



Maweni Enterprises Limited & 2 others v Guaranty Trust Bank (Kenya) Limited (Civil Application E010 of 2024) [2024] KECA 1446 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KECA 1446 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E010 OF 2024
SG KAIRU, FA OCHIENG & WK KORIR, JJA
OCTOBER 11, 2024**

BETWEEN

**MAWENI ENTERPRISES LIMITED 1ST APPLICANT
CHRISTINE MUMBI MUCHEMI (SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF THE LATE JOHNSTONE MUCHEMI
MUGUTU) 2ND APPLICANT
ELIZABETH WANGU MUGUTU 3RD APPLICANT**

AND

GUARANTY TRUST BANK (KENYA) LIMITED RESPONDENT

(An application for stay of execution pending lodging, hearing and determination of an appeal from the judgment of the High Court of Kenya at Nakuru (Chemitei, J.) dated 14th December, 2023 in HCCC No. 29 of 2014)

RULING

1. This ruling arises from an application by the applicants, Maweni Enterprises Limited, Christine Mumbi Muchemi (personal representative of Estate of Johnstone Muchemi Magutu) and Elizabeth Wangu Mugutu dated 18th January 2024. The application is made under Rule 5(2)(b) of the [Court of Appeal Rules](#) and seeks an order against the respondent Guaranty Trust Bank of Kenya Limited for stay of execution of the judgment of the High Court at Nakuru delivered on 14th December 2023 pending the hearing and determination of the intended appeal.
2. Based on the material before us, the background in brief is that in April 2007, Fina Bank, the predecessor to Guaranty Trust Bank of Kenya Limited (the Bank) extended a banking facility in the form of asset finance in the amount of Kshs. 7,036,950.00 to the 1st applicant to finance the purchase of a Prime Mover and Trailer. The facility was secured by a Guarantee furnished by Johnstone Muchemi



Magutu and Elizabeth Wangu Mugutu. Apparently, there was default in repayment. The Bank filed suit which culminated in the judgment of the High Court at Nakuru (H. K. Chemitei, J.) delivered on 14th December 2023 ordering the 1st applicant to pay Kshs. 14,320,357.44 outstanding on its asset finance Kshs. 32,999.98 overdrawn on its current account; and Kshs. 14,353,357.42 as against the 2nd and 3rd applicants being the cumulative outstanding amount on the asset finance and overdrawn current account with interest continuing to accrue until payment in full.

3. Dissatisfied with the judgment, the applicants filed a Notice of Appeal and subsequently this application.
4. Having heard the application on 25th April 2024, when Mr. O. Othim, learned counsel for the applicant appeared before us, we have considered the same, the affidavits in support, the replying affidavit and the written submissions in support and in opposition to the application.
5. The applicants argue that the intended appeal is arguable and has high chances of success; that the process of execution has commenced in view of a draft decree having been forwarded for approval; and that the application fulfils the two prerequisites for granting the orders sought. The case of *Ontweka & 3 Others v Onderi*, Civil Application No. E332 of 2023 [2023] KECA 1032 (KLR) is cited in support.
6. The advocates for the Bank, on the other hand, citing the case of *Trust Bank Limited and Another v Investech Bank Limited and 3 Others* [2000] eKLR, submit that the intended appeal is not arguable as the applicants failed to fulfil their obligations by repaying the facility and have not demonstrated that the financial accommodation extended has been paid. It is submitted that the applicants have also not demonstrated that the appeal will be rendered nugatory if the orders sought are not granted; that the Bank is reputable and would be in a position to refund the decretal amount to the applicants should the appeal ultimately succeed; and that the applicants have not demonstrated their financial ability. Cited was the case of *Kenya Hotel Properties Limited v Willesden Properties Limited*, Civil Application No. NAI. 322 of 2006.
7. Undoubtedly, under Rule 5(2)(b) of the *Court of Appeal Rules*, the court has the discretion to grant the orders sought provided the applicants demonstrate that the intended appeal is arguable and not frivolous and that unless stay of execution of the judgment is granted the appeal, if successful, would be rendered nugatory. See *Stanley Kangethe Kinyanjui v Tony Ketter & others* [2013] eKLR.
8. In their Memorandum of Appeal attached to the application, the applicants generally complain that the learned Judge of the High Court in rendering his judgment did not take their evidence and that of their witnesses as well as their submissions into account. Upon a preliminary assessment, and given that an arguable appeal is not one that must necessarily succeed (See *China Road & Bridge Corporation (K)Ltd v African Gas & Oil Co. Ltd & 3 others* [2016] eKLR) we are prepared to give the applicant's the benefit of doubt and state that the intended appeal is not frivolous.
9. However, beyond making the statement that the appeal if successful, will be rendered nugatory, the applicants have not at all demonstrated, how that will be so. Consequently, the application fails and is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAKURU THIS 11TH DAY OF OCTOBER, 2024.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

F. OCHIENG



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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

