

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
MISC. APPLICATION NO. E470 OF 2022

HON. JUSTICE ALEEM VISRAM

13TH NOVEMBER, 2025

BETWEEN

**PILI MANAGEMENT CONSULTANTS
LIMITED.....APPLICANT**

AND

**CHINA FUSHUN NO.1 BUILDING
ENGINEERING COMPANY LIMITED.....
RESPONDENT**

RULING

Introduction & Background

1. The Applicant, through its Notice of Motion dated 29th June, 2023, seeks to stay the execution of the court’s decree and order of 20th April, 2023, that dismissed its application that sought to set aside the arbitral award, and judgment was entered in favour of the Respondent as per the said award (“the Ruling”). It also seeks to set aside the Warrant of Attachment and Sale dated 21st June, 2023. The application is supported by the grounds on its face and the supporting affidavit of the Applicant’s director, Monica Anyango Awiti, sworn on 29th June, 2023. The Applicant avers it is dissatisfied with the

Ruling and that it has already filed a Notice of Appeal and an application for leave to appeal to the Court of Appeal and that the Respondent obtained a Warrant of Attachment and Sale before costs are taxed which the Applicant argues is irregular and premature.

2. The Applicant claims merit in the intended appeal as the underlying contract was a fixed-price contract for Kshs. 440,971,611/= and that it had already paid Kshs. 721,230,412.00/= to the Respondent which is nearly twice the contract price, yet the Respondent abandoned the project without completion. That the arbitral award, which the Court upheld, requires the Applicant to pay a further Kshs. 195,201,041/= and the Applicant contends that this award is without jurisdiction and confers unjust enrichment on the Respondent, contrary to public policy. It argues that the Court erred by not properly addressing these issues of jurisdiction and unjust enrichment.
3. The Applicant states that if the stay is not granted and the Respondent executes the decree, the Applicant will suffer substantial loss, potentially having to sell the very property the Respondent was contracted to build and which is already charged to a bank, and this would render any successful appeal meaningless.
4. In response, the Respondent relies on the replying affidavit of its director, Bao Ping, sworn on 7th July, 2023. It asserts that the Applicant's motion raises no reasonable cause of action and is a waste of the court's time and it is characterized as part of a continued strategy by the Applicant to file successive applications to cause unreasonable delay and

avoid paying the decretal sum. The Respondent argues that the Applicant has failed to satisfy the legal requirements for a stay of execution under Order 42, Rule 6 of the Civil Procedure Rules as it has not demonstrated what substantial loss it will suffer if the stay is not granted. That merely stating that the decretal sum is large, is insufficient. It claims the Applicant provided no proof of the alleged overpayment and must show a specific, negative impact that would render the appeal nugatory.

5. Further, that the Applicant has not offered any security for the due performance of the decree, a mandatory condition for granting a stay and that the security must be adequate to cover the entire decree that may ultimately be binding, including costs and interest. The Applicant's claim that the warrant was issued irregularly before taxation of costs is rejected. The Respondent contends that the costs from the arbitral award were already conclusively determined by the arbitrator and captured in the decree and therefore, no separate taxation was needed for those costs to allow execution to proceed. The Respondent insists that the Warrant of Attachment is regular and lawfully issued and that the Applicant has provided no evidence to support its claim of wrongful attachment, which the Respondent frames as another tactic to evade liability.

6. In summary, the Respondent urges the court to find the Applicant's application incompetent and to dismiss it with costs. It argues that allowing the stay would unjustly deny the Respondent, as the successful litigant, the right to enjoy the fruits of its judgment.

Analysis and Determination

7. The starting point is that the Arbitration Act 1995 (“the Act”) does not contemplate any process of appeal in relation to the merits of an award (See *Christ for All Nations v Apollo Insurance Co. Ltd* [2002] 2 EA 366 and *Synergy Industrial Credit Ltd v Cape Holdings Ltd* [2020] eKLR).
8. Nor does the Act contain any provision for a stay of execution arising from a decree following recognition and enforcement pursuant to Section 36 of the Act.
9. The concept of a stay of execution pending appeal following recognition and enforcement is therefore a foreign process to the Arbitration Act, and is not a process contemplated as falling within the jurisdiction of the High Court.
10. To the contrary, the intention of the Act, is that arbitration is intended to be final and binding. Section 32A “Effect of award” states as follows: -

Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act.
11. Further, Section 10 of the Act precludes any intervention by the court unless expressly provided for under the Act. In this regard, the said section states as follows:-

10. Extent of court intervention

Except as provided in this Act, no court shall intervene in matters governed by this Act.

12. Based on a reading of the above, once the High Court has recognized and enforced an award as a decree of the court, it is functus officio.
13. The power to grant leave to appeal from a Section 35 application lies only with the Court of Appeal, and not the High Court. This is evident, because the jurisdiction of the Court of Appeal is not based in statute, but rather, is a creation of the Supreme Court and is specifically granted to only the Court of Appeal.
14. In this regard, the Supreme Court explained that in limited matters, the Court of Appeal may grant leave to appeal from the High Court and assume jurisdiction. However, **“This circumscribed and narrow jurisdiction should also be so sparingly exercised that only in the clearest of cases should the Court of Appeal assume jurisdiction.”** (See *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch (Petition 12 of 2016) [2019] KESC 11 (KLR) (6 December 2019) (Judgment)*). (Emphasis mine)
15. Therefore, in the event that there is any jurisdiction to grant a stay of execution of an arbitral award, the same lies within the sole preserve of the court that has

the limited jurisdiction to grant leave to appeal, which in this case, is the Court of Appeal.

16. Accordingly, I find that this Court has no jurisdiction to grant the orders sought; it has no powers to grant leave to appeal; and having recognized and enforced the final award, it thereafter became functus officio.

Conclusion and Disposition

17. The Application dated 29th June, 2023, is accordingly dismissed with costs.

Dated and delivered virtually via Microsoft Teams this 13th day of November, 2025

**ALEEM VISRAM, FCI Arb
JUDGE**

**In the presence of;
Court Assistant: Lispa**

.....for Applicant

.....for Respondent