



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Etyang v National Bank of Kenya (Civil Appeal E032 of 2025)
[2025] KEHC 11741 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11741 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E032 OF 2025
WM MUSYOKA, J
JULY 31, 2025**

BETWEEN

GABRIEL IMOJIR ETYANG APPELLANT

AND

NATIONAL BANK OF KENYA RESPONDENT

*(Appeal from orders made in a ruling delivered by Hon. EA Nyaloti,
Chief Magistrate, in Busia CMCCC No. 151 of 2017, on 24th April 2025)*

RULING

1. The application, that I am invited to determine is dated 8th May 2025. It seeks temporary stay of execution of the orders in the ruling delivered on 24th April 2025, by Hon. EA Nyaloti, Chief Magistrate, in Busia CMCCC No. 151 of 2017, pending hearing and determination of the appeal herein. The applicant avers to be dissatisfied with the said orders of 24th April 2025; hence he has lodged the instant appeal against them. He avers that the appeal raises weighty legal issues, and that he stood to be committed to jail, should a stay order not be given.
2. The respondent has reacted to the application, through an affidavit by Chrispinus Wanyangu, sworn on 9th May 2025. He avers that an application by the appellant, at the trial court, dated 21st August 2019, was dismissed on 22nd August 2019. The suit itself, at the trial court was dismissed on 31st August 202, with costs. The respondent had its party and party costs bill, dated 20th November 2019, assessed on 22nd August 2023, and a certificate of costs issued, dated 23rd August 2023. The ruling on 24th April 2025 dismissed an application by the appellant, dated 6th September 2024, seeking the setting aside of the taxation proceedings.
3. The application was placed before me, on 6th May 2025, under certificate of urgency. I gave directions on service. On 13th May 2025, the parties sought to canvass the application by way of written submissions, and directions along those lines were granted. Both sides have filed and served written



submissions, supported by relevant authorities. I have read through them and noted the arguments advanced.

4. The appeal herein arises from orders made in a ruling that the trial court delivered on 24th April 2025. The Motion, dated 8th May 2025, seeks stay of execution of the orders made in that ruling of 24th April 2025, pending appeal. The ruling of 24th April 2025 was on an application for stay of execution of warrant of arrest and stay of execution of taxation proceedings of 28th November 2019. It was founded on an application dated 6th September 2024. The ruling of 24th April 2025 dismissed the application of 6th September 2024, in the following terms, “The application lacks merit and the same is dismissed with costs.”
5. The said ruling of 24th April 2025 made only 1 order, that of dismissing the application dated 6th September 2024, with costs. By its very nature, an order dismissing an application or suit is not capable of execution. The dismissal order is incapable of being stayed. It can only be set aside or reviewed, but not stayed, for there is nothing to stay. For no action or activity is required, by the party in whose favour it is made, to bring that dismissal order to effect, following the dismissal order. The dismissal order becomes effective immediately it is pronounced, and it is, therefore, not available to be stayed, for it has since taken effect.
6. That being the case, there can be no merit, whatsoever, in the application dated 8th May 2025. It should be dismissed with the contempt it deserves. It is hereby dismissed. The respondent shall have the costs. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 31ST DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Faustine Waswa, instructed by Juma Waswa & Company, Advocates for the appellant.

Mr. Bogonko, instructed by Bogonko Otanga & Company, Advocates for the respondent.

