



**Kewal Contractors Limited v Hatfield (Civil Application  
E649 of 2024) [2025] KECA 1167 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1167 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E649 OF 2024  
DK MUSINGA, F TUIYOTT & M NGUGI, JJA  
JUNE 20, 2025**

**BETWEEN**

**KEWAL CONTRACTORS LIMITED ..... APPLICANT**

**AND**

**DAVID JOHN HATFIELD ..... RESPONDENT**

*(Being an application for stay of execution of the Decree of the High Court of  
Kenya at Nairobi (S. Amin, J.) dated 26th May 1999 in HCCC No. 2010 of 1996)*

**RULING**

1. Before this Court is a notice of motion dated 20<sup>th</sup> November 2024, which is brought by the applicant under the provisions of sections 3A and 3B of the [Appellate Jurisdiction Act](#), rules 5 (2)(b), 44 and 49 (1) and (4) of the [Rules of this Court](#). The applicant seeks two main orders namely, that pending the hearing and determination of this application, this Court be pleased to issue an order for stay of execution of the decree dated 26<sup>th</sup> May 1999 issued in HCCC No. 2010 of 1996: [David John Ratfield v Kewal Contractors Limited](#); and that pending the hearing and determination of the intended appeal, this Court be pleased to issue an order of stay of execution of the decree dated 26<sup>th</sup> May 1999 issued in the same suit.
2. The background to this application is that the applicant, Kewal Contractors Limited, vide an application dated 6<sup>th</sup> May 2024, sought interim orders staying any action towards execution of a judgment delivered on 26<sup>th</sup> May 1999 and the decree dated 26<sup>th</sup> May 1999 in High Court Civil Case No. 2010 of 1996. The grounds in support of the application were, inter alia, that the decretal sums had already been paid to the respondent through its then Advocates, Gibson Morara & Company Advocates, in full satisfaction of the decree. The applicant further averred that the enforcement was statute-barred under section 4(4) of the [Limitation of Actions Act](#), which provides a 12-year limitation period for executing judgments, and a 6-year period for claiming interest on judgment debts. On this



basis therefore, it was contended that the decree had long lapsed, and that the respondent's attempt to revive execution was frivolous, vexatious, and an abuse of court process.

3. The respondent, David John Hatfield, in his response to the application, contended that he had been persistently and unjustifiably prevented from enforcing the decree. He detailed various obstacles, including the loss of the court file, which remained untraceable for a significant period, and acts of intimidation, including physical assault and threats by the defendant's managing director, which compelled him to flee Kenya for personal safety. He also pointed to bankruptcy proceedings initiated by the applicant in 1998, shortly after delivery of the judgment sought to be enforced, which he averred was a deliberate tactic to stall execution. He averred that although receiving orders were issued, the bankruptcy case was never concluded, nor was the decretal sum paid in over two decades.
4. The respondent further highlighted his extensive and documented attempts to trace the applicant's assets and company records, which were often unavailable or inaccessible. These frustrations were compounded by the loss of institutional memory due to the missing court file, which had to be reconstructed. He argued that his attempts to execute the decree over the years were genuine and persistently thwarted by circumstances beyond his control, many of which stemmed from the applicant's own conduct.
5. In its ruling delivered on 11<sup>th</sup> November 2024, the trial court held that although section 4(4) does impose strict limitation periods for executing judgments and recovering interest, its language, particularly the use of the word "may", confers judicial discretion to extend time where sufficient cause is shown. The court emphasized that where execution is initiated within the limitation period, or where delay is credibly explained and not due to indolence, courts may permit enforcement beyond the statutory window.
6. The court found that the respondent had made a compelling case, substantiated by evidence, that his efforts to execute the judgment were diligent but continually frustrated by legal, procedural, and even criminal impediments, some of which were orchestrated by the applicant. It rejected the applicant's assertion of payment as unsupported and found no merit in the claim that execution was now barred. Accordingly, the court dismissed the application with costs to the respondent.
7. Being dissatisfied with the ruling of the trial court, Kewal Contractors Limited intends to lodge an appeal before this Court as evinced by the Notice of Appeal dated 13<sup>th</sup> November 2024.
8. This application is supported by the grounds set out on its face and in the supporting affidavit sworn by Parminder Singh Manku, a director of the applicant. The applicant contends that the intended appeal raises substantial and arguable issues, and is therefore meritorious, with a high likelihood of success. In support of that contention, a draft Memorandum of Appeal is annexed to the said affidavit, setting out sixteen grounds of appeal. Among these is the ground that the learned judge erred both in law and in fact by: failing to appreciate the true construction, meaning and essence of section 4 (4) of the *Limitation of Actions Act*, failing to find that the respondent was obligated to execute the judgment and decree of the High Court within the prescribed statutory timeline, and that there was no justified reasons to execute 22 years from the date the judgment was delivered; and failing to take into account evidence contained in the applicant's supplementary affidavit which clearly showed that the entire decretal sum was paid to the then respondent's advocate, Gibson Morara & Co. Advocates.
9. With respect to the nugatory aspect, the applicant contends that the respondent has sought the issuance of warrants of arrest against its director, Parminder Singh Manku, in execution of the decree dated 26<sup>th</sup> May 1999; that in the absence of an order for stay of execution the said director faces an imminent and substantial risk of arrest and committal to civil jail, which would effectively render the intended appeal nugatory.



10. The application is opposed by the respondent, who relies on the replying affidavit and supplementary affidavit filed in the trial court, together with the annexures thereto. The respondent urges this Court to find that the application lacks merit and to dismiss it accordingly, thereby allowing execution to proceed against Parminder Singh Manku.
11. At the hearing of this application, learned counsel Mr. Musana held brief for Mr. Macharia for the applicant. The respondent was represented by learned counsel Mr. Musundi. Counsel made brief oral highlights of their respective client's written submissions, which was a reiteration of the grounds summarized hereinabove. We shall therefore not rehash their arguments, save to note that Mr. Musana asserted that the decretal sum sought to be recovered had been paid in full to the respondent's former advocate. In response, Mr. Musundi maintained that there was no credible evidence to support the alleged payment, and further argued that the applicant was, in effect, seeking a stay of a negative order, which in law is not capable of being stayed.
12. We have considered the application, the submissions, as well as the applicable law. It is trite law that in an application of this nature an applicant must satisfy this Court that the appeal or the intended appeal is arguable, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR. Even one arguable ground of appeal will suffice. See *Damji Pragji Mandavia v Sara Lee Household & Body Care (K) Ltd*, Civil Application No. Nai 345 of 2004.
13. Before we delve into the substantive merits of the application, we take note that the applicant, in the body of the motion, seeks stay of execution not of the orders and/or ruling delivered by the trial court on 11<sup>th</sup> November 2024, but rather of the decree issued on 26<sup>th</sup> May 1999 in HCCC No. 2020 of 1996. Curiously though, the notice of appeal dated 13<sup>th</sup> November 2024 is expressly directed against the ruling delivered on 11<sup>th</sup> November 2024. In addition, the grounds articulated in the annexed draft Memorandum of Appeal exclusively impugn that same ruling. In effect, there is no notice of appeal lodged in respect of the judgment delivered in 1999, nor is there any material on record to suggest that the intended appeal is directed at that judgment or the corresponding decree of 26<sup>th</sup> May 1999. In our view, the applicant appears to be disingenuously concealing an application for stay of execution of the ruling of 11<sup>th</sup> November 2024 under the guise of seeking a stay of execution of the 1999 decree.
14. As pointed out hereinabove, the respondent's counsel contended that the applicant was seeking stay of a negative order, an order which, in law, is incapable of being stayed. A perusal of the record reveals that the application before the trial court sought interim orders to restrain the respondent from executing a judgment delivered in 1999 and the consequential decree dated 26<sup>th</sup> May 1999. That application was dismissed. The trial court did not direct either party to take or refrain from taking any specific action; it merely declined to grant the orders sought. It is now well settled that a stay of execution cannot issue in respect of a negative or dismissive order, as there is nothing to stay. In *Western College of Arts and Applied Sciences v Oranga & Others* [1976-80] 1 KLR 63, the Court of Appeal for East Africa stated thus on the issue:

“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 *Wilson v Church*, the High Court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any 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, it is so ordered.”



15. In *Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya)* [2015] eKLR, this Court held as follows:

“An order for stay of execution [pending appeal] is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a judgment. The delay of performance presupposes the existence of a situation to stay – called a “positive order” – either an order that has not been complied with or has partly been complied with. See, for this general proposition, the holding of the Court of Appeal of Uganda in *Mugenyi & Co. Advocates v National Insurance Corporation (Civil Appeal No. 13 of 1984)* where it was stated: ‘.... an order for stay of execution must be intended to serve a purpose ....’”

16. Similarly, in *Kaushik Panchatia & 3 Others v Prime Bank Limited & Another* [2020] eKLR, this Court stated as follows regarding negative orders:

“... a negative order is incapable of being stayed because there is nothing to stay. It therefore, follows that in light of the above threshold we have no mandate to grant a stay order in the manner prayed for by Applicants.”

17. In light of the foregoing, there is nothing to stay in the present matter, and this application is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE 2025.**

**D. K. MUSINGA, (PRESIDENT)**

.....

**MUMBI NGUGI**

**JUDGE OF APPEAL**

.....

**F. TUIYOTT**

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

