

2. Grounds of this Application:

The grounds of the application as contained in the application and affidavit in support of the applicant are;

- i. That on the 24th day of May 2021, the respondent's bill of costs was taxed and allowed at Ug. shs 11,640,000 (Uganda Shillings Eleven Million Six Hundred forty thousand) against the applicant.
- 35 ii. That the applicant being dissatisfied with the whole decision of the trial Magistrate filed a taxation reference before this honourable court which is pending determination and the same was served to the respondents.
- iii. That the respondents have started the process of execution.
- 40 iv. That the applicant's intended appeal has high chances of success.
- v. That the application has been brought without undue delay.
- vi. That it is fair and just that this application be allowed.

The respondents did not file a reply.

3. Submissions:

45 The applicant in her submissions through counsel stated the principles under which an application of stay of execution can succeed as were well espoused in ***Lawrence Musiitwa Kyazze Vs Eunice Busingye SCCA No. 18 of 1990, Hon Ssekikubo and Ors vs Attorney General and Ors Constitutional Application No. 3 of 2014 and***
50 ***Kyambogo University Vs Prof. Isaiah Omolo Ndiege CA 341 of 2013.***

In relations to the instant matter, Counsel submitted that the applicant filed a taxation reference in this court which fulfils the legal requirement for the grant of a stay in that the applicant had shown that she had lodged

55 a notice of appeal and that the taxation reference had the likelihood of success.

Additionally, counsel submitted that this application raises substantial issues in regard to the taxation of a vote recount which cannot be equated to an election petition.

60 Further that the applicant will suffer substantial loss if the exorbitant bill is allowed executed by the respondents.

With regard to there being eminent threat of execution, counsel submitted that by virtue of ***Osman Kassim Ramathan Vs Century Bottling Company Limited Civil Application No. 35 of 2019***, it should be
65 noted that execution is a process and not an event given the fact that decisions of court are never issued in vain and have to be enforced.

Accordingly, counsel submitted that since execution is a process, there is a high likelihood that if this application is not granted then the respondent who has a court order would be at liberty to enforce the fruits of her
70 judgement to the detriment of the applicant who will be compelled to pay the bill of costs to her detriment and thus rendering the taxation reference nugatory.

Counsel finally submitted that given the above positions, this Honourable Court should be pleased to grant the order of stay of execution so as to
75 preserve the *status quo* such that the applicant is enabled with peace of mind to pursue his taxation reference which is pending before this honourable court.

4. Findings and Decision of Court:

From the records, I note that it is factual that the applicant has filed a
80 taxation reference in this court. It is Taxation Reference No. 24 of 2021. It arises from the Chief Magistrate Court and it alludes to the applicant being

dissatisfied with a taxed bill of costs amounting to Ug. shs. 11,640,000/= arising from an election recount petition. The said reference is pending determination before this Honourable Court. The applicant asserts that
85 the respondent has started the process of execution. The respondent did not file a reply to this application and would therefore be assumed legally to not being opposed to the grant of this application given that I have no evidence to the contrary.

The prerequisites for grant of stay is now well espoused. They are laid out
90 in several decided cases including those of ***Lawrence Musiitwa Kyazze vs. Eunice Busingye Supreme Court Civil Application No. 18 of 1990*** and ***Supreme Court Case of Hon. Theodore Ssekikubo and Others vs. The Attorney General and Others Constitutional Application No. 03 of 2014.***

95 These are:

- i. Applicant must establish that his appeal has likelihood of success; or a prima facie case of his right of appeal.
- ii. That the applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.
- 100 iii. If 1-2 above have not been established, Court must consider where the balance of convenience lies.
- iv. That the application was instituted without delay.
- v. There is serious/eminent threat of execution of the decree or order and if the application is not granted, the appeal would be
105 rendered nugatory.
- vi. Refusal to grant will inflict more hardship than it would avoid.

In respect of this application, first and foremost, I note that the respondent has not made any reply to this application. This makes me assume that the respondent is not opposed to the same.

110 The applicant is required by law to prove the following;

a) The applicant must show that he lodged a notice of appeal:

The Applicant in Paragraph 5 of his affidavit in Support of this Application expressly filed a taxation reference well within time, he stated as follows;

115 **“5. THAT I was dissatisfied with the decision reached by the trial magistrate and through my lawyers, I went ahead and filled a taxation reference before this honourable court which is pending determination and the same application was served on to the respondent.”**

120 The applicant through affidavit evidence states that and I have proved that there is a taxation reference before pending resolution before this court. It is Taxation Reference No. 24 of 2021. It arises from the Chief Magistrate Court and it alludes to the applicant being dissatisfied with a taxed bill of costs amounting to Ug. shs. 11,640,000/= arising from an election recount
125 petition. The said reference is pending determination before this Honourable Court and it challenges the taxed bill of costs taxed by the Chief Magistrate, Soroti.

As submitted by counsel execution is a process and if the applicant is not granted stay the respondent will be at liberty to execute the taxed bill of
130 costs against her which action will render the reference nugatory and as well as put her through more hardship than it avoids.

Given the fact that the applicant upon being dissatisfied with the decision the tax master in the lower trial court has made the Taxation Reference No.24 of 2021, I am satisfied that the first requirement for the grant of a stay of execution is fulfilled.

b) That substantial loss may result to the Applicant unless the Stay of Execution is granted.

The applicant avers through her affidavit evidence that if this application is not granted, she is likely to suffer substantial loss.

In the case of *Tropical Commodities Supplies Ltd and Others Vs International Credit Bank Ltd (In liquidation)* [2004] 2 EA 331 CH CV, substantial loss was described as follows;

“Substantial loss does not represent any particular size or amount but refers to any loss, great or small that is of real worth or value as distinguished from a loss that is merely normal.”

In the present case, a taxed bill of costs was issued on d 24th May 2021 as seen in Paragraph 4 and 8 of the affidavit in support of this application with the applicant stating that;

“4. THAT the respondent then filled a bill of cost against me of which on the 24th day of May 2021 the respondents bill of costs was taxed and allowed at Ug. Shs. 11,640,000 (Uganda shillings eleven million six hundred forty thousand) a copy of the taxed bill of cost is hereto attached as “B”

160 **8. THAT, if stay is not granted by this honorable court, I will suffer irretrievable and substantial loss as the taxed respondent's bill of costs is exorbitantly taxed and allowed by the Trial Magistrate."**

165 From the above averments, it can be concluded that it is the applicant's contention that if this application is not granted an alleged exorbitant respondents' bill of costs amounting to Ug. Shs. 11,640,000 (Uganda Shillings Eleven Million Six Hundred Forty Thousand) will be executed before the hearing of the pending **Taxation Reference No. 41 of 2021** and that such action will lead to substantial loss to the applicant.

170 From the above averment, it is true that the respondent has a taxed bill of costs amounting to Ug. Shs. 11,640,000 (Uganda Shillings Eleven Million Six Hundred Forty Thousand). That amount appears high by any standard for an election recount petition. It can be executed any time yet there is pending a Taxation Reference No. 41 of 2021. I would agree that since execution is a process and not an event, there is a high chance that if this application is not granted then the respondent who already has a taxed bill of costs would in his right execute the same without any obstruction.

175 Therefore, from the averment of the applicant I am satisfied that there is a high likelihood that substantial loss may result to the Applicant unless the Stay of Execution is granted. This principle is satisfied.

180 c) There is a serious or eminent threat of execution of the decree or order and if the Application is not granted the taxation reference would be rendered nugatory.

In the case of **Osman Kassim Ramathan Vs Century Bottling Company Limited Civil Application No. 35 of 2019**, it was held that;

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“It was contended by the respondent that there were no threats of execution and that mere taxation of costs did not institute any threat. With greatest respect, it is not true that taxation of costs is not a threat imminent or otherwise of execution.”

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Execution is a process and not an event, one of the processes of execution is taxation of costs. Execution in its widest sense signifies the enforcement of or the giving effect to the judgment or order of Courts of Justice.

Black’s Law Dictionary 5th Edition defines execution in the following terms; -

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“...it is the carrying out of some act or course of conduct to its completion and putting into force, completion, fulfillment or perfecting of anything or carrying it into operation and effect.”

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It is clear from the above definition that taxation of costs is a process of law for the enforcement of or giving effect to judgment or orders of a Court of justice and accordingly constitutes imminent threats to execution.

The applicant deposes under paragraph 6 of the affidavit in support of the application that;

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“6. THAT, the respondents have initiated the process of execution before the taxation reference no. 24 of 2021 is finally determined.”

In addition, the respondents are pursuing the review of taxation in **Misc. Cause No. 010 of 2021** as is seen from paragraph 4 of the affidavit in support of the application wherein it stated as follows;

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“4. THAT the respondent then filled a bill of cost against me of which on the 24th day of May 2021 the respondents bill of cost was taxed and allowed at Ug. shs 11,640,000 (Uganda shillings eleven million six hundred forty thousand) a copy of the taxed bill of cost is hereto attached as “B”

215 Given the fact that execution is a process and not an event and decisions of a court are never issued in vain, they have to be enforced. It is thus true that if this application is not granted, the respondent would be at liberty to enforce the fruits of the court decision to the detriment of the applicant. This ground is satisfied.

220 d) Refusal to grant the Stay would inflict more hardship than it would avoid.

According to the applicant, if court refuses to grant this application for stay of execution, the applicant will be compelled to pay Uganda Shillings 11,640,000 (Uganda Shillings Eleven Million Six Hundred Forty
225 Thousand) in satisfaction of the lower court’s allowed bill of cost to his detriment which action would cause more hardships given the fact that the applicant is challenging the same with such execution rendering the taxation reference nugatory.

I would agree with that preposition. Since there is a taxation reference to
230 this court, it means that the applicant is aggrieved with the taxed amount. It thus legal imperative that the applicant is heard on the grievance and a decision is made accordingly. Therefore, given the fact that the taxation reference ought to be heard and determined it is only proper that the same be given the opportunity to be heard without any other interpolations
235 which may render it nugatory. This ground is thus satisfied.



e) The Application is not frivolous and has a likelihood of success.

The Applicant states that this application is frivolous and has a likelihood
240 of success. This assertion is seen from paragraph 7 of his affidavit in
support to this application wherein it is stated that;

**“7. THAT, I have been advised by my lawyers M/s
Omongole & Co. Advocates whose advise I verily believe to
be true that my appeal has high chances of success but may
245 be rendered nugatory.”**

From the perusal of the taxation reference, it is clear to me that the
applicant raises substantial issues as the level and amount relating to the
taxation of a vote recount which the applicant states cannot be equated to
that of an election petition.

250 Given that assertion, it is only well and proper for this Honourable Court
to enable the applicant prove to this court that costs in a vote recount
should not be equated with that of an election petition.

The same is an issue which needs proper examination and resolution.
Accordingly, I am satisfied that this application is not frivolous and has a
255 likelihood of success.

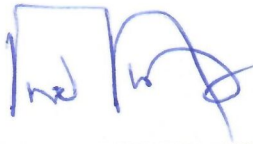
In conclusion, given that the applicant has fulfilled all the requirements
for the grant of an order for stay of execution, I would grant the order of
stay of execution in order to preserve the *status quo* so which would enable
the Applicant pursue her Taxation reference which is pending before this
260 Honourable Court freely and to its logical conclusion without any
Damocles sword dangling on her neck.

Accordingly, I would find that this application has merits and thus is allowed.

5. Order:

- 265 - This application is allowed.
- The execution of the of the decree and judgment in Chief Magistrates' Court of Soroti in Miscellaneous Cause No. 010 of 2021 is accordingly stayed pending the determination of Taxation Reference No. 24 of 2021.
- 270 - The cost of this application to be in the cause.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

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Judge

30th August 2022