



Baharini Consultants Limited v Kaylist Services Limited & another (Civil Application E131 of 2024) [2025] KECA 1140 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KECA 1140 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E131 OF 2024
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
JUNE 20, 2025**

BETWEEN

BAHARINI CONSULTANTS LIMITED APPLICANT

AND

KAYLIST SERVICES LIMITED 1ST RESPONDENT

MICHAEL THUO (SUING AS THE PERSONAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE DECEASED JORAM THUO WAIREGI) 2ND RESPONDENT

(An application for injunction against the Ruling of the High Court of Kenya at Nyeri (K. Magare, J.) delivered on 8th July, 2024 in H.C. Civil Suit No. 39 of 2002 Consolidated with HCCC No. 121 of 2001)

RULING

1. The dispute at the High Court of Kenya, Nyeri involved Michael Thuo (suing as the personal representative and Administrator of the Estate of the deceased Joram Thuo Wairegi) as 1st plaintiff, Jane Njeri Muikia (substituted for Samuel Mbugua) as 2nd plaintiff and Shelmith Waithera Kamunya (suing as the personal representative and Administrator of the Estate of the deceased Peter Kamunya Kiboi) as 3rd plaintiff. They sued Kaylift Services Limited as defendant asking for various reliefs and they obtained judgment after which execution issued.
2. The applicant here (Baharini Consultants Limited) joined the suit as an objector claiming that the proclaimed goods belonged to it but not to the defendant in the suit. In a ruling delivered on 8th July, 2024 Kizito Magare, J. found that the applicant had not established ownership of the goods and the objection was dismissed.



3. In the Motion before us brought under sections 3A and 3B of the *Appellate Jurisdiction Act*, and Rule 5 (2)(b) of the Court of Appeal Rules, 2010 (Since replaced by the Court of Appeal Rules, 2022) it is prayed in the main that pending hearing and determination of the application and the intended appeal we do issue an injunction restraining the 1st respondent including Vintage Auctioneers from attaching the applicant's movable goods including machines and motor vehicles. In grounds in support of the application and in a supporting affidavit of Jane Thuo, a director of the applicant, it is stated amongst other things that when parties appeared before the High Court for hearing of the applicant's application (objection proceedings) that application could not be traced at all at the court registry or on the entire portal and counsel for the applicant was forced due to the circumstances to withdraw it; that the main reason why the Judge had dismissed the applicant's application was that there were no documents attached by the applicant to show ownership of the goods, that the applicant had produced copies of business permits for the premises where the goods were proclaimed and motor vehicle log books in the supporting affidavit; that the applicant had demonstrated that it was the legal owner of the proclaimed goods. The applicant says that the intended appeal has reasonable chances of success as shown in draft Memorandum of Appeal. It is further said that unless an order of injunction is issued the 1st respondent, despite being aware that the said goods belong to the applicant will proceed with attachment and sale of the same; the applicant will be at risk of losing its movable properties including motor vehicles registered in its name and that the applicant will suffer irreparable loss if the goods are sold. It is therefore said that unless the application is granted the intended appeal will be rendered nugatory.
4. Attached to the Motion and affidavit are various applications filed at the High Court of Kenya, Nyeri. One of those applications is a Notice of Motion dated 20th September, 2022 and a supporting affidavit of Jane Thuo who attached various documents as annexures to her affidavit. These documents included proclamations by Vintage Auctioneers, Warrant of Attachment of Movable Property in Execution of Decree of Money in HCCC No. 39 of 2002 (consolidated with 121 of 2001); Certificate of Incorporation issued to Baharini Consultants Limited given on 15th February, 2002, Clearance Certificate by Nairobi City County to Baharini Consultants Limited, a Single Business Permit issued by the said County to the applicant, other proclamations by Link Eye Auctioneers and various motor vehicle log books owned by the applicant.
5. There is a strange document "1st respondent's grounds of opposition" filed by M/s Kilonzo & Co., Advocates – we say strange because the rules of this Court do not provide for such a document at all.
6. We have seen and considered the applicant's written submissions.
7. The principles that apply in an application for stay of execution pending appeal or for an injunction are well known. For an applicant to succeed he must show, firstly, that the appeal, or intended appeal, as the case may be, is arguable, which is the same as saying that the same is not frivolous. Such an applicant must, in addition, show that the appeal will be rendered nugatory absent stay - *Multimedia University & Another vs. Gitile N. Naituli* [2014] eKLR
8. We note that Kizito Magare, J., in concluding the ruling delivered on 8th July, 2024 found that the applicant, as objector, had not furnished any evidence of ownership of the proclaimed goods. He held:
 17. With no such evidence the court finds that the objection is baseless and untenable in law. It is accordingly dismissed to the 1st Decree holder."
9. The applicant intends to argue (as per draft Memorandum of Appeal) that the Judge erred in law and in fact in finding that there was no evidence attached to show ownership of the goods and thus there was nothing to show that the 1st respondent had interest in the goods. Another ground to be argued



(amongst others) is that the Judge failed to appreciate that the applicant had in fact produced copies of business permits for the premises where the goods were proclaimed and motor vehicle log books in its name as exhibits in the application dated 20th September, 2024. Upon consideration we find those not to be idle grounds, they are arguable grounds on appeal and as has been found by this Court an arguable point on appeal is not one that will succeed, it is one requiring full consideration and determination by the Court. See *Damji Pragji Mandavia vs. Sara Lee Household & Body Care (K) Ltd* Civil Application No. Nai 345 of 2004.

10. On the nugatory aspect the applicant submits that its goods will be sold in execution of a decree in a suit it was not a party; that those goods would then be beyond its reach making the appeal to be rendered nugatory. We agree. The applicant was not a party to the said suit from which the decree arose. If its goods are sold it will be deprived of them suffering the inconvenience and loss to its business when its goods have been proclaimed in a decree where the applicant was not a party and to which it filed objection proceedings.
11. The applicant has satisfied the principles for grant of a positive order in its favour. The Motion is allowed in terms of prayers (a) and (b) of the same.
12. Costs of the motion shall be in the intended appeal.

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

S. ole KANTAI

.....

JUDGE OF APPEAL

J. LESIIT

.....

JUDGE OF APPEAL

ALI – ARONI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

