THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 456 OF 2025

(ARISING FROM TAXATION APPLICATION NO. 52 OF 2025

(ARISING FROM MISCELLANEOUS APPLICATION NO. 1092 OF 2024)

(ALL ARISING FROM CIVIL SUIT NO. 661 OF 2023)

TIBET-HIMA MINING CO. LTD :: APPLICANT

VERSUS

KILEMBE MINES LIMITED ::: RESPONDENT

BEFORE: HON. LADY JUSTICE PATIENCE T.E. RUBAGUMYA

RULING

Introduction

This application was brought by way of Chamber Summons under **Section 37 of the Judicature Act, Cap. 16** and **Section 98 of the Civil Procedure Act, Cap. 282,** seeking:

1. An order staying taxation proceedings of the Respondent's bill of costs commenced as a result of the orders of this Court in ***Miscellaneous Application No. 1092 of 2024; Kilembe Mines Ltd Vs Tibet-Hima Mining Co. Ltd***, pending the hearing and determination of the intended Appeal.
2. Costs of the application be provided for.

Background

The background of this application is contained in the affidavit in support deponed by **Mr. Bi Lei** the Applicant's Director, and is summarized below:

1. That the Applicant was aggrieved by the Ruling and Orders of Court issued on 3rd December, 2024 vide ***Miscellaneous Application No. 1092 of 2024; Kilembe Mines Ltd Vs Tibet- Hima Mining Co. Ltd***.
2. That the Applicant has since filed a notice of appeal and applied for a typed record of proceedings in the suit.
3. That unless this Court issues an order staying the proceedings in ***Taxation Application No. 52 of 2025***, the Respondent will proceed to tax the bill of costs and initiate execution, as the said bill has already been filed and a taxation date has been issued.
4. That the Applicant will be prejudiced if the Registrar proceeds to tax the Respondent's bill of costs.
5. That the intended appeal has a very high likelihood of success, raises substantial questions and this application was brought without unreasonable delay.
6. That the application should be granted so as not to render the appeal nugatory and the balance of convenience favours the Applicant.

In reply, the Respondent, through an affidavit deponed by **Ms. Catherine Bulya,** the Board Secretary of the Respondent and one of the lawyers in the personal conduct of this matter, opposed the application contending that:

1. The Respondent has not commenced any execution proceedings arising out of ***Civil Suit No. 661 of 2023*** and ***Miscellaneous Application No. 1092 of 2024***.
2. The taxation of the Respondent's bill of costs will not prejudice the Applicant since it does not amount to execution.

3. The application is an abuse of Court process since it was filed in anticipation of the Respondent applying for execution.
4. The Applicant can be ordered to deposit the taxed costs on the Court account or to the Respondent.
5. The Applicant will not suffer irreparable damage nor will it be prejudiced by the taxation of the Respondent's bill of costs and that if the application is dismissed and any damage is incurred, it can be atoned for in damages.

In rejoinder, the Applicant, through an affidavit deponed by **Mr. Bi Lei,** the Applicant's Director reiterated its previous averments and added that:

1. The outcome of the appeal is likely to affect the taxation proceedings since the question being investigated on appeal is whether or not the Respondent is entitled to costs.
2. Since the proceedings in ***Taxation Application No. 52 of 2025*** have already commenced, it is only prudent to stay the same pending the outcome of the appeal challenging the award of costs against the Applicant.
3. There is a pending appeal vide ***Civil Appeal No. 1081 of 2024.***
4. The Applicant has an address in Uganda, which is public information at the Uganda Registration Services Bureau, and the Respondent can access it should it intend to visit the Applicant's registered office located at Upper Kololo.
5. It would be imprudent to order the Applicant to deposit the costs in Court since this would amount to gagging its right to be heard by this Court or the Court of Appeal.
6. The Applicant does not have to wait for execution since the question on appeal is whether or not the Respondent is entitled to costs.

7. The Respondent shall suffer no prejudice if this application is granted since the appeal is already filed and served on the Respondent.

Representation

The Applicant was represented by Learned Counsel David Oundo of **M/s Waymo Advocates** while Learned Counsel Sembuya Magulu Douglas of **M/s CMS & Co. Advocates** represented the Respondent.

Both parties filed their written submissions as directed, and the same have been considered by this Court.

Issues for Determination

Following **Order 15 rule 3 of the Civil Procedure Rules**, and the case of ***Oriental Insurance Brokers Limited Vs Transocean (U) Limited SCCA No. 55 of 1995***, this Court framed the issues for resolution as follows:

1. Whether the application discloses sufficient grounds for the grant of an order of stay of proceedings in ***Taxation Application No. 52 of 2025?***
2. What remedies are available to the parties?

In its affidavit in reply, the Respondent raised a preliminary objection to the effect that the affidavit in support is argumentative, prolix, speculative and contains falsehoods however, they did not submit on the same. Therefore, this Court shall infer that the same was abandoned,

Issue No.1: Whether the application discloses sufficient grounds for the grant of an order of stay of proceedings in ***Taxation Application No. 52 of 2025?***

Applicant's submissions

Learned Counsel for the Applicant submitted that an appeal has already been lodged in the Court of Appeal, and that, following the case of ***East Africa Law Society Vs The Attorney General of the Republic of Uganda Ref. No. 7 of 2012 (East African Court of Justice)***, the test for granting a stay of proceedings is that if the decision of the Appellate Court is likely to affect the decision of the trial Court, then a stay of proceedings is the only remedy. That it was further held that whether the effect of the decision of the Appellate Court will be substantial cannot be determined at this stage.

That if the application is not granted, the Applicant will be prejudiced since the mistake of its former Counsel is being visited on it. That the main question to be examined by the Court of Appeal is whether a mistake by Counsel affecting a third party should be imputed to the client. Learned Counsel relied on the case of ***Captain Philip Ongom Vs Catherine Nyero Owota SCCA No. 14 of 2001***. In conclusion, Learned Counsel prayed to Court to grant this application.

Respondent's submissions

Learned Counsel for the Respondent contended that the taxation of the Advocates' bill of costs pertains to the formal review and assessment of the fees charged by an Advocate to their client for legal services provided, as specified in the Advocates (Remuneration and Taxation of Costs) Regulations.

That in the circumstances, the bill of costs was filed in Court and is pending hearing. That its purpose is to determine the fees payable to the Respondent, not enforcement. Further that Learned Counsel for the

Applicant initially applied for a stay of execution, sought to amend this application, and then applied for a stay of the taxation proceedings. Learned Counsel for the Respondent also argued that the case of ***East Africa Law Society Vs The Attorney General of the Republic of Uganda (supra***), cited by Learned Counsel for the Applicant, does not apply to the circumstances of this application. That the said decision was based on two concurrent proceedings that affected the outcome of each process and that its core principle was that once an application or reference raises a question about the Court's jurisdiction, the Court should stay the main proceedings and await a decision on jurisdiction.

Learned Counsel further submitted that the issue here relates to a completely different situation. That the Respondent was given an order of costs that are due for ascertainment, which does not affect the appeal or vice versa. That the Applicant only seeks to delay the process of taxation. Learned Counsel further referred to the case of ***Attorney General Vs Gladys Nakibuule Kisekka, Constitutional Appeal No. 02 of 2016***, in which the Supreme Court guided on the exercise of judicial discretion and prayed that the Court dismisses the application.

<u>Analysis and Determination</u>

I have considered the application, the Respondent's affidavit in reply, the affidavit in rejoinder, the submissions of both parties and the authorities therein.

In the cases of ***Olivia da Ritta Siqueira E Facho Vs Siqueira [1933] 15 KLR 34*** and ***Jadva Karsan Vs Harnam Singh Bhogal [1953] 20 EACA 74***, it was held that the inherent jurisdiction may be invoked to stay proceedings where the ends of justice require so or to prevent an abuse of Court process.

Further, in the case of ***Simba Properties Investment Co. Ltd & Others Vs Vantage Mezzanine Fund II Partnership & Another C.A. Civil Application No. 1299 of 2023***, the Court of Appeal cited with approval the case of ***Hon. Theodore Ssekikubo and 3 Others Vs The Attorney General and 4 Others Supreme Court Constitutional Application No. 06 of 2013*** and held that the grounds to be considered in staying proceedings pending an appeal are that:

> *1) The Applicant must establish that its appeal has a likelihood of success or a prima facie case of his right of appeal.*
> *2) The Applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.*
> *3) If 1-2 above have not been established, Court must consider where the balance of convenience lies.*

I shall now consider the conditions to be fulfilled before granting an order for stay of proceedings.

i) <u>The appeal has a likelihood of success or a prima facie case of the Applicant's right of appeal.</u>

In the matter at hand, the Applicant averred that it filed and served a notice of appeal vide ***Court of Appeal Civil Appeal No. 1081 of 2024; Tibet-Hima Mining Co. Ltd Vs Kilembe Mines Ltd*** as per annexure **"B"** a notice of appeal attached to the affidavit in support. That therein it is challenging the award of costs to the Respondent vide ***Misc. Application No. 1092 of 2024***, that are being taxed vide ***Taxation Application No. 52 of 2025.***

Under **paragraph 9** of the affidavit in support, the Applicant contended that the appeal raises substantial questions for consideration by the Court of Appeal.

In the premises, I find that there is an appeal and a prima facie case of the Applicant's right of appeal.

ii) <u>The Applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.</u>

The Applicant averred that it will suffer loss of a colossal sum of money that arose as a result of negligence of its former Counsel which will substantially and irreparably affect it since the Respondent has no capacity to pay considering that the mines were taken over by another investor. To this, the Respondent contended that in case the Applicant suffers any damage, it will be strictly monetary and the same can be atoned for in damages considering that ***Taxation Application No. 52 of 2025*** involves the ascertainment of the Respondent's costs awarded to it by the Court. In rejoinder, the Applicant contended that the appeal will be rendered nugatory if this application is not granted since the question before the Court of Appeal is whether the Respondent ought to be awarded any costs. That the outcome of the said appeal will affect the taxation of the Respondent's bill of costs.

In the case of ***Giella Vs Cassman Brown & Co. Ltd [1973] E.A 358*** it was held that irreparable damage does not mean that there must not be a physical possibility of repairing the injury but it means that the injury must be substantial or a material one, that is; one that cannot be adequately compensated for in damages. (See also: ***E.L.T. Kiyimba Kaggwa Vs Haji Abdu Nasser Katende [1985] HCB 43***).

Considering that the damage anticipated to be suffered by the Applicant arises from the award of taxed costs to the Respondent, I therefore agree with the Respondent's averment that the said damage is strictly monetary. This can be atoned for in damages.

Having considered the submissions of both Counsel and the purpose of an application for taxation of the Advocates' bills of costs, the fact that no demand has been made yet, or the existence of execution proceedings in my analysis, it is anticipated that taxation of the bills of costs is a preliminary step to execution proceedings. I therefore find that the taxation of the Advocates' bill of costs does not pose an imminent threat of execution, but one for the future.

In the premises, the Applicant has failed to prove this requirement.

iii) Balance of convenience.

It is trite that while considering this ground, the Court should judiciously attempt to weigh the substantial mischief or injury likely to be caused to the parties if the application is granted and compare it with that which is likely to be caused to the opposite party.

In the instant case, the Respondent did not adduce any evidence to show that it will be prejudiced if this application is granted. Therefore, the balance of convenience is in favour of the Applicant. Further, granting the application will prevent the multiplicity of proceedings in this matter.

In summation, I find that the application discloses sufficient grounds for the grant of an order of stay of proceedings in ***Taxation Application No. 52 of 2025*** pending the determination of ***Civil Appeal No. 1081 of 2024***. Accordingly, pursuant to **Section 37 of the Judicature Act** and **Section 98 of the Civil Procedure Act**, this application is hereby granted.

Therefore, issue No.1 is answered in the affirmative.

Issue No. 2: What remedies are available to the parties?

Considering that issue No.1 has been answered in the affirmative, the application is hereby granted with the following orders:

1. The Registrar shall stay the proceedings in ***Taxation Application No. 52 of 2025*** until the final determination of ***Civil Appeal No. 1081 of 2024*** by the Court of Appeal.
2. Costs of this application shall abide the outcome of ***Civil Appeal No. 1081 of 2024.***

I so order.

Dated, signed and delivered electronically via ECCMIS this **19th** day of **August, 2025**.

Patience T. E. Rubagumya
JUDGE
19/08/2025
6:45am