



**Haile v CIM Credit Kenya Limited & another; NCBA Bank Limited (Garnishee)  
(Cause E6482 of 2020) [2025] KEELRC 714 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 714 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6482 OF 2020**

**MN NDUMA, J  
MARCH 6, 2025**

**BETWEEN**

**YOEAL HAILE ..... CLAIMANT**

**AND**

**CIM CREDIT KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CIM GROUP/CIM FINANCE LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**NCBA BANK LIMITED ..... GARNISHEE**

**RULING**

1. Serving before court is an application dated 4/9/2024 seeking an order in the following terms:-
  1. Spent
  2. Spent
  3. Spent
  4. Spent.
  5. That pending the hearing and determination of the Respondents' intended appeal, there be a stay of execution of the judgment of Honourable Justice Mathew Nduma Nderi delivered on 30<sup>th</sup> May, 2024
  6. The costs of this application be provided for.
2. The application is premised on grounds set out on the face of the Notice of Motion and buttressed in the supporting affidavit which may be summarized that the firm of Mutubwa and Associates Advocates



has lodged an application seeking warrants of attachment and sale against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for recovery of the decretal sum.

3. That this second execution application is an abuse of the court process given that the firm of Mutunga Justus and Associates Advocates have commenced Garnishee proceedings for the entire judgment for which warrants are now sought and have obtained Garnishee order Nisi in that regard.
4. That duplication of execution proceedings by two firms of lawyers purporting to act for the same claimant is gross abuse of court process and warrants intervention by the court.
5. That the firm of Mutubwa and Associates commenced taxation proceedings which are currently ongoing with the next court attendance scheduled for 9/10/2024. That the application for attachment is therefore made in bad faith and is irregular. That no leave has been sought in terms of section 94 of the [Civil Procedure Act](#) to allow execution of the decree before the costs are taxed.
6. That the court do issue a stay of execution of the judgment delivered on 3/5/2024 and stay further proceedings with respect to the Garnishee application filed by the firm of Mutunga Justus and Associates Advocates.

### **Replying Affidavit**

7. The Claimant filed a Replying Affidavit in opposing the application and depose that the issue of representation between the two named law firms was resolved by a consent on 2/10/2024 filed by the said firms' and matter is spent.
8. That the only pending issue is stay of execution pending appeal per prayers in the Notice of Motion. That the application does not meet the threshold under order 42 Rule 6 of the Civil Procedure Rules. That judgment was issued on 30/5/2024 and this application is visited by inordinate delay without any valid explanation given for the delay. That the application is an afterthought. That the Applicant has not demonstrated that failure to get stay of execution would render intended appeal nugatory. Furthermore, no security for realization of the decretal sum and costs has been furnished by the Applicant.
9. That the application lack merit and it be dismissed with costs.

### **Determination**

10. The court has perused the record and is satisfied that the issue of representation of Claimant was settled by consent of the parties on 24/9/2024 and papers filed by Mutunga and Associates Advocates were struck off the record. Therefore, the Garnishee application and Rule Nisi granted thereof were set aside, hence the move by the Claimant to execute the decretal amount vide application for attachment.
11. The court is guided with regard to the only relevant matter of whether or not the Applicant has satisfied the threshold for stay of execution pending appeal by the decision of the High Court in *Butt v Rent Restriction Tribunal* [1982] KLR 417 as also well captured in the case of *Felix Mochieno Oindi v Gutonya Newton Mbogo* [2018] eKLR where the principles were laid down as follows:-
  - i. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
  - ii. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverses the Judge's discretion.



- iii. A Judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the Applicant at the end of the proceedings.
  - iv. The court in exercising its discretion whether to grant (or) refuse an application for stay will consider the special circumstances of the case and unique requirements.
  - v. The court in exercising its powers under Order XLI Rule 4(2) (now Order 42 Rule 6) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to collapse.”
12. The Applicant has not expressed a reasonable fear that the Claimant would be unable to pay back the decretal sum as was stated in the case of National Industrial Credit Bank Ltd versus Aquinas Francis Wasike and another [2020] eKLR.
13. Above all, this application was filed on 9/10/2024 whereas the judgment of the court was delivered on 30<sup>th</sup> May 2024. This is about seven (7) months from the date of judgment and the same was filed only upon application for instant warrant of execution being made by the Claimant.
14. The court is not satisfied that the Applicant has satisfied the requirements under Order 42 Rule 6 of Civil Procedure Rules.

Accordingly, the application lacks merit and is dismissed with costs

**DATED AT NAIROBI THIS 6TH DAY OF MARCH 2025**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Ms. Mutubwa for Claimant/Respondent

Ms. Kirimi for Respondent/Applicant

Mr. Kemboi – Court Assistant

