



**Agricultural Development Corporation & another v JJ Chesaro & Company Advocates  
(Civil Appeal (Application) E032 of 2024) [2025] KECA 802 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 802 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPEAL (APPLICATION) E032 OF 2024  
F TUIYOTT, KI LAIBUTA & GWN MACHARIA, JJA  
MAY 9, 2025**

**BETWEEN**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... 1<sup>ST</sup> APPLICANT**

**LANDS LIMITED ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JJ CHESARO & COMPANY ADVOCATES ..... RESPONDENT**

*(Being an application seeking stay of execution of the ruling of the  
Environment and Land Court of Kenya at Malindi (E. K. Makori, J.)  
delivered on 20th June 2024 in ELC Misc. (Reference) No. E003 of 2023)*

**RULING**

1. On 20<sup>th</sup> June 2024, E.K. Makori, J. dismissed the reference in ELC Misc. Reference Application No. E003 of 2023 - Agricultural Development Corporation & Anor vs J. J Chesaro & Company Advocates (the reference). The effect of the dismissal is that Agricultural Development Corporation (ADC), the applicant, is due to pay the sum of Kshs.13,226,441.60 to J. J. Chesaro & Company Advocates (the advocates), the respondent.
2. ADC is now before us seeking stay of execution of that decision pending the hearing and determination of this appeal. The plea is in a Notice of Motion dated 17<sup>th</sup> September 2024 brought pursuant to Rule 5(2) (b) of the Court of Appeal Rules, 2022. In the affidavit in support sworn by Rodgers Karumpu, the Corporation Secretary of ADC, he deposes that the appeal has a reasonable chance of success and should the amount be paid out, the corporation is unlikely to recover it. The latter alluding to the appeal being rendered nugatory if stay is not granted.
3. The advocates, through an affidavit of Joyce Chesaro sworn on 1<sup>st</sup> October 2024, resist the motion. Shorn of what may not be directly relevant to the matter at hand, the advocate deposes that: the appeal has been filed in bad faith only to delay the firm from enjoying the fruits of their good work having



secured for ADC a valuable suit property worth billions which had been invaded by squatters; and ADC has not indicated readiness to furnish security for due performance of the Certificate of Taxation.

4. We have considered the material placed before us in the motion and the replying affidavit. We have also read and understood the written submissions filed on behalf of the parties.
5. At the plenary hearing, we gently implored Ms. Ndungu, learned counsel representing ADC, to reconsider her client's application crafted as a prayer for stay of execution of a negative order. The negative order being the dismissal of the reference by the learned judge. We did so because once an order is negative in nature, then there is nothing to be stayed. This truism has been restated by this Court time without number (see for example *Kimanthi v Kiiiva & 2 others* (Civil Application E321 of 2021) [2021] KECA 283 (KLR)). We have no doubt that the provisions of Rule 5(2)(b) offers another avenue under which ADC would have sought shelter but, instead, chose to seek stay and persist in that quest. This, however, is a strong headwind that the application has encountered and, on that account alone, would be for refusal.
6. Yet if we are wrong, still there is another impediment to success.  
  
Without elaborating, for an application for grant of stay under Rule 5(2) (b) to prevail, then the applicant must show that the intended appeal or appeal is arguable and that not to grant stay will render it nugatory. The twin conditions must both be met.
7. What is sought to be stayed is a money decree. In this regard, this Court in *Kenya Hotel Properties Limited v Willesden Investments Limited* (Civil Application 322 of 2006) [2007] KECA 401 (KLR) has stated:  
  
“.....normally the courts have felt that the success of the appeal would not be rendered nugatory if the decree is a money decree so long as the court ascertains that the respondent is not a “man of straw” but is a person who, on the success of the appeal, would be able to repay the decretal amount plus any interest to the applicant. However, with time, it became necessary to put certain riders to that legal position as it became obvious that in certain cases, undue hardship would be caused to the applicants if stay is refused purely on grounds that the decree is a money decree.”
8. ADC contends that, if stay is declined, then it is unlikely to recover the sum paid in the event of a successful appeal. But ADC does not substantiate its apprehension. It does not, for instance, say that the advocates are financially incapable of repaying the sum if asked to do so. We are not told that the advocates have a record of avoiding or evading financial obligations. The apprehension is therefore not demonstrated. In addition, it is not the case of ADC that payment of Kshs.13,226,441.60 is such a heavy burden that it will make it insolvent or will handicap or severely affect its operations.
9. In a word, the Notice of Motion dated 17<sup>th</sup> September 2024 is without merit. We hereby dismiss it with costs.

**DATED AND DELIVERED AT MOMBASA THIS 9<sup>TH</sup> DAY OF MAY 2025.**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

**DR. K. I. LAIBUTA CARb, FCIArb.**

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**JUDGE OF APPEAL**

**G. W. NGENYE-MACHARIA**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

