



**Bank of South Sudan v Government of South Sudan & 3 others (Civil Application E194 of 2025) [2026] KECA 823 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 823 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E194 OF 2025  
F TUIYOTT, AO MUCHELULE & GV ODUNGA, JJA  
APRIL 30, 2026**

**BETWEEN**

**BANK OF SOUTH SUDAN ..... APPLICANT**

**AND**

**GOVERNMENT OF SOUTH SUDAN ..... 1<sup>ST</sup> RESPONDENT**

**GADANO GENERAL TRADING COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**STANBIC BANK KENYA LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**CITIBANK NA ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for leave to appeal to the Court of Appeal and stay of execution of the decree, garnishee order nisi and garnishee order absolute issued by the High Court at Nairobi (A. Mabeya, J.) made on 7th August 2023, 24th August 2023 and 20th November 2024 respectively in HCCOMMARB No. E070 of 2022)*

**RULING**

1. The applicant, Bank of South Sudan, by a Notice of Motion dated 25<sup>th</sup> March 2025 seeks, in the main, leave to appeal against the rulings and orders made on 7<sup>th</sup> August 2023, 24<sup>th</sup> August 2023 and 20<sup>th</sup> November 2024 in Nairobi HCCOMMARB No. E070 of 2022 and stay of execution and proceedings arising from the said decisions pending the hearing and determination of an intended appeal to this Court against the said decisions.
2. The applicant's case was: that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were involved in a dispute in which an arbitral award was issued in Permanent Court of Arbitration Case No. 2019-36 in favour of the 2<sup>nd</sup> respondent; that the 2<sup>nd</sup> respondent sought for recognition of the final award and a decree issued in its favour after which it filed an application dated 2<sup>nd</sup> August 2023 seeking to execute the same by way of garnishee proceedings; that an application was then made seeking to join the applicant as an interested party



to the said proceedings which application was allowed on 9<sup>th</sup> February 2024; that by a ruling dated 20<sup>th</sup> November 2024, the High Court issued garnishee order absolute in respect of some 9 accounts held by Stanbic Bank Kenya Limited, the 3<sup>rd</sup> respondent, including accounts nos. 0100000296637 and 0100000296613 held by the applicant in the 3<sup>rd</sup> respondent; that aggrieved by the said order, the applicant lodged a Notice of Appeal intending to challenge the said decision on appeal and sought leave to appeal as well as stay of execution of the said decision; and that the trial court on 11<sup>th</sup> March 2024 dismissed the said application and aggrieved by the said decision, the applicant filed a Notice of Appeal against it.

3. According to the applicant: it is the Central Bank of South Sudan incorporated under the Bank of Sudan Act, 2011 as an autonomous corporate entity and is not a department of the Government of the Republic of South Sudan, the 2<sup>nd</sup> respondent but, rather, is a banker of banks; apart from engaging in commercial transactions, it also has a statutory mandate of initiating and setting the monetary policy, printing legal tender/money, controlling inflation, foreign currency and foreign exchange reserves for the Government and supporting international remittances of funds by individuals and commercial banks; in its reply to the garnishee proceedings, the 3<sup>rd</sup> respondent exhibited statements of accounts that confirmed that the two bank accounts belonged to the applicant; the two accounts have significant amounts of Euros 61,922 and USD 69,509.48 and the garnisheeing the said accounts is likely to prejudice the applicant; and that courts of Kenya have no jurisdiction to seize assets of the applicant since it enjoys immunity under the Vienna Convention, 1961.
4. The applicant insisted that the funds in its accounts cannot be equated to the funds belonging to the Government of the Republic of South Sudan since they are held on behalf of the applicant's customers and depositors. In addition, the applicant was not a party to the arbitral proceedings at the Permanent Court of Arbitration that led to the award of 9<sup>th</sup> June 2021 in favour of the decree holder hence its accounts with the 3<sup>rd</sup> respondent are not liable to seizure in the garnishee proceedings. It is the applicant's contention that the learned Judge erred in finding that the applicant belongs to the 1<sup>st</sup> respondent and hence it should shoulder the 1<sup>st</sup> respondent's liability. It is, inter alia, on this account that the applicant believes that its intended appeal is arguable. The applicant is apprehensive that unless the orders of stay are granted, its funds held in the two accounts shall be seized in satisfaction of the decree dated 7<sup>th</sup> August 2023 subjecting it to prejudice. The applicant undertakes to provide such security for the due performance of such decree as may ultimately be found binding on it by this Court.
5. In response to the application, the 3<sup>rd</sup> respondent, Stanbic Bank Kenya Limited, filed an affidavit sworn by Wahura Mwangi, its legal advisor, in which he deposed: that on 19<sup>th</sup> March 2025, in compliance with the orders directing it to pay over to the 1<sup>st</sup> respondent (sic), all sums standing in credit of the applicant in the said two accounts, it remitted the said sums to the 1<sup>st</sup> respondent (sic); that currently, the 3<sup>rd</sup> respondent no longer holds any funds in whatever currency on behalf of the applicant as the garnishee order absolute of 20<sup>th</sup> November 2024 has been fully complied with and hence the 3<sup>rd</sup> respondent ought to be discharged from the proceedings.
6. When this matter was for hearing on 27<sup>th</sup> May 2025, learned counsel, Mr Mwangi, appeared for the applicant while learned counsel, Mr Ochola, appeared for the 3<sup>rd</sup> respondent. Mr Mwangi relied on the written submissions filed on behalf of the applicant while Mr Ochola relied entirely on the replying affidavit filed on behalf of the 3<sup>rd</sup> respondent.
7. Based on the contents of the supporting affidavit, it was submitted on behalf of the applicant that although it has no automatic right of appeal against the decisions it intends to appeal against, its intended appeal is not frivolous since it was not a party to the arbitral proceedings that gave rise to the decree which was being executed by way of garnishee proceedings. Similarly, it was contended that the



High Court lacked jurisdiction to seize the applicant's assets as its accounts enjoy diplomatic immunity under the Vienna Convention, 1961.

8. It was further submitted that although the 3<sup>rd</sup> respondent deposed that it had released the sums held in the two accounts, nothing stops further garnishee proceedings being taken against the said accounts should monies be deposited therein. Citing *Kamau v Agricultural Finance Corporation & 3 Others* [2025] KECA 574 the applicant submitted that it had met the test for the grant of the orders sought.
9. We have considered the application and the submissions made.

That the power to grant leave is an exercise of judicial discretion which must be exercised judicially was appreciated by this Court in *Dr. Wilson Mwonga Ngoka v Anne Ndinda Ngoka* Civil Application No. Nai. 296 of 2005 (UR). This Court further held in *Kenya Shell Limited v Kobil Petroleum Limited* [2006] 2 KLR 251 that:

“Whether or not the Court would grant leave to appeal is a matter for the discretion of the Court and as in all discretions exercisable by courts, it has to be judicially considered... The Court will only refuse leave if satisfied that the applicant has no realistic prospects of succeeding on the appeal. (See *Machira T/A Machira & Company Advocates v Mwangi & Another* [2002] 2 KLR 391). The approach will naturally differ depending on the category and subject matter of the decision and the reason for seeking leave to appeal. (See *Mohamed Yakub & Another T/A Yasser Butcher v Mr. Badur Nasa & 2 Others* Civil Application No. Nai. 285 of 1999).”

10. The rationale for the legal requirement for leave to appeal against certain decision, as explained by the predecessor of this Court in *Rene Dol v Official Receiver of Uganda* [1954] 21(1) EACA 116, is to restrict appeals from minor procedural questions or interlocutory matters which do not go to the root of the litigation or determine finally the substantive rights of the parties or which can themselves be brought into question in an appeal from the final decision.
11. Regarding the consideration for grant of leave to appeal the Court in *Sango Bay Estates Ltd and Others v Dresdner Bank AG* [1971] EA 17 held that:

“Leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration but where...the order from which it is sought to appeal was made in the exercise of judicial discretion, a rather stronger case will have to be made out.”

12. The same view was expressed by this Court in *J P Machira T/A Machira & Company Advocates v Wangethi Mwangi & Another* [2002] 2 KLR 391 where the Court held that:

“The court will only refuse leave to appeal if satisfied that the applicant has no realistic prospects of succeeding on appeal. The use of the word “realistic” makes it clear that fanciful prospect or an unrealistic argument is not sufficient. When leave is refused, the court gives short reasons which are primarily intended to inform the applicant why leave is refused. The court can even grant leave if it is satisfied that the appeal has no prospects of success, for example, the issue may be one which the Court considers should, in the public interest, be examined by the Court of Appeal or, that the Court of Appeal may take the view that the case raises a novel point or an issue where the law requires clarifying. There, however, must always be a ground of appeal, which merits judicial consideration. When leave is granted, the applicant does not need to know more than that he has the leave which he needs and therefore that he is entitled to proceed with the proposed appeal. The intended respondent



has no entitlement to receive reasons as to why the application has been granted, in the same way that he does not normally have any right to be heard on the application which is usually made ex parte. Where the order from which it is sought to appeal was made in exercise of a judicial discretion, a rather stronger case would have to be made...It should be borne in mind prior to making such an application that the Court is likely to be unsympathetic to such an application being made if it will in effect involve the parties in exactly the same expense as determining the appeal itself, and will not necessarily save the time of the Court but risk the Court having to have two hearings when only one would be necessary if, for example, the defendants were to file their appeal after the hearing of the application.”

13. In the matter before us the applicant intends to argue, inter alia, that since it is not a department of the Government of the Republic of South Sudan, the 1<sup>st</sup> respondent, against whom the decree was entered, its accounts ought not to have been attached in satisfaction of the debts owed by the 1<sup>st</sup> respondent. It also contends that its accounts are protected by diplomatic immunity. In our view, the applicant stands a realistic prospect of succeeding in its intended appeal although we cannot state that it will certainly succeed.
14. The premises we grant the applicant leave to appeal as sought.
15. With respect to stay of execution, it is clear that what is being sought to be stayed is execution in respect of the two accounts held to the credit of the applicant with the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent has confirmed that the said two accounts have been depleted, it having released the sums therein in satisfaction of the order sought to be stayed. In the premises the application for stay has been overtaken by events. Should further sums be deposited in the said accounts, as the applicant contemplates, they would be subject of fresh garnishee proceedings since garnishee proceedings only apply to funds held by the judgement’s creditor as at the time the application for garnishee order is made and granted. It is not contingent on some future credits that the creditor may come across. See *Petro Sonko & Another v H A D B Patel & Another* [1953] 1 EACA 99. In the premises, to grant a stay in respect of future deposits would, at this stage be premature and speculative.
16. Regarding the prayer for stay of further proceedings, the applicant did not disclose to us the nature of the proceedings that are pending before the trial court. This Court cannot grant orders at large. An order seeking stay of proceedings can only be made where the applicant satisfies the Court that there are pending proceedings and the effect of their continuation on the appeal or intended appeal. In addition to the two well known conditions for grant of orders under rule 5(2)(b) of the Rules of this Court, that is whether the intended appeal is arguable and whether the process of execution is likely to render its success nugatory, the applicant must go further and demonstrate the existence of exceptional circumstances. In this case, the applicant has failed to show that there are pending proceedings and the exceptional circumstances that would warrant staying them.
17. In the circumstances while we grant leave to the applicant to appeal to this Court against the orders in question, we decline to stay either execution or proceedings in the High Court.
18. We make no order as to the costs of this application.
19. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**F. TUIYOTT**

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**JUDGE OF APPEAL**



**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

**G. V. ODUNGA**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY \_REGISTRAR**

