



**Mohansons Food Distributors Limited & another v Kenya Commercial Bank Limited
& another (Civil Suit 14 of 2003) [2026] KEHC 4371 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 14 OF 2003
F WANGARI, J
MARCH 5, 2026**

BETWEEN

MOHANSONS FOOD DISTRIBUTORS LIMITED 1ST PLAINTIFF

MEADOW VALE LIMITED 2ND PLAINTIFF

AND

KENYA COMMERCIAL BANK LIMITED 1ST DEFENDANT

FAYAZ BAKERS LIMITED 2ND DEFENDANT

RULING

1. The 1st Defendant filed an Application Notice on contempt of court dated 29th August 2025 pursuant to Section 1A, 1B, 3, and 3A of the *Civil Procedure Act*, Section 5 (1) of the *Judicature Act*, Part 81 of the English Civil Procedure Rules, 1998, Order 22 Rule 18 and 22 of the Civil Procedure Rules, and all enabling provisions of the law.
2. The 1st Defendant seeks for orders that there be stay of execution orders, restraining orders against the Respondents from attaching or removing the Applicant's property, summons be issued and a date granted for personal attendance of Sandeep Singh Kandhari, Priptal Singh Kandhari, Rajesh Kandhari, Mohansons Food Distributors and Meadow Vale Limited before the court for the hearing of the present application for contempt of court by the Plaintiffs in the contempt proceedings for being in breach and disobedience of the court orders issued on 19th June 2023.
3. That Sandeep Singh Kandhari, Priptal Singh Kandhari, Rajesh Kandhari, Mohansons Food Distributors and Meadow Vale Limited do stand committed to civil jail for a period to be determined by this court and/or pay a punitive fine for contempt of court.
4. The Applicant further prayed that an order do issue to cancel and set aside the warrants of attachment and sale dated 11th August 2025 and the Notice of Proclamation of Movable Property dated 26th



August 2025 served by Ms Kameta Enterprises Auctioneers for being incurably defective, bad in law, incompetent and a nullity and for being taken out in contempt of the orders of the court issued on 19th June 2023, and that costs of the application be awarded to the 1st Defendant.

5. The application is premised on the grounds set out therein and supported by the affidavit of Bonnie Okumu an employee of the 1st Defendant/ Applicant. It was deponed that the 1st Defendant deposited three bank guarantees dated 5th July 2023 as ordered by the court. That the Plaintiffs are aware of the ruling and orders of the court issued on 19th June 2023, which are still valid and have not been set aside.
6. That the appeal is yet to be heard and determined but the Plaintiffs have taken the law into their hands by proceeding with execution. That the Plaintiffs have proceeded with execution of the judgment delivered on 5th June 2020 and attached and proclaimed the property of the 1st Defendant by way of warrants of attachment and sale dated 11th August 2025 and the Notice of Proclamation dated 26th August 2025.
7. The 1st Defendant filed a further application dated 5th November 2025 seeking to review the orders of this court. The application was held in abeyance pending hearing and determination of the application subject to this ruling.
8. The Plaintiffs in response filed a Replying Affidavit sworn on 22nd September 2025 and stated that they are two separate entities in law and that the 1st Plaintiff cannot execute any monetary decree as none was awarded to it. That on 19th June 2023, the court issued a ruling that execution of the decree was to be stayed on condition that the 1st Defendant deposits three bank guarantees within 30 days but the 1st Defendant did not comply with the conditions.
9. That on 7th July 2023, the 1st Defendant's advocate forwarded what were purported to be bank guarantees which the 1st Plaintiff rejected through the cover letter dated 14th July 2023. That the 2nd Plaintiff's advocates only received the purported bank guarantees addressed to itself and the 2nd Defendant but none was sent to the 1st Plaintiff as ordered by court.
10. The Plaintiffs deponed that since 2023, the 1st Defendant has intimated its desire to amicably settle the matter but despite several promises of settlement, it has failed to do so and has been buying time and frustrating the entire process. That the 1st Defendant have come to court with unclean hands as they have severally failed to abide by directions of the court.
11. The 1st Defendant filed a Further Affidavit sworn on 6th November 2025 where they stated that the deponent of the Replying Affidavit sworn on 22nd September 2025 purports to swear an affidavit for himself and on behalf of the other cited persons but there is no authority filed authorizing him to act in the alleged manner on behalf of the other said persons. That contempt of court proceedings are personal and quasi criminal in nature and that each of the cited persons is required to personally respond to a charge of contempt as the proceedings attach to individual conduct and knowledge of the court order.
12. The 1st Defendant deponed that in the absence of affidavits sworn personally by Priptal Singh Kandhari, Rajesh Kandhari, Mohansons Food Distributors and Meadow Vale Limited, the application remains undefended against them, and consequently the Replying Affidavit of Sandeep Singh Kandhari is incompetent to rebut the specific allegations of contempt directed at the persons.
13. The 1st Defendant further deponed that court records show that judgment was entered in favour of the Plaintiffs and that costs were awarded and taxed forming part of the decretal sum. That additionally,



to execute costs and other orders in the decree in favour of the 1st Plaintiff is contrary to provisions of Section 94 of the *Civil Procedure Act* which prohibits piecemeal execution without leave of the court.

14. The 1st Defendant stated that the bank guarantees were issued by a first-tier bank as directed by the court and that the ruling of 19th June 2023 required bank guarantees to be deposited in a first-tier bank, which condition was satisfied by the 1st Defendant. That if the Plaintiffs considered the form or issuer of the bank guarantee unlawful, the appropriate course was to apply to this court for review or setting aside of the conditional stay orders and not to unilaterally reject the bank guarantees and proceed to execute.

Submissions

15. The application was canvassed by way of written submissions. The 1st Defendant in their submissions dated 20th November 2025 argued that it is a plain and unqualified duty of every party to court proceedings to obey court orders as long as they exist and that it was not for the Plaintiffs to interpret the orders themselves. That if conditions in the ruling had not been complied with, the proper course of action for the Plaintiffs was to apply to the court to have the ruling and order set aside.
16. The 1st Defendant submitted that the Plaintiffs' actions of commencing execution under Warrants of Attachment and Sale dated 11th August 2025 amounted to willful disobedience of the court orders issued on 19th June 2023. That Section 5 (1) of the *Judicature Act* states that the High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England.
17. The 1st Defendant contended that they are entitled to the orders sought in the application herein by citing the case of *Macfoy v United Africa Co. Ltd* [1961] 3 All ER 1169 and prayed for this court to hold that the execution proceedings commenced by the Plaintiffs were void ab initio and a nullity in law and the same could not form the basis of a lawful execution accruing in favour of the Plaintiffs.
18. The Plaintiffs filed submissions dated 20th November 2025 and applied the principle in the case of *Pandya Memorial Hospital v Junju & another* [2023] KEHC 27245 (KLR) which cited with approval the decision in *Robert Njoka Muthara & another v Barclays Bank of Kenya Limited & another* (2017) that a guarantee as envisaged in law ought to have been issued by a person other than the 1st Defendant who was obliged to satisfy the decree of the court. That the any bank guarantee ought to have been issued by an independent first-tier bank not party to the proceedings.
19. That the purported bank guarantees were invalid, void and incapable of satisfying the court's conditional order of stay of execution. That the conditional stay automatically lapsed upon non-compliance 30 days after it was issued on 19th June 2023 entitling the Plaintiffs to proceed with execution of the judgment and decree. The Plaintiffs maintained that the Defendant's conduct demonstrates a lack of good faith, a deliberate attempt to frustrate the execution process and tactics to delay justice.
20. The Plaintiffs submitted that the 1st Defendant's request for further orders of stay of execution and conservatory relief restraining Plaintiffs from attaching or removing its property is not only misconceived in law but also an abuse of the court process.
21. Having considered the 1st Defendant's applications dated 29th August 2025 and 5th November 2025, the Replying Affidavit sworn on 22nd September 2025, the Further Affidavit sworn on 6th November 2025, and submissions by the parties, the issues for determination are;
 - a. Whether the application is merited for grant of the orders sought



- b. What orders on costs should issue.
22. The order of 19th June 2023 granted stay of execution on condition that the 1st Defendant deposit 3 bank guarantees within 30 days. It is settled law that where a stay of execution is granted conditionally, compliance with the conditions is mandatory. In *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR), the Court of Appeal held: -
- “... as security for the due performance of such decree or order as may ultimately be binding upon him, failing which the stay shall lapse without a further order of this court being necessary.”
23. I have perused through the ruling of the court delivered on 19th June 2023. Paragraph 44 (a) and (b) of the determination states as hereunder;
- a. I allow the application dated 7/6/2021 and grant the 2nd Defendant stay of the entire decree and judgment of the court issued on 5/6/2020 pending the hearing and determination of the intended appeal
- b. The applicant, KCB, do deposit 3 bank guarantees for each of the decree holders in a first tier bank as follows:-
- 2nd plaintiff – A sum of Ksh. 5,000,000/=
- 2nd Defendant – Ksh 4,400,000
- 1st Plaintiff Ksh 1,000,000 million within 30 days.
24. The Plaintiffs contend that the purported guarantees by the 1st Defendant were rejected, they were not issued by an independent first-tier bank, they were not properly addressed as directed by the court, and the conditions were therefore not satisfied.
25. Henry Anselm de Colyar: *A treatise on the Law of Guarantees and of Principal and Surety* 1 (3rd ed. 1897) as cited in *Black’s Law Dictionary* (10th ed. 2014) define a guarantee as hereunder;
- “A guarantee is a collateral engagement to answer for the debt, default or miscarriage of another person. The person who gives the guarantee, is termed the surety or guarantor; the person to whom it is given, the creditor or guarantee; and the person debt, default or miscarriage is the foundation of the guarantee, the principal debtor or simply the principal.”
26. The 1st Defendant therefore cannot issue a bank guarantee for itself to act as security for its own interests. The 1st Defendant ought to have secured a bank guarantee from a 3rd Party first tier bank, as the 1st Defendant is deemed as the principal. I concur with the submissions by the Plaintiffs that the purported guarantee by the 1st Defendant did not meet the threshold of a bank guarantee. I find that the Plaintiff rightfully rejected the purported bank guarantee as the 1st defendant could not be both a debtor and a guarantor.
27. This court therefore finds that the 1st Defendant did not demonstrate strict compliance with the terms of the order of 19th June 2023. Consequently, the conditional stay lapsed automatically for non-compliance.
28. On whether the Respondents cited for contempt acted in clear disobedience of the court orders, the stay of execution having been conditional, and the said condition having been found not to have been



complied with, the stay ceased to operate. Execution thereafter cannot amount to disobedience of a non-operative order. This court finds that the Respondents did not act in contempt of court.

29. On whether the execution was irregular and in violation of Section 94 of the *Civil Procedure Act*, which prohibits execution of a decree for costs before taxation unless leave of court is obtained. Section 94 of the *Civil Procedure Act* provides;

“Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.”

30. The record shows that costs were taxed and formed part of the decretal sum. There is no evidence placed before this court demonstrating that execution was commenced prematurely or without compliance with Section 94. There being no proof of procedural irregularity in the warrants, this Court finds no basis to declare them null and void.
31. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. Considering the 1st Defendant did not meet the requirements of the conditional stay, costs of this application shall be borne by the 1st Defendant.

Determination

32. In the upshot, this court makes the following orders;
- a. The Application Notice dated 29th August, 2025 lacks merits and is hereby dismissed.
 - b. Costs awarded to the Plaintiffs/ Respondents to be borne by the 1st Defendant/ Applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5TH DAY OF MARCH, 2026

.....

HON. F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of: -

Mr. Khagram Advocate for the Applicant

Mr. Amakobe Advocate for the Respondent

Ms. Salwa, Court Assistant

