

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

(Before Hon. Lady Justice Monica Mbarũ)

CAUSE NO. E032 OF 2023

KUDHEIHA.....CLAIMANT

VERSUS

SUCHAM INVESTMENT LIMITED.....RESPONDENT

RULING

The Respondent, Sucham Investment Limited, filed an application dated 30 January 2026 under the provisions of section 1A, 1B and 3A of the Civil Procedure Act, Order 22 Rule 25 and 52, Order 42 Rule 6, Order 51 of the Civil Procedure Rules and seeking orders:

1. *Spent.*
2. *Spent.*
3. *Pending the hearing and determination of the intended appeal against the judgment dated 29th January 2026 and any ensuing decree, execution of the said judgment and decree be stayed.*
4. *In the alternative, pending the hearing and determination of the suit No. ELC/E005/2026 at the Environment and Land Court at Kwale, execution*

of the judgment dated 29th January 2026 and any ensuing decree be stayed.

5. *Costs be provided for.*

The application is supported by **Charanjit Singh Hayer**, a director of the company, and on the grounds that judgment herein was delivered on 29 January 2026, the execution of which is ongoing, including the enforcement of the balance of approximately Ksh. 32 million through what the Respondent contends is a fraudulent and contemptuous private treaty sale of its prime beachfront immovable property, title C.R. 17508[L.R. 13443] and C. R. 18325[L.R. 13442] valued at Ksh. 1.8 billion for Ksh. 600 million only.

Hayer avers in his affidavit that a transfer of title has already taken place and he has filed suit for gross fraud at the Kwale ELC, which assumes jurisdiction post-transfer under ELC E005 of 2026 – **Sucham Investment Limited v Registrar of the Land Registrar and Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers & 3 others.**

The application herein is necessary to seek a stay of execution, as without it, there will be grave and irreparable harm, including loss of a unique hospitality asset. The Respondent Ehrin has filed an appeal against the judgment herein delivered on 29 January 2026 on the basis that there exists a prima facie arguable appeal with high chances of success, and there will be a substantial

loss if the stay of execution is not allowed. He has moved the court without delay.

The balance of convenience favours the Respondent who seeks to prevent unjust enrichment by the Claimant.

Hayer avers that the parcels of land subject to execution herein are approximately 8.466 Ha (20, 92 acres) in Tiwi Beach, Kwale County, with a fully developed hospitality establishment known as Amani Tiwi Beach Resort. However, on 8th August 2025, with the parties' consent, the court issued Prohibitory Orders barring the sale or transfer of the subject titles. The orders were endorsed with a penal notice registered on 5th September 2025, thereby imposing a statutory embargo on all dealings under section 68 of the Land Registration Act.

On 30th September 2025, the Claimant was authorised to sell the land parcels through Kinyua & Company Auctioneers to recover Ksh. 32 million plus costs and any surplus thereof to be remitted to the Respondent. Despite the Prohibitory Order, the auctioneers proceeded to take the sale and transfer of the subject titles.

Hayer avers that the transfer instruments dated 12th November 2023 indicate that they were for the sale of Ksh. 100 million of L.R. No. 13443 and Ksh. 500 million for L.R. No. 13442, the total being Ksh. 600 million.

No memorandum of sale was executed. The Respondent was not served with the warrants for attachment as required by law. Following investigations, the Respondent has discovered that the entity registered as the proprietor with the 1st Respondent, Genesis Avenue Investment Limited and a CR12 reveals it was incorporated on 27th October 2025, long after the impugned execution process had lost the capacity to take the transfer at the time.

The decree sought to be enforced amounts to approximately Ksh. 32 million while the suit properties are valued at Ksh. 1.8 billion. A valuation of 12th January 2026 reveals a value of Ksh. 1.8 billion. The forced sale value of Ksh. 1.3 billion represents a 25% discount on the market value, and the sale by the auctioneers was grossly undervalued.

Unless the orders sought are issued, the Respondent stands to suffer great loss and damage.

In reply, the Claimant filed the Replying Affidavit of Hezron Onwonga, the chief industrial relations officer, who avers that judgment herein was delivered on 9th July 2024, and the Respondent, through the firm of E.O. Ratemo & Co. Advocates, filed an application dated 1st August 2024 seeking to set aside the judgment, which was set aside through a ruling delivered on 18th December 2024.

Upon the court's ruling, the Respondent appointed Dr Otieno F. Advocates, who requested mediation, which was conducted before the County Labour Officer, Kwale. The conciliation report was filed in court and dated 24th February 2025.

The parties signed a consent agreement, which the court adopted on 17th June 2025.

The Respondent failed to pay the agreed consent amount. The Claimant moved the court to allow execution to proceed by advertisement of the Respondent's movable and immovable assets and property. This was allowed.

The Claimant reported to the court having sold the suit property and paying off the grievants' terminal dues.

The instant application by the Respondent is made post-consent judgment and upon conclusion of the execution process. The Respondents have appeared in court with different advocates without leave or consent, contrary to the mandatory provision of Order 9, Rule 9.

The stay of execution sought herein is overtaken by events upon the grievants being paid off their terminal dues in full settlement of the claim. Any matters arising from any suit before the ELC, including suit No. ELC/E005/2026 at the Environment and Land Court at Kwale cannot be stayed by this court. The Respondent must address any arising matters therein under such suit. The basis

of an order of stay of execution herein has no foundation, the suit having been spent.

Accordingly, the application dated 30 January 2026 is without merit and is hereby dismissed. Costs to the Claimant.

Delivered in open court at Nairobi, this 23rd day of April 2026

**M. MBARŪ
JUDGE**

In the presence of:

Court Assistant: Catherine and Omar

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and

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