



**Abuga v Northern Rangelands Company Trust (Civil Appeal  
E134 of 2024) [2024] KEHC 13094 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13094 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E134 OF 2024  
EM MURIITHI, J  
OCTOBER 31, 2024**

**BETWEEN**

**PAUL ABUGA ..... APPELLANT**

**AND**

**NORTHERN RANGELANDS COMPANY TRUST ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated 5/9/2024 pursuant to Section 6 of the [Civil Procedure Act](#), Order 43, Order 51 Rule 1 of the [Civil Procedure Rules](#), Article 159 (2) (a) & (d) of the [Constitution](#) and all the enabling provisions of the law, the Applicant seeks that:
  1. Spent
  2. The Honorable Court be pleased to order stay of any further proceedings in Isiolo CMCC No. E007 of 2021 *Paul Abuga v Northern Rangelands Company Trust* and Isiolo CMCC E062 Of 2024; *Northern Rangelands Company Limited v Paul Abuga & I.g Ringera T/a Viewline Auctioneers*, pending hearing and determination of the Motion herein.
  3. The Honorable Court be pleased to order stay of any further proceedings in Isiolo CMCC No. E007 of 2021 *Paul Abuga v Northern Rangelands Company Trust* and Isiolo CMCC E062 of 2024; *Northern Rangelands Company Limited v Paul Abuga & I.g Ringera T/a Viewline Auctioneers*, pending hearing and determination of the Appeal herein.
  4. Costs be in the cause.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Paul Abuga, the Appellant/Applicant herein sworn on even date. He avers that the trial court vide its judgment of 19/7/2021 awarded him Ksh. 2,500,000. Dissatisfied with that award, he filed High Court Civil Appeal No. E104 of 2022, which was heard and determined.



The court awarded him interests on the full decretal sum assessed at Ksh. 5,566,900. Upon judgment in Civil Appeal No. E104/2022, the lower court file was forwarded back to the trial court for issuance of a fresh decree. Thereafter, a certificate of costs of Ksh. 293,275 was issued and they instructed I.G Ringera T/A Viewline Auctioneers to proceed to collect the outstanding balance of the decretal sum. The Respondent, through their subsidiary Company instructed their then advocate Abdullahi & Co. Advocates to file objection proceedings vide an application dated 27/11/2023 against the proclamation and attachment of their properties. During the pendency of the ruling of the aforementioned application, the Respondent's counsel on record approached his advocate for an out of court settlement which culminated in the filing of a consent dated 15/1/2024 with the sum total negotiated inclusive of the costs of the appeal at Ksh. 4,669,771. The consent was to act as stay of execution, with the auctioneer's fees to be paid by the Respondent, in default of which execution would issue. That consent was subsequently brought to the attention of the trial court and adopted as an order of the court in the presence of both advocates. The Respondent alleged that the proceedings of 27/5/2023 were made by Northern Rangelands Company Limited while the consent settling those proceedings was made by Northern Rangelands Company Trust, which are two different entities. It is absurd that the Respondent wants to have its cake and eat it by running away from a consent it has been honoring in full compliance in terms of amounts and dates agreed upon. When the Respondent breached the consent, fresh warrants of attachment were taken out, service was effected upon it and its attached motor vehicle was sold through a public auction. The Respondent filed an application dated 17/5/2024 seeking stay of execution and the court vide its ruling of 27/8/2024 set aside the consent order dated 16/1/2024 citing undue influence upon the Respondent. He is advised by his advocate that the Respondent did not prove any ground warranting the setting aside of the consent order, and unless the orders sought are granted, the appeal will be rendered nugatory.

3. The Applicant swore a supplementary affidavit on 18/9/2024 in support of his application.
4. The Respondent opposed the application vide a replying affidavit sworn by Osman Hussein, its Project Manager on 11/9/2024. He terms the application as fanciful, frivolous, incompetent, defective, bad in law and a non-starter which ought to be dismissed with costs. He avers that the issues in Isiolo CMCC No. 062/2024 *Northern Rangeland Company Limited v Paul Abuga & I.G Ringera T/A Viewline Auctioneers* are different from Isiolo CMCC No. E007/2021 *Paul Abuga & I.G Ringera T/A Viewline Auctioneers v Northern Rangeland Trust* because the same stems from wrongful detention and sale of the Company's motor vehicle registration No. KCG 316W Toyota land cruiser. The impugned ruling does not in any way affect the proceedings in Isiolo CMCC No. 062/2024 and the said application is only meant to cause unreasonable delay without any justification. The consent and the subsequent order of 16/1/2024 were obtained by serious misrepresentation bordering on fraud as the Applicant deliberately failed to disclose to the court that the amounts in Isiolo CMCC No. E007/2021 were fully paid thus improperly using the same figure to calculate interest on the same, and the court thus found that the claim of interest on an amount already paid was outrageous. To further conceal this fraud, the Applicant sought to execute the said decree against a different entity than the Respondent. The Applicant intends to unjustly enrich himself by clearly insisting on a consent that he knows very well was acquired by misleading the court into granting the same and intimidating the Respondent into accepting its terms. The Applicant is attempting to convolute the facts by raising the issue of payment of auctioneer which does not have a bearing on the application or the intended appeal.
5. The application was urged orally in court and ruling was reserved.



## Determination

6. The gravamen of this application is the setting aside of the consent order dated 16/1/2024 by the trial court on the pretext that it had been procured by undue influence.
7. A cursory look at the Appellant's memorandum of appeal reveals that the intended appeal is pegged in its entirety on the consent dated 15/1/2024 which was subsequently adopted as an order of the court on 16/1/2024. Put differently, whether the consent and the consent order were properly set aside is an issue for determination in the appeal, and not at this interlocutory stage.
8. Without going into the merits of the intended appeal, this court deems it fit to grant the stay sought to preserve the substratum of the appeal.
9. The contention by the Respondent that there is no nexus between Civil suit No. E062/2024 and E007/21 is unfounded. The court notes the Appellant's separate issues for determination in Civil Suit No. E062/2024 dated 19/7/2024 where the issues are
  - “2. Did the plaintiff (Northern Rangelands Company Limited) bind themselves to the consent dated 15<sup>th</sup> January 2024 filed in Isiolo CMCC E007 of 2021?
  3. Was the subject motor vehicle KCG 316 W part of the consent dated 15<sup>th</sup> January 2024 in Isiolo CMCC E007 of 2021?
  4. Was there a clause for execution in default of the terms of the consent?
  5. Was the subject motor vehicle sold through warrants of attachment sanctioned by the Court in Isiolo CMCC E007 of 2021?”
10. The court thus finds the two matters are interweaved around the very consent of 15/1/2024 and the consequential order of 16/1/2024, the subject of the appeal herein.

## Orders

11. Accordingly, for the reasons set out above, this court allows the application dated 5/9/2024 and makes the following orders:
  1. An order of stay of any further proceedings in Isiolo CMCC No. E007 of 2021 *Paul Abuga v Northern Rangelands Company Trust And Isiolo CMCC E062 Of 2024*; *Northern Rangelands Company Limited v Paul Abuga & I.g Ringera T/a Viewline Auctioneers*, pending hearing and determination of the Appeal herein is hereby issued.
  2. The Record of Appeal to be filed within 60 days from the date hereof.
  3. In the event of default, the stay hereby granted shall lapse and be of no effect.

Order accordingly.

**DATED AND DELIVERED THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Mutuma, J. for the Applicant.



Mr. Mwiti M. for Mr. Chelimo for the Respondents.

