

**IN THE COURT OF  
APPEAL AT  
MOMBASA**

**(CORAM: MUSINGA (P), MURGOR, & NGENYE, JJ.A.)**

**CIVIL APPLICATION NO. E052 OF 2025**

**BETWEEN**

**KENYA PORTS AUTHORITY.....APPLICANT**

**AND**

**POWERPARTS KENYA LIMITED.....RESPONDENT**

*(Being an application for stay of proceedings and stay of execution pending the hearing and determination of an appeal against the Ruling and Orders of the High Court at Mombasa (F. Wangari, J.) delivered on 30<sup>th</sup> June 2025*

*in*

**Mombasa Commercial Case Number E070 of 2024)**

\*\*\*\*\*

**\*\*\*\*\* RULING OF THE**

**COURT**

- 1.** Before this Court is an application dated 1<sup>st</sup> July 2025 which is brought under Articles 50 and 159 of the Constitution, section 3, 3A and 3B of the Appellate Jurisdiction Act, as well as **rule 5(2)(b)** of the Rules of this Court. In the application, the applicant principally seeks stay of execution of the ruling and consequential orders delivered on 30<sup>th</sup> June 2025 by **F.**

**Wangari, J. in HCCOMM No. E070 of 2024 (Power  
Parts**

**Kenya Limited v. Kenya Ports Authority**), including the subsequent garnishee proceedings, pending hearing and determination of the appeal it has filed from the said ruling.

2. The background to this application is that, a dispute arose from two framework supply contracts issued to the respondent in February and April 2024 for the supply of spare parts, which later resulted in litigation following termination of the contracts. On 6<sup>th</sup> March 2025, the High Court issued interim measures and referred the matter to arbitration, after which the parties recorded a consent order on 29<sup>th</sup> May 2025 requiring the applicant to pay USD 846,061 that was said to be outstanding under specified Local Purchase Orders. The applicant later contended that reconciliation revealed that payments totaling USD 1,957,540.03 had already been made in respect of the 27 LPOs and that a further USD 111,516.10 had been inadvertently overpaid, thereby disputing the sums claimed under the consent.
3. Despite the reconciliation dispute, the respondent filed a Notice of Motion dated 26<sup>th</sup> June 2025 seeking garnishee orders to recover USD 413,940.00, leading the trial court to

issue a

garnishee order *nisi* on 27<sup>th</sup> June 2025 attaching the applicant's bank accounts. In response, the applicant filed its own application dated 28<sup>th</sup> June 2025 seeking variation of the consent order and setting aside of execution proceedings and the interim stay. However, in a ruling delivered on 30<sup>th</sup> June 2025, the trial court dismissed the applicant's application *in limine* and directed that the respondent's garnishee proceedings proceed for hearing.

4. Being dissatisfied with the High Court's ruling, the applicant intends to appeal against the said ruling as evinced in the Notice of Appeal dated 30<sup>th</sup> June 2025.
5. Turning to the merit of the present application, the applicant asserts that based on the grounds on the face of the motion itself and the affidavit in support sworn by **Eveline Shigoli**, its General Manager, Supply Chain Management, its intended appeal is arguable. In its memorandum of appeal annexed to the said affidavit, the applicant contends, *inter alia*, that the learned judge erred in law and in fact by dismissing the applicant's Notice of Motion dated 28<sup>th</sup> June 2025 *in limine* while directing that the respondent's garnishee application proceed

for hearing; by failing to accord the applicant the right to be heard on its application; and on the question of compliance with the consent orders, by permitting execution through garnishee proceedings notwithstanding that no decree had been extracted and without proof of a recoverable debt capable of attachment; and by misapprehending the applicable provisions of the Civil Procedure Rules and the public finance principles governing the use and protection of public funds.

6. On the nugatory aspect, the applicant contends that unless orders of stay of execution and stay of proceedings are granted, the High Court may proceed to hear and determine the respondent's application dated 26<sup>th</sup> June 2025 and issue a garnishee order absolute compelling payment of USD 413,940.00 from the applicant's bank accounts. The applicant asserts that continued attachment of its bank accounts will cripple its operational functions and compel it to release public funds which are entrusted on it by the public. It is further contended that once payment is effected and the garnishee proceedings concluded, the appeal will be rendered nugatory and the applicant will suffer prejudice

from having effectively

been condemned unheard while the respondent would suffer no more than compensable delay should the stay orders be granted.

7. The respondent opposes the application vide a replying affidavit sworn by **Vishal Soni**, its director. He depones that, on 30<sup>th</sup> June 2025, he attended court virtually during which counsel for both parties addressed the court on the status of compliance with the consent orders. He avers that counsel for the respondent informed the court of the applicant's non-compliance with the consent, which had led to the filing of the garnishee application dated 26<sup>th</sup> June 2025 while counsel for the applicant indicated that the applicant had filed an application dated 28<sup>th</sup> June 2025 opposing the garnishee proceedings. Following oral submissions, the court dismissed the applicant's application *in limine* and directed that the respondent's garnishee application proceeds for hearing.
8. As regards arguability, the respondent avers that the intended appeal is not arguable because the High Court orders challenged by the applicant were merely negative orders dismissing the applicant's application dated 28<sup>th</sup> June 2025 and

directing the garnishee application to proceed, which orders are incapable of being stayed. The respondent further avers that the intended grounds of appeal are frivolous and founded on misconceptions of the law, particularly regarding the right to be heard, the applicability of provisions on execution under the Civil Procedure Rules and the definition of a decree. It is thus averred that the applicant has failed to demonstrate any valid basis for reviewing or setting aside the consent order of 28<sup>th</sup> May 2025 forming the basis of the garnishee proceedings.

9. On the nugatory aspect, the respondent contends that the appeal would not be rendered nugatory because the decretal sum of **USD 413,940.00** represents an admitted outstanding portion of the consent judgment debt which remains unpaid despite partial payments already made. In addition, that the respondent is a reputable company capable of refunding the amount if the appeal were eventually successful. The respondent further asserts that the applicant has not opposed execution by other lawful modes and that the present application is merely intended to delay recovery of the unpaid decretal sum through the

garnishee proceedings.

10. The respondent avers that the dispute between parties has already been conclusively determined through a long chain of binding decisions, beginning with a judgment that was entered by the High Court in 2019 in favour of the respondent and which was affirmed by this Court 2022. It is further averred that the applicant's subsequent petition to the Supreme Court was struck out, thereby leaving the decree final. It is further asserted that the applicant has persistently refused to satisfy the decree which has continued to accrue interest and now stands at a substantially higher amount thereby necessitating lawful execution measures. The respondent maintains that the prohibitory order issued on 22<sup>nd</sup> May 2025 merely preserves

**L.R. No. 1549/Section 1 Mainland North, Mombasa**, the only known asset available for execution and therefore does not occasion any irreparable prejudice to the applicant but instead safeguards the decree-holder's ability to realize the fruits of a 28-year litigation.

11. The respondent further avers that the applicant's reliance on ongoing succession disputes affecting the estates of

deceased director is misconceived because a limited liability  
company is

a separate legal entity and such disputes cannot shield company property from execution. It is also contended that the intended appeal is incompetent for failure to obtain leave, and that the present application for stay does not meet the requirements under rule 5(2)(b) of the Rules of this Court. The respondent avers that the application is a vexatious and dilatory attempt to frustrate enforcement of the decree after exhausting all avenues of appeal and that unless execution is allowed to proceed without delay, the respondent will continue to be unjustly denied the benefit of a valid and long-standing judgment. Accordingly, the respondent urges dismissal of the application, leave to proceed with execution, and an order requiring the applicant to deposit security for the decretal amount.

12. At the hearing of this application, learned counsel **Mr. Munyao** appeared for the applicant while **Mr. Omollo**, learned counsel appeared for the respondent. Both counsel briefly highlighted their respective client's written submissions.
13. On behalf of the applicant, it was submitted that the trial court, by dismissing the applicant's application *in limine*

effectively

denied the applicant the right to be heard and permitted execution to proceed in the absence of a duly extracted decree. According to counsel, these were arguable issues for determination on appeal. On the nugatory aspect, counsel contended that the applicant, being a state corporation, enjoys statutory protection against attachment of its assets and that unless stay is granted, the impending determination of the application to make the garnishee order nisi absolute, heard on 3<sup>rd</sup> July 2025 with the ruling scheduled for 16<sup>th</sup> October 2025, may result in the release of public funds and thereby render the intended appeal nugatory.

14. For the respondent, it was contended that the impugned order was a negative order incapable of being stayed and that the applicant had failed to demonstrate that the intended appeal raises any arguable issues. On the nugatory aspect, counsel submitted that the applicant had neither pleaded nor proved that the respondent would be unable to refund the decretal sum in the event the appeal succeeds, and, that on the contrary, the respondent had demonstrated its financial capacity to repay

any sums that may be paid pursuant to the garnishee proceedings.

- 15.** We have considered the application, the affidavits, the rival submissions and the law. It is trite law that applications of this nature, the applicant must demonstrate, first, that the intended appeal is arguable, and secondly, that unless the orders sought are granted, the appeal will be rendered nugatory. See **Stanley**

**Kang'ethe Kinyanjui v Tony Ketter & 5 Others** [2013] eKLR.

16. Before we advent into determining this application on its merits, we must first consider whether we have the requisite jurisdiction. The respondent contends that the order dismissing the applicant's application was negative in nature and, therefore, incapable of being stayed. While it is true that the dismissal order itself was negative, the trial court also issued consequential positive orders and/or directions, including allowing the garnishee proceedings to proceed and the fixing of the matter for hearing. These consequential orders had operative effect and are capable of execution, thereby properly invoking this Court's jurisdiction under rule 5(2)(b).

17. Turning to the arguability of the intended appeal, the law is clear that an arguable appeal is not one that must necessarily succeed but one that raises at least a single *bona fide* issue deserving consideration by the Court. In the present matter, the applicant raises several issues which, *prima facie*, cannot be said to be frivolous, including whether the trial court erred in dismissing the applicant's application *in limine* without according it an opportunity to be heard, whether execution could properly proceed in the absence of an extracted decree, and whether garnishee proceedings could lawfully issue against a state corporation in the circumstances presented. Without making any final findings on the merits, we are satisfied that the intended appeal presents at least one arguable issue deserving this Court's consideration.
18. On the nugatory aspect, it is trite law that whether or not an appeal will be rendered nugatory depends on whether the act sought to be stayed, if allowed to occur, is reversible, or, if not, whether damages would adequately compensate the aggrieved party. In the present case, we are satisfied that unless stay is granted, the garnishee proceedings may result

in the release of

**USD 413,940.00** from the applicant's bank accounts thereby disrupting its statutory operations and exposing public funds to immediate disbursement before the appeal is heard. Once payment is effected and the garnishee proceedings concluded, the substratum of the intended appeal will have been substantially altered, with the result that the appeal may be rendered largely academic.

19. Although the respondent asserts that it is financially capable of refunding any sums paid should the appeal succeed, this Court must also consider the practical prejudice that may arise from the interruption of the applicant's operations, the potential difficulty of recovering public funds once disbursed and the public interest considerations attendant to the management of statutory funds. In these circumstances, we are satisfied that the applicant has demonstrated that, absent the grant of stay, the intended appeal would be rendered nugatory.

**20.** Since the applicant has satisfied both limbs under rule 5(2) (b), the Notice of Motion dated 1<sup>st</sup> July 2025 is merited and is hereby allowed. There shall be a stay of execution of the ruling and consequential orders delivered on 30<sup>th</sup> June 2025

in **HCCOMM**

**No. E070 of 2024** by F. Wangari, J. and a stay of the garnishee proceedings arising from the respondent's Notice of Motion dated 26<sup>th</sup> June 2025 pending the hearing and determination of the intended appeal. We also direct that the appeal be heard on a priority basis. The costs of this application shall abide the outcome of the appeal.

**Dated and delivered at Mombasa this 13<sup>th</sup> day of March 2026.**

**D. K. MUSINGA, (PRESIDENT)**

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

**A. K. MURGOR**

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

**G.W. NGENYE-MACHARIA**

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

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

*Signed*

**DEPUTY REGISTRAR.**