



**KCB Bank (K) Limited v Muktar & another (Miscellaneous Application  
E977 of 2023) [2025] KEHC 331 (KLR) (Civ) (23 January 2025) (Directions)**

Neutral citation: [2025] KEHC 331 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS APPLICATION E977 OF 2023**

**JN MULWA, J**

**JANUARY 23, 2025**

**BETWEEN**

**KCB BANK (K) LIMITED ..... INTENDED APPLICANT**

**AND**

**ABDULLAHI SHEIKH MUKTAR ..... 1<sup>ST</sup> RESPONDENT**

**EASTMEAT SUPPLIES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTIONS**

1. Before the Court is a Notice of Motion application filed on 23/01/2023 and dated 19/10/2023 brought pursuant to the provisions of Section 79 G of the Civil Procedure Act, Order 42 Rule 6 of the Civil Procedure Rules, Order 51 Rule 1 of the Civil Procedure Rules, Section 1A & 3A of the Civil Procedure Act. The Applicant (KCB Bank) seeks the following orders:-
  - a. Spent.
  - b. That the applicant be granted leave to appeal out of time against the Ruling of Hon L.B Koech delivered on 23<sup>rd</sup> June 2023.
  - c. That the Honourable Court be pleased to stay the execution of the Ruling/Order issued on 23<sup>rd</sup> June, 2023 pending the hearing and determination of this Application.
  - d. That the Honourable Court be pleased to stay the execution of the Ruling/Order issued on 23<sup>rd</sup> June 2023 pending the hearing and determination of the Intended Appeal.
  - e. That the costs of this Application be awarded to the Applicant.
2. The Application is supported by the Supporting Affidavit sworn on 18/10/2023 by one Emmanuel Wambua describing himself as the Assistant Manager of the Respondent, and grounds found at its face.



3. The application is opposed by the 1<sup>st</sup> Respondent/Judgment Creditor, by a Replying Affidavit he swore on 16/2/2024.
4. KCB Bank (K) Limited in this application is stated as the applicant/intended appellant. In the trial court, CMCC No E10169/2021, KCB Bank was the objector to execution proceedings. In the application for stay of execution before the trial court, the same Emmanuel Wambua described himself as the Assistant Manager of the objector, KCB Bank.
5. At the time of writing this ruling, I noted an apparent error/mistake on the face of the Supporting Affidavit dated 18/10/2023 sworn by Emmanuel Wambua. He states at paragraph 1 “That I am the Assistant Manager of the Respondent herein and I have been duly authorized to swear this affidavit on its behalf”  
  
I have also perused annexure marked 2 to the 1<sup>st</sup> Respondent’s Replying Affidavit dated 16/2/2024. The Supporting Affidavit dated 13/3/2023 indicates that Emmanuel Wambua is the Assistant Manager of the Objector (KCB Bank (K) Limited).
6. The court notes that the above error was not noticed by any of the parties. The court having seen the confusion and error, it would not be in the interest of justice for the court to proceed with interrogation and eventual determination of the application, without the same being corrected by the party.
7. Thus, in recognition of the overriding objective of the *Civil Procedure Act*, stated at Sections 1A and 3A thereof, the Court is mandated to exercise its discretion and powers to make such orders as it may deem necessary for the ends of justice to deal with cases justly, that includes, so far as it is practicable, ensuring that each case is dealt with not only expeditiously but also fairly.
8. In the circumstances, I direct that the matter be listed for mention before this court for taking further directions on 4/2/2025. Interim stay orders issued on 23/10/2023 shall remain in force pending the determination of the application dated 19/10/2023.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY, 2025**

**JANET MULWA**

**JUDGE**

