



**Kimani & 2 others v Equity Bank (Kenya) Limited & another (Civil Case E103 of 2023)
[2025] KEHC 13995 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E103 OF 2023
F GIKONYO, J
SEPTEMBER 25, 2025**

BETWEEN

**ANDREW MWANGI KIMANI 1ST PLAINTIFF
ECS LIMITED 2ND PLAINTIFF
RANBERRY LIMITED 3RD PLAINTIFF**

AND

**EQUITY BANK (KENYA) LIMITED 1ST DEFENDANT
PHILLIPS INTERNATIONAL AUCTIONEERS 2ND DEFENDANT**

RULING

1. The significant order sought in the 1st defendant/ applicant's notice of motion dated 5th December 2023 is a stay of proceedings pending the hearing and determination of the Court of Appeal Civil Appeal No. E274 of 2024, against the ruling of 10th November 2023.
2. The application is premised on the grounds set out in its body, the affidavits sworn by the 1st defendant's legal officer, Kariuki King'ori on 5th December 2023, 12th February 2024 and 13th June 2024.
3. The plaintiffs opposed the application through replying and supplementary affidavits sworn by the 1st plaintiff on 25th January 2024 and 11th March 2024.
4. The application was canvassed through written submissions. The 1st defendant filed written submissions dated 18th September 2024, while the plaintiffs filed written submissions dated 19th May 2025.



The applicant's case

5. The 1st defendant asserted that it has met the conditions for the grant of a stay of proceedings pending appeal. It submitted that it has established a prima facie arguable case from the grounds of appeal outlined in the affidavit sworn on 5th December 2023; these are that the court did not consider that the 1st plaintiff had no interest in the properties charged to the 1st defendant, owned by the 2nd and 3rd plaintiffs; and that, the court did not consider that the 1st plaintiff's allegation that he is owed Kshs. 2,524,083,510 is a chose in action, which cannot be offset against an existing liability and cannot be the basis to stop the realisation of the charged properties.
6. The 1st defendant faulted the court for considering the debit of Kshs. 2,524,083,510 as solely a banker and customer issue without considering the context of the transaction, including the reason the Kshs. 2,524,083,510 was deposited. The Custody Service Agreement did not have a tenure, and there was no term providing that once funds were deposited in the 1st plaintiff's account, the terms of the agreement would stop being applicable. Consideration of whether the debit was properly done has to look at the terms of the Custody Service Agreement, which provides for arbitration. The dispute over the claim for Kshs. 2,524,083,510/- arose out of the Custody Service Agreement, which provided that disputes under the agreement would be resolved through arbitration.
7. The 1st defendant complained that the court neither considered *Elijah Bii v Kenya Commercial Bank Limited HCCC No. 324 of 2000* and *Thomas Nyakamba Okong'o v Co-operative Bank of Kenya Limited [2012] eKLR*, nor gave reasons why they were inapplicable to this case.
8. The 1st defendant contended that it was wrong for the court to determine that the public auction held on 15th March 2023 was unlawful because only one bidder was present. This issue did not arise from the application dated 24th March 2023.
9. The 1st defendant submitted that it has filed the present application expeditiously, less than one month after the ruling.
10. The 1st defendant submitted that it is in the interest of justice for the court to grant a stay of proceedings. That in considering the appeal, the Court of Appeal will have to determine whether the 1st plaintiff's claim against the 1st defendant should be referred to arbitration and be heard separately from the 2nd and 3rd plaintiffs' claim against the 1st defendant. That if the Court of Appeal allows the appeal, the steps towards hearing the case would be rendered null and void and result in waste of precious judicial time.
11. The 1st defendant asserted that the plaintiffs shall not be prejudiced if a stay is granted as the interlocutory injunction granted by the court restrains it from exercising its statutory power of sale. It added that the appeal has already been filed and served.
12. The 1st defendant relied on:-
 1. Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi [2014] eKLR
 2. Stanley Kangethe Kinyanjui v Tony Ketter & 5 others [2013] Eklr

Response

13. The plaintiffs submitted that the 1st defendant entered appearance and filed its defence, hence the application has been overtaken by events. That there was an inordinate delay in filing the application, which has not been explained. That after receiving directions from the Court of Appeal, the 1st defendant has neither filed its submissions as directed, nor pursued the appeal.



14. The plaintiffs argued that the application has been brought in bad faith, with the sole intention of delaying the progression of this suit, and to continue to vex them, as the issues raised have been determined through the impugned ruling.
15. The plaintiffs asserted that the application is based on the dismissal of its chamber summons dated 15th May 2023, which was misleading and based on material falsehood. They denied that the 1st plaintiff's complaint in these proceedings is in respect of breach of the Custody Service Agreement, or unlawful debit of his custody account as alleged. They clarified that his complaint is based on breach of fiduciary duty by the 1st defendant, by illegally and unilaterally debiting the 1st plaintiff's personal bank account number 0010101201534 with the sum of Kshs.2,524,083,510.13.
16. The plaintiffs underscored that the defendant's manager of legal services, Kariuki King'ori, admitted in his affidavit sworn on 5th December 2023 that the 1st defendant debited the sum of Kshs.2.5 billion being the proceeds of the sale of shares.
17. The plaintiffs argued that they stand to suffer great prejudice as follows:-
 - a. The 1st defendant will continue to illegally withhold and deny the 1st plaintiff access to, and use of his money, being the Kshs.2,524,083,510.13, which was illegally and unilaterally debited by the 1st defendant from his personal account on 10th July 2017, and which debit is admitted by the 1st defendant.
 - b. The 1st plaintiff is also entitled to have and enjoy interest on the aforesaid amount from 10th July 2017 to date, but which he may not have if the application is allowed.
 - c. According to a statement of account provided by the 1st defendant in December 2023, the 1st defendant continues to charge monthly interest on the facilities advanced to the 2nd defendant, with the last interest (for 5th December 2023) being Kshs. 632,186.00.
 - d. According to a statement of account provided by the 1st defendant in December 2023, the 1st defendant continues to charge monthly interest on the facilities advanced to the 2nd defendant, with the last interest (for 25th November 2023) being Kshs.7,391,247.00.
 - e. The 1st defendant has been debiting the 2nd and 3rd plaintiffs' accounts with substantial amounts which are unexplained, and levying/charging varying interest on the said amounts without notice to the plaintiffs, to the prejudice of the plaintiffs.
 - f. The 1st defendant continues to charge interest.
18. The plaintiffs relied on:-
 1. Karsan Ramji & Sons Ltd v Athumani & Another (Suing for and on behalf of Wamwanyundo Clan & 6 Others (Civil Application E034 of 2023) [2024] KECA 563 (KLR)
 2. Lucy Njoki Waithaka v Tribunal Appointed to Investigate the Conduct of the Honourable Lady Justice Lucy Njoki Waithaka M Judicial Service Commission; Kenya Magistrates M Judges Association (Interested Party) [2020] eKLR

Analysis and Determination

19. The issue before the court is whether the 1st defendant has met the conditions for stay of proceedings pending appeal.



20. The court has the discretionary power to stay proceedings pending appeal. Order 42 Rule 6 of the Civil Procedure Rules.
21. The discretion ought to be exercised judicially in the interests of justice.
22. The principles for consideration were captured by this court in *Lucy Waithera Kimanga & 2 others v John Waiganjo Gichuri* [2015] KEHC 6120 (KLR) as follows:-
 - a. The decision whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice.
 - b. The sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted.
 - c. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order.
 - d. In considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”
23. In addition, the discretion also ought to be exercised sparingly and only in exceptional cases, as observed in *Halsbury’s Law of England*, 4th Edn. Vo. 37 page 330 and 332, as follows:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

Timeous application

24. A matter of preliminary significance: The plaintiffs argued that the application has been brought with inordinate delay. The impugned ruling was issued on 10th November 2023. The present application was filed, 25 days thereafter, on 5th December 2023. In my view, the period is not inordinate. I find the application was filed without unreasonable delay.

Arguable appeal

25. The 1st defendant submitted that it has demonstrated that it has a prima facie arguable appeal.
26. It is not disputed that the 1st defendant has filed Civil Appeal No. E274 of 2024, against the ruling of 10th November 2023. It is an interlocutory appeal. According to the affidavit sworn by Mr. King’ori on 5th December 2023, the grounds of appeal are based on the contention that the 1st plaintiff’s claim



for Kshs. 2,524,083,510/- arose out of the Custody Service Agreement which provided that disputes under the agreement would be resolved through arbitration.

27. But, the plaintiff took a different view of the matter; first, that the claim is for breach of a fiduciary duty resulting into unlawful debit.
28. Second, the plaintiff stated that the 1st defendant has filed its defence, arguing that the application has been overtaken by events.
29. The record confirms that the 1st defendant has filed its defence dated 8th December 2023 captioned to be under protest. However, that question is for determination by the Court of Appeal.

Prejudice

30. Other relevant factors include the plaintiffs' argument that the 1st plaintiff stands to be prejudiced if a stay of proceedings is granted because its claim against the 1st defendant is for breach of fiduciary duty through debiting the Kshs. Kshs.2,524,083,510.13 from his personal account. They added that the 1st plaintiff will be kept from accessing his money to which it was entitled from 10th July 2017 and that the 1st defendant continues to charge interest on the 2nd and 3rd plaintiff's accounts.
31. On the other hand, the defendant claimed that the plaintiffs will not suffer any prejudice because the appeal has been filed and served and the interlocutory injunction granted by the court restrains it from exercising its statutory power of sale.
32. The 1st defendant has indicated that if allowed, the appeal on the referral of its dispute with the 1st plaintiff arbitration, the proceedings in this court shall be rendered null and void.
33. Thus, calling for proportioned balance between the 1st defendant's right of appeal against the plaintiffs' right to equal treatment and benefit before the law and to have their case determined without unreasonable delay. Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63
34. On the whole, in the circumstances of this case, the 1st defendant has not shown that its interlocutory appeal will be rendered nugatory if the hearing of the case proceeds.

Disposal

35. The 1st defendant's application dated 5th December 2023 is dismissed with no costs.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 25TH DAY OF SEPTEMBER, 2025**

F. GIKONYO M

JUDGE

In The Presence Of: -

Leiber for Kiprop for Plaintiff

Ms. Obwangi for Kiragu for 1st defendant

CA Kinyua

