

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMM NO. E170 OF 2025**

<b>CLARA</b>	<b>WANJA</b>	<b>NAMU</b>
<b>MASINDE.....PLAINTIFF</b>		
<b>VERSUS</b>		
<b>HALIFAX</b>	<b>FINANCIAL</b>	<b>SERVICES</b>
<b>LIMITED.....</b>		
<b>.....DEFENDANT</b>		

**RULING**

1. Before me for determination is the Plaintiff’s Notice of Motion dated 11<sup>th</sup> March 2025 brought under Sections 1A, 1B, 3A and 63(c) and (e) of the Civil Procedure Act, Order 40 Rules 1 and 2 and Order 51 Rule 1 of the Civil Procedure Rules. The application seeks, first, a temporary injunction restraining the Defendant from enforcing the Director’s Deed of Guarantee and Indemnity executed by the Plaintiff; and second, an order staying execution of the decree issued in HCCOMM No. 244 of 2018.
  
2. The application is supported by the grounds on its face and by the Plaintiff’s supporting affidavit sworn on 11<sup>th</sup> March 2025. She states that she is the wife of one Robert Wire Masinde, having contracted their marriage on 23<sup>rd</sup> August 2003. She avers that the said husband incorporated Micro Mobile Limited in August 2012, where she was registered as a director, though she was not involved in the affairs or daily

management of the company. She further contends that in 2015 the company sought financial accommodation from the Defendant in the sum of Kshs. 30 Million, and she signed the Deed of Guarantee and Indemnity in favour of the Defendant. The facility was enhanced in June 2016 to Kshs. 100 million.

3. Her position is that she executed the guarantee without full appreciation of its consequences. She deposes that she has since been served with a Notice to Show Cause in HCCOMM No. 244 of 2018, and is at risk of civil jail and loss of property, which would expose her to grave and colossal financial prejudice.
4. The Defendant opposes the application through a Replying Affidavit sworn by Simon Gachomo, a director of the Defendant, on 7<sup>th</sup> April 2025. It is contended that the application is frivolous, misconceived and an abuse of the court process. The Defendant avers that the Plaintiff and her husband procured financial accommodation on behalf of Micro Mobile Limited and defaulted in repayment. The Plaintiff voluntarily executed a Director's Guarantee and Indemnity, under which interest was chargeable at 5% per month and 10% per month on default.
5. It is further stated that the suit in HCCOMM No. 244 of 2018 was resolved by mediation, and the Plaintiff did not raise any challenge to the guarantee. The Plaintiff has failed to honour

the decree, necessitating the issuance of a Notice to Show Cause and a warrant of arrest. The Defendant contends that the Plaintiff's attempt to shift blame to her husband is untenable and does not absolve her from liability as a guarantor.

6. Directions were issued that the application be canvassed by way of written submissions. The Plaintiff filed submissions dated 25<sup>th</sup> April 2025, and the Defendant filed submissions dated 14<sup>th</sup> May 2025.

### **Analysis and determination**

7. I have carefully considered the Notice of Motion, the affidavits on record, the annexures thereto, and the written submissions of both parties. The issue that falls for determination is whether the Plaintiff has met the threshold for the grant of a temporary injunction and stay of execution.
8. The principles governing the grant of temporary injunctions are settled in **Giella v Cassman Brown & Co. Ltd [1973] EA 358** and reaffirmed in **Nguruman Limited v Jan Bonde Nielsen & Others [2014] eKLR**. The applicant must demonstrate:
  - i. A prima facie case with a probability of success;***
  - ii. That she stands to suffer irreparable harm that cannot be compensated by damages;***

***iii. Where the court is in doubt, it will determine the matter on a balance of convenience.***

9. A prima facie case was defined in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** as one that demonstrates an infringement of a right that calls for rebuttal at trial. In the present matter, the Plaintiff admits that she executed the Director's Deed of Guarantee and Indemnity, both in 2015 and during the enhancement of the facility in 2016. Her contention is that she signed without knowledge of the consequences and that she was not involved in the company's management.
10. Guarantees are solemn commercial instruments. In **National Bank of Kenya Ltd v Pipeplastic Samkol & Another [2001] eKLR**, the Court of Appeal held that courts cannot rewrite contracts or relieve parties from consequences of agreements freely entered into.
11. A guarantor is bound by the terms of the guarantee and cannot escape liability on account of internal arrangements within the company. In the present case, the Plaintiff does not dispute signing the guarantee. Her argument that she did not understand the implications cannot, without more, discharge her from liability. The guarantee is clear that in the event of default by the principal debtor, the guarantors would be liable. The Plaintiff has not demonstrated any

misrepresentation, fraud, coercion, or undue influence that would impeach the validity of the guarantee.

12. Further, the Plaintiff participated in HCCOMM 244 of 2018 where a decree was issued following mediation. She did not raise issues of coercion, lack of knowledge, or impropriety in execution of the guarantee at that stage. The matter has therefore crystallized into a judgment duly entered by a competent court. As stated in **Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd [2014] eKLR**, courts do not issue injunctions to restrain the enforcement of valid court decrees except in the clearest of circumstances.

13. On irreparable harm, the Plaintiff claims she risks civil jail and loss of property. These consequences flow directly from the decree in HCCOMM 244 of 2018, a matter not under appeal or review before this Court. Importantly, the Plaintiff voluntarily used her property as security by executing the guarantee. The law is clear that once a property is offered as security for a commercial loan, its loss is not irreparable (See **Andrew Muriuki Wanjohi v Equity Building Society [2006] eKLR**).

14. I find the balance of convenience tilts heavily in favour of allowing the Defendant to enjoy the fruits of its judgment. The Plaintiff has been in default and has not satisfied the decree. Moreover, the Plaintiff approaches the court seeking

equitable relief while alleging no wrongdoing on the part of the Defendant; the plea that she was misled by her husband is not a legal defence. It is trite law that a guarantor cannot escape liability by shifting blame to a co-guarantor or principal debtor.

15. In sum, I find that the issues raised by the Plaintiff do not favour the grant of injunctive orders. The application is an attempt to reopen and frustrate the enforcement of a lawful decree.

### **Stay of execution**

17. The Plaintiff also seeks a stay of execution of the decree issued in HCCOMM No. 244 of 2018. A stay of execution is an equitable relief governed by Order 42 Rule 6 of the Civil Procedure Rules. The applicant must show substantial loss, prompt application, and offer security to satisfy the decree if a stay is granted.
18. In the present case, the Plaintiff has not invoked Order 42 Rule 6, nor provided any form of security. She has also not demonstrated promptness in seeking this relief, considering that HCCOMM No. 244 of 2018 was mediated and a decree issued without objection at the time. Her application, therefore, is essentially an attempt to challenge a lawful and final decree indirectly.
18. The Plaintiff claims potential civil jail and loss of property and that she was misled by her husband or did not

understand the guarantee does not amount to legal grounds for a stay. However, these consequences arise directly from her voluntary execution of a Director's Guarantee and Indemnity, and not from any impropriety on the part of the Defendant. The principle that "equity aids the vigilant, not the indolent" applies squarely here.

19. On balance, granting a stay of execution would unfairly prejudice the Defendant, who is entitled to enjoy the fruits of a valid decree. The balance of convenience therefore weighs heavily against the Plaintiff, who has not demonstrated substantial loss, offered security, or established any legal basis to suspend enforcement.

20. Consequently, I find the Notice of Motion dated 11<sup>th</sup> March 2025 lacks merit and is hereby dismissed with costs.

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **20<sup>th</sup>** day of **November** 2025.

**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Ms. Natalie Obago h/b for Mr. Mbaluto for Plaintiff/Applicant*

*Mr. Ochieng for Defendant/Respondent*

*Court Assistant: Carlos*