

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

MISC. APPLICATION NO.114 OF 2015 CONSOLIDATED WITH

MISC. APPLICATION NO.126 OF 2015

BETWEEN

**CAPE HOLDINGS LIMITED (Under Administration).....
...APPLICANT**

AND

**SYNERGY INDUSTRIAL CREDIT
LIMITED.....RESPONDENT**

AND

**I & M BANK LIMITED
.....OBJECTOR**

AND

**JAYSUKHLAL BHAICHAND
SANGHRAJKA.....INTERESTED
PARTY**

RULING

Introduction & Background

1. On 26th June 2025, this court gave orders *inter alia* that the Warrants of Attachment and Sale concerning property L.R. No. 209/19436 [I.R. 120877] (“the suit property”) in the name of Cape

Holdings be hereby lifted and set aside and that an independent, professional valuation of the property be conducted by a valuer appointed by Synergy within 30 days from the date of the ruling. The costs of the said valuation were to be borne by Cape Holdings and the intended sale/auction of the property was stayed pending the completion and presentation of the valuation report to the Court. Thereafter, the court was to proceed to issue fresh warrants of sale in accordance with the law.

2. The court is now being called upon to determine the following applications by the parties; The Interested Party's applications dated 3rd October 2025 and 10th December 2025, Synergy's applications dated 19th December 2022, 27th November 2025 and 22nd December 2025 and Cape Holdings' application dated 26th November 2025. The Interested Party is seeking to dismiss the Synergy's application of 19th December 2022 seeking to lift the corporate veil of Cape Holdings and that the court to grants him and his family access to and possession of his property, Title No. Nairobi/Block 92/259 and to order the Land Registrar to remove the prohibitory orders from the property's title register.
3. Apart from seeking to lift the corporate veil of Cape Holdings, Synergy also seeks to review the court's orders of 26th June 2025 by lifting the stay of execution order and re-issue the warrants of

sale for Cape Holdings' prime asset, the suit property. It further seeks to discharge and set aside interim orders issued by the court on 12th December 2025 on the Interested Party's application of 10th December 2025 which allowed the Interested Party to access, occupy, and deal with the property Nairobi/Block 92/259. Synergy also wants the *status quo ante* restored and the sale of the suit property to proceed with the assistance of the OCS, Spring Valley Police Station.

4. On its part, Cape Holdings urges the court to stay of execution of the decree and that it be allowed to pay the debt in installments by converting the suit property into long-term leases and transferring one block, "*Grosvenor*" (formerly *Synergy Square*), to Synergy in partial satisfaction of the decree. It further seeks an order lifting all encumbrances on the title to facilitate this conversion and an order that an account be taken to determine the lawfully payable interest, limited by the statute of limitations.
5. The applications have been responded to by the parties by way of affidavits and supplemented by written and oral submissions by their respective counsels. I have considered the pleadings and the said submissions and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

6. I do not intend to spend so much time on these applications because much has been previously stated by this court and the Court of Appeal. On the Interested Party's application seeking access to and possession of his property, Title No. Nairobi/Block 92/259 and an order for the Land Registrar to remove the prohibitory orders from the property's title register, I am in agreement with Synergy that this matter is *res judicata* as the court has previously pronounced itself on the same in the ruling of 19th November 2024. The Interested Party had sought a stay execution and review of the orders of the Ruling of this court (Chepkwony J.,) issued on 14th June 2023 and the resultant order thereof in so far as the Court issued a prohibition order stopping any further dealings and/or otherwise dealing with the property Nairobi/Block 92/259. This court noted that the stay of execution orders being relied upon by the Interested Party had been discharged by the Court of Appeal's decision in **Synergy Industrial Credit Ltd v I & M Bank & another [2023] KECA 661 (KLR)** and that Synergy was at liberty to continue with executing the decree meaning that it could complete execution of the property **Nairobi/Block 92/259** by attaching the same.
7. Therefore, to entertain the same application again, or to allow the Interested Party's subsequent applications that seek the same

relief based on the same or similar grounds, would be to undermine the finality of the 19th November 2024 ruling. The Interested Party has already had his day in court on this specific issue, and he lost. Furthermore, the court finds that the Interested Party's application was procured through a material non-disclosure. At the time of seeking these *ex-parte* orders, the Interested Party failed to disclose the existence of his own prior application dated 3rd October 2025, which was already pending before this court and which sought substantially similar relief. This is a grave abuse of the court process. A party seeking *ex-parte* orders is under a duty of utmost good faith to make a full and frank disclosure of all material facts. The Interested Party breached this duty.

8. Still, the Interested Party's argument that the orders had lapsed is legally misconceived. I am in agreement with Synergy's response that the prohibitory orders of 14th June 2023 were not issued pending the determination of a "suit" in the manner contemplated by **Order 40 Rule 6** of the **Rules**. They were final orders in execution proceedings, explicitly stated to subsist until "*....further orders of this Honourable Court.*" No such further orders have been issued to discharge them. The orders therefore remain in full force and effect. The upshot is that the interim orders of 12th

December 2025 are hereby set aside. They were irregularly obtained and directly conflict with the valid and subsisting prohibitory orders of this Court. Consequently, Synergy's application dated 22nd December 2025 succeeds and the Interested Party's applications dated 3rd October 2025 and 10th December 2025 are dismissed.

9. On lifting of the corporate veil, I find that proceeding directly to lift the corporate veil before exhausting remedies against Cape Holdings' primary asset, that is the suit property, would be premature. That is not to say that I do not hear Synergy's grounds set out in its application dated 19th December 2022, I do. However, this is not the time to hear the same especially when they are in the process of executing Cape Holdings' known and main asset. Furthermore, in the court's ruling of 26th June 2025, by the ordering a fresh valuation and explicitly stating that upon its presentation, "*the court shall proceed to issue fresh warrants of sale,*" the court signaled that the next step is the sale of the suit property. Staying this process to hear a veil-lifting application now would directly contradict the court's own order. The proper course is to follow the court's sequenced plan of valuation, issuance of warrants and sale.

10. Further still, at the time Synergy's application was filed, Synergy acknowledged that the primary execution against the suit property was stalled by a stay. Its purpose in filing the application was therefore preservation, not immediate execution against the directors. It explicitly sought to prevent the dissipation of the Interested Party's property while it waited for the appeal to be determined. Since that stay has now been vacated and the court has ordered the sale of the suit property subject to a valuation, the urgency that prompted the veil-lifting application has diminished. The primary path to recovery is now open. I therefore strike out Synergy's application dated 19th December 2022 for lifting of the corporate veil at this time with leave to renew, if necessary, after the sale of the corporate assets and the examination of the directors.
11. Turning to Cape Holdings' application, I find that its prayer for an account of interest is *res judicata*, fully determined by the 19th November 2024 ruling. In its previous application, Cape Holdings' prayed for taking accounts of interest, challenging the 18% compound interest rate, and invoking **section 4(4) & (5)** of the ***Limitation of Actions Act***. This court explicitly addressed these issues, holding that such grounds were always available and challenging the interest awarded is too late in the day. The Court

of Appeal has further confirmed that the decree has been executed and its propriety cannot now be challenged. I therefore decline the entreaty to delve into this same issue once again.

12. On the prayer for registration of leases and lift all encumbrances, I find that this is an attempt to circumvent the previous pronouncements by this court and the Court of Appeal. The Court of Appeal has declared that execution was completed by attachment on 14th January 2022. The prohibition order was found proper and unchallenged. The court's ruling of 26th June 2025 specifically ordered a fresh valuation and once this was done, fresh warrants of sale would be issued. The clear intention was for the sale to proceed, not for the Cape Holdings to undertake complex land conversions that would inevitably delay execution. I find the application dated 26th November 2025 to be yet another delaying tactic by Cape Holdings in a decade-long effort to frustrate a lawful decree, and I therefore dismiss it in its entirety.

13. It is clear to me that Synergy has complied with the court's orders and directions of 26th June 2025. A valuation report dated 9th October 2025 been prepared by *Knight Frank Valuers Limited*, an independent firm, and was formally presented to this Court. The condition for the stay has therefore been satisfied. The court finds that the continued subsistence of the stay orders of 26th June 2025

serves no purpose. The stay was conditional, and the condition has been met. To delay the issuance of warrants any further would be to deny Synergy the fruits of its judgment, contrary to the principle that a decree holder should not be left holding a paper decree. Consequently, Synergy's application dated 27th November 2025 has merit. The stay must be lifted, and the Deputy Registrar is hereby directed to issue fresh warrants of sale for the suit property in accordance with the law.

Conclusion and Disposition

14. In the upshot, the following are now the final orders of the court:

- a) Synergy's Notice of Motion application dated 27th November 2025 is hereby allowed. The stay of execution orders issued on 26th June 2025 are hereby reviewed, varied, and discharged. The Deputy Registrar of this Court is hereby directed to re-issue warrants of sale for the property known as L.R. No. 209/19436 (I.R. 120877) forthwith, to facilitate its sale by public auction in accordance with the law.**
- b) Cape Holdings' Notice of Motion application dated 26th November 2025 is hereby dismissed with costs to Synergy**
- c) The Interested Party's Notice of Motion application dated 10th December 2025 is hereby dismissed with costs to Synergy. The interim orders issued on 12th**

December 2025 are hereby vacated and set aside in their entirety.

- d) Synergy's Notice of Motion application dated 22nd December 2025 is hereby allowed. For the avoidance of doubt, the prohibitory orders issued on 14th June 2023 over Title No. Nairobi/Block 92/259 remain in full force and effect.
- e) Synergy's Notice of Motion application dated 19th December 2022 and its prayer to lift the corporate veil of Cape Holdings is hereby struck out as being premature. Synergy is at liberty to renew the same, if so advised, after the sale of Cape Holdings' assets and upon the conclusion of proceedings under Order 22 Rule 35 of the Civil Procedure Rules.
- f) The Inspector General of Police through the Officer Commanding Station (OCS) of the Spring Valley Police Station is directed to provide such assistance as may be necessary to give effect to the orders issued herein, including ensuring compliance with the restoration of the *status quo ante* and preventing any interference with the property Nairobi/Block 92/259. It is so ordered.

DATED SIGNED and DELIVERED virtually at NAIROBI this 2nd

DAY OF MARCH 2026

.....
J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF

1. Mr. AHMED NASSIR SC and Ms. ASLI OSMAN for the Plaintiff/Decree Holder- Synergy Industrial Credit Limited.
2. Mr. ALLEN GICHUI for the Defendant/Judgement Debtor- Cape Holdings Limited.
3. Mr. MIKWA and Ms. MULYUNGI holding brief for Mr. GITONGA for the Interested Party.
4. Amos - Court Assistant

ORIGINAL