



REPUBLIC OF KENYA



**KENYA LAW**  
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**Tuffsteel Limited v Copia Kenya Limited (Commercial Appeal E183 of 2024)  
[2025] KEHC 3865 (KLR) (Commercial and Tax) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3865 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E183 OF 2024**

**H NAMISI, J**

**MARCH 28, 2025**

**BETWEEN**

**TUFFSTEEL LIMITED ..... APPELLANT**

**AND**

**COPIA KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The Notice of Motion dated 10 July 2024 seeks the following orders:
  - i. Spent
  - ii. That in the interim, and pending the hearing and determination of this Application inter partes, an order do and is hereby issued staying the Ruling and Orders of Hon. S. K. Onjoro (PM) given on 21 June 2024 in Milimani Commercial No. MCCMISC E833 of 2024;
  - iii. That in the interim, and pending the hearing and determination of this Application inter partes, an order do and is hereby issued maintaining the status quo as at 21 June 2024 to the effect that the orders freezing the Respondent's Bank accounts, Copia Kenya Limited , KRA NO. P051xxxxxxN to the extend of Kshs 13,312,133.00 in Kenya Commercial Bank Ltd, NCBA Bank, Citi Bank, Absa Bank, Co-operative Bank of Kenya, Equity Bank Limited, Standard Chartered Bank Limited, Ecobank Limited and Stanbic Bank Limited issued by Hon. S. K. Onjoro (PM) on 22 May 2024 in Milimani Commercial Case No. MCCCmisc E833 of 2024 to remain in force;
  - iv. That an order do and is hereby issued staying the Ruling and Orders of Hon. S. K. Onjoro (PM) given on 21 June 2024 in Milimani Commercial No. MCCMISC E833 of 2024 pending the hearing and determination of the Appeal herein;



- v. That an order do and is hereby issued maintaining the status quo as at 21 June 2024 to the effect that the orders freezing the Respondent's Bank accounts, Copia Kenya Limited , KRA NO. P051xxxxxN to the extend of Kshs 13,312,133.00 in Kenya Commercial Bank Ltd, NCBA Bank, Citi Bank, Absa Bank, Co-operative Bank of Kenya, Equity Bank Limited, Standard Chartered Bank Limited, Ecobank Limited and Stanbic Bank Limited issued by Hon. S. K. Onjoro (PM) on 22 May 2024 in Milimani Commercial Case No. MCCCmisc E833 of 2024 to remain in force pending the hearing and determination of the Appeal herein;
  - vi. That the Court be pleased to grant any other orders that it may deem necessary in the interest of justice;
  - vii. That the costs of this Application be provided for.
2. The Application is supported by the Affidavit of Tejas Patel and premised on the following grounds:
    - a. That the lower court delivered a Ruling on 21 June 2024 on Notice of Motion by the Respondent dated 27 May 2024 in the absence of Counsel for the Applicant;
    - b. That the said Ruling lifted orders issued by the same court on 22 May 2024 lifting the freezing orders on the accounts held and operated in the various banks;
    - c. That if the lifting orders are enforced, the Applicant will be highly prejudiced as he stands to lose his hard earned money;
    - d. That further, if the lifted orders remain in place, the Appeal herein will be rendered nugatory as the Respondent will withdraw and/or transfer the funds to the detriment of the Appellant;
    - e. That the Appellant has a strong appeal with high chances of success;
    - f. That there is need to have the orders herein reinstated to protect the amounts owed by the Respondent herein;
    - g. That if the Court does not stay the Ruling of the lower court, the Applicant fears that it may never be able to recoup the monies and the Applicant will suffer irreparable loss;
    - h. That it is only fair, just and mete that the orders herein be issued for justice to be well accorded.
  3. The Supporting Affidavit repeats the grounds on the Application.
  4. In opposing the Application, the Respondent filed a Replying Affidavit sworn by Anthony M. Muthusi, one of the Administrators of the Company appointed on 17 May 2024. The Administrator noted that the application filed in the lower court by the Respondent herein sought to interim orders issued on 22 May 2024 since the company had been placed under administration. The Application was done pursuant to section 560(1)(d) of the *Insolvency Act*, 2015. The Administrator contended that the Applicant's prayers herein are in effect seeking a stay of a negative order, which stay cannot be granted.
  5. The Application was canvassed by way of written submissions.
  6. On lifting of the freezing order, the Appellant submitted that the orders were properly issued based on compelling reasons, including the need to protect the Applicant's interests, prevent the loss or dissipation of the assets and funds in question, and ensure that they remain available for satisfying any judgment or award that may be issued. The Applicant contended that it is well established that a court cannot review a matter already adjudicated upon by itself unless the provisions of Section 80 of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules* are met. Reliance was placed on the case of *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR



7. The Applicant further relied on *Principles of Corporate Insolvency Law*, Sweet and Maxwell, para. 11-69 where the learned author states as follows in relation to self-help remedies:

“While there is a general prohibition on the institution of proceedings without the consent of the administrator or the permission of the court, the only self-help remedies falling within para. 43 of Sch B1 are those mentioned earlier, namely the taking of steps to enforce a security or to repossess goods in the company’s possession under a hire-purchase agreement, the exercise of a right to forfeit a lease by peaceable re-entry and the levying of a distress...”

8. I have keenly read and considered the Application, the response and submissions by both parties. The main issue for determination is whether the stay of execution pending appeal is merited.

9. In *RWW v EKW* [2019] eKLR, the court considered the purpose of a stay of execution order pending appeal, in the following words:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

10. In the instant case, the court discharged its earlier orders made on 22 May 2024. As submitted by the Respondent, the court did not order any of the parties to do anything, to refrain from doing anything or to pay any sum. In the case of *Western College Farts and Applied Sciences vs. Oranga & Others* [1976] KLR 63, the Court of Appeal whilst considering whether an order of stay can be granted in respect of a negative order stated inter alia as follows:

“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. An execution can only be in respect of costs....”

11. This position was reiterated by the same court in *Kanwal Sarjit Singh Dhiman v Keshavji Juvraj Shah* [2008] eKLR, where it held as follows:

“The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18<sup>th</sup> December, 2006. The order of 18<sup>th</sup> December, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only (see *Western College of Arts & Applied Sciences v Oranga & Others* [1976] KLR 63 at page 66 paragraph C).”

12. Adopting the same reasoning, I find that Applicant seeks to stay a negative order which is one that is incapable of execution, and thus, incapable of being stayed.



13. Further, section 560(1)(d) of the *Insolvency Act* provides that a person may begin or continue legal proceedings (including execution and distress) against the company or the company's property only with the consent of the administrator or with the approval of the Court. It is clear that the Applicant herein did not seek the consent of the Administrator nor that of the Court prior to instituting these proceedings against the Respondent. That being the case, then this Application, and in deed these proceedings, are improperly before the Court.
14. The upshot is that the Application is dismissed. Bearing in mind the outcome, each party shall bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF MARCH 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Ms. Nambande h/b Ms. Michael .....for the Applicant

Ms. Wetungale h/b Ms Kale.....for the Respondent

Libertine Achieng.... Court Assistant

