



**Joma Investments Limited v Liteline Enterprises Limited & another (Commercial Case E289 of 2024) [2025] KEHC 5966 (KLR) (Commercial and Tax) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5966 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E289 OF 2024  
JWW MONG'ARE, J  
MAY 12, 2025**

**BETWEEN**

**JOMA INVESTMENTS LIMITED ..... APPLICANT**

**AND**

**LITELINE ENTERPRISES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NK BROTHERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Appellant has by an application dated 3<sup>rd</sup> October 2024 moved this Honourable Court under a Certificate of Urgency and brought under Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 6 and Order 43 Rule 2 of the Civil Procedure Rules seeking the following orders:-
  1. Spent
  2. Spent
  3. Spent
  4. THAT pending the hearing and determination of this Appeal, a Conservatory Order do issue staying the execution of the Judgment and Decree of the Honourable Court (Hon. Wendy K. Micheni-as she then was) delivered on 20<sup>th</sup> September 2024 in CMCC No. 2940 of 2017-Liteline Enterprises Limited V Joma Investments and N.K. Brothers.
2. The Application is supported by the grounds set out on its face and the supporting affidavit of MORRISON WAYAYA sworn on 3<sup>rd</sup> October 2024. The Application is opposed and the Respondents have filed a replying and further affidavits sworn by PARMINDER SINGH PANESAR



on 17<sup>th</sup> October 2024 and 2<sup>nd</sup> December 2024 respectively. Both parties have filed written submissions which I have carefully considered.

3. The Appellant/Applicant has in compliance with the requirements of Order 42 Rule 6 offered to provide a bank guarantee as security for costs. The Appellant argues that the only uncontested sum in the judgment being challenge in the present appeal is the sum of Kshs.2,186,244.00/= which it admits is the balance of the contract sum. The Appellant argues that the rest of the sum of Kshs.2,197,83.93/= is interest on the balance of the contract sum and for which they take issue with its award and hence they are moving to challenge the decision of the trial court, among other issues that are raised in the Memorandum of Appeal. The Appellant argues that it has an arguable appeal with high chances of success and that they stand to suffer substantial loss of the orders sought are not granted.
4. In the response to the application, the Respondent has alluded to the fact it is not opposed to the application save that the intended bank guarantee should be for the full amount due as per the decree issued on 24<sup>th</sup> October 2024 for the sum of Kshs.8,623,624.54/= broken down as follows:-
  - i. Principal amount of Kshs.4,384,277.83/=
  - ii. Interest on (i) above at 12% per annum from 02.05.2017-23.10.2024- Kshs.3,936,436.01/=
  - iii. Costs of the suit assessed at Kshs.302,960.70/=
5. The Respondent urged the Court to find that the sum of Kshs. 2,186,244.00/= was admitted and direct that the same be paid to the Respondent and the balance of Kshs.6,437,380.54/= either be deposited in an interest earning account between the parties awaiting the determination of the intended appeal or be provided in the form of a bank guarantee.
6. I have considered the arguments put forward by the parties. I note that Order 42 Rule 6 has set out in very clear terms how a court faced with an issue as is presently before this court should proceed. Order 42 Rule 6 provides as follows:-

“ 6. Stay in case of appeal [Order 42, rule 6]

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) 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.

- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

7. It is not disputed that this application was brought in a timely fashion noting that the judgment was delivered on 20<sup>th</sup> September 2024 and the present application was filed on 3<sup>rd</sup> October 2024. The question the court must address herein is if it is to allow the Appellant to proceed with the intended appeal, what form of security should the court order the Appellant to furnish? Both parties are in agreement that there was an uncontested balance on the contract for Kshs. 2,186,244.00/= and the Appellant has offered to avail these funds as security for costs in form of a bank guarantee. The Respondent is opposed to the said proposal but has instead urged the court to order that this sum of Kshs.2,186,244.00/= be paid to it as it is already admitted and the balance of Kshs.6,577,871.37/= be made available as security for costs either by depositing the said sum into an escrow account held by both parties or making available a bank guarantee for the same for the duration of the Appeal.
8. The power to make orders in an application brought under order 42 rule 6 is discretionary. The court in doing so is called upon to balance the interest of the party who already has a judgment in their favour and the Applicant who is keen to challenge that judgment by way of an appeal and is convinced that they stand a chance to do so.
9. I have considered the two proposals made by both parties to this suit. I am satisfied that the application herein is merited and I allow the same conditional on performance of certain requirements on the part of the Applicant. In order to preserve the rights of the parties to the suit, I am satisfied that the sum of Kshs.2,186,244.00/= is undisputedly agreed by and between the parties as being due and owing under the contract to the Respondents. Without moving to determine the appeal at this interim stage, I find that it is only fair and in the interest of justice that these funds be made available to the Respondents forthwith. In addition, and as the matter awaits the determination of the appeal by the Applicant, I direct that in order to ensure that there is security for costs if the appeal is not successful, the Appellant, in addition to making the payment to the Respondent for the sum of Kshs. 2,186,244 will provide a bank guarantee of Kshs.2,000,000.00/= from a local reputable bank to be held as security, pending the determination of the appeal filed herein. The payment of the said sum of Kshs.2,186,244.00/= to the Respondent and the provision of the bank guarantee of Kshs.2,000,000.00/= shall be done within



30 days from the date of this ruling. Each party shall bear their own costs of the application. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY 2025**

.....

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

**JUDGE**

In the Presence of:-

1. Mr. Ochieng for the Applicant.
2. Ms. Ouma for 1<sup>st</sup> the Respondent.
3. Mr. Ogendo for the 2<sup>nd</sup> Respondent.
4. Amos - Court Assistant

