



**SBC Africa Consulting Limited v Muhia t/a Skylane Solutions (Commercial Appeal E001 of 2024) [2025] KEHC 9066 (KLR) (Commercial and Tax) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9066 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E001 OF 2024**

**KW KIARIE, J**

**JUNE 27, 2025**

**BETWEEN**

**SBC AFRICA CONSULTING LIMITED ..... APPLICANT**

**AND**

**KELVIN MUHIA T/A SKYLANE SOLUTIONS ..... RESPONDENT**

**RULING**

1. In the application dated the 14<sup>th</sup> day of May 2024, the applicant moved the court through a Notice of Motion under sections 1A, 1B, 3A of the *Civil Procedure Act*, and Order 42 Rule 6 of the Civil Procedure Rules. They are seeking the following orders:
  - a. This application is to be heard ex parte in the first instance and as a matter of urgency.
  - b. That pending the hearing and determination of this application ex parte, the honourable court be pleased to extend the stay of execution orders issued on 14<sup>th</sup> February, 2025.
  - c. That pending the hearing and determination of this application inter partes, the honourable court be pleased to extend the stay of execution orders issued on 14<sup>th</sup> February, 2025.
  - d. That pending the hearing and determination of this appeal inter partes, the honourable court be pleased to grant an order for the extension of the stay of execution of orders issued on 14<sup>th</sup> February 2025.
  - e. That the honourable court do issue an order compelling the respondent to provide its account opening documents to the appellant to facilitate the opening of a joint account as directed on 14<sup>th</sup> February, 2025.



- f. That the honourable court be pleased to set aside the decree issued on 24<sup>th</sup> April 2025 pending the hearing and determination of this application and/or appeal.
  - g. That pending the hearing and determination of this application, the honourable court be pleased to set aside the warrants of attachment and sale dated 6<sup>th</sup> May 2025 against the applicant and all consequential process predicated thereon be hereby set aside.
  - h. That the honourable court make such further orders and/or directions as it deems fit.
  - i. The costs of and incidental to this application be provided for.
2. The application is premised on the following grounds:
- a. On 9<sup>th</sup> May 2025, the applicant herein was served with a proclamation of attachment dated 9<sup>th</sup> May 2025 issued on Mbusera Auctioneers seeking to attach the applicant's property within the next 7 days for execution of the decree of this court allegedly issued on 24<sup>th</sup> April 2025.
  - b. The same comes as a shock since execution in this matter has already been stayed pending appeal, by the Hon. Justice W. Kiarie on 14<sup>th</sup> February, 2025 in HCCOMMA/EOO1/2024: SBC Africa Consulting Limited Vs Kelvin Muhia T/A Skylane Solutions.
  - c. The court directed the parties to deposit the decretal sum of Kshs. 1,200,000/= in a joint account within 45 days.
  - d. The applicant has been trying to contact the respondent to provide his details on numerous occasions to no avail, making it very difficult to open the said account within the given period.
  - e. A joint account has to be opened in the presence of both parties, and the respondent has refused, ignored and/or neglected to provide its account opening documents to facilitate the same.
  - f. It is therefore surprising that the respondent has since proceeded with execution and had a decree issued by this court on 24 April 2025, as well as warrants of attachment to Mbusera Auctioneers on 6 May 2025, despite the stay of execution orders in place in the High Court.
  - g. It is extremely urgent that the honourable court stay the impending execution in the interest of justice and fairness.
  - h. It is only fair and just that the application be heard as soon as possible and that the applicant be granted interim orders.
3. The respondent opposed the application on the following grounds:
- a. This is not the first time the applicant is making an application of this nature, and it cannot be gainsaid that he has been granted a stay of execution order severally. This information the applicant has wilfully and mischievously concealed from this honourable Court.
  - b. The trial court delivered its judgment on 11 October 2024, in which summary judgment was entered in favour of the respondent, and the applicant was given a 45-day stay of execution.
  - c. The application was heard on 14 November 2024 before Hon. Justice Charles Kariuki, who granted the applicant a stay of execution on the condition that he deposit half the decretal sum, Kshs. 600,000, with the court within 30 days. He never complied, and the orders lapsed.
  - d. The application came for directions before Hon. Justice Charles Kariuki on 14 February 2025, when the Court extended its leniency in favour of the Applicant. He was granted a further



stay of execution pending appeal on the condition that he would deposit the full decretal sum within 45 days from 14 February 2025. Again, he never complied.

- e. The applicant has never made any attempts to have the amount deposited and only wrote an email on 11<sup>th</sup> May 2025 (more than 90 days later) asking for the plaintiff's details to open a joint interest-earning account. A clear afterthought on the part of the defendant.
  - f. The applicant has attempted to mislead this court by claiming he tried to contact the respondent to open a joint interest-earning account. Still, the respondent refused to give documents to facilitate the same. This is false and quite unbecoming of the applicant for the following reasons;
    - i. That whereas the applicant was given 45 days on 14<sup>th</sup> February 2025 to deposit the decretal sum, the application before the Court is dated 15<sup>th</sup> May 2025, more than 90 days after the conditional stay was given. The applicant has not accounted for the delay of over 45 days after the lapse of the stay orders.
    - ii. There is no evidence of an attempt by the applicant to reach the respondent.
    - iii. The only email written to the respondent was on 11<sup>th</sup> May 2025, after 90 days of issuing orders of conditional stay.
    - iv. The applicant is a dishonest litigant and never intended to deposit the decretal sum as directed by the court.
      - a. It is clear that the present application is made in bad faith and is only aimed at delaying the execution process and denying the respondent the right to enjoy the fruits of his judgment.
4. On the 14<sup>th</sup> day of February 2025, the parties in this matter appeared before me. They agreed to open a joint account to deposit the decretal amount. The only issue on which they could not reach an agreement was the timeframe. The applicant sought 60 days, while the respondent proposed 30 days. This court granted them 45 days to comply. This time elapsed on the 31<sup>st</sup> day of March 2025. The stay of execution was conditional.
  5. In the case of Gianfranco Manenthi & Another v Africa merchant Assurance Co. Ltd [2019] eKLR the court observed:

The applicant must show and meet the condition of payment of security for the due performance of the decree. Under this condition, a party who seeks the right of appeal from a money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under Order 42 Rule 6(1) of the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal falls. Further Order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal, there could be no return to the status quo on the part of the plaintiff to initiate execution proceedings where the judgment involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal.... Thus, the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals.



In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant submitted that he is ready to provide a bank guarantee as security for due performance of the decree.

6. Though the applicant claims he was frustrated by the respondent, he wrote an email on 11 May 2025 requesting the respondent's details to open a joint interest-earning account. this was nearly two months after the timeframe given to him.
7. I perceive mischief from the applicant's side. He cannot assert that his efforts were thwarted. The application is dismissed with costs.

**DELIVERED AND SIGNED AT NYANDARUA THIS 27<sup>TH</sup> DAY OF JUNE 2025**

**KIARIE WAWERU KIARIE**

**JUDGE.**

