



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nderi & 2 others v Habib Bank Limited & 2 others (Civil Suit 929 of 2004)  
[2025] KEHC 19000 (KLR) (Civ) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19000 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL SUIT 929 OF 2004**

**SN MUTUKU, J  
DECEMBER 19, 2025**

**BETWEEN**

**DOROTHY WANGARI NDERI ..... 1<sup>ST</sup> PLAINTIFF  
EDWARD NDERI MARINE ..... 2<sup>ND</sup> PLAINTIFF  
LUCY WANJIRU MARINE ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**HABIB BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT  
JOSEPH MURIITHI MWANGI ..... 2<sup>ND</sup> DEFENDANT  
STEPHEN ONYANGO JUMA T/A INTIME SERVICE (KENYA)  
LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. There are two pending Notice of Motion applications dated 26/11/2025 filed by 2<sup>nd</sup> Defendant and 2<sup>nd</sup> December 2025, filed by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. Both applications seek court's intervention in respect of the judgment and decree of this Court dated 16/10/2025 by way of granting a stay of execution and temporary injunction in respect of property known as L. R. No. 4480/149 situated at Ngong Town pending the hearing and determination of this application and the intended appeal. Directions pertaining to how the two applications should be canvassed are yet to be issued.
2. On 15/12/2025, this court granted Ms Nyaboke, who attended court on behalf of Mr. Nyambega for the Respondent 3 days to file responses to the two applications. The court also granted interim stay. The court set the date to return and confirm compliance with those directions as 17<sup>th</sup> December 2025.



3. On 17<sup>th</sup> December 2025, when the matter came for mention, Mr. Nyambega informed the court that the Respondent has filed responses to the two applications. He also told the court that he had some information which he wished to bring to the attention of the court.
4. Mr. Nyambega questioned the competency of the Notice of Appeal filed by the 1<sup>st</sup> and 3<sup>rd</sup> Applicants that it was wrongly brought under Rule 75 of the Court of Appeal Rules 2022, which Rule applies to Criminal Appeal. He stated that the applicable Rule is 76. He also stated that the 2<sup>nd</sup> Applicant has not cited any Rule to support his Notice of Appeal.
5. Further, counsel asked the court to direct that rent collected from the commercial building in question to be deposited in the Judiciary Account pending the determination of the applications.
6. In opposing the oral application, Mr. Janjo for the 1<sup>st</sup> and 3<sup>rd</sup> Applicants submitted that the judgment sought to be stayed restored the Plaintiffs as legal representatives of the owner of the property who is deceased and did not give directions in respect to rental income from that property. Mr. Janjo sought leave to file Supplementary Affidavit on the new issue raised by Mr. Nyambega that the Notice of Appeal is incompetent.
7. Counsel further submitted that the time within which to strike out Notice of Appeal has lapsed.
8. Mr. Litoro, for the 2<sup>nd</sup> Applicant submitted that the Notice of Appeal in respect to the 2<sup>nd</sup> Applicant is competent in that there is no requirement to cite the Court of Appeal Rules on the Notice of Appeal.
9. Counsel opposed the issue of security and stated that the issue of collection of rent is an attempt to amend the judgment.

### **Determination**

10. I have considered the issues raised by Mr. Nyambega, learned counsel for the Respondent and the responses in opposition by Mr. Janjo, learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Applicants and Mr. Litoro, learned counsel for the 2<sup>nd</sup> Applicant.
11. To my understanding, counsel is challenging the competency of the respective notices of appeal filed by the applicants. He is also seeking to have the rent collected from the disputed property deposited in the Judiciary Account pending the determination of the applications.
12. From the outset, I wish to state that the issues raised by the Respondent's counsel at this stage could have been argued during the canvassing of the two applications. Nonetheless, I will proceed to determine them.
13. Among the orders sought by the applicants in both applications is the order for stay of execution. The applicants have invoked Order 42 Rule 6 of the Civil Procedure Rules. The applications are yet to be argued for this court to determine whether the applicants have satisfied the requirements for grant of stay of execution pending an appeal. I have to exercise caution in my pronouncements at this stage to avoid prejudice to any of the parties before me.
14. For the above reason, it is my considered view that issues touching on security and rental income cannot be handled at this stage. It will have to await full hearing of the application should the parties pursue the issue.
15. On the competency of the Notices of Appeal, I have read the Court of Appeal Rules, specifically Rule 75 and 76. I agree with Mr. Nyambega that Rule 75 deals with Criminal Appeals or Reviews and that the applicable Rule in respect of Civil Appeals is Rule 76.



16. Under Rule 77 of the Rules, it is provided that:

Notice of appeal

- (1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
- (2) Each notice under subrule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.
- (3) Each notice of appeal under subrule (1) shall state whether it is intended to appeal against the whole or part only of the decision and, where it is intended to appeal against a part only of the decision, shall—
  - (a) specify the part complained of;
  - (b) the address for service of the appellant; and
  - (c) the names and addresses of the persons intended to be served with copies of the notice.
- (4) When an appeal lies only with leave or on a certificate that a point of law of general public importance is involved, it shall not be necessary to obtain such leave or certificate before lodging the notice of appeal.
- (5) Where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging the notice of appeal.
- (6) A notice of appeal shall be substantially in Form D as set out in the First Schedule and signed by or on behalf of the appellant

17. I have read the Notices of Appeal lodged by the Applicants. The Notice of Appeal by the 1<sup>st</sup> and 3<sup>rd</sup> Applicants has quoted Rule 75 of the Court of Appeal Rules while that by the 2<sup>nd</sup> Applicant has not quoted any rule. The contents of the two Notices of Appeal are clearly understood. They comply with Rule 77 as far as possible save for quoting the wrong Rule or not quoting any Rule at all. They also fit the description of Form D found on the 1<sup>st</sup> Schedule of the Court of Appeal Rules.

18. My conclusion of this matter, therefore, is that the error in quoting the wrong Rule or not quoting any rule at all is an error that does not affect the substance of the Notices of Appeal. This error, in my view, is curable under Article 159 (2) (d) of *the Constitution*.

19. Consequently, I do not agree with Mr. Nyambega in the issues he has raised and decline the invitation to interfere with the two applications without fully listening to the arguments of all the parties involved. I will proceed to issue directions in respect of the two pending applications.

20. It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF DECEMBER 2025.**

**S. N. MUTUKU**

**JUDGE**

In the presence:

1. Mr. Nyambega for Plaintiffs/Respondents



2. Mr. Shah for 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Applicants

3. Mr. Litoro for 2<sup>nd</sup> Defendant/Applicant

