

KENYA / JUDGMENT

Absa Bank Kenya PLC v Owour

[2026] KEHC 13296 (KLR)

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COURT

High Court

CASE / FILE NUMBER

Commercial Appeal E174 of 2024

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HCCOMMA NO. E174 OF 2024 P. MULWA, J. REPUBLIC OF KENYA IN THE HIGH COURT OF KENYA AT NAIROBI COMMERCIAL AND ADMIRALTY DIVISION HCCOMMA NO. E174 OF 2024 ABSA BANK KENYA PLC.....APPELLANT/RESPONDENT VERSUS ALEX OWINO OWOUR.....RESPONDENT/APPLICANT

RULING

1. Alex Owino Owour filed the Notice of Motion dated 23rd April 2025 seeking a stay of execution of the judgment delivered on 10th April 2025.
2. The application is based on the record and supported by the Applicant's affidavit, where he states that the Appellant appealed the decision of Hon. Chepkwony made on 5th April 2024 in CMCC No. E4584. This court set aside that judgment in a ruling delivered on 10th April 2025. The Applicant has filed an appeal in the Court of Appeal and is concerned that without a stay order, the bank will proceed with execution by selling the suit property, L.R. Nairobi/Block 134/1297, which would defeat the appeal. He argues that he will suffer irreparable harm if this happens. The Applicant also filed a Notice of Appeal on 16th April 2025 and has expressed willingness to settle the decretal amount by paying 1,500,000/=, which has reduced the total decretal sum, and he is willing to provide security.
3. The bank opposes the application through Samuel Njuguna's replying affidavit sworn on 13th May 2025. He states that the Page 1 of 5 HCCOMMA NO. E174 OF 2024 P. MULWA, J. application lacks merit because the Applicant has not shown the substantial loss he would suffer and has been in default since 2023. The suit property was provided as security. As of 6th May 2025, the outstanding loan was Kshs. 3,280,484.05 and continues to accrue interest. There is a risk that the debt will exceed the property's market value before the appeal is heard, justifying the bank's exercise of its statutory power of sale to realize the security. He requests the court to grant a stay only if the balance of the decretal amount is deposited into a joint interest-earning account in the names of both advocates.

4. The application was canvassed by written submissions; the applicant filed submissions dated 3rd June 2025, while the appellant filed submissions dated 25th June 2025.

Analysis and determination

5. The singular issue for determination is whether the Applicant has met the threshold for the grant of a stay of execution.
6. The Applicant seeks a stay of execution pending appeal. The Respondent opposes, arguing the property was voluntarily charged.
7. The applicable principles are set out under Order 42 Rule 6 of the Civil Procedure Rules which requires an applicant to demonstrate that substantial loss may result unless a stay is granted, that the application has been made without unreasonable delay; and that they are willing to provide such security as the court may order for the due performance of the decree. Page 2 of 5 HCCOMMA NO. E174 OF 2024 P. MULWA, J.
8. On substantial loss, mere possibility of sale of charged property does not constitute substantial loss.
9. However, the intended appeal challenges the judgment allowing realization of the security. Sale before the appeal is heard would alter the subject matter and render the appeal nugatory. Preservation is warranted, but must balance the Respondent's right to recover the debt. 10. On delay, the application was filed promptly, the impugned judgment was delivered on 10th April 2025, the Notice of Appeal was lodged on 16th April 2025, and the motion was filed on 23rd April 2025. 11. On security, the Applicant has demonstrated good faith by offering security and having paid Kshs. 1,500,000 towards the debt. 12. The powers to grant or refuse an application for stay of execution pending appeal are discretionary. The purpose of stay pending appeal is to preserve the subject matter of the litigation so that the right of appeal is not rendered illusory. At the same time, the Court must bear in mind that a successful litigant is entitled to the fruits of its judgment (See *Butt v Rent Restriction Tribunal* [1982] KLR 417). 13. Taking all the circumstances into account, I am satisfied that the interests of justice favour preservation of the suit property pending appeal, but upon terms that adequately secure the Respondent. An unconditional stay would expose the Respondent to further accumulation of the debt and would therefore be inequitable. Page 3 of 5 HCCOMMA NO. E174 OF 2024 P. MULWA, J. 14. Consequently, the Notice of Motion dated 23rd April 2025 is allowed on the following terms: i. There shall be a stay of execution of the judgment delivered on 10th April 2025, including the sale or disposal of L.R. Nairobi/ Block 134/1297, pending the hearing and determination of the intended appeal. ii. The Applicant shall, within thirty (30) days from the date hereof, deposit the outstanding decretal amount, less any sums already paid and duly acknowledged by the Respondent, in a joint interest-earning account in the names of the advocates for the parties. iii. In default of compliance with order (ii) above, the order of stay shall automatically lapse without further reference to the Court. iv. The costs of the application shall abide the outcome of the appeal.

Orders accordingly. RULING delivered virtually, dated and signed at NAIROBI This 1st day of September 2026. PETER M. MULWA JUDGE In the presence of: Mr. Sikuku h/b for Ms. Muthee for Appellant/Respondent Mr. Teddy Ochieng for Respondent/Applicant Page 4 of 5 HCCOMMA NO. E174 OF 2024 P. MULWA, J. Court Assistant: Sharon Page 5 of 5

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