

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: W. KARANJA, M'INOTI & ACHODE, JJ.A.)

CIVIL APPEAL (APPLICATION) NO. E110 OF 2025

BETWEEN

SAMSUNG ELETRONICS LIMITED.....APPLICANT

AND

PARAGON ELETRONICS LIMITED.....RESPONDENT

(An application for a stay of execution pending appeal of the Ruling and Order of the High Court at Nairobi (N. W. Sifuna J.) delivered on 16th December 2024

in

HCCC 171 OF 2009)

RULING OF THE COURT

1. Before this Court is a Notice of Motion dated 17th February 2025 which is brought by the applicant under the provisions of **section 3, 3A and 3B** of the **Appellate Jurisdiction Act** and **rules 1(2), 5(2)(b), 43, 44 and 49(1)** of the **Rules** of this Court.
2. The applicant seeks stay of execution of the ruling and any other consequential orders flowing from the ruling of N. W. Sifuna, J., delivered on 16th December 2024 in **HCCC No. 171 of 2009** pending the hearing and determination of this application and the intended appeal.
3. The background to the application is that on 10th November

2016 judgment was delivered by the High Court in this matter
wherein

the applicant was ordered to pay the respondent USD 54,300.00 together with interest from February 2003 until payment in full. Following the judgment, the Deputy Registrar calculated interest from 2003 at USD 169,570.71 which the applicant contested as wrong, saying that the same should have been calculated from 2008. The applicant filed an application dated 14th December 2020 which sought the review and setting aside of the decision of the Deputy Registrar.

4. This application for review was dismissed by the High Court in a ruling dated 31st July 2024 stating that a party dissatisfied with a decision of the Deputy Registrar ought to file an appeal against it as required by **Order 49** of the **Civil Procedure Rules** and within 7 days from the date of the decision.
5. On 19th August 2024 the applicant filed an application seeking enlargement of time to file an appeal pursuant to the earlier ruling of 31st July 2024 and also seeking stay of execution.
6. The High Court (Sifuna, J.) dismissed the application. It is against that ruling that the present application arises.
7. In this application which is supported by the grounds on the face thereof and by the applicant's affidavit in support, the applicant contends that its intended appeal raises arguable points of law

with high chances of success as set out in the grounds of appeal at paragraph 23 of the supporting affidavit.

8. The application is opposed through a replying affidavit sworn by Valentine Ataka, the respondent's Advocate dated 4th April 2025. The respondent contends that the court's ruling of 16th December 2024 was a negative order and that no positive orders were issued and as such that the prayer for stay of execution pending appeal is not capable of being granted. The respondent, therefore, urges that this application be dismissed with costs.
9. At the virtual hearing of the application on 9th April 2025, learned counsel Mr. Havi appeared with Ms. Lilian Okonji for the applicant while Ms. Ataka was present for the respondent. Both parties had filed submissions which they briefly highlighted.
10. In its written submissions, the applicant submits that it has demonstrated that its intended appeal raises arguable issues worthy of consideration by this Court.
11. As regards the nugatory aspect, the applicant contends that it will suffer substantial and irreparable harm if stay is not granted as paying more than five times the principal amount would amount to double jeopardy and violate the applicant's

socio-economic rights under **Article 43** of the **Constitution** as the record shows that the principal and interest were fully paid by 22nd June 2022.

12. In its written submissions, the respondent submits that the applicant's appeal is not arguable as the memorandum of appeal does not raise any arguable points against the ruling of 16th December 2024.
13. As regards the nugatory aspect, the respondent submits that the court's ruling of 16th December 2024 was a negative order and that no positive orders were issued and as such the prayer for stay pending appeal is not capable of being granted as the trial court did not order any of the parties to do anything or to refrain from doing anything. The respondent thus prays that the application be dismissed with costs.
14. We have considered the application, the affidavits, the rival submissions, and the law. It is trite law that in an application of this nature the applicant must demonstrate, first, that the intended appeal is arguable, and secondly, that unless the orders sought are granted, the appeal will be rendered nugatory. See **Stanley Kang'ethe Kinyanjui -vs- Tony Ketter & 5 Others** [2013] eKLR.
15. However, before engaging with those two limbs, we must first be satisfied that there exists a positive order capable of being stayed.

16. The position taken by this Court in respect of applications for stay of execution in respect of negative orders is clear. Negative orders cannot be stayed. We reiterate the sentiments of the predecessor of this Court in its decision in **Western College of Arts and Applied Sciences -vs- EP Oranga & 3 others [1976] KECA 15**

(KLR) where the Court stated in respect of stay of execution as follows: -

“But what is there to be executed under the judgment, the subject of the intended appeal” The High Court has merely dismissed the suit with costs. Any execution can only be in respect of costs. In Wilson v Church, the High Court had ordered the trustees of a church to make a payment out of that fund. In the instant case, the High Court has not ordered any parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court Judgment for this Court, in and application for stay, it is so ordered.”

17. The principle in **Western College of Arts and Applied Sciences**

-vs- E.P. Oranga & 3 others (supra) has been affirmed in

numerous decisions of this Court including **Kanwal Sarjit Singh**

Dhiman -vs- Keshavji Jivraj Shah [2008] KECA 346 (KLR), Co-

operative Bank of Kenya Limited -vs- Banking Insurance &

Finance Union (Kenya) [2015] KECA 353 (KLR), and

Kenya

**Commercial Bank Limited -vs- Tamarind Meadows
Limited &**

7 Others [2016] eKLR.

18. In the circumstances herein, the main orders sought in the motion itself relate to stay of execution of the ruling of the High Court dated 16th December 2024. None of the said prayers seek an injunction. The judgment of the High Court did no more than dismiss the applicant's application. It did not direct it to do or refrain from doing anything. In those circumstances, the order under challenge is a negative one that cannot be stayed. While the applicant may very well pursue its intended appeal, the relief it seeks under **rule 5(2) (b)** does not lie.

19. For these reasons, the Notice of Motion dated 17th February 2025 is without merit. It is accordingly dismissed with costs to the respondent.

Dated and delivered at Nairobi this 21st day of November 2025.

W. KARANJA

.....
JUDGE OF APPEAL

K. M'INOTI

.....
JUDGE OF APPEAL

L. ACHODE

.....
JUDGE OF APPEAL

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

Signed

DEPUTY

REGISTRAR.