



**Shah v Patel (Civil Case 492 of 2003) [2025] KEHC 4775 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4775 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**CIVIL CASE 492 OF 2003**  
**TW CHERERE, J**  
**MARCH 6, 2025**

**BETWEEN**

**BINDI SHAH ..... PLAINTIFF**

**AND**

**DR JANARDAN D PATEL ..... DEFENDANT**

**RULING**

1. As part of this ruling, I deem it necessary to examine the background of the case. Judgment was entered in this matter for the Respondent, Bindi Shah, against the Applicant, Dr. Janardan D. Patel, on 04<sup>th</sup> March 2019 in the sum of KES. 21,535,459/-.
2. By Orders made on the 17<sup>th</sup> October, 2019, the court granted a conditional stay of execution pending appeal that the Applicant deposit the sum of KES. 5,000,000/- in a joint interest earning account in the names of the Advocates as well as depositing in Court a title deed/certificate of lease in my name with a valuation report the value of which should be equal to or more than the balance of the decretal sum within 60 days.
3. Being unable to raise the full security sum of KES. 5,000,000/- within the stipulated time, Applicant filed the application dated 10<sup>th</sup> July, 2020 seeking a variation of the conditional stay of execution Orders which application was dismissed through by ruling dated 29<sup>th</sup> October, 2020.
4. The Applicant moved to the Court of Appeal and by the ruling dated 23<sup>rd</sup> April, 2021 obtained a conditional stay of execution pending hearing and determination of the intended appeal on condition that he deposits KES. 5,000,000/- in an escrow interest earning account in the joint names of the respective Advocates as well as depositing a title deed in Applicant's name as security for the balance of the decretal sum within 30 days of the said ruling.



5. The Applicant complied with the order to deposit KES 5,000,000/- before the expiry of the 30 days. This was confirmed by the Deputy Registrar in the ruling dated 31<sup>st</sup> January 2025. However, the Deputy Registrar noted that a resolution by the Board of Directors of Nanak Hospital Management Services and the title deed were presented before the court on the 06<sup>th</sup> of July 2021 but were returned due to non-compliance with the Court of Appeal ruling dated 23<sup>rd</sup> April 2021.
6. Due to this non-compliance, the Respondent filed a Notice to Show Cause application dated 29<sup>th</sup> May 2023, seeking, among other reliefs, that the Applicant be committed to civil jail in execution of the decree.
7. The court considered the application, along with the Applicant's preliminary objection, and by a ruling dated 31<sup>st</sup> January 2025, dismissed the objection, allowed the application, and issued a warrant for the arrest against the Applicant.
8. Consequently, the Applicant filed the Notice of Motion dated 07<sup>th</sup> February 2025, under Sections 1A, 1B, 3A, and 63(e) of the *Civil Procedure Act*, Order 42 Rule 6 of the *Civil Procedure Rules*, and all other enabling provisions of law, seeking the following orders:
  1. Stay of execution against the Ruling and Orders of the Deputy Registrar delivered on 31<sup>st</sup> January 2025 pending the hearing and determination of the intended appeal.
  2. Extension of time to deposit security for the decretal sum.
  3. Costs of the application to be in the intended appeal.
9. The application is based on the premise that the Applicant complied with the conditional stay of execution orders issued by the Court of Appeal on 23<sup>rd</sup> April 2021 by depositing KES. 5,000,000/- with his former advocates, M/S Ashitiva Advocates LLP, and securing a resolution by the Board of Directors of Nanak Hospital Management Services, along with a title deed. However, due to his advocates' failure to act, the resolution by the Board of Directors of Nanak Hospital was not deposited with the court within the 30-day period as directed by the Court of Appeal. The Applicant, therefore, urges the court not to penalize him for the omission of his counsel.
10. The Respondent opposed the application through grounds of opposition dated 12<sup>th</sup> February 2025 asserting that:
  - a. This Court lacks jurisdiction to grant the relief sought since the orders in question were issued by the Court of Appeal.
  - b. The Applicant, having failed to comply with the conditional stay orders, cannot seek equitable relief before this Court.
  - c. The Applicant should have moved the Court of Appeal for an extension of time rather than approaching this Court

### **Issues for Determination**

11. I have considered the application in light of the supporting affidavit, the grounds of opposition as well as the court record and I have identified the following key issues for determination:
  - a) Whether this Court has jurisdiction to grant the orders sought
  - b. Whether the mistakes of counsel can be visited upon the litigant.
  - c. Whether the application is merited based on the principles governing stay of execution.



**a. Whether this court has jurisdiction to grant the orders sought**

12. The Respondent contends that this Court lacks jurisdiction to vary, extend, or stay the execution of the Court of Appeal's orders.
13. The judicial hierarchy in Kenya is well-defined: while the High Court has unlimited original jurisdiction in civil and criminal matters, it lacks appellate or supervisory jurisdiction over the Court of Appeal.
14. The Court of Appeal, established under Article 164 of *the Constitution*, primarily hears appeals from the High Court and courts of equal status. It also has jurisdiction to determine interlocutory applications, including applications for stay of execution or injunctions, to preserve the subject matter pending the resolution of appeals.
15. Given this judicial structure, a party aggrieved by an order of the Court of Appeal must seek redress before the same appellate court or, where applicable, before the Supreme Court. Once the Court of Appeal has rendered its decision, the High Court is precluded by the doctrine of jurisdictional boundaries from varying, extending, or staying its execution.
16. This principle was reaffirmed in *Equity Bank Limited v. West Link Mbo Limited* [2013] eKLR, where the Court of Appeal emphasized its inherent jurisdiction to issue interim orders aimed at preserving the subject matter of an appeal, thereby ensuring that the appeal is not rendered nugatory.
17. Having granted a conditional stay of execution, the Court of Appeal remains the proper forum for any application seeking to stay its orders or extend the time for compliance. It is trite that once a court order is issued, it remains valid and binding unless set aside through review or appeal.
18. This Court lacks jurisdiction to entertain any application that effectively seeks to alter or extend the appellate court's orders.
19. It is well established that jurisdiction is everything, and without it, a court has no power to take even one more step (See *Owners of Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Limited* [1989] KLR 1).
20. The Applicant's failure to ensure full and proper compliance with the Court of Appeal's orders inevitably means that the required security was not adequately provided.
21. Accordingly, I find no error in the Deputy Registrar's order dated 31<sup>st</sup> January 2025 issuing a warrant of arrest against the Applicant.
22. That said, I have examined whether the application would have been successful if this Court had the requisite jurisdiction.
23. The Applicant attributes non-compliance with the Court of Appeal orders dated 23<sup>rd</sup> April 2021 to his advocate's inaction. However, in *Habo Agencies Limited v. Wilfred Odhiambo Musingo* [2015] eKLR, the Court of Appeal emphasized that a litigant cannot simply attribute all procedural failures to their advocate. It reiterated that parties must actively follow up on their cases, even when represented by counsel. Similarly, in *Mwangi v. Kariuki* (1999) LLR 2632 (CAK), Shah, JA held that inaction by an advocate alone is insufficient to justify refusing to exercise discretion unless accompanied by a litigant's negligence.
24. In the present case, there is no evidence on record indicating any steps taken by the Applicant between 17<sup>th</sup> May 2021 when he says he deposited the resolution by the Board of Directors of Nanak Hospital



Management Services and a title deed with his advocate and 31<sup>st</sup> January 2025, the Deputy Registrar issued a warrant of arrest against him, a span of nearly 4 years.

25. Additionally, the Court of Appeal's orders were issued on 23<sup>rd</sup> April 2021, yet this application was only filed on 07<sup>th</sup> February 2025, almost four years later. Equity aids the vigilant and not the indolent. The delay in this matter is inordinate and unexplained.
26. Concerning the merits of the application, Order 42 Rule 6(2) of the [Civil Procedure Rules](#) requires an applicant seeking a stay of execution to prove:
  - a. That the application was filed without undue delay.
  - b. Substantial loss if the stay is not granted.
  - c. That the applicant has provided security for the due performance of the decree.
27. The Applicant argues that execution will result in his committal to civil jail, which would cause irreparable harm. However, in [Kenya Shell Ltd v. Kibiru & Another](#) [1986] eKLR, the Court of Appeal held that execution does not amount to substantial loss, as a successful litigant is entitled to enjoy the fruits of their judgment.
28. The Applicant has failed to demonstrate any irreparable harm beyond the ordinary consequences of execution. Moreover, having failed to comply with the Court of Appeal's conditional stay orders, the Applicant is undeserving of a further order of stay of execution
29. For the reasons stated above, I make the following orders:
  1. The Notice of Motion dated 07<sup>th</sup> February 2025 is dismissed for lack of jurisdiction and want of merit.
  2. The prayer for stay of execution of the Deputy Registrar's ruling delivered on 31<sup>st</sup> January 2025 is declined.
  3. The Applicant shall bear the costs of this application.

It is so ordered.

**DELIVERED AT NAIROBI THIS 06<sup>th</sup> DAY OF March 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ubah

For Applicant - Ms. Guserwa for J.A.Guserwa & Co. Associates Advocates

For Respondent - Mr. Kamau for Sobhag H.Shah & Goswami Advocates

