Kumar v Transnational Bank (K) Ltd (Civil Suit E034 of 2020) [2025] KEHC 12793 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12793 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL SUIT E034 OF 2020

RN NYAKUNDI, J

SEPTEMBER 19, 2025

BETWEEN

PATEL SUNIL KUMAR .... PLAINTIFF

AND

TRANSNATIONAL BANK (K) LTD .... DEFENDANT

RULING

1. Before this Court is a Notice of Motion dated 24th day of July 2025 expressed under Sections 1A, 3 and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Order 40 Rule 2, Order 51 Rule 1 of Procedure Rules together with all other enabling provisions of the law seeking for Orders that:
    1. That this application be certified as urgent and the same be heard as soon as possible in view of its urgency.
    2. That pending the hearing and determination of this Application, this Honorable Court be pleased to issue an order of temporary injunction restraining the Defendant herein, whether by itself, its employees, servants, Auctioneer, agents and/or assignees from disposing of, transferring and/or selling by public auction or private treaty the Applicant's properties being Land Reference Number 7830/220 and Land Reference Number 209/4539 or any other assets charged as security for the loan facilities.
    3. That the Defendant herein Access Bank (kenya) PLC through the Branch Manager, Nandi Hills show cause why it should not be held in Contempt of Court for having expressly failed to comply with the orders of this court vide its judgment dated 23rd December, 2025, which specifically directed the Defendant to provide the Plaintiff with a comprehensive statement of indebtedness within thirty (30) days, clearly showing how each payment was allocated across the various facilities, including detailed breakdown of principal, interest, and other charges

for each facility, which the Defendant has failed to do despite the expiry of the stipulated timeframe.

4. That the costs of this application be provided for.

Which Application is based on the grounds that-

1. That this Honorable Court delivered a comprehensive judgment on 23rd December 2024 in Civil Suit No. E034 of 2020 wherein Justice R. Nyakundi made specific orders directing the Defendant to comply with certain mandatory requirements before exercising any statutory power of sale.

2. That the said judgment specifically suspended the Defendant's statutory notices for a period of one hundred and twenty (120) days and directed the Defendant to provide the Plaintiff with a comprehensive statement of indebtedness within thirty (30) days, clearly showing how each payment was allocated across the various facilities.

3. That the judgment further directed the parties to jointly appoint an independent auditor from the Institute of Certified Public Accountants of Kenya (ICPAK) within fourteen (14) days to conduct a comprehensive reconciliation of all fourteen loan facilities advanced to the Plaintiff.

4. That despite the clear and mandatory nature of these court orders, the Defendant has failed, refused and/or neglected to comply with any of the said orders and has instead proceeded to issue a letter dated 11th July 2025 threatening immediate realization of the charged properties.

5. That the Defendant's letter dated 11th July 2025 demonstrates a clear intention to proceed with enforcement actions in direct contravention of this Honorable Court's orders, thereby constituting contempt of court.

6. That the Defendant's proposed settlement of KES 20,000,000 is made without providing the foundational documentation ordered by this court and is therefore premature and lacks proper basis for evaluation.

7. That the threatened sale and realization of the Plaintiff's properties, including his family home and business assets, will cause irreparable harm, hardship and financial loss to the Plaintiff and his family.

8. That the Defendant has previously sold certain motor vehicles that were charged as security for the loan facilities, including some or all of the vehicles with registration numbers KBR 567P, KBS 648K and KBU 179K, without providing proper documentation of such sales or indicating the amounts realized from the disposals.

9. That despite the earlier realization of the said motor vehicles, the Defendant has failed to account for the sale proceeds or factor the amounts realized into the outstanding balance claimed to be due, thereby creating uncertainty about the true indebtedness of the Plaintiff.

10. That the Plaintiff's remaining properties known as Land Reference Number 7830/220 located in Nandi Hills and Land Reference Number 209/4539 located at Parklands within Nairobi County are at imminent risk of being sold without compliance with

this Court's mandatory orders and without proper accounting for previously realized assets.

11. That the Defendant has proceeded to threaten enforcement despite the court's finding that the banking relationship grew from an initial facility of KES 37,959,065 to encompass advances exceeding KES 84,696,032 through fourteen different facilities requiring proper reconciliation.

12. That the complexity of the banking arrangements, as recognized by this Honorable Court, demands the structured resolution process ordered by the court rather than unilateral enforcement actions by the Defendant.

13. That unless this Honorable Court intervenes by way of temporary injunction, the Defendant will proceed with the sale of the charged properties in contempt of court orders, thereby rendering the court's judgment nugatory.

14. That the Plaintiff has a strong prima facie case for contempt of court given the Defendant's clear non-compliance with specific court orders and its intention to proceed with enforcement actions.

15. That the balance of convenience favors the granting of temporary injunctive relief to preserve the status quo pending compliance with the court's orders and proper reconciliation of accounts.

16. That it would be in the interest of justice for the temporary injunction to be granted to prevent further contempt of court and to ensure that the Defendant complies with the mandatory court orders before exercising any enforcement rights.

Which Application is supported by the Affidavit of Patel Sunil Kumar as hereinunder:

1. That I am the Plaintiff/Applicant herein and I am competent to swear this Affidavit having personal knowledge of the facts deposed herein.

2. That this Honorable Court delivered a comprehensive judgment on 23rd December 2024 in this matter wherein Justice R. Nyakundi made specific and binding orders directing the Defendant to comply with certain mandatory requirements before exercising any statutory power of sale over my charged properties. (Annexed and marked PSK 1 is a copy of the judgment).

3. That the said judgment specifically suspended the Defendant's statutory notices for a period of one hundred and twenty (120) days and directed the Defendant to provide me with a comprehensive statement of indebtedness within thirty (30) days, clearly showing how each payment was allocated across the various loan facilities, including detailed breakdown of principal, interest, and other charges for each facility.

4. That the judgment further directed the parties to jointly appoint an independent auditor from the Institute of Certified Public Accountants of Kenya (ICPAK) within fourteen (14) days to conduct a comprehensive reconciliation of all fourteen loan facilities that the Defendant had advanced to me over the years.

5. That despite the clear and mandatory nature of these court orders and the expiry of the stipulated timeframes, the Defendant has failed, refused and/or

neglected to comply with any of the said orders and has instead proceeded to threaten immediate enforcement against my properties.

6. That on or about 11th July 2025, I received a letter from the Defendant's Remedial Assets Officer threatening to proceed with realization of the collaterals held without any further reference to me whatsoever. (annexed herewith marked as "PSK 2" is a copy of the said letter).

7. That the said letter dated 11th July 2025 demonstrates the Defendant's clear intention to proceed with enforcement actions in direct contravention of this Honorable Court's orders, thereby constituting contempt of court and causing me great anxiety and distress.

8. That the Defendant has previously sold certain motor vehicles that were charged as security for the loan facilities, including some or all of the vehicles with registration numbers KBR 567P, KBS 648K and KBU 179K, without providing me with proper documentation of such sales or indicating the amounts realized from the disposals.

9. That despite the earlier realization of the said motor vehicles, the Defendant has failed to account for the sale proceeds or factor the amounts realized into the outstanding balance claimed to be due, thereby creating uncertainty about my true indebtedness and potentially exposing me to double recovery.

10. That my remaining properties known as Land Reference Number 7830/220 located in Nandi Hills and Land Reference Number 209/4539 located at Parklands within Nairobi County are my primary assets and include my family home and business premises which are vital for my livelihood and that of my family.

11. That the threatened sale and disposal of my said properties will cause me and my family irreparable harm, hardship and financial loss as we shall be rendered homeless and I shall lose my business premises from which I conduct my commercial activities.

12. That the property known as Land Reference Number 7830/220 is my family home where I reside with my wife and children, and the same has been our residence for many years. The loss of this property would render my family homeless and cause untold suffering.

13. That the property known as Land Reference Number 209/4539 located at Parklands serves as commercial premises for my business operations, and the loss thereof would effectively terminate my source of livelihood and render me unable to service any legitimate obligations to the Defendant.

14. That the Defendant's proposed settlement of KES 20,000,000 contained in their letter is made without providing the foundational documentation ordered by this court and is therefore premature and lacks proper basis for evaluation.

15. That I am advised by my Advocates on record, which advice I verily believe to be true, that the Defendant's conduct in proceeding with enforcement threats

without complying with the court's mandatory orders constitutes contempt of court and warrants urgent intervention by this Honorable Court.

16. That unless this Honorable Court intervenes by way of temporary injunction, the Defendant will proceed with the sale of my charged properties in contempt of court orders, thereby rendering this court's judgment nugatory and causing me irreparable loss.

17. That I have a strong prima facie case for the relief sought given the Defendant's clear non-compliance with specific court orders and the imminent threat to dispose of my properties without following the court-mandated reconciliation process.

18. That the balance of convenience favors the granting of temporary injunctive relief to preserve the status quo pending compliance with the court's orders and proper reconciliation of accounts as directed by this Honorable Court.

19. That it would be in the interest of justice for the temporary injunction to be granted to prevent further contempt of court and to ensure that the Defendant complies with the mandatory court orders before exercising any enforcement rights.

20. That what is deposed to hereinabove is true to the best of my knowledge save as to matters deposed to on information sources whereof have been disclosed and matters deposed to on belief whereupon the grounds have been given.

2. The application was vehemently opposed vide a replying affidavit sworn by Elisha Nyikuli the Head of Legal and Company Secretary at Access Bank Kenya PLC the successor of Trans National Bank Ltd. The highlights of the affidavit can be captured as follows:

   1. The Plaintiff/Applicant's Application is misconceived, premature, an abuse of the Court process and the same ought to be dismissed for he reasons set out hereinbelow:

   2. That I am informed by the Defendant/Respondent's Advocates on record that this Honorable Court delivered its judgment on 23rd December 2024 and prior to its delivery, the parties had appeared before the Honourable Judge on several occasions when the Judgment was not ready, including on 29th November 2024, 4th December 2024, 6th December 2024, 9th December 2024 and 20th December 2024.

   3. That I am further informed my Advocates, on 20th December 2024 the parties were informed that the Judgment was still pending and would be delivered on notice. On the same day, the Defendant/Respondent's advocates closed their offices for the December holidays.

   4. That the Defendant/Respondent only came to learn, upon resumption from the vacation on 13th January 2025 that the Judgment had in fact been delivered on 23rd December 2024 without notice.

   5. That the Judgment expressly suspended the Bank's Statutory Notices for a period of one hundred and twenty (120) days, during which the Defendant/Respondent was directed to provide Plaintiff/Applicant with a comprehensive statement of indebtedness within thirty (30) days.

   6. That upon obtaining a copy of the said judgment on 13th January 2025, the Defendant/Respondent was ready and willing to furnish the Plaintiff/Applicant with the comprehensive

statement of indebtedness, noting that time began to run from 13th January 2025, pursuant to the provisions of Order 50 Rule 4 of the Civil Procedure Rules.

7. That before the lapse of thirty (30) days from the date of resumption, the Plaintiff/Applicant, vide its letter dated 5th February 2025, approached the Defendant/Respondent with an offer to pay a sum of Kenya Shillings Twenty Million (Kshs 12,000,000) as a full and final settlement of the outstanding debt. (Annexed and marked herewith as "VM-1" is a copy of the letter dated 5th February 2025 probative of the foregoing).

8. That in the said letter, the Plaintiff/Applicant expressly stated that they were willing to settle the matter amicably and further observed that there was no need to incur the additional expenses of appointing auditors to undertake an audit and reconciliation process, which they themselves admitted would take longer than the period provided.

9. That the foregoing proposal, together with the conduct of the Plaintiff/Applicant clearly demonstrates an intention on the Plaintiff/Applicant's part to compromise and var the terms of the Honorable court's judgment delivered on 23rd December 2024.

10. That consequently, the Defendant/Respondent acceded to the Plaintiff/Applicant's request vide its letter dated 13th May 2025 and subsequently approved a full and final settlement of Kenya shilling Twenty Million (Kshs 20,000,000). (Annexed and marked herewith as "VM-2" is a copy of the letter dated 13th May 2025 probative of the foregoing).

11. That notwithstanding the said approval, the Plaintiff/Applicant failed to make good its commitment within two (2) months as promises and, vide its letter dated 9th June 2025, expressly communicated its intention not to honour the agreed settlement.

12. That as a result, the Defendant/Respondent vide its letter dated 11th July 2025, notified the Plaintiff/Applicant of its intention to proceed with realization of the securities noting that the settlement engagement had failed to materialize.

13. That contrary to the Plaintiff/Applicant's averments, the Defendant/Respondent has not commenced any realization process of the securities, there are notices and/or advertisements have been issued by the Defendant/Respondent or its agents with the intention of disposing of the charged property.

14. That the instant application is therefore premature and devoid of urgency, as there is no threat of imminent realization of the securities.

15. That the Plaintiff/Applicant's prayer that the Defendant/Respondent be cited for contempt of the Court orders is misconceived and misleading. The conduct of both parties, particularly the Plaintiff/Applicant's request for a negotiated settlement after delivery, demonstrates that there were indeed mutual arrangements fully settle the matter ad be back to court to close the matter.

16. That the Plaintiff/Applicant cannot in fact therefore turn around and use the said negotiations against the Defendant/Respondent as a basis for contempt proceedings.

17. That further, the Plaintiff/Applicant has not demonstrated any effort to comply with the judgment of the Honorable Court by making repayments towards reduction of the loan, as was expressly directed by the court.

3. In addition to the averments the Respondent made brief submissions opposing grant of the reliefs to the Applicant. The Applicant placed reliance on the following cases:In the case of Andria (Vasco), [1984] 1 QB 477 at page 491, letter Gili Robert Golf L.F. (as he then was observed as follows:

> “ It is axiomatic that in ex-parte proceedings there should be full and frank disclosure to the court of facts known to the applicant, and that failure to make such disclosure ay result in the discharge of any order made upon the ex-parte application, even though the facts were such that, with full disclosure, an order would have been justified.

We are also reliably guided by the case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment) where the Honorable Court of Appeal Judges stated that:

> “ This rule applies with equal force in Kenya and looking at the substance of the two telexes, I entertain no doubt at all that Caltex failed in its duty to make a full and frank disclosure of material facts and the application by the appellants are set aside the writ and the warrant of arrest ought to have been allowed because quite clearly the original order made by Githinji J., for the arrest of the ship was improperly obtained. Mr. Inamdar’s complaint about the affidavit is well founded and I would uphold his submissions in his last ground of appeal as well. It was for these reasons I was in favour of allowing the appeal, setting aside the writ and releasing the ship from arrest. I would give the appellants their costs of this appeal

In the case of Signature Tours & Travel Limited v National Bank of Kenya Limited [2017] 1 EKLR the Court of Appeal while dealing with the issue concerning material non-disclosure in making an application for injunction adopted the Honorable Court’s holding in Bahadurali Ebrahim Shamji v Al Noor Jamal & 2 Others Civil Appeal No. 210 of 1997:

> “ It is perfectly well-settled that a person who makes an ex parte application to the court – that is to say, in the absence of the person who will be affected by that which the court is asked to do – is under an obligation to the court to make the fullest possible disclosure of all material facts within is knowledge, and if he does not make the fullest possible disclosure then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained. It has been for many years the rule of court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts – facts, not law. He must not mistake the law if he can help it – the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement....

4. Finally, the Respondent prayed for dismissal of the application.

DECISION

5. The law

   Contempt of Court is committed where one willfully and mala fide refuses to comply with an order of Court. The essentials are the following:

   1. That there is a Court order which is extant.

2. That the order has been either served on the individuals concerned, or has come to their personal notice

3. That the individual(s) in question know what it requires them to do or not to do, and

4. Knowing what that order dictates, the individuals concerned deliberately and consciously disobeyed the order.

6. Any disregard of this Court's orders and the judicial process requires this Court to intervene and it also involves the vindication of *the Constitution*. The test for contempt, a deliberate intentional disobedience of an order of a competent Court, is threefold; firstly, an order was granted against the alleged contemnor, secondly, the alleged contemnor was served with the order or had knowledge of it and, lastly, that the alleged contemnor failed to comply with the order. The law of contempt of the face of the record relates to the intentional violation of the dignity, repute and authority of the Court. This Court has inherent jurisdiction as advised of preventing interference of justice and maintain the authority of the rule of the law. Learned Author Aswald in his book Contempt of Court (Can Edit.16 contends that:

> " contempts which tend to bring the administration of justice into scorn, or which tend to interfere with the due course of justice, are criminal in their nature; but that contempt in disregarding orders or judgments or a civil suit, or in doing something ordered to be done in a cause, is not criminal in its nature.

7. What the law envisages is that for civil contempt the disobedience of the order, decree etc of the Court or bridge of undertaking given by the Court must be willful.

8. Generally speaking, to the issues raised in the application this Court on 23rd December 2024 in its judgment issued various declarations and orders with regard to the issues which were raised during the trial of the commercial dispute between the Applicant and the Respondent. The orders as formulated showed that there were indicators which in the opinion of the Court were germane arising out of the evaluation of the facts of the case, evidence admitted and the interpretation of the law on the commercial contract between the parties. The fulcrum of it as a foundation of resolving the dispute it may be recalled that the additional evidence was designed under Section 1A, 1B, 3 and 3A of the *Civil Procedure Act*.

9. The final judgment rule is, at its simplest, is a rule of administration of justice which carries the facts of the case, evidence admitted before a trial Court and the final dictum. As per the provisions of Section 25 of the *Civil Procedure Act* it is intentional as crafted that a judgment and decree is a pronouncement by a Court of law after the case has been heard by taking in evidence for or against the subject matter. In the same Act the decree means the formal expression of an adjudication which so far as regards the Court expressing it, and conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and maybe either preliminary or final. That means that a decree can be preliminary, final and partly preliminary and partly final. The legislature in its wisdom thought that suits of certain types should be decided in stages and though the suit in such cases can be regarded as fully and completely decided only after a final decree is made, the decision on the Court arrived at the earlier stage also has a finality attached to it. In this respect as I have already observed there are indications that the *Civil Procedure Act* contemplates more than one preliminary decree and one final or executive decree in a suit.

10. It is necessary to set out why the Applicant has found it necessary to make this application and to do so we need to go back to the Ruling delivered by this Court on 23rd December 2024 which carries the following orders:

    a. The bank's statutory notices issued pursuant to the *Land Act* are hereby suspended for a period of one hundred and twenty days. During this period, the following steps shall be taken:

        i. The bank shall, within thirty days, provide Mr. Kumar with a comprehensive statement of his indebtedness, clearly showing how each payment was allocated across the various facilities. This statement must include a detailed breakdown of principal, interest, and other charges for each facility.

        ii. The parties shall, within fourteen days, jointly appoint an independent auditor from a panel of three names to be proposed by the Institute of Certified Public Accountants of Kenya (ICPAK). This auditor shall:

            1. Conduct a comprehensive reconciliation of all fourteen loan facilities advanced to the Plaintiff.

            2. Provide a detailed analysis of interest calculations and their application across multiple facilities;

            3. Present a clear chronological breakdown of how the initial facility of Kshs. 37,959,065 grew to encompass advances exceeding Kshs 84,696,032;

            4. Verify the allocation of al payments made against specific facilities.

    b. The independent auditor shall submit their report to this court within ninety (90) days, with copies to both parties. The parties shall have fourteen days t file any objections to the findings.

    c. The bank shall establish a dedicated point of contact for Mr. Kumar to address any queries arising from the reconciliation process. This arrangement shall ensure that communication regarding the outstanding facilities is clear, consistent, and properly documented.

    d. Mr. Kumar shall, pending the completion of this process, continue to make monthly payments based on the most recent loan restructuring agreement. These payments shall be held in an interest earning escrow to be established by mutual agreement between the parties.

    e. Upon completion of the reconciliation process, but not later than ninety days from this judgment, the parties shall present to this Court a joint report detailing:

        i. The agreed outstanding amount.

        ii. A structured repayment plan that takes into account both the bank's right to recover its funds and Mr. Kumar's ability to maintain his business operations.

    f. The costs of the reconciliation process and the independent audit shall be borne equally by both parties, reflecting their shared responsibility for the complexity that has characterized this banking relationship.

    i. The bank shall provide monthly statements to both the Plaintiff and the independent auditor showing how these payments are being applied.

    g. The costs of this suit shall be borne by each party.

11. There are some similarities in the application before me in which I find the principles articulated in Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 634F-635 of significance;

> " ..... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted ..... In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact ... if in such a case the respondent has not availed himself of his right t apply for the deponents concerned to be called for cross examination ... and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks ... there may be exceptions to this general rule, as, for example where the allegation or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers."

12. In the Kenyan context of litigation, the conceptual framework on structural interdict is not very well practiced and articulated in our legal system. It is more fundamental and it is at the core of the constitutional Court of South Africa. It is a complex phenomenon which revolves the involvement of the session Court to continue participating in the implementation of its orders. Kenya is more associated with the doctrine of functus officio once the Court has handed down its ruling or judgment. That means that the Court relinquishes its jurisdiction in the matter. Therefore, the canon of structural interdict in the policy of litigation does not strip the Judge's powers to monitor the implementation of the orders and decrees post judgment. My reading of the judgment of this Court answers to the question and the plan which was ordered after the determination of the issues on the merit to concretize it as part of its final orders. The model adopted by this Court as stated in the judgment was to enable the Court to harness the information and the expertise which may have been in the hands of the Respondent but not shared with the Court during the pendency of the trial. In fairness to the Respondents who indeed know where their duty lies were given an opportunity on accountability and transparency to acquire that additional evidence only geared to fashioning the final decree appropriately. It is my view although structural interdict applies more to post judgment arena in disputes involving government agencies, it is also applicable in the realm of other branches of law as between the disputants.

13. It is self-evident from the record that the declarations and orders issued on 23rd December 2024 have not been complied with within that policy framework in the judgment. The issue of functus officio does not arise as submitted by the Respondent. Manifestly, the orders are not a nullity, they were issued by a properly constituted Court having jurisdiction. On the facts, this application falls squarely within the judgment of the Court. Consequently, it was not open to the parties to give the orders their own interpretation. Having found that the orders were lawfully and legally issued they must be complied with by the parties. The import of it resonates well with the persuasive dicta in case of MEC of Health Eastern Cape v Kirland Investments (Pty) Ltd [2014] ZACC 6 in which the Court made the following observations:

> There is a higher duty o the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not in indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifetime."

14. In respect of this case, if one severs the word State or Government in the constitutional import the principles illuminated above are implicit and touch on the duties of each citizen or institution litigating in any of our justice sector to find it as a constitutional mandate vested in each one of them to obey and comply with Court orders decreed in every judgment without cherry-picking any of the orders which only works in his, her or their favor. I therefore do not find merit in the arguments agitated and pursued by the Respondent in this case.

15. The Applicant is relying on the protocol of the provisions of Sections 1A, 3 and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Order 40 Rule 2, Order 51 Rule 1 of the Procedure Rules together with all other enabling provisions of the law. I take cognizance of the fact that there is no pending appeal or review as a justiciable issue by the Applicant. Notwithstanding that position there are clear issues in the final judgment of this Court which counter-demand that both the Applicant and the Respondent be summoned by the Court so as to ventilate the level of compliance. In essence, the import of the principles in Butt v Rent Restriction Tribunal 1979 eKLR comes in handy; Thus;

> " It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory.

16. The essence of jurisdiction to grant stay conferred on the courts and the right of parties in a suit coming before any adjudication forum constituted under Article 50 of *the Constitution* it is statutory and inherent. It is meant to maintain the status quo until the determination of the dispute so as to preserve the res of the litigation. In the instant application weighed together with the orders issued on 23rd of December 2024 I find prima facie a subsisting serious issues which ought to be canvassed at the level of interlocutory post judgment for this Court to put things right. I do not consider the application as vexatious or oppressive to the jurisdiction of this Court. In any litigation in a formal Court of law parties usually compete for justice to be done or be seen to be done. Therefore, in an application for stay or injunction has some relevance so that the Court will consider the competing rights of both the Applicant and the Respondent.

17. I have perused, scrutinized and evaluated the record with a long historical component of delay which in some cases was inexcusable and unjustified. This is a mortgagee and mortgagor commercial contract entered freely and the terms reduced into writing. The critical issues which underpin the grievances raised by the applicant is as eruditely and concisely underscored in the impugned judgment. On the face of the record, this is a unique application which touches more on compliance of the judgment of the Court than on a higher definition of a valid cause of action in the form of a plaint, petition, claim or originating summons. In my view, the importance of courts as a forum of justice entrenches vividly the protection and guarantees of the fundamental rights and freedoms for the citizens of Kenya. By this reasoning, I do not think that the Applicant is a busy body before this Court. There are justiciable issues post judgment of this Court way back on 23rd December 2024. I can therefore recall these proceedings as those falling within the special and exceptional circumstances for this Court to intervene following the pronouncement of its judgment which set out certain obligations to both the Applicant and the Respondent.

18. From this view, it can be garnered that the scope of stay of the enforcement and execution of the judgment rendered against the Applicant without compliance with the orders issued by this Court will remain a disturbing aspect. As a consequence, an order of stay is granted albeit at the interim basis to deal with the pending compliance issues in the judgment. The costs of this application to abide the outcome of this matter.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 19TH DAY OF SEPTEMBER 2025.

………………………**………………….**

R. NYAKUNDI

JUDGE