



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bintex Company Limited v Bollore Africa Logistics Kenya Ltd (Civil Suit 18 of 2016) [2025] KEHC 12090 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12090 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT 18 OF 2016  
F WANGARI, J  
MAY 22, 2025**

**BETWEEN**

**BINTEX COMPANY LIMITED ..... PLAINTIFF**

**AND**

**BOLLORE AFRICA LOGISTICS KENYA LTD ..... DEFENDANT**

**RULING**

1. This is a Ruling on an Applications dated 26/07/2023. The Application seeks the following Orders:
  - i. Spent
  - ii. Spent
  - iii. Spent
  - iv. That there be stay of execution of the Judgment of this court pending hearing and determination of the appeal.
  - v. That costs of the appeal be provided for.
2. The Application is premised on the grounds that that after judgment was delivered on 23/05/2022, temporary stay of execution of judgment was granted pending formal application for stay orders. A Notice of appeal dated 02/05/2022 was filed.
3. This application could not be filed for reasons that Defendant/ Applicant could not access a copy of the judgment, the trial judge Hon. Dorah Chepkwony having been transferred to Milimani High Court.
4. The Applicant stated that execution proceedings having commenced, if the stay orders are not granted, the Defendant will suffer irreparable loss considering the judgment award stood at USD 126,326/= which would irreparably affect its very financial core.



5. The application was not opposed.

### **Analysis**

6. Even though the application was not opposed, it must be determined on its own merits. I have analyzed the Application and the supporting affidavit. The issue for determination is whether the Appellant has satisfied the conditions for the grant of stay of execution pending Appeal.

7. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which provides:

“No order for stay of execution shall be made under subrule (1) unless—

- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

8. The Appellant must therefore satisfy the following;

- (a) that substantial loss may result to the applicant unless the order is made,
- (b) that the application has been made without unreasonable delay, and
- (c) that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given. (See Antoine Ndiaye v African Virtual University [2015] eKLR.)

9. I have to ascertain whether the Applicant has demonstrated loss that it stands to suffer if the order of stay is not granted. The Respondent having not responded to the application, it cannot be guaranteed that in the event execution takes place and the appeal succeeds, the Respondent would be in a position to refund the money paid.

10. On security, the purpose of its deposit is to ensure that the successful party can recover the decretal award. USD 126,326/= having been awarded, a reasonable amount ought to be deposited as security. I find that Kshs. 5,000,000/= would be sufficient as security.

### **Determination**

11. The upshot of the foregoing is that I allow the Notice of Motion dated 26/07/2023 as follows:

- a. That there be stay of execution of the Judgement on the following conditions
  - i. The Applicant shall deposit Kshs. 5,000,000/= in courts within the 30 next days.
  - ii. In default of (i) above, stay orders lapses and the Respondent is at liberty to execute.
- b. Mention on 07/10/2025 to confirm the status of the appeal.
- c. Costs shall abide the outcome of the Appeal.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 22<sup>ND</sup> DAY OF MAY, 2025.**

.....



**F. WANGARI**

**JUDGE**

In the presence of;

M/S Barasa Advocate for the Applicant

M/S Wanjike Advocate for the Respondent

M/S Norah, Court Assistant

