



**Enterprise Generale Malta Forrest v Isolux Ingeneria SA & another; Kenya  
Electricity Transmission Co Ltd (Garnishee) (Civil Suit 350 of 2017)  
[2024] KEHC 5929 (KLR) (Commercial and Tax) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5929 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 350 OF 2017  
FG MUGAMBI, J  
MAY 24, 2024**

**BETWEEN**

**ENTERPRISE GENERALE MALTA FORREST ..... PLAINTIFF**

**AND**

**ISOLUX INGENERIA SA ..... 1<sup>ST</sup> DEFENDANT**

**DATA CONCURSAL SLP ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**KENYA ELECTRICITY TRANSMISSION CO LTD ..... GARNISHEE**

**RULING**

1. Vide a notice of motion application dated 22<sup>nd</sup> November 2023, the plaintiff prays for leave to appeal against the ruling delivered on 10<sup>th</sup> November 2023 by this court. The application is filed pursuant to order 43, rule 1(2) and (3) of the [Civil Procedure Rules](#), sections 1A, 1B, 3B and 75(1) of the [Civil Procedure Act](#) and article 50 (2) (q) of [the Constitution](#) of Kenya.
2. It is supported by an affidavit sworn by Jonathan Van Eetvelde, the business controller of the plaintiff. The plaintiff argues that the defendants will not suffer any prejudice if leave to appeal is granted and that it is in the interest of justice to grant the orders sought.
3. In opposition, the interested party herein filed a replying affidavit sworn on 1<sup>st</sup> December 2023 by Samwel Rambo, its Senior Legal Officer. He averred that the application is defective as the plaintiff has not demonstrated that it has an arguable appeal and that leave was not sought prior to the institution of the proceedings against the defendants in accordance with section 560(1) of the [Insolvency Act](#) making



the suit defective and nullity ab initio. This further would mean that the intended appeal is a waste of judicial time and an abuse of the process of the court.

4. The 2<sup>nd</sup> defendant filed grounds of opposition dated 5<sup>th</sup> December 2023 in opposition to the subject application asserting that the application offends section 720 as read with part 22(a) of the fifth schedule of the *Insolvency Act*. The 2<sup>nd</sup> defendant further adds that since the proceedings against the 1<sup>st</sup> defendant have been stayed and any suits, including the intended appeal, have been suspended, the application before court is devoid of merit and should be dismissed with costs to the 2<sup>nd</sup> defendant.

### **Analysis and determination**

5. I have carefully considered the application, responses, submissions and evidence presented by rival parties. It is not in dispute that through an application dated 29<sup>th</sup> March 2021, the plaintiff applied for an order to attach money apparently held by the interested party to the tune of Kshs.307,131,756.26/- together with accrued interest thereon of Kshs.257,569,948.83.
6. Upon considering the application, this court found vide its ruling of 10<sup>th</sup> November 2023 that the application lacked merit and dismissed it with costs. The court noted that the insolvency proceedings of the 1<sup>st</sup> defendant in the Spanish Commercial Courts was recognized by the court in Kenya in IP E009 of 2019, Data Concurisal SLP V Isolux Ingeniera by Kasango, J.
7. The effect of this is that under section 22 of the Fifth schedule to the *Insolvency Act*, execution proceedings against the 1<sup>st</sup> defendant's assets were stayed. The court went on to state that any money that is due to the 1<sup>st</sup> respondent from the interested party herein forms part of the assets and estate of the 1<sup>st</sup> defendant herein which are vested in the foreign representative.
8. As explained in the court's ruling, the effect of having foreign insolvency proceedings recognized in our jurisdiction is that there cannot be a continuation of proceedings including execution proceedings against the entity under distress. All assets, including the money held by a garnishee is subject to the insolvency proceedings in the foreign court.
9. It would therefore not be functional under the circumstances, to grant leave to the plaintiff to appeal against the ruling of 10<sup>th</sup> November 2023 as all proceedings, including appeals in our jurisdiction have been held in abeyance. Allowing the application would result in wasting judicial resources.

### **Disposition**

10. The application before the court lacks merit and is hereby dismissed with costs to the defendants and interested party.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 24<sup>TH</sup> DAY OF MAY 2024.**

**F. MUGAMBI**

**JUDGE**

