

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT ELDORET
ELC CASE NO. 5 OF 2015

VERONICA J. MAGUT.....
.....PLAINTIFF

-VERSUS-

GLADYS MORAA MARIE NYACHIEO (Suing as legal representative of the late MARY KERUBO

AMINGA.....1ST DEFENDANT

PAUL KAVISI.....2ND
DEFENDANT

EMILY MISOI.....3RD
DEFENDANT

KAPYEMIT BLOCK 20/46 SELF HELP GROUP.....4TH
DEFENDANT

RULING:

1. The Plaintiff/Applicant filed a Notice of Motion dated 28th April, 2025 seeking for an order of stay of proceedings pending the hearing and determination of an appeal against the judgment of the trial court in this matter. The application is based on the 5 grounds thereon and supported by the affidavit of Veronica J. Magut (the applicant) sworn on even date.

2. The applicant deponed that she has been aggrieved by the judgment delivered by the trial judge in this matter on 21/11/2024 in which this suit was dismissed with costs. That she has since filed a Notice of Appeal against the entire judgment and now waiting for the typed and certified proceedings to enable her compile the Record of appeal.
3. The applicant averred that she has been served with a Bill of costs by the Defendant's counsel which was due for assessment before the Deputy Registrar on 2/5/2025. That having preferred an appeal, she wishes to pray for orders sought, and in particular stay of proceedings pending the hearing and determination of the said appeal.
4. The applicant contended that she stands to be prejudiced if the Defendants' Bill of costs is allowed to proceed. That she has demonstrated a sufficient cause to warrant this court to exercise its discretion in her favour. The applicant further stated that she has been informed by her advocates that she has prima facie merits in her intended appeal since it raises issues of ownership of the plot, hence an arguable case before the appellate court. That the Respondents will not be prejudiced if stay of proceedings pending appeal is granted.

5. The application is opposed by the 1st Defendant/Respondent who filed grounds of opposition dated 10th February, 2026 on the following grounds: -
- i. That the application and orders sought are incompetent, untenable in law, misconceived and an abuse of the court process.
 - ii. That this Honourable court delivered judgment on 21st November, 2024 dismissing the plaintiff's suit with costs hence giving a negative order.
 - iii. That this court is *functus officio* as it cannot stay its own proceedings. The applicant has appealed vide Civil Appeal No. E103 of 2025.
 - iv. That taxation of costs is a statutory process governed by the Advocates Remuneration Order and falls within the exclusive jurisdiction of the Deputy Registrar/Taxing officer.
 - v. That this Honourable court lacks jurisdiction to stay or interfere with taxation proceedings, the same not constituting proceedings before this court within the meaning of Order 42 Rule 6 of the Civil Procedure Rules.
 - vi. That Orde 42 Rule 6 of the Civil Procedure Rules does not apply to taxation proceedings before the Taxing Officer which the applicant is invoking.

- vii. That sections 1A, 1B and 3A of the Civil Procedure Act cannot be invoked to confer jurisdiction where none exists.
 - viii. The plaintiff/Applicant's Notice of Motion dated 28th April, 2025 lacks merit and should be struck out with costs to the 1st Defendant/Respondent.
6. Pursuant to directions given by the court on 16th February, 2026, counsel agreed to canvass the application by way of written submissions. Counsel for the 1st Defendants/Respondent filed submissions dated 13th March, 2026 while counsel for the plaintiff/Applicant did not file any submissions either within the time granted by the court or at all.

1st Defendant/Respondent's submissions;

7. Counsel for the 1st Defendant identified the issues for determination to be whether this court is *functus officio* and thus lacks jurisdiction to grant a stay of taxation proceedings after delivering final judgment; whether the court has jurisdiction to stay or interfere with taxation of costs; whether Order 42 Rule 6 of the Civil Procedure Rules 2010 applies to taxation proceedings; and whether the application is meritorious or an abuse of process warranting dismissal with costs.

8. Counsel for the 1st Defendant submitted that the judgment conclusively determined the rights of the parties, and that once a court has delivered a final and valid decision, it becomes *functus officio* and cannot revisit, vary or stay its own orders except through an appellate process. It was counsel's submissions that the doctrine of *functus officio* is a cornerstone of finality in the administration of justice. Counsel cited the Supreme Court of Canada in **Chandler v Alberta Association of Architects (1989) 2 SCR 848** which held that a decision-maker who has discharged its duty is precluded from reopening the matter. He also relied on the case of **Nderitu & 55 others v Telkom Kenya limited & another (2024) KEHC 2297 eKLR and Telkom Kenya Limited v John Onchanda (2014) eKLR.**
9. Counsel further submitted that while the court retains such jurisdiction to undertake incidental proceedings, the court cannot arrogate itself powers to grant orders which it has no jurisdiction to grant. That taxation of costs is exclusively within the jurisdiction of the Deputy Registrar/Taxing officer and thus this court has no jurisdiction to stay such proceedings. Counsel relied on the decision of the Supreme Court of Kenya in **Samuel Kamau Macharia v. KCB & 2 others (2022) eKLR**, and submitted that in the present case, although residual jurisdiction survives for truly incidental post-judgment steps, such as stay of execution of

an already taxed certificate of costs, the doctrine of *functus officio* precludes the trial court from staying the taxation process itself. That taxation is not an incidental procedural step geared towards closure of the file, but a separate statutory function under the Advocates (Remuneration) Order. He submitted that any attempt to stay taxation would amount to an impermissible arrogation of jurisdiction not conferred by law. That while the court is not wholly *functus officio* for every post-judgment incidental application, it lacks jurisdiction to grant the specific relief sought in respect of taxation, and argues that the plaintiff's application fails on this ground alone.

10. On whether the court has jurisdiction to stay or interfere with taxation of costs, the 1st Defendant's counsel submitted that taxation of costs is a distinct statutory process governed by the Advocates (Remuneration) Order and falls exclusively within the jurisdiction of the Deputy Registrar/Taxing Officer as was held in **Africert Limited v Nyaga (2025) KEHC 11684 eKLR**. That it does not constitute proceedings within the meaning of Order 42 Rule 6 of the Civil Procedure Rules. Counsel submitted that the Taxing Officer exercises judicial power in determining quantum of costs under Rule 13A of the Advocates (Remuneration) Order, and the trial court therefore lacks jurisdiction to stay or interfere with the taxation process itself. Counsel relied on the case of **Guya v Mbaye & another (2022) KEELC 3564 eKLR**.

11. Regarding the applicant's contention that she will be aggrieved in the event that the taxation of the Defendants' Bill of costs are not stayed pending the appeal, counsel relied on the case of **Deposit Protection Fund v Rosaline Njeri Macharia** Civil case 399 of 2005 which noted inter-alia, that the taxation of a Bill of costs cannot occasion any loss to the person against whom it is taxed, and submitted that this court lacks the jurisdiction to stay or interfere with the taxation of costs, and argued that the plaintiff's application in this regard is incompetent and an abuse of process of court.
12. Regarding the issue whether Order 42 Rule 6 of the Civil Procedure Rules applies to taxation proceedings, counsel submitted that Order 42 Rule 6 empowers the court to stay the execution of a decree pending appeal upon proof of substantial loss. Counsel argued that taxation of costs is not execution of a decree, but is a quantification process preceding execution. That the rule therefore has no application before the taxing officer.
13. In conclusion, counsel submitted that the application is incompetent, an abuse of process and a clear afterthought aimed at delaying the Defendant's legitimate right to taxed costs after final judgment. In the premises, the 1st Defendant prayed that the application be dismissed with costs.

Analysis and Determination;

14. I have considered the application, the grounds of opposition and the submissions filed together with the authorities relied on. The issues that arise for determination are: -
- i. Whether the court is *functus officio*,
 - ii. Whether an order of stay of proceedings can issue.

i. Whether the court is *functus officio*;

15. The first issue is whether this court is *functus officio*. It is a general principle in law that litigation must come to an end. Ordinarily, a suit would come to an end when a court has rendered a decision and that decision has been acted upon or executed. At that point, the court is said to be *functus officio*, and any party who is aggrieved must now pursue the course of appeal or review to a higher court.
16. In this case, the court on 21st November, 2024 found that the plaintiff had failed to prove her case on a balance of probabilities, hence the dismissal of the suit with costs to the 1st Defendant. That decision basically concluded the matter and the case was thereafter out of the hands of this court, save for costs which is a matter within the jurisdiction of the Deputy Registrar as the Taxing officer. I am therefore of the view that in the circumstances, this court is in fact '*functus officio*' and is not entitled to revisit the matter as the same has been fully determined. Further, I do agree with the

Respondent's submission that the application herein is untenable and misconceived as it seeks an order of stay of proceedings yet there are no proceedings that are pending. Indeed, the applicant admits that being dissatisfied with the judgment delivered by this court on 21/11/2024, he has filed and served a Notice of Appeal dated 18/12/2024. It has been stated that stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interfered with the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceedings is high and stringent. (See *Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000*) (Unreported). As already stated, there is nothing to stay in this case since the matter was heard and concluded and all that the court issued was a negative order dismissing the suit, save for costs. The only pending issue is taxation of costs which is a post-judgement statutory process. Therefore, on that ground alone, the plaintiff's application must fail.

17. By reason of the foregoing, it is my finding and I so hold that the Notice of motion dated 28/4/2025 lacks merit and the same is hereby dismissed with costs to the 1st Respondent.
18. It is so ordered.

DATED, SIGNED and **DELIVERED** virtually at **ELDORET** on this **7TH** day of **MAY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of:-

Mr. Misoi for the Plaintiff.

Mr. Omboto for the 1st Defendant.

No appearance for 2nd-4th Defendants.

Court Assistant - Laban.

ORIGINAL