

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC NO. E046 OF 2022**

**JOSEPH NICHOLAS MURAGE (Suing as the administrator  
of the estate of Bernard Chiori .....  
PLAINTIFF/RESPONDENT**

**VERSUS**

**LAND REGISTRAR, KILIFI COUNTY ..... 1<sup>ST</sup>  
DEFENDANT/RESPONDENT  
MASUMBUKO YERRY KOMBE ..... 2<sup>ND</sup>  
DEFENDANT/APPLICANT**

**RULING**

1. For determination is the 2<sup>nd</sup> Defendant's application dated 27/11/2025 brought under sections 1A, 1B, 3 and 3A of the Civil Procedure Act; and Order 42 Rule 6 and Order 51 rule 1 of the Civil Procedure Rules, 2010. The application is seeking a stay of all further procedures relating to the pending taxation before this court pending the hearing and determination of the 2<sup>nd</sup> defendant's preferred appeal.
2. The application is premised on the grounds that the 2<sup>nd</sup> defendant challenges the entire judgment of this court in its entirety and that's filed and Notice of Appeal under the Court Of Appeal Rules 2022 and requested proceedings vide a letter dated 3<sup>rd</sup> October 2025; that despite the appeal the plaintiff has moved the court and caused to be filed a party to party bill of costs dated 30<sup>th</sup> October 2025 which has been scheduled for taxation on Monday 1<sup>st</sup> December 2025 (a date that went past without incident apparently due to information given to the taxing master that there was an application pending

before the judge, being the present application, where upon she appears to have refrained from any action on the bill of costs.)

3. The application is opposed by the plaintiff through his replying affidavit dated 5<sup>th</sup> December 2025. The plaintiff deponed that the application is premature; that the order awarding costs has not been stayed previewed and or set aside; that the application does not seek a stay of the judgment and decree but only the taxation of the bill of costs; that taxation proceedings are distinct from the main suit and are meant only to ascertain costs due and payable to the parties who have been awarded costs; that no prejudice is discernible and that no evidence has been placed before this court of any prejudice that maybe occasioned to the 2<sup>nd</sup> defendant by the determination of the amount of costs payable; that taxation would aid in the determination of what security should be provided by the 2<sup>nd</sup> defendant should he seek the later on, and 30 minutes event there bead of costs is not the subject of the intended appeal. The respondent states that the bill of cost was not the subject matter in the trial and the proposed stay cannot by any stretch of imagination be deemed an act of preservation of the subject matter of this suit.
4. The application was disposed of by way of written submissions which both sides filed and which I have taken consideration of in this ruling. However, the principal issue is that the application has been brought under Order 42 Rule 6 which rule in this court's view is reserved for applications for stay of execution of judgment and decree rather than the stay of taxation sought in the application.

And the respondent has responded to the application in substance as though it were a stay of execution application, which is not the case, probably *ex abundante cautela*. In fact, in the experience of this court I have not come across provisions of law providing for stay of taxation.

5. To this court, it is crystal clear that taxation is not tantamount to execution, and it does not automatically lead to execution. It is not execution that is sought to be stayed in the application hence **Order 42 Rule 6** does not come into play. Besides as stated by the respondent the bill of costs was not the issue before the trial Court and no order of stay thereof is merited.
6. Having considered the application before me I find that there is no good ground given for the proposed stay of taxation proceedings in this matter.
7. Consequently, the application details 27<sup>th</sup> November 2026 is here by dismissed with costs to the plaintiff for want of merit.

**Dated, signed and delivered at Malindi on this 14<sup>th</sup> Day of April, 2026.**

**MWANGI**



**JUDGE, ELC, MALINDI.**

**NJOROGE,**