



NCBA Bank Kenya PLC v Multiple Hauliers EA Limited (Civil Appeal (Application) E543 of 2024) [2025] KECA 1469 (KLR) (12 September 2025) (Ruling)

Neutral citation: [2025] KECA 1469 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E543 OF 2024
SG KAIRU, FA OCHIENG & AO MUCHELULE, JJA
SEPTEMBER 12, 2025**

BETWEEN

NCBA BANK KENYA PLC APPLICANT

AND

MULTIPLE HAULIERS EA LIMITED RESPONDENT

(An application for an order of stay of execution against the ruling and order of the High Court at Nairobi (Mabeya, J.) dated 13th September 2024 in HCCC Insolvency Cause No. E022 of 2021)

RULING

1. The applicant, NCBA Bank Kenya PLC, is one of the main creditors of the respondent, Multiple Hauliers EA Limited. The respondent owed the applicant Kshs.7,255,411,886.90. This was in breach of the agreed repayment obligations. The applicant filed a motion at the High Court in Milimani seeking to place the respondent under administration. On 7th June 2021 it appointed Julius Mumo Ngonga and Anthony Makenzie Muthugi as joint administrators. Following an application, the High Court issued orders suspending the appointment. The orders were extended severally to allow the respondent to negotiate with a potential investor. On 23rd July 2024, the managing director of the respondent swore an affidavit in the court outlining a proposed transaction with Amava Consortium and annexed a Term Sheet detailing the salient terms of the proposed transaction. Amava was the intended investor.
2. It should be noted that over and above the applicant, the other big lenders of the respondent were KCB, Cooperative Bank and I & M Bank. By April 2024, the joint administrators appointed by the respondent had resigned.
3. In the Time Sheet above, a time table had been given showing the steps Amava and the respondent had to take until the deal was concluded in or about December 2024. The respondent wanted the stay orders extended. The creditors, including the applicant, could not hear of this. According to them,



the respondent had taken too long to find a credible investor, three previous investors having failed to inject any reasonable capital to help the creditors. They were worried that time was being wasted and, in the meantime, the respondent's assets continued to diminish in value. The court received rival affidavits on the question whether the interim orders of stay should be extended.

4. In a ruling delivered on 13th September 2024, the learned A. Mabeya, J. extended the interim orders in force. Secondly, he appointed the Official Receiver -

“strictly for the purposes of overseeing the process of completing the Term Sheet that has been executed between the company and the investor and to oversee the smooth taking over of the company by the new investor by December 2024.”

The Official Receiver was to report to court and advise the creditors on the progress after every 60 days. All actions against the respondent were suspended until further orders.

5. These were the orders that aggrieved the applicant. The applicant filed a notice of appeal dated 20th September 2024, and by this notice of motion dated 22nd October 2024 under Rule 5(2)(b) of the Court of Appeal Rules, sought the stay of the execution of the orders on the ruling until the intended appeal was heard and determined.
6. The complaint by the applicant was that the respondent had not sought the appointment of the Official Receiver as its administrator; that the Official Receiver's appointment was not with the concurrence of the applicant who had earlier on appointed joint administrators over the respondent; that the court had disregarded the applicant's statutory right to appoint the administrator over the respondent, and that the right ranked in priority; and that, without application and/or considering the applicant's right, the learned Judge lacked jurisdiction to appoint the Official Receiver as the administrator.
7. Concerning the nugatory appeal, it was contended that the appointment of the Official Receiver had left the applicant handicapped and without access to the assets of the respondent; that the appointment being limited to the Time Sheet effectively left the assets of the respondent in the hands of its directors with the imminent risk of diminishing the value of the assets to the detriment of the applicant and other creditors.
8. The application was opposed by the respondent whose case was that it was the differences among the creditors that had delayed the restructuring process; that the identification of Amava was going to resuscitate the process; and the implementation of the Time Sheet was a better deal for the creditors, the applicant included. According to the Official Receiver, who also opposed the application, after the administrator appointed by the applicant and resigned, no steps were taken to appoint another administrator. It therefore became necessary for the court to act in the manner it did, to rescue the respondent as a going concern. The Official Receiver stated that his appointment was being supervised by the court and therefore there was no danger that the 1st respondent's assets would be diminished.
9. On the chances of the intended appeal being rendered nugatory, it was contended that there was no such chance as the official receiver was a public officer who will treat all creditors equally, and who will not be biased in any way.
10. During the hearing of the application, senior counsel Mr. Oraro, holding brief for senior counsel Mr. Kamau Karori, appeared with learned counsel Mr. Cecil Kuyo, learned counsel Mr. Paul Kamara, and learned counsel Ms. Adhiambo Ameo, for the applicant. Learned counsel Mr. Oraro was for the respondent, while learned counsel Ms. Diana Ogula was for KCB and Cooperative Bank. Senior



counsel Mr. Oraro highlighted the written submissions filed by the applicant while learned counsel Mr. Orare highlighted the written submissions by the respondent.

11. The principles relating to the granting of stay of execution are well settled. We reiterate that Rule 5(2)(b) of the Rules of this Court is a procedural innovation designed to empower this Court to entertain an interlocutory application for the preservation of the subject matter of the appeal in order to ensure the just and effective determination of the appeal. A stay will only be granted if the applicant is able to show that the appeal or intended appeal has at least one arguable point. (See Chris Munga N. Bichange -vs- Richard Nyagaka Tongi & 2 Others [2013] KECA 141 (KLR)). An arguable appeal is not necessarily one that will succeed, but simply one that is deserving of the Court's consideration. Secondly, the applicant has to show that, if stay is not granted, the appeal or intended appeal, if successful, will be rendered nugatory (see Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme -vs- Milimo Muthoni & Company Advocates & 2 Others [2022] KECA 491 (KLR)).
12. In Stanley Kang'ethe Kinyanjui -vs- Tony Ketter & 5 Others [2013] eKLR, it was observed that whether or not the appeal will be rendered nugatory depends on whether or not what is sought to be stayed, if allowed to happen, is reversible or if it is not reversible, whether damages will reasonably compensate the party aggrieved.
13. We have carefully considered the notice of motion, the responses and the rival submissions. In our view, whether in the absence of an application, the learned Judge had the jurisdiction to appoint the Official Receiver as the administrator of the respondent is an arguable point. We are mindful, and this was pointed out to us, by senior counsel Mr. Oraro, that the learned Judge in appointing the Official Receiver, sought to rely on sections 606 and 607 of the Insolvency Act. Section 606 provides that if an administrator dies, resigns, is removed from office or vacates office, he may be replaced. Under section 607, the court may replace such an administrator where there is an application to the effect. On appeal, senior counsel will be arguing that in the absence of an application, the learned Judge had no power to appoint the Official Receiver. We have indicated in the foregoing that only one arguable point will suffice in a request for stay of execution.
14. On whether the appeal will be rendered nugatory, the applicant's overarching argument was that the appointment of the Official Receiver to be an administrator was to oversee the single transition in relation to the Time Sheet as opposed to an administrator appointed for the benefit of the respondent's creditors, the applicant included; that the directors will in effect be left to run the respondent with the prospect that the applicant's loan in excess of Kshs.7 billion will be put to great risk. We agree with the applicant that this limited administration did not preserve the assets and accounts of the respondent to ensure the right of the applicant to recover its loan. In effect, the applicant is likely to suffer irreversibly, if stay is not granted and the intended appeal ultimately succeeds.
15. We allow the notice of motion, and order stay of the orders issued on 13th September 2024 by the learned Judge until the intended appeal is heard and determined. Costs of the application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF SEPTEMBER 2025

S. GATEMBU KAIRU, C.Arb, FCI Arb.

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JUDGE OF APPEAL

F. OCHIENG



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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

