



**Nathoo & another v Afex Expeditions Limited & another (Civil Appeal  
(Application) E343 of 2025) [2025] KECA 2319 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2319 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E343 OF 2025  
SG KAIRU, P NYAMWEYA & JM NGUGI, JJA  
DECEMBER 19, 2025**

**BETWEEN**

**AZIM NATHOO ..... 1<sup>ST</sup> APPLICANT**

**TAJDIN NATHOO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**AFEX EXPEDITIONS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**VANOIL ENERGY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for stay of execution pending the hearing and determination  
of the Appeal against the Ruling of the High Court of Kenya at Nairobi  
(Mugambi, J.) dated 5<sup>th</sup> July, 2024 in HCCOMM No. 554 OF 2014)*

**RULING**

1. The applicants' motion dated 30<sup>th</sup> April, 2025 is brought under sections 3, 3A and 3B of the *Appellate Jurisdiction Act* and Rule 5(2)(b) of the Court of Appeal Rules, 2022. They seek an order of stay of execution of the ruling delivered on 5<sup>th</sup> July, 2024 by the High Court ((Dr.) F. Mugambi, J.) pending the hearing and determination of their appeal.
2. The background to the application is largely uncontested. In 2017, the 1<sup>st</sup> respondent obtained a default judgment against the 2<sup>nd</sup> respondent for Kshs. 87,082,622.99. When attempts at execution proved fruitless, the 1<sup>st</sup> respondent invoked Order 22, Rule 35 of the Civil Procedure Rules seeking to summon and examine the applicants as alleged directors of the 2<sup>nd</sup> respondent and potentially to hold them personally liable for the decree.
3. Majanja, J. ordered the oral examination of the applicants on the means and assets of the 2<sup>nd</sup> respondent and directed the production of certain documents. Further prayers — most notably the request to lift the corporate veil — were deferred pending the outcome of that examination. Pursuant to those



- orders, the 1<sup>st</sup> applicant was orally examined on 6<sup>th</sup> December, 2023. The learned (Dr.) F. Mugambi presided over the examination.
4. In her ruling of 5<sup>th</sup> July, 2024, the learned Judge concluded that the applicants' responses, when weighed against letters, email correspondences and other documents produced by the 1<sup>st</sup> respondent, demonstrated involvement in the affairs of the 2<sup>nd</sup> respondent. She held that the applicants had deliberately withheld information about the 2<sup>nd</sup> respondent's financial status and concluded that this justified lifting the corporate veil and holding the applicants personally liable for the decretal sum.
  5. The applicants thereafter sought a stay before the High Court. The learned Judge granted conditional stay on 16<sup>th</sup> April, 2025, requiring a deposit of Kshs. 20,000,000 in a joint account and a bank guarantee of Kshs. 30,000,000 within thirty days. The applicants state that they are unable to meet those terms and, therefore, seek relief from this Court.
  6. The 1<sup>st</sup> respondent opposes the application, arguing principally that the applicants have been found to have concealed their role in the 2<sup>nd</sup> respondent; that the decretal sum has remained unsatisfied for over seven years; and that the applicants have not provided proof of inability to comply with the terms imposed by the High Court.
  7. The principles governing an application under Rule 5(2)(b) are settled. As stated in *Stanley Kang'ethe Kinyanjui v Tony Keter & Others* [2013] eKLR and consistently reiterated thereafter, an applicant must demonstrate, first, that the appeal is arguable and, second, that unless stay is granted, the appeal will be rendered nugatory. This Court exercises original jurisdiction in such applications and does not undertake a mini-appeal of the impugned decision – even where conditional stay has been granted at the High Court.
  8. On arguability, the applicants contend that their intended appeal raises at least one bona fide question: whether the learned Judge properly applied the principles governing the lifting of the corporate veil. They argue that the evidence relied upon by the learned Judge did not establish that they were directors, shareholders, or controlling minds of the 2<sup>nd</sup> respondent; that the learned Judge misapprehended the evidentiary value of their communications; and that strangers to a judgment cannot be saddled with personal liability unless the stringent criteria for veil-piercing are fully satisfied.
  9. In *Stanley Kangethe Kinyanjui* (supra), this Court held that even a single arguable ground would suffice; and further that an arguable appeal is not one that must necessarily succeed, but one which ought to be argued fully before the Court. In other words, an arguable appeal is one which presents at least one serious legal issue warranting further judicial consideration on appeal. In the present case, whether the learned Judge crossed the high legal threshold for disregarding the separate legal personality of a company is, on its face, a legitimate point deserving full appellate interrogation. That alone suffices to satisfy the first limb.
  10. The second limb — the nugatory test — is more contested. The applicants submit that unless stay is granted, execution against them personally will issue immediately. They emphasise that the decretal amount, exceeding Kshs. 87 million, is substantial; that they are elderly individuals aged 62 and 91 respectively; that they are not involved in any remunerative enterprise; and that execution against their personal assets, including possible attachment and sale, would irreversibly disrupt their lives and dignity. They further argue that the very premise of the appeal is that they were never directors of the judgment debtor, and that it is, therefore, unjust to expose them to immediate enforcement of a company's debt before their challenge to the finding of personal liability is heard. They maintain that if stay is refused and execution proceeds, the appeal — whatever its merits — would become academic, for the coercive process of execution in this case would be irreversible in practical terms. It is, they say,



no answer that the decree is a money decree because the gravamen of their appeal is not quantum but the legality of their personal exposure.

11. The applicants also point out that nothing prevents the 1<sup>st</sup> respondent from continuing its attempts at execution against the 2<sup>nd</sup> respondent, which remains the corporate judgment debtor. They submit that depriving them of protection pending appeal would render the entire appellate process nugatory, as the personal consequences of execution cannot later be undone merely by a monetary refund. They rely on *Butt v Rent Restriction Tribunal* [1982] KLR 417, which affirms that the purpose of stay is to maintain the status quo so that the appeal, if successful, is not rendered illusory.
12. The 1<sup>st</sup> respondent maintains that because the decree is a money decree, it cannot be rendered nugatory, citing *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] KLR 410. It also faults the applicants for not proving impecuniosity by affidavit of means and asserts that their failure to satisfy the security terms imposed by the High Court demonstrates lack of bona fides.
13. We have carefully considered the dueling arguments by the two parties on the nugatory aspect. We are of the view that this is not a typical money decree situation. The underlying decree is against a corporation, yet the impugned ruling imposes personal liability on individuals who were not parties to the original suit. The applicants' core complaint is precisely that they were wrongly exposed to personal execution for a corporate debt. If execution proceeds now, the substratum of the appeal — the lawfulness of their personal exposure — will be extinguished. Unlike in ordinary monetary judgments, the prejudice here is not merely financial but jurisdictional and structural: it concerns whether the applicants may, in law, be treated as judgment debtors at all. That question would, in practical terms, be overtaken by events if personal execution issues before the appeal is heard. This Court addressed a similar concern in *Equity Bank Ltd v West Link MBO Ltd* [2013] eKLR, emphasising that the nugatory inquiry must be sensitive to the nature of the impugned order and the character of the threatened harm.
14. In *Reliance Bank Ltd v Norlake Investments Ltd* [2002] 1 EA 227, the Court reiterated that the nugatory test is context-specific and must be applied flexibly to prevent injustice. Given the applicants' advanced age, the nature of the case (imposition of individual liability for corporate veil) and the magnitude of the decretal sum, we are satisfied that the consequences of execution would not be reversible in any realistic sense. The ability to seek a refund in the distant future, after execution against individuals whose liability is itself contested, does not ameliorate the risk that the appeal would be rendered otiose.
15. The High Court itself considered the matter deserving of interim protection and granted conditional stay. The applicants' inability to meet the specific financial terms does not negate the need to preserve the appeal's substratum. The justice of the case requires maintaining the status quo until the appeal is heard.
16. Taking all factors into account, we are satisfied that both limbs of Rule 5(2)(b) have been met. The applicants have an arguable appeal, and unless stay is granted, that appeal will be rendered nugatory.
17. In the result, the application dated 30<sup>th</sup> April, 2025 succeeds. A stay of execution of the ruling delivered on 5<sup>th</sup> July, 2024 and all consequential orders is hereby granted pending the hearing and determination of the intended appeal. Costs of this application shall abide the outcome of the appeal.
18. It is so ordered.

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

**S. GATEMBU KAIRU, FCIArb, C.Arb.**



**JUDGE OF APPEAL**

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**NYAMWEYA**

**JUDGE OF APPEAL**

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**JOEL NGUGI**

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

