



**Mbalanya v ABSA Bank Kenya Limited (Environment and Land Appeal E054 of 2024) [2025] KEELC 6205 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6205 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND APPEAL E054 OF 2024  
YM ANGIMA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**NOAH NAMBUTE MBALANYA ..... APPELLANT**

**AND**

**ABSA BANK KENYA LIMITED ..... RESPONDENT**

**RULING**

1. By a notice of motion dated 20.12.2024 expressed to be filed pursuant to Sections 1A, 1B, 65 and 95 of the *Civil Procedure Act* (Cap 21) Order 42 Rule 6 and Order 51 of the Civil Procedure Rules the appellant sought a stay of execution of the ruling of the trial court dated 19.12.2024 in Mombasa MCELC NO.E202 of 2023 – Noah Nambute Mbalanya vs Absa Bank Kenya Limited.
2. The material on record shows that by the said ruling, the trial court found that the appellant’s suit was sub judice and res judicata. As a result, the trial court struck out the appellant’s suit as well as his application for interim orders dated 15.11.2023.
3. Aggrieved by the said decision, the appellant filed a memorandum of appeal dated 20.12.2024 disputing that his suit before the trial court was sub judice or res judicata. Simultaneously with the filing the appeal, the appellant filed the instant application seeking a stay of execution of the order of the trial court pending the hearing and determination of the appeal.
4. The respondent filed a replying affidavit sworn by Samuel Njuguna on 10.04.2025 in opposition to the application on several grounds. First, it was contended that the court had not jurisdiction to entertain the appeal. second, that the striking out order made by the trial court was a negative order not capable of being stayed. Third, the appellant had defaulted on the loan facility since 2018 hence he was not deserving of any equitable remedy.
5. When the application was listed for directions on 02.04.2025 it was directed that the same shall be canvassed through written submissions. The parties were also given timelines within which to file and



exchange their submissions. However, by the time of preparation of the ruling none of the parties had filed submissions.

6. The court has considered the appellant's application and the material on record. It is apparent that the impugned order of the trial court was an order merely striking out the appellant's suit and application. The trial court did not make any positive order capable of being executed or stayed. As was held in the case of *Western College of Arts and Applied Sciences vs E. P Oranga & 3 Others* [1976] KECA 15 (KLR) an order of stay does not lie against such a negative order.
7. The upshot of the foregoing is that the court finds no merit in the appellant's application for stay of execution pending appeal. As a consequence, the appellant's notice of motion dated 20.12.2024 is hereby dismissed with costs to the respondent. It is so ordered.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Court assistant Gillian

Appellant present in person

Mr. Kongere for the respondent

