



**Chege v Cool Rivers Hotel Limited (Cause 304 of 2014)
[2025] KEELRC 645 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 645 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 304 OF 2014
AN MWAURE, J
FEBRUARY 28, 2025**

BETWEEN

JOSEPH MUREGI CHEGE CLAIMANT

AND

COOL RIVERS HOTEL LIMITED RESPONDENT

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 11th November 2024 filed under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. Spent
 3. This Honourable Court be pleased to issue an order of stay of execution for the recovery of the taxed costs pending the filing, hearing and determination of the Applicant's Reference against the whole ruling on the Claimant/Respondent's Bill of Costs delivered on 23rd September 2024.
 4. This Honourable Court be pleased to issue an order that the Respondent/Applicant settle the award of Kshs. 313,501.30 by equal monthly instalments of Kshs. 50,000/= only per month with effect from 30th November 2024 and a similar sum of Kshs.50,000/= per month on the last date of each subsequent month until the said sum of Kshs.313,501.30 is fully paid.
 5. The costs of this Application be provided for.

Respondent/Applicant's case

2. The Respondent/Applicant avers that judgment was entered in favour of the Claimant/Applicant on 31st July 2023 in the sum of Kshs.313,501.30.



3. The Respondent/Applicant avers that the Claimant/Respondent's Bill of Costs dated 4th August 2023 was delivered on 4th October 2024 being taxed at Kshs. 206, 375/=.
4. The Respondent/Applicant avers that he was dissatisfied with the entire taxation delivered on 4th October 2024 and his advocate on record wrote a letter to the Hon. Deputy Registrar for reasons for the ruling of the taxation.
5. The Respondent/Applicant avers that there was no response given by the Hon. Deputy Registrar to enable his advocate to file a Reference required under paragraph 11 of the Advocates Remuneration Order 2014.
6. The Respondent/Applicant avers that the Claimant/Respondent extracted the decree without recourse to the mandatory requirements of Order 21 Rule 8 of the Civil Procedure Rules.
7. The Respondent/Applicant avers that the decree did not contain any interest on the decretal sum but when the Claimant/Respondent applied for execution, there was interest amounting to Kshs.54,862.73 which was not part of the decree or Judgment and warrants of attachment and sale of the Claimant/Applicant's moveable properties.
8. The Respondent/Applicant avers that the warrant of attachment and sale of the properties also contain the figure of the impugned costs of Kshs.206,375/=.
9. The Respondent/Applicant avers that his advocate wrote to the Claimant/Respondent's advocate proposing of monthly installment of Kshs.50,000/= and had the intention to file a reference against the taxed Bill of costs.
10. The Respondent/Applicant avers that the Claimant/Respondent did not respond to the said letter and on 29th October 2024 and moved to execute for recovery of Kshs.577,189.03.
11. The Respondent/Applicant avers that his properties are on the verge of being seized and carried away by the Claimant/Respondent urging this Honourable Court to allow the application as prayed.

Claimant/Respondent's replying affidavit

12. In opposition to the application, the Claimant/Respondent filed a replying affidavit dated 14th November 2024.
13. The Claimant/Respondent argues that the application before the court is not made in good faith and is intended to frustrate him and prevent him from enjoying the fruits of his judgment.
14. The Claimant/Respondent avers that the Respondent/Applicant knew about the judgment delivered on 31st July 2023 and waited for 1 year and 3 months to file the application without proposing a mode of payment to settle the awarded amount.
15. The Claimant/Respondent avers that the Respondent/Applicant was also aware of the costs due and did not propose what amount was reasonable to pay him.
16. The Claimant/Respondent avers that a proposal was made to pay the decretal sum at Kshs.50,000/= per month which could be cleared in 7 months.
17. The Claimant/Respondent avers that he did not obstruct the Respondent/Applicant from suggesting a settlement plan for the decretal sum or from requesting additional time for payment and as such the court ought to decline the proposal.



18. The Claimant/Respondent avers that Respondent/Applicant did not object to the items on the Bill of Costs leading to the taxation of the said Bill of Costs taxed as drawn and delivering of the ruling in accordance with Advocates Remuneration Order 2014.
19. The Claimant/Respondent avers that the purported reference is just a delaying tactic and urges this Honourable Court to compel the Respondent/Applicant to deposit the entire taxed costs.
20. The Claimant/Respondent avers the court did not award the interest as the Judgment was silent on the interest as the adjustment of interest has been raised from 6% to 14% and urges this Honourable Court to allow the application as prayed.
21. The application was disposed of by way of written submissions.

Respondent/Applicant's submissions

22. The Respondent/Applicant contended that the Deputy Registrar failed to justify her taxation on the Bill of Costs, preventing the filing of the intended Reference, and that the issue of costs was unresolved. The Respondent/Applicant also sought the Honourable Court to be allowed settlement of the claim amount of Kshs.313,501.30 in monthly instalments of Kshs.50,000/=.
23. The Respondent/Applicant relied on Order 21 Rule 12(2) of the Civil Procedure Rules which provides as follows:

“After passing of any such judgment or decree, the court may on the application of the judgment-debtor and with the consent of the decree-holder or without the consent of the decree-holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.”
24. The Respondent/Applicant relied on the cases of *Botanics Kenya Limited V Ensign Food (K) Ltd (1959)* and *A. Rajabali Alidini V Remtula Alidina & another [1961] EA 565*, where factors such as the circumstances of debt contraction, debtor conduct, financial difficulties, and genuine attempts to pay were considered for paying the decretal sum in installments. In *Freight Forwarders Limited V Elsek (K) Limited [2012] eKLR*, the court stated that “sufficient cause” for installment payments includes the debtor’s inability to pay the entire amount at once, ability to pay reasonable monthly installments, and the application being made in good faith.
25. The Respondent/Applicant submitted that upon execution, the interest seen on the warrant of attachment amounted to Kshs.54,862.73 on the decretal sum. The Respondent/Applicant relied on the case of *Re Estate of Nkubitu (Deceased) [2004] eKLR* where the court stated that if the court has not ordered interest on costs, it cannot be claimed or paid. Under Section 27(2) of the *Civil Procedure Act*, a judge has the discretion to award interest on costs, but without such an order, interest is not payable. This was supported by the case of *Santana Fernandes V. Kara Arjan & Sons and Others (1962) E. A 473*, where it was held that costs do not carry interest without a specific order. In this case, there is no evidence of an order for interest on costs, so the respondent’s claim for interest is not valid, and the decretal sum will be reduced by Kshs.81,200/=.
26. In *Kombo Juma Mzee V Karisa Nzai Munyika [2018] eKLR* the court stated that in cases where a judge has not awarded interest and had the discretion to do so, the appropriate course of action for an aggrieved party is to appeal the decision rather than seek a review. Section 80 of the *Civil Procedure Act* allows for review when no appeal has been filed, but Section 26(1) of the Act confirms



that awarding interest is at the court's discretion. Therefore, not awarding interest cannot be deemed an error warranting review. The court cited the case of *Jane Wanjiru Gitau vs. The Kenya Power & Lighting Company Limited* [2006] eKLR to support this position.

27. In *Labh Singh Harman Singh Limited V Attorney General and 2 others* [2016] eKLR the court held that the Respondent's claim lacked the authority to order a stay in cases of costs taxation. The court stated that taxation of costs is part of the execution process, and provisions for stay of execution exist under the Civil Procedure Rules. Section 94 of the *Civil Procedure Act* generally mandates that the execution of court orders should await cost confirmation by taxation, unless the court grants leave for execution before taxation. Section 89 of the Act affirms the application of the Civil Procedure Rules to civil cases, including cost taxation. Therefore, the court has the authority to grant a stay of execution in such cases. This ensures that a party required to pay substantial taxed costs can challenge the costs' liability and amount through the Advocates' Remuneration Order procedure, preventing a waste of judicial time if the challenge is successful.
28. The Respondent/Applicant urged this Honourable Court to allow the application as prayed.

Claimant/Respondent's submissions

29. The Claimant/Respondent submitted that although the Respondent/Applicant expressed willingness to pay the decretal sum, he has been reluctant to do so. Instead of depositing the amount into an account, the Claimant/Respondent suggested that the sum be remitted directly to him.
30. The Claimant/Respondent submitted that the Respondent/Applicant did not adhere to the proposal of monthly installments and there has been no follow-up on filing the reference challenging the taxation on the Bill of Costs. The Claimant/Respondent submitted that this Honourable Court orders the Respondent/Applicant to deposit Kshs.206,375/= in court with a minimum of 7 days and release Kshs.313,510.30, failure to which execution will take effect on the said amount.

Analysis and determination

31. The court has considered the application, replying affidavit and the submissions, the issue of determination is whether the application is merited.
32. Order 42 Rule 6(2) of the Civil Procedure Rules sets out the conditions of stay of execution as follows:
- “No order for stay of execution shall be made under subrule (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
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
33. In *James Wangalwa & Another V Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR) the court set out the condition of stay of execution including substantial loss occurring leading to irreparable loss, security for the due performance of the decree, and the application being made without unreasonable delay.
34. In this instant case, the Respondent/Applicant herein is seeking a stay of execution on the taxed costs pending filing, hearing and determination of the Reference against the Ruling on the Bill of Costs delivered on 23rd September 2024. The Application was filed on 11th November 2024 which is 2



months after the ruling and therefore this Honourable Court finds that the application was made without unreasonable delay.

35. The Respondent/Applicant stated that it is willing to propose monthly installments of Kshs.50,000/= and the Claimant/Respondent did not oppose the proposal of the mode of monthly installments. The Respondent/Applicant has presented correspondence showing its willingness to make monthly installments of Kshs.50,000/=. This Honourable Court reiterates Order 21 Rule 12 of the Civil Procedure Rules which has been cited in the earlier part of this ruling.
36. The Respondent/Applicant has demonstrated that its properties were attached and therefore he will suffer irreparable loss.
37. Flowing from the foregoing, this Honourable Court finds that the application dated 11th November 2024 is merited and allows the following prayers as per the Notice of motion that is prayers 2 and 3 that the stay of execution of the Decree and of the taxed costs on the following conditions: -
 - a. The Respondent/Applicant do make monthly installment payment of Kshs.70,000/= towards the decretal sum of Kshs.313,510.30 commencing on 5th March, 2025 and continue paying the same consecutively on every 5th day of each month until completion.
 - b. The amount of Kshs.206,375/= to be deposited in the joint interesting earning in the names of the advocates' representing the parties within 30 days from the date of the ruling.
 - c. The Respondent/Applicant to file its reference within 30 days from the date of this ruling.
 - d. Failure to comply with the foregoing execution to proceed without any further intervention.
38. The costs of the application will be in the cause.
39. Mention on 10th March 2025 to confirm progress.
40. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF FEBRUARY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE



JUDGE

