



**Guojun v Huadong (Miscellaneous Application E327 of 2024)
[2026] KEHC 4872 (KLR) (Commercial and Tax) (14 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4872 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E327 OF 2024**

BK NJOROGE, J

APRIL 14, 2026

BETWEEN

QIAN GUOJUN APPLICANT

AND

GU HUADONG RESPONDENT

RULING

1. This is a Ruling in respect of the Application dated 3rd April, 2025 seeking for a stay of execution pending an Appeal to the Court of Appeal.

Background Facts

2. The Applicant filed the Notice of Motion dated 3rd April 2025 seeking the following orders
 - a. Execution of and all proceedings to enforce the Ruling, Order and Decree given in this matter on 7th November 2024 by the Honourable Mr. Justice Benjamin K. Njoroge be stayed pending the hearing and final determination of this application.
 - b. Execution of and all proceedings to enforce the Ruling, Order and Decree given in this matter on 7th November 2024 by the Honourable Mr. Justice Benjamin K. Njoroge be stayed pending the hearing and final determination of the Defendant's Appeal to the Court of Appeal against the said Ruling, Order and Decree.
 - c. Costs of this application be made to abide the result of the said Appeal.
3. The Application was supported by the Affidavit of Qun Huadong. He stated that by the Ruling delivered on 7th November 2024, the Court recognized and adopted as a decree the Final Award on



Costs dated 26th January 2024. It was issued and publicized by the Arbitrator, Njeri Kariuki, in the arbitration between the parties.

4. The Applicant was the initial Respondent in the main Motion that gave rise to these proceedings. For ease of reference the Court will for purposes of this Ruling refer to Qun Huadong as the Applicant. It follows that reference to the Respondent means Qian Guojun.
5. The award requires the Applicant to pay to the Respondent Kshs. 8,028,388 together with interest at 14% per annum until payment in full. The interest has increased the total amount claimed to approximately Kshs. 9,152,388. Dissatisfied with the Ruling, the Applicant has filed a Notice of Appeal and obtained leave to appeal to the Court of Appeal of Kenya in preparation for the intended appeal.
6. The Applicant argued that the intended appeal is arguable and has a strong likelihood of success. It was further contended that enforcing payment of the decretal sum before the appeal is heard would cause substantial hardship, potentially crippling the Applicant's business operations and affecting employees' livelihoods. The Applicant also expressed concern that the Respondent may be unable to refund the decretal sum should the appeal succeed, and therefore seeks a stay of execution to preserve the subject matter of the appeal and safeguard the interests of justice.
7. The Respondent filed its Replying Affidavit sworn on 3rd June 2025. In response, the Respondent contended that the Ruling delivered on 7th November 2024 created a clear and enforceable monetary obligation against the Applicant. That therefore the decree is immediately executable rather than speculative or contingent. Further, that the present application for stay has been filed after an unexplained delay of more than five months. Additionally, the Respondent has already filed an appeal in this matter before the Court of Appeal of Kenya, and therefore the High Court should refrain from entertaining the application as the matter is already before the Appellate Court.

Issues for determination

8. The Court has considered the Motion, the affidavits, the rival submissions, and the authorities cited. The two (2) issues arising for determination are:
 - i. Whether this Court has jurisdiction to grant the application for stay sought.
 - ii. Whether the Applicant has met the threshold for stay under Order 42 Rule 6(2).

Analysis

9. While relying on Order 42 Rule 6(2) of the Civil Procedure Rules, the Applicant took the position that stay may be granted for sufficient cause. That the Courts are enjoined to give effect to the overriding objectives in the exercise of their powers under the *Civil Procedure Act* or in the interpretation of any of its provisions.
10. On the other hand, the Respondent disputed the Applicant's claims of irreparable harm, arguing that they are unsupported. That the Applicant has not demonstrated the nature of the alleged business that would suffer loss. Further, the Applicant, a foreign national, has not shown the existence of assets within Kenya, making recovery difficult if the appeal fails. In addition, his willingness to provide a bank guarantee contradicts his claim of financial hardship and does not constitute sufficient security. Instead, the Respondent urged the Court to require the full decretal sum to be deposited in a joint interest-earning account should a stay be granted.



i. Whether this Court has jurisdiction to grant the application for stay sought.

11. Does the Court have jurisdiction to determine this Application? It is well established that under the Arbitration Act, the Court has no jurisdiction to hear applications post recognition and adoption of the arbitral award as a judgment of the Court. This position was well enunciated by the Court of Appeal in the seminal decision of *Anne Mumbi Hinga V Victoria Njoki Gathara*, [2009] eKLR. The Court stated as follows:

“A careful look at all the provisions cited in the heading in the application and invoked by the appellant in the superior court clearly shows that, all the provisions including the Civil Procedure Act and rules do not apply to arbitral proceedings because Section 10 of the Arbitration Act makes the Arbitration Act a complete code and rule 11 of the Arbitration Rules cannot override Section 10 of the Arbitration Act which states: “Except as provided in this Act no court shall intervene in matters governed by this Act.

The provisions of the Arbitration Act make it clear that it is a complete code except as regards the enforcement of the award/decreed where Arbitration Rules 1997 apply the Civil Procedure Rules where appropriate. In our view, Rule 11 of the Arbitration Rules 1997 has not imported the Civil Procedure Rules line, hook and sinker to regulate arbitrations under the Act.”

12. Under Section 10 of the Arbitration Act, no Court shall intervene in matters governed by the Act except as provided therein. Further, Section 32 of the Act is clear that, “except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act.”
13. The Court finds that the parties herein did not “otherwise agree” on the issue of the Court’s intervention post the recognition of the arbitral award. Thus, this Court is functus officio. The Court is persuaded to associate itself with the holding in *Pili Management Consultants Limited v China Fushun No 1 Building Engineering Company Limited* [2025] KEHC 16714 (KLR)

“Based on a reading of the above, once the High Court has recognized and enforced an award as a decree of the court, it is functus officio.

The power to grant leave to appeal from a Section 35 application lies only with the Court of Appeal, and not the High Court. This is evident, because the jurisdiction of the Court of Appeal is not based in statute, but rather, is a creation of the Supreme Court and is specifically granted to only the Court of Appeal.

In this regard, the Supreme Court explained that in limited matters, the Court of Appeal may grant leave to appeal from the High Court and assume jurisdiction. However, “This circumscribed and narrow jurisdiction should also be so sparingly exercised that only in the clearest of cases should the Court of Appeal assume jurisdiction.” (See *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch* (Petition 12 of 2016) [2019] KESC 11 (KLR) (6 December 2019) (Judgment)). (Emphasis mine)

Therefore, in the event that there is any jurisdiction to grant a stay of execution of an arbitral award, the same lies within the sole preserve of the court that has the limited jurisdiction to grant leave to appeal, which in this case, is the Court of Appeal.



Accordingly, I find that this Court has no jurisdiction to grant the orders sought; it has no powers to grant leave to appeal; and having recognized and enforced the final award, it thereafter became functus officio.”

14. It therefore matters not whether this Court granted leave to Appeal on the basis that such leave was not opposed by the Respondent. Nothing much would flow from such leave if this Court is divested from granting the same as parties cannot give a Court jurisdiction, where it lacks the same.

ii.) Whether the Applicant has met the threshold for stay under Order 42 Rule 6(2).

15. Had the Court determined that it had Jurisdiction, it would have granted a conditional stay. That is to the effect that the Applicant deposits the entire decretal sum in an interest earning Bank Account in the names of the Counsel for the Parties pending Appeal within a period of 45 days. However, this is now moot on account of the Court’s considered view that it has no jurisdiction to grant the stay orders sought.
16. As to costs, the same lie at the discretion of this Court and ordinarily follow the event, the same are awarded to the successful Respondent.

Determination

17. The Applicant’s Application dated 3rd April, 2025 is hereby dismissed as lacking in merits.
18. The costs of the Application are awarded to the Respondent.
19. It is so ordered.
20. This file is marked as closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 14TH DAY OF APRIL, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Zainab for Mr. Sarvia for the Respondent/Applicant.

Miss Lanoi holding brief for Miss Njoroge for the Applicant/Respondent.

Mr. John Paul -Court Assistant

