



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mandavia & another v Majevdia & 2 others (Civil Case E003 of 2022)
[2024] KEHC 16708 (KLR) (Commercial and Tax) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 16708 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E003 OF 2022
BM MUSYOKI, J
NOVEMBER 22, 2024**

BETWEEN

NITIN GORDHANDAS MANDAVIA 1ST PLAINTIFF

NGM FINANCIAL CONSULTANTS LIMITED 2ND PLAINTIFF

AND

HITAN CHAGANLAN MAJEVDIA 1ST DEFENDANT

ST. CLAIRE ESTATES LIMITED 2ND DEFENDANT

BIOPHARMA LIMITED 3RD DEFENDANT

RULING

1. The application before this court is dated 18th September 2023 in which the defendants in their main prayer seek for stay of proceedings in this matter pending hearing and determination of an intended appeal on grounds appearing on the face of the application. The same is supported by affidavit of the 1st defendant sworn on 18th September 2023. The application is opposed by the plaintiffs through replying affidavit of the 1st plaintiff sworn on 7th February 2024.
2. The application was deposed of by way of written submissions which were highlighted on 3-10-2024. The plaintiff's submissions are dated 11-04-2024 while the defendants' are dated 23-02-2024. When the parties appeared before this court on 3-10-2024, their highlights were majorly on the merits or lack of it of the suit and the intended appeal which in my view bordered on what my brother Honourable Justice Chacha Mwita ruled on vide his ruling dated 28-07-2023. I will not revisit the issues which were dealt with in that ruling. Further, it is not for this court to consider whether or not the appeal is arguable. That is a matter for the Court of Appeal.



3. Applications for stay of execution or proceedings in the High Court are governed by Order 42 Rule 6 of the Civil Procedure Rules. The principles upon which an application for stay of execution or proceedings should be considered are now well settled. For an applicant to succeed in such an application, he must demonstrate that he will suffer substantial loss if the application is not allowed; that he made the application without undue delay and lastly that he has given an appropriate security for due performance of the decree.
4. I do not think that the limp on security is applicable in this matter since there is no decree or order capable of being executed. The application seeks stay of proceedings. This case has not even taken off in terms of hearing on merits. The ruling intended to be appealed related to an application to strike out the suit and as such there is no decision of the court which is due for execution.
5. The 2nd limp is whether the applicant is likely to suffer substantial loss if the application is not allowed. In *Kenya Power & Lighting Co. Ltd v Julius Ole Sunkuli & 3 Others* (2013) KEHC 3262 (KLR), Honourable Justice J.B. Havelock cited a holding of Honourable Justice Daniel Musinga (as he then was) in *Daniel [Chebutul Rotich v Emirates Airlines Hcc number 368 of 2001](#)* thus;

‘Substantial loss is a relative term and more often than not can be assessed by the totality of the consequences which an applicant is likely to suffer if stay of execution is not granted and the applicant is therefore forced to pay the decretal sum.’
6. I have gone through the supporting affidavit sworn by the 1st defendant in support of the application and I am unable to see any substantial loss the defendants or any of them are likely to suffer if the application is denied. Denial of this application would mean that the matter proceeds for hearing on its merits. In his ruling dated 28-07-2023, Honourable Justice Chacha Mwita observed and I do agree that the issues raised in the application needed adduction of evidence. The issues the applicants are seeking to ventilate at the Court of Appeal will still be open to them during the hearing of this suit.
7. The defendants have argued that if the application is not allowed, there is likelihood of having conflicting decisions from this court and the Court of Appeal. In the event the defendants will be dissatisfied with the judgement of this court after full hearing, they would still have a chance to appeal to the Court of Appeal. If the intended appeal is determined before the hearing of this suit and in favour of the defendants, this suit will automatically be dispensed with. I therefore find the argument by the defendants that there is likelihood of conflict of decision non-meritorious. In these circumstances, I find that the defendants have failed to convince me that they are likely to suffer any substantial loss.
8. The 3rd and the last ground is whether the application was filed without undue delay. The ruling being appealed was delivered on 28-07-2023 and this application was filed on 21-09-2023. The plaintiffs claim that there was undue delay in filing the application which I don’t think is correct. A period of two months cannot be termed as inordinate.
9. In view of the above, I find that the application must fail because one limp of the conditions for grant of an application for stay has not been satisfied. The position in the law is that if any of the conditions is not met, the application must fail as the conditions must move together. This position was encapsulated in *Njenga v Njeri & 2 Others* (2023) KEHC 23991 (KLR) where it was held that;

‘The three (3) conditions for granting stay of execution pending appeal must be met simultaneously. They are conjunctive and not disjunctive.’
10. In conclusion, it is my finding that the defendants’ application dated 18th September 2023 lacks merits for failing to satisfy the limp of substantial loss. The same is hereby dismissed with costs to the plaintiffs.



DATED SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered online in presence of:

Miss Wakarima holding brief for Miss Chege for the plaintiff;

and Mr. Kyalo Mbobu for the defendants.

