



**Rafiki Microfinance Bank Limited v Assets Recovery Agency & 2 others (Civil Appeal (Application) E542 of 2022) [2022] KECA 1173 (KLR) (21 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1173 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E542 OF 2022  
K M'INOTI, KI LAIBUTA & PM GACHOKA, JJA  
OCTOBER 21, 2022**

**BETWEEN**

**RAFIKI MICROFINANCE BANK LIMITED ..... APPLICANT**

**AND**

**ASSETS RECOVERY AGENCY ..... 1<sup>ST</sup> RESPONDENT**

**RIGATHI GACHAGUA ..... 2<sup>ND</sup> RESPONDENT**

**ANNE KIMEMIA T/A JENNE ENTERPRISES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for stay of execution pending an intended appeal from the Judgment of the High Court of Kenya at Nairobi (E. N. Maina, J.) dated 28th July, 2022 in ACEC NO. E020 OF 2020)*

**RULING**

1. Before us is the applicant's notice of motion dated August 17, 2022 made under rule 5(2) (b) of the [Court of Appeal Rules](#) seeking, *inter alia*: stay of execution of the judgment and/or decree of the High Court of Kenya at Nairobi (Esther N Maina, J) dated July 28, 2022 in ACEC No E020 of 2020 pending hearing and determination of the intended appeal; and costs.
2. The application is supported by the annexed affidavit of Helen Nyaboke (the applicant's legal manager) sworn on August 17, 2022, and is made on 18 grounds, which we need not replicate here save to observe that the applicant's main contention is that "the substantive sum of the forfeiture order is the fixed deposit sum in the name of the 2<sup>nd</sup> respondent and which also is a security that guaranteed several loan facilities taken with the applicant by third parties;" that the 1<sup>st</sup> respondent has been demanding for the remittance of the decretal sum of the forfeiture order to the agency and even threatened to institute contempt proceedings against the applicant in case the decretal amount was not settled immediately;



and that the applicant stands to suffer substantive loss and irreparable injury to its reputation and market standing.

3. Except for the learned senior counsel for the applicant, who filed his written submissions, list of authorities and case digest dated September 9, 2022 in support of the motion, none of the respondents has filed any replying affidavit or written submissions.
4. When the applicant's motion came for hearing on the GoTo Meeting virtual platform, Prof Tom Ojienda, SC (counsel for the applicant), Mr K Kilukumi, SC (counsel for the 2<sup>nd</sup> respondent) and Mr Wachira (counsel for the 3<sup>rd</sup> respondent) attended. The 1<sup>st</sup> respondent was unrepresented despite having been duly served with a hearing notice.
5. Learned counsel for the applicant, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents made oral submissions in support of the application. Having considered the applicant's notice of motion, the affidavit in support thereof, the written submissions of learned senior counsel for the applicant, and the oral submissions of learned counsel in attendance, we call to mind the provisions of section 92(6) of the [Proceeds of Crime and Anti-Money Laundering Act](#), 2009, which reads:

“ 92.(6) A forfeiture order shall not take effect—

(a) before the period allowed for an application under section 89 or an appeal under section 96 has expired; or

(b) before such an application or appeal has been disposed of.”

6. In view of the foregoing, we reach the inescapable conclusion that the applicant's motion is unwarranted, having been made in disregard of section 92(6) of the [Act](#) which, in our view, provides statutory safeguards pending appeal. The applicant's motion amounts to a plea to this court to order obedience to statute law; a plea that this court cannot entertain. Accordingly, the same is hereby dismissed with no orders on costs.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER, 2022.**

**K. M' INOTI**

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**JUDGE OF APPEAL**

**DR. K. I. LAIBUTA**

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**JUDGE OF APPEAL**

**M. GACHOKA – CI Arb, FCIARB**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

