

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: W. KARANJA, ACHODE & MUCHELULE, JJ.A.)**

**CIVIL APPLICATION NO. E889 OF  
2025**

**BETWEEN**

**NCBA BANK KENYA PLC.....APPLICANT**

**AND**

**OFFICIAL RECEIVER & ADMINISTRATOR,  
MULTIPLE HAULIERS (E.A) LIMITED  
(UNDER**

**ADMINISTRATION) .....1<sup>ST</sup> RESPONDENT**

**MULTIPLE HAULIERS E.A LIMITED.....2<sup>ND</sup> RESPONDENT**

*(An application for an order of stay of the ruling and order of the High Court at Nairobi (F. Gikonyo, J.) dated 2<sup>nd</sup> October 2025 and stay of further proceedings in*

***HCCC. Insolvency Cause No. E022 of  
2021)***

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**RULING OF THE COURT**

1. The applicant, NCBA Bank Kenya PLC, is one of the main creditors of the 2<sup>nd</sup> respondent, Multiple Hauliers EA Limited. The 1<sup>st</sup> respondent, Official Receiver & Administrator (Multiple Hauliers (E.A) Limited (Under administration) was appointed by the High Court as the administrator of the 1<sup>st</sup> respondent on 13<sup>th</sup> September 2024.
2. This appointment was made pursuant to the ruling delivered on

13<sup>th</sup> September 2024, by A. Mabeya, J. who extended the interim orders in force. Secondly, he appointed the Official Receiver: -

***“strictly for the purposes of overseeing the process of completing the Term Sheet that has been***

**executed between the Company and the investor and to oversee the smooth taking over of the Company by the new investor by December 2024.**

**The Official Receiver was to report to court and advise the creditors on the progress after every 60 days. All actions against the 2<sup>nd</sup> respondent were suspended until further orders.”**

3. These orders aggrieved the applicant. The applicant filed a notice of appeal dated 20<sup>th</sup> September 2024, and by a notice of motion dated 22<sup>nd</sup> October 2024 made under **Rule 5(2)(b)** of the **Court of Appeal Rules**, sought stay of execution of the orders issued in the impugned ruling pending hearing and determination of the intended appeal.
4. This Court on 12<sup>th</sup> September 2025 allowed the notice of motion, and ordered stay of the orders issued on 13<sup>th</sup> September 2024 by the learned Judge until the intended appeal is heard and determined.
5. the learned A. Mabeya, J. in yet another ruling stated that:

***“In the interest of justice and to prevent a miscarriage of justice, the interim order issued did not exclude the appointment of the two replacement administrators. I now clarify the interim order to also include the replacement administrators. Accordingly, as the application by official receiver for appointment of administrators is pending, I extend the interim orders which also applies***

***to the two administrators until the application is heard. Their appointment is suspended for the sake of clarity. The Official Receiver or any other party may also move the court for any orders."***

6. These were the orders that aggrieved the applicant. The applicant filed a Notice of Appeal dated 14<sup>th</sup> October 2025, and by the instant notice of motion dated 24<sup>th</sup> October 2024 under **Rule 5(2)(b)** of the **Court of Appeal Rules**, sought stay of the above ruling and order of A. Mabeya, J. until the intended appeal is heard and determined and, further, a stay of further proceedings before the High Court in **High Court Insolvency Cause No E022 of 2021**
7. The applicant submitted that its complaint was that there was no application that had been made by any party that was before court for hearing and determination on 2<sup>nd</sup> October 2025; that the ruling was delivered without any of the parties being heard; that on 2<sup>nd</sup> October 2025 the matter was coming up for a mention for taking directions and that instead of the directions the learned Judge delivered a ruling; that it is trite that no substantive orders can be given during a mention and as such the ruling is a nullity; that the effect of that ruling is that the Company which was under administration of the administrators appointed by the applicant and an official receiver appointed by court which appointment was stayed by this Court, hand over the administration of the Company to the Directors; that the Company is under administration but there are no administrators and the Directors have taken over the Company which violates

the rights of the applicants from the protection of the security they have; that the Company owes the

applicant in excess of over Ksh.12 billion and to other secured creditors, which money is still owing and that the ruling hampers the applicant's ability to appoint administrators to recover the money owed to it.

8. It is submitted that all these are arguable points which merit to be heard and determined by this Court.
9. Concerning the nugatory aspect, it was contended that the 2<sup>nd</sup> respondent is an operating Company and raises revenue from its operations and that if the stay is not issued, the Directors will be in charge of the money generated from the operations of the Company and it is not known how the money will be applied. That the Company is already facing a winding up petition because of complaints with regards to how the Directors have been operating the Company; that it would be dangerous for this Court to allow the Directors who have mismanaged the Company to the extent in which they are not servicing the loan to be allowed to continue to manage the Company. That allowing this situation is a threat to the secured creditors and poses a danger in the Company being run down and render it impossible for the applicant to recover the money owed to it. Finally, that if the Company is ran without any supervision in the form of an administrator, there is a likelihood that the assets charged to this Company will be dilapidated in value

because of the manner the Company is dealing with them. That it is in the interest of justice that the Company be under an administrator as appointed by the applicant on 22<sup>nd</sup> September 2025 and that this Court should stay the ruling of 2<sup>nd</sup> October 2025 suspending the appointment.

10. The application was opposed by the 1<sup>st</sup> respondent whose case was that the application was misconceived, self-serving and an abuse of the court process as it seeks to displace a neutral court appointed administrator with administrators handpicked by NCBA, a single creditor, thereby undermining the collective interests of all creditors and stakeholders; that the 1<sup>st</sup> respondent was appointed as administrator of Multiple Hauliers (E.A) Limited on 13<sup>th</sup> September 2024 by an order of the court and that this Court on 17<sup>th</sup> February 2025 extended the term of the administrator for a further six months and vested the official receiver the full powers of an administrator under **Division 9** and the **Fourth Schedule** of the **Insolvency Act**; that the substitution of the official receiver with NCBA's nominees would fatally compromise the administration, create and incurable conflict of interest and tilt the process exclusively to the benefit of a single creditor.
11. The 1<sup>st</sup> respondent submitted that the ruling issued on 2<sup>nd</sup> October 2025 were directions issued based on the applications

before the

court and in any event, the court ordered that pending determination of the proceedings before it, there should be no appointment of administrators and hence it is a misconstruction for the applicant to claim that it was just substituting administrators when there was already an application for extension of an administrator of the official receiver as the current administrator; that no substantive orders were issued for this Court to deliberate upon with regard to this application, as the Judge only gave directions to guide on what would happen to the applications before the court and the decision by this Court.

12. On whether the appeal will be rendered nugatory it is contended that the issue in contention is who gets to appoint the administrator and when the administrator can be appointed and not the issue that there is no administrator in place. It is contended that the apprehension by the 1<sup>st</sup> respondent is that, should there be a stay, then the hearing on 3<sup>rd</sup> December 2025 will not take place, then there is a risk that the Directors will continue to control the Company and the dilapidation of the assets can occur, a matter the applicant is raising as matter of concern.
13. The application was opposed by the 2<sup>nd</sup> respondent whose case was that, should the application be granted, the Court would have essentially aided the applicant in stealing a match by

defeating the

ruling of Mulwa J., and denying the High Court the opportunity to hear and determine the 1<sup>st</sup> respondent's application seeking an extension of its term as administrator and the 2<sup>nd</sup> respondent's application challenging the appointment of the replacement of administrators; that the 2<sup>nd</sup> respondent's debenture over the 2<sup>nd</sup> respondent's property has already been fixed, and moreover the 2<sup>nd</sup> respondent's moveable and immovable assets are charged to various financial institutions including the appellant and the Directors cannot transfer, sell or charge the 2<sup>nd</sup> respondent's assets in the circumstances and that the financial institutions hold the original title documents pursuant to the charges.

14. It is submitted that the appeal is not arguable as it is an appeal against interim orders issued on 23<sup>rd</sup> September 2025. It is contended that the ruling of 2<sup>nd</sup> October 2025 was a clarification of the interim orders made on 23<sup>rd</sup> September 2025. It was contended that directions or orders are not appealable; those interim orders are not final orders and hence not appealable; and that there are no arguable grounds of appeal raised.
15. On the chances of the intended appeal being rendered nugatory, it was contended that all the assets are charged to the bank and are co-owned by the bank which defeats the nugatory aspect.

16. At the hearing of the application, learned Senior counsel Mr. Kamau Karori, appeared with learned counsel Mr. Cecil Kuyo for the applicant, Ms. Osicho appeared for the 1<sup>st</sup> respondent while learned counsel Mr. Owiti appeared with learned counsel Mr. Kiarie for the 2<sup>nd</sup> respondent. Both parties highlighted the written submissions already filed.

**17.** We have considered the application, the affidavits and both written and oral submissions. The principles applicable in applications of this nature as pronounced in **Stanley Kangethe Kinyanjui v Tony**

**Ketter & 5 Others [2013] KECA 378 (KLR)** are well settled. We

reiterate that **Rule 5(2)(b)** of the **Rules** of this Court is a procedural innovation designed to empower this Court to entertain an interlocutory application for the preservation of the subject matter of the appeal in order to ensure the just and effective determination of the appeal. A stay will only be granted if the applicant is able to show that the appeal or intended appeal has at least one arguable point. (See **Chris Munga N.**

**Bichange -vs- Richard Nyagaka**

**Tongi & 2 Others [2013] KECA 141 (KLR)**).

18. An arguable appeal is not necessarily one that will succeed, but simply one that is deserving of the Court's consideration.

Secondly, the applicant has to show that, if stay is not granted, the appeal or intended appeal, if successful, will be rendered nugatory (see

**Registered Trustees, Kenya Railways Staff  
Retirement**

**Benefits Scheme -vs- Milimo Muthoni & Company  
Advocates &**

**2 Others [2022] KECA 491 (KLR)).**

19. In our view, whether in the absence of an application, and on a mention date, the learned Judge had the jurisdiction to deliver the impugned ruling and issue substantive orders to suspend the appointed replacement administrators of the applicant, is an arguable point that is deserving of this Court's consideration.
20. On whether the appeal will be rendered nugatory, the applicant's argument was that the suspension of the replacement administrators means that there is no administrator of the 2<sup>nd</sup> respondent as the 1<sup>st</sup> respondent's appointment was also stayed by this Court. We agree with the applicant that as things stand, there is no administrator in place to preserve the assets and accounts of the 2<sup>nd</sup> respondent to ensure the rights of the applicant to recover its loan are protected. Besides, there is a likelihood that the Directors of the 2<sup>nd</sup> respondent may run down or deplete the value of the properties they are left to run with no supervision from the administrators. In effect, the applicant is likely to suffer irreversibly, if stay is not granted and the intended appeal ultimately succeeds.

21. We allow the notice of motion dated 24<sup>th</sup> October 2025, and order stay of the orders issued on 2<sup>nd</sup> October 2025 by the learned Judge,

we also issue an order of stay of proceedings in **HCCC Insolvency Cause No E022 of 2021** until the intended appeal, the subject of this ruling is heard and determined.

22. Costs of the application shall abide the outcome of the appeal.

**Dated and delivered at Nairobi this 19<sup>th</sup> day of December 2025.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**L. ACHODE**

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**JUDGE OF APPEAL**

**A.O. MUCHELULE**

.....  
**JUDGE OF APPEAL**

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

*SIGNED*

**DEPUTY REGISTRAR.**