



REPUBLIC OF KENYA



**Gatabaki & another (As the Donee of the Powers of Attorney for Dr. Samuel Mundati Gatabaki - Deceased) & another v Muga Developers Limited & 4 others (Civil Case 30 of 2020) [2025] KEHC 11442 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11442 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 30 OF 2020**

**PM MULWA, J**

**JULY 31, 2025**

**BETWEEN**

**JOSEPHINE BEATRICE GATHONI GATABAKI, & ESTHER SUSAN WANGARI GATABAKI (AS THE DONEE OF THE POWERS OF ATTORNEY FOR DR. SAMUEL MUNDATI GATABAKI - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF  
NANCY WANJA GATABAKI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MUGA DEVELOPERS LIMITED ..... 1<sup>ST</sup> DEFENDANT  
SURAYA SALES LIMITED ..... 2<sup>ND</sup> DEFENDANT  
SURAYA PROPERTY GROUP LIMITED ..... 3<sup>RD</sup> DEFENDANT  
EQUITY BANK LIMITED ..... 4<sup>TH</sup> DEFENDANT  
WATTS AUCTIONEERS ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The 5<sup>th</sup> Respondent, Suraya Investment Fourways Limited (hereinafter “the Applicant”), filed the Chamber Summons application dated 7<sup>th</sup> October 2024 brought under Section 3A, 28 and 38(c) of the *Civil Procedure Act*, Order 23 Rule 1(1) of the *Civil Procedure Rules* and all enabling provisions of the law. The applicant seeks the following orders:
  - a. Spent
  - b. An order restraining the 2<sup>nd</sup> Plaintiff/Judgment Debtor, Nancy Wanja Gatabaki, whether by herself or through her agents or servants, from withdrawing, transferring, or in any other



manner dealing with funds held in Account No. 01822XXXX9004 at SBM Bank, or any other account in her name held at the said bank.

- c. An order that the funds held in the aforementioned accounts be released to the Applicant in satisfaction of the Certificate of Taxation dated 20<sup>th</sup> July 2023.
  - d. An order compelling the Judgment Debtor to pay interest on the taxed sum at prevailing commercial rates from 20<sup>th</sup> July 2023 until payment in full.
  - e. That the Plaintiffs/judgment Debtors bear the costs of the application.
2. The application is supported by the grounds on the face thereof and the affidavit sworn by Peter Kiarie Muraya, a director of the Applicant, who deposes that on 30<sup>th</sup> November 2020, costs were awarded in favour of the Applicant and a party and party bill of costs was taxed on 13<sup>th</sup> July 2023 at Kshs. 264,217,938.66, with a certificate of taxation issued on 20<sup>th</sup> July 2023. Despite the lapse of time, the judgment debtors have failed to settle the taxed amount.
  3. The Applicant avers that the Judgment Debtors have failed to satisfy the taxed costs and are actively engaging in acts designed to defeat execution, including disposal of assets assigned to third parties.
  4. The application is opposed. The 2<sup>nd</sup> Plaintiff, Nancy Wanja Gatabaki, filed a Notice of Preliminary Objection dated 15<sup>th</sup> October 2024 and a replying affidavit dated 24<sup>th</sup> October 2024, contending that the application is premature, is founded on material non-disclosure, and that the taxed costs are subject to a pending appeal.
  5. The application was canvassed by way of written submissions as directed by the Court.
  6. The singular issue for determination is whether the application by the 5<sup>th</sup> Respondent/Applicant is meritorious and warrants the orders sought.
  7. It is trite law that a Certificate of Taxation, once issued and not set aside or stayed, constitutes conclusive proof of the amount due. Section 51(2) of the *Advocates Act* provides:

“The certificate of the taxing officer...shall, unless set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit...”
  8. The Court in *Lubullelah & Associates Advocates v NK Brothers Limited* [2014] eKLR held:

“In the absence of a challenge to the certificate of taxation or a stay of execution, there is no impediment to the applicant moving the court for entry of judgment based on the certificate of costs.”
  9. In the present case, although the Judgment Debtor contends that there is a pending appeal arising from the dismissal of a reference, no stay of execution has been granted. The Certificate of Taxation dated 20<sup>th</sup> July 2023, therefore, remains valid and enforceable.
  10. The law is clear that an appeal does not, by itself, operate as a stay of execution. The Court in *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* [1986] eKLR held:

“The mere filing of an appeal does not operate as a stay of execution unless the court so orders.”



11. It follows, therefore, that in the absence of a stay, a decree-holder cannot be denied the fruits of their judgment.
12. Order 23 Rule 1(1) of the *Civil Procedure Rules*, provides that:

“A court may, upon the ex parte application of the decree-holder and either before or after an oral examination of the judgment-debtor, and upon proof by affidavit of the facts, issue a garnishee order nisi...”
13. This Court is satisfied that the requirements for the issuance of a garnishee order have been met. The garnishee, SBM Bank, has not denied holding funds in the name of the 2<sup>nd</sup> Plaintiff. There exists no legal impediment to the making of a garnishee order absolute.
14. The argument advanced by the Judgment Debtor that there exists no enforceable decree is similarly without merit. The Court in *Nyakundi & Company Advocates v Kenyatta National Hospital Board* [2017] eKLR stated:

“The absence of a formal judgment or decree does not negate the obligation to pay. A certificate of taxation once issued and not challenged forms a valid basis for enforcement.”
15. While the allegations concerning the dissipation of assets remain largely unsubstantiated, this Court finds merit in the prayer seeking to preserve the funds in the identified account to ensure satisfaction of the taxed costs.
16. As regards interest, the Certificate of Taxation is silent. The issue of interest is therefore a matter for the Court’s discretion. In the absence of any contractual stipulation or specific court order, this Court finds that interest at the rate of 12% per annum, being a reasonable commercial rate, shall apply from 20<sup>th</sup> July 2023 until payment in full.
17. In the result, the Court finds merit in the application dated 7<sup>th</sup> October 2024 and makes the following orders:
  - i. The Preliminary Objection dated 15<sup>th</sup> October 2024 is hereby dismissed with costs.
  - ii. An order is hereby issued restraining Nancy Wanja Gatabaki, whether by herself or through her agents or servants, from withdrawing, transferring, or otherwise dealing with funds held in Account No. 01822XXXX004 at SBM Bank until further orders of the Court or full satisfaction of the taxed costs.
  - iii. A garnishee order absolute is hereby issued, directing SBM Bank Kenya Limited to release to the Applicant Kshs. 264,217,938.66 or such amount as may be available in Account No. 01822XXXX004 or any other account in the name of Nancy Wanja Gatabaki, in satisfaction of the Certificate of Taxation dated 20<sup>th</sup> July 2023.
  - iv. The Applicant shall be entitled to interest at 12% per annum on the taxed sum from 20<sup>th</sup> July 2023 until payment in full.
  - v. The Plaintiffs/Judgment Debtors shall bear the costs of this application.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**PETER M. MULWA**



## **JUDGE**

In the presence of:

Ms. Wanyonyi for Plaintiff/Respondent

Mr. Ouma for 5<sup>th</sup> Defendant/Applicant

Ms. Mutimba for Garnishee

Mr. Amwayi h/b for Mr. Kiragu Kimani for 8<sup>th</sup> Defendant

Ms. Kimathi for 12<sup>th</sup> Defendant

Court Assistant: Carlos

