



**Okango v Suri (Commercial Appeal E199 of 2025)
[2025] KEHC 13975 (KLR) (Commercial and Tax) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E199 OF 2025
BK NJOROGE, J
OCTOBER 2, 2025**

BETWEEN

FREDRICK OKANGO APPELLANT

AND

SANJIT SINGH SURI RESPONDENT

RULING

1. The Ruling is in respect of the Applicant's Application by way of a Notice of Motion dated 8.7.2025. It is presented to Court under a Certificate of Urgency. It is supported by the affidavit in support of Fredrick Tshombe Okang'osworn on 8th July 2025.
2. It seeks the following orders:
 - (1) Spent.
 - (2) That pending the hearing and determination of this application, there be a temporary stay of execution of the decree in Milimani MCOMMSU E291 of 2023 Sanjit Singh Suri Vs Fredrick Tshombe Okang'o.
 - (3). That the Applicant be granted leave to liquidate the decretal sum in monthly instalments by tender of a deposit of Ksh.100,000/= and monthly sum of Ksh.50,000/= beginning on the 30th July 2025 and on the last day of each subsequent month till full and final payment.
 - (4) That the Respondent/Plaintiff be restrained from levying execution for as long as the Defendant pays the proposed monthly instalment.
 - (5) That costs of this application be in the cause.



3. The Application is opposed by the Respondent through a Replying Affidavit of SANJIT SINGH SURI sworn on 25th July 2025.

Background Facts:

4. The Appellant appeals against the refusal by the Trial Court to allow the Appellant to settle the decretal sum by instalments.
5. The Respondent intends to resist the Appeal, stating that it lacks merits.
6. The Appellant has filed the present application seeking that a stay of execution be granted. This is for purposes of preserving the subject matter of the Appeal.

Issues for Determination

7. The Court has looked at the application, the response and the submissions filed. The Court frames a single issue for determination.
 - a) Whether the Court should grant a stay of execution pending Appeal.

Analysis

8. When the matter came up for hearing ex-parte under a Certificate of Urgency, the Court certified the application as urgent. It also issued a conditional stay of execution. It directed the Appellant to pay a sum of Kshs.100,000/= to the Respondent's Advocates within three (3) days. A further sum of Kshs.100,000/= was to be paid on or before 25th July 2025. Failure to comply would lead to the lapsing or vacating of the ex-parte order of stay of execution.
9. Since then, the Court notes that the Appellant has made further payments of Kshs.100,000/= on 20.8.2025 and Kshs.100,000/= on 22.9.2025. The decretal sum was said to have been in the region of Kshs.700,000/=. The parties must very well know the current outstanding decretal sum.
10. The Court has perused the Memorandum Appeal and the Application filed herein. Here is an Appellant whose main prayers is to be allowed to pay the decretal sum in instalments. He has made substantial payments every month.
11. Knowing fully well the number of appeals that are pending before the Commercial and Tax Division, this is one file that should not join those matters and clog the system.
12. The Court has a duty to expedite the resolution of matters that are pending before it. However, the Court is not the sole forum through which parties should present all their disputes for resolution. The Kenyan justice system envisages a multi-door approach to dispute resolution. The Court is but one of the various doors that parties can approach to seek justice. The other doors are Court annexed mediation, private mediation, Arbitration, traditional dispute resolution systems, negotiations, reconciliation and other forms of Alternative Justice Systems under the umbrella of AJS.
13. Article 159 (2) (c) of *the Constitution* states as follows:
Judicial authority.
159.
 - (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.



- (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
 - (a) justice shall be done to all, irrespective of status;
 - (b) justice shall not be delayed;
 - (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

14. The Court in exercise of the judicial authority is mandated to promote alternative forms of dispute resolution commonly referred to as ADR. In promoting ADR, the Court understands its duty to be to inform, educate, sensitize and point out to the parties these forms of ADR that can resolve their disputes. Where the Court exercising its mind fairly and judiciously identifies a form of ADR suitable to resolve a dispute before it, no harm would be occasioned by directing parties to approach that form of ADR. Therefore, whereas under the previous constitutional dispensation, parties approached the Courts expecting to be served a single meal called Judgement through litigation, the Court now offers a wider menu and serves buffet. The Court as a smart waiter has a duty to point out the various meals on the ala carte menu to a leisure traveller. It also has a duty to invite the busy business traveller to pop in and sample the sumptuous and readily available meals at the buffet table. All this while inviting the dinner to make a choice that best suits their needs depending on their palate and time.

15. The Judiciary in discharging this important constitutional mandate to promote Alternative Justice Systems has rolled out Court Annexed Mediation. The Law has given the Courts sufficient powers and mandate to inform, promote and encourage parties to adopt this multi-doors of justice. Section 59B of the [Civil Procedure Act](#) states as follows;

59B. Reference of cases to mediation

- (1) The Court may—
 - (a) on the request of the parties concerned; or
 - (b) where it deems it appropriate to do so, or
 - (c) where the law so requires, direct that any dispute presented before it be referred to mediation.
- (2) Where a dispute is referred to mediation under subsection (1), the parties thereto shall select for that purpose a mediator whose name appears in the mediation register maintained by the Mediation Accreditation Committee.
- (3) A mediation under this Part shall be conducted in accordance with the mediation rules.
- (4) An agreement between the parties to a dispute as a result of a process of mediation under this Part shall be recorded in writing and registered with the Court giving the direction under subsection (1), and shall be enforceable as if it were a judgment of that Court.
- (5) No appeal shall lie against an agreement referred to in subsection (4).

59C. Other alternative dispute resolution methods



- (1) A suit may be referred to any other method of dispute resolution where the parties agree or the Court considers the case suitable for such referral.
- (2) Any other method of alternative dispute resolution shall be governed by such procedure as the parties themselves agree to or as the Court may, in its discretion, order.
- (3) Any settlement arising from a suit referred to any other alternative dispute resolution method by the Court or agreement of the parties shall be enforceable as a judgment of the Court.
- (4) No appeal shall lie in respect of any judgment entered under this section.

59D. Power to enforce private mediation agreements

All agreements entered into with the assistance of qualified mediators shall be in writing and may be registered and enforced by the Court.

16. Order 46 Rule 20 of the Civil Procedure Rules also provides as follows,

20. Alternative dispute resolution [Order 46, rule 20.]

- (1) Nothing under this order may be construed as precluding the court from adopting and implementing, of its own motion or at the request of the parties, any other appropriate means of dispute resolution (including mediation) for the attainment of the overriding objective envisaged under sections 1A and 1B of the Act.
- (2) The court may adopt an alternative dispute resolution and shall make such orders or issue such directions as may be necessary to facilitate such means of dispute resolution.
- (3) Where a court mandated mediation adopted pursuant to this rule fails, the court shall forthwith set the matter down for hearing and determination in accordance with the Rules.

17. The “Oxygen Principles” as set out in Section 1A & 1B of the *Civil Procedure Act*, also mandate the Court to facilitate parties to resolve their disputes in the most efficient and expeditious manner.

18. To facilitate the mediation envisioned above the Court has in place the Civil Procedure (Court-Annexed Mediation) Rules, 2022. These rules govern matters that are referred by the Courts to the Court Annexed Mediation, as one of the multi-doors of dispute resolution.

19. The discretion of the Court to refer matters to ADR is clearly spelt out by statutes referred to above. The Court is possessed of certain wisdom and experience to be able to discern matters that can benefit from ADR. At times the dispute before the Court is so ripe for ADR that it will be loudly screaming to the Court;

“Refer me to ADR, refer me to ADR.”

20. When the Court is faced with such a matter, should it shy away from its Constitutional and Statutory obligation? This Court holds that such a Court would be failing to live to its full duties and responsibilities in implementing the Judiciary’s policy namely the Social Transformation through Access to Justice (STAJ).

21. This Court is of the view that this dispute is one that can be disposed of by way of mediation. The Court finds favour in the decision in LJY v JKY [2025] KEHC 1797 (KLR). The Court in discharging its constitutional mandate under Article 159(2)(c) of *the Constitution*, refers the parties herein to one



of the multi-doors of justice being the Court Annexed Mediation. The Court in promoting this multi-door policy encourages the parties to mediate this dispute. Should mediation fail, the Court remains accessible to the parties as a default forum.

Determination

22. The matter is referred to Court Annexed Mediation and parties encouraged to resolve the entire dispute in this Appeal within the Sixty (60) days provided for under the Court Annexed Mediation Rules. The matter is referred to the Deputy Registrar in charge of Commercial Mediation for a mention for further directions.
21. A stay of execution is granted on condition that the Appellant does pay a sum of Ksh.100,000 every month to the Respondent with effect from 22.10.2025 and thereafter on every 22nd day of each subsequent month. In default the orders granted to lapse.
22. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 02ND DAY OF OCTOBER, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Onderi for the Appellant/Applicant.

Miss Kiendi for the Respondent.

Mr. Peter Wabwire - Court Assistant.

