



**Managing Director, Kenya Pipeline Limited & another v Public
Procurement Administrative Review Board & 2 others (Civil Application
Sup E018 of 2024) [2025] KECA 756 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 756 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION SUP E018 OF 2024
SG KAIRU, P NYAMWEYA & F TUIYOTT, JJA
MAY 9, 2025**

BETWEEN

**THE MANAGING DIRECTOR, KENYA PIPELINE LIMITED ... 1ST APPLICANT
KENYA PIPELINE COMPANY LIMITED 2ND APPLICANT**

AND

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD 1ST
RESPONDENT
SEDGWICK KENYA INSURANCE BROKERS LIMITED 2ND RESPONDENT
FOUR M INSURANCE BROKERS LIMITED 3RD RESPONDENT**

*(Being an application for stay of the Judgment of the Court of
Appeal of Kenya at Nairobi (Warsame, Kantai & Nyamweya,
JJ.A.) dated 9th February 2024 in Civil Appeal No. E1009 of 2023)*

RULING

1. This ruling relates to the applicants' application dated 9th October 2024 seeking an order of "stay of the judgment and orders of the Court of Appeal (Warsame, Kantai & Nyamweya, JJ.A.) in *Civil Appeal No. E1009 of 2023* delivered at Nairobi dated 9th February 2024" pending the hearing and determination of the intended appeal against the said judgment.
2. The background in brief is this: Following a Request for Review, the 1st respondent, Public Procurement Administrative Review Board (the Board), in its decision dated 2nd November 2023 nullified and set aside a letter of award to the 3rd respondent, Four M Insurance Brokers Limited, dated 7th September 2023 and contract dated 2nd October 2023 for the All Risk Industrial Insurance Policy in relation to Tender No. KPC/PU/OT-298/Finance/NBI/22-23 for provision of insurance brokerage



services for the period 1st July 2023 to 20th June 2025. The Board directed the appellant to extend the validity period of the tender for a further 30 days from the date of its expiry, and to make good the anomalies it pointed out and proceed to conclude the procurement proceedings and execute a contract with the successful tenderer.

3. Four M Insurance Brokers Limited (the 3rd respondent) was aggrieved by the decision of the Board and instituted Judicial Review proceedings before the High Court, being *JR Application No. E121 of 2023* which culminated in a judgment delivered on 18th December 2023 allowing the application on grounds that the Board lacked jurisdiction to hear the Request for Review on grounds that the contract dated 2nd October 2023 had already been signed by the appellants.
4. The Board was aggrieved and lodged *Civil Appeal No. E1009 of 2023* before this Court. In a judgment delivered on 9th February 2024, this Court (Warsame, Kantai & Nyamweya, JJ.A.) allowed the appeal by Board and set aside the judgment and orders of the High Court at Nairobi (Chigiti, J.) delivered on 18th December 2023 in *JR Application No. E121 of 2023* and reinstated the decision of the Board.
5. Dissatisfied with the judgment of this Court, and intending to appeal the decision of this Court to the Supreme Court of Kenya, the appellants filed a Notice of Appeal dated 19th February 2024. Four M Insurance Brokers Limited on its part applied for review and/or setting aside of the judgment. In a ruling delivered on 20th September 2024, the Court (Kantai, Lesiit & Gachoka, JJ.A.) dismissed that application.
6. About eight months after delivery of the judgment by the Court on 9th February 2024, the applicants moved the Court, under Rule 5(2)(b) of the *Court of Appeal Rules*, by their present application dated 9th October 2024 which we heard on 17th December 2024.
7. At the hearing of the application, the parties were represented by learned counsel. Mr. Waudu appeared for the applicants. Mr. Munene Wanjohi appeared for the Board. Ms. Desma Nungo appeared for Sedgwick Kenya Insurance Brokers Limited, the 2nd respondent, while Mr. Shimoli appeared for the 3rd respondent, Four M Insurance Brokers Limited.
8. On jurisdiction of the Court to entertain the present application, counsel referred to Rule 1(2) and 5(2) (b) of the *Court of Appeal Rules*; Section 3A of the *Civil Procedure Act* and the decision of the Court in *Equity Bank Limited v. West Link Mbo Limited* [2013] eKLR among other decisions for the argument that the Court has inherent power to grant interim orders pending the hearing and determination of appeals.
9. Counsel also referred to the decision of the Court in *Stanley Kangethe Kinyanjui v. Tony Ketter & 5 Others* [2023] eKLR, to support the applicants' contention that the Court has jurisdiction to stay its own judgment or orders, provided the applicants shows that the appeal or intended appeal is arguable; that the applicants intended appeal is arguable as this Court, in setting aside the decision of the High Court, failed to check whether the contract it gave effect to had been signed in accordance with Section 135 of the Act; and the Court in its judgment failed to consider that a condition precedent to the signing of the contract, namely provision of a performance bond, had not been fulfilled.
10. Counsel also referred to the case of *Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others* [2014] eKLR for the argument that public interest is also a legitimate consideration in applications of this nature. In that regard, it was submitted that the effect of the impugned judgment of this Court is that the 2nd applicant does not currently have a subsisting Industrial All Risk Insurance cover; that substantial amounts of public funds are involved, and the intended appeal will be rendered nugatory.



11. Counsel for the 2nd respondent supported by counsel for the Board in opposing the application, referred to the replying affidavit sworn by Sammy Kiragu, the Managing Director of the 2nd respondent, and urged that the provisions of Rule 5(2)(b) of the *Court of Appeal Rules* relates to power of the Court to grant orders of stay of execution or injunction pending determination of appeals before it; that to the extent that the intended appeal is to the Supreme Court, the jurisdiction of this Court is not properly invoked; that on the strength of the decision in *Teachers Service Commission v. Kenya National Union of Teachers & 3 Others* [2015] eKLR, the Court lacks jurisdiction to entertain the present application; that having rendered its judgment, this Court is functus officio. Moreover, it was urged, the intended appeal is not arguable and in that regard counsel addressed the Court at length to demonstrate that the intended appeal is devoid of merit.
12. Counsel for the 3rd respondent did not oppose the application.
13. We have considered the application and the submissions. The critical question is whether the Court has jurisdiction to entertain the present application. As already indicated, following the appeal from the decision of the High Court delivered on 18th December 2023, this Court delivered judgment on 9th February 2024. Thereafter an application for review of that judgment was declined.
14. The powers of this Court under Rule 5(2)(b) of the *Court of Appeal Rules* are exercisable in the context of a pending or intended appeal before it. In that regard, the Court having already heard and determined the appeal no longer has the mandate under Rule 5(2)(b) to grant the orders the applicants seek. The circumstances in this case are not dissimilar to those in *Dickson Muricho Muriuki v. Timothy Kagundu Muriuki & 6 Others* [2013] eKLR where the Court addressed the issue whether it can entertain an application for stay of execution pending the hearing and determination of an application for leave to appeal to the Supreme Court. In that regard, the Court stated:

“On the issue of whether this Court has jurisdiction to stay execution of its orders or stay any proceedings after the final delivery of its judgment and pending the hearing and determination of an intended appeal to the Supreme Court, we are of the view that once this Court has pronounced the final judgment, it is functus officio and must down its tools. In the absence of statutory authority, the principle of functus officio prevents this Court from re-opening a case where a final decision and judgment has been made.”
15. In the same case, the Court provided guidance that subject to the Court of Appeal’s jurisdiction to certify matters of appeal to the Supreme Court, the proper forum to seek and apply for stay of execution after judgment by the Court of Appeal is the Supreme Court; and only when leave or certification has been granted.
16. More recently, in *Odongo v Clerk, Nakuru County Assembly & 5 Others* (Civil Appeal (Application) E001 of 2023) [2023] KECA 1554 (KLR) the Court in declining to grant an order of stay of proceedings that had been sought pending appeal to the Supreme Court stated as follows:

“As for the prayer seeking a stay of proceedings and stay of dismissal in Nakuru ELRC Petition No. E017 of 2022 and Nakuru ELRC Petition No. E001 of 2023 of this Court’s judgment pending the hearing of the intended appeal to the Supreme Court, the prayer is not available, as this court is functus officio and lacks the jurisdiction to grant such orders.” [Emphasis added].

We respectfully agree and need not say more.



17. The applicants' application dated 9th October 2024 fails and is dismissed with costs to the 1st and 2nd respondents.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MAY, 2025.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

