

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: GATEMBU, MUMBI NGUGI & NYAMWEYA, JJ.A.)

CIVIL APPLICATION NO. E038 OF

2025 BETWEEN

JYOTI STRUCTURES LIMITED.....APPLICANT

AND

UBA KENYA BANK LIMITED.....1ST RESPONDENT

**KENYA ELECTRICITY TRANSMISSION
COMPANY LIMITED2ND
RESPONDENT**

(Being an application for stay of execution pending the hearing and determination of the intended appeal from the Judgment of the High Court of Kenya at Nairobi (F. Mugambi, J.) dated 27th September 2024

in

HCCC No. 38 of 2018)

RULING OF THE COURT

1. By its application dated 13th December 2024, the applicant, Jyoti Structures Limited (Jyoti), seeks an order of stay of execution of the judgment delivered on 27th September 2024 by the High Court at Nairobi (**F. Mugambi, J.**) pending the hearing and determination of its appeal. In that judgment, the High Court entered judgment for the 1st respondent, UBA Bank Limited (the Bank), and ordered that a frozen amount of

USD

2,581,978.35 held by the 2nd respondent, Kenya Electricity Generation Company Limited (Ketraco) be remitted to the Bank.

2. The background in brief is that the Bank granted credit facilities to Jyoti to enable it to carry out works under a contract entered into with Ketraco under which Jyoti was to construct an electricity transmission line from Isinya to Suswa. To secure the credit facilities, Jyoti executed a 'domiciliation agreement' under which payments due to Jyoti from Ketraco would be applied towards repayment of the debt owed by Jyoti to the Bank. In addition, Jyoti issued a Notice of Assignment to Ketraco assigning payments due to it from Ketraco to the Bank.
3. The Bank instituted suit against Jyoti and Ketraco before the High Court in 2018 contending that Jyoti had, in breach of its obligations, defaulted in repayment of the credit facilities and that Ketraco had diverted payments to third parties and failed to remit payments due to Jyoti to the Bank. Having heard the parties, the learned Judge found in favour of the Bank and entered judgment in terms already stated.
4. Aggrieved, Jyoti filed a Notice of Appeal dated 9th October 2024 on which the present application is hinged.
5. We heard the application on 20th May 2025. We have considered the same, the supporting affidavit sworn by A. P. Padmakumar, the Chief Operating Officer of Jyoti; a replying

affidavit sworn by Florence Mitey, the Corporation Secretary
of

Ketraco in support of the application; and a replying affidavit sworn by George Mwangi Wanjeru, a Credit Analyst of the Bank, in opposition to the application. We have also considered the written and oral submissions by learned counsel **Mr. Eric Mugo** for Jyoti, **Mr. E. Mwangi** for the Bank and **Mr. Muchiri Kahoro** for Ketraco.

6. We bear in mind the principles applicable in applications of this nature, including the requirements that an applicant should demonstrate that it has an arguable appeal and that the appeal or intended appeal will be rendered nugatory if the orders sought are declined and the appeal eventually succeeds. See for instance **Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others [2013] eKLR.**
7. In entering judgment for Bank, the High Court found that there was a valid domiciliation of Proceeds agreement with Jyoti under which Jyoti undertook that for the duration of the credit facilities, all payments from Ketraco would be routed through the Bank and that Jyoti had assigned to the Bank the payment receivables from Ketraco. The Judge also found that there was breach of the agreement and undertaking.
8. Jyoti challenges those findings. It contends that the intended appeal is arguable. Among the grounds of appeal proposed to be put forth by Jyoti are that the learned Judge failed to appreciate that the domiciliation arrangement was restricted to proceeds from the Isinya-Suswa project and did not

extend to

proceeds from other contracts; and that the Judge failed to consider that all payments relating thereto had been made.

9. Although counsel for the Bank strenuously contended that the intended appeal is frivolous and an abuse of the process of court, bearing in mind that an arguable appeal is not one that will necessarily succeed, we are persuaded, based on the complaints raised, that the same is arguable.
10. As to whether the intended appeal will be rendered nugatory, the Bank has demonstrated that Jyoti's principal place of business is outside the jurisdiction of the Court and possesses no known assets within the jurisdiction of the Court; that investigations by the Bank revealed that insolvency proceedings had been commenced against Jyoti in Mumbai, India, and the likelihood of the Bank recovering assets in satisfaction of the decretal amount is uncertain. Jyoti on its part, on the face of those claims by the Bank, did not counter them by demonstrating it has the means.
11. The Bank on the other hand asserts that it is a well-established and stable multinational Pan-African Bank with a healthy balance sheet, which was exhibited, and that it would have no difficulty at all in refunding the decretal amount should the appeal eventually succeed.
12. We are in those circumstances not satisfied that Jyoti has demonstrated that the intended appeal will be rendered

nugatory if we decline the orders sought and the appeal ultimately succeeds.

13. Consequently, the applicant's application dated 13th December 2024 fails and is hereby dismissed with costs to the 1st respondent.

Dated and delivered at Nairobi this 24th day of October 2025.

S. GATEMBU KAIRU, C.Arb, FCIArb.

.....
JUDGE OF

APPEAL MUMBI

NGUGI

.....
JUDGE OF APPEAL

P. NYAMWEYA

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR