



Skytrade Global Enterprises Ltd v The Owners of Motor Vessel M/T “R Ocean & 2 others (Claim E003 of 2024) [2025] KEHC 17923 (KLR) (1 December 2025) (Ruling)

Neutral citation: [2025] KEHC 17923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CLAIM E003 OF 2024
J NGAAH, J
DECEMBER 1, 2025**

BETWEEN

SKYTRADE GLOBAL ENTERPRISES LTD CLAIMANT

AND

THE OWNERS OF MOTOR VESSEL M/T “R OCEAN 1ST DEFENDANT

CROWN EXPRESS SHIPPING LLC 2ND DEFENDANT

APITAL COMPANY OF SHIPPING & TRADING CORPORATION 3RD DEFENDANT

RULING

1. By an application dated 10 June 2025 the defendants in this claim have asked primarily for the order that the proceedings in this claim be stayed pending the hearing and determination of an appeal they have filed in the Court of Appeal. The application is expressed to be brought under the provisions of Section 49(3) of the Senior Courts Act 1981, Rules 3.1(2)(f) and 57.2 of the English Civil Procedure Rules and Section 1A, 1B and 3A of the *Civil Procedure Act* (Cap. 21). They have also invoked Order 42 Rule 6 of the Civil Procedure Rules and Sections 4 (2) and (3) of the *Judicature Act* (Cap. 8).
2. The application is supported by the affidavit of Samir Inamdar Esq., the learned counsel for the applicants.
3. Mr. Inamdar has sworn that the 1st and 3rd applicants are Owners of Motor Vessel MT 'R Ocean'(hereinafter” the vessel”) while the 2nd applicant is the manager of the Vessel under what he has described as a “Consultancy Agreement” dated 28 October 2020.
4. The Claimant, the respondent in this application, filed this action on 30 August 2024 and following orders from this Honourable Court, the Vessel was arrested on 2nd September 2024. The Applicants filed an Acknowledgement of Service on 4 September 2024 indicating their intention to dispute this



Honourable Court's jurisdiction on the ground that its jurisdiction to entertain the Claimant's Claim and to issue a Warrant of Arrest against the Vessel had not been lawfully invoked or properly exercised.

5. Subsequently, and more particularly, on 18 September 2024 the applicants filed an application which sought, among other orders, the order to strike out the suit or set aside the warrant of arrest issued against the vessel. The application was based on the grounds that:
 - “(i) the action against the Vessel was not brought under Sections 20 and 21 of the Senior Courts Act 1981; and
 - (ii) this Court therefore had no jurisdiction to either entertain this action or to issue a warrant of arrest against the Vessel; and
 - (iii) the action against the Vessel and its arrest are founded on gross violations of, and noncompliance with, mandatory procedural prerequisites of an action in rem and thereby constitute an abuse of process justifying the warrant of arrest being set aside and the Claim being struck out ex debito justitiae.”
6. In a ruling delivered on 20 January 2025, this Honourable Court (Ng'arng'ar, J.) dismissed the Application. The applicants were dissatisfied with the court's decision and, therefore, on 20 January 2025, they filed a Notice of Appeal against that part of the Ruling dismissing their application.
7. As at the time of filing the instant application, the applicants had filed the Record of Appeal in the Court of Appeal, more particularly on 28 April 2025.
8. According to Mr. Inamdar, the appeal directly challenges the manner in which the Court exercised its jurisdiction the effect of which is to continue entertaining these proceedings allegedly without regard to the legal principles pertaining to an action in rem and wrongfully issuing a warrant of arrest against the Vessel. These issues, it is contended, are all fundamental jurisdictional points that require, in law, to be determined in limine.
9. It is contended on behalf of the applicants that unless the order for a stay of proceedings is granted pending the determination of the appeal, the Applicants stand to be prejudiced by reason of them being effectively required to submit to this Court's jurisdiction and to defend these proceedings while simultaneously challenging the invocation of jurisdiction of this Court - which would thereby tender its appeal nugatory.
10. Further, Mr. Inamdar has sworn that the Vessel was released by an order of this Court dated 9 October 2024 after security was put up by the Applicants by way of a bank guarantee. The guarantee, which was due to expire on 24 September 2025, has been extended by the issuing bank on 4 June 2025 by another year at the request of the Applicants.
11. The guarantee is due to expire on 24 September 2026 and thus, there is sufficient time to ensure that no prejudice is caused to the Claimant pending the hearing and determination of the Applicant's Appeal.
12. The claimant opposed the motion and filed a replying affidavit sworn by Hanier Zadeh who has introduced himself as one of the directors of the claimant. He has basically reiterated that this Honourable Court is seized of jurisdiction and defended the impugned ruling.
13. On whether the applicant's appeal is arguable, it has been contended that the Applicants have not demonstrated that the appeal raises any arguable point of law or fact. According to the respondent, the grounds of appeal are generalised grievances which do not disclose any serious question deserving



appellate review. The respondent has defended this Honourable Court's ruling as being grounded on uncontested facts, proper appreciation of the law, and correct application of admiralty principles.

14. I have considered the defendant's application the response thereto and the submissions filed in support of and in opposition to the application. The basic facts upon which the determination of the application turns are not in dispute. In short, they are that the Claimant filed an "action in rem" against the Applicants on 30 August 2024, seeking the arrest of the Motor Vessel MT "R Ocean" subsequent to which this Honourable Court ordered the arrest and detention of the vessel on 2 September 2024.
15. In response to the claim, the Applicants disputed the court's jurisdiction and filed an application on 18 September 2024 seeking to, not only set aside the arrest order but also to strike out the Claimant's claim. Their application was dismissed on 20 January 2025.
16. Dissatisfied with the decision of the court, the Applicants immediately filed a Notice of Appeal on the same day and, subsequently, filed the Record of Appeal on 28 April 2025.
17. The applicants argue that the legal basis for their application is the inherent jurisdiction of this Honourable Court and Order 42 Rule 6(1) of the Civil Procedure Rules, 2010.
18. On the question of the court's inherent jurisdiction, to stay proceedings in circumstances in which they find themselves, the applicants have relied on *Harnam Singh & Others v Mistri* [1971] EA 122, where it was affirmed that this Honourable Court has inherent jurisdiction to order stay of a suit for sufficient reason. They also cited *Re Global Tours & Travel Ltd HCWC No. 43 of 2000*, where Ringera J. (as he then was) held, inter alia, that whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice.
19. As far as the question of whether the applicants' appeal to the Court of Appeal is arguable, it has been urged that the appeal raises fundamental issues such as jurisdictional errors, procedural defects, and the improper inclusion of certain parties in the action. In particular, they have urged that, in dismissing the applicants' application, the court did not consider the fact that the claimant had failed to satisfy the requirements of Section 20(2) and Section 21(4) of the Senior Courts Act for an in rem claim.
20. The ruling is also impugned on the ground that it endorsed the improper issuance and execution of the warrant of arrest by the Harbour Master instead of the Admiralty Marshal. The claimant is alleged to have impleaded parties who cannot be part of an in rem action and, in any event, they also failed to comply with mandatory procedural rules in completing the Claim Form and appurtenant documentation.
21. They have relied on *William Kamunge & 2 Others v Muriuki Mbithi Nairobi Civil Appeal No. 54 of 2016*, where this Honourable court is said to have held that an arguable appeal is not one that will necessarily succeed but one which raises triable issues. The important consideration, it was also held, is whether the appellant has demonstrated that he is likely to suffer prejudice, hence injustice, if the Court was to decline to grant the order of stay.
22. Besides the question of their appeal being arguable, the applicants have urged that they have posited a bank guarantee of US\$ 400,000 as security to cover the Respondent's claim and thereby mitigating any prejudice that the Respondent may suffer pending the hearing and determination of the appeal.
23. They have also urged that contrary to the claimant's response that this court is functus officio, it is not. They urge that the application has been filed timeously having been filed within four months of the impugned ruling and after filing the Record of Appeal. It is their case that proceeding with the trial while the appeal is pending would be waste of judicial time and resources if the appeal was to succeed. Finally, the applicants hold the position that a stay of proceedings should be granted in the interest of



justice. In this regard, they have emphasised the importance of resolving the jurisdictional challenge before proceeding with this case any further.

24. The respondent, on the other hand, has urged that stay of proceedings is a stringent relief that should only be granted in exceptional circumstances. The Applicants, it is urged, have failed to meet the high threshold required for such relief and the application is a delaying tactic aimed at frustrating the Respondent's legitimate claim. In support of the submissions, the respondent cited Halsbury's Law of England, 4th Edition, Vol. 37, pages 330 and 332 where it stated:

“The stay of proceedings is a serious, grave, and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

25. The respondent has also cited Machakos Civil Appeal No. 24 of 2018, Ezekiel Mulemusembi v H. Young Co (E.A.) Ltd (2019) eKLR where it was held that that this Honourable Court has powers to stay proceedings pending appeal and this jurisdiction is derived from both Order 42 Rule 6 of the Civil Procedure Rules as well the inherent jurisdiction reserved in section 3A of the *Civil Procedure Act*. The purpose of this jurisdiction, according to this decision, is to ensure that the object of an application for stay is not rendered nugatory and that a substantial loss and irreparable harm is not suffered by the applicant if the Plaintiff proceeds with the suit but the appeal eventually succeeds.
26. But in Access Bank Kenya PLC versus Mengich & Another (Civil Appeal E003 of 2024) [2024] KEHC 5682 (KLR) the court is said to have held that stay of proceedings is a radical remedy and which can only be granted in very exceptional circumstances. The primary question ought to be whether it is in the interest of justice to order a stay of proceedings and if it is, the terms upon which the stay should be granted.
27. For the same argument, the respondent has relied on Kenya Wildlife Service v James Mutembei [2019] eKLR where the court warned that stay of proceedings is a grave judicial action since, in the court's opinion, it interferes with the right of a litigant to conduct his litigation. The order, it was held, impinges on the right of access to justice, right to be heard without delay and overall, the right to a fair trial. For this reason, the threshold upon which it can be granted is “high and stringent”.
28. In response to the question whether the appellant's appeal is arguable, the respondent has countered that the Memorandum of Appeal does not disclose any substantial legal or factual issue and that the arguments raised have been described as “speculative and recycled”. On this score, the respondent has again cited Access Bank Kenya PLC v Mengich & Another (supra) where it was held that an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous.
29. Regarding the question whether the appeal would be rendered nugatory in the event a stay order is not granted, it has been argued on behalf of the respondent that applicants have not demonstrated that the subject matter of the dispute is perishable or at risk of dissipation. The vessel in question, it is urged, was arrested pursuant to a valid claim, and the Court retains full jurisdiction to issue appropriate remedial orders, including restitution, if the appeal succeeds. The respondent has relied on Multimedia University & Another v Professor Gitile Naituli [2014] eKLR where it was held that the burden lies squarely on the Applicant to demonstrate that unless the stay is granted, the appeal would be rendered nugatory. According to the respondent, this burden has not been discharged by the applicants.



30. As far as the question of *functus officio* is concerned, it is urged that the Court has addressed itself to the issue of jurisdiction in its ruling dated 20 January 2025. In this regard, they have relied on *Odinga v Independent Electoral & Boundaries Commission & 3 others* (Petition 5, 4 & 3 of 2013 (Consolidated)) [2013] KESC 8 (KLR) where the Supreme Court held that the *functus officio* doctrine is one of the mechanisms by which the law gives expression to the principle of finality. Under the doctrine, a person vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter; and, once proceedings are finally concluded, the court cannot review or alter its decision. Any challenge to its ruling on adjudication must be taken to a higher court if that right is available.
31. The respective learned counsel for the applicants and the respondent are in agreement that the legal basis for stay of proceedings is the inherent jurisdiction of this Honourable Court and Order 42 Rule 6 of the Civil Procedure Rules. The part relevant to the application reads as follows:
- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
32. I gather from this rule that the proceedings that may be stayed under this provision of the law are those that ensue from an order or a decree eligible for execution. They are proceedings subsequent to the order or decree and which are necessary for the execution of the order or decree in instances where, for one reason or the other, the order or decree has not been satisfied or settled. In short, the stay of proceedings contemplated under this provision of the law is restricted to a particular type of proceedings.
33. Staying proceedings generally derives from this Honourable Court's inherent jurisdiction. In my humble view, this is the appropriate jurisdiction to be invoked in the applicants' case. I say so because the order against which the applicants have appealed was an order dismissing an application. It is a negative order not warranting any form of execution or execution proceedings against which a stay would ordinarily be sought under order 42 rule 6 of the Civil Procedure Rules.
34. This is what I understand the court in *Harnam Singh & Others v Mistri* (Supra) to have meant when it held:
- “The High Court has inherent jurisdiction to order stay of a suit for sufficient reason, and so far as the power to order a stay is concerned, as distinct from the question whether a stay ought to be ordered, the provisions of the Act are irrelevant.”
35. Thus, inherent jurisdiction goes beyond any statutory or procedural provision on jurisdiction and; to the extent that the applicants' only alternative is the inherent jurisdiction of this Honourable Court, order 42 rule 6 of the Civil Procedure Rules is inapplicable to their circumstances.



36. Speaking of exercise of inherent jurisdiction in applications for stay of proceedings it was held the English case *Reichhold Norway ASA v Goldman Sachs International* [1999] 1All ER (Comm) 40 that:

“The court’s power to stay proceedings is part of its inherent jurisdiction which is expressly preserved by section 49(3) of the *Supreme Court Act* 1981. It is exercised under a wide range of circumstances to achieve a wide variety of ends. Subject only to statutory restrictions, the jurisdiction to stay proceedings is unfettered and depends only on the exercise of the court’s jurisdiction in the interests of justice.”

37. It follows that the fundamental question upon which the applicants’ application turns is whether this Honourable Court should exercise its inherent jurisdiction and stay the proceedings in respect of the claimant’s claim pending the hearing and determination of the applicants’ appeal.

38. In seeking an appropriate answer to this question, the consideration that has heavily weighed on my mind is that the decision sought to be impeached is on this Honourable Court’s jurisdiction to determine the applicants’ claim. It is not in doubt that in dismissing the applicants’ application, the court thereby affirmed its jurisdiction to determine the respondent’s claim. But by its appeal, the respondent has escalated this question to the Court of Appeal.

39. The appeal could go either of the two ways: it may be allowed and the decision of this Honourable Court overturned or, on the other hand, it may as well be dismissed, in which event there would be nothing untoward in this court disposing of the respondent’s claim.

40. It follows that if this Honourable Court proceeds on the assumption that it is seized of jurisdiction despite the applicant’s appeal, it would be more of a gamble that its decision will be upheld by the Court of Appeal. The flipside of such a gamble is that all the efforts invested in the prosecution of and defence against the respondent’s claim would be an exercise in futility if the Court of Appeal was to come to the conclusion that, in disposing of the claim, this Honourable Court assumed jurisdiction which it does not have.

41. Rather than gamble and risk its efforts and the efforts and resources of all those involved in the suit being rendered null, it would be prudent, in my humble opinion, for this Court to hold its horses and await the Court of Appeal’s word on the jurisdictional challenge to its decision.

42. Two decisions cited by the applicants and which speak to this point are *Step Up Holdings v Mount Kenya University* (supra) and *Daniel Walter Rasugu v Johana Nyakwoyo Buti* (supra). In the former decision, Ouko, J. (as he then was) spoke of the application for stay of proceedings as follows:

“The effect of this court dismissing this application would be to allow the matter to proceed before the court and the applicant to participate when they have challenged that participation. It is indeed a question of jurisdiction which in my view must be determined/ by the outcome of the appeal. What purpose will it serve to hear the parties and render a judgment only for the Court of Appeal to overturn the ruling and order the parties to go for arbitration? Just as there is likelihood that the appeal may take long to determine, there will also be wastage of judicial time to proceed with the hearing before the determination of the appeal.”

43. And emphasising the same point, Musinga, J. (as he then was) held as follows:

“In determining the application, the issue that I consider most important is optimum utilization of scarce judicial time, if stay of proceedings is not granted, the plaintiff may



proceed his case within a short while. If sometime thereafter the appeal is heard and it succeeds, it will be held that this Court had no jurisdiction and therefore any proceedings that may have gone on including any order that may have been issued will be a nullity. On the other hand, if stay of proceedings is allowed and the appeal is unsuccessful, the hearing of the plaintiff's case will go on. While I appreciate that pendency of litigation is a source of anxiety to parties and the plaintiff wishes to minimize his anxiety by proceeding with this suit expeditiously, I think the Plaintiff would be more stressed by a scenario in which orders are made by this court, hopefully in his favour, only for the Court of Appeal to trash them for want of jurisdiction in the event that the appeal allowed.”

44. The sum total of these decisions is that where the question of whether this court is seized of jurisdiction to determine the dispute before it is pending before the Court of Appeal, it is necessary to withhold further proceedings on the dispute until such a time that the Court of Appeal has ruled on the matter.
45. That aside, it is also worth noting that despite losing its case against this Honourable Court's jurisdiction to determine the respondent's claim, the applicants have not submitted to the jurisdiction of this Honourable Court. According to Part 11 Rule 7 of the English Civil Procedure Rules, a party who has failed in its jurisdictional challenge is required to file an Acknowledgement of Service within 14 days of the date of the Order, acknowledging that it is bound by the court's jurisdiction or within such other period as the court may direct.
46. It would not only be illogical but it would also be futile for the applicants to appeal against this Honourable Court's decision assuming jurisdiction to dispose of the claim before it and, at the same time, file the acknowledgement of service that effectively enjoins them to submit to the same jurisdiction they have questioned before the appellate court.
47. The omission to file the acknowledgement of service is for a valid reason: that the question whether this Honourable Court is seized of jurisdiction to determine the suit before it is pending for determination before the Court of Appeal. And for this very reason, if the court was to proceed and dispose of the respondent's claim, it would do so without the applicants' participation.
48. In conclusion, I am persuaded that there is sufficient reason to withhold further proceedings in this suit pending the determination of the applicant's appeal. The applicants' application is allowed to that extent. Costs will abide the outcome of this suit. It is so ordered.

SIGNED, DATED AND DELIVERED ON 1 DECEMBER 2025

NGAAH JAIRUS

JUDGE

