



**Registered Trustee of Archdiocese of Kisumu v Awad Auto Limited; Ecobank Kenya Limited (Proposed Interested Party) (Environment and Land Case E146 of 2023) [2025] KEELC 5973 (KLR) (2 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 5973 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E146 OF 2023  
CG MBOGO, J  
SEPTEMBER 2, 2025**

**BETWEEN**

**REGISTERED TRUSTEE OF ARCHDIOCESE OF KISUMU ..... PLAINTIFF**

**AND**

**AWAD AUTO LIMITED ..... DEFENDANT**

**AND**

**ECOBANK KENYA LIMITED ..... PROPOSED INTERESTED PARTY**

**RULING**

1. Before me for determination are three applications. The notice of motion dated 29<sup>th</sup> July, 2024, 30<sup>th</sup> July, 2024 and 21<sup>st</sup> February, 2025 all filed by the defendant/applicant. The notice of motion dated 29<sup>th</sup> July, 2024 is expressed to be brought under Order 42 Rule 6 of the Civil Procedure Rules and Sections 3A, 1A and 1B of the *Civil Procedure Act* seeking the following orders:-
  1. Spent.
  2. That there be a temporary stay of the order issued on 16<sup>th</sup> July 2024 pending the hearing and determination of this application.
  3. That there be an order of stay of the orders issued on 16<sup>th</sup> July 2024 pending the hearing and determination of the intended appeal.
  4. Costs of this application be in the cause.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of Peter Maina Kingori, the director of the defendant/applicant sworn on even date. The defendant/applicant deposed that the court did not give cognizance of the assignment dated 19<sup>th</sup>



October, 2018 and that being dissatisfied with the ruling, they intend to appeal against the same. It was deposed that the intended appeal has good chances of success and the amounts of money involved are colossal and the orders sought in the plaint have far reaching consequences as they seek nullification of the sale and deprivation of the suit property. He deposed that the intended appeal would be rendered nugatory if the order for stay is not granted.

3. The plaintiff/respondent filed grounds of opposition dated 20<sup>th</sup> January, 2025 challenging the application on the following grounds: -
  1. The application lacks merit.
  2. The defendant has not demonstrated how and why supplying the particulars of its pleadings will occasion to it substantial loss.
  3. The defendant is engaged in abuse of the court process by seeking stay of the order requiring it to furnish particulars of its defence while at the same time stating in the supporting affidavit that the particulars have been supplied.
  4. The application is frivolous, and vexatious only meant to delay the fair trial and quick conclusion of the suit herein.
4. The defendant/applicant filed the notice of motion dated 30<sup>th</sup> July, 2024 expressed to be brought under Order 11 Rule 2 (d), and Order 45 Rule 1 of the Civil Procedure Rules and Sections 1A,1B and 3A of the *Civil Procedure Act* seeking the following orders: -
  1. Spent.
  2. There be a temporary stay of the orders made on 16<sup>th</sup> July, 2024 pending the hearing and determination of this application.
  3. The orders issued on 16<sup>th</sup> July, 2024 be reviewed and or set aside to the extent that they order the striking out of the statement of defence.
  4. The plaintiff be and is hereby ordered to make discovery and produce for inspection the following documents:-
    - a. Bank statement- Account Bo. 0290290626082 Equity Bank period March 2018.
    - b. Bank statement- Account No. 0042001000883 ABC Bank, period 1<sup>st</sup> June 2019-30<sup>th</sup> November, 2023.
    - c. Bank statement- Account No. 0042001000967 ABC Bank, period June 2023.
    - d. Bank statement- Account no. 6616003493 Eco Bank.
  5. Costs of this application be provided for.
5. The application is premised on the grounds that the court overlooked and did not make cognizance of the documents filed. The application is supported by the affidavit of Peter Maina Kingori, the director of the defendant/applicant sworn on even date. The defendant/applicant deposed that it is necessary for the court to stay the orders of striking out the defence and review the orders by directing the receiving banks to either provide copies of account statement or receipt of payment. He deposed that the order for striking out shuts the defendant/applicant from proving its case on merits.



6. The application was challenged by the grounds of opposition dated 20<sup>th</sup> January, 2025 on the following:-
  1. Prayer 2 of the application has been overtaken by events and cannot be granted.
  2. Prayer 3 of the application is lacking in merit as no good ground or reason has been given for reviewing or setting aside the order given on 16<sup>th</sup> July, 2024.
  3. Prayer 4 of the application is not only res judicata but it is also lacking in merit.
  4. In further response to prayer 4 of the application, the plaintiff states that the various bank accounts referred to are not the subject of litigation and are not relevant to the litigation herein.
  5. The defendant has deliberately disobeyed this court's order dated 16<sup>th</sup> July, 2024 and the application dated 30<sup>th</sup> July, 2024 is a mischievous attempt to delay compliance with the order or circumvent the same.
  6. The application is an abuse of the court process.
7. The 3<sup>rd</sup> application is the notice of motion dated 21<sup>st</sup> February, 2025, and it is expressed to be brought under Order 51 Rule 1 & 3, and Order 1 Rule 10 (2) of the Civil Procedure Rules and Sections 1A, 3, and 3A of the Civil Procedure Act seeking the following orders:-
  - i. Ecobank Kenya Limited be enjoined to this suit as an interested party.
  - ii. Costs be in the cause.
8. The application is premised on the grounds inter alia that the proposed interested party is a necessary party to this suit. The application is supported by the affidavit of Peter Kimani Kingori, the director of the defendant/applicant sworn on even date. The defendant/applicant deposed that on 19<sup>th</sup> October 2018, the plaintiff/respondent executed an assignment with Ecobank Kenya Limited where a sum due to the defendant of Kshs. 100,000,000/- in relation to LR. No. 3525/12 and LR 3525/13 was assigned to Ecobank Kenya Limited.
9. The defendant/applicant deposed that the assignment was served upon it, and it commenced paying the same to Ecobank, that to date, it paid a sum of Kshs. 100,000,000/-. Further, that the amount paid to Ecobank is the same amount claimed by the plaintiff/respondent, and despite the same, the plaintiff/respondent has purported to cancel the agreement for sale.
10. The defendant/applicant deposed that the suit turns on the interpretation of the assignment and the payment made to Ecobank, and therefore it is a necessary party to these proceedings.
11. The application was opposed by the replying affidavit of the plaintiff/respondent sworn on 12<sup>th</sup> March, 2025 by Rev. Fr. Felix Atindah. The plaintiff/respondent deposed that in an application dated 18<sup>th</sup> February, 2019 between Ecobank and the plaintiff/respondent, Ecobank had applied for a garnishee order to have the same money paid by the defendant/applicant. It was deposed that the defendant/applicant strongly opposed the application by Ecobank and the same was dismissed, and thus the instant application is res judicata. It was deposed that the defendant/applicant refused to pay the purchase price even after being served with the notice to complete, leading to the termination of the contract. Further, that any purported payments to Ecobank without its knowledge or consent cannot be the basis to enjoin Ecobank in this suit.



12. In a further affidavit sworn on 19<sup>th</sup> March, 2025 by the defendant/applicant it was deposed that the court did not rule on the validity of the claim by Ecobank against the plaintiff, and that the instant application is not res judicata or barred by issue estoppel. Further, that the plaintiff/respondent will not be prejudiced in any manner if Ecobank is enjoined to this suit.
13. The applications were canvassed by way of written submissions. The defendant/ applicant filed its written submissions dated 25<sup>th</sup> March, 2025. With regard to the notice of motion dated 29<sup>th</sup> July, 2024, the defendant/applicant submitted that it has satisfied the conditions of stay pending appeal as set out under Order 42 Rule 6 of the Civil Procedure Rules. The defendant/applicant relied on the cases of *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR) and *Kenya Shell Limited v Benjamin Karuga Kibiru* [1986] KECA 94 (KLR). The defendant/applicant went on to reiterate the issues raised in the application and submitted that a litigant should not be shut out of justice without being afforded a hearing and that the application for stay has merits and should be allowed.
14. With regard to the notice of motion dated 30<sup>th</sup> July, 2024, the defendant/applicant submitted that there are errors apparent on the face of the record, and that there are sufficient reasons to order a review and setting aside of the orders. Further, that if the orders are sustained, they would occasion serious injustice and had the court considered the facts raised above, it would have found that the defendant/applicant provided sufficient particulars.
15. The defendant/applicant submitted that since the filing of this application, there has been new evidence that was not available then as it had paid the full amount owed to Ecobank and which was wrongly claimed by the plaintiff/respondent. Further, that the accounts are relevant to these proceedings, and that there has been no previous application for review. To buttress on this issue, the defendant/applicant relied on the case of *Dyson v Attorney General* [1911] 1KB 410 cited in the Nairobi CA No. 132 of 1983 *Lali Swale Ali & others v Stephen Mathenge Wachira*.
16. On the third application, the defendant/applicant submitted that the substantial issue for determination in this suit is the effect of the deed of assignment between the plaintiff/respondent and Ecobank Limited. It was submitted that this instant application is not barred by the doctrine of res judicata as the court in ELC 204/2017 did not decide on whether the plaintiff/respondent owed Ecobank the monies or whether the defendant/applicant could pay the bank the said monies.
17. The plaintiff/respondent filed its written submissions dated 29<sup>th</sup> May, 2025. With regard to the notice of motion dated 29<sup>th</sup> July, 2024, the plaintiff/applicant submitted that considering the orders given on 16<sup>th</sup> July, 2024, the 14 days lapsed on 30<sup>th</sup> July, 2024 and thus there is nothing to stay. It was submitted that the plaintiff/respondent is waiting to have the matter proceed for formal proof.
18. On the application dated 30<sup>th</sup> July, 2024, the plaintiff/respondent further submitted that the grounds in this application do not constitute grounds for review under Order 45 of the Civil Procedure Rules as they are grounds which can be presented and argued in an appeal. Reliance was placed in the case of *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR.
19. With regard to the notice of motion dated 21<sup>st</sup> February, 2025, the plaintiff/respondent submitted that from the ruling delivered by Fred Ochieng, J as he then was, it is clear that the High court was dealing with the sale of the suit properties particularly on payment of the purchase price. While relying on the case of *In re Estate of the late King Arap Talam Simon* [2025] eKLR, the plaintiff/respondent submitted that it is not open for the defendant to have stated in the previous suits that it had nothing to do with the loans and yet claim that the proposed interested party is a necessary party who should be enjoined for the same reason which were advanced in the previous suit. They submitted that the application is debarred by the twin doctrine of estoppel.



20. The plaintiff/respondent submitted that after the defendant/applicant refused to pay the purchase price of the suit properties, the default forced it to serve upon the defendant completion notice after which the sale contract was rescinded. Further, that this means that any purported payment made to the proposed interested party after the sale contract was rescinded are of no consequence to the suit, and the defendant/applicant can get its money back from the said Ecobank Kenya Limited. They submitted that the remedy is not to seek joinder but to ask Ecobank for a refund.
21. The three applications before me were precipitated by the ruling delivered on 16<sup>th</sup> July, 2024. In the said ruling, the court noted that none of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants objected to the request for particulars served upon them by the plaintiff/respondent. The court proceeded to order the defendants to answer the request and supply the required particulars within 14 days from the date thereof. The court was quite adamant to strike out the defence but maintained that legible copies of the request for particulars dated 7<sup>th</sup> February, 2024 should be supplied. The orders issued in this ruling were conditional upon performance of those instructions. As it is, and in the absence of confirmation of compliance with the above orders, the defence is struck out.
22. The question that arises is whether this court ought to proceed and determine issues that have long been overtaken by events? Can the court determine stay of execution pending appeal or review the same ruling which was time bound and which time has lapsed? In the circumstance, I find that it would be a waste of the court's precious time to consider the said application. The implication of the ruling goes to the issue of locus standi of the defendant/applicant to further argue the notice of motion dated 21<sup>st</sup> February, 2025. The defence filed by the defendant/applicant was struck out on 30<sup>th</sup> July, 2024. This would mean that the defendant/applicant forfeited his right of standing before the court to enable him have audience.
23. Having said the above, this court is unable to delve into the merits or otherwise of the three applications. Thus, the notice of motion dated 29<sup>th</sup> July, 2024, 30<sup>th</sup> July, 2024 and 21<sup>st</sup> July, 2025 are dismissed with costs to the plaintiff/respondent.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF SEPTEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

02/09/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Kimani for the Defendant/Applicant

Mr. Atieno holding brief for Mr. Amuga for the Plaintiff/Respondent

