



Plexus Energy Limited v Solar Points Technology Limited (Civil Appeal E317 of 2023) [2024] KEHC 9823 (KLR) (Civ) (26 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
CIVIL APPEAL E317 OF 2023
FG MUGAMBI, J
JULY 26, 2024**

BETWEEN

PLEXUS ENERGY LIMITED APPLICANT

AND

SOLAR POINTS TECHNOLOGY LIMITED RESPONDENT

(Being an Appeal from the whole Ruling and Order of Hon. A. G. Njuguna, delivered on 27th October 2023 in CCOMM Case No. E4078 of 2023)

RULING

Background

1. For determination is an application dated 6/12/2023 seeking a stay of proceedings in SCCOMM E4078 of 2023 pending the hearing and determination of this application. The background to the dispute is that the respondent filed a claim dated 2/6/2023 against the appellant seeking for the recovery of a debt worth Kshs.970,260/= for goods and services supplied to the applicant from the year 2016. The applicant raised a preliminary objection on a point of law on the basis that the respondent's cause of action was time barred and that the subordinate court did not have jurisdiction to entertain it. The preliminary objection was dismissed vide a ruling dated 27/10/2023.
2. The applicant is dissatisfied with the decision of the trial court. In addition to filing a memorandum of appeal the applicant also seeks to stop the proceedings at the subordinate court noting that the matter has proceeded before the lower court notwithstanding this appeal.
3. The application is opposed by way of a replying affidavit sworn by Electine Mbakaya on 15/1/2024. The respondent contends that there were payments which were made by the applicant and confirmed by the appellant after the alleged period of limitation. The respondent contends that it had in writing



acknowledged to the applicant that the amount due as at 8/2/2019 was Kshs. 2,284,500/=. The applicant had also made a further payment of Kshs. 60,000/= on 26/6/2020, which was not denied.

4. Due to these payments, which were made after the contract was entered into in 2016, the respondent argues that the claim was revived as if it were new.

Analysis and determination

5. When granting an order for a stay of proceedings, the court follows the guidelines set forth in Order 42, Rule 6 of the Civil Procedure Rules, which specifies the conditions for such an order. To succeed in an application for a stay of proceedings, the applicant must demonstrate that the three principles established by various authorities have been satisfied, which are that:
 - i. The application has been filed without delay.
 - ii. The intended appeal is arguable.
 - iii. The intended appeal, if successful, will render the ongoing proceedings nugatory.
6. In exercising such the discretion, the court should further consider the need for expeditious disposal of the matter as well as the merits of the intended appeal. This was held in *Global Tours & Travels Limited V Five Continents Travel Ltd*, NBI HC Winding Up Cause No. 43 of 2000.
7. I have considered the pleadings, evidence and submissions presented by the parties herein. The Memorandum of Appeal dated 17/11/2023 was filed in this court on 20/11/2023. The application was filed on 6/12/2023 barely one and a half months after the ruling and therefore within reasonable time.
8. As to whether the appeal before this court is arguable, the main bone of contention is of course whether the action is time barred. That is a question that goes to the jurisdiction of the court to determine the matter. The trial court in dismissing the claim for limitation, based its finding on the fact that the contractual relationship between the parties was continuous, from 2016 and was not based on a one-off transaction.
9. The trial court further considered the fact that there was a payment made by the applicant as late as 29/6/2020 for Kshs. 60,000/=. The same is evidenced by the statement filed at the trial court. Considering the decision of this court in *Telkom Kenya Limited V Kenya Railways Corporation*, [2018] eKLR, the trial court found that the part payment of a debt after the limitation of time had accrued gave the cause of action a new lease of life.
10. Section 23(3) of the *Limitation of Actions Act* provides that:

“Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to movable property of a deceased person, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment.”
11. This principle generally holds that the act of making a part payment acknowledges the existence of a debt, thereby resetting or extending the limitation period. In other words, this gives a fresh starting point for the limitation period. I have seen the correspondence between the parties confirming that the amount owing to the respondent as at 18/2/2019 was Kshs. 2,284,500/=. It means that from February 2019 up to the time when the claim was filed, the applicant had made further payments bringing the balance down to Kshs. 970,260.00/=.



12. Moreover, there is evidence from the statement before the court that the last payment towards the debt is that which was made on 29/6/2020 for Kshs. 60,000/=.
13. By dint of section 23(3) of the *Act* I am therefore not persuaded that the appellant has made out a prima facie case with chances of success for which the application ought to be allowed. I am equally not convinced that the intended appeal will if successful render the ongoing proceedings nugatory.
14. I align myself with the decision of this court in *Turbo Highway Eldoret Ltd V Muniu*, [2022] KEHC 10197 (KLR). The court observed that an appeal is not automatically rendered nugatory merely because the trial may proceed and a judgment on merits given, as such judgment is also subject to a potential stay.
15. I also recognize that ordering a stay of proceedings in this case would undermine the very objective for the establishment of small claims courts which is to expedite the hearing and disposal of cases.

Disposition

16. Accordingly, the application dated 6/12/2023 is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 26TH DAY OF JULY 2024.

F. MUGAMBI

JUDGE

