



**Aswa Developers & Contractors Limited & 2 others v Synergy
Industrial Credit Ltd & another (Commercial Case E808 of 2021)
[2025] KEHC 4165 (KLR) (Commercial and Tax) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4165 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E808 OF 2021**

A MABEYA, J

APRIL 3, 2025

BETWEEN

**ASWA DEVELOPERS & CONTRACTORS LIMITED 1ST PLAINTIFF
STEPHEN WANGOMBE KINUTHIA 2ND PLAINTIFF
IRENE NJOKI WANGOMBE 3RD PLAINTIFF**

AND

**SYNERGY INDUSTRIAL CREDIT LTD 1ST DEFENDANT
PHILLIPS INTERNATIONAL AUCTIONEERS 2ND DEFENDANT**

RULING

1. This ruling determines the Notice of Motion dated 26/10/2023. The same was brought pursuant to the provisions of Order 22 Rule 25, Order 51 of the *Civil Procedure Rules*, 2010 and Section 1A, 1B and 3A of the *Civil Procedure Act*. It sought the following orders: -
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That this Honourable Court be pleased to make an order of stay of execution of the decree obtained on the 13th July 2023 and all consequential process therefrom, pending hearing and determination of Milimani HCCOMM E294 2023: *Aswa Developers and Contractors Limited v Synergy Industrial Credit Limited And Capital Square Limited*.



- e. That this Honourable court be pleased to make such further or other orders as it may deem fit and just to grant.
2. The application was based on the grounds set out on the body thereof and the supporting affidavit of the 2nd applicant Stephen Wangombe Kinuthia sworn on the 26/10/2023.
 3. It was averred that judgment was entered for the 1st respondent against the applicants vide orders issued on 25/3/2022 for the balance of Kshs. 45,526,583/- with interest at 18% per annum on a reducing balance. That a sum of Kshs. 24,800,000/- had been paid to the 1st respondent as at 26/7/2023 but the applicants' property was proclaimed by the 2nd respondent on 23/10/2023.
 4. That some of the assets proclaimed by the 2nd respondent were registered in the name of 3rd parties which is illegal and that the said proclamation notice was manifestly erroneous for alleging that the sum due was Kshs. 58,035,049.33 without a basis or foundation.
 5. That to allow the 1st respondent to proceed with attachment regardless of a pending application dated 23/6/2023 whose outcome could render the suit and the decree a nullity would be manifestly unjust as this Court would in effect have pre-determined the aforementioned application.
 6. The applicants contended that no prejudice would be suffered by the 1st respondent if the orders sought were granted as the balance of the decretal sum continues to accrue interest whereas the applicants stand to be greatly prejudiced by the actions of the respondents as they will suffer irreparable harm.
 7. In response, the 1st respondent filed a replying affidavit sworn on the 19/11/2024 by one Jacob Mbae Meeme, the 1st respondent's legal officer.
 8. It was deposed on behalf of the 1st respondent that the Motion by the applicant was fatally defective, incompetent, an abuse of the Court process, misconceived and had no merit. That the applicants had not demonstrated sufficient cause to warrant the granting of the orders sought. That the application was meant to impede the overriding objective and was premised under Order 22 Rule 25 of the [Civil Procedure Rules](#) 2010 which is inapplicable in the circumstances.
 9. It was deposed that the applicants' suit HCCOMM E294 of 2023: *Aswa Developers & Contractors Limited v. Synergy Industrial Credit Limited & Capital Square Limited* is on the verge of being dismissed for, among other reasons, violating the doctrine of res judicata and section 34 of the [Civil Procedure Act](#).
 10. That the applicants have not offered to provide any security for stay orders and that the instant Motion was a mere mischievous attempt to obstruct the execution proceedings that had been commenced.
 11. I have considered the rival contestations together with the submissions and authorities relied on.
 12. The main issue for determination is whether the applicants have demonstrated that the orders of 13/7/2023 should be stayed pending the hearing and determination of Milimani HCCOMM E294 of 2023.
 13. The application was brought under Order 22 Rules 22 and 25 of the [Civil Procedure Rules](#) among other orders. Rule 25 provides for stay of execution pending suit between decree holder and judgment debtor. The rule provides that where a suit is pending in any court against the holder of a decree of such court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.



14. In the present case, there is a suit, HCCOMM E294 of 2023: *Aswa Developers & Contractors Limited v. Synergy Industrial Credit Limited & Capital Square Limited* that is currently pending between the parties herein. Its outcome would in one way or another impact the decree herein of 13/7/2023.
15. This fact is not controverted. The only averment by the respondent is that the said suit is on the verge of being dismissed for, amongst other reasons, violating the doctrine of res judicata. To this Court, the success or otherwise of the said suit is not in question here. Neither can this Court purport to gauge the chances of the said suit. What this Court has to consider in exercising its discretion is, will the outcome of that suit have any effect on the decree herein?
16. Save averring that the said suit was on the verge of being dismissed, the respondent did not controvert or challenge the allegations made by the applicants. I acknowledge the respondent's sentiments that no security has been offered for stay of the orders sought. However, in light of the overriding objective under sections 1A and 1B of the [Civil Procedure Act](#), the Court is enjoined to do justice between the parties.
17. According to section 1B, the objectives specified under section 1A are; the just determination of the proceedings, the efficient disposal of the business of the Court, the efficient use of the available judicial and administrative resources and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.
18. Taking all relevant factors into account and in order not to render the pending application in HCCOMM E294 of 2023: *Aswa Developers & Contractors Limited v. Synergy Industrial Credit Limited & Capital Square Limited* nugatory, and, considering that no prejudice will be suffered by the 1st respondent, the following orders commend themselves to the Court: -
 - a. That there be a stay of execution of the decree obtained on the 13/7/2023 and all the consequential process therefrom pending the hearing and determination of Milimani HCCOMM E294 of 2023: *Aswa Developers & Contractors Limited v. Synergy Industrial Credit Limited & Capital Square Limited*.
 - b. That the aforesaid stay of execution order is conditional upon the applicants depositing the balance of the decretal sum of Kshs. 32,668,329/= in an interest earning account in the joint names of the advocates for the parties within 60 days of the date hereof.
 - c. Each party do bear own costs.

It is so ordered.

DATED AND DELIVERED FROM KISUMU ON THE 3RD DAY OF APRIL, 2025.

A. MABEYA, FCI Arb

JUDGE

