

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**MISC. APPLICATION NO. E062 OF 2024**

*(Before Hon. Lady Justice Agnes Kitiku Nzei)*

**V. CHOKAA & CO. ADVOCATES .....APPLICANT**

*VERSUS*

**ESSAJEE AMIJEE (E.A) LTD .....RESPONDENT**

**RULING**

1. Vide a Ruling delivered on 28<sup>th</sup> March, 2025, this Court made the following Orders:-
  - (a) *The Taxing Officer's Taxation Ruling delivered on 30<sup>th</sup> August, 2024 taxing the Advocate's bill of costs at Kshs.84,042/= and the Certificate of Taxation issued thereon on 4<sup>th</sup> September, 2024 are hereby set aside.*
  - (b) *The Advocate/Client Bill of Costs dated 27<sup>th</sup> February, 2024 is hereby re-assessed and taxed at Kshs.70,800/=.*
  - (c) *A Certificate of Costs shall issue forthwith.*

(d) *Each party shall bear its own costs of the application.*

2. On 16<sup>th</sup> May, 2025, the Client/Applicant filed an urgent Notice of Motion dated 15<sup>th</sup> May, 2025 seeking the following Orders:-

(a) *That the application be certified as urgent, service of the same be dispensed with, and [be] heard ex-parte in the first instance.*

(b) *That the Court be pleased to grant interim stay of execution of the costs awarded **(sic)** in its Ruling delivered on 28<sup>th</sup> March, 2025 in **NAIROBI ELRC MISC. NO. E062 of 2024 (V. Chokaa & Co. Advocates - vs - Essajee Amijee E.A. Ltd)**, pending hearing and determination of the application.*

(c) *That the Court be pleased to grant interim orders for stay of execution of the costs awarded **(sic)** pending hearing and determination of the intended appeal.*

(d) *That leave be granted to the Applicant to appeal to the Court of Appeal against this Court's Ruling*

delivered on 28<sup>th</sup> March, 2025 in **NAIROBI ELRC  
MISC. NO. E062 of 2024 (V. Chokaa & Co.  
Advocates - vs - Essajee Amijee E.A. Ltd).**

(e) *That consequent to the grant of leave, the Notice of Appeal filed herein be deemed to be duly filed and properly on record.*

(f) *That costs of the application be in the cause.*

3. The application sets out on its face the grounds on which it is based, which grounds are substantially replicated in the supporting affidavit sworn on 15<sup>th</sup> May, 2025. The Application is opposed by the Advocate/Respondent vide a replying affidavit sworn on 15<sup>th</sup> July, 2025.
4. The application was placed before me under a certificate of urgency on 22<sup>nd</sup> March, 2025. I certified the same as urgent and granted interim stay of execution, **on condition that the taxed costs were deposited in Court within 21 days of the date of the order, and directed that the application be served.** The Court was on 15<sup>th</sup> July, 2025 informed by Counsel that the taxed costs had been deposited in Court **on 11<sup>th</sup> June, 2025.**

5. Both parties have since filed written submissions on the application pursuant to the Court's directions given on 15<sup>th</sup> July, 2025 in that regard.
6. I have noted from the Court file herein that following delivery of this Court's Ruling on 28<sup>th</sup> March, 2025, the Client/Applicant filed in this Court **a Notice of Appeal** pursuant to Rule 77(6) of the Court of Appeal Rules 2022. **The said Notice of Appeal is dated 7<sup>th</sup> April, 2025 and was filed on 8<sup>th</sup> April, 2025.** This was within the time provided for in the aforesaid Court of Appeal Rules for filing of a Notice of Appeal.
7. In my view, issues that fall for determination are as follows:-
- (a) Whether this Court is seized of Jurisdiction to grant stay of execution pending appeal, and if so, whether stay should issue in the present case.**
  - (b) Whether leave as sought by the Client/Applicant can issue.**

8. On the first issue, a Court's Jurisdiction flows from either the Constitution or legislation or both. This position was stated by the Supreme Court of Kenya in the case of **Samuel Kamau Macharia & Another - vs - Kenya Commercial Bank Limited & Another [2012] eKLR** as follows:-

***“A Court's Jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise Jurisdiction as conferred by the Constitution or other written law, and cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law . . . whether a Court of law has jurisdiction to entertain a matter before it . . . goes to the very heart of the matter, for without Jurisdiction, the Court cannot entertain any proceedings.”***

9. Pursuant to Section 13 of the Employment and Labour Relations Court Act, execution proceedings regarding orders and decrees of this Court are governed by the Civil Procedure Rules. Indeed, Rule 73(2) of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:-

**“(2) Rules on an execution or stay of execution of an order or decree of the Court shall be in accordance with the Civil Procedure Rules.”**

10. Order 42 Rule 6(1) of the Civil Procedure Rules provides as follows:-

**“(1) No appeal or second appeal shall operate as a stay of execution of proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an**

***order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”***

11. Order 42 Rule 6(4) of the Civil Procedure Rules provides as follows:-

**“(4) For the purpose of this Rule, an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court a notice of appeal has been given.”**

12. There being an appeal duly filed pursuant to Order 42 Rule 6(4) of the Civil Procedure Rules, this Court is seized of Jurisdiction to grant a stay of execution of its Orders in issue pursuant to Order 42 Rule 6(1) of the Civil Procedure Rules pending hearing and determination of the filed appeal, if such stay is merited.

13. On whether stay of execution should issue pending hearing and determination of the appeal instituted by the Client/Applicant as aforesaid, the Client/Applicant

deposited in Court the taxed costs on 11<sup>th</sup> June, 2025 pursuant to a conditional interim stay of execution ordered by this Court on 22<sup>nd</sup> May, 2025. The deposited sum shall remain so deposited, pursuant to Order 42 Rule 6(2)(b) of the Civil Procedure Rules, pending hearing and determination of the instituted appeal, or pending further Orders of this Court if no appeal is eventually **lodged** or has been lodged in the Court of Appeal pursuant to the said Court's Rules.

14. The Court of Appeal (**Madan, JA**) stated as follows in the case of **Butt - vs - Rent Restriction Tribunal [1979]**  
**eKLR:-**

***“... It is the discretion of the Court to grant or refuse stay, but what has to be judged is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the Court as a general rule ought to exercise its best discretion in a way so as to prevent the appeal, if successful, from being nugatory, per Brett L J in Wilson vs. Church (No.***

**2) 12 ChD (1870) 454 at p459. In the same case, Colton L J, said at p. 458:-**

***“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this Court has to see that the appeal, if successful, is not nugatory.”***

15. On the second issue, the Applicant is **not specific** on what kind of leave it is seeking. Prayer (d) in the application as set out herein seeks **leave to appeal to the Court of Appeal against this Court’s Ruling delivered on 28<sup>th</sup> March, 2025**. The application is expressed to be brought pursuant to Article 159(2)(d) of the Constitution of Kenya 2010, **Rule 11(3) of the Advocates (Remuneration) Order**, Sections 1A, 1B and 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules 2010. Based on the provisions of the law invoked, and the fact that an appeal has since been instituted by filing of a Notice of Appeal, it can only be understood that the Client/Applicant is seeking leave pursuant to **Rule 11(3)** of the Advocates (Remuneration) Order, which states as follows:-

**“(3) Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subparagraph (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.”**

16. It is quite clear, from the wording of the foregoing Rule, that leave to appeal to the Court of Appeal against a Judge’s decision upon an objection referred to the Judge **must be sought and obtained before the appeal is filed**. As already stated in this Ruling, the Client/Applicant instituted an appeal against this Court’s Ruling in issue on 8<sup>th</sup> April, 2025.

17. I have noted from this Court’s record that the Client/Applicant **did not** seek leave to appeal upon delivery of the Court’s Ruling on 28<sup>th</sup> March, 2025. Further, the Client/Applicant did not subsequently apply for, and did not obtain the Court’s/Judge’s leave to appeal **before** instituting its appeal vide the Notice of Appeal filed in this Court on 8<sup>th</sup> April, 2025. Rule 11(3) of the Advocates (Remuneration) Order **does not** provide for granting of leave **after** filing of

an appeal. As stated by the Supreme Court of Kenya in the **Samuel Kamau Macharia Case (Supra)**, a Court's jurisdiction flows from either the Constitution or legislation or both, and the Court cannot arrogate to itself jurisdiction exceeding that which is conferred by law.

18. The upshot of the foregoing is that this Court has **no** Jurisdiction to grant leave to appeal to the Court of Appeal, as sought, **after** the appeal is instituted. Consequently, the prayer for leave is declined. The prayer to deem the Notice of Appeal already filed as being properly on record (**prayer (e)**), is anchored on the prayer for leave, and must also fail, as this Court has **no** jurisdiction to issue such an order. The prayer is declined.

19. In sum, and having considered written submissions filed on behalf of both parties herein, the Notice of Motion dated 15<sup>th</sup> May, 2025 **partly** succeeds, and is **partly** allowed in the following terms:-

**(a) There will be a stay of execution of this Court's Orders dated 28<sup>th</sup> March, 2025 pending hearing and determination of the intended appeal.**

**(b) The taxed costs deposited in this Court pursuant to this Court's Orders dated 22<sup>nd</sup> May, 2025 shall remain so deposited as security for due performance of the Orders dated 28<sup>th</sup> March, 2025, pending hearing and determination of the intended appeal; or further orders of this Court if no appeal is eventually lodged or has been lodged in the Court of Appeal.**

**(c) Each party will bear its own costs of the application.**

20. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS**

**23<sup>RD</sup> DAY OF JANUARY 2026**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Chokaa for the Applicant/Respondent

Miss Otokoma for the Respondent/Applicant

ORIGINAL