

**IN THE COURT OF APPEAL
AT NAIROBI**

**(CORAM: JOEL NGUGI, NDERI & MUNYAO,
JJ.A.) CIVIL APPLICATION NO. E712 OF 2025**

BETWEEN

NCBA BANK KENYA PLC.....APPELLANT

AND

MG HOLDINGS LIMITED.....1ST

RESPONDENT

RAJINDER SINGH BARYAN.....2ND

RESPONDENT THE ESTATE OF THE LATE TARLOCHAN

SINGH HEER.....3RD

RESPONDENT MANVIR SINGH BARYAN.....

.....4TH RESPONDENT BARAK FUND SPC

LIMITED.....5TH RESPONDENT

*(Being an application for stay of the Ruling and Order of the
High Court of Kenya at Nairobi (Mulwa, J.) dated 30th October,
2025*

in

H.C.COMM. Case No. E601 of 2025)

RULING OF THE COURT

1. This is an application dated 26th November, 2025 brought under Rule 5(2)(b) of the Rules of this Court seeking a stay of the Ruling and Orders of the High Court (*Mulwa J.*) delivered on 30th October, 2025 in ***Milimani High Court Commercial Case No. E601 of 2025***. By that ruling, the learned Judge granted interim measures of protection under Section 7 of the Arbitration Act, No. 4 of 1995 restraining the Applicant, NCBA Bank Kenya PLC, and the 5th Respondent from appointing administrators over Multiple Hauliers (E.A.) Limited ("the Company") and from enforcing guarantees issued by the 1st to 4th Respondents pending the conclusion of ***London Court of Commercial Arbitration (LCIA) Arbitration***

No. 246177. The Applicant now seeks to stay those orders pending the hearing and determination of its intended appeal.

2. The litigation posture giving rise to the present application is commercially significant and procedurally complex. The Applicant is a secured creditor of the Company pursuant to syndicated financing arrangements executed in October, 2017. The facilities were secured through debentures, guarantees and other security instruments typical of syndicated lending structures.
3. According to the material placed before the Court, the Company's indebtedness to the Applicant stood at approximately Ksh. 12.7 billion as at November, 2024 and continues to accrue interest.
4. In March, 2024, the 1st to 4th Respondents commenced LCIA arbitration proceedings alleging that the Applicant and the 5th Respondent breached their contractual obligations under the financing agreements by failing to disburse agreed facilities. The Respondents contend that the failure to disburse those facilities deprived the Company of essential liquidity, precipitating financial distress that ultimately culminated in the Company's placement under administration.
5. The arbitration proceedings have progressed considerably. Pleadings have been exchanged and the arbitral tribunal has scheduled hearing dates for March, 2027. The 1st to 4th Respondents assert that their claim in the arbitration exceeds Ksh. 88 billion.
6. In September, 2025, apprehending that the Applicant intended to appoint replacement administrators and enforce guarantees against them, the 1st to 4th Respondents moved the High Court under Section 7 of the Arbitration Act seeking interim protective measures.
7. The High Court granted the relief sought. The learned Judge held

that the applicants before that Court (who are the 1st to 4th Respondents herein) had satisfied the test articulated by this Court in ***Safaricom***

Limited v Ocean View Beach Hotel Limited & 2 Others [2010] eKLR to be entitled to interim protective measures under the Arbitration Act. That test provides that an applicant must demonstrate: (i) the existence of an arbitration agreement; (ii) that the subject matter of the arbitration is under threat; and (iii) that the interim measure sought is appropriate to preserve that subject matter.

8. The High Court concluded that the appointment of administrators or enforcement of guarantees during the pendency of arbitration risked undermining the arbitral process and potentially destroying the Company as a going concern before the arbitral tribunal determined liability.
9. The Applicant is aggrieved by that decision and has lodged a Notice of Appeal signalling its intention to challenge the ruling before this Court. In the meantime, apprehending that the impugned orders substantially impair its rights as a secured creditor, it has filed the present application seeking a stay of those orders pending the hearing and determination of the intended appeal.
10. The application is opposed by the 1st to 4th Respondents. Both parties filed written submissions. Those of the Applicant are dated 23rd February, 2026 while those of the 1st to 4th Respondents are dated 24th February, 2026. The 5th Respondent did not participate in the proceedings despite proof of service of the application and the hearing notice.
11. During the hearing of the application, learned counsel Mr. Karori Kamau, leading Mr. Kuyo, appeared for the Applicant while learned counsel Mr. Owiti, appearing with Mr. Kiarie, appeared for the 1st to

4th Respondents. Counsel relied on their written submissions which they orally highlighted before us.

12. The Applicant indicates that it intends to challenge the High Court decision on several fronts. It argues that the learned Judge erred in restraining the exercise of statutory rights conferred upon secured creditors under the Insolvency Act, No. 18 of 2015. It submits that the Act expressly empowers secured creditors to appoint administrators to protect secured assets and that those statutory mechanisms cannot properly be suspended through interim arbitral measures.
13. The Applicant argues that Section 7 of the Arbitration Act cannot be interpreted to disable insolvency processes established by statute. In its view, arbitration law cannot be deployed as a shield against legitimate insolvency enforcement by a secured creditor.
14. The Applicant further contends that the arbitration concerns damages for alleged breach of financing agreements and does not challenge the validity of insolvency processes themselves. It, therefore, submits that the High Court misdirected itself by treating insolvency enforcement as a threat to arbitration.
15. The Applicant also points to practical risks arising from the High Court orders. It argues that leaving the Company under the control of directors whose interests are adverse to the secured creditor exposes the secured assets to potential dissipation, deterioration, or strategic mismanagement.
16. The Respondents strongly contest those assertions. They maintain that the High Court correctly exercised its jurisdiction under Section 7 of the Arbitration Act and that interim measures are intended precisely to preserve the efficacy of arbitration.
17. They rely on ***Safaricom Ltd v Ocean View Beach Hotel Ltd***

(supra)

and ***RFS v JDS [2013] eKLR*** where this Court emphasised that

interim relief in arbitration matters must remain flexible and responsive to the circumstances of each case.

18. The Respondents argue that allowing the Applicant to appoint administrators would place control of the Company and, indirectly, the arbitration in the hands of a party (the Applicant) facing enormous financial exposure. They submit that administrators appointed by the Applicant would have statutory authority under the Insolvency Act to determine whether litigation involving the Company should continue. Such authority, they argue, could effectively allow the Applicant to influence proceedings against itself, and to the detriment of the 1st to 4th Respondents. In their view, that outcome would compromise the integrity of the arbitration.

19. The jurisdiction of this Court under Rule 5(2)(b) is well settled. In ***Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR*** this Court stated:

“In dealing with Rule 5(2)(b) applications the Court exercises original and discretionary jurisdiction. The applicant must satisfy the Court on two principles: first, that the appeal or intended appeal is arguable; and second, that unless the order sought is granted, the appeal or intended appeal would be rendered nugatory.”

20. The Court further observed in the same decision that:

“An arguable appeal is not one which must necessarily succeed but one which ought to be argued fully before the Court.”

21. Applying that standard, we are satisfied that the intended appeal raises serious and arguable questions of law. The interaction between Section 7 of the Arbitration Act and the insolvency regime

established under the Insolvency Act is neither trivial nor settled.
Whether interim

arbitral measures may restrain the exercise of statutory insolvency rights by a secured creditor is a question that warrants full appellate interrogation.

22. The arguability limb is, therefore, satisfied.

23. The second limb concerns whether the intended appeal would be rendered nugatory if the orders sought are not granted.

24. On this limb, as rehashed above, the Applicant contends that unless the stay sought is granted the intended appeal will be rendered illusory. It argues that the impugned orders effectively disable it from exercising statutory rights conferred upon a secured creditor under the Insolvency Act, including the right to appoint administrators over the Company pursuant to the debenture it holds. The Applicant submits that the continued operation of the Company without administrators appointed under that statutory regime exposes the charged assets to the risk of dissipation, deterioration, and continued trading losses, thereby eroding the value of the security securing a debt that now stands in excess of Ksh. 12.7 billion. In its view, if the appeal ultimately succeeds after such erosion has occurred, the victory would be hollow because the security underlying the Applicant's statutory rights would have been materially impaired.

25. The Respondents submit that the dispute between the parties is essentially monetary and that any delay in enforcement of the Applicant's debt is compensable through the continued accrual of interest. It further submits that staying the impugned orders exposes the 1st to 4th respondents of the real risk that any administrators appointed by the Applicant would directly undermine the arbitration proceedings.

26. While the 1st to 4th Respondents' submissions have some force, they do not fully address the Applicant's concern. The Applicant's grievance is not merely that it cannot presently enforce its debt. Rather, it contends that the impugned orders disable it from exercising statutory powers conferred upon secured creditors under the Insolvency Act — powers designed precisely to preserve the value of charged assets when a debtor company is in financial distress.
27. The Applicant's apprehension is that leaving the Company without effective administration exposes the secured assets to progressive dissipation and deterioration. It submits that in the absence of administrators appointed pursuant to the statutory insolvency framework, the Company remains under the control of directors whose interests are adverse to those of the secured creditor. In such circumstances, there exists a real risk that the Company's financial affairs may be conducted in a manner that erodes the value of the security through continued trading losses, asset depletion, or strategic decision-making inconsistent with creditor protection.
28. The material before us also includes a further affidavit placing before the Court earlier judicial pronouncements arising from litigation involving the same Company. Among the material annexed is the ruling of the High Court (Okwany J.) delivered on 8th December, 2022 recognising the Applicant's entitlement, as holder of a qualifying floating charge, to appoint administrators over the Company pursuant to the Insolvency Act.
29. The affidavit also draws attention to two decisions of this Court including a ruling delivered in ***NCBA Bank Kenya PLC v Official Receiver & Administrator, Multiple Hauliers (EA) Limited***

(Under Administration) & Another [2025] eKLR, in
proceedings concerning

the same Company. In that ruling, this Court observed that the absence of administrators overseeing the affairs of the Company carried the real risk of asset dissipation and could materially prejudice the position of secured creditors.

30. Those determinations do not resolve the questions raised in the intended appeal. However, they illuminate the practical context within which the impugned orders presently operate. The effect of those orders is that the Applicant remains disabled from invoking statutory insolvency mechanisms to appoint administrators under the Insolvency Act. In circumstances where the indebtedness is substantial and continues to accrue, and the company is already in financial crisis, the absence of such supervision raises a real risk that the value of the charged assets may diminish during the pendency of the appeal.

31. If that were to occur, the success of the intended appeal would offer little practical relief to the Applicant. It would have vindicated its statutory rights only after the security underlying those rights had materially deteriorated.

32. In those circumstances we are satisfied that the nugatory limb has been established.

33. That conclusion does not trivialise the 1st to 4th Respondents' concern regarding the integrity of the arbitration. However, the arbitration is scheduled for hearing in March, 2027. The parties were in agreement before us that the appeal can be heard well before that date if appropriate directions are issued. The justice of the matter, therefore, lies not in maintaining the impugned restraint indefinitely but in ensuring that the substantive appeal is heard and determined with expedition.

34. In the result, we are satisfied that the Applicant has met both limbs required under Rule 5(2)(b). Accordingly, we allow the application.
35. There shall be a stay of execution of the Ruling and Orders of the High Court (*Mulwa J.*) delivered on 30th October, 2025 in ***Milimani High Court Commercial Case No. E601 of 2025*** pending the hearing and determination of the intended appeal.
36. We further order that the Applicant shall file and serve the Record of Appeal within thirty (30) days of the date hereof. Upon filing, the appeal shall be listed for case management immediately and shall thereafter be set down for hearing on a priority basis in the next term.
37. Costs of this application shall abide the outcome of the appeal.
38. It is so ordered.

Dated and delivered at Nairobi this 13th day of March, 2026.

JOEL NGUGI

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

NDUMA NDERI

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

MUNYAO SILA

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

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

Signed

DEPUTY REGISTRAR