



**KCB Bank Kenya Limited v Kinyua & another (Civil Appeal
E027 of 2023) [2024] KEHC 6820 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E027 OF 2023**

GMA DULU, J

MAY 7, 2024

BETWEEN

KCB BANK KENYA LIMITED APPELLANT

AND

BEATRICE WANJIKU KINYUA 1ST RESPONDENT

KINDE ENGINEERING WORKS LIMITED 2ND RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 17th July 2023 filed under Section 1A, 1B, 3 and 3A of the *Civil Procedure Act* (Cap.21), and Order 41 Rule 6 of the *Civil Procedure Rules* 2010, seeking the following orders:-
 1. (Spent).
 2. (Spent).
 3. Pending the hearing and determination of this appeal, there be a stay of execution of the Garnishee Order Absolute made on 28th October 2022 as upheld by the ruling delivered on 6th July 2023 in Voi CMCC No. E005 of 2021 Beatrice Wanjiku Kinyua =versus= Kinde Engineering Works Ltd & Kenya Commercial Bank Ltd.
 4. That costs of the application be in the appeal.
2. The application has grounds on the face of the Notice of Motion that in a ruling delivered on 6th July 2023 the court upheld a Garnishee Order Absolute made on 28th October 2022 requiring the applicant to pay Kshs. 2,600,000/= to the 1st respondent; that the applicant is aggrieved by that ruling and filed an appeal; that if stay orders are not granted the applicant will suffer substantial loss as the bank accounts



of the 2nd respondent are overdrawn and the applicant will have to pay from its own money even though it is not the judgment debtor; that it is in the interest of justice to grant the stay orders sought.

3. The application was filed with a supporting affidavit sworn on 17th July 2023 by Lilian Sogo the Head Counsel Litigation of the applicant KCB Bank Kenya Limited, which annexed the garnishee order and Memorandum of Appeal.
4. The application has been opposed through a replying affidavit sworn on 24th July 2023 by Eliud Wachira Wamahiu the administrator of the estate of Beatrice Wanjiru Kinyua (deceased) in which it was deponed that the applicant was duly served with garnishee application and garnishee orders; that when the application came up for inter partes hearing the applicant failed to attend the hearing; and that the application herein thus lacks merits.
5. The applicant's counsel filed and relied upon written submissions, while the respondent's counsel relied upon the replying affidavit filed.
6. This is an application for stay of judgment or decree pending hearing and determination of appeal. It is thus governed by the provisions of Order 42 Rule 6 of the *Civil Procedure Rules*. In this regard Rule 6(2) provides that in order to justify grant stay of execution orders, the court must be satisfied:-
 - i. That substantial loss may result to the applicant unless the stay orders sought are granted.
 - ii. The application has been made without unreasonable delay.
 - iii. Security has been offered for the performance of such decree or order.
7. It is important to mention that the present appeal arises from orders issued in third party proceedings for attachment of an alleged debt from monies in a bank account or bank accounts.
8. Starting with whether the application was filed without unreasonable delay, I note that an application to set aside the trial court's orders was dismissed on 6th July 2023 and this application filed on 17th July 2023. In those circumstances, I find no unreasonable delay in filing the present application.
9. On the likelihood of the applicant suffering substantial loss, I note that the applicant has pleaded in the application that the targeted bank accounts are overdrawn and if no stay is granted, it will mean paying from own funds while the target was the moneys said to belong to the judgment debtor herein, who is not the applicant.
10. In the above circumstances, in my view, the applicant stands to suffer substantial loss if the stay orders sought are not granted pending the hearing and determination of the appeal, as the applicant was not one of the primary litigants herein.
11. With respect to providing security, the applicant has offered to abide by the court's orders on provision of security. However, this court finds no basis for ordering them to provide security, provided that the appeal is heard and determined without inordinate delay.
12. Consequently and for the above reasons, I allow the application and order as follows:-
 - a. Pending the hearing and determination of this appeal I grant stay of execution of the Garnishee Order Absolute made on 28th October 2022 as upheld in a ruling delivered on 6th July 2023 in Voi CMCC No. E005 of 2021; Beatrice Wanjiku Kinyua =Versus= Kinde Engineering Works Ltd & Kenya Commercial Bank Ltd.
 - b. The costs of the application will abide the decision in the appeal.



DATED, SIGNED AND DELIVERED THIS 7TH DAY OF MAY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Ms. Cheruiyot holding brief for Mr. Kongere for the applicant

Mr. Mwakireti for the 1st respondent

