confirms that while giving directions on the notice of motion dated 3<sup>rd</sup> June 2025 on the 5<sup>th</sup> June 2025, the court ordered inter alia that all the four applications filed by the plaintiffs be canvassed together to avoid unnecessary delay; that stay of execution was granted pending inter parties hearing on condition the plaintiffs deposits the whole taxed costs in an interest earning bank account in the parties advocates' names, or with the court in ten days. During the subsequent mention on 1<sup>st</sup> July 2025, the court directed that the applications be canvassed through written submissions and gave timelines for filing and exchanging the same. The learned counsel for the plaintiffs and defendants filed their submissions dated 22<sup>nd</sup> October 2025 and 27<sup>th</sup> October 2025 respectively, which the court has considered.
6. The issues for the court's determinations in the chamber summons and three notices of motions are as follows:
  - a. Whether the plaintiffs have met the threshold for stay of execution order to issue pending the intended reference and or appeal.
  - b. Whether the plaintiffs have made a reasonable gave for extension of time to issue notice of objection to the taxation master.
  - c. Who pays the costs to each of the four applications?
7. The court has carefully considered the grounds on the four applications, affidavit evidence for and against, submissions by the learned counsel, superior court decisions cited thereon, the record and come to the following findings:
  - a. That the main ground on the plaintiffs' applications challenging the taxation ruling of 10<sup>th</sup> April 2025 is that they were not given an opportunity to be heard as the Bill of Costs and the Notice of Taxation were not served. The defendants have disputed that claim and annexed to their replying affidavit copies of affidavits of service sworn by Boniface M. Joseph confirming service. The plaintiffs have through submissions by their learned counsel stated that the email [kmkadvocates@gmail.com](mailto:kmkadvocates@gmail.com) used by the said process server to effect service to them was not their email address. It is trite that submissions is an address from the bar, and cannot be a medium through which evidential materials are presented to the court.
  - b. The proper forum of rebutting what is in a replying affidavit is through a further or supplementary affidavit and not submissions. I have perused the copy of the plaintiffs' advocates letter to the defendants' advocate dated 30<sup>th</sup> April 2025 that is attached to the replying affidavit and marked "TA 4(b)" and noted among the six emails on the right top corner, below the telephone numbers, is [kmkadvocates@gmail.com](mailto:kmkadvocates@gmail.com), and the plaintiffs' counsel's submission that the email, [kmkadvocates@gmail.com](mailto:kmkadvocates@gmail.com), does not belong to them cannot therefore, be true. I am therefore satisfied that the plaintiffs were served with the party to party bill of costs and notice of taxation and failed to defend it and or attend court for taxation. I have taken the liberty to peruse the record and the taxation ruling in respect of the bill of costs dated 8<sup>th</sup> January 2025 is the one dated 7<sup>th</sup> April 2025 and delivered on 9<sup>th</sup> April 2025. I have not found any taxation ruling delivered on 10<sup>th</sup> April 2025 as alleged in the plaintiffs' applications, and the court cannot consider issuing orders against a non-existent taxation ruling.



- c. It is clear from the ruling dated 7<sup>th</sup> April 2025 and delivered on 9<sup>th</sup> April 2025, the bill of costs had sought for Kshs.1,168,184.96. under item 1 on instruction the taxing master has indicated that the suit property was a liquidated claim of Kshs.32,382,525, and worked out how and why he taxed off Kshs.340,997.60 from the Kshs.855,301 sought to allow Kshs.514,303.40 on that item. It is also clear that Kshs.161,128.96 claimed as VAT under item 2 was taxed off while the other items were found to have been drawn to scale and allowed. The last paragraph of the taxation ruling leaves no doubts that Kshs.502,126.56 was taxed off from the total claim of Kshs.1,168,184.96 leaving the amount allowed or granted after taxation as Kshs.666,058.40. I do not find any reasonable basis to fault the taxing master on his taxation ruling dated 7<sup>th</sup> April 2025 and delivered on 9<sup>th</sup> April 2025.
- d. That in view of the finding above that the respondents had been served with the party to party bill of costs and taxation notice and failed to oppose it or attend court during taxation, then I find they have failed to present any reasonable basis upon which to ground their application for extension of time, to file a notice of objection to the taxing master. They have failed to tender any reasonable explanation on their delay, and the filing of a multiplicity of applications seeking for more or less the same prayers did not help in any way other than resulting to increase in costs and time used. The court therefore finds that the filing of the chamber summons dated 23<sup>rd</sup> May 2025 did not comply with paragraph 11 of the Advocates (Remuneration) Order, 2014 as no evidence of notice to object was given to the taxing officer within fourteen days, and the application for extension of time has failed. The attempt by the plaintiffs to canvass the merit of a non-existent reference is therefore an attempt to prosecute a reference before extension of time to file the notice of objection and possibly reference thereafter has been dealt with, which is irregular.
- e. In the notice of motion dated 3<sup>rd</sup> June 2025, the plaintiffs sought for stay of execution pending an intended appeal on the decision of Hon. Noelyne Reuben delivered by the Deputy Registrar on 30<sup>th</sup> May 2025. I have perused the record and have not seen any ruling delivered or dated 30<sup>th</sup> May 2025, or any Notice of Appeal in respect of a ruling dated or delivered on 30<sup>th</sup> May 2025. The plaintiffs have therefore failed to establish the basis for an order of stay of execution to issue, and the application fails.
- f. From the foregoing, I find no merits in the plaintiffs four applications listed above. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where for good cause the court directs differently. In this instance I find no reason to direct differently, especially considering the defendants have successfully opposed the applications. The plaintiffs will bear the defendants costs.
8. In view of the foregoing conclusions on the four listed applications, the court finds and orders as follows:
- a. The plaintiffs' chamber summons and three notices of motion are without merit and are dismissed.
- b. The plaintiffs to bear the defendants costs in the four applications.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 10TH DAY OF DECEMBER 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**



In The Presence Of:

Plaintiffs : M/s Wamaitha

Defendants : M/s Julu

Kalekye-court Assistant.

