



**Thatchamaanz Limited v Pride Inn Limited; Glory Rent and Car  
East Africa Ltd & another (Objector) (Civil Suit 329 of 2015)  
[2021] KEHC 287 (KLR) (Commercial and Tax) (17 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 287 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 329 OF 2015  
F TUIYOTT, J  
NOVEMBER 17, 2021**

**BETWEEN**

**THATCHAMAANZ LIMITED ..... PLAINTIFF**

**AND**

**PRIDE INN LIMITED ..... RESPONDENT**

**AND**

**GLORY RENT AND CAR EAST AFRICA LTD ..... OBJECTOR**

**GLORY INSTATE AND INVESTMENT LTD ..... OBJECTOR**

**RULING**

- [1] The 2<sup>nd</sup> Objector has brought a Notice of Motion dated 26<sup>th</sup> January 2021 seeking that this Court stays execution of the Judgment delivered on 15<sup>th</sup> February 2019 pending the hearing and determination of the intended appeal.
- [2] On 25<sup>th</sup> January 2021, this Court dismissed the 2<sup>nd</sup> Objector's objection proceedings with the result that the Plaintiff can now move to execute against the goods and assets which the 2<sup>nd</sup> Objector had asserted to belong to it. That is what, I understand, the current applicant seeks to arrest. I think the 2<sup>nd</sup> Objector would be entitled to bring such an application as it appeals against the said Ruling.
- [3] The application for stay was filed expeditiously, just two days after the impugned Court Ruling and easily satisfies the first test which such an application must meet. To be filed without undue delay.
- [4] The others are revealed in Order 42 Rule 6:
  - (2) No order for stay of execution shall be made under subrule (1) unless—



- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

There must be real fear of substantial loss if stay is not granted and the suitor for such an order must be willing to grant security to meet any ultimate decree.

- [5] This Court has considered the material placed before it and submissions of counsel.
- [6] The substantial loss feared by the 2<sup>nd</sup> Objector is that the Plaintiff has no known physical address, residence, assets or financial means. The Plaintiff, a limited liability company, failed to confront this assertion and instead, its director Edward Ahn, offered to personally guarantee the repayment of monies that may be found due from the Plaintiff by this Honourable Court. I wonder whether that was not a concession by the company of the fears raised by the 2<sup>nd</sup> Objector!
- [7] The trouble, however, with the offer made by Edward Ahn is that he himself, while saying that he is the owner of certain named assets, fails to provide proof of ownership. For that reason, the offer of a personal guarantee is this far hollow. In that event real fear of substantial loss has by the 2<sup>nd</sup> Objector been demonstrated.
- [8] For security, the offer made by the 2<sup>nd</sup> Objector is for a bank guarantee for the entire decretal sum. The Court does not perceive that to be unreasonable. The Notice of motion of 26<sup>th</sup> January 2021 is allowed but on the following terms:
- 8.1. There shall be a stay of execution as against the goods/assets/property said to belong to the 2<sup>nd</sup> objector and which were subject of the Ruling dated 25<sup>th</sup> January 2021 pending the hearing and determination of the 2<sup>nd</sup> Objector's intended appeal but on condition that the 2<sup>nd</sup> Objector shall furnish a Bank Guarantee issued by a reputable Bank in the sum equivalent to the decretal sum as it now stands within 45 (forty five) days of the delivery of this ruling failing which the order of stay shall stand discharged.
  - 8.2 For the sake of clarity, the order granted in 8.1 is not an order staying execution as against the Judgment debtor.

**DATED AND SIGNED THIS 11<sup>TH</sup> DAY OF NOVEMBER 2021**

**F. TUIYOTT**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF NOVEMBER 2021**

**A. MABEYA, FCI Arb**

