



**Co-operative Bank of Kenya Limited v Kojo alias Owino & another; Jenks Auctioneers (Interested Party) (Civil Appeal E026 of 2022) [2024] KEHC 15960 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15960 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL E026 OF 2022  
REA OUGO, J  
NOVEMBER 11, 2024**

**BETWEEN**

**THE CO-OPERATIVE BANK OF KENYA LIMITED ..... APPELLANT**

**AND**

**OWINO KOJO ALIAS VICTOR BRIAN OWINO ALIAS BRIAN OWINO  
KOJO ..... 1<sup>ST</sup> RESPONDENT**

**KHETIA DRAPERS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JENKS AUCTIONEERS ..... INTERESTED PARTY**

**RULING**

1. On the 30<sup>th</sup> of September 2024, judgment was entered against the appellant/applicant ( hereinafter referred to as the applicant). The applicant was granted a stay of execution from 30.9.2024 for 30 days. On the 25. 10.2024 the applicant filed an application seeking various orders. The application is brought under sections 1A, 1B, 3A of the [Civil Procedure Act](#) and Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.
2. The applicant is seeking a stay of execution of the Judgment delivered on the 30<sup>th</sup> of September 2024 pending the hearing and determination of the Application dated 24<sup>th</sup> October 2024 filed in Kisumu COACAPPL/E154/ 2024 The Cooperative Bank of Kenya Limited -vs- Owino Kojo alias Victor Brian Owino alias Brian Owino Kojo , Khetia Drapers Limited and Jenks Auctioneers and pending the hearing and determination of the intended Appeal.
3. The application is supported by the applicant’s supporting affidavit sworn by the applicant’s legal officer. The application was opposed. The 1<sup>st</sup> Respondent filed a replying affidavit and the applicant responded to the said affidavit by its further affidavit dated 5<sup>th</sup> November 2024.



4. In addition, the 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection dated 29<sup>th</sup> October 2024 in opposition to the applicant's application dated 25.10.2024. In the said Preliminary Objection the 1<sup>st</sup> Respondent avers that this court lacks the jurisdiction to entertain the application dated 25.10.2024 since no appeal has been filed against the judgment as required under Order 42 Rule 6 on which the application is premised and that the application amounts to an abuse of the Court process and ought to be struck out in limine in accordance with the provisions of Order 2 Rule 15 (1)(d) of the Civil Procedure Rules. Through the Preliminary Objection, the 1<sup>st</sup> Respondent and the Interested Party seek that the Notice of Motion application dated 25.10.2024 be dismissed and/or struck out with costs to the 1<sup>st</sup> Respondent and the Interested Party.
5. The preliminary objection was opposed by the applicant and it was canvassed by way of oral submissions.
6. I have considered the rival arguments and the authorities relied on. The preliminary objection is a point of law that the application for a stay of execution cannot be considered for reasons that no appeal has been lodged against the judgment as required under Order 42 Rule 6.
7. I have perused the court file. The applicant was granted a stay of execution after the delivery of judgment on the 30<sup>th</sup> of September 2024. On 22.10.2024 the applicant filed a Notice of Change of Advocates dated 22.10.2024, and on 23.10.2024 the applicant filed a Notice of Appeal. It is therefore not correct that there is no Notice of Appeal filed by the applicant. Therefore, the cases the respondent relied on are not applicable in this matter. I find the case relied on by the applicant of *Morris Ngundo vs Joan Nyaki & another* [2015] more applicable, the court held in the said case that once a Notice of Appeal is filed it's as good as an appeal having been filed. Rule 2 of the Court of Appeal Rules defines an appeal to include an intended appeal. I therefore find no merit in the preliminary objection and it is dismissed with costs.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THE 11<sup>TH</sup> DAY OF NOVEMBER 2024.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Miss Aluvale For the Appellant/ Applicant

Mr. Kojo -For the 1<sup>st</sup> Respondent & Interested Party

2<sup>nd</sup> Respondent - Absent

Kizito - C/A

