



**Power Twins Limited v Finton Logistics Limited (Commercial Appeal E083 of 2025)
[2026] KEHC 5973 (KLR) (Commercial and Tax) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E083 OF 2025**

PM MULWA, J

APRIL 30, 2026

BETWEEN

POWER TWINS LIMITED APPELLANT

AND

FINTON LOGISTICS LIMITED RESPONDENT

RULING

1. This ruling concerns the Respondent's Notice of Motion dated 11th November 2025 seeking, principally, an order that the decretal sum of Kshs. 563,655.17 deposited in court by the Appellant be released to it through its advocates pursuant to the order of 7th March 2025, together with costs of the application.
2. The application is premised on the grounds set out on its face and supported by the affidavit of Sammy Githegi, the Respondent's Business Development Manager, sworn on 11th November 2025. He deposes that the dispute arises from the judgment of the Small Claims Court delivered on 9th December 2024 in favour of the Respondent for the sum of Kshs. 563,655.17.
3. Aggrieved by that decision, the Appellant lodged an appeal and obtained an order of stay of execution on condition that the decretal sum be deposited in court as security. The Respondent thereafter raised a Preliminary Objection on the basis that the appeal had been filed out of time without leave. By a ruling delivered on 6th November 2025, the Court upheld the Preliminary Objection and struck out the appeal. It is therefore contended that there is no longer any subsisting appeal to anchor the continued retention of the decretal sum in court.
4. The application is opposed by the Replying Affidavit of Thomas Mbugua, a director of the Appellant, sworn on 26th January 2026. He avers that the decretal sum was deposited to preserve the substratum of the appeal and to protect both parties pending its determination. He contends that the appeal



was not dismissed on merit but struck out on a technicality, and thus the rights of the parties remain undetermined. He further deposes that the Appellant has since filed an application for leave to appeal out of time in HCCOMM MISC/E1143/2025, which is pending determination, and that the intended appeal raises arguable issues with high chances of success.

5. It is the Appellant's position that release of the decretal sum would render the intended appeal nugatory, occasion substantial loss, and defeat the purpose of the security. He also asserts that there is no evidence that the Respondent would be able to refund the decretal sum if the intended appeal succeeds, and urges the Court to maintain the status quo in the interests of equity.

Analysis and determination

6. The sole issue for determination is whether the Respondent is entitled to the release of the decretal sum deposited in court.
7. It is common ground that the decretal sum was deposited pursuant to an order of stay of execution pending appeal. The requirement for such security is anchored in Order 42 Rule 6(2)(b) of the Civil Procedure Rules, which obligates an applicant for stay to furnish security for the due performance of the decree.
8. The legal effect of striking out the appeal is that there is no longer a pending appeal upon which the order of stay can subsist. Orders of stay are discretionary in nature and are intended to preserve the subject matter pending the hearing and determination of an appeal. (See Court of Appeal in *Butt v Rent Restriction Tribunal* (1982) KLR 417).
9. The power to grant a stay is exercised to ensure that an appeal, if successful, is not rendered nugatory.
10. Once the appeal was struck out, the substratum upon which the order of stay rested was extinguished. In the absence of a competent and subsisting appeal, there exists no juridical basis upon which this Court can continue to withhold from a successful litigant the fruits of a valid judgment.
11. The Appellant has urged that it has since lodged an application for leave to appeal out of time in HCCOMM MISC/E1143/2025. However, no material has been placed before this Court to demonstrate that any interim or preservative orders have been issued in the said proceedings to warrant the continued retention of the decretal sum. A mere intention to appeal, or a pending application for leave, cannot of itself sustain an order of stay.
12. Further, the Appellant has not discharged the burden of demonstrating that the Respondent would be unable to refund the decretal sum in the event the intended appeal succeeds. That burden lies squarely upon the Appellant, and it has not been satisfied.
13. While this Court retains inherent jurisdiction under Section 3A of the *Civil Procedure Act*, such jurisdiction is not to be exercised in a manner that undermines or defeats a lawful decree. It cannot be invoked to sustain orders of stay where there is no pending appeal or valid basis in law.
14. In the premises, I am satisfied that the continued retention of the decretal sum in Court lacks any legal foundation and cannot be sustained.
15. I find the Respondent's Notice of Motion dated 11th November 2025 merited and is hereby allowed.
16. The decretal sum of Kshs. 563,655.17 deposited in court shall be released forthwith to the Respondent through its advocates on record.
17. The Appellant shall bear the costs of the application.



It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 30TH DAY OF APRIL 2026.

P.M. MULWA

JUDGE

In the presence of:

Ms. Okech for Respondent

Court Assistant: Lispa

