



REPUBLIC OF KENYA



**KENYA LAW**  
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**Clegane Horizons Ltd v Mazel Investment Company Limited & 2 others (Civil Appeal E1076 of 2024) [2025] KEHC 9743 (KLR) (Civ) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9743 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E1076 OF 2024**

**JN MULWA, J**

**JULY 3, 2025**

**BETWEEN**

**CLEGANE HORIZONS LTD ..... APPELLANT**

**AND**

**MAZEL INVESTMENT COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SUMAC MICROFINANCE BANK LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**DAKAR EXPORTERS (K) LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The motion subject of this ruling is dated 20/09/2024 and is filed by the Appellant. It is premised on provisions of Order 51 Rule 1 of the CPR and Section 3A of the *Civil Procedure Act* (CPA).
2. The main prayer sought by the Appellant is an order to stay proceedings and/or continuation of the proceedings in Milimani CMCC No. E3649 of 2023, which ruling gave birth to this appeal by a Memorandum of Appeal dated 16/09/2024, which appeal is against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the trial court thus the 1<sup>st</sup> and 2<sup>nd</sup> Respondents only in the appeal.  
The 3<sup>rd</sup> Respondent Daker Exporters (k) Limited is not a party in the instant appeal.
3. The Applicant Clegane Horizons Limited relies on its grounds for the application and supporting affidavit both of an even dates, 20/09/2024 sworn by one Titus Makhanu a Director for the applicant.
4. The appeal is premised on two rulings by the trial court delivered on 12/09/2024, allowing the Respondent application dated 2/04/2024, setting aside ex-parte judgment in the suit and 3<sup>rd</sup> Respondents' application dated 13/03/2024.



5. At the center of the appeal as may be gleaned from the record is a conflicting holding by the trial court on one hand allowing the ex-parte judgment entered on 21/02/2024; and on the other hand proceeding to set it aside on 12/09/2024.
6. This court has duly perused the impugned trial court ruling dated 12/09/2024.
7. On behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the 2<sup>nd</sup> Respondent Sumac Microfinance Bank Ltd, by its business Development Manager Evapenrope Wambui filed her Replying Affidavit sworn on 8/01/2025 in which depositions she posits that by the ruling of 12/09/2024 the trial court allowed the 2<sup>nd</sup> Respondent bank application therefore setting aside the ex-parte judgment against it on 21/09/2024 and therefore allowed the case to be heard on merit by granting the Respondents temporary stay orders of proceedings on 4/09/2024 pending determination of its application dated 20/09/2024. These court orders have not been complied with as proceedings have since been continued to the detriment and prejudice of the appellant as stated.
8. Upon the above basis the Respondents have urged this court to disallow the instant application.
9. The court has considered the rival parties pleadings and arguments in support of their rival case. Cumulatively, the court has flagged one issue for determination:-

Whether the Appellant/Applicant ought to be granted an order of stay of proceedings in the trial court case; Milimani CMCC No. E3649 of 2023 pending hearing and determination of the appeal herein.

#### **Analysis and Determination.**

10. On 20/09/2024, the Respondents moved to this court vide an application dated 20/09/2024 seeking an order of stay of proceedings in the trial court pending interparte hearing of the application, which orders the court temporarily allowed on 24/09/2024. These orders are in force but the applicant argues that the respondents have failed to comply with the said stay orders.
11. This in the courts view necessitated filing of the motion dated 3/10/2024 in which the Applicant sought similar order in the main for stay of proceedings. The two motions shall be determined together as they seek similar orders.
12. A reading of the impugned trial court orders dated 12/09/2024 shows that:-

“The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants defences are deemed as properly on record. They shall be served by close of business today. Parties have 45 days within which to comply with order 11 of the Civil Procedure Rules”
13. In essence, the ex-parte judgment entered against the defendants was set aside and they were allowed to defend the suit. The plaintiff was dissatisfied with the said ruling and preferred this appeal, and simultaneously filed the instant application dated 20/09/2024 seeking stay of proceedings of the trial court proceedings.
14. I must comment the trial court in its very detailed and well-analyzed ruling dated 12/09/2024. I say so because and as well stated by the learned Magistrate that there are no limits or restrictions on a judge’s discretion to vary or set aside a default judgment under Order 10 Rule II CPR.
15. In the case of Patel v. E. A Cargo Handling Services ltd [1974] EA 75; the court rendered that:- “...the principle obviously is that unless and until the court has pronounced final judgment upon merits or



by consent, it is to have power to revoke the expression of its coercive power where that has obtained only by a failure to follow any rule of procedure”.

16. Having the above-learned holding in reserve, and further considering the decision in Global Tours Travel Limited (Nairobi HC. Winding up Cause No. 43 of 2000) wherein the court held:-

“as I understand the law whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice..... the sole question is whether it is in the interest of justice to order a stay of proceedings and if so, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pro and cons of granting or not granting the order. and in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the Prima Facie Merits of the intended appeal in the service of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”

17. Having considered the above conditions and principles set out in the decisions and more so the trial courts well analyzed ruling, this court is not persuaded to allow the instant application dated 20/09/2024 to stay proceedings in the CMCCS Court.
18. The trial court case Milimani CMCC No. E 3549 of 2023 shall continue before the said court to its logical conclusion there being no plausible reasons and grounds to stay the proceedings pending the hearing and determination of the appeal, which upon careful consideration exhibits no arguable grounds on prima facie basis.
19. In conclusion, therefore, the appellant’s motion dated 20/09/2024 is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> respondents. No costs due to peculiar circumstances.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF JULY, 2025**

.....  
**JANET MULWA.**  
**JUDGE**

