



REPUBLIC OF KENYA



**Sukari Industries Limited v Bulimu (Civil Appeal E133 of 2025)
[2025] KEHC 18256 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E133 OF 2025
ACA ONG'INJO, J
DECEMBER 4, 2025**

BETWEEN

SUKARI INDUSTRIES LIMITED APPELLANT

AND

BENERD MWITA BULIMU RESPONDENT

RULING

1. Vide a Notice of Motion application dated 22nd October, 2025 the Appellant sought that the ruling of the Adjudicator dated 14th October 2025 choosing SCCCOMM NO E135 OF 2025 as test suit in a series of suit for 52 other claims for claimants be set aside.
2. The application is premised on the grounds on its face which are to the effect that the amounts being claimed by the different claimants is different, the loans owed by the Claimants to the Appellant are different, the sizes of farms allegedly involved in the alleged contracts are different, and are in different locations.
3. The Appellant argued that a claim for breach of contract cannot be subject to test suit as each farmer will have to prove the type of breach and compensation due to them.
4. The Appellant/Applicants have also argued that they are being denied an opportunity to be heard and to cross examine the individual Claimants on allegations of alleged breach of contract and damages due to them and that the denial will prejudice them.
5. It was further argued that only parties to a contract are privy to the terms and conditions and the Claimant in the test suit cannot seek to rely on or enforce a contract that he is not privy to.
6. The application dated 22nd October 2025 is supported by the affidavit of Steve Antony Ougo the Human Resource Manager of the Applicant company sworn on 22nd October 2025 in which he reiterated the grounds on the face of the application.



7. The Respondent's Counsel opposed the application vide Replying Affidavit sworn by himself on 28th October 2025.
8. The application was canvassed by written submissions which this court has considered together with the grounds of the application and makes the following findings.

The application before the appellate court is essentially for stay of proceedings of SCCCOMM No. E135 of 2025, pending the hearing of an appeal against the Adjudicator's ruling selecting it as a test suit for 52 similar claims.

The issue is whether the Applicant has met the threshold for stay of proceedings.

The applicable principle which the courts have consistently held is that stay of proceedings is a grave, discretionary remedy, to be granted sparingly and only in clear cases.

In the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR it was held that stay of proceedings is a serious, draconian step as it interferes with a litigant's right to have their case heard without delay.

Similarly in the case of *Global Tours & Travels Limited HC Winding Up Cause No. 43 of 2000* it was held that the court must consider:

1. Whether the appeal is arguable or has merits.
2. Whether the appeal will be rendered nugatory if proceedings continue.
3. The interests of justice and the need to balance parties' rights.
4. Whether prejudice to the applicant outweighs prejudice to the respondent.

Further in *Standard Chartered Bank v Intercom Services Ltd & Others* [2004] eKLR the court held that a party must demonstrate exceptional circumstances.

Therefore, the Applicant must show:

A prima facie arguable appeal
Real risk of prejudice or the appeal being rendered nugatory
That the balance of convenience favours stay

On whether the appeal herein is arguable, the Appellant challenges the selection of a test suit on grounds that:

1. Claims differ in quantum
2. Loan amounts differ
3. Farm sizes and locations differ
4. Contracts differ
5. Each claimant must prove breach individually
6. Issues of privity of contract
7. They will be denied an opportunity to cross-examine each claimant

These are substantive questions regarding whether the claims truly share common questions of law or fact, which is the legal basis for test suits.

The test for an arguable appeal is not that it must succeed, but that it raises at least one bona fide issue deserving judicial consideration.

This court therefore finds that the Applicant has demonstrated an arguable appeal but in consideration of the timelines provided for in the *Small Claims Court Act* this court finds that the Applicants are entitled to a right to cross-examine all 52 claimants and therefore in mitigation of the prejudice that



may arise it is hereby ordered that Common issues be determined in the test suit, and individualized assessments of damages or liability be addressed separately later.

Although the proceedings herein may be reversed in event the appeal succeeds it will be a waste of time to proceed with a matter that is likely to be reversed upon prosecution of a successful appeal. The parties are therefore advised to go back to the trial court and conduct fresh pre-trial proceedings that will realize the rights of every party to fair hearing as enshrined under Article 50 of *the Constitution*.

The application therefore succeeds subject to the directions given herein. Costs of the application to be borne by each party.

Mention on 5th December 2025 for directions.

The appeal herein is marked as settled with no orders as to costs.

DATED, SIGNED, AND DELIVERED AT MIGORI THIS 4TH DAY OF DECEMBER, 2025.

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ANNE ONG'INJO

JUDGE

