



**Roy Hauliers Limited v Bamburi Cement Limited (Commercial Case E777 of 2024)  
[2025] KEHC 4941 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4941 (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  
APRIL 24, 2025**

**BETWEEN**

**ROY HAULIERS LIMITED ..... APPLICANT**

**AND**

**BAMBURI CEMENT LIMITED ..... DEFENDANT**

**RULING**

1. On 6<sup>th</sup> March 2025 this Honourable Court issued an order pursuant to an application by the Plaintiff for the payment of the sum of Kshs.3,374,000,000/= into an interest earning account in the joint names of the Advocates for both the Plaintiff and the Defendant, as security for costs, pending the determination of the arbitral proceedings between the parties. In the alternative the Court directed that the Defendant do obtain and furnish a bank guarantee from a reputable local bank for the said sum of money as security for costs.
2. Subsequently and upon delivery of the said ruling, the Defendant applied orally to stay the execution of the said ruling and sought leave to proceed to the Court of Appeal to challenge the ruling. The court having considered the application before it granted the Defendant leave to move to the Court of Appeal but declined to allow the prayer for stay of execution of the said ruling.
3. The Plaintiff has by an application dated 26<sup>th</sup> March 2025 moved to court seeking to leave to commence contempt of court proceedings against the Defendant and its CEO for failure to comply with the orders of 6<sup>th</sup> March 2025. Before the said application could be considered, the Defendant filed the present application on 2<sup>nd</sup> April 2025 seeking orders to stay the proceedings before this court, pending the determination of the intended appeal and the court directed that this application be heard and determined first. Parties filed written submissions and appeared before the court to orally highlight the submissions.



4. A perusal of the record reveals that the Defendant has since filed a Notice to Appeal before the Court of Appeal and has also filed an application seeking to stay the execution of the orders of 6<sup>th</sup> March 2025 before the said appellate court in Civil Application No. E198 of 2025 - Bamburi Cement Limited v Roy Hauliers Limited. The substantive appeal is yet to be filed. The court notes that no orders have been issued by the Court of Appeal in the matter filed before the said court.
5. I have carefully considered the pleadings and the rival submissions filed by the parties herein. I note that in its objection to the present application, the Plaintiff has argued that the court is functus officio having considered a similar application by the Defendant for stay of execution of the ruling and having so declined to grant the prayers sought therein, cannot revisit the issue. The Plaintiff, to support this argument has urged the court to be guided by the Supreme Court decision in *Shollei v Judicial Service Commission & another* (Application No. 10(E016) of 202(2023) KESC(civ) (17<sup>th</sup> February 2023) as reaffirmed in *Raila Odinga v IEBC & Others* (2013)eKLR where the court stated that “a court is functus officio when it has performed all its duties in a particular case...”
6. I agree with the argument put forward by the Defendant that the jurisdiction exercised by the Court in its ruling in the previous application seeking to stay the execution of the ruling was distinct and separate than the one this court is now being called upon to exercise. The present application seeks to stay the proceedings currently before the court in totality while the previous application sought to prevent the execution of the ruling. It is my finding therefore that this court is not functus officio and can legitimately proceed to consider the application presently before it.
7. The next question left for the court is to consider whether the application before it is merited. Both parties agree that for a court to grant the orders sought for stay of proceedings, the application must be put through a test higher than that set out for an ordinary application for an injunction. The Defendant/Applicant has urged the court to be guided by the decision in *Imperial Bank Limited (in receivership) & 2 others v Alnashir Popat & 17 others* (2017) KEHC 923(KLR) where Tuiyott J(as he then was) set out the test for an application for stay of proceedings in the following terms “14. When the High Court considers an application in its trial jurisdiction its discretion is fettered by two important considerations. That there is sufficient cause to order stay, that is substantial loss would ensue from a refusal to grant stay; secondly that the application is brought without delay.”
8. Having heard the arguments by both parties, I therefore proceed to put the present application through this test. From the onset it is important to remember that substantive proceedings subject matter of the present application are before an arbitral tribunal and not before this court. What remains before this court is an application by the Plaintiff seeking leave to commence contempt of court proceedings in order to enforce compliance with the orders of this court issued in the ruling of 6<sup>th</sup> March 2025 and which the Defendant has moved to the Court of Appeal to challenge. The court must then determine the two issues that have been set out by the decision of Tuiyott J(as he then was) in *Imperial Bank Limited (in receivership) & 2 others v Alnashir Popat & 17 others*(*supra*). I note that this application was filed on 2<sup>nd</sup> April 2025, while the substantive ruling was issued on 6<sup>th</sup> March 2025. I therefore agree with the Defendant that the application has been brought in a timely fashion and without inordinate delay.
9. The question then the court must answer is whether sufficient cause has been established to warrant a grant of the orders sought. As pointed out earlier, what is before this court is the contempt of court application that is yet to be heard. The Court notes that the orders that the Defendant is seeking to set aside in the Court of Appeal were to the effect that security for cost in the sum of Kshs.3,374,000,000/= be deposited in the joint interest earning account in a local Bank in the joint names of the Advocates for both parties. It also provided an alternative of the Defendant availing a bank guarantee for the same amount in the alternative. It is the court’s view that unlike in the case of a final judgment, these funds



are only held as security for costs and the Defendant through its advocates will have control of the same and as such there is no likelihood of its being diverted or wasted without the Defendant being involved. Further, in making the said orders the court considered the fact these funds were already available from the sale of shares by the majority shareholder and would not be drawn from operating costs of the Defendant.

10. In addition to the above reasoning, in declining to grant the orders seeking to stay the execution of its ruling of 6<sup>th</sup> March 2025 in its subsequent ruling of 11<sup>th</sup> March 2025, the court already considered this issue and held that no substantial loss would be suffered by the Defendant if security for costs was provided. I am persuaded and agree with the Plaintiff's argument that there is no sufficient cause established by the present application to warrant a grant of the orders sought. To do so will on the flipside greatly prejudice the Plaintiff who, in the event that it succeeds before the arbitral tribunal in its quest, may be left holding a paper judgment.
11. In conclusion, I find no merit in the present application and I dismiss the same with costs to the Plaintiff. It is so ordered.

**DATED SIGNED AND DELIVERED virtually this 24<sup>th</sup> DAY OF APRIL 2025**

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

**JUDGE**

In the Presence of:

1. Mr. Okore Oyore holding brief for Prof. Tom Ojienda SC for the Plaintiff.
2. Mr. Kiragu Kimani and Mr. Muiruri for the Defendant.
3. Amos – Court Assistant

