



**ABSA Bank Kenya Plc & another v Lwigado (Civil Appeal E043 of 2024)
[2025] KEHC 13765 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL E043 OF 2024
JN KAMAU, J
SEPTEMBER 29, 2025**

BETWEEN

ABSA BANK KENYA PLC 1ST APPELLANT

LEGACY AUCTIONEERS SERVICES 2ND APPELLANT

AND

HUDSON AMWAI LWIGADO RESPONDENT

(Being an appeal from the Ruling of Hon J. A. Agonda (PM) delivered at Vihiga in the Principal Magistrate's Court Civil Case No E170 of 2024 on 20th August 2024)

RULING

Introduction

1. In their Notice of Motion dated and filed on 3rd December 2024, the Appellants herein sought orders for stay of proceedings in Civil Suit E170 of 2024 Hudson Amwai Lwigado vs Absa Bank Kenya PLC & Legacy Auctioneering Services pending the hearing and determination of the appeal herein.
2. Samuel Njuguna, the 1st Appellant's Legal Officer swore an affidavit in support of the said application on 3rd December 2024. Through the said advocate, they averred that they were aggrieved by the Trial Court's Ruling delivered on 20th August 2024 and had filed a Memorandum of Appeal which they argued, raised triable issues and fundamental questions of law.
3. They contended that they appeared before the Trial Court on 28th November 2024 and it ordered the parties to comply before the hearing on 27th February 2025.
4. They further averred that it was proper and orderly that the appeal be heard first noting the possibility of conflicting orders which would embarrass the judicial process and render the appeal an academic exercise. They added that if the court did not issue orders compelling the Respondent to continue



making payments for the outstanding facility, there was the possibility of the loan outstripping the value of the suit property by the time the appeal was heard and determined.

5. They were categorical that the appeal would accord the Respondent an equal platform to litigate any of the issues that they intended to prosecute before the lower court. They were emphatic that this application was made without delay and that it was only fair and just that the court grants the orders sought.
6. Their Written Submissions were dated and filed on 7th April 2025. The Respondent did not file any response to the said application or file any Written Submissions. This Ruling is therefore based on the Appellants' Written Submissions only.

Legal Analysis

7. The Appellants submitted that through the impugned Ruling, the Trial Court had attempted to reverse a successfully completed public auction by ordering the 1st Appellant to re-issue a forty-five (45) days' redemption notice despite having complied fully with the security realisation process. They added that as the successful bidder had already paid the deposit of Kshs 1,250,000/= to the 1st Appellant, the 1st Appellant was barred from re-issuing the forty-five (45) days redemption notice to the Respondent lest it was sued for recovery of damages for breach of contract.
8. They placed reliance on the case of *Re Global Tours & Travel Limited (Nairobi) HC Winding up Case No 43 of 2000* (eKLR citation not given) where it was held that the decision of whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from was a matter of judicial discretion to be exercised in the interest of justice. A further holding was that in exercising its discretion, a court was required to weigh the pros and cons of granting or not granting the order, consider whether or not the application had been brought expeditiously, be satisfied of the prima facie merits of the intended appeal and bear in mind the need for expeditious disposal of cases, the scarcity and optimum utilisation of judicial time.
9. They asserted that the Ruling was delivered on 20th August 2024 and they filed this application on 18th September 2024 and hence, the delay between the said dates could not be termed as unreasonable. They further submitted that if this court did not allow the application as prayed, they stood to suffer substantial loss as their appeal would be rendered nugatory.
10. They submitted that the possibility of having two (2) conflicting decisions emanating from the High Court and the Trial Court was the mischief that was sought to be cured by Section 6 of the *Civil Procedure Act* Cap 21 (Laws of Kenya). They argued that the spirit behind the said provision was to avoid embarrassing courts as different courts of the same jurisdiction could arrive at different results on the same issue. They further averred that the said provision was also meant to bar litigants from forum shopping, maintain the integrity of the judicial process and avoid abuse of the judicial process.
11. They reiterated that their Memorandum of Appeal raised arguable grounds hence stood great chance of success. They thus urged this court to grant stay of proceedings of the Trial Court case so as not to render the appeal nugatory. To buttress their argument, they relied on the case of *Dennis Mogambi Mang'are vs AG & 3 Others*[2012]eKLR where it was held that an arguable appeal was not one that had to necessarily succeed but that it was one that was deserving of the court's consideration.
12. Notably, the question of whether or not to grant an order for stay of proceedings was a discretionary one. This discretionary power had to be exercised judiciously. The court had to consider if it would be in the interests of justice to grant the same. The underlying interest ought to be that the appeal should not be rendered nugatory.



13. This court had due regard to the case of UAP Provincial Insurance Co. Ltd vs Michael John Beckett [2004] eKLR where the Court of Appeal held that before an order for stay of proceedings could be granted, an applicant had to demonstrate that he had an arguable appeal and that if the stay was not granted, the hearing of the appeal would be a futile exercise.
14. This aspect of being rendered nugatory was hinged on whether or not the appeal was arguable on appeal and not whether the appeal would be successful as was held in the case of Co-operative Bank of Kenya Ltd vs Banking Insurance of Finance Union (Kenya) [2015]eKLR. An arguable appeal only needed to raise a single bona fide point worthy of consideration.
15. Further, in the case of David Morton Silverstein vs Atsango Chesoni [2002] eKLR, the Court of Appeal cited the case of Kenya Commercial Bank Ltd vs Benjoh Amalgamated Ltd & Another [1998] eKLR where it was held that it was not that a stay of proceedings could not be granted but rather, that each case depends on its own facts.
16. A court was therefore called upon to be very cautious not to look into the merits or otherwise of the appeal at that stage as that was under the purview of the appellate court.
17. As the prayer for stay of proceedings was an equitable relief, an applicant had to come to court with clean hands. One of the considerations to be taken into account was that the application for stay of proceedings had to have been filed without undue delay.
18. The court noted that the Ruling the Appellants intended to appeal against was delivered on 20th August 2024. The Memorandum of Appeal was filed on 18th September 2024 while the present application was filed on 3rd December 2024. A period of about a month could not be said to have been inordinate. This court was thus satisfied that the present application was filed without any delay.
19. A perusal of the Memorandum of Appeal herein led this court to the conclusion that the intended appeal was indeed arguable and not frivolous as the question before the appellate court was whether or not the Trial Court varied and/or attempted to vary and/or re-write the terms of the charge between the 1st Appellant and the Respondent and whether or not the requisite statutory notices had been served by the Appellants.
20. This court found and held that in the event it did not grant an order for stay of proceedings and the Appeal herein was heard and was successful, the proceedings in the Trial Court would have been rendered unnecessary, even though an appropriate order for costs could have been made to remedy that.
21. Accordingly, having considered the affidavit evidence, the Written Submissions and the case law by the Appellants, this court came to the firm conclusion that this was a suitable case for it to grant an order for stay of proceedings so as not to render the Appeal herein nugatory. Judicial time was precious and scarce and was not to be wasted in proceedings that would end up being academic exercises, a position that the Court of Appeal in the case of Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR reinforced when it rendered itself as follows:-

“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice.”

Disposition

22. For the foregoing reasons, the upshot of this court’s decision was that the Appellants’ Notice of Motion application dated and filed on 3rd December 2024 was merited and the same be and is hereby granted in terms of Prayer No (3) therein to the effect that it is hereby ordered that the proceedings in Civil



Suit No E170 of 2024 Hudson Amwai Lwigado vs Absa Bank Kenya PLC & Legacy Auctioneering Services be and are hereby stayed pending the hearing and determination of this Appeal. Costs of the application will be in the cause.

23. It is hereby directed that the matter will be mentioned on 11th November 2025 for further orders and/or directions.
24. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF SEPTEMBER 2025

J. KAMAU

JUDGE

