



**Rene & Hans Advocates LLP v Kiwipay (K) Limited & 4 others; Kiwipay PTE Limited & another (Interested Parties) (Miscellaneous Application E804 of 2022) [2025] KEHC 482 (KLR) (Commercial and Tax) (28 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 482 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E804 OF 2022**

**JWW MONG'ARE, J  
JANUARY 28, 2025**

**BETWEEN**

**RENE & HANS ADVOCATES LLP ..... APPLICANT**

**AND**

**KIWIPAY (K) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ECOBANK KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**MAINA STEPHEN NJENGA ..... 3<sup>RD</sup> RESPONDENT**

**FELIX RANTUU LEKISHE ..... 4<sup>TH</sup> RESPONDENT**

**SOLOMON JOSEPH MAINA ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**KIWIPAY PTE LIMITED ..... INTERESTED PARTY**

**I&M BANK LIMITED ..... INTERESTED PARTY**

**RULING**

**Introduction and Background:-**

1. This matter was filed by the Applicants (“Advocates”) through their application dated 14<sup>th</sup> November 2022 where the Advocates sought to preserve the sum of USD 2,502,675 in the 1<sup>st</sup> Respondent’s (“Kiwipay”) accounts domiciled at the 2<sup>nd</sup> Respondent (“Ecobank”). The Advocates also sought an order directing the Bank to transfer this sum to them which they claimed was on account of agreed legal fees for representation of the 3<sup>rd</sup> – 5<sup>th</sup> Respondents in Nairobi High Court Commercial



Petition No. E010 of 2022, Maina Stephen Njenga & 2 Others v Kiwipay PTE Limited & Others. On 27<sup>th</sup> March 2023, the court (Chepkwony J.,) allowed the application on terms that the Bank was directed to transfer the claimed USD 2,502,675 to the Advocates. This prompted Kiwipay to file an application dated 30<sup>th</sup> March 2023 seeking to stay execution of the orders of 27<sup>th</sup> March 2023 pending the hearing of the application and the intended appeal against the ruling. Kiwipay further sought to maintain the status quo obtaining as at the time of filing the application.

2. On 31<sup>st</sup> March 2023 the court (Mabeya J.,) partly allowed Kiwipay's application when it issued orders staying the execution of the orders of 27<sup>th</sup> March 2023. Kiwipay followed up their application with two applications dated 4<sup>th</sup> April 2023 where they sought similar orders of stay of execution and preservation, restoration and/or restitution of the said USD 2,502,675 in Kiwipay's account held at Ecobank. These prayers were allowed in the interim by Sifuna J., in his directions and orders of 6<sup>th</sup> April 2023. Kiwipay also seeks an injunction restraining the 2<sup>nd</sup> Interested Party ("I&M Bank") from releasing, disbursing, transferring and/or whatsoever dealing with the USD 2,502,575 that it received from Ecobank and that I&M Bank be directed to revert, restore and/or retribute the USD 2,502,675 to Kiwipay's account at Ecobank.
3. The aforementioned applications are opposed by the Advocates through the replying affidavit of their Managing Partner, Isaac Rene, sworn on 17<sup>th</sup> March 2023, by Ecobank through the affidavits sworn by its Senior Legal Officer, John Wambugu on 8<sup>th</sup> May 2023 and 9<sup>th</sup> June 2023 and by I&M Bank through the affidavits of Andrew Muchina And Gul Khan sworn on 12<sup>th</sup> April 2023 and 9<sup>th</sup> June 2023 respectively and the Notice of Preliminary Objection dated 22<sup>nd</sup> May 2023. The parties have also supplemented their arguments by way of written and oral submissions by their respective counsel.

#### **Analysis and Determination:-**

4. I have carefully gone through applications, the responses thereto, the Objection and the submissions of the parties. Even though some technical issues are being raised about the competence of the applications, I am inclined to deal with their merits for the sake of completeness and substantive justice. The issues for the court's determination are whether there ought to be a stay of execution of the court's orders of 27<sup>th</sup> March 2023 pending the hearing of the intended appeal and whether I&M Bank should be enjoined from dealing with the USD 2,502,675 it received from Ecobank and whether the same should be reverted to Kiwipay's account at Ecobank.
5. The Advocates, Ecobank and I&M Bank argued that there is nothing to be stayed as the orders of 27<sup>th</sup> March 2023 had already been complied with by the time the court was issuing the stay orders of 31<sup>st</sup> March 2023 and 6<sup>th</sup> April 2023. I have gone through annexures on the chronology of events when the orders of 27<sup>th</sup> March 2023 were issued and when the stay orders of 31<sup>st</sup> March 2023 and 6<sup>th</sup> April 2023 were issued served and I am inclined to agree with them that by the time they were being served with the stay and preservation orders, the orders of 27<sup>th</sup> March 2023 had already been complied with and perfected. Therefore, there was nothing for them to stay, preserve or revert as Ecobank and I&M Bank acted on the orders of 27<sup>th</sup> March 2023 and rightly so, before the stay and preservation orders of 31<sup>st</sup> March 2023 and 6<sup>th</sup> April 2023 were served upon them. The orders of stay of execution, preservation and restitution that Kiwipay seeks have been overtaken by events and cannot be granted in the present circumstances and that granting the said orders would serve no useful purpose (see Jane Jeptoo Sawe v Estate of Sylvester Kimagut Sang Represented by Jennifer Chebet Sang [2016] KECA 349 (KLR)).



**Conclusion and Disposition:-**

6. As a result, the applications dated 30<sup>th</sup> March 2023 and 3<sup>rd</sup> April 2023 fail and the same are hereby dismissed forthwith. Each party is directed to bear their own costs. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF JANUARY 2025**

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

Mr. Isaac Rene holding for Mr. Omwanza for the Plaintiff.

Mr. Mwangi holding brief for Mr. Rimui for the 2<sup>nd</sup> Defendants.

Mr. Kiprotich for the 1<sup>st</sup> Interested Party.

Amos - Court Assistant

