



**Bett v Nakwhile & another (Civil Appeal E072 of 2024)
[2024] KEHC 10011 (KLR) (9 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10011 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E072 OF 2024
RN NYAKUNDI, J
AUGUST 9, 2024**

BETWEEN

DOUGLAS KIMUTAI BETT APPELLANT

AND

JUSTINE NEKESA NAKWHILE 1ST RESPONDENT

KENYA POWER AND LIGHTING COMPANY 2ND RESPONDENT

RULING

1. Before me for determination is an application dated 18th April, 2024 brought under the provisions of Order 42 Rules 4 and 6, Order 51 Rule 1 of the Civil Procedure Rules, 2010, Section 3, and 3A of the Civil Procedure Act. The Applicant seeks the following orders:
 - a. Spent
 - b. That this honorable court be pleased to order a stay of any further proceedings in Eldoret Small Claims Civil Cause No. E664 of 2023 pending the hearing and determination of this application.
 - c. That this Honorable Court be pleased to stay any further proceedings in Eldoret Small Claims Civil Cause No. E664 of 2023 pending the hearing and determination of the Appellant's/Applicant Appeal on the ruling dated 12th April, 2024.
 - d. Spent
 - e. That the costs of this application abide the outcome of the appeal
2. The grounds in support of the application have been enumerated as follows:
 - a. That on the 12th April 2024, the honorable court issued a ruling on the Respondent/Applicant's notice of Preliminary Objection dated 27th February, 2024.



- b. That the Honorable court ruled that it had jurisdiction to hear and determine personal injury matters arising out of road traffic accidents deviating from Hon. Justice Kizito's decision in *Ongwari versus Hersi (Civil Appeal 223 of 2022)* (2023) KEHC 20111 (KLR) (3rd July 2023) (judgment)
 - c. Being aggrieved by the Ruling, the Appellant/Applicant proceed to appeal before the High Court at Eldoret seeking to set aside the said ruling dated 12th April, 2024 and to strike out the suit in the subordinate court being Eldoret Small Claims Civil Claim No. E664 of 2023.
 - d. That in the Appeal, the Appellant primarily seeks the High Court's determination of whether the small claims court is bound by the High Court decision in *Ongwari v Hersi (Civil Appeal 223 of 2022)* (2023) KEHC 20111 (KLR) (3rd July, 2023) (Judgment).
 - e. That the Appellant/Applicant's Appeal has high chances of success.
 - f. That the Appellant/Applicant is apprehensive that the court may proceed to hear the suit and deliver the judgment in Eldoret Small Claims Civil Case No. E664 of 2023 at the Applicant's detriment.
 - g. That it was the Applicant's contention that the Small Claims Court is guided and bound by the high court decisions, and as such, the Small Claims Court lacks jurisdiction to entertain the suit before it, being Eldoret Small Claims Civil Case No. E664 of 2023.
 - h. That unless stay of proceedings is granted in Eldoret Small Claims Civil Case No. E664 of 2023 is granted, and the trial court proceeds to hear and to deliver judgment, the Applicant's Appeal will be nugatory and the Respondent in the Small Claims Court will suffer irreparable loss and damage.
 - i. That the Appellant/Applicant is ready, willing and able to furnish such reasonable security as this honorable court may deem fit.
3. The application is unopposed as there is not response on record.

Determination

4. Having read through the application and the affidavit in support, the only issue that is up for determination is whether the applicant has met the requirements for grant of stay of proceedings in Eldoret Small Claim Civil Cause No. E664 of 2023.
5. The principles guiding stay of proceedings were laid down by a 5-judge Bench of the High Court, after looking at our jurisprudential scan on the question of stay of proceedings in the case of *William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others* [2019] eKLR;
 - a. First, there must be an appeal pending before the higher Court;
 - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;



- c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
- d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
- e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
- f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.

6. In the same vein, in Halsbury’s Laws of England, 4th Edition, Vol. 37 at p. 330:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court’s general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue....This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of this case.”

7. From the foregoing authorities, it is evident that the stay of proceedings is a radical measure which is only exercised in the most of deserving cases. This is a discretionary power that is exercised by the court sparingly. Hence, granting stay of proceedings pending an appeal over interlocutory matters is decided on the facts of each case and with “due regard to the salutary general rule that appeals are not entertained piecemeal.” See *Walhaus & Others v Additional Magistrate, Johannesburg & Another*, 1959 (3) SA 113(A) at 120D

8. I must point that out that this court set on motion an empaneling of a three judge bench to address the issues raised herein and the said exercise is on course.

9. Given that fact, there is need to stay the proceedings in order to have the issue addressed to finality. This matter in the manner it is being explored and litigated raises arguable points of law of general public importance that triggers the jurisdiction of the Small Claims Court. For that reason, the following orders do issue:

- a. The Proceedings in Eldoret Small Claims Civil Cause No. E664 of 2023 are hereby stayed pending the determination of the Applicant’s Appeal on the ruling dated 12th April, 2024.
- b. The Costs shall abide by the outcome of the Appeal.

10. It is so ordered.

DATED AND SIGNED AT ELDORET THIS 9TH DAY OF AUGUST, 2024.

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R. NYAKUNDI

JUDGE

