



REPUBLIC OF KENYA



KENYA LAW
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**Badar Hardware Ltd v Bett (Civil Appeal E213 of 2025)
[2025] KEHC 14316 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14316 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E213 OF 2025
RN NYAKUNDI, J
OCTOBER 15, 2025**

BETWEEN

BADAR HARDWARE LTD APPELLANT

AND

ROBERT K. BETT RESPONDENT

RULING

1. There are two applications still pending before this Honourable court for determination. The first application is a notice of motion application dated 28th day of August 2025 expressed under the provisions under Order 42 Rule 6 of the Civil Procedures Rules. The applicant sought orders as follows:
 - a. Spent
 - b. That there be stay of the ruling and orders dated 27th August 2025 in Eldoret CMCC E820 of 2021, Robert K. Bett-vs-Badar Hardware Ltd delivered by Hon. D. S. Sifuma SRM on 27th August 2025 and any consequent order thereon be suspended pending the hearing and determination of the application herein.
 - c. That there be stay of execution of the ruling dated 27th August 2025, the consequent orders in Eldoret CMCC E820 of 2021, Robert K. Bett -vs- Badar Hardware Ltd delivered by Hon. D. S. Sifuma SRM on 27th August 2025 pending the hearing and determination of the appeal filed herein before the High Court of Kenya at Eldoret.
 - d. That the costs of this application be provided for.
2. This application is based on the following grounds on the face of it among others: -
 - a. That judgement was rendered in the subordinate court in favour of the respondent for Kshs Two Million, one hundred fifty-seven thousand (2,157,000) together with interests and costs.



- b. That A decree was issued in the subordinate court on 14/4/2025 for a total sum of Kshs two million, six hundred thirty-seven thousand, seventy-five (2,637,075) being the principal sum, costs and interests.
- c. That execution of the sums in the decree was commenced, a court issued garnishee orders nisi dated 06/05/2025 for the sum of Kshs Three million, five hundred seventeen thousand, forty-four (3,517,044.00).
- d. That the orders of Court made on 6th May 2025 were at variance with the decree of Court dated 14th April 2025 thus an application dated 28/05/2025 was filed by the appellant to review and or set aside the garnishee order nisi.
- e. That the entire decretal sum under the decree dated 14th April 2025 is Kshs 2,637,075.00 while the Garnishee order nisi dated 6th May 2025 made the sum of Kshs 3,517,044.
- f. That the principal sum, the interests and costs totaling Kshs 2,637,075.00 were paid to the respondent on 20th June 2025.
- g. That on 19th June 2025 the respondent made an application to review the computation of the interest rates in the judgement.
- h. That the Subordinate Court in an impugned decision dated 27/08/2025 erred by stating that the court interests' rate is 14% per annum.
- i. That an appeal against the said decision has been filed and dated 28/08/2025.
- j. That the grounds of objection to the decision are inter alia that the subordinate court grossly erred by awarding interests to the respondent for sums 15/11/2024.
- k. That further the honorable magistrate grossly erred by disregarding the application of the principal provisions of the *Civil Procedure Act* (CAP 21) in regards to statutory rates of interests.
- l. That principally, the subordinate court grossly prejudiced the appellant by rendering a ruling dated 27/8/2025 whose findings on interests' conflict with the findings under the judgement dated 15/11/2024.
- m. That it will be a travesty of justice for the appellant to settle an amount not adjudged by the trial court
- n. That the respondent's means are unknown thus the payment of further costs may defeat the essence of this appeal
- o. That the trial court through its ruling of 27/8/2025 directed that a further sum of Kshs 945,449.50 be paid to the respondent as further interests.
- p. That the appeal filed herein challenges the said decision as such, the orders ought to be suspended pending the hearing of the instant application and appeal.
- q. That if the orders of stay are not granted the substratum of the appeal shall dissipate and the appeal herein shall be rendered nugatory.
- r. That the appellant shall suffer immense loss and damage.
- s. That the appellant is ready to comply with any directions on security as the court may deem fit.



- t. That it is in the interest of justice and fairness.
3. In support of the application is the annexed affidavit of Omar Ahmed Yusuf dated 28th August 2025 who deponed as follows:
- a. That I am the Managing Director of Badar Hardware Limited, I am well versed with the matters of fact herein and therefore competent and duly authorized to swear this affidavit.
 - b. That judgement was rendered in the subordinate court in favour of the respondent for Kshs Two Million, one hundred fifty-seven thousand (2,157,000) together with interests and costs.
 - c. That I am aware that a decree was issued in the subordinate court on 14/4/2025 for a total sum of Kshs two million, six hundred thirty-seven thousand, seventy-five (2,637,075) being the principal sum, costs and interests.
 - d. That I am aware that execution for the sums in the decree was commenced, a court issued garnishee orders nisi dated 06/05/2025 for the sum of Kshs Three million, five hundred seventeen thousand, forty-four (3,517,044.00).
 - e. That I perused the orders of the subordinate Court made on 6th May 2025 and noted that they were at variance with the decree of Court dated 14th April 2025 thus an application dated 28/05/2025 was filed to review and or set aside the garnishee order nisi.
4. The second application is a Notice of Motion Application dated 10th September, 2025 expressed under the provisions under Order 2 Rule 15 of the Civil Procedure Rules. The applicant sought orders as follows:
- a. Spent.
 - b. That the appeal herein be struck out with costs to the Respondent.
5. The application anchored on grounds that:
- a. That the appeal is scandalous, frivolous, vexatious, an abuse of the court process and meant to delay fair process of execution.
 - b. That in the judgment delivered on 15th November, 2024, the court awarded the Respondent interest to be computed from date of filing suit.
 - c. That the appeal herein arises from judgment delivered on 15th November, 2024 in Eldoret CMCC No. E820 of 2021.
 - d. That in the said judgment the court awarded the Respondent interest to be computed from date of filing suit.
 - e. That grounds in which the appellant herein challenges the award of interest from filing suit.
 - f. That the appeal herein thus offends the provisions of section 79G of the Civil Procedure Act to be filed within 30 days.
 - g. That the appeal is therefore incompetent.
6. In response to the application, the Respondent stated as follows:
- a. That the application is incompetent as the same is hinged on an appeal that is incompetent given the fact that in the appeal lodged by the appellant, the appellant raises grounds which



revolve around as to whether interest awarded to me ought to be computed from date of suit or from the date of judgment.

- b. That in the Ruling delivered on 27th August, 2025 the Learned Magistrate just reiterated his findings in the judgment delivered on 15th November, 2025.
- c. That the issue of interest was a subject of a judgment rendered on 15th November, 2024 where the court ordered that interest be paid to me to be computed from the date of filing suit.
- d. That I am advised by my advocate that if at all the appellant was dissatisfied with the award of interest, the appellant ought to have lodged the appeal within 30 days which time lapsed on 15th December, 2024.
- e. That grounds in which the appellant herein challenges the award of interest from filing suit has thus been filed out of time.
- f. That the issue of applicable interest was not a subject of the proceedings as such cannot be a basis of the appeal.
- g. That the application together with the appeal is therefore incompetent, frivolous, vexatious and an abuse of the court process and ought be struck out.
- h. That the appellant will not suffer substantial loss considering that I am a prominent businessman in the transport industry and thus capable of refunding the amount of Kshs. 950,000/= in the event the appeal would succeed.

Analysis and determination

7. These two applications would be determined together being guided by the provisions of section 1A, 1B, 3, & 3A of the *Civil Procedure Act*. To start with is the application on stay of execution pending appeal as provided for under Order 42 Rule 6 of the Civil Procedure Rules which does vest the standard and burden of proof to the applicant to demonstrate existence of the following grounds: Sufficient cause, Substantial loss, No unreasonable delay, Security.
8. In the case of *Swanya Ltd Vs Daima Bank Ltd*, Nairobi Civil Application No. 45 of 2001 KLR the court held that:

Whilst it is true that the court does not make a practice of depriving a successful litigant of the fruits of his litigation and locking up funds to which prima facie he is entitled pending an appeal, it is equally true that when a party is appealing, exercising his undoubted right of appeal, if successful, is not rendered nugatory but it is however in the discretion of the court to grant or refuse a stay.

9. The court in *Butt Vs Rent Restriction Tribunal* 1979 eKLR the court held that:

“it is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson vs Church* (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458. “I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”



10. Having regard to the two applications, one for stay of execution and the other one seeking leave of this court to strike out the appeal for being scandalous, frivolous, vexatious, an abuse of the court process and meant to delay fair process of execution, this court orders as follows:
- a. That the application to struck out the appeal be and is hereby dismissed.
 - b. That leave to appeal and stay of execution against the decision of the Honorable Magistrate D.S Sifuma SRM delivered on 27th August 2025 be and is hereby allowed.
 - c. That the Deputy Registrar to supply the appellant with copies of the typed proceedings for purposes of filing an appeal be undertaken within 30 days from today's date.
 - d. That the appellant to offer the bank guarantee of the decretal sum of Kshs. 2,157,000 from a reputable financial institution to be deposited with Deputy Registrar of the High court.
 - e. That the costs of this application to abide the outcome of the appeal.
 - f. It is so ordered.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 15TH DAY OF OCTOBER 2025

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R. NYAKUNDI

JUDGE

