



**Manguo Development Company Limited & 7 others v I&M Bank Limited (Civil Application E567 of 2024) [2025] KECA 1972 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1972 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E567 OF 2024  
DK MUSINGA, P NYAMWEYA & GV ODUNGA, JJA  
NOVEMBER 21, 2025**

**BETWEEN**

**MANGUO DEVELOPMENT COMPANY LIMITED ..... 1<sup>ST</sup> APPLICANT  
CHARLES KARANJA KAHAHU ..... 2<sup>ND</sup> APPLICANT  
ANNE WAIRIMU WANYEKI ..... 3<sup>RD</sup> APPLICANT  
DAVID KABUBII KURIA ..... 4<sup>TH</sup> APPLICANT  
SHADRACK THUKU KURIA ..... 5<sup>TH</sup> APPLICANT  
ELIZABETH WAMBUI KURIA ..... 6<sup>TH</sup> APPLICANT  
PINNACLE PROJECTS LIMITED ..... 7<sup>TH</sup> APPLICANT  
WINLOUKE PROPERTIES LIMITED ..... 8<sup>TH</sup> APPLICANT**

**AND**

**I&M BANK LIMITED ..... RESPONDENT**

*(An application for stay of Execution of the orders from the Ruling of the High Court at Nairobi (Njoki Mwangi J.) dated 14th October 2024 in Nairobi HC. Comm Case No. 6 of 2019)*

**RULING**

1. The High Court at Nairobi (Njoki Mwangi J.) delivered a ruling on 14<sup>th</sup> October 2024 in Milimani HC. COMM Case No. 6 of 2019, in which the trial Judge dismissed an application filed by the applicants herein seeking an injunction to restrain the respondent from transferring, pursuant to an auction, the property known as LR No .Limuru/Kamirithu/4504 (Limuru Mall) (hereinafter the “suit property”); and that the Certificate & Memorandum of sale of the said property dated 22<sup>nd</sup> August 2023 be set aside. The learned Judge in the same ruling allowed a second application by the respondent, that had sought ratification of the sale by auction of the suit property conducted on 22<sup>nd</sup> August 2023



whereby the suit property was sold to Peter Birugu Gachugu at Kshs.220,000,000/=, and that the suit property be transferred and registered in the name of the purchaser, Peter Birugu Gachugu.

2. The applicants herein were aggrieved by the said ruling, and filed a notice of appeal dated 18<sup>th</sup> October 2024 therefrom. They also lodged an application dated 28<sup>th</sup> October 2024 in this Court, in which they seek to stay execution of the orders emanating from the said ruling pending determination of their intended appeal, or that in the alternative, the status quo ante prior to the said ruling be maintained pending the intended appeal. The application is supported by an affidavit of even date sworn by David Kabubii Kuria, the 4<sup>th</sup> applicant, on behalf of the other applicants.
3. The applicants detailed the background to their appeal, whose genesis was an offer made by the respondent to finance a project for the establishment of a mall over the suit property with a term loan of Kshs 450,000,000/=, as a result of which a first legal charge was established in its favour over the suit property, wherein the 1<sup>st</sup> applicant was the principal borrower, while the 2<sup>nd</sup> - 8<sup>th</sup> applicants were guarantors.

Further, that under the subject letter of offer, a periodical disbursement would be released in respect of periodical certificates of completion. In addition, that during the period of the project construction from January 2016, the repayment of the monthly instalments by the borrower of a sum of Kshs.9,326,608/= was waived, and a moratorium of 24 months was imposed lasting until 31<sup>st</sup> December 2018, and it was expected that by the end of the moratorium which would coincide with the project completion, the rental income from the mall would be utilized towards repayment of the principal sum and the interest for a period of 84 months.

4. However, that by January 2019, by which time a sum of between Kshs.415-420 million out of the allocated loan of Kshs.450 million had been disbursed, the project construction was still incomplete, and the respondent was yet to disburse the full amount as secured by the project. The respondent nevertheless started levying interest from the first date of the loan draw down in 2016 on the full amount of Kshs. 450 million, as if the same had been paid in full in one lumpsum, and there was no moratorium in place. Furthermore, despite the borrower approaching the respondent with a request to make several adjustments to the term loan, the respondent declined, and on 7<sup>th</sup> January 2019 it indicated that it would not renegotiate or restructure the term loan and proceeded to issue statutory notices of the exercise of the power of sale over the charged suit property. Consequently, the applicants filed a suit challenging the exercise of the statutory power of sale in the High Court, being Milimani HC. COMM Suit No. 6 of 2019; Manguo Development Co. Ltd & Others vs 1 & M Bank Limited & Another.
5. Despite several applications by the applicants for injunctions to stop the sale, the High Court delivered a ruling on 18<sup>th</sup> May 2020 in which it held that the respondent was entitled to sell the suit property as long as it complied with the legal requirements. The suit property was subsequently advertised for sale by an auction on the 22<sup>nd</sup> August, 2023, and in November, 2023 it was disclosed to the applicants that the suit property had been sold to one Peter Birugu Gachugu for a sum of Kshs. 220 million, which necessitated the applicants' application dated 22<sup>nd</sup> November, 2023 seeking that the sale be set aside, and the respondent's counter application dated 29<sup>th</sup> February 2024 seeking for ratification of the sale by auction of the 22<sup>nd</sup> August 2023, which applications were the subject of the impugned ruling.
6. The applicants set out their grievances with the impugned ruling which they seek to pursue in their intended appeal, namely that the order therein effectively determines the entire suit at interlocutory stage; and the primary dispute between the parties is a contractual dispute relating to the parties' joint venture and project financing, and not the issue of default on repayments. In particular, there are arguable issues as to whether the respondent was in breach of contract for the alleged default when the



sums secured by the charge were yet to be fully disbursed and the project from which the repayments would emanate was incomplete; whether the respondent was right to charge interest on the full sums of Kshs.450 million from the date of drawn down, when the same was not yet disbursed and during the moratorium; and if it was appropriate for the respondent to call default on a sum that was yet to be fully disbursed in favour of the borrower or issue statutory notices of intention to sell an incomplete project to which it was a party. Lastly, that whereas the trial court established that some mandatory requirements in exercising the statutory power of sale had not been met by the respondent, it went ahead to hold and find that it was in the interest of justice nonetheless to ratify the sale.

7. The applicants attached a draft memorandum of appeal and their advocates filed submissions dated 28<sup>th</sup> November 2024, in which the averments hereinabove were reiterated. While citing the decisions by this Court in *Damji Pragji Mandavia vs Sara Lee Household & Body Care (K) Ltd*, Civil Application No. Nai 345 of 2004; *Stanley Kangethe Kinyanjui vs Tony Ketter & 5 others* [2013] KECA 378 (KLR); *Equity Bank Limited vs West Link Mbo Limited* [2013] eKLR; *Okul & another vs Ondieki & 2 others* [2022] KECA 702 (KLR); *Reliance Bank Limited vs Norlake Investments Ltd* [2002]1 EA 227; and *Bob Morgan Systems Ltd & another vs Jones* (2004) eKLR on the exercise of the jurisdiction to grant stay of execution and injunctions under rule 5(2)(b) of the Court of Appeal Rules, the applicants submitted that they had demonstrated that they have an arguable appeal; the respondent had not attached evidence that the transfer has already taken place, and hence their application has not been overtaken by events; and the consequence of refusal to grant a stay pending appeal will be the inability to reverse the transfer of the suit property, which event does not offer itself for compensation in damages.
8. The respondents opposed the application by way of a replying affidavit sworn on 22<sup>nd</sup> November 2024 by Andrew Muchina, the respondent's senior legal manager, and written submissions of even date filed by its advocates. The respondent's case was that the applicants' appeal is not arguable, since the legal issues set out therein have been subjected to numerous and intense litigation before; the applicants have on numerous occasions frustrated the realization process by denying auctioneers and potential purchasers from accessing the charged property; the applicants have since admitted the debt; the loan facility has outstripped the value of the security, in that total amount secured by the charged property is Kshs.450 million while the total outstanding amount as at 2<sup>nd</sup> February 2024 was Kshs.1,099,130,152.07 which amount continues to accrue interest until payment in full; and the proceeds of sale are not sufficient to repay the entire loan as the said loan.
9. Further, that the intended appeal will not be rendered nugatory if an injunction is not granted because the subject property has since been sold to Peter Birugu Gachugu on 22<sup>nd</sup> August 2023 for Kshs.220 million; the Bank is desirous of settling the matter by accepting the said proceeds of sale of Kshs.220 million as full and final settlement and the suit property is at the transfer stage; the applicants will not suffer any loss that cannot be compensated by damages in the event the appeal succeeds; and they have not demonstrated the inability of the respondent to settle any damages that the court may grant in the event their appeal succeeds. Therefore, that imposing an injunction will cause greater hardship to the respondent than it would avoid in the circumstances. The respondent cited the decisions in *Equip Agencies Limited vs I&M Bank Limited* [2019] eKLR and *Julius Musili Kyunga vs Kenya Commercial Bank Ltd & 2 Others* [2016] eKLR to urge that the applicants must demonstrate the two limbs as regards arguability of the appeal and that it will be rendered nugatory if stay is not granted, and in any event, if they succeed on appeal, an award of damages will be an adequate remedy.
10. We heard the application on 1<sup>st</sup> July 2025 on this Court's virtual platform, and learned counsel Mr. Sichangi appeared for the applicants, while learned counsel Mr. Dennis Mutugi appeared for the respondent. The two counsel highlighted the pleadings and submissions set out hereinabove. We have



carefully considered the application, together with the averments and legal arguments made by the parties. The principles applicable in the exercise of this Court's discretion under rule 5(2)(b) of the Court of Appeal Rules of 2022 to grant a stay of execution, injunction or stay of proceedings are well settled. An applicant has to satisfy two requirements. Firstly, that he or she has an arguable appeal. Secondly, that unless an order of stay is granted, the appeal or intended appeal would be rendered nugatory. These principles have been restated and amplified by this Court in *Stanley Kang'ethe Kinyanjui vs Tony Ketter & 5 others* (supra).

11. Both limbs must be demonstrated before a party can obtain a relief under rule 5(2)(b) (see *Republic vs Kenya Anti-Corruption Commission & 2 others* (2009) KLR 31; *Reliance Bank Ltd vs Norlake investments Ltd* (2002) I EA 227 and *Githunguri vs Jimba Credit Corporation No (2)* (1988) KLR 838). In addition, this Court exercises original jurisdiction under rule 5 (2)(b) as held in *Ruben & 9 others vs Nderitu & another* (1989) KLR 459 and *Trust Bank Limited and Another vs Investech Bank Limited and 3 Others* (2000) eKLR.
12. In summary, the applicants' case is that the exercise of the statutory power of sale by the respondent was unlawful, and that the trial Court determined its suit in this regard at an interlocutory stage. Bearing in mind that the requirement of arguability of an intended appeal is met if it raises a bona fide issue worth of consideration by the Court (see *Kenya Tea Growers Association & Another vs Kenya Planters Agricultural Workers Union*, Civil Application No. Nai. 72 of 2011 UR), we are satisfied that the applicants have in this regard raised arguable points in their intended appeal.
13. As regards the second limb, an appeal or intended appeal will be rendered nugatory where the resulting effect of not granting a stay of execution or injunction is likely to be irreversible or, if it is not reversible, where damages will not reasonably compensate the party aggrieved (see *Stanley Kang'ethe Kinyanjui vs Tony Ketter & 5 others Civil* (supra)). Hence the various decisions of this Court that the purpose of a remedy under rule 5(2)(b) is to preserve the subject matter of the appeal.
14. In the present application, it is notable that the applicants have admitted their indebtedness to the respondent, and that the suit property was charged as security for its loan facility with the respondent. In addition, it is evident that the suit property has since been sold by way of auction to a third party, who has not been joined to this application or appeal, and who will be prejudicially affected by any orders given on the application. Lastly, it is notable that given the circumstances giving rise to the appeal, and particularly that the applicants' indebtedness is not disputed, we are of the view that the applicants can be adequately compensated by way of damages in the event their appeal succeeds.
15. We accordingly find that the applicants have not satisfied the second limb for the grant of orders of stay, namely that their intended appeal will be rendered nugatory. The application dated 28<sup>th</sup> October 2024 is accordingly found not to have merit, and is hereby dismissed with costs to the respondent.
16. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2025.**

**D. K. MUSINGA (PRESIDENT)**

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**JUDGE OF APPEAL**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**



**G. V. ODUNGA**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

