

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**

**ELC LAND CASE NO. E001 OF 2025**

**ANGAYO                      AMOTH                      DANCAN                      &                      11  
OTHERS.....PLAINTIFFS/RESPON  
DENTS**

**-VERSUS-**

**CORNEL                      RASANGA                      AMOTH.                      .....1<sup>ST</sup>  
DEFENDANT/APPLICANT**

**COUNTY GOVERNMENT OF SIAYA.....2<sup>ND</sup>                      DEFENDANT/  
APPLICANT**

**LIVINGSTINE                      RAGEN                      AMOTH.....3<sup>RD</sup>  
DEFENDANT/APPLICANT**

**WEST KENYA SUGAR COMPANY LTD.....4<sup>TH</sup>  
DEFENDANT**

**RULING**

1. The subject of this ruling is the Notice of Motion Application dated 13/05/2025 by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants seeking the following verbatim orders; -

- 1) SPENT
- 2) THAT this Honourable Court be pleased to stay the suit herein pending payment of costs.

3) THAT this honourable court be pleased to strike out the suit for non-payment of the taxed costs in MCELC/21/2019.

4) THAT costs of this application be borne by the respondents

2. The application is premised on the following grounds; -

1) THAT the Plaintiffs first filed this suit in the lower court vide, MCELC/21/2019, which suit was dismissed for lack of jurisdiction, and the Plaintiffs/Respondents were ordered to pay costs amounting to Kshs 349,235.

2) THAT Plaintiffs/Respondents have frustrated efforts to recover the decretal sums by obstructing auctioneers, including threatening them with a panga, thereby delaying the execution process.

3) THAT the proceedings in this suit are similar with the issues in the lower court matter, and allowing these proceedings to continue before the settlement of the decretal sums would prejudice the Applicant and occasion a miscarriage of justice.

4) THAT a stay of these proceedings is necessary to promote judicial, prevent abuse of the court process, and ensure fairness to all parties. e) THAT by refusing to comply with the court order to pay costs the respondents are in contempt and therefore lack audience before the court whose orders they refuse to obey.

- 5) THAT the application is made in good faith, in the interest of justice, and without undue delay.
3. The application is also supported by the affidavit of Livingstone Ragen Amoth the 3<sup>rd</sup> Defendant with authority to depone to the matters. The deponent largely rehashes the grounds in support of the application. It is also deponed that the dispute before this court and the one before the lower court were similar. Copies of both Plaints, ruling dismissing the said suit, certificate of costs and proclamation by auctioneers are annexed.
  4. It is further deponed that the decretal sums arising from the taxed costs remain unsettled, and the plaintiffs have frustrated the efforts by the applicants to recover the same by threatening to mete violence on the auctioneer using panga. That the continuation of proceedings before this court without settling the decretal sums from the lower court case amounts to a mockery and abuse of the court processes by parties who themselves do not follow orders of the court but at the same time expects justice from the same courts.
  5. According to the applicants the orders of stay of proceedings should be granted is in the interest of justice and which will allow for the defendants/applicants to recover the decretal amounts from Plaintiffs/respondents and ensure finality of the previous suit. That no prejudice will be suffered.

6. That having failed to pay the taxed costs as ordered by court, they are in contempt of court and unless they purge the contempt they do not have an audience before this honorable court. That since they have deliberately refused to pay the taxed costs in MCELC/21/2019, this honourable court has the powers to order for the dismissal of the instant suit. Further that application is made in good faith, without undue delay, and in accordance with the provisions of Order 42 Rule 6 of the Civil Procedure Rules, 2010, and Section 3A of the Civil Procedure Act.
7. The application is opposed by the Replying affidavit of Erick Wango Amoth the 2<sup>nd</sup> Plaintiff sworn on 7/07/2025. It is deponed that costs were not awarded and the whole taxation process was flawed as the Magistrate lacked jurisdiction. That the taxation was based on a criminal activity on the part of the respondents therefore unconstitutional. The court cannot reward a crime. According to the deponent the decretal sums have been appealed and the appeal is due for a ruling on 30th July, 2025.

### **Submissions**

8. The application was disposed by way of written submissions dated 30/09/2025. The Respondents submissions are dated 13/10/2025.

### **Analysis and Determination**

9. Having considered the application, the affidavits sworn for and against it alongside the submissions filed, the main

issue for determination is whether the orders sought in the application should be issued.

10. The application is brought under the provisions of Sections 1A, 1B, 3A, and 6 of the Civil Procedure Act, Cap 21, Order 25 Rule 4, and Order 26 Rule 1 of the Civil Procedure Rules, 2010, Article 159 (2) (c) of the Constitution of Kenya 2010 and all other enabling provisions of the law).
11. I will not rehash the above provisions except the said Order 25 Rule 4 and 26 Rule 1

**“Stay of subsequent suit [Order 25, rule 4]**

**If any subsequent suit shall be brought before payment of the costs of a discontinued suit, upon the same, or substantially the same cause of action, the court may order a stay of such subsequent suit until such costs shall have been paid”**

12. Order 26 Rule 1 is on security for Costs and gives the court the discretion to order that security for the whole or any part of the costs of any defendant or third or subsequent party be given by any other party.
13. I agree with the applicants submission that it is not in doubt that the suit in MCELC/21/2019 was discontinued however by the court for want of jurisdiction. That the said suit and the current one is similar in all dimensions; the parties and the prayers sought. It is also not contested that the Plaintiffs have not settled the taxed costs. being Kshs 349,235.

14. I have also read the decisions in *John Kibet Kibor v Daniel Kiplangant Chepkwony* [2017] KEELC 3207 (KLR), and *Meshack Ochora Osoro Aricha v National Bank Kenya Limited & Saddabri Auctioneers* [2017] KEELC 3169 (KLR), cited by the applicant and I'm indeed persuaded by the same.
15. But the ISSUE IS what has resulted into the failure to settle the taxed costs considering that every case is decided upon its merits and circumstances. Firstly, with due respect I think it is wrong to impute criminality on the part of the other party. If the respondents felt very strongly about this then he knows the correct forum to adjudicate the allegation.
16. Having said that it is the respondents case that costs were not awarded and the issue was pending appeal before this court. It is submitted that the application is premature and must await the appeal.
17. It is not in dispute that there are two appeals that are pending before this court in addition to the current suit all arising from the same facts and surrounding the contested costs. The appeals are still pending determination.
18. But I must note that this court rendered a ruling on an application dated 25/05/2025 in Appeal No. **ELCLA/025/2025** on 18/12/2025. The application was made by the Respondents herein for stay of execution of the costs arising from the matter filed in the lower court. The full particulars are within the knowledge of the parties herein. I rendered myself thus; -

**'The upshot of the foregoing is that the Notice of Motion Application dated 25/05/2025 is disposed of in the following terms; -**

- 1. An order of stay of execution of the court decree dated 6/3/2025 hereby issues and restraining the Respondents their servants Ikimwanya Auctioneers from executing the court decree dated 6/3/2025 pending the determination of the appeal.**
- 2. The Applicants shall deposit in Court the amount of Kshs.349,235 within 45 days of this ruling.**
- 3. Failure to comply with order No. 2 above the decree holder shall be at liberty to execute.**
- 4. The costs of the application shall abide the outcome of the appeal.'**

19. Having made the aforementioned orders it is my considered view that the above orders cover the Applicant in the instant application herein to the extent that the taxed costs are being held by the court if at all and secures them should the appeal not succeed.
20. In the meantime, the present suit can proceed on the substantive merits as it has nothing to do with the execution of the decree. To stay the instant proceedings on the basis of failure to pay costs would be in my view a contradiction of the ruling of the court.
21. The upshot of the foregoing is that the application dated 13/05/2025 is overtaken by events and shall be treated as such in view of the orders of the court issued on

18/12/2025 in **ELCLA/025/2025** filed in the Environment and Land Court at Siaya

**Orders Accordingly**

Dated, signed and delivered at Siaya this 26<sup>th</sup> day of February 2026

**HON. A. E. DENA**  
**JUDGE**  
**26/02/2026**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:**

Mr.Omondi Holding Brief for Mr. Que for 1<sup>st</sup> & 3<sup>rd</sup> defendants/applicants

Mr. Oguda for 4<sup>th</sup> Defendant

No appearance for the Plaintiffs/Respondents

Court assistant: Ishmael Orwa