



**Stanbic Bank Kenya Limited v Simba (Commercial Appeal E114 of 2022)  
[2025] KEHC 3315 (KLR) (Commercial & Admiralty) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3315 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
COMMERCIAL APPEAL E114 OF 2022  
JWW MONG'ARE, J  
MARCH 17, 2025**

**BETWEEN**

**STANBIC BANK KENYA LIMITED ..... APPELLANT**

**AND**

**ANTHONY MWAMISI SIMBA ..... RESPONDENT**

**RULING**

1. What is before this court is a Notice of Motion application filed by the Appellant/Applicant under Article 159 of the Constitution of Kenya, 2010, Sections 1A, 1B, 3, 3A of the Civil Procedure Act and it seeks the following orders: -
  - i. Spent
  - ii. That this Honourable Court be pleased to direct that the sum of Kshs.300,045/= deposited into this court pursuant to the terms of the Order of the court issued on 25<sup>th</sup> October 2022 be hereby released to the Appellant's Advocates herein.
  - iii. That this Honourable Court be pleased to order that the sum of Kshs.43,290.00/= paid to the firm of Waruiru, Karuku & Mwangale Advocates in partial payment for the stay of execution be paid to the Appellant's Advocates herein.
  - iv. In default of (2) above, this Honourable Court be pleased to allow execution proceedings for recovery of the above amount together with the costs award vide the certificate of taxation issued on 5<sup>th</sup> August 2024 as against the Respondent.
  - v. Costs of this Application be provided.



2. The application is supported by the grounds set on its face. The Applicant seeks to have funds deposited to the court by the Respondent pending the hearing and determination of the Appeal which was determined by this court on 19<sup>th</sup> September 2023 for the amount of Kshs.300,045/= and the sum of Kshs.43,290/= paid by the Respondent's advocates be released to it forthwith.
3. That the appeal herein having been determined in its favour, there is no good grounds as to why these funds that were deposited to secure an order of stay of execution pending appeal, should not be released to allow the Bank to trade in the same and continued holding of these funds is prejudicial to the bank as it has been denied an opportunity to trade in the said funds.
4. Having carefully considered the application herein and the responses filed therein, I note that it is not disputed that the sum of Kshs.300,045/= was deposited with the court pursuant to the orders of the court to secure an order off stay of execution pending the hearing and determination of the Appeal filed therein. I further note that flowing from the averments of the Further Affidavit by the Kennedy Kithinji, there is annexed to the said affidavit evidence that the further sum of Kshs.43,290/= was paid directly to the Respondents and not their advocates as pleaded in the Application. Both parties agree that the appeal was determined and that what is pending is the disposition of the funds held as security by the court and those that were paid directly to the Plaintiff.
5. It is not disputed that these funds were paid by the Appellant and that correspondence annexed to the application demonstrate that there has been an attempt to have the Deputy Registrar of the High Court cause the release of the funds so held by the court. I agree with the Appellant's submissions that it is necessary for this court to issue directions as regards the release of the said funds in line with Order 27 Rule 9 of the Civil Procedure Rules which provides that;- "Any money paid into court shall only be paid out pursuant to a court order." It is true that the deposit of the said funds was tied to the life of the appeal and therefore only proper that the said funds be released to the Appellant as the purpose for which they were so held has been extinguished. I direct therefore that the sum of Kshs.300,045/= held by the court as security pending the determination of the appeal be forthwith released to the Appellant by the court.
6. Turning to the funds paid out to the Respondents. The Appellant in the further affidavit of Kennedy Kithinji sworn on 28<sup>th</sup> January 2025 has made available a deposit slip as evidence that the sum of Kshs.43,290/= was paid directly to the Respondents Account held at Stanbic Bank. I direct that the Respondent do reimburse these funds to the Appellant forthwith and within 30 days from the date of this Ruling.
7. In conclusion, I find and hold that the Appellant application of 7<sup>th</sup> November 2024 is merited. The same is allowed and the Deputy Registrar of the High Court is hereby directed to facilitate the release to the Appellant the sum of Kshs.300,045/= held by the court forthwith. The Respondent is equally ordered to reimburse to the Appellant the sum of Kshs.43,290/= within 30 days from the date of the ruling herein failing which the Appellant is at liberty to take appropriate measures for its recovery. Each party shall bear their own costs of this application. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF MARCH 2025.**

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**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-



Mr. Otieno for the Appellant/Applicant.

Ms. Kyalo holding brief for Mr. Hasea for the Respondent.

Amos - Court Assistant

