



REPUBLIC OF KENYA



**Bahati Agro Processors Limited v JKK (Minor Suing Next Friend) MKN (Civil Appeal E036 of 2024) [2025] KEHC 6613 (KLR) (Civ) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6613 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA**

**CIVIL  
CIVIL APPEAL E036 OF 2024**

**KW KIARIE, J**

**MAY 22, 2025**

**BETWEEN**

**BAHATI AGRO PROCESSORS LIMITED ..... APPELLANT**

**AND**

**JKK (MINOR SUING NEXT FRIEND) MKN ..... RESPONDENT**

**RULING**

1. The appellant/applicant herein moved the court through a Notice of Motion dated the 18<sup>th</sup> day of March 2025. It was brought under Sections 1A (1), 1B (1) and 3A of the *Civil Procedure Act* and Article 159 (2) (d) of *the Constitution* of Kenya. The applicant is seeking the following orders:
  - a. This application must be certified as urgent and service of the same must be dispensed within the first instance. [Spent]
  - b. That this honourable court be pleased to issue a temporary injunction to restrain the respondent, his servants or agents from proclaiming, attaching or selling by public auction or otherwise the Appellant's property pending the hearing and determination of this application inter partes.
  - c. That this honourable court be pleased to issue a temporary injunction to restrain the respondent, his servants or agents from proclaiming, attaching or selling by public auction or otherwise the appellant's property pending the hearing and determination of the appellant's appeal.
  - d. That this honourable court be pleased to find that the terms of its Orders adopted from the Consent by the parties dated 4<sup>th</sup> December, 2025 in Nyandarua High Court Miscellaneous Application No. E045 OF 2024 were complied with within the time frame allowed having



regard to the time it took to operationalize the joint account, the suspension of the operation of time and the extension granted.

- e. That in the alternative to (4) hereinabove this Court be pleased to extend the time fixed by this court in its Order adopted from the Consent filed in Nyandarua High Court Miscellaneous Application No. E045 OF 2024 and upon such extension hold that the payment of Kshs.200,000/= to the respondent advocate on 7<sup>th</sup> February, 2025 and deposit of Kshs.535,150/= in the joint account are properly paid/deposited.
  - f. That the costs of this application be borne by the respondent.
2. The application was premised on the following grounds:
- a. That the respondent has proclaimed the appellant's goods for a second time despite the appellant having paid the respondent the sum payable to them and deposited the balance in a joint account.
  - b. The appellant paid the Plaintiff's advocate the sum of Kshs. 200,000/= on 7<sup>th</sup> February, 2025 and deposited the balance of Kshs. 535,150= in the joint account on 11<sup>th</sup>February, 2025.
  - c. The respondent's failure to operationalize the joint account in good time arose from their end. The bank rejected their signatures on the Account Opening forms as they were inconsistent on all pages, and the forms had to be signed afresh.
  - d. That having regard to the 15 days delay it took to operationalize the account, the suspension in the computation of time under Order 50 Rule 4 Civil Procedure Rule and extension granted by this honourable court the respondent complied with the terms of the Orders of this court as adopted from the Consent Order in the High Court Miscellaneous Application No. E045 OF 2024.
  - e. The respondent has procured warrants despite the payment and deposit.
  - f. If the court finds that the deposit was not made strictly within time, this court has the power to extend or enlarge time in the interest of justice, as the payments and deposit have been made. It is just a matter of having the appeal as proceedings have been typed, and the Record of Appeal is being compiled for filing shortly.
  - g. That at the core of the appeal is whether the respondent sustained an alleged fracture, as the appellant's doctor had discounted the possibility of such a fracture in a Medical Report presented before the trial court.
  - h. That the appellant stands to suffer irreparable loss as the respondent has not shown nor demonstrated that he can refund the decretal sum.
3. The application was opposed on the following grounds:
- a. That the application and the affidavit in support of it, as drawn, contain falsehoods meant to mislead this honourable court.
  - b. That the entire application is misguided, misconceived, vexatious, and an abuse of the court process.
  - c. After rendering its judgment on the 23rd of October 2024, the trial court granted the Appellant a thirty (30) day stay of execution.



- d. On November 27, 2024, the appellant filed Nyandarua High Court Miscellaneous Application No. E045 of 2024 seeking a further stay and leave to appeal out of time. By this time, the thirty (30) days' stay granted by the honourable court had already lapsed.
  - e. That on December 4, 2024, my advocates on record entered into a consent with the advocates representing the Appellant, which consent compromised the application.
  - f. That the honourable court in the Nyandarua High Court Misc. Application No. E045 of 2024, upon adopting the consent orders, directed the matter to be mentioned on 21st January, 2025, to confirm compliance with the Consent Orders on the part of the appellant.
  - g. That on the said mention date the appellant had only complied with term one (1) of consent by filing the Memorandum of Appeal in the instant appeal, and the Honourable Judge granted them a further seven (7) days to fully comply with the consent order failure to which I was at liberty to proceed with the execution.
  - h. That in blatant disobedience of the consent orders and the extension order granted by the High Court on 21<sup>st</sup> of January, 2025, the appellant went to sleep only to be awoken on 4<sup>th</sup> of February, 2025 after their assets were proclaimed and attached by Brave Auctioneers who were acting on the instructions given by my advocates on record and the valid warrants of attachment and sale granted by the Honourable Court.
  - i. That the two payments were clearly done way after the stipulated time and in any case the same was done in order to give the application dated 11<sup>th</sup> February, 2025 a justification which was primarily lacking.
  - j. That the said application dated 14<sup>th</sup> March, 2025 speak to the same issue as the instant application though the orders sought in the instant application have been fashioned differently probable as a double chance bet and in an attempt to forum shop for a convenient court just in case the trial court and/or this court will not issue any order in their favour.
  - k. The appellant has also not satisfactorily explained the loss they will likely suffer if I proceed to attach and sell the attached property.
  - l. The application and the appeal are ploys meant to buy time, delay, and frustrate me. Therefore, the respondent will be prejudiced should the application be allowed as presented.
4. On 21 January 2025, the applicants in miscellaneous civil case E045 of 2025 informed the court that they had not complied with the consent regarding the deposit issue. The consent entered into by the parties had allowed the applicants 30 days from 4 December 2024 to make the second deposit, and the matter was scheduled for mention on 21 January 2025 to confirm compliance. Given these timelines established by the parties and the court, the issue of interpreting the running of the timelines does not arise.
  5. The seven-day compliance extension lapsed on January 28, 2025. The appellant paid the plaintiff's advocate Kshs. 200,000 on February 7, 2025, and deposited the balance of Kshs. 535,150 in the joint account on February 11, 2025. This was outside the agreed-upon timelines.
  6. At no time did the applicant raise the issue of frustration from the respondent's advocate regarding opening a joint account. Assuming this were the case, the first instalment that was not contingent on opening an account should have been paid as agreed.



7. The application lacks merit. I therefore dismiss it with costs.

**DELIVERED AND SIGNED AT NYANDARUA THIS 22<sup>ND</sup> DAY OF MAY 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

