



**Roy Hauliers Limited v Bamburi Cement Limited (Commercial Case E777 of 2024)
[2025] KEHC 2827 (KLR) (Commercial and Tax) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E777 OF 2024
JWW MONG'ARE, J
MARCH 11, 2025
(FORMERLY CIVIL CASE NO. 268 OF 2024)**

BETWEEN

ROY HAULIERS LIMITED PLAINTIFF

AND

BAMBURI CEMENT LIMITED DEFENDANT

RULING

1. On 6th March 2025 this court delivered a ruling allowing the Plaintiff's application and ordering that the Defendant do provide security for costs pending the hearing and determination of the arbitration proceedings between the parties. Ostensibly the security to be provided is in the form of an escrow Account for the sum of Kshs.3,374,00,000/= to be held in a local banking institution in the joint names of the Advocates for the both the Plaintiff and the Defendant. In the alternative the Defendant is to provide a bank guarantee for the said sum of Kshs.3,374,000,000/= from a reputable local bank.
2. Subsequently and upon the delivery of the said Ruling Counsel for the Defendant orally applied for stay of execution of the Ruling and leave to appeal the same before the Court of Appeal. The Counsel pointed out to court that this court has the requisite jurisdiction to entertain an oral application by parties for leave to appeal and stay of execution of the Ruling. Counsel for the Defendant urged the court to be guided by the decision in Madhupaper International Limited vs. Keer (1985) eKLR in granting the said prayers. Counsel also urged the court to be further guided by the decision in Republic vs. University of Nairobi(2002) Vol.2 E.A. at page 572 in granting the prayers sought.
3. The Plaintiff Counsel opposed the application for stay of execution of the Ruling and leave to file an appeal against the same thereto. Counsel submitted that the proper procedure would have been for the Defendant to file a formal application to allow the Plaintiff to respond to the same appropriately to



the issues raised by the Defendant. Counsel for the Plaintiff urged the court to decline the invitation to grant the orders sought on an oral application.

4. I have considered the application by the Defendant seeking to stay the execution of the Ruling delivered on 6th March 2023 and the responses raised by the Plaintiff's counsel to the same. I note that the ruling subject matter of this application is not one envisioned under section 75 of the *Civil Procedure Act* from which an automatic right of appeal exists and therefore for a party to move to the appellate court, leave from this court is necessary. That for an application to appeal a ruling of this court arising out of the appl leave of this court to do so.
5. I have also considered the argument that the onset to be deposited is substantial and may prejudice the Defendant if the same is to be taken out of its operating capital. I am persuaded that the Defendant has laid a basis for grant of leave to file an appeal challenging the Ruling from this court. I therefore, grant leave to the Defendant to move to the Court of Appeal and file its appeal.
6. I decline however to stay the execution of the Ruling issued by this court on 6th March 2025. In my view, this court having rendered itself on the matter before it and arrived at a decision that security pending the hearing and determination of the arbitral proceedings is necessary and it is in the interest of justice, to grant a stay of the same orders would amount to this court sitting on appeal on its own Ruling. Let each party bear their own costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIS 11TH DAY OF MARCH 2025

J.W.W. MONG'ARE

JUDGE

In the presence of:-

Mr. Kimani Kiragu SC and Mr. Mwihuri for the Defendant/Applicant.

Ms. Msando holding brief for Prof. Tom Ojienda SC for the Plaintiff.

Amos- Court Assistant

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