



**Oracle Technology Systems (Kenya) Ltd v Transnational Computer Technology (Kenya) Ltd  
(Civil Appeal E574 of 2022) [2023] KEHC 1197 (KLR) (Civ) (24 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1197 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E574 OF 2022  
JK SERGON, J  
FEBRUARY 24, 2023**

**BETWEEN**

**ORACLE TECHNOLOGY SYSTEMS (KENYA) LTD ..... APPELLANT**

**AND**

**TRANSNATIONAL COMPUTER TECHNOLOGY (KENYA)  
LTD ..... RESPONDENT**

*(The appellant sought for a stay of all proceedings in Chief Magistrates Court Civil Suit No. E10553 of 2021 pending the hearing and determination of the applicant's intended appeal.)*

**RULING**

1. The appellant/applicant brought the Notice of Motion dated July 28, 2022 supported by the grounds presented on its face and the facts stated in the affidavit of Muthoni Nyoike the Compliance and Ethics Director of the applicant. The appellant sought for a stay of all proceedings in Chief Magistrates Court Civil Suit No E10553 of 2021 pending the hearing and determination of the applicant's intended appeal.
2. The respondent opposed the Motion by filing the Grounds of Opposition dated August 22, 2022 and put forward the following grounds:
  - i. The order made by the trial Court on July 22, 2022 is an order from which no appeal lies as of right; the appellant's application thus negates section 75 of the [Civil Procedure Act](#), Cap 21, Laws of Kenya.
  - ii. The orders issued by the trial Court on July 22, 2022 are in accordance with Section 10 of the [Magistrates Courts Act, 2015](#) which grants the Court Power to punish for contempt, the Contemnors having willfully disobeyed the order of the court.



- iii. The appellant's application does not meet the threshold of Order 42 rule 6 of the [Civil Procedure Rules, 2010](#) relied upon.
  - iv. Order of stay of proceedings sought is not in the interest of justice. The appellant is inviting the Court to exercise judicial discretion capriciously and whimsically.
  - v. The application is premature as the Contemnors are yet to be sentenced. The Contempt proceedings being *sui generis* in nature and meant to uphold the dignity of the courts.
3. I have considered the grounds set out on the face of the motion and the facts deponed in the supporting affidavit and the Grounds of Opposition, the brief oral submissions and authorities cited.
  4. The applicant stated that the court on August 24, 2021 issued the first Injunctive order against the applicant restraining it from non-renewal of the Oracle Partner Network Policies agreement between it and the respondent pending the hearing and determination of the first injunction application.
  5. The applicant further stated that the shortly thereafter the respondent filed another application dated September 24, 2021 seeking identical injunctive orders as the first injunction application, the second injunction application was granted *ex parte* by the lower court and that the applicant therefore challenged and sought to set aside the second *ex parte* injunction order.
  6. The applicant avers that the respondent filed an application dated April 28, 2022, the contempt application seeking the representatives of the applicant be cited for contempt on the grounds that the applicant allegedly disobeyed the second *ex parte* injunction order.
  7. The applicant further avers that it is dissatisfied with the whole ruling/order of the lower court and is desirous of appealing the same and has consequently filed a memorandum of Appeal dated July 28, 2022.
  8. In retort, the respondent avers that it is not in the interest of justice to stay proceedings since the applicants before this court are convicted contemnors and that the contempt proceedings took into account the arguments.
  9. Be that as it may, the provisions of Order 42, Rule 6(2) of the Civil Procedure Rules, 2010 express that even where an application for a stay of execution or proceedings is denied or granted by the trial court, the court sitting on appeal is at liberty to consider a similar application and to make such orders as it deems just.
  10. The granting of a stay of proceedings is purely a matter of judicial discretion. The principles surrounding the granting of an order for stay of proceedings were aptly discussed by the court in the case of [William Kamunge & 2 others v Muriuki Mbiti](#) [2016] eKLR:
 

“...it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”
  11. The prayer for stay of proceedings is an equitable relief. An applicant must have come to court with clean hands. It is therefore important for the court to consider whether or not the application for stay of proceedings has been filed expeditiously.
  12. The first principle concerns itself with whether there was delay in filing of the application. The court noted that the Order the applicants intended to appeal was delivered on July 22, 2022. The



Memorandum of Appeal was filed on July 28, 2022 while the present application was filed on July 28, 2022 six (6) days could not be said to have been inordinate. This court was thus satisfied that the present application was filed without any delay.

13. The second principle concerns itself with whether the applicant has an arguable appeal with reasonable chances of success. The applicant is of the view that their appeal raises arguable grounds and has high chances of success based on the fact that by virtue of the ruling dated February 4, 2022 delivered by Hon.Kivuti, the first and second injunction *ex parte* orders lapsed due to a limited duration that they would only be in force pending the hearing and determination of the first and second injunction applications.
14. The applicant avers that there are no orders of stay of proceedings in force therefore the applicant is apprehensive that the lower court will proceed and impose a sentence against the applicant which if allowed will render this appeal nugatory.
15. I did not come across any specific arguments by the respondent on this subject.
16. In my view, I am satisfied that the applicant has demonstrated that the appeal raises prima facie arguable points of law and fact and that if an order for a stay of proceedings is denied and the suit proceeds for hearing, there is a likelihood that the appeal will be rendered nugatory.
17. Going further, this court was cognizant of the fact that an arguable appeal only needed to raise a single bona fide point worthy of consideration and need not be one that must necessarily succeed as was held in the case of *Co-operative Bank of Kenya Ltd vs Banking Insurance of Finance Union (Kenya)* [2015]eKLR.
18. The Court of Appeal also held in the case of *UAP Insurance Company Ltd vs Michael John Beckett* [2004] eKLR, all an applicant is required to show is that he has arguable appeal which is not frivolous and that the appeal will be rendered nugatory if the stay of proceedings are not granted.
19. Concerning the third principle on the expeditious disposal of cases vis-à-vis proper use of judicial time, upon considering the foregoing circumstances, I find that it would only be a practical and proper use of judicial time for the parties to first pursue the appeal before undertaking any further proceedings in the present suit.
20. As was held in the case of *Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others* [2009]eKLR, the Court of Appeal rendered itself as follows:-

“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice.”
21. In the end therefore, the Motion dated July 28, 2022 is hereby allowed on merit in the following terms. Consequently:
  - i. There be an order of stay of all further proceedings in Milimani Chief Magistrate Court Civil Suit no E10553 of 2021 for 60 days within which the appeal should have been prosecuted.
  - ii. Costs of the Motion shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2023.**

.....  
**J. K. SERGON**



**JUDGE**

