



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**  
**MILIMANI LAW COURTS**

**ELC NO. 828 OF 2016**

**SCOTIA HOLDINGS LIMITED.....PETITIONER**  
**VERSUS**  
**PATEL RAVJI.....1<sup>ST</sup> DEFENDANT**  
**LALJI DEVRAJ.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application dated 10<sup>th</sup> February 2025 prays for the following orders;
  - a) That this Application be certified as urgent and service be dispensed with in the first instance.
  - b) That this Honourable Court do hereby grant leave to the firm of WANYANGA & COMPANY ADVOCATES to come on record on behalf of the Defendants/Applicants in place of OTHIENO AND COMPANY ADVOCATES.
  - c) That pending the hearing and determination of this Application inter partes, the Honourable Court be pleased to issue an ORDER staying the execution of the Judgment entered on the 5th of May 2022 and/or any other consequential orders deriving therefrom.
  - d) That pending the hearing of the Notice to Show Cause dated 7th November 2024, the Honourable Court be pleased to issue an ORDER

staying the execution of the Judgment entered on the 5th of May 2022 and/or any other consequential orders deriving therefrom.

- e) That an Order due issue setting aside the Notice to Show Cause dated 7th November 2024.
  - f) That this Honourable Court do issue any such other and/or further Orders as justice of the case herein may demand.
2. The application is brought on the grounds that following the delivery of Judgement herein on the 5<sup>th</sup> May 2022, the Plaintiff/ Respondent filed a bill for taxation on the 17<sup>th</sup> January 2024 which was taxed at an amount of Kshs 2,400,000. That following the Taxation the Defendant / Applicant sought to be furnished with reasons for the Taxation which have not been availed to date. That the counsels have just been instructed to take over the matter which is scheduled for Notice to Show Cause on 11<sup>th</sup> February 2025.
  3. The application is supported by the affidavit of Devraj Lalji who deposes that the Defendant has on several occasions requested to be furnished with the reasons for taxation but have not been successful. He attributes the delay in filing the reference on the failure to avail reasons and urges the court to allow the orders as the Defendant is likely to be prejudiced if execution is allowed to take place.
  4. The Plaintiff/Respondent opposed the application vide a Replying affidavit sworn by Morrison Wayaya on the 3<sup>rd</sup> March 2025. He stated that there had been inordinate delay on the part of the applicants as the Judgement had been rendered 3 years ago and the bill of costs taxed one year prior. That the Defendant/ Applicants have not appealed against the Judgement. He was

categorical that the Applicants have not furnished the court with any evidence to prove that they have made efforts to obtain the reasons for the Ruling.

On the 12<sup>th</sup> March 2025 the court gave directions that the application be canvassed by way of written submissions. The Applicants filed submissions dated 28<sup>th</sup> May 2025 in support of the application while the Respondents filed submissions dated 28<sup>th</sup> May 2025.

5. The court has considered the application, the affidavits and the submissions by both parties. The court distils the following issue for determination;

- Whether the court should grant leave to the firm of Wanyanga and Co to come on record after Judgement
- Whether the court should set aside the Notice to Show Cause / grant stay of execution

6. The prayer by Wanyanga & Co Advocates to come on record after Judgement is guided by Order 9 rule 9 of the Civil Procedure Rules which stipulates as follows: -9. *When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—*

- a. *upon an application with notice to all the parties; or*
- b. *upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.*

7. This reasoning behind this provision was articulated in **S K Tarwadi vs Veronica Muehlmann [2019] eKLR** wherein the court observed that: “ ... In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him...”
8. In this case the application has been served upon the Respondent as evidenced by the affidavit of service. There is no objection by the firm of Othieno & Co Advocates to the firm of Wanyanga taking over the matter. The court will thus allow this application.
9. Rule 11 of the Advocates Remuneration Order provides for objections to Taxation thus; “Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”
10. While the Defendant/ Applicant avers that the delay in filing the Reference was occasioned by the failure of the Taxing Master to provide reasons, there is no letter requesting reasons attached to the affidavit in support of the application. The court on its own motion looked through the E filing system and was only able to glimpse a letter requesting reasons dated 19<sup>th</sup> December 2023 by the advocate now seeking to come on record. Even if the court were to assume the date was a typographical error, the request has been made by a

stranger as the advocate had not by then been granted leave to come on record. I therefore find that there is no evidence that the Defendant/Applicant has made any efforts to obtain the reasons for taxation.

11. The principles that guide the Court in applications for stay of execution pending appeal are well settled. Order 42 rule 6(2) of the **Civil Procedure Rules** provides as follows:

*No order for stay of execution shall be made under subrule (1) unless—*

*(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and*

*(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.*

12. These principles were summarized in **Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nai. 15 of 1990 [1990] KLR 365**, wherein the Court of Appeal held that whereas the Court of Appeal's power to grant stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 42 rule 6 of the **Civil Procedure Rules** is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay.

13. The Applicant cites delay in obtaining reasons for taxation as ground for delay in seeking stay of execution. In view of my findings on the Applicant's failure to request for reasons, there is no explanation for the delay in filing the instant application. Even worse the Applicant does not offer any security.

14. In considering an application for stay the court has to balance the interests of the Applicant with those of the Respondent as highlighted in the case of *M/s portreitz maternity -vs- James Karanga Kabia civil appeal no. 63 of 1997* where the court stated;

*“That right of appeal must be balanced against an equally weighty right, that of the Plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the Plaintiff of that right”.*

15. The Defendant/ Applicant have failed to provide any reasons for the great delay in filing this application. I therefore find that the application has no merit and save for the prayer that the firm of Wanyanga and Co be allowed to come on record for the Defendant is dismissed with costs. It is so ordered.

**Ruling Signed dated and delivered via Microsoft teams this 4<sup>th</sup> day of December 2025**

**JUDY OMANGE**

**JUDGE**

***In the presence of***

*Court Assistant Catherine*

*Mr. Otieno for Defendant/Respondent*

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