



REPUBLIC OF KENYA



KENYA LAW
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Sacco v Karanja (Civil Appeal E057 of 2023) [2024] KEHC 9687 (KLR) (29 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL APPEAL E057 OF 2023
SN MUTUKU, J
JULY 29, 2024**

BETWEEN

KITENGELA TRAVELLERS SACCO APPELLANT

AND

HENRY KARANJA RESPONDENT

RULING

1. Kitengela Travellers Sacco, the Appellant, filed a Notice of Motion dated 13th September 2023 seeking the following orders:
 - i. Spent.
 - ii. That this Honourable Court be pleased to stay further proceedings consequential to the ruling of the trial Court of 21st August 2023 in Kajiado Small Claims Court – Kitengela Travellers Sacco v. Henry Karanja pending the hearing and determination of this application.
 - iii. That this Honourable Court be pleased to stay further proceedings consequential to the ruling of the trial Court of 21st August 2023 in Kajiado Small Claims Court – Kitengela Travellers Sacco v. Henry Karanja pending the hearing and determination of this appeal.
 - iv. That costs of this application be provided for.
 - v. That this Honourable Court be pleased to make such further or other orders as it may deem fit and just to grant
2. The grounds the Applicant has advanced to support the application are that they filed a case in Kajiado Small Claims Court against the Respondent, being Kajiado SCC No. 242 of 2022; that the matter was set down for mention on 12th December 2022; which fell on a public holiday; that the Applicant through their advocates were advised by the Registry Staff the matter would be mentioned on 18th January 2023; that the matter was however mentioned on 9th January 2023 and was dismissed for non-



- attendance and that this was only discovered on 18th January 2023 when the advocate attended court for mention of the matter as earlier scheduled.
3. The Applicant, upon advice by his advocate filed another suit being SCC No. E147 of 2023. The Respondent filed an application dated 23/06/2023 seeking dismissal of the suit on the grounds that the current suit was similar to the one dismissed earlier. That on 21/08/2023, the court dismissed the second suit on the grounds of duplicity of suits with costs to the Respondent. The Applicant is apprehensive that the Respondent may pursue its costs and attach the Applicant's motor vehicles thereby paralyzing its operations.
 4. The Applicant argues that if the orders sought is not granted, their appeal will be rendered nugatory.
 5. The Application is opposed by the Respondent through a Replying Affidavit dated 13th October 2023 sworn by Joseph N. Ngigi an advocate having conduct of the case on behalf of the Respondent. He has deposed that the Applicant's Application lacks merit and does not deserve the orders sought; that the application is premature because the party and party bill of costs is yet to be filed and taxed; that without taxation of the bill of costs and certificate of taxation, there is no apprehension of any imminent danger as to execution as alleged by the Applicant.
 6. It is further deposed that costs follow event and that the Respondent is entitled to costs; that the firm of advocates representing the Respondent is of known means and the Applicant can easily recover the costs and that the Applicant is frivolous, vexatious, mala fides and therefore an abuse of court process. The Respondent asked this court to dismiss this application.
 7. The application was canvassed through written submissions. The Applicant filed submissions dated 6th November 2023. They have submitted on whether the Applicant has established that he has a prima facie arguable case, to which it is submitted that the Applicant has demonstrated that he has an arguable case; whether the application was filed expeditiously, to which it was submitted that there was no delay in filing this application given that it was filed within 29 days after the ruling subject of this appeal was delivered; whether the Applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the order sought, to which it was submitted the Applicant has never been heard on merits of his case against the Respondent.
 8. The Respondent's submissions are dated 4th December 2023. It was submitted that the Applicant has not established sufficient cause to the satisfaction of the court to warrant granting an order of stay. It was submitted that the Applicant filed a suit and due its own indolence, the suit was dismissed for non-attendance and that the matter before the court is res-judicata. The Respondent urged that this application be dismissed and the appeal with costs to the Respondent.

Determination

9. I have considered the application and the grounds in support of the same. I have considered the grounds in opposition of the Application contained in the Replying Affidavit. I have considered the rival submissions. That the Applicant's case was not heard on merit is clear from the documents attached to the application. It was dismissed for non-attendance.
10. The reason for non-attendance, as argued by the Applicant, is that the initial date given by the Court for mention of the matter was 12th December 2023 which fell on a Public Holiday. They argued that the Registry advised them that their matter would be mentioned on 18th January 2023. I have seen communication from the Kajiado Small Claims Registry advising the Applicant that the case, Kajiado SCCC No. 242 of 2022 would be mentioned on 18th January 2023. On the strength of that advice, the



Applicant's counsel did send a Mention Notice on 14th December 2022 to the Respondent notifying him of the mention date on 18th January 2023.

11. I have seen the Notice of Motion dated 23rd January 2023 seeking setting aside the orders of the court dated 9th January 2023 dismissing the Applicant's claim for non-attendance/want of prosecution.
12. I have considered this matter and I note that the lower court, either through the Registry or the Adjudicator, misled the Applicant on the date of the mention of the case. The Applicant is raising a genuine concern in this Application. I agree with the Applicant that it was not heard on merit because of a mistake that was not of its own making. For this reason I will and do hereby allow this application. I hereby order stay of further proceedings consequential to the ruling of the Small Claims Court delivered on 21st August 2023 pending the hearing and determination of this appeal.
13. The Applicant is directed to file and serve a record of Appeal within 60 days from the date of this ruling and to serve the same on the Respondent.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 29TH JULY 2024.

S. N. MUTUKU

JUDGE

