

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CIVIL APPEAL NO. E106 OF 2025**  
**ALLIANCE LEASING**  
**LIMITED.....APPELLANT/APPLICANT**  
**VERSUS**

**DOTWISE INTERNATIONAL**  
**LIMITED.....RESPONDENT/RESPONDEN**  
**T**

***(An appeal from the ruling of the Honourable F. M. Nyakundi (PM) in the Chief Magistrate's Court at Kericho delivered on 26<sup>th</sup> November 2025 in Kericho Chief Magistrate's Court Commercial Case No. E009 of 2025.)***

**RULING**

1. Before this Court for determination is the Appellant's Notice of Motion application dated 2<sup>nd</sup> December 2025. The application is brought under Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, and the inherent power of the Court.

2. The Appellant seeks the following orders;

***a) Pending the hearing and determination of the appeal, THERE SHALL BE A stay of all further proceedings before the Chief Magistrate's Court in Kericho Chief Magistrate's Court Civil Case Number E009 of 2025 including the ruling scheduled for delivery on 4<sup>th</sup> December 2025.***

***b) Pending the hearing and determination of the appeal, a stay of execution of the ex-parte order of the Magistrate's Court issued on 28<sup>th</sup> July 2025.***

***c) Costs of this application be in the appeal***

3. The application is supported by the affidavit of RAJIV BHUSHAN, a director of the Appellant, sworn on 2<sup>nd</sup> December 2025, and the annexed exhibits thereto. The Appellant has also filed written submissions dated 2<sup>nd</sup> March 2026 and a list of authorities.

4. The Respondent opposes the application through the Replying Affidavit of ONDARI OSORO DENNIS sworn on 19<sup>th</sup> February 2026, together with annexures marked "OOD-1" and "OOD-2".

5. The Court has carefully considered the application, the rival affidavits, the submissions, and the authorities cited.

6. The dispute arises from a Master Operating Lease Agreement entered into between the parties for the lease of seven motor vehicles. The Respondent defaulted in payment, leading the Appellant to repossess the suit motor vehicles in April 2025.

7. On 23<sup>rd</sup> July 2025, the Respondent filed suit in the Chief Magistrate's Court at Kericho (CMCC No. E009 of 2025) seeking reliefs arising from the repossession.

8. On 28<sup>th</sup> July 2025, the Magistrate's Court issued an ex-parte injunction restraining the Appellant from advertising for sale, selling, transferring, alienating, disposing of, detaining, or in any way interfering with the suit motor vehicles.

9. On 1<sup>st</sup> August 2025, the Appellant filed a Notice of Preliminary Objection challenging the Magistrate's Court's pecuniary and territorial jurisdiction to hear the suit. On the same date, the Respondent filed a contempt application seeking to cite the Appellant's directors for disobedience of the injunction orders and to have them detained in prison for up to 6 months.

10. On 11<sup>th</sup> September 2025, the Appellant filed an application seeking to have its Preliminary Objection heard in priority to the Respondent's contempt application. By a ruling delivered on 26<sup>th</sup> November 2025, the Magistrate's Court (Hon. F.M. Nyakundi, PM) dismissed the Appellant's application on the ground that the supporting affidavit sworn by Rajiv Bhushan was defective for lack of authority.

11. The Magistrate's Court scheduled the ruling on the Respondent's contempt application for 4<sup>th</sup> December 2025. Aggrieved by the said ruling, the Appellant filed the present appeal on 2<sup>nd</sup> December 2025, together with the instant application for stay.

12. The Appellant contends that it has an arguable appeal and that unless stay of proceedings is granted, the appeal will be rendered nugatory.

13. The Appellant argues that the Magistrate's Court erred in dismissing its application on the technical ground that the affidavit was defective. It relies on Order 9 Rule 2(c) of the Civil Procedure Rules and the Court of Appeal decision in **Makupa**

***Transit Shade Limited & another v Kenya Ports Authority & another [2015] KECA 891 (KLR)*** , where it was held that there is no legal requirement to file authority to swear an affidavit; it is sufficient for the deponent to state that they are duly authorized.

14. The Appellant has annexed a Board Resolution dated 31<sup>st</sup> July 2025 showing that Rajiv Bhushan was appointed as a director and authorized to sign documents on behalf of the company.

15. On the test for stay of proceedings, the Appellant cites ***Imperial Bank Limited (In Receivership) & 2 others v Alnashir Popat & 17 others [2017] KEHC 9923 (KLR)*** , which sets out the two-fold test: (a) sufficient cause/substantial loss, and (b) no undue delay.

16. The Appellant argues that substantial loss will result if stay is not granted because;

***(a) The Respondent's contempt application seeks the imprisonment of the Appellant's directors for up to 6 months.***

***(b) The appeal challenges the jurisdiction of the Magistrate's Court. It is unjust to face penal consequences from a court whose authority to hear the matter is under challenge.***

***(c) The suit motor vehicles are depreciating assets, and the Appellant continues to suffer financial loss. The***

**Respondent owes over Kshs. 20 million in arrears and Kshs. 168 million in outstanding lease balance.**

**(d) Relying on *Delphis Bank Limited v Channan Singh Chatthe & 5 others* [2006] KECA 295 (KLR) and *Reliance Bank Ltd v Norlake Investments Ltd* [2002] 1 EA 227 , the Appellant argues that if the contempt application is determined first, the appeal will be rendered academic and nugatory.**

17. On delay, the Appellant notes that the application was filed 6 days after the ruling, hence there is no undue delay.

18. On stay of execution of the ex-parte injunction, the Appellant argues that the injunction is an "order" capable of being stayed under Order 42 Rule 6, and that its continued operation causes substantial loss.

19. On security, the Appellant submits that the order sought to be stayed is not a money decree, and the Respondent is actually indebted to the Appellant. Requiring security would be inequitable.

20. The Appellant urges the Court to grant the stay orders sought.

21. The Respondent opposes the application primarily on the ground that the supporting affidavit sworn by Rajiv Bhushan is incompetent for lack of authority.

22. The Respondent has annexed a CR12 (annexure "OOD-1") obtained from the Registrar of Companies, which allegedly shows

that Rajiv Bhushan is not a director or shareholder of the Appellant company.

23. The Respondent contends that;

***(a) Rajiv Bhushan admits that the formal process of his appointment as a director with the Registrar of Companies has not been completed. Under the Companies Act, 2015, he is therefore not legally a director.***

***(b) The internal board resolution and letter of acceptance have no legal effect under the Companies Act and are not evidence of directorship.***

***(c) No power of attorney has been granted to Rajiv Bhushan to act on behalf of the company.***

***(d) The entire application is therefore fatally defective and ought to be expunged from the court record.***

24. The Respondent further argues that the Magistrate's ruling dated 26<sup>th</sup> November 2025 was sound and proper, and that the Appellant has not purged the contempt.

25. On the merits of the stay application, the Respondent contends that the Appellant has not demonstrated any viable reasons or met the threshold for granting stay of proceedings or stay of execution. The Respondent prays that the application be dismissed with costs.

26. The Respondent has raised a preliminary challenge to the competence of the entire application, arguing that Rajiv Bhushan

is not a director of the Appellant and lacks authority to swear the supporting affidavit. The Respondent relies on a CR12 (annexure "OOD-1") obtained from the Registrar of Companies, which allegedly does not list Rajiv Bhushan as a director or shareholder.

27. The Appellant, on the other hand, has annexed a Board Resolution dated 31<sup>st</sup> July 2025 (at page 1 of the exhibit marked "RB-2") showing that:

***(a) Rajiv Bhushan was appointed as a director of the company with effect from 31<sup>st</sup> July 2025.***

***(b) The directors were authorized to "verify, sign and submit any statutory forms" and "do all acts, deeds and things as may be necessary to give effect to the aforesaid resolution."***

28. The Appellant also relies on the Court of Appeal decision in ***Makupa Transit Shade Limited & another v Kenya Ports Authority & another [2015] KECA 891 (KLR)*** , where the Court held:

***"We could go further and state that indeed there is no legal***

***requirement that authority to swear an affidavit on behalf***

***of a corporate need to be filed in court. ... It was therefore***

***sufficient for the deponents to state that 'they were duly***

***authorized.' It was then upto the appellants to demonstrate***

***by evidence that they were not so authorized."***

28. The Supreme Court in ***Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others [2023] KESC 105 (KLR)*** affirmed that a company acts through its organs and by resolutions.

29. This Court has considered the rival positions. The Respondent has placed before the Court a CR12 which may reflect the position as at the date it was obtained. However, the Appellant has placed before the Court a board resolution dated 31<sup>st</sup> July 2025 appointing Rajiv Bhushan as a director. There is no evidence before this Court that this resolution has been challenged, set aside, or quashed by any competent forum.

30. In ***Lake View Development Limited v Belgo Holdings Limited & another [2024] KEELC 3960 (KLR)*** , the Court held;

*"In view of the foregoing, there is no gainsaying that until and unless the appointment of the said directors is quashed, via a Decision of the High Court, same are therefore lawful directors and are thus duly constituted as recognized agents of the Plaintiff company in accordance with the law."*

31. This Court finds that Rajiv Bhushan has demonstrated, through the board resolution, that he was appointed as a director of the Appellant. The Respondent has not placed before this Court any evidence to impeach the authenticity or validity of the said

resolution. Furthermore, under the **Makupa Transit** principle, it was sufficient for the deponent to state that he was duly authorized. The Appellant has gone further and provided the board resolution as proof. This Court therefore finds and holds that the application is competently before the Court.

32. On the issue of stay, the principles governing the grant of a stay of proceedings pending appeal are well settled. In ***Imperial Bank Limited (In Receivership) & 2 others v Alnashir Popat & 17 others [2017] KEHC 9923 (KLR)*** , Tuiyott J (as he then was) stated;

*"When the High Court considers an application to Stay proceedings in its Trial jurisdiction its discretion is fettered by two important conditions. That there is sufficient cause to order Stay, that is, that substantial loss would ensue from a refusal to grant stay. Secondly that the Application is brought without delay."*

33. The test is therefore two-fold;

- (a) Sufficient cause / substantial loss.
- (b) No undue delay.

34. On the second limb, this application was filed on 2<sup>nd</sup> December 2025, a mere 6 days after the ruling of the Magistrate's Court delivered on 26<sup>th</sup> November 2025. There is clearly no undue delay. The Respondent did not contest this point.

35. On the first limb, the question is whether the Appellant has demonstrated sufficient cause or substantial loss if the stay is not granted.

36. The Court of Appeal in ***Butt v Rent Restriction Tribunal [1982] KLR 417***, held that the court ought to exercise its discretion in a way so as not to prevent the appeal, if successful, from being rendered nugatory.

37. Therefore, this Court makes the following observations;

***(a) The Respondent's contempt application dated 1<sup>st</sup> August***

***2025 seeks orders to have the Appellant's directors cited***

***for contempt and detained in prison for a period not exceeding 6 months. This is not a mere monetary claim; it***

***touches on the liberty of the individual.***

***(b) The Appellant's appeal challenges the jurisdiction of the***

***Magistrate's Court to hear the suit. If the Magistrate's Court***

***proceeds to hear and determine the contempt application,***

**and makes adverse findings, the Appellant's directors may**

**face penal consequences. If the appeal subsequently succeeds, the success would be hollow, the damage, that**

**is, imprisonment and reputational harm would already have occurred and cannot be undone.**

**(c) The Magistrate's Court had scheduled the ruling on the**

**contempt application for 4<sup>th</sup> December 2025 (now overtaken by events due to interim orders). If this Court**

**does not grant a stay, the ruling will be delivered, and the**

**substratum of the appeal will be destroyed.**

38. This Court is satisfied that the Appellant has demonstrated substantial loss sufficient to warrant a stay of proceedings. The prejudice to the Appellant is grave, immediate, and irreversible. On the other hand, the prejudice to the Respondent is merely delay, which can be compensated by an award of costs. Accordingly, this Court finds that the Appellant has satisfied the conditions for grant of stay of proceedings pending appeal.

39. The Appellant also seeks a stay of execution of the ex-parte injunction issued by the Magistrate's Court on 28<sup>th</sup> July 2025. Order 42 Rule 6(2) of the Civil Procedure Rules provides:

**"No order for stay of execution shall be made under sub-rule**

**(1) unless;**

**(a) the court is satisfied that substantial loss may result to**

**the applicant unless the order is made and that the application has been made without unreasonable delay;**

**and**

**(b) such security as the court orders for the due performance**

**of such decree or order as may ultimately be binding on**

**him has been given by the applicant."**

40. The Appellant must satisfy three conditions; Substantial loss and no unreasonable delay and provision of security.

41. On delay, as already found, the application was filed promptly.

42. On substantial loss, the Appellant argues that;

**(a) The suit motor vehicles are depreciating assets.**

**(b) The Respondent owes over Kshs. 20 million in arrears and**

**Kshs. 168 million in outstanding lease balance.**

**(c) The injunction prevents the Appellant from exercising its** contractual rights of repossession and mitigating further loss.

43. The Court finds that the Appellant has demonstrated substantial loss. The continued operation of the injunction causes ongoing commercial harm.

44. On security, the Appellant submits that the order sought to be stayed is not a money decree, and the Respondent is actually indebted to the Appellant. Requiring security would be inequitable.

45. The Court notes that the injunction is a prohibitory order, not a positive order for payment of money. The rationale for security under Order 42 Rule 6 is to secure the due performance of a decree that may ultimately be binding. In this case, there is no monetary award in favour of the Respondent requiring protection.

46. However, the Court must balance the interests of both parties. To protect the Respondent's position, the Appellant should provide an undertaking as to damages, which is customary in injunction matters.

47. The Court also notes the Respondent's argument that an injunction is a "negative order" incapable of being stayed.

However, this Court agrees with the Appellant's submission that an injunction is an "order" within the meaning of Order 42 Rule 6. Its continued operation restrains legal rights and is enforceable by penal sanctions. If enforcement causes substantial loss or renders an appeal nugatory, it is capable of being stayed.

48. This Court is satisfied that the Appellant has met the conditions for grant of stay of execution of the ex-parte injunction.

49. Costs follow the event. However, as the main appeal is yet to be determined, it is appropriate that the costs of this application be costs in the appeal.

50. For the reasons set out above, The Notice of Motion application dated 2<sup>nd</sup> December 2025 is found to be with merit giving rise to issuance of the following orders;

***(a) THAT there shall be a stay of all further proceedings before the Chief Magistrate's Court in Kericho Chief Magistrate's Court Civil Case Number E009 of 2025 - Dotwise International Limited versus Alliance Leasing Limited pending the hearing and determination of the appeal.***

***(b), THAT there shall be a stay of execution and/or operation of the ex-parte order of injunction issued by the Magistrate's Court on 28<sup>th</sup> July 2025 in Kericho Chief Magistrate's Court Civil Case Number E009 of 2025 pending the hearing and determination of the appeal***

***(c) Costs of this application shall be costs in the appeal.***

**Dated, signed and delivered at Kericho this 12<sup>th</sup> day  
of March, 2026.**

.....  
**J. K. SERGON  
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Njiru for Appellant/Applicant

Jausiku for the Respondent