REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

MISCELLANOUS APPL. NO. E445 OF 2019

INSTALANCIONES INABENSA S.A……J-C/RESPONDENT

VERSUS

KENYA ELECTRICITY TRANSMISSION CO. LIMITED (KETRACO)……J-D/APPLICANT

AND

NCBA BANK KENYA (PLC)……1ST GARNISHEE

KENYA COMMERCIAL BANK……2ND GARNISHEE

STANDARD CHARTERED BANK……3RD GARNISHEE

COOPERATIVE BANK OF KENYA……4TH GARNISHEE

CITI BANK……5TH GARNISHEE

AND

ECOBANK KENYA LTD……INTERESTED PARTY

RULING

1. This ruling dispose two applications, the Judgement Debtor's application dated 17th December 2025 and the Interested Party's application dated 19th January 2026. The two applications were canvassed by way of written submissions.
2. The genesis of this matter is a Final Arbitral Award dated 30th July 2019, which was adopted as a judgment and decree of this court on 12th February 2021 in favour of the original Decree Holder, Instalaciones Inabensa S.A. (Inabensa). Upon failure by KETRACO to settle the decretal sum, the Decree Holder commenced garnishee proceedings, culminating in a Garnishee Order Nisi issued by this court on 11th December 2025.
3. Aggrieved by the Garnishee Order Nisi, KETRACO filed the Notice of Motion dated 17th December 2025, principally seeking a stay of execution. The application is supported by the affidavits of its Company Secretary, Florence Mitey, and is opposed by the Decree Holder. KETRACO's grounds for stay are twofold: Firstly, the public interest, arguing that immediate garnishment would cripple its operations as the sole national electricity transmission utility, paralysing essential services and threatening national security; Secondly, it raises serious doubts about the Decree Holder's legal capacity to execute, pointing to the Spanish insolvency of the original decree holder and questioning whether the assignment of the decree to the current claimant has been properly perfected or recognized in Kenya.
4. The Decree Holder opposes the stay, asserting that it is a liquid entity capable of refunding the decretal sum should the appeal succeed. It contends that KETRACO's financial

difficulties are self-inflicted and cannot excuse compliance with a lawful court decree.

5. While the stay application was pending, Ecobank Kenya Limited filed the Notice of Motion dated 19th January 2026. It seeks to be joined as an Interested Party and, substantively, for an order directing the garnishee banks to pay it EUR 3,800,000 directly from the attached funds. Ecobank's claim is predicated on a consent order entered in **HCCC No. E013 of 2019** on 22nd December 2020, which it argues created a secured interest over the proceeds of the Arbitral Award in its favour.
6. KETRACO supports Ecobank's joinder, echoing the fear of double jeopardy: it is obligated to pay the Decree Holder under the Arbitral Award, and simultaneously bound by the consent order to pay Ecobank. The Decree Holder vehemently opposes the joinder, arguing that this court lacks jurisdiction to enforce a consent from a different suit and that, as a purchaser of Inabensa's assets, it is not liable for its predecessor's debts, including the one to Ecobank.
7. Having carefully considered the applications, the following issues arise for determination;
    i. *Whether the Judgment Debtor, KETRACO, has demonstrated sufficient cause to warrant a stay of execution of the Garnishee Order Nisi.*
    ii. *Whether Ecobank Kenya Limited has met the legal threshold to be enjoined in these proceedings*
    iii. *Whether this Court can, within these garnishee proceedings, give effect to the consent order arising from* ***Milimani HCCC No. E013 of 2019.***

iv. What is the effect of the undisclosed Spanish insolvency proceedings on the Decree Holder's capacity to execute the decree?

v. Who should bear the costs of these applications?

8. The principles upon which the court may stay the execution of orders appealed from are settled. The Applicant must approach the court timeously and demonstrate the likelihood that he will suffer substantial loss if the order is denied. He must also furnish security for the performance of the decree in the event the appeal does not succeed. These are the requirements stipulated in Order 42 Rule 6(2) of the Civil Procedure Rules.
9. Since the Applicant filed the appeal as well as the application for stay of execution pending appeal within 6 days of the impugned ruling, the application was made timeously.
10. I now turn to the substantive issue. The core of the Applicant's case on substantial loss rests on two interconnected pillars: first, the public interest and the potential for catastrophic disruption to national electricity transmission and essential services; and second, the risk that the funds, if released, would be irreversibly dissipated to a party whose legal capacity and ability to refund is in serious question.
11. The Decree Holder counters that this is a money decree, and substantial loss in such cases is primarily established by showing that the decree-holder would be unable to refund the decretal sum if the appeal succeeds. It further argues that the current Decree Holder, CA Infraestructuras T & I SLU (the assignee), is a liquid entity capable of refunding any monies paid.

12. The Decree Holder has not, in response to the Applicant's assertion, placed before this Court any concrete evidence of the financial standing or asset base of CA Infraestructuras T & I, SLU within or outside this jurisdiction. The evidential burden, having shifted, was not sufficiently discharged. The assertion that it is a "reputable company" is, without more, insufficient to allay the legitimate concerns raised by the Applicant. In the event the appeal succeeds and the funds have been paid out to an entity that may not have been the proper decree holder, or to an entity without the means to effect restitution, the Applicant's appeal would indeed be rendered an empty victory. The public funds at stake are colossal, running into tens of millions of Euros and hundreds of millions of Kenya Shillings.

13. The Applicant has also presented compelling evidence of the critical nature of its mandate. KETRACO is not an ordinary commercial entity; it is a State Corporation solely responsible for the planning, construction, operation, and maintenance of Kenya's high-voltage electricity transmission network. It is funded by public funds and development partners. The freezing of its operational accounts has, by its own uncontroverted evidence, already disrupted its ability to pay staff salaries, service loans, procure key inputs, and maintain the national grid.

14. To insist, as the Decree Holder does, that this is a self-inflicted wound arising from the Applicant's refusal to pay a decade-old debt, is to overlook the profound public interest dimensions at play. While the rule of law demands that court decrees be obeyed, and state corporations cannot claim immunity from commercial obligations, the Court must also

be alive to the wider, potentially catastrophic, consequences of a sudden and total shutdown of the national electricity transmission system. An electricity blackout is not a mere inconvenience; it is a threat to national security, public safety, the economy, and essential services such as healthcare. The Applicant's fears in this regard are neither speculative nor far-fetched; they are real and imminent.

15. I am therefore satisfied that the Applicant has demonstrated, on a *prima facie* basis, that substantial loss may result if the stay is not granted. The intended appeal raises arguable grounds, and the unique circumstances of this case, involving a public utility and questions over the decree holder's capacity, take it outside the ordinary run of money decree cases.

16. I now turn to the issue of security. The Applicant has expressed, in the clearest terms, its readiness and willingness to furnish this Court with a bank guarantee as security for the due performance of the decree. This is a significant undertaking. It demonstrates good faith and a commitment to protecting the Decree Holder's interests while the appeal is pursued. It also addresses the Decree Holder's legitimate concern that its judgment should not be rendered valueless.

17. Regarding the alternative prayers, I have considered the request for a temporary stay to facilitate negotiations under Article 159(2)(c) of the Constitution. Similarly, the prayer for settlement by instalments under Order 21 Rule 12 of the Civil Procedure Rules has been considered. However, in light of the finding that a conditional stay pending appeal is

merited, these specific prayers are subsumed by the primary orders granted herein.

18. This Court is acutely aware of the tension between two fundamental principles: the right of a successful litigant to enjoy the fruits of its judgment, and the right of an aggrieved party to pursue an appeal without that appeal being rendered nugatory. The Court must balance these competing interests justly.

19. In this case, the balance of convenience and the interests of justice tilt decisively in favour of granting a conditional stay. The potential harm to the Applicant and the Kenyan public from a refusal of stay far outweighs the prejudice to the Decree Holder from a temporary delay in execution, particularly where that delay is conditioned on the provision of adequate security. The Decree Holder's interest in the decree is not extinguished; it is merely secured through a different mechanism, one that does not imperil the nation's electricity supply.

20. Accordingly, I find that the Applicant is entitled to an order for stay of execution.

21. Turning to the application dated 19th January 2026, the law on joinder is clear. Order 1 Rule 10(2) of the Civil Procedure Rules grants the court discretion to add any person as a party whose presence is necessary to enable it to effectually and completely adjudicate upon all questions involved in the suit. A party is necessary, if they are directly or legally interested in the proceedings.

22. In the instant case, the "matter in dispute" in the garnishee proceedings is the execution of the Arbitral Award. Ecobank claims a direct and legally recognized interest in the

proceeds of that very Award by dint of the consent order in **HCCC No. E013 of 2019**.

23. The existence of the consent order is not disputed by any of the original parties to it (KETRACO and Inabensa). The dispute is raised by COX T&I, which now stands in the shoes of Inabensa regarding the Award's benefits. To determine whether the proceeds of this Award should be paid to COX T&I free of the encumbrance claimed by Ecobank, or subject to it, the court must hear Ecobank. Its presence is not just proper, but necessary for a complete and final decision.

24. Accordingly, I find that Ecobank Kenya Limited has demonstrated a sufficient legal interest to be joined as an Interested Party. Its application for joinder succeeds.

25. Having allowed the joinder, the more difficult question is whether this Court can, within the confines of a garnishee application, issue the substantive order sought by Ecobank for direct payment. The Decree Holder argues that to do so would be to impermissibly enforce a decree from a different suit.

26. The mischief this court must avoid is issuing orders that conflict with or undermine a valid decree of a court of concurrent jurisdiction. What is before me is not a direct application to execute the decree in **HCCC No. E013 of 2019**. It is a garnishee application in respect of a different decree (the Arbitral Award). Ecobank has been joined to protect its interest in the *subject matter* of this garnishee.

27. The substantive order sought by Ecobank for direct payment is, in essence, a claim that it has a prior right or charge over the funds. This is a claim that must be adjudicated. However, the final arbiter of that claim cannot

be this court in a procedural interlocutory application. For this court to order the banks to pay Ecobank directly would be to enforce the consent order in **HCCC No. E013 of 2019**, a matter that properly lies before the court handling that file.

28. This substantive prayer is therefore declined at this stage. The Interested Party is at liberty to pursue its claim to the funds in the appropriate forum.

29. Critically, the joinder of Ecobank immediately illuminates the more fundamental flaw in these proceedings: the status of the Decree Holder itself. It is now an undisputed fact that the original decree holder, Inabensa, is bankrupt. Its rights were sold in a foreign insolvency proceeding to the entity now before me. Yet, at no point has this Decree Holder sought the recognition of those Spanish insolvency proceedings by the Kenyan Courts.

30. Kenya has domesticated the UNCITRAL Model Law on Cross-Border Insolvency in the Fifth Schedule to the Insolvency Act, 2015. The Act provides a clear, complete code for the recognition of foreign proceedings.

31. The entity now before me, claiming title to a Kenyan decree based on an order of a Spanish Commercial Court, has not legitimized its status. It cannot simply appear and claim entitlement without first complying with our own statutory framework. To allow otherwise would be to undermine the protections designed for local creditors like Ecobank, and to disregard the procedural integrity of our courts. The non-disclosure of the insolvency while pursuing execution is a serious omission.

32. In light of this, the Decree Holder’s arguments regarding the consent order become secondary. The primary question

is whether the entity seeking to execute this decree has any legal standing before this Court at all. The garnishee proceedings cannot validly proceed in favour of an entity whose legal capacity has not been duly recognized. KETRACO's fear of double payment is not just legitimate, it is imminent. Paying the garnishee sum to an entity whose legal standing is procedurally irregular would expose KETRACO to significant risk and would be an act of this court in vain.

33. The upshot of the above is that two competing interests must be harmonized. KETRACO, a public utility, is entitled to pursue its appeal, but it must secure the Decree Holder's interest. The Decree Holder, on the other hand, must first regularize its standing before it can enjoy the fruits of this judgment. Meanwhile, the substratum of the matter, the funds themselves, must be preserved to protect all competing claims, including that of the newly joined Interested Party.

34. Consequently, I make the following consolidated orders:

a) The Notice of Motions dated 17th December 2025 and 19th January 2026 are hereby allowed on the following terms;

i. There shall be a stay of execution of the Garnishee Order Nisi issued on 11th December 2025, pending the hearing and determination of the Applicant's appeal to the Court of Appeal.

ii. The grant of stay is conditional upon the Applicant, within thirty (30) days of the date hereof, procuring and furnishing to this Court a bank guarantee from a reputable bank registered in Kenya, in the sum of KES 1 billion.

The guarantee shall be irrevocable and payable on demand to the Decree Holder, CA Infraestructuras T & I, SLU, in the event the Applicant's appeal is dismissed and the decree remains unsatisfied. The guarantee shall be valid until final determination of the appeal and for a period of sixty (60) days thereafter to allow for execution.

iii. Upon provision of the bank guarantee as ordered, the Garnishee Order Nisi issued on 11th December 2025 shall be and is hereby lifted, and the garnishee banks are at liberty to permit the Applicant to operate its accounts in the normal course of business, provided that nothing in this order shall affect the existing court order of 17th May 2016 concerning Account No. 1111251622 at Kenya Commercial Bank.

iv. Ecobank Kenya Limited is hereby enjoined in these proceedings as an Interested Party.

v. The Decree Holder, CA Infraestructuras T & I, SLU, is hereby directed to file and serve a formal application for the recognition of the Spanish insolvency proceedings and its appointment as the foreign representative, in strict compliance with the Fifth Schedule to the Insolvency Act, 2015, within twenty-one (21) days of the date hereof. Failure to do so will result in the automatic discharge of the Garnishee Order Nisi.

vi. For the avoidance of doubt, the substantive prayers sought by the Interested Party for direct payment from the garnishees are declined at this stage.

b) The costs of this application shall be costs in the appeal.

c) The matter shall be mentioned after sixty (60) days to confirm compliance and for further directions.

RULING delivered virtually, dated and signed at **NAIROBI**
This **5th** day of **March** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms. Nyangweso h/b for Mr. Muthui for Judgment Creditor
Mr. Kioko h/b for Mr. Mumia for Judgment Debtor
Mr. Gichangi for 1st Garnishee
Mr. Gichana h/b for Mr. Ndirangu for 2nd Garnishee
Mr. Mureithi h/b for Mr. Lawson Ondieki for 3rd & 5th Garnishees
Ms. Adenyi h/b for Mr. Muchiri for 4th Garnishee
Ms. Kandie h/b for Mr. Mugisha for Interested Party
Court Assistant*: Carlos*