



KCB Bank Kenya Limited v Omonde t/a Dimonde Agencies & Auctioneers (Miscellaneous Civil Application E023 of 2024) [2025] KEHC 2292 (KLR) (7 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2292 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS CIVIL APPLICATION E023 OF 2024
REA OUGO, J
FEBRUARY 7, 2025**

BETWEEN

KCB BANK KENYA LIMITED APPLICANT

AND

**DICKSON OMONDE T/A DIMONDE AGENCIES &
AUCTIONEERS RESPONDENT**

RULING

1. In an amended notice of motion dated 6th March 2024 the applicant seeks the following orders;
 - i. Spent
 - ii. The honourable court may be pleased to issue an order of stay of proceedings in P.M.C.C No. 464,465,466,467,468,479,471,472,473 and 486 of 2023 (Bungoma) Dickson Omonde T/A Dimonde Agencies & Auctioneers- vs- KCB Bank Kenya Limited pending the hearing and determination of this application.
 - iii. The honorable court may be pleased to issue an order of stay of proceedings in P.M.C.C No. 464,465,466,467,468,479,471,472,473 and 486 of 2023 (Bungoma) Dickson Omonde T/A Dimonde Agencies & Auctioneers- vs- KCB Bank Kenya Limited pending the hearing and determination of the applicant’s appeal.
 - iv. The honorable court be pleased to grant the applicant leave to file an appeal of time.
 - v. Spent
 - vi. Spent
 - vii. That the costs of the application be provided for.



2. The application is brought under the provisions of order 42 Rule 6 and Order 51 of the Civil Procedure Rules, Sections 3A and 63 (e) of the *Civil Procedure Act* Chapter 21 of the Laws of Kenya.
3. The application is supported by the grounds on the face of the application and a supporting affidavit of the applicant's Recovery manager, Western region. The applicant seeks to be granted leave to file their appeal out of time and also a stay of the proceedings. The applicant explains that after the trial magistrate delivered the ruling on 15.2.2024 they instructed their advocates to appeal and they requested the Executive Officer for certificate copies of the proceedings and ruling. They were unable to get a copy of the ruling and proceedings despite their attempts to do so and hence without a certified copy of the proceedings they were unable to file a proper memorandum of appeal. They have an arguable appeal with high chances of success. If the orders are not granted the applicant will suffer substantial loss.
4. The application was opposed. The respondent filed a replying affidavit dated 29.4.2024. He avers as follows; the application has no merit and that the application is only wielded towards denying him a chance to realize the fruits of his ruling after lawfully completing the attachment as instructed by the applicant vide repossession letters issued in 2016. He made several attempts to the applicant to be paid for his services but to no avail and he proceeded and filed his bill for taxation. The applicant applied to strike out some matters and the said application was dismissed. The applicant thereafter filed an appeal which is aimed at delaying the fruits of his judgment. The applicant exercised inordinate delay in applying. The applicant has failed to meet the threshold required in granting orders of stay of execution against the ruling delivered on 15.2.2024. allowing the application will cause an injustice to him.
5. I have carefully considered the written submissions filed by the parties and the law that governs an application for a stay of proceedings. Under section 79 (1) of the *Civil Procedure Act*, an appeal can be admitted out of time if the applicant satisfies the court that he had a good and sufficient cause for not filing the appeal on time. Order 42 Rule 6 sets the threshold to be considered in considering an application for a stay of execution and stay of proceedings. It is the burden of the applicant to satisfy the court that they have a reasonable explanation. The ruling the applicant seeks to appeal against was delivered on 15.2.2024 and the application for stay of proceedings was filed on 5.3.2024. The applicant has explained and exhibited correspondence written on 15.2.2024 seeking a copy of the certified proceedings and ruling. The applicant has explained the effort they made right from the time the ruling was delivered. In my view, the applicant has satisfactorily explained that the delay was not inordinate. The reason given was reasonable and I find that no prejudice will be caused to the respondent. The delay in getting certified copies of the proceedings cannot be attributed to the applicant. I will therefore exercise my discretion in favour of the applicant. The applicant shall file its appeal within 7 days from the date of this ruling.
6. On stay of proceedings, I am aware that a stay of proceedings order is a serious order. The court's general practice is that a stay of proceedings should not be imposed unless the proceedings are beyond reasonable doubt and should not be allowed to continue. The applicant argues it has met the required threshold for a stay of proceedings order and that it is in the interest of justice that the order to issue to enable the applicant's intended appeal to be heard on merit. The applicant submits that it has an arguable appeal and that the intended appeal and application have established a prima facie case. The respondent on the other hand argues that the applicant has failed to demonstrate the substantial loss they will suffer if the stay of execution order is not issued. The applicant has not pleaded that they can comply with the order of security of costs should their application be allowed and that there has been an inordinate delay. The respondent further submitted the applicant did not move the court to stay proceedings within the stipulated time as required by Rule 55 (5) of the *Auctioneers Act* Cap 526 that the appeal from the decision of a Registrar under sub-rule (2) and (3) shall be to the judge in Chamber



and that the memorandum of appeal by way of Chamber Summons setting out the grounds of appeal shall be within 7 days. The respondents argue that the application is incompetent.

7. In the case of Global Tours and Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000), Justice Ringera held as follows “Judicial discretion in granting a stay of proceedings he has an arguable appeal is exercised in the interest of justice, weighing the pros and cons of granting or not granting”.
8. The applicant has stated that his memorandum of appeal raises substantial issues and they ought to be heard, however, the applicant failed to respond to the respondent’s submission on its failure to comply with Rule 55 of the *Auctioneers Act* Cap 526, noting that the appeal arises from a matter heard by the magistrate under sub-rule (2) and (3) of Rule 55. In my view, this fact alone will cause a denial of an order of stay of proceedings. The said provisions are mandatory. Even if I were to consider granting an order of stay of execution the applicant failed to satisfactorily explain the loss they would suffer. I decline to issue an order of stay of the proceedings as sought. Cost shall be in the cause.

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 7TH OF FEBRUARY 2025.

R.OUGO

JUDGE

In the presence of:

Miss Karanja h/b for Mr. Macharia for the Applicant

Miss Komora h/b for Miss Nekesa for the Respondent

Wilkister - C/A

