



REPUBLIC OF KENYA



KENYA LAW
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NGM Company Limited v Silverspread Hardware Limited & another (Civil Appeal E082 of 2025) [2025] KEHC 10606 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E082 OF 2025
SM GITHINJI, J
JULY 17, 2025**

BETWEEN

NGM COMPANY LIMITED APPELLANT

AND

SILVERSPREAD HARDWARE LIMITED 1ST RESPONDENT

LIFELINE AUCTIONEERS 2ND RESPONDENT

RULING

1. For determination is the Notice of Motion dated 11/4/2025 brought under Order 42 Rule 6 (6) of the Civil Procedure Rules, Sections 1A, 1B, 3A, of the Civil Procedure Act, seeking that:
 1. Spent
 2. Spent
 3. Pending the hearing and determination of the appeal, this Honourable Court be pleased to issue a temporary injunction restraining the Respondents whether by themselves, their agents, employees, auctioneers or any other persons acting under their authority from enforcing and/or executing in any manner whatsoever the judgment and Amended Decree dated 30/9/2024 issued in Meru CMCC No. E414 of 2021.
 4. The costs of the application be provided for.
2. The application is supported by the affidavit sworn by Tabitha Weru, the Appellant's advocate on even date. She adopted the averments by Eric Mugambi Murungi in support of the application. She averred that on 9/4/2025, the trial court delivered a ruling in Meru CMCC No. E414/2021, dismissing the Appellant's application dated 15/10/2024 which sought to stay the execution of the amended decree issued on 30/9/2024 and to set aside the warrants of attachment and proclamation notice that permitted execution of the decree against the Appellant's directors personally. The aforesaid



order was predicated on the court's erroneous finding that the Appellant had been duly served with both the application to lift the corporate veil dated 3/11/2023 and the order allowing the said application as prayed. That finding was plainly erroneous as it disregarded clear statutory and procedural requirements governing proper service of court documents and the well-established legal threshold for lifting the corporate veil. On the strength of the impugning ruling, the 2nd Respondent, acting under instructions of the 1st Respondent, has threatened to proceed with the attachment and sale of properties belonging to Audrey Wanja Murungi, Angela Pearl Namwankira, Angela Muthoni Murungi, Allan Nyaga Murungi and Eric Mugambi Murungi, the Appellant's directors, notwithstanding the fact that they were neither parties to the suit, the subject of the decree, nor were they afforded a hearing prior to the orders being issued. The Appellant's directors are in danger of an imminent unlawful and irregular attachment of their personal properties, and unless the impugning orders are set aside or varied, they will suffer irreparable harm that cannot be compensated by damages.

3. In opposing the application, Rameshi Hiran, the 1st Respondent's director swore a Replying Affidavit on 20/5/2025 in which he deposed that the application was unmerited and calculated to frustrate him from enjoying the fruits of his judgment. Contrary to the Appellant's contention, the Appellant's directors were served with the application to lift the corporate veil not only through their counsel but also personally through their known address, and in his view, the intended appeal lacked merit.
4. In opposing the application, Kelvin Mutuma Nyamu, an auctioneer from the 2nd Respondent swore a replying affidavit on 28/5/2025 in which he deposed that on 19/10/2024, he served Alan Muriungi, the Appellant's director with a copy of the proclamation, warrant of sale and attachment and a copy of the decree through Whatsapp on telephone number 0733633288. The application is made to cause delay and if granted, it may cause prejudice to their company.
5. The application was directed to be canvassed by way of written submissions, but none were filed by counsel.

Disposition

6. Having considered the application and the replying affidavits, I find the issue for determination to be whether the threshold for grant of the injunction sought has been met.
7. Pursuant to Order 42 Rule 6(6) of the *Civil Procedure Rules*, the High Court is vested with jurisdiction to entertain an application for temporary injunction pending appeal from a subordinate court as follows; "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."
8. The principles for grant of temporary injunction pending appeal were settled by the Court of Appeal in *Venture Capital & Credit Limited v Consolidated Bank of Kenya Ltd* Civil Application No Nairobi 349 of 2003 (174 of 2003 UR) quoted by the court (Alnashir Visram J, as he then was) in *Patricia Njeri & 3 Others v National Museum of Kenya* [2004] eKLR, as follows; "a. an order of injunction pending appeal is a discretionary which will be exercised against an applicant whose appeal is frivolous. b. the discretion should be refused where it would inflict greater hardship that it would avoid. c. the applicant must show that to refuse the injunction would render the appeal nugatory. d. the court should also be guided by the principles in *Giella vs. Cassman Brown* [1973] EA 358."
9. It is discernable from the grounds of appeal, that the Appellant is disputing inter alia being properly served with court process. As such the appeal cannot be said to be frivolous.



10. Invariably, I find that the appeal, which is undeniably arguable will be rendered nugatory if execution proceeds, and the Appellant will suffer irreparable loss and damage, in the eventuality of a successful appeal.
11. The upshot from the foregoing considerations is that the application dated 11/4/2025 is merited and it is allowed in terms of prayer 3 thereof.
12. Costs be in the cause.

DATED AND DELIVERED AT MERU THIS 17TH JULY, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Mr. Karuti for the Appellant/Applicant.

Mr. Kaume is for the Respondent (absent).

Mr. Karuti – We have a comment to record.

We can have a mention date.

Mention on 23/9/2025.

