



**KCB Bank Kenya Limited v Ongwete (Miscellaneous Application  
E115 of 2024) [2025] KEHC 1933 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1933 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS APPLICATION E115 OF 2024  
WM MUSYOKA, J  
FEBRUARY 21, 2025**

**BETWEEN**

**KCB BANK KENYA LIMITED ..... APPLICANT**

**AND**

**HILLARY OKANGA ONGWETE ..... RESPONDENT**

**RULING**

1. The Motion herein, dated 2<sup>nd</sup> October 2024, is for stay of execution of a decree passed in Busia CMCCC No. 358 of 2019, pending hearing and determination of the application; and for leave to lodge appeal out of time against the judgment which gave rise to that decree.
2. The affidavit in support is sworn by the Advocate for the applicant, Simiyu Makokha. It is averred that the judgment was initially due on 8<sup>th</sup> February 2022, but it was not delivered until 30<sup>th</sup> August 2024, without notice to the parties, and the applicant was not aware of its delivery until 2<sup>nd</sup> October 2024. The applicant was aggrieved by it, but by then it was out of time for filing appeal, hence this application.
3. The respondent has reacted to the application. His affidavit was sworn on 14<sup>th</sup> October 2024. He supports the reliefs given and the awards made by the trial court, and asks that the applicant deposits the decretal sum in court as security should the appeal be lost. He complains that a memorandum of appeal has not been exhibited to the application, as testimony of seriousness. He further argues that the applicant has not demonstrated that it would suffer substantial loss should execution be levied. He goes on to argue that there is no good faith, for the applicant has not offered to deposit the decretal sum in court.
4. Directions were given on 16<sup>th</sup> October 2024, for canvassing of the application by way of written submissions.
5. I see written submissions by the applicant in the record before me, dated 10<sup>th</sup> December 2024. I have not seen any filed by the respondent. The applicant cites Order 42 rule 6(2) of the Civil Procedure



Rules; sections 79G and 95 of the *Civil Procedure Act*, Cap 21, Laws of Kenya; Nicholas Kiptoo arap Salat vs. Independent Electoral and Boundaries Commission & 7 others [2014] eKLR (Ibrahim & Wanjala, SCJJ); Paul Musili Wambua vs. Attorney General & 2 others [2015] eKLR (Koome, JA); Vishram Ravji Halai vs. Thornton Turpin (1963) Ltd [1990] eKLR [1990] KECA 65 (KLR)(Gicheru JA, Chesoni & Cockar, Ag JJA); Victory Construction vs. BM (minor suing through next friend PMM) [2019] eKLR (Odunga, J); Century Oil Trading Company Ltd vs. Kenya Shell Limited [2008] KEHC 1875 (KLR)(Warsame, J); Samvir Trustee Limited vs. Guardian Bank Limited [2007] eKLR (Warsame, J), John Gachanja Mundia vs. Francis Muriira alias Francis Muthika & another [2016] eKLR (Gikonyo, J); RWW vs. EKW [2019] eKLR (Ongeri, J); Absalom Dova vs. Tarbo Transporters [2013] eKLR; Mwaura Karuga t/a Limit Enterprises vs. Kenya Bus Services Ltd & 4 others [2015] eKLR (Gikonyo, J); Gianfranco Manenthi & another vs. Africa Merchant Assurance Company Limited [2019] eKLR (Nyakundi, J); Arun C. Sharma vs. Ashana Raikundalia t/s Rairundalia & Company Advocates & 2 others [2014] eKLR (Gikonyo, J); and Focin Motorcycle Co. Limited vs. Ann Wambui Wangui & another [2018] eKLR (Gitari, J).

6. The application is fairly straightforward, in my view, for the respondent has conceded to it, at paragraph 4 of his affidavit, where he avers “that the reliefs granted and the awarded sum by the trial court is reasonable in the circumstances and that the Applicant should deposit the same in the Court’s account as security for costs in the event he loses the appeal.” Whatever else he says thereafter, can only be a feeble attempt to oppose the application, and an afterthought, for he cannot possibly concede the application and oppose it at the same time. Doing so is what blowing hot and cold, and approbating and reprobating, are about.
7. In view of the concession, I do not think I should be-labour the matter. I do hereby grant the Motion, dated 2<sup>nd</sup> October 2014, as prayed. The intended appeal shall be filed within 30 days of this order. The condition, attaching to the stay order, shall be that the total decretal amount be deposited in court within 30 days of this order. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA THIS 21st DAY OF FEBRUARY 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Simiyu Makokha, instructed by Makokha Wattanga & Luyali, Advocates for the applicant.

Ms. Lugulu, instructed by Namatsi & Company, Advocates for the respondent.

