



Sare Developers Limited v Airo & another (Environment and Land Appeal E013 of 2022) [2024] KEELC 14207 (KLR) (19 November 2024) (Ruling)

Neutral citation: [2024] KEELC 14207 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E013 OF 2022
GMA ONGONDO, J
NOVEMBER 19, 2024**

BETWEEN

SARE DEVELOPERS LIMITED APPLICANT

AND

CHARLES ATIENO AIRO 1ST RESPONDENT

BARRACK OTIENO DACHE 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 11th January 2024 brought under, inter alia, sections 3 and 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya and Order 42 Rule 6 of the *Civil Procedure Rules* 2010, the applicant through S.O Odingo and Company Advocates, is seeking the following orders;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. This Honourable court be pleased to grant a stay of execution of the taxation Ruling of Migori ELC appeal No.E013 of 2022 dated 14th April 2023 pending the hearing and determination of the Notice of Objection dated and filed on the 14th November 2023 and the intended reference to be filed.
 - e. The costs of this application be provided for.
2. The application is premised upon ten grounds which include;
 - a. That a Notice of Objection was filed on the 14th November 2023 against and/or objection ruling of the taxing master delivered on the 19th April, 2023.



- b. That the applicant having been aggrieved by the taxation ruling of the learned magistrate Hon. A.C. Munyony delivered on the 19th April, 2023 , objected to it via a Notice of objection dated 14th November 2023 against the whole taxation with intention of filing a reference application to this court.
 - c. That the respondents are very likely to proceed with execution anytime henceforth and the applicants are dissatisfied with the entire said taxation ruling.
 - d. That the notice of objection and the intended reference application raises valid issues for determination wholly as against the said taxation ruling of Hon. A.C. Munyony.
 - e. That the instant application has been filed expeditiously , timely ad in good faith.
3. The respondents through Abisai and Company Advocates, opposed the application by way of a replying affidavit of eighteen paragraphs sworn on 19th February 2024 by the 1st respondent with the authority of the 2nd respondent and averred in part;
 - a. That the applicant has several cases over the same cause of action against us namely Migori HC ELC Appeal No. E013 pf 2022, Migori CMCC ELC 6 of 2021, Migori CMCC ELC No. 96 of 2021 and Migori HC ELC 2 of 2023.
 - b. That I have unsettled Decrees against the applicant in Migori ELC Appeal No. E013 of 2022, Migori CMCC ELC 96 of 2021 and Migori CMCC ELC No. 6 of 2021.
 - c. That there is no pending Appeal in any of the matters that the applicant has lost against me.
 - d. That the applicant has not disclosed any reasons known to law as to why he should be granted stay of execution.
 - e. That the objection filed by the applicants was filed out of the timelines given by the court hence it is null and void ab initio.
 4. The applicant’s counsel failed to file submissions to fortify the application.
 5. The respondent’s counsel filed submissions dated 13th March 2024 making reference is made to the application which seeks to stay execution of costs upon the applicant’s suit being struck out by the trial court’s ruling on the bill of costs rendered on 14th April 2023. Five issues for determination are identified in the submissions including whether the application is merited. It was submitted in part that an objection was filed out of time.
 6. Counsel submitted that the applicant has not presented any material to show that the conditions under Order 42 rule 6 of the Civil Procedure Rules 2010 have been satisfied. To fortify the submissions, counsel relied on, *inter alia*, Joseph Gachie T/A Joska Metal Works v Simon Ndeti Muema (2012) eKLR and Kenya Shel Ltd v Kibiru & another (1986) eKLR, Article 159 (2) (b) (*supra*) and Order 42 rule 6 of the Civil Procedure Rules 2010.
 7. In the foregone, the issues for determination are condensed to whether the application has merit.
 8. The conditions for stay of execution in a case such as the instant one, are set out under Order 42 Rule 6 (*supra*) and are within the inherent power of the court. The application does not show that the applicant is bound to suffer substantial loss and no security has been offered for the due performance of the decree or order as held in Kenya Shel Ltd case (*supra*) and Halai & another v Thornton & Turpin (1963) Ltd (1990) eKLR.



9. Moreover, the principles of equity anchored under Articles 10 (2) (b) of the [Constitution of Kenya 2010](#) are, *inter alia*, equity aids the diligent not the indolent and delay defeats equity. Also, Article 159 (2) (b) (*supra*) provides;

Justice shall not be delayed

10. Order 50 of the [Civil Procedure Rules 2010](#) stipulates time and extension of timelines is an equitable discretionary remedy to a deserving party; see [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) (2014) eKLR.
11. It is trite law that delay for a day will result to dismissal of application or matter if not explained; see [Raphael Musila Mutiso & 3 others v Joseph Ndava Nthuka & another](#) (2019) eKLR.
12. In the case of [County Executive of Kisumu v County Government of Kisumu & 8 others](#) (2017) eKLR, the Supreme Court of Kenya of the Republic of Kenya applied [Salat case](#) (*supra*) on the settled principles that guide the court in such matters and held;

‘.....the whole period of delay should be declared and explained satisfactorily to the court.....’

13. In the instant case, taxation ruling on the respondent’s bill of costs was rendered on ruling 19th April 2023 and the application lodged on 29th January 2024. The applicant has failed to account for the delay of close to nine months thereof.
14. Notably, there are several other cases on the same cause of action and decrees unsettled as discerned in the respondents’ opposition to the application. A party has a vested right to the judgment which ought to be effectual; *Shahmad v Shamji Bros and another* (1957) EA 438.
15. In the premises, the application is unmeritorious. The same is hereby disallowed with costs to the respondents.
16. It is so ordered.

DATED AND DELIVERED AT MIGORI THIS 19TH NOVEMBER 2024

G M A ONGONDO

JUDGE

Present;

B. Singei learned counsel for the respondents

Tom Maurice, court assistant

