



**NCBA Bank Kenya PLC v Wyss Logistics (Civil Appeal
E277 of 2023) [2025] KEHC 5031 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5031 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E277 OF 2023
JM NANG'EA, J
APRIL 28, 2025**

BETWEEN

NCBA BANK KENYA PLC APPLICANT

AND

WYSS LOGISTICS RESPONDENT

RULING

1. By Notice of Motion dated 21st February 2025, the Respondent prays for reliefs as hereunder;
 1. Spent
 2. That sum of Kshs. 2,000,000/= deposited in Court by the Appellant pursuant to orders made on 12th February 2025 be released to the respondent's advocates on record in partial satisfaction of the decree issued in Nakuru CMCC No. E626 Of 2022: *Wyss Logistics Ltd Vs Ncba Bank Kenya PLC*(sic).
 3. That the costs of the application be provided for.
2. The Respondent's Director (Herodian Machoka) swore an affidavit in support of the application. Alluding to the court's ruling delivered on 12th February 2025, he avers that the Appellant was directed to deposit into court the entire decretal sum awarded in the lower court within 7 days in default of which stay of execution earlier granted pending hearing and determination of the appeal would automatically lapse. The Appellant is said to have failed to fully comply with the order, depositing only Kshs. 2,000,000/= instead of the whole decretal sum amounting to Kshs. 2,179,000/=. The Respondent laments that this is a breach of the court's order and wants the sum of Kshs. 2,000,000/= released to him in partial satisfaction of the decree in his favour.
3. The Appellant opposes the application vide an affidavit in reply sworn by its legal Counsel (Christine Wahome). It is deposed that the decretal sum the Respondent was ordered to deposit was Kshs.



- 2,000,000/= as per the decree of the lower court. The Appellant states that it received an invoice in the same amount from the court's registry on the basis of which it made the deposit.
4. Although it concedes that the extracted decree contains two parts to wit; the decree section showing the sum of Kshs. 2,000,000/= and Certificate of Costs in the sum of Kshs. 175,000/=, the Appellant states that it understood the decretal sum to be only the amount of Kshs. 2,000,000/=. The Appellant, however, expresses readiness to deposit any other additional sum as may be ordered by the court.
 5. The Appellant therefore maintains that it complied with the court's ruling of 12th February 2025 as to deposit of security pending hearing and determination of its appeal.
 6. The Learned Counsel for the parties made brief oral Submissions reiterating their clients' factual position as per their affidavit evidence. Mr. Ratemo Advocate for the Respondent also referred the court to a list of authorities filed online to wit; *John Kosgei & Another vs Dancun Kiplagat* (2011) eKLR, *Gianfranco & Another vs Africa Merchant Assurance Company Limited* (2019) KEHX 7586 (KLR), *Andrew Kuria Njuguna T/A Ongatet Enterprise Kariuki Mungai vs Rose Wambui Kuria* (2012) KEHC 3029 (KLR) & *Asanyo & 3 Others vs Attorney General* (Petition No. 07 of 2019) [2020] KESC 62 (KLR) (10 January 2020) (Judgment). These authorities define and explain a decretal sum to include a principal amount together with any costs and interest granted.
 7. The Appellant made no legal submissions.
 8. The issue arising for determination is whether the costs of the suit that were granted to the Respondent in the lower court are part of the decretal sum required to be deposited in terms of this court's ruling of 12/2/2025. Clearly, the position is in the affirmative as elaborated in the cases cited by the Respondent. A money decree includes any costs or interest awarded to a party. The Appellant has therefore regrettably continued to frustrate the Respondent by failing to obey court orders aimed at enabling the appeal to proceed. The Appellant does not deserve any further indulgence.
 9. The Application is allowed and the sum of Kshs. 2,000,000/= (Kenya Shillings two million) deposited into court is ordered released to the Respondent in part settlement of the decree. The Respondent will have the costs of the application.

RULING DELIVERED VIRTUALLY THIS 28TH DAY OF APRIL, 2025 IN THE PRESENCE OF:

J. M. NANG'EA - JUDGE

Appellant's Advocate, Mr. Ojou

Respondent's Advocate, Mr. Ratemo

Court Assistant (Jeniffer)

J. M. NANG'EA - JUDGE

