



KCB Bank Kenya Limited v Signature Tours and Travel Limited & 2 others (Civil Case E413 of 2018) [2025] KEHC 12435 (KLR) (Commercial and Tax) (4 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12435 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E413 OF 2018
PM MULWA, J
SEPTEMBER 4, 2025**

BETWEEN

KCB BANK KENYA LIMITED PLAINTIFF

AND

SIGNATURE TOURS AND TRAVEL LIMITED 1ST DEFENDANT

KOOME MUNENE 2ND DEFENDANT

ALFETTA WARUIRU MUNGAI 3RD DEFENDANT

RULING

1. The 3rd Defendant/Applicant moved this Court by a Notice of Motion dated 4th June 2024 brought under Order 42 Rule 6 of the Civil Procedure Rules and Section 63(e) of the *Civil Procedure Act*.
2. The Applicant sought orders of stay of execution of the ex-parte judgment and decree pending the hearing and determination of the appeal and the costs of this application be provided for.
3. In the judgment, the Court ordered the Defendants, jointly and severally to pay the Plaintiff Kshs. 171,500,000/- being the loan amount due as at 27th August 2028, plus interest and costs.
4. The application is based on the grounds on the face thereof and the supporting affidavit sworn by Koome Munene, the 2nd Defendant and director of the 1st Defendant on 4th June 2024. In the supporting affidavit it was deposed that the Defendants filed an application in the Court of Appeal seeking stay of execution of the ex-parte judgment and had since filed submissions on the same.
5. The Applicant contends that it would be prejudicial and against public policy if the orders of 27th May 2024 are executed since the financial facility was extended to the 1st Defendant. And that the said orders should be stayed pending outcome of the ruling of the Court of Appeal.



6. It was deposed that the Plaintiff will not suffer any prejudice if the orders of 27th May 2024 are stayed.
7. The Plaintiff/Respondent filed a replying affidavit sworn by Lilian Sogo, its Head Counsel - Litigation, on 7th August 2024. She deposed that the application is a gross abuse of the court process meant to frustrate the Plaintiff from executing a validly obtained judgment. It was contended that the Applicant did not appeal the judgment but instead filed an application dated 3rd November 2022 for review which was dismissed and thereafter another application dated 3rd May 2022 in the Court of Appeal seeking stay of execution which is still pending hearing and determination.
8. The Plaintiff further averred that the Applicant filed the instant application ostensibly to frustrate execution and upon obtaining ex-parte orders they withdrew the application for stay of execution pending before the Court of Appeal. And further that to date they have never lodged any record of appeal.
9. According to the Plaintiff, the Applicant has not met the conditions for granting of the orders sought; that there was unexplained delay in filing the instant application, no evidence that they are likely to suffer any substantial loss, and no security has been offered as a condition precedent to granting of stay orders. The Plaintiff urges the court to dismiss the application with costs.
10. In the submissions dated 27th September 2024 filed on behalf of the Defendants, it is submitted that the three limbs which require to be satisfied for the grant of an order of stay of execution have been met. Firstly, the Applicant will suffer substantial loss if her salary is executed considering that is her only livelihood and that the Plaintiff had already sold all the Defendants' attachable assets. Secondly, she filed the instant application without delay. That she had first filed an application to set aside/vary and/or review the judgment which was dismissed. And that a notice of appeal was also filed on 5th April 2023 and subsequently a stay of execution application in the Court of Appeal on 3rd May 2023 but was later withdrawn on 1st July 2024.
11. The Plaintiff in its submissions dated 4th October 2024, essentially content that the Applicant has not satisfied the criteria for grant of stay of execution pending appeal as is elaborately set out in Order 42 Rule 6(1) and (2) of the Civil Procedure Rules.
12. I have considered the cited authorities relied on by the parties alongside the respective affidavits and the rival submissions.
13. Before delving into these substantive issues, the first question for consideration is whether there is indeed an appeal before the Court of Appeal upon which the present application can be anchored. The Respondent contends that there is no such appeal. That the Applicant only filed an application seeking stay of execution which was later withdrawn. And since then, there is no record of appeal that has been filed. This is not controverted by the Applicant. Indeed, the Applicant avers that they have been diligent in pursuing this matter by filing an application for review which was dismissed and later an application for stay orders at the Court of Appeal which they later withdrew.
14. From the record, there is nothing to show that the Defendants lodged an appeal to the Court of Appeal. Other than the Civil Application that was later withdrawn, the Applicant did not exhibit a notice of appeal or record of appeal to justify the grant of the orders sought.
15. The judgment sought to be stayed was delivered on 24th June 2024. The instant application is dated 4th June 2024. There is no explanation for the inordinate delay in bringing this application, other than the evident efforts by the Applicant to scuttle Plaintiff's realization of the judgment.



16. Order 42 Rule 6(2) of the Civil Procedure Rules, provides as follows:

“No order for stay of execution shall be made under sub rule (1) unless—

- a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

17. In addition to the provisions set out hereinabove, the Court in exercising its discretion on whether or not to grant an order for stay of execution pending appeal, the Court of Appeal in *Kenya Tea Growers Association & another v Kenya Plantation and Agricultural Workers Union* [2012] eKLR addressed what is considered to be an arguable appeal as hereunder-

“The power of the Court under rule 5(2)(b) of the Court of Appeal Rules is discretionary. Two principles guide the court in exercising that discretion. First, for an applicant to succeed in such application he must show that his appeal or intended appeal is arguable, or put another way that it is not a frivolous one. He need not show that such appeal is likely to succeed. It is enough for him to show that there is at least one issue upon which the Court should pronounce its decision...Second, the applicant must in addition, show that, unless he is granted either a stay or injunction as the case may be, the success of his appeal or intended appeal will be rendered nugatory”

18. Applying these principles, the inevitable conclusion is that there exists no appeal upon which the instant application can be anchored. The substratum upon which the application rests is absent. Any further consideration of the issues would be an exercise in futility. The conduct of the Defendants is to say the least clear effort to delay the execution of a valid judgment. It follows that the application is one for failing.

19. For the foregoing reasons, I find that the application dated 4th June 2024 is devoid of merit and is dismissed with costs to the Plaintiff.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF SEPTEMBER 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Mbabu for Plaintiff

Mr. Omwenga for 3rd Defendant/Applicant

Court Assistant: Carlos

