



Ngugi & another v Co-operative Bank of Kenya Ltd (Civil Application E732 of 2024) [2025] KECA 584 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KECA 584 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E732 OF 2024
K M'INOTI, LA ACHODE & WK KORIR, JJA
MARCH 28, 2025**

BETWEEN

PATRICK KARANJA NGUGI 1ST APPLICANT

EVERTON ENTERPRISES LTD 2ND APPLICANT

AND

CO-OPERATIVE BANK OF KENYA LTD RESPONDENT

(Application for stay of execution pending appeal from the ruling and order of the High Court of Kenya at Kiambu (Mshila, J.) dated 22nd November 2024 in HCCC No. E009 of 2023)

RULING

1. It is a firmly established principle in this jurisdiction that this Court cannot be moved under rule 5(2) (b) of the [Court of Appeal Rules](#) to issue an order of stay of execution of a decision of the High Court, the Environment and Land Court or the Employment and Labour Relations Court, which has merely dismissed an application or a suit. The predecessor of this Court expressed the principle way back in 1976 as follows, in [Western College of Arts and Applied Sciences v. E. P. Oranga & 3 Others](#) [1976] eKLR:

“But what is there to be executed under the judgment, the subject of the intended appeal? The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs...In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay, to enforce or refrain by injunction.”



2. Later, in *George ole Sangui v. Kedong Ranch Ltd* [2015] eKLR the Court reiterated the position in these terms:

“In the instant case, the High Court dismissed the suit in which the applicants were seeking a declaration and an order to be registered as the proprietors of the suit land on the basis of the doctrine of adverse possession. The dismissal order cannot be enforced and is not capable of execution. It is not a positive order requiring any party to do or to refrain from doing anything. It does not confer any relief. It simply determined the suit by making a finding that the claimant was not entitled to the reliefs or orders sought and dismissed the suit against the respondent. That was not a positive order that required any party to do or refrain from doing anything. It was not capable of execution or enforcement. The act of dismissal of the suit could not be stayed. It is our finding that to the extent to which the application seeks stay of the order of the dismissal of the suit it cannot be granted.”

3. We can cite a myriad of other decisions along the same lines, among them, *Exclusive Estates Ltd v. Kenya Posts and Telecommunications Corporation & Another* [2005] 1 EA 53; *FRS v. JDS* (CA. No. Nai. 114 of 2012); *Devani & 4 others v. Joseph Ngindari & 3 Others* (CA No. Nai 136 of 2004); *F & S. Scientific Ltd. v. Kenya Revenue Authority & Another* (CA No. 260 of 2012); *Republic v. Kenya Anti-Corruption Commission & 2 Others* (CA No. 51 of 2008); *Mombasa Sea Port Duty Free Ltd v. Kenya Ports Authority* (CA No. Nai. 242 of 2006); *Stanbic Bank Kenya Ltd v. Kenya Revenue Authority* (CA No. Nai 294 of 2007); *Metro Pharmaceuticals Ltd v. Kenya Revenue Authority* (CA No. Nai 131 of 2012); and *Marangu Rucha & another v Attorney General & 10 Others* (CA No. 180 of 2013).
4. The applicants’ Motion on Notice before the Court is dated 2nd December 2024 and prays for an order of stay of execution of the ruling and order of the High Court of Kenya at Kiambu (Mshila, J.), dated 22nd November 2024 pending the hearing and determination of an intended appeal. In the impugned ruling, the High Court was seized of an application for injunction by the applicants, which it determined by the following succinct order:

“The court finds the application to be devoid of merit and it is hereby dismissed with costs to the respondent.”

5. When the applicants’ motion came up for hearing, the Court drew the attention of Ms. Angiela, learned counsel for the applicants, to the above principle and decisions of this Court, but counsel was adamant that the Court can still issue an order of stay of execution. Ms. Karanu, learned counsel for the respondent, was of the view that the application was a non- starter.
6. Before we are called upon to consider whether the applicant’s intended appeal is arguable and risks being rendered nugatory if it were to succeed, we must be satisfied that we have before us a competent application in which we can validly issue an order of stay of execution.
7. Taking into account the decisions of this Court we have cited above, we are satisfied that to the extent that the High Court merely dismissed the applicant’s application for injunction, there is no basis for this Court to issue an order of stay of execution against an order of dismissal.
8. For that reason, the applicant’s motion dated December 2, 2024 has no merit and the same is hereby dismissed with costs to the respondent. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH, 2025.

K. M’INOTI



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JUDGE OF APPEAL
K. ACHODE

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JUDGE OF APPEAL
W. KORIR

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

