Pasha Enterprises Limited v Kenya Alliance Insurance Company Limited; Karama & Yussuf (Suing as the Legal Representative of the Estate of Abdul Wahab Hassan - Deceased) & 3 others (Interested Parties) (Civil Application E051 of 2024) [2025] KECA 1600 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KECA 1600 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NYERI

CIVIL APPLICATION E051 OF 2024

W KARANJA, JW LESSIT & A ALI-ARONI, JJA

OCTOBER 3, 2025

BETWEEN

PASHA ENTERPRISES LIMITED ..... APPLICANT

AND

KENYA ALLIANCE INSURANCE COMPANY LIMITED ..... RESPONDENT

AND

YUSSUF HASSAN KARAMA & HALIMA YUSSUF (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ABDUL WAHAB HASSAN - DECEASED) ..... INTERESTED PARTY

AMOS MAINGI ..... INTERESTED PARTY

MOHAMED ALI DAWA & JAMILA MOHAMED (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ADAN ALI - DECEASED) ..... INTERESTED PARTY

BISHRO ALI HASSAN & RUKIA ABDULLAHI ALI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ALI HASSAN BORU - DECEASED) ..... INTERESTED PARTY

(An application for an injunction pending hearing and determination of an intended appeal against a Ruling of the High Court at Meru (E. Murithi, J.) delivered on 16th May 2024 in HCCA No. E002 of 2024)

RULING

1. Before the Court is an application by way of a notice of motion dated 7th June 2024, brought under Article 159(2) of *the Constitution*, Sections 3, 3A and 3B of the Appellate Jurisdiction Act, and rule 5(2) of the Court of Appeal Rules, 2022 (the Rules), seeking injunctive orders against the execution of the judgment/decree in Isiolo Civil Suits 46, 47, 48, and 49 of 2015, pending the hearing and determination of the intended appeal.

2. The application is based on the grounds outlined in the motion and rehashed in the supporting affidavit of Samwel Theuri, a director of the applicant, sworn on 7th June 2024. He deposed that in the impugned judgments against the applicant; the respondent, Kenya Alliance Insurance Company Limited, which had insured the applicant's vehicle that was involved in the accident subject of the cases, declined to settle the decretal sums despite a valid insurance contract being in place between the applicant and the respondent; resulting in the applicant filing Meru High Court Civil Suit No. E002 of 2024 against the respondent, seeking to compel it to settle the decrees in the said cases; the applicant had obtained injunctive order against the interested parties, restraining them from executing the decrees in a ruling delivered on 18th April 2024; however, on 25th April 2024, the interested parties applied to have the injunctive orders set aside or reviewed; ultimately they said orders were set aside in a ruling dated 16th May 2024; the interested parties have since commenced the execution process; unless the orders sought are granted, the applicant will suffer irreparable loss and damage.

3. Learned counsel for the 1st, 2nd, 3rd and 4th interested parties filed a replying affidavit sworn on 20th June 2024, in response to the application, wherein counsel deposed that the 1st, 2nd, 3rd and 4th interested parties filed Isiolo CMCC Nos. 46, 47, 48 and 49 of 2015 against the applicant; following a lengthy hearing characterized by several adjournments, the cases were concluded with judgments being delivered on 24th October 2023; aggrieved by the decision in Isiolo CMCC Nos. 47, 48, and 49 of 2015, the applicant preferred appeals in Meru HCCA Nos. 202, 203, and 204 of 2023, dated 13th November 2023; notably, no appeal was filed against the decision in Isiolo CMCC No. 46 of 2015; the applicant obtained stay orders (ex parte) in Meru HCCA Nos. 202, 203, and 204 of 2023; the 1st interested party, whose suit was CMCC No. 46 of 2015, moved to have the applicant's properties proclaimed. As a result of the proclamation, he filed Meru HCCC. No. E002 of 2024 and at the same time sought a stay of execution of the decrees in Isiolo CMCC Nos. 46, 47, 48, and 49 of 2015 and successfully obtained ex parte orders; the applicant failed to disclose that there were existing parallel stay orders in Meru HCCA Nos. 202, 203, and 204 of 2023, which challenged the decrees in Isiolo CMCC Nos. 47, 48, and 49 of 2015. Meru HCCC E002 of 2024, HCA Nos. 202, 203, and 204 of 2023 were handled by E. Muriithi, J., who delivered rulings in all matters on 18th April 2024 as follows:

    a. Meru HCCA No. 202 of 2023, the court ordered the applicant to pay the respondent Ksh. 1,000,000/- and deposit the balance of Ksh. 2,009,122/- into an escrow account in the names of the advocates on record for both parties within 30 days. Failure to comply would result in the lapse of the stay orders.

    b. Meru HCCA No. 203 of 2023, the court ordered the applicant to pay the respondent Ksh. 1,500,000/- and deposit Ksh. 2,763,973/- in an escrow account within 30 days, failing which the stay orders would also lapse.

c. Meru HCCA No. 204 of 2023, the court ordered the applicant to pay the respondent Ksh. 2,000,000/- and provide a guarantee for the balance of Ksh. 8,660,000/- within 30 days, with the same consequence of lapsing the stay orders for non- compliance.

d. Meru HCCC No. E002 of 2024 injunctive orders were issued against the execution of the judgment in all the cases.

4. Learned counsel contended that the injunctive orders in HCCC No. E002 of 2024 contradicted and technically defeated the conditional stay orders issued in Meru HCCA Nos. 202, 203, and 204 of 2023; and on 25th April 2024, the interested parties applied for review of the orders. Upon hearing the parties, the court reviewed and set aside the injunction orders issued on 18th April 2024, which paved the way for execution in CMCC Nos. 46, 47, 48 and 49 of 2015; instead of complying with the conditional orders of stay, the applicants changed advocates to Evans Muli & Co. Advocates and filed a stay application before the Magistrate's Court in Isiolo related to Isiolo CMCC Nos. 46, 47, 48, and 49 of 2015, pending the hearing and determination of Meru HCCC E002 of 2024; the applicant failed to disclose to the court the existing conditional orders of stay granted in Meru HCCA Nos. 202, 203, and 204 of 2023, which he had not complied with. The trial magistrate was scheduled to deliver her ruling on 26th June 2024; the applicant is an unreliable litigant who does not deserve the equitable discretionary orders he seeks from this Court; he cannot obtain injunctive orders against lawful decrees, and his disputes with his insurers should not interfere with the lawful decrees of third parties; the applicant ought to settle the decrees of the interested parties and seek reimbursement from his insurer through a declaratory action; the interested parties are justified in the recovery of the decretal sums.

5. Learned counsel for the applicant filed submissions and a list of authorities, both dated 25th October 2024. On whether the applicant can be granted the relief sought, learned counsel argued that the principles for granting a stay of execution or an injunction under Rule 5(2)(b) of this Court's Rules are well established. He referenced the case of Trust Bank Limited & Another v. Investech Bank Limited & Others [2000] KECA 38 (KLR).

6. On whether the intended appeal is arguable, counsel cited the case of Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others [2013] eKLR, which outlines the characteristics of an arguable appeal. Counsel contended that, at the time of the accident, the insurance policy was valid; however, the respondent declined to settle the decretal sum, to the applicant's detriment. The interested parties are actively pursuing the execution of judgments in Isiolo CMCC Nos. 46, 47, 48, and 49 of 2015; although the respondent who is obligated to pay the decretal amounts, having received the premium and being statutorily and contractually bound to do so, has failed to make good the claims. The applicant is likely to suffer irreparable loss if execution takes place. In support of this contention counsel cited the case of Joseph Mwangi Gitundu vs. Gateway Insurance Co. Ltd [2015] KEHC 5025 (KLR).

7. On whether the appeal would be rendered nugatory if the orders sought are not granted, counsel submitted that should the orders not be granted, the court would be aiding the respondent not meet his obligation. In support of this assertion he referred to the case of Charles Makenzi Wambua vs. Africa Merchant Assurance Co. Ltd & 10 Others [2014] KEHC 662 (KLR).

8. Learned counsel for the interested parties filed submissions dated 26th June 2024 and summarized three key issues for determination: whether this Court can issue orders of injunction against valid decrees of the lower court; whether the application has merit; and who bears the costs of the application.

9. On whether the court can issue injunctive orders against valid decrees of the lower court, counsel submitted that the application is misconceived and constitutes an abuse of the court process. He reiterated the need for an applicant to satisfy the twin principles stated above.

10. Counsel asserted that no draft memorandum of appeal was annexed to the application, which hinders the court's ability to assess the veracity of the appeal. Furthermore, he stated that the execution of decrees can only be stayed under Order 42 rule 6 of the Civil Procedure Rules when such an application is made in the High Court. He argued further that the execution of a lawful decree cannot fall under the provisions of Order 40, rules 1 and 2, regardless of how it is considered.

11. On the question of whether the application has merit, learned counsel submitted that the application is non-suited, lacks merit, represents an abuse of this Court's process, and is a waste of judicial time. On the costs of the application, counsel argued that costs should follow the event and therefore prays that the application be dismissed with costs.

12. To succeed in an application under rule 5(2)(b) of the Court's Rules, an applicant has to satisfy the twin principles that are enumerated in many decisions of this Court, namely:

    i. An applicant must demonstrate that they have an arguable appeal; and

    ii. That the intended appeal (or appeal if already filed) will be rendered nugatory if the execution of the decree or order of proceedings is not stayed.

13. On the first limb of this twin principle, this Court held in David Morton Silverstein vs. Atsango Chesoni [2002] eKLR, that for an order of stay to be issued, the applicant must first demonstrate that the appeal or intended appeal is arguable, that is, it is not frivolous and that the appeal or intended appeal, would in the absence of a stay, be rendered nugatory.

14. Regarding the sufficiency of the pleaded grounds of appeal to warrant a grant of the stay of the orders sought, this Court in Yellow Horse Inns Ltd vs. A. A Kawir Transporters & 4 Others [2014] eKLR, observed that an applicant need not show a multiplicity of arguable points, as one arguable point would suffice. Neither is the applicant required to show that the arguable point would succeed, as this Court held in Kenya Commercial Bank Limited vs. Nicholas Ombija [2009] eKLR.

15. Regarding the second principle of whether the appeal will be rendered nugatory if the order for stay is not granted and the appeal succeeds, we are guided by the decision in Stanley Kangethe Kinyanjui vs. Tonny Keter & others [2013] eKLR, where the court summarized what should guide the court as follows:

> " xii. The term 'nugatory' has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling.
>
> xiii. Whether or not an appeal will be rendered nugatory depends on whether what is sought to be stayed, if allowed to happen, will be reversible, or if it is not reversible, whether damages will reasonably compensate the party aggrieved.
>
> ix. Where the applicant alleges that the appeal will be rendered nugatory on account of the respondent's impecuniosity, the onus shifts to the latter to rebut by evidence the claim."

16. The notice of appeal in this matter is clear that the intended appeal is against the ruling in HCCA No. E002 of 2024. The primary parties in that suit are; the respondent and the appellant. It is a declaratory suit filed by the applicant against the respondent for failing to fulfil its obligation.

17. We also take note that the applicant did not annex a memorandum of appeal in support of the application. From his supporting affidavit, it appears that his insurer, the respondent, has failed to make good awards arising from a road traffic accident involving vehicles it had insured. The interested

parties are the ones to be paid. The applicant cunningly drags the interested parties into a case that does not concern them; he seeks a stay of execution of the decrees in their favour, while he has conditional stays in the appeals he filed against the judgment in favour of the interested parties. Against the above background and in the absence of a draft memorandum of appeal, we do not fathom the arguability of the intended appeal.

18. We hasten to add that the HCCC No. E002 of 2024 is not about the judgments in CMCC Nos: 46, 47, 48, and 49 of 2015. There are appeals separately subsisting against the said judgment.

19. On the second limb, the decrees involving the third parties are monetary; should the appeals succeed, monies (paid to the interested parties) will be recoverable from the respondent.

20. Ultimately, we do not find the application merited. The same is dismissed with costs to the respondent and interested parties.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2025.

W. KARANJA

.....

JUDGE OF APPEAL

J. LESIIT

.....

JUDGE OF APPEAL ALI-ARONI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR