



**Ojienda t/a Prof Tom Ojienda Associates Advocates v Golfview Office Suites Limited & 2 others (Commercial Arbitration Cause E018 of 2024) [2025] KEHC 11408 (KLR) (Commercial & Admiralty) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11408 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
COMMERCIAL ARBITRATION CAUSE E018 OF 2024**

**PM MULWA, J**

**JULY 31, 2025**

**BETWEEN**

**PROF TOM OJIENDA T/A PROF TOM OJIENDA ASSOCIATES  
ADVOCATES ..... APPLICANT**

**AND**

**GOLFVIEW OFFICE SUITES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**GOLFVIEW OFFICE SUITES MANAGEMEN LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**GOLFVIEW OFFICE SUITES (ONE) MANAGEMENT LIMITED .... 3<sup>RD</sup>  
RESPONDENT**

**RULING**

1. The Court is seized of the applicants Notice of Motion dated 3<sup>rd</sup> December 2024 brought under Article 159(2) of *the Constitution* of Kenya, Sections 1A, 1B, 3A of the *Civil procedure Act*, Order 51 Rule 15 of the Civil Procedure Rules and all other enabling provisions of the law. The applicant seeks to stay the execution and set aside the orders issued on 26<sup>th</sup> November 2024. It also seeks to have the Respondent’s application dated 3<sup>rd</sup> April 2024 scheduled for mention for directions and the costs be provided for.
2. The application is supported by the annexed affidavit of Nelson Andayi Havi sworn on 3<sup>rd</sup> December 2024, in which it is deponed that the impugned orders were issued ex parte on a mention date, in the absence of the Applicant or their counsel. The Applicant avers that the cause list for that day had indicated that the Court would not be sitting, hence their non-attendance. It is further contended that the issue of conflict of interest, which the Respondent had raised, had already been canvassed before the Arbitrator during preliminary proceedings.



3. The Respondent opposed the application through a Replying Affidavit sworn by Owour Thatcher on 13<sup>th</sup> December 2024, in which it is deponed that the Applicant had failed to file a response to the substantive application dated 3<sup>rd</sup> April 2024, which was listed for mention on 26<sup>th</sup> November 2024 and proceeded unopposed. The Respondent maintains that a court notice had been issued indicating that the Court would sit on that date to handle urgent matters, and that the notice was duly served upon the Applicant.
4. The application was canvassed by way of written submissions.

### **Analysis and determination**

5. I have carefully considered the application and the written submissions filed by the parties. The central issue for determination is whether the ex parte orders issued by this Court on 26<sup>th</sup> November 2024 should be set aside, and whether a stay of execution should be granted pending inter parties hearing.
6. The law on setting aside ex parte orders is well settled. In *Shah v Mbogo & Another* [1967] EA 116, Harris J stated:

“This discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist a person who has deliberately sought...to obstruct or delay the course of justice.”
7. Order 51 Rule 15 of the Civil Procedure Rules empowers the Court to set aside or vary an order made ex parte for sufficient cause, while Section 3A of the *Civil Procedure Act* similarly saves the inherent powers of the Court to prevent abuse of its process and to ensure justice is done.
8. The Applicant’s case is that they were absent due to a court-issued cause list which suggested that the Court would not be sitting on 26<sup>th</sup> November 2024. Conversely, the Respondent has exhibited a notice from the court indicating that the Court would sit to deal with urgent matters.
9. From the record, it is apparent that the mention date of 26<sup>th</sup> November 2024 was obtained through a letter to the Deputy Registrar seeking urgent intervention. The Respondent duly served the mention notice on the Applicant, but no response was filed, nor did the Applicant attend court.
10. Additionally, the Applicant failed to file a response to the substantive application dated 3<sup>rd</sup> April 2024. This points to a lack of diligence on the part of the Applicant. Nonetheless, this Court is mindful of the nature of the impugned orders, which effectively stayed arbitral proceedings and directed that they commence de novo before an agreed arbitrator. Arbitration is governed by the principle of party autonomy and judicial restraint, as emphasized in Section 10 of the *Arbitration Act*. In the decision of *Nyutu Agrovet Limited v Airtel Networks Kenya Limited & Another* [2019] eKLR, the Supreme Court underscored the limited scope of court intervention in arbitral processes.
11. Given the gravity of the orders and the absence of inter-parties hearing, the Court finds that the Applicant should be given an opportunity to be heard. Justice would best be served by setting aside the ex parte orders of 26<sup>th</sup> November 2024 and reinstating the application dated 3<sup>rd</sup> April 2024 for the full hearing.
12. On whether stay of execution should issue, the guiding legal principles are found in Order 42 Rule 6 of the Civil Procedure Rules. The primary objective is to preserve the substratum of the dispute pending determination.



13. Having found merit in setting aside the impugned orders, it follows that any execution thereof ought to be stayed pending the rehearing of the Respondent's application dated April 2024. Any further steps to implement the orders issued on 26<sup>th</sup> November 2024 would prejudice the Applicant and render the rehearing nugatory.
14. In view of the court's finding above, the Respondent's application dated 3<sup>rd</sup> April 2024 shall be reinstated and scheduled for mention for directions on hearing inter parties.
15. Although costs ordinarily follow the event, under Section 27 of the *Civil Procedure Act*, this Court has discretion to depart from that general rule. In the present matter, the Applicant failed to respond to the initial application and was lax in attending court. On the other hand, the Respondent participated actively. In balancing the scales of justice, I am persuaded that each party should bear their own costs.

### **Final Orders**

16. In light of the foregoing, the Court makes the following orders:
  - a. The orders issued by this Court on 26<sup>th</sup> November 2024 are hereby set aside.
  - b. The Respondent's application dated 3<sup>rd</sup> April 2024 is reinstated.
  - c. There shall be a stay of execution pending inter parties hearing and determination of the Respondent's application.
  - d. Each party shall bear their own costs of this application.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Ms. Owuor h/b for Mr. Havi for Applicant

Ms. Ndilo h/b for Mr. Singh for 3<sup>rd</sup> Respondent

Court Assistant: Carlos

