



**Convex Commodity Merchant Ltd & 2 others v Stanbic Bank Kenya Ltd & another
(Civil Application E513 of 2025) [2025] KECA 1468 (KLR) (8 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1468 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E513 OF 2025
W KARANJA, K M'INOTI & WK KORIR, JJA
SEPTEMBER 8, 2025**

BETWEEN

**CONVEX COMMODITY MERCHANT LTD 1ST APPLICANT
CONVEX COMMERCIAL LOGISTICS LTD 2ND APPLICANT
JAMES WAIHAKA 3RD APPLICANT**

AND

**STANBIC BANK KENYA LTD 1ST RESPONDENT
GARAM INVESTMENTS LTD 2ND RESPONDENT**

(Application for stay of execution pending appeal from the ruling and order of the High Court of Kenya at Nairobi (Mabeya, J.) dated 3rd July 2025 in HCCC No. E355 of 2023)

RULING

1. On 9th August 2023 the three applicants herein moved the High Court for, among others, orders of injunction to restrain the respondents from selling or interfering with the properties known as LR No. 18474225 and LR No. 18474/229 (the suit properties) pending the hearing and determination of their suit. In the alternative, they sought an order compelling the 1st respondent to grant them 12 months within which to secure alternative financing. The dispute between the parties arose from a lender- borrower relationship in which the applicants offered the suit properties to the 1st respondent as securities.
2. After hearing the application, Mabeya, J. dismissed the application on 3rd July 2025. The learned judge expressed himself thus:

“30. Accordingly, the application dated 9/8/2023 is found to be without merit and is hereby dismissed with costs to the respondents.”



3. On 20th August 2025, the applicants moved this Court, primarily under rule 5(2)(b) of the Court of Appeal Rules, for an order of stay of execution of the said ruling and orders of the High Court, pending the hearing and determination of an intended appeal. There was an alternative prayer for an order maintaining the status quo, but that prayer was limited to the period before the hearing and determination of this application, rather than the intended appeal. It is therefore, for all intended and purposes, a spent prayer.
4. We heard Ms. Kiiru, learned counsel for the applicants, and Mr. Oraro, SC appearing with Ms. Lubano and Ms Mwangi, learned counsel, for the respondents. When the Court inquired from Ms. Kiiru whether in the circumstances of the application an order of stay of execution could issue, counsel responded that what the applicants are seeking to stay is not the ruling of the High Court, but the consequences of the ruling, namely to stop an impending auction of the suit property tomorrow. Counsel could, however, not explain why she had not applied for an injunction, which is an express remedy available under rule 5(2) (b).
5. It is a well established principle that this Court will not, under rule 5(2) (b) issue an order of stay of execution of a decision of superior court below where such court has merely dismissed an application or a suit, because there is nothing to stay in a negative order which does not direct the applicant to do or refrain from doing something.
6. Way back in 1976, in *Western College of Arts and Applied Sciences v E. P. Oranga & 3 others* [1976] eKLR it was held as follows:

“But what is there to be executed under the judgment, the subject of the intended appeal? The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs...In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay, to enforce or refrain by injunction.”
7. Similarly in *George ole Sangui v Kedong Ranch Ltd* [2015] eKLR the Court reiterated the position in these terms:

“In the instant case, the High Court dismissed the suit in which the applicants were seeking a declaration and an order to be registered as the proprietors of the suit land on the basis of the doctrine of adverse possession. The dismissal order cannot be enforced and is not capable of execution. It is not a positive order requiring any party to do or to refrain from doing anything. It does not confer any relief. It simply determined the suit by making a finding that the claimant was not entitled to the reliefs or orders sought and dismissed the suit against the respondent. That was not a positive order that required any party to do or refrain from doing anything. It was not capable of execution or enforcement. The act of dismissal of the suit could not be stayed. It is our finding that to the extent to which the application seeks stay of the order of the dismissal of the suit it cannot be granted.”
8. We can cite many other decisions upholding that position, among them, *Exclusive Estates Ltd v Kenya Posts and Telecommunications Corporation & another* [2005] 1 EA 53; *FRS v JDS* (CA. No. Nai. 114 of 2012); *Devani & 4 others v Joseph Ngindari & 3 others* (CA No. Nai 136 of 2004); *F & S. Scientific Ltd. v Kenya Revenue Authority & another* (CA No. 260 of 2012); *Republic v Kenya Anti-Corruption Commission & 2 others* (CA No. 51 of 2008); *Mombasa Sea Port Duty Free Ltd v Kenya Ports Authority* (CA No. Nai. 242 of 2006); *Stanbic Bank Kenya Ltd v Kenya Revenue Authority*



(CA No. Nai 294 of 2007); Metro Pharmaceuticals Ltd v Kenya Revenue Authority (CA No. Nai 131 of 2012); and Marangu Rucha & another v Attorney General & 10 others (CA No. 180 of 2013).

9. Before we are called upon to consider under rule 5(2) (b) whether the applicants' intended appeal is arguable and risks being rendered nugatory if it were to succeed, we must first be satisfied that we have before us a competent application in which we can validly issue orders of stay of execution as prayed by the applicants. There is no such application before us.
10. Taking into account the consistent decisions of this Court that we have cited above, we are satisfied that to the extent that the High Court merely dismissed the applicants' application for injunction, and in the absence of a prayer for injunction, there is no basis on which this Court can issue an order of stay of execution of the negative ruling and order of High Court dated 3rd July 2025.
11. But even if we were minded to consider the merits of this application, we still would not grant it because the applicant does not allege that the 1st respondent is impecunious or incapable of compensating it should the intended appeal succeed. Also, as found by the High Court, the debt in issue is not disputed, the main issue raised by the applicants being the valuation of the suit properties, which is really an issue for damages should the appeal succeed. What all this means is that the applicant does not satisfy both considerations which guide the Court in applications under rule 5(2) (b). (See Stanley Kang'ethe Kinyanjui v Tony Keter & 5 others [2013] eKLR).
12. For the foregoing reasons, we are satisfied that the applicant's motion dated 20th August 2025 has no basis and the same is hereby dismissed with costs to the respondents. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF SEPTEMBER 2025.

W. KARANJA

.....

JUDGE OF APPEAL

K. M'INOTI

.....

JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

