



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISC NO. E250 OF 2025

SOLOMON

MWINZI

MWAU.....OBJECTOR/APPLICANT

VERSUS

WEST END BUTCHERY LIMITED.....

RESPONDENT

RULING

1. Before me for determination is the Chamber Summons dated 24th July 2025, brought under Article 159 of the Constitution of Kenya 2010, Sections 1A, 1B, and 3A of the Civil Procedure Act, and Rule 11 of the Advocates (Remuneration) Order and Order 50 and 51 Rule 10 of the Civil Procedure Rules in which the Applicant seeks the following orders:

a) Spent.

b) Spent.

c) THAT ending hearing and final determination of this application, the Honourable Court be pleased to issue a stay of execution of the ruling dated 8th May 2025 and the accompanying Certificate of Costs and consequential orders.

d) THAT the Honourable Court be pleased to grant the Applicant leave to file a Reference out of the prescribed time in objection to the Taxing Officer's (Hon Vincent Kiplagat) ruling delivered on 8th May 2025.

e) THAT the Draft Reference attached hereto be deemed as duly filed and served upon payment of the requisite fees.

f) That the costs of this application be provided for.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Solon Mwinzi Mwau, sworn on even date.

THE APPLICANT'S CASE

3. The Applicant stated that, dissatisfied with the ruling issued on 8th May, 2025, he requested the reasons for the ruling in accordance with Paragraph 11 of the Advocates (Remuneration) Amendment Order 2014, but the Taxing Officer did not respond, prompting him to send a reminder.
4. Based on the foregoing, he argued that he should not be blamed for failing to file the reference on time. He expressed his intention to file a reference arguing that the Taxing Officer erred in principle by failing to address himself to the orders contained in the judgment dated 20th December 2012 and failing to note that the value of the suit property was pleaded differently by the various parties involved.
5. The Applicant is apprehensive that if a stay is not granted, the Respondent would commence execution proceedings against him.

THE RESPONDENT'S CASE

6. The Respondent filed a replying affidavit sworn by Leonard Anyonje in opposition to the application.
7. The deponent stated that the ruling and the reasons for the taxation were available to the parties because they were uploaded on the CTS on 9th May, 2025.

8. According to him, the Applicant has not demonstrated his willingness to deposit the portion of the costs certified against him.
9. He asserted that the Taxing Officer did not err by failing to apportion the certified costs, as the Court had already apportioned the costs in the judgment. He maintained that the Taxing Officer applied the principles of taxation when making his decision.
10. The application was canvassed by way of written submissions.

THE APPLICANT'S SUBMISSIONS

11. The Applicant filed his submissions dated 13th October 2025.
- 12.** On behalf of the Applicant, Counsel relied on the contents of the supporting affidavit to argue that it would be a miscarriage of justice to deny the Applicant leave to file a reference out of time. To support this point, Counsel relied on **Paul Gacheru T/A Gicheru & Co Advocates v Karuga (K) Construction Co. Ltd (2008) KEHC (KLR)**

THE RESPONDENT'S SUBMISSIONS

13. The Respondent filed its submissions dated 20th October 2025.
14. On behalf of the Respondent, Counsel outlined the following issues for the court's determination:
- a) Whether the Honourable Court should grant a stay pending the hearing of the application; and*
 - b) Whether this Honourable Court should grant leave to file a reference out of time.*
15. Regarding the first issue, Counsel argued that for a stay of execution to be granted, the Applicant should deposit a quarter of the certified costs as security for the due performance of the decree.
- 16.** Regarding the second issue, Counsel submitted that the Applicant did not specify which items of taxation he objected to, but only requested the reasons for the ruling. Counsel argued that it is unnecessary for the Taxing Officer to provide reasons for the decision when the ruling already includes them. To support this argument, Counsel cited **Otieno, Ragot & Co Advocates v Kenindia Assurance Company Limited**

(2015) KLR, and Evans Thiga Gaturu Advocate v Kenya Commercial Bank Limited (2012) eKLR.

17. Counsel argued that granting leave to file the reference out of time would be a waste of the Court's time. Counsel further submitted that the Taxing Officer did not make an error in failing to apportion the certified costs, as the Court had already done so in its judgment.
18. In conclusion, Counsel urged the Court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

- 19.** Having considered the application, the respective affidavits, and the rival submissions, the following issues arise for determination:
- a) Whether a stay of execution of the ruling dated 8th May 2025 should be granted; and*
 - b) Whether the Applicant should be granted leave to file a reference out of time.*
- 20.** Regarding the first issue, the Applicant seeks a stay of execution of the ruling and certificate of costs pending the filing and determination of the intended reference.

21. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules outlines the guiding principles to be met for the grant of stay and provides that;

6(1) No appeal or second appeal shall operate as a stay of execution or 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.

6(2) No order for stay of execution shall be made under sub-rule (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

such security of costs for the performance of such decree or order as may ultimately be binding on him has been given by Applicant.

22. The principles governing stay of execution were discussed in **Butt v Rent Restriction Tribunal (1982) KLR**, where the Court of Appeal held that the power to grant stay is discretionary and should be exercised in a manner that prevents an appeal from being rendered nugatory.

23. On the first condition of proving that substantial loss may occur if stay orders are not granted, the Applicant should not only state that he is likely to suffer substantial loss but also prove that he will suffer substantial loss if stay orders are not granted.

24. In so finding, I am persuaded by the Court of Appeal decision in **Charles Wahome Gethi Vs Angela Wairimu Gethi (2008) eKLR**, where the Court held that;

“...it is not enough for the Applicants to say that they live or reside on the suit land and they will suffer substantial loss. The Applicants must go further and show the substantial loss that the Applicants stand to suffer if the Respondent executes the decree in this suit against them.”

25. What amounts to substantial loss was expressed by the Court of Appeal in the case of **Mukuma Vs Abuoga (1988) KLR**, where the Court held that;

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”

26. In the present case, the Applicant is apprehensive that the Respondent will commence execution proceedings if a stay of execution is not granted. Should execution take place before the reference is heard, the intended challenge to taxation may be rendered nugatory.

27. In an application for stay of execution pending appeal, an applicant must also demonstrate to the Court that the application was made without unreasonable delay. I find that the application was filed without undue delay.

28. Regarding the requirement for security for costs, Order 42 Rule 6 (2) (b) of the Civil Procedure Rules is expressed in mandatory terms, stating that the applicant must provide security for the performance of the order or decree. In the case of **Arun C Sharma Vs Ashana Rakundalia T/A Raikundalia & Co. Advocates & 2 Others (2014) eKLR**, the Court held that;

“The purpose of the security under Order 42 is to guarantee due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor....civil process is quite different because in civil process the judgment is like a debt hence the applicant become and are judgment debtors in relation to the respondent. That is why any security given under order 42 rule 6 of the civil procedure rules acts as a security for the performance of such decree or order as may ultimately be binding

on the Applicants. I presume the security must be one which can serve that purpose.”

- 29.** The Respondent correctly argued that the Applicant has not offered security for costs. In balancing the interest of justice, the Court finds that the ends of justice will be served by ordering the Applicant to deposit security for the due performance of the decree.
- 30.** Regarding the second issue, the procedure governing challenges to taxation is provided under Rule 11 of the Advocates' Remuneration Order. A party who objects to the decision of the Taxing Officer must give Notice in writing specifying the items objected to within fourteen days and thereafter file a reference to a judge upon receipt of the reasons for the taxation.
- 31.** The Court, however, has the discretion to extend the time if sufficient cause is demonstrated.
- 32.** The principles guiding extension of time were discussed by the Supreme Court in **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others (2014) eKLR**, where the Court stated that extension

of time is not a right but an equitable remedy that is available at the discretion of the Court, and the Applicant must satisfactorily explain the delay.

33. In the matter at hand, the Applicant stated that he requested the reasons for the ruling, but they were not supplied. The Respondent argued that the ruling, which contained the reasons, was uploaded on the CTS.

34. The requirement for reasons forms the basis on which a party may properly formulate a reference. **In Reupblic v Kenya Revenue Authority ex parte Yaya Towers Limited (2008) eKLR**, the Court held that if reasons for a decision are not provided despite a request, the court may intervene to prevent a party from being shut out of the right to challenge the decision.

35. In light of the foregoing, I find that the Applicant should not be denied the opportunity to challenge the taxation merely because the reasons were not supplied.

36. In the end, I find that the application is merited and is hereby allowed on the following terms:

a) The Applicant is granted leave to file a reference out of time against the ruling dated 8th May 2025.

b) The Applicant shall file and serve the Reference within fourteen (14) days from the date hereof.

c) A stay of execution of the ruling dated 8th May 2025 is granted on condition that the Applicant deposits a quarter of the certified costs within 14 days of this ruling.

d) In default of prayer (c), the stay shall automatically lapse.

e) Costs to abide by the outcome of the appeal

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 6TH DAY OF MARCH, 2025.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF: -

Nzei for the Applicant

Anyonje for the Respondent

Ahmed - Court Assistant

ORIGINAL