



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Aberdare Wire Products Limited v Tarmal Wire Products Limited (Civil Appeal (Application) E154 of 2021) [2025] KECA 1154 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KECA 1154 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E154 OF 2021
J KARANJA, LA ACHODE & SG KAIRU, JJA
JUNE 20, 2025**

BETWEEN

ABERDARE WIRE PRODUCTS LIMITED APPLICANT

AND

TARMAL WIRE PRODUCTS LIMITED RESPONDENT

(Being an application for stay of execution against the Ruling of the High Court of Kenya at Nairobi (Nzioka, J.) dated 11th December 2019 in HCCC No. 254 of 2016)

RULING

1. The applicant, Aberdare Steel & Hardware Limited moved the Court by Notice of Motion dated 15th October 2021 under Rule 5(2)(b) of the Court of Appeal Rules (among other provisions) seeking an order for stay of execution of the ruling of the High Court delivered on 11th December 2019 pending the hearing and determination of its appeal.
2. In that ruling the High Court (Nzioka, J.) struck out the applicant's statement of defence and entered judgment for the respondent, Tarmal Wire Products Limited, in the amount of Kshs. 21,221,177.00 and interest at court rates as prayed in the plaint. In doing so, the learned Judge found "that the defence herein is a sham and an abuse of the court process".
3. The record before us shows that the parties were in a trading relationship. In its plaint before the High Court, the respondent pleaded that it was a wholesale supplier of steel and hardware products while the applicant was a retailer; that between 2010 and 2012 the respondent supplied the applicant with products on credit and that the applicant defaulted in payment for the goods supplied; and that cheques with a combined value of Kshs. 12,711,755 issued by the applicant to the respondent towards liquidating its debt were dishonoured on presentation. The applicant filed a statement of defence denying the respondent's claim whereupon the respondent applied, by an application dated 18th January 2017, to strike out that defence for being a sham and an abuse of the process of the court.



4. Solomon Ngechu, a director of the applicant deponed in his affidavit in support of the present application that the appeal is meritorious and ought to be heard „to its finality#; that it is in the interest of justice that the application be allowed; that the respondent already filed a bill of costs that was pending taxation before the Deputy Registrar of the High Court and that execution was imminent.
5. It is the applicant#s case, urged before us by learned counsel Mr. Festus Onyango in his submissions that the appeal is arguable and has high chances of success; that the applicant was not accorded the right to a fair hearing as espoused under *the Constitution*; that the application meets the threshold in the case of Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others [2013] eKLR; and that the appeal will be rendered nugatory if the Court fails to grant the orders sought.
6. In opposition to the application, learned counsel for the respondent Mr. Otieno Omuga relying on the replying affidavit sworn by the respondent#s accountant Ebrahim Ali Omar and his written submissions urged that the applicant failed to disclose that a similar application to stay of execution was declined by the High Court; that the present application is frivolous and intended to “buy time” and frustrate the respondent#s attempts to recover the decretal amount; and that the application does not meet the test for the grant of the orders sought as stated in the decision in Githunguri vs. Jimba Credit Corporation Limited No.2 [1988] eKLR.
7. Counsel for the respondent urged that the appeal is not arguable and neither will it be rendered nugatory if the orders sought are declined; that in any event there is no suggestion that the respondent would be unable to refund the decretal amount should the appeal succeed; and that the applicant is not deserving of the Court#s exercise of discretion in its favour.
8. Evidently, counsel on either side is alive to the legal principles on which the Court considers applications of this nature. (See Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others and Reliance Bank Limited vs. Norlake Investments Limited [2002] 1 EA 227 (CAK) cited before us). As to whether the appeal is arguable, the applicant in its memorandum of appeal complains that in striking out its defence, the learned Judge erred: by concluding that the same did not raise triable issues; by denying it the right to fair trial under *the Constitution* and the Civil Procedure Rules; and by denying it unconditional right to defend its case. Given that an arguable appeal is not one that will necessarily succeed, we are prepared to give the applicant the benefit of doubt and say the appeal is not frivolous.
9. However, on the nugatory aspect, the decree the execution of which a stay is sought is a monetary decree. The applicant has not challenged the assertion by the respondent that it would be able to refund the decretal amount should the appeal eventually succeed. See for instance Trust Bank Limited & Another vs. Investech Bank Limited & 3 Others [2000] KECA 11(KLR); and Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme vs. Millimo, Muthomi & Company Advocates & 2 Others [2022] KECA 491 (KLR). The applicant has not demonstrated that the appeal will be rendered nugatory if we decline to grant the orders sought.
10. Consequently, the application dated 15th October 2021 fails. It is dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE 2025.

W. KARANJA

.....

JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb



.....

JUDGE OF APPEAL

L. ACHODE

.....

JUDGE OF APPEAL

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

Signed

Deputy Registrar

