



Kenya Bureau of Standards v Centurion Engineers & Builders Limited (Civil Application E556 of 2024) [2025] KECA 1974 (KLR) (21 November 2025) (Ruling)

Neutral citation: [2025] KECA 1974 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E556 OF 2024
SG KAIRU, J MOHAMMED & AO MUCHELULE, JJA
NOVEMBER 21, 2025**

BETWEEN

KENYA BUREAU OF STANDARDS APPLICANT

AND

CENTURION ENGINEERS & BUILDERS LIMITED RESPONDENT

(Being an application for stay pending the appeal against the Ruling of the High Court of Kenya at Nairobi (Mabeya, J.) dated 28th October 2024 in HC. Misc. Application No. 506 of 2012)

RULING

1. In its application dated 25th October 2024 supported by an affidavit and further affidavit sworn by its Company Secretary, Miriam Kahiro, the applicant, Kenya Bureau of Standards seeks an order of stay “suspending the execution and enforcement of the Ruling and Order of the High Court ... delivered on 18th October 2024 in HCC Misc Application No. 506 of 2012 pending the hearing and determination” of its intended appeal.
2. In that ruling, the High Court (Mabeya, J.) ordered the applicant to liquidate the decretal sum (Kshs. 384,960,776.75) by instalments. The first instalment of Kshs.100m was payable “on or before 31/10/2024” and the balance by instalments of Kshs.80 million effective 30/11/2024 until payment in full. In default, the Chief Executive Officer of the applicant was to appear immediately before the court to be cross-examined on the means of the applicant to settle the decree.
3. Aggrieved, the applicant obtained leave from the High Court to appeal that decision and filed a Notice of Appeal dated 23rd October 2024 on which the present application is hinged.
4. In opposition to the application, Eng. Samay Singh, a director of the respondent, Centurion Engineers & Builder Limited deposes in his replying affidavit that the application is the applicant’s “latest attempt



in a long list of similar cantankerous initiatives” to prevent the respondent from enjoying the fruits of its judgment and that the application is frivolous, vexatious and an abuse of the process of the court.

5. We heard the application on 6th May 2025 when learned counsel Mr. Mansur Issa appeared with Mr. Nura for the applicant while learned counsel Mr. Bryan Khaemba appeared for the respondent. Counsel highlighted their respective written submissions.
6. We have considered the application, the affidavits and the written and oral submissions. As both counsel pointed out, the principles applicable in applications of this nature as pronounced in *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others* [2013] KECA 378 (KLR) are established. However, whilst the applicant submitted that this is a proper case for the Court to exercise its discretion in its favour, the respondent on the other hand maintained that the intended appeal is not arguable and neither will it be rendered nugatory if the orders sought are declined and the applicant’s appeal ultimately succeeds.
7. The background in brief is that the parties entered into a contract for building works for refurbishment of Biochemical Laboratories. A dispute arose which was referred to arbitration which culminated in an arbitral award in favour of the respondent. An application by the applicant before the High Court to set aside that award was initially successful but the respondent successfully appealed to this Court which reinstated the arbitral award in favour of the respondent.
8. In its bid to execute the decree emanating from the arbitral award, the respondent then moved the High Court by Notice of Motion dated 27th September 2024 seeking an order for the Managing Director/ Chief Executive Officer of the applicant to appear before the court for purpose of being orally examined as to the means and assets of the applicant and the manner it intends to satisfy the decree. The applicant opposed that application. However, in a ruling delivered on 18th October 2024 the learned Judge of the High Court, as already stated, ordered the applicant to liquidate the decretal sum by instalments in the manner stated. That is the ruling that is the subject of the applicant’s intended appeal.
9. The applicant contends that the intended appeal is arguable. It contends that the High Court overreached by granting orders that were neither pleaded nor prayed for; that absent an application by the applicant as the judgment debtor, the learned Judge had no mandate under Order 21 Rule 12 of the Civil Procedure Rules to make such orders of his own motion.
10. The respondent on the other hand urged that the grounds of the intended appeal are based on a misapprehension of the ruling and orders of the High Court; that it is a right of a decree holder to apply to examine any officer of a corporation on its means of settling a decree and the High Court had the discretion to order payment by instalments.
11. Cognisant that an arguable appeal is not one that must necessarily succeed (see *Joseph Gitahi Gachau & Another v Pioneer Holdings (A) Limited*, Civil Application No. 124 of 2008 [2009] KECA 201 (KLR)) we are not persuaded that the intended appeal is frivolous. There is for instance, the question whether the learned Judge could, without being moved, order satisfaction of the decretal amount in the manner that he did. It is in our view arguable.
12. On the nugatory aspect, it was submitted for the applicant on the strength of the decision in *Governors Balloon Safaris Limited v Skyship Company Ltd & Another* [2015] KECA 652 (KLR) that execution for the large amount involved from public funds can cripple the applicant, and a stay of the ruling should therefore be granted in the public interest as otherwise substantial loss will arise. It was submitted that the Chief Executive Officer of the applicant was summoned to appear in court and that the appeal would be overtaken unless a stay is granted; that the applicant will be compelled to pay before the appeal, which is already filed as C.A. No. E187 of 2025, is determined.



13. Counsel for the respondent on the other hand submitted that the appeal will not be rendered nugatory if the stay is declined; that the respondent’s objective is not to incarcerate the Chief Executive Officer of the applicant and what is required is to examine her on the assets of the applicant. Citing the case of Gladwell Wangechi Kibiru v Lord Melvin John Blackburn & 4 Others [2015] eKLR counsel urged that an appeal arising out of a money decree such as this cannot be rendered nugatory if the stay is declined; and that what is sought to be stayed is reversible.
14. In Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others (above) the Court stated that in “considering whether an appeal will be rendered nugatory the court must bear in mind that each case must depend on its own facts and peculiar circumstances” and that:
 - “ix) The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling. Reliance Bank Ltd v Norlake Investments Ltd [2002] 1 EA 227 at page
 - x. Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.
 - x. Where it is alleged by the applicant that an appeal will be rendered nugatory on account of the respondent’s alleged impecunity, the onus shifts to the latter to rebut by evidence the claim. International Laboratory for Research on Animal Diseases v Kinyua, [1990] KLR 403.”
15. With that in mind, given that the jurisdiction of the High Court in making the impugned orders is challenged, and considering further the amount involved, and public interest, we are persuaded that this is a proper case for the Court to exercise its discretion in favour of the applicant.
16. In the result, prayer 3 of the application dated 25th October 2024 is hereby granted with the result that the ruling and order of the High Court delivered on 18th October 2024 in HCC. Misc Application No. 506 of 2012 is hereby stayed pending the hearing and determination of the applicant’s appeal.
17. Costs of the application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2025.

S. GATEMBU KAIRU, FCIArb, C.Arb.

JUDGE OF APPEAL

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JAMILA MOHAMMED

JUDGE OF APPEAL

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A.O. MUCHELULE

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

