

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
(CIVIL DIVISION)

CIVIL APPEAL NO. E017 OF 2025

KENYA PORTS AUTHORITY
APPLICANT

VERSUS

CEMTEC ENGINEERING LIMITED
.....RESPONDENT

RULING

1. On 12th September 2025, this court issued various orders, among which was Order No. 3, which stated that:-
“Pending the interpartes hearing of this application, a stay of execution of the judgment and decree issued in **MSA CMCC No 105 of 2017, Cemtec Engineering Ltd v Kenya Ports Authority Retirement Benefits Scheme**, including all consequential initial orders and the garnishee proceedings therein, is hereby issued.”
2. The question before the court, as raised by Ms Osewe, learned counsel for the garnishee, in the garnishee proceedings before the court below, is whether the stay of execution froze the garnishee proceeding, and whether the party in whose credit the garnishee holds the funds can access them or not.

3. Mr Khagram, for the appellant/applicant, contended that the account that was the subject of the garnishee proceedings didn't belong to the appellant/applicant. His submissions were supported by Ms Osewe, who urged that a garnishee order is a form of execution. It was her submissions that a garnishee order could not remain in limbo, and that it was lifted once the stay of execution was granted. She prayed that this court interpret the order in favour of the garnishee and permit the party entitled to the funds to access them.
4. Mr Karina, on the other hand, submitted that an order staying execution of a decree or order does not annul what has already been done.
5. I have considered the submissions of the parties and the applicant law. A stay of execution is defined in the 11th Edition of the Black's Law Dictionary as:-

“(1) postponement or halting of a proceeding, judgment, or the like (2) an order to suspend all or part of judicial proceedings or a judgment resulting from those proceedings.”
6. What then was the effect of the stay on the garnishee proceeding? Does it mean that the party to whose credit the funds in the bank account held at the garnishee bank can now access it? Or were garnishee proceedings frozen pending further directions of this court?

7. In my view, the latter viewpoint is the correct one. By issuing a stay of execution, this court froze the execution at the stage it had reached, so that the said process could be subjected to a judicial examination to determine whether it should proceed. The court did not annul the process or set it aside.

8. The Court of Appeal, while addressing a similar situation, in the case of the **Attorney General v Law Society of Kenya and another [2009]eKLR**, quoted with approval the following excerpt from Black's Law Dictionary, 6th Edition, at page 1413:-

“A ‘stay’ does not reverse, annul, undo, or suspend what already has been done, or what is not specifically stayed nor pass the merits of the orders of the trial court, but merely suspends the time required for performance of the particular mandates stayed, to preserve a status quo pending appeal.”

9. Applying the foregoing decision to this matter, which is binding on his court as it was delivered by the Court of Appeal, I am of the opinion that the court order suspended further prosecution of the garnishee proceeding and, in essence, in a manner of speaking, froze it in aspic, until this court determines the application for stay of execution of the decree or order pending the hearing and determination of the appeal. That being the case, it means that the person in whose credit the garnishee holds the funds cannot access them until the court determines the application for stay of execution, and declines to issue

a stay pending appeal, or where a stay pending appeal is granted, until the appeal is heard and determined.

10. To allow the party/entity in whose credit the garnishee holds the money to access the funds at this moment would be unjust. What if the court, after hearing the parties inter partes, determines that no stay should issue pending the hearing of the appeal? In such a case, the party/entity would, in most likelihood, withdraw the funds. Wouldn't the respondent have been strongly prejudiced by being denied the fruits of a judgment in their favour?

11. In the circumstances, I order the garnishee to hold the funds in its possession, and not to release them to any party or entity, until the application dated 9th September 2025 is heard and determined on the merits

12. It is so ordered.

Dated and signed in Mombasa, this 29th day of October 2025.

Delivered virtually through **Microsoft TEAMS.**

Gregory Mutai

JUDGE

In the presence of: -

Mr Khagram for the Applicant;

Mr Karina, for the Respondent;

Ms Osewe, for the Garnishee; and
Arthur – Court Assistant.

Original