

**IN THE COURT OF  
APPEAL AT  
MOMBASA**

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

**CIVIL APPLICATION NO. E049 OF 2025**

**BETWEEN**

**DHANJAL INVESTMENTS LIMITED.....APPLICANT**

**AND**

**SHABAHA INVESTMENT LIMITED.....RESPONDENT**

*(Being an application for injunction and stay of proceedings emanating from the Ruling of the High Court of Kenya at Mombasa (F. Wangari, J.) delivered on 22<sup>nd</sup> May 2025*

*in*

**Civil Suit No. 38 of 1997)**

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**RULING OF THE COURT**

1. Before this Court is an application dated 17<sup>th</sup> June 2025 which is brought under **rule 5(2)(b), 44(1) and 49(1)** of the Rules of this Court. In the application, the applicant principally seeks orders of injunction to restrain the respondent, whether by themselves, their agents, servants, employees, or assigns, from dealing in any manner whatsoever with the property known as L.R. No. 1549/Section I Mainland North, Mombasa

(C.R. 13445) pending

hearing and determination of an intended appeal. The applicant also seeks orders staying any further proceedings and consequential orders in **Mombasa Civil Suit No. 38 of 1997, Shabaha Investments Limited v. Dhanjal Investments Limited**, pending hearing and determination of the intended appeal.

2. The background to this application is that the respondent herein (as decree holder), filed an application dated 30<sup>th</sup> October 2024 at the High Court in Mombasa seeking execution of a monetary decree issued on 17<sup>th</sup> June 2019. In the motion, the respondent sought, among other orders, a prohibitory order against the parcel of land known as L.R. No. 1549/Section I Mainland North, Mombasa (C.R. 13445) to restrain any transfer or charge thereof, together with leave to attach and sell the said property by public auction in satisfaction of the decretal sum which was stated to have increased from Kshs. 69,660,000 to approximately Kshs. 144,396,796 inclusive of accrued interest.
3. The applicant (as judgment debtor) opposed the application on the basis that some directors of the company were

deceased; the property was allegedly affected by pending succession disputes;

the respondent had not exhausted other modes of execution; and that the amount claimed had not been properly particularized.

4. In addition, the respondent filed a preliminary objection dated 20<sup>th</sup> February 2025 seeking to strike out the application on the ground that it offended section 20 of the Consumer Protection Act.
5. In its ruling delivered on 22<sup>nd</sup> May 2025, the trial court held that the preliminary objection had not been prosecuted by the applicant and, therefore, dismissed it for lack of merit.
6. On the merits of the application, the court held that the decree remained unsatisfied, and that the respondent was entitled to proceed with execution. It rejected the contention that pending succession proceedings involving some of the company's directors could prevent execution, reiterating the principle of separate corporate personality and holding that the company's registered property was liable to attachment in satisfaction of the decree. The court consequently granted the prohibitory order over the suit property but declined to immediately authorize its sale, noting that the decretal

amount claimed had not been properly particularized and tabulated in compliance with Order

22 rule 7 of the Civil Procedure Rules. The application was therefore partially allowed, with directions that the respondent files a proper computation of the amount due before further execution orders could issue.

7. Being dissatisfied with the High Court's ruling, the applicant intends to appeal against the said whole ruling as evinced in the notice of appeal dated 22<sup>nd</sup> May 2025.
8. Turning to the merits of the present application, the applicant asserts, based on the grounds on the face of the motion itself and the affidavit in support by **Nirmal Dhanjal**, its director, that its intended appeal is arguable. In its memorandum of appeal annexed to the said affidavit, the applicant contends that the learned judge erred in law and in fact by failing to consider and apply the doctrine of exhaustion before issuing prohibitory orders over property allegedly affected by ongoing succession proceedings; by allowing execution proceedings despite alleged procedural irregularities and the existence of pending succession causes concerning the suit property; by introducing and relying on facts not pleaded by the parties; by failing to consider the applicant's submissions, factual

assertions, and legal arguments

and by misconstruing the applicable provisions of law and relevant precedents; and by arriving at a decision that was biased, unjust, and against the weight of the law and the evidence on record.

9. On the nugatory aspect, the applicant contends that the appeal will be rendered nugatory unless stay is granted because execution of the decree may lead to attachment and sale of the suit property, thereby causing substantial and irreversible prejudice. It is argued that such execution would risk loss of the land despite the applicant having already paid the full purchase price, thereby effectively allowing the respondent to retain both the land and the purchase price. The applicant further asserts that the ongoing succession disputes affecting the estates of the deceased directors have constrained the company's ability to operate and settle obligations, and that immediate execution during this period would cause severe and irreparable harm that could not be adequately remedied if the appeal ultimately succeeds.
10. The respondent opposes the application vide a replying affidavit sworn by **Bryan Waruhiu**, its director. 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 in 2022. It is further averred that the applicant's subsequent petition to the Supreme Court was struck out, thereby leaving the decree final and enforceable. 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 directors 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, **Mrs. Otieno**, learned counsel held brief for **Dr. Aoko** for the applicant, while **Ms. Wangui Shaw**, learned counsel, appeared for the respondent. Both counsel briefly highlighted their respective client's written submissions, which we shall not rehash as it was basically a reiteration of the grounds set out

hereinabove.

13. We have considered the application, the affidavits, the rival submissions and the law. It is trite law that in 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.
14. On arguability, 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. However, arguability must be shown by pointing to a clear legal or factual error in the impugned ruling and not simply by expressing general dissatisfaction with the trial court's decision.
15. Having considered the draft memorandum of appeal and the grounds relied on in the application, we are not persuaded that the applicant has raised any arguable issue that would justify the exercise of this Court's discretionary jurisdiction. In our view, the High Court properly applied the well-established principle that a company is a separate legal entity and,

therefore, disputes relating to the estates of deceased directors cannot prevent

execution against property registered in the name of the company. This position is firmly settled in company law and no clear legal error has been shown. Likewise, the argument that the doctrine of exhaustion was not applied is misplaced since execution proceedings arising from a final judgment do not depend on the completion of unrelated processes such as succession proceedings involving persons who are legally separate from the corporate judgment debtor.

16. In addition, the record reflects that the decree the respondent seeks to execute was issued in 2019, later confirmed on appeal, and the applicant's further attempt to challenge it to the Supreme Court was unsuccessful. The execution proceedings now complained of therefore stem from a valid and long-standing decree that has not been satisfied. It is also clear from the impugned ruling that the learned judge acted cautiously by declining to immediately authorize the sale of the property and, instead, directed the respondent to first file a proper computation of the decretal amount before any further execution steps could be taken. In these circumstances, the applicant has not, in our

view, shown any serious issue of law or fact that would justify this Court's intervention at this interlocutory stage.

17. Notwithstanding the foregoing, and even assuming arguability were established, the applicant must additionally satisfy the Court that unless the orders sought are granted, the intended appeal would be rendered nugatory. In our view, the applicant has not satisfied this requirement. In so stating, we note that the order presently in force is a prohibitory one, preserving the property pending further lawful execution steps, The High Court expressly declined to authorize an immediate sale. Preservation of property pending computation of the decretal amount cannot, in itself, render an appeal nugatory. On the contrary, the order serves to maintain the *status quo* and secure the subject property pending compliance with the procedural requirements governing execution.
18. Further, we are not persuaded that the applicant's apprehension that the property may eventually be sold is enough to show that the appeal would be rendered nugatory. If the property is sold after the required legal procedures are followed and the appeal later succeeds, the law provides

remedies to address the

situation. In any event, the decree in favour of the respondent has remained unsatisfied for several years, and halting execution without strong justification would, in our view, unfairly deny the decree holder the benefit of a valid judgment.

19. Taking the foregoing into account, and as the applicant has failed to satisfy either limb of the well-known test under rule 5(2)(b), this application cannot succeed. Accordingly, the notice of motion dated 17<sup>th</sup> June 2025 is hereby dismissed with costs to the respondent.

**Dated and delivered at Mombasa this 25<sup>th</sup> day of March 2026.**

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

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

**A. K. MURGOR**

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**JUDGE OF APPEAL**

**G. W. NGENYE-MACHARIA**

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

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

*Signed*  
**DEPUTY REGISTRAR.**