



Gulf African Bank Limited v Signon Corporation Limited & 7 others (Commercial Case E890 of 2021) [2025] KEHC 11559 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E890 OF 2021**

**PM MULWA, J
JULY 31, 2025**

BETWEEN

GULF AFRICAN BANK LIMITED PLAINTIFF

AND

SIGNON CORPORATION LIMITED 1ST DEFENDANT

PHILIP NDEGWA OWINO 2ND DEFENDANT

ELIUD GITAU GITONGA 3RD DEFENDANT

TYSONS LIMITED 4TH DEFENDANT

PK NJUGUNA 5TH DEFENDANT

CHIEF LAND REGISTRAR 6TH DEFENDANT

**MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT 7TH
DEFENDANT**

THE HON ATTORNEY GENERAL 8TH DEFENDANT

RULING

1. The 1st, 2nd and 3rd Defendants (hereinafter the Applicants) seek a stay of this Court’s ruling and orders issued on 7th November 2024, pending the hearing and determination of the appeal which, it is contended, raises triable issues and has high chances of success. This application is brought by way of a Notice of Motion dated 25th November 2024, made pursuant to Sections 1A and 3A of the [Civil Procedure Act](#), Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, as well as Articles 50 and 169 of [the Constitution](#). It is supported by an undated affidavit sworn by Philip Ndegwa Owino, the 2nd Applicant.



2. The grounds in support of the application are as follows: The applicant is aggrieved by the Court's ruling of 7th November 2024, which entered judgment on admission in favour of the Plaintiff against the Applicants for an admitted sum of Kshs. 21,364,155.35. The Applicants contend that they stand to suffer substantial financial loss and damage in the event execution is levied against them by the Plaintiff/Respondent. The Applicants argue that the Respondent will not be prejudiced in any way if the orders sought are granted. They urge that, in the interest of justice, the execution of the said ruling be stayed to pave way for the hearing and determination of the appeal.
3. The Plaintiff/Respondent opposes the application through a replying affidavit sworn by Lawi Sato on 17th December 2024. In his affidavit, Mr. Sato deposes that execution is a lawful process for recovery of decretal sums due to a successful party and that an appeal does not operate as automatic stay of execution. He avers that, no arguable grounds have been demonstrated in the intended appeal for impugning the judgment entered on admission.
4. The Respondent further contends that the Applicants have failed to give any security for the due performance of the decree and that the stay orders, if granted, will visit injustice on the Respondent Bank which has been kept out of its money for over 5 years now, and the instant application is a delay tactic to frustrate the execution of the decree.
5. The Respondent emphasizes that it is a vibrant commercial bank with full ability to refund the decretal sum in the unlikely event that the Applicants' intended appeal succeeds.
6. The application was heard through written submissions, which I have considered alongside the affidavits in support and in opposition. The key issue for determination is whether this court should grant a stay of execution of its ruling of 7th November 2024.
7. Order 42 Rule 6(1) of the Civil Procedure Rules provides that an appeal shall not operate as a stay of execution or proceedings unless the court so orders. Thus, the burden lies on the Applicants to satisfy the Court that the circumstances justify the grant of a stay pending appeal.
8. The principles governing the grant of stay pending appeal under Order 42 Rule 6(2) of the Civil Procedure Rules are well settled. The applicant must satisfy the Court that:
 - i. The applicant may suffer substantial loss if the stay is not granted;
 - ii. The application has been made without unreasonable delay; and
 - iii. The applicant has provided such security as the court may order for the due performance of the decree or order.
9. As to whether the application was made without undue delay, the record shows that the ruling was delivered on 7th November 2024, and the application was filed on 25th November 2024. Hence the application was filed promptly and without unreasonable delay.
10. On the issue of substantial loss, the applicants contend that they are likely to suffer irreparable loss if the stay is not granted, as the Respondent may proceed to commence execution proceedings against them and this would be detrimental to their interests. They argue that denial of the orders sought would undermine the appeal and defeat its purpose.
11. In response, the Respondent maintains that it is a reputable financial institution capable of refunding the amount in the event the appeal succeeds, and therefore, no substantial loss would arise.



12. In the case of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, the court expressed itself as hereunder:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal...”

13. Applying the above principles to the present matter, this Court finds that while the Respondent claims financial capacity, the amount of money constituting the decree, and the risk of the impending execution before the appeal is heard and determined, raises legitimate concern. The Court is therefore persuaded that the Applicant has demonstrated the likelihood of substantial loss if the status quo is not preserved.

14. On the issue of security for due performance of the decree, Order 42 Rule 6 (2) (b) mandates the Court to consider the provision of such security as a condition for granting a stay. The Applicants in submission invited the Court to determine fair and reasonable terms for security the uphold the interest of both parties.

15. In conclusion, the Court is satisfied that the applicant has met the threshold for the grant of stay of execution pending appeal. I allow the motion dated 25th November 2024 and accordingly order as follows:

- i. A stay of execution of this Court’s ruling and order dated 7th November 2024, entering judgment on admission in favour of the Plaintiff against the 1st, 2nd and 3rd Defendants for the admitted sum of Kshs. 21,364,155.35, is hereby granted, pending the hearing and determination of the intended appeal.
- ii. Order (i) above is granted on condition that the judgment sum of Kshs. 21,364,155.35 is deposited in a joint interest earning account to be opened in the names of Advocates for both the Plaintiff and the 1st, 2nd and 3rd Defendants within 60 days from the date of this ruling.
- iii. Costs of this application shall abide by the outcome of the appeal.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Evans Ochieng for Plaintiff

Ms. Nyanchera h/b for Mr. Onyango for 1st, 2nd & 3rd Defendants

Mr. Nyaga h/b for Mr. Mueke for 4th & 5th Defendants

Mr. Mohamed h/b for Ms. Karanja for 6th, 7th & 8th Defendants

Court Assistant: Carlos

