



**Wuor v Beatper Enterprises Ltd (Miscellaneous Application E089 of 2023)  
[2025] KEHC 13501 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13501 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E089 OF 2023  
FG MUGAMBI, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**BAPINY MONTUEL WEJANG WUOR ..... JUDGMENT DEBTOR**

**AND**

**BEATPER ENTERPRISES LTD ..... DECREE HOLDER**

**RULING**

**Background and Introduction**

1. Before Court is the Decree Holder's preliminary objection to the Judgment Debtor's application of 16<sup>th</sup> July, 2025 seeking stay of execution pending appeal.
2. The material facts are not in dispute. The Judgment Debtor (Bapiny) has lodged three (3) notices of appeal from decisions of this Court, including in Civil Appeal No. 537 of 2024, in which he also sought a stay of execution pending appeal. Interim relief was not issued by the Court of Appeal. Thereafter, he moved this Court for substantially the same orders, which were granted conditionally and the condition was complied with. Subsequently, he returned to the Court of Appeal and lodged a notice of withdrawal of the earlier stay application, but the withdrawal has not yet been adopted or recorded by the Court of Appeal.
3. The Decree Holder (Beatper) contends that Bapiny's course of conduct of pursuing identical interlocutory relief in both Courts and seeking to retreat from the appellate forum only after obtaining a conditional order in the High Court offends the doctrines of sub judice, is an abuse of process and embarrasses the due administration of justice.
4. Beatper further submits that the interim stay orders of 18<sup>th</sup> July 2025 were issued "pending appeal" when, in truth, no competent appeal existed. In particular, the application for leave to appeal filed as



Application No. E536 of 2024 was marked as concluded with no leave granted, leaving nothing upon which a stay could lawfully be anchored.

5. It is also emphasized that the arbitral award which has already been adopted as a judgment and decree of this Court expressly directed the immediate auction of L.R. No. Karen 12882/28. Any order restraining or suspending that auction would, in effect, amount to varying the award or amount to this Court sitting on appeal over its own judgment, which is impermissible given the limited scope for post-adoption intervention in arbitral matters.
6. Additionally, Beatper contends that the Court is functus officio on the question of stay, the issue having been canvassed and determined in the earlier application dated 11<sup>th</sup> December 2023, culminating in a ruling delivered on 11<sup>th</sup> March/May 2024. On that basis, the present application is res judicata within the meaning of Section 7 of the *Civil Procedure Act*.
7. For these reasons it prays that the preliminary objection be allowed, Bapiny's stay application be struck out, and the conditional stay already granted be discharged.
8. Bapiny in response does not deny the existence of Civil Appeal No. E536 of 2024. He however states that he had already initiated withdrawal of that stay application. He avers that the notice of withdrawal was filed before the Court of Appeal heard the application and before he filed the present stay application in this Court, thus denying that there was any deliberate duplication or forum shopping.

### **Analysis and Determination**

9. I have carefully considered the preliminary objection, the response thereto and the respective submissions filed by the parties.
10. It is settled law that a preliminary objection must rest on a pure point of law which, if upheld, disposes of the proceedings (See *Mukisa Biscuit Manufacturing Co Ltd V West End Distributors Ltd*, [1969] EA 696). The relevant facts here are undisputed: there exists an application for stay of execution both at the Court of Appeal and in this Court; a conditional stay has since been issued by this Court and a notice of withdrawal of the application at the Court of Appeal remains unadopted. The background to the pending appeal is also not contested. As no evidentiary inquiry is required, the objection is properly taken.
11. Section 6 of the *Civil Procedure Act* codifies the sub judice rule, which bars parallel proceedings on matters directly and substantially in issue between the same parties before a competent court. Its purpose is to prevent duplicative applications for similar relief, thereby avoiding conflicting decisions and embarrassment of the judicial process, as affirmed by the Supreme Court in *Kenya National Commission on Human Rights V AG; IEBC (Interested Party)* [2020] eKLR.
12. The ruling impugned herein was delivered on 20<sup>th</sup> September 2024. Following that decision, Bapiny lodged a notice of appeal (Appeal No. 536 of 2024) together with an application for stay of execution dated 15<sup>th</sup> October 2024. Having invoked the appellate forum for the very relief of stay, he was precluded from subsequently filing a parallel stay application in this Court, the one dated 16<sup>th</sup> July 2025.
13. The principle is clear that although the High Court retains jurisdiction under Order 42 Rule 6 to grant stay, the Court of Appeal exercises a similar jurisdiction under Rule 5(2)(b). That parallelism does not permit contemporaneous duplication. Once a party elects to pursue stay before the Court of Appeal, comity of courts and respect for the appellate hierarchy demand that the High Court refrain from entertaining a mirror application. To do otherwise would invite conflicting outcomes and undermine the appellate court's decision.



14. Bapiny contends that he withdrew the application before the Court of Appeal. Yet, in my view, a notice of withdrawal does not take effect merely upon filing. It forms part of the record and only acquires legal effect once the Court formally adopts or records it. At the time the application in the High Court was lodged, no such adoption had been demonstrated. The application before the Court of Appeal therefore remains pending, and the subsequent filing in this Court created a duplication, precisely the embarrassment the sub judice rule seeks to forestall.
15. I take the view that the sub judice rule is assessed at the point the second forum is invoked. A unilateral and unperfected withdrawal cannot cure the mischief especially since Bapiny failed to disclose to this Court the existence of the earlier application when moving the application of 16<sup>th</sup> July 2025. Such nondisclosure offends the duty of candour and the principle of good faith in litigation. The totality of all that I have said is that on this ground only, the preliminary objection is meritorious.
16. Independently of the sub judice bar, Bapiny's conduct constitutes abuse of process. Abuse of process arises where a party knowingly and dishonestly employs the court process to pursue an ulterior purpose inconsistent with the administration of justice. This was recognized by the Court of Appeal in *Muchanga Investments Ltd V Safaris Unlimited (Africa) Ltd & 2 Others*, [2009] KECA 453 (KLR), which identified multiplicity of proceedings and tactical manoeuvring as classic examples. Having failed to secure interim relief from the Court of Appeal, Bapiny could not, while that application remained pending, re-litigate the same interlocutory relief before this Court.
17. It would be imprudent for this Court to proceed on the assumption that the Court of Appeal will necessarily adopt the notice of withdrawal. So long as that has not happened, there are technically two applications for the same relief alive in two different courts. This Court, out of respect for the doctrine of comity of courts and the hierarchy of judicial authority, must defer to the Court of Appeal and decline to entertain the later application.

### **Disposition**

18. For the foregoing reasons, I find merit in the Decree Holder's preliminary objection. Accordingly, the Judgment Debtor's application for stay of execution pending appeal before this Court is hereby struck out for being sub judice.
19. Consequently, the conditional order of stay earlier issued by this Court is vacated and set aside forthwith. For the avoidance of doubt, the security deposited in Court pursuant to that order shall be released to the Judgment Debtor.
20. The Decree Holder shall have the costs of the preliminary objection.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**F. MUGAMBI**

**JUDGE**

