



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. E045 OF 2022**

**NATURAL WORLD MOMBASA SAFARIS LIMITED.....APPELLANT/APPLICANT**

**-VERSUS-**

**MONICA NYAGONYO KARURI.....RESPONDENT**

**RULING**

1. The appellant/applicant brought the Notice of Motion dated 7<sup>th</sup> February, 2022 supported by the grounds presented on its face and the facts stated in the affidavit of Legal Officer of the appellant Anne Wayamba. The appellant sought for a stay of all proceedings in Milimani CMCC NO. 1304 of 2020 pending the hearing and determination of this appeal.

2. The respondent opposed the Motion by filing the Grounds of Opposition dated 14<sup>th</sup> February, 2022 and put forward the following grounds:

*a. The applicant does not fault the impugned ruling(s) of the Lower court as lacking legal basis.*

*b. The applicant does not dispute service of Mention Notice for pretrial conference in Milimani CMCC No.1304 of 2020 and orders the Court made on 8/12/2021*

*c. The applicant does not dispute filing list of defendant witness and documents out of time and without leave of the Court,*

*d. The court should not come to aid of an indolent party and in this case the applicant.*

*e. The instant application does not meet the minimum threshold required by law for granting orders sought.*

*f. The instant application is only meant to delay finalization of the lower court matter being Milimani CMCC No.1304 of 2020.*

*g. For the above reasons, the instant application is thus incompetent, baseless and an abuse of Court process deserving dismissal with costs.*

3. The parties were directed to file and exchange written submissions on the Motion. I have considered the grounds laid out on the body of the Motion; the facts deponed in the affidavit supporting it; the Grounds of Opposition and the submissions of both parties.

4. A brief background of the matter is that this application is premised on rulings issued by the trial court on 2<sup>nd</sup> February 2022 whereas in the 1<sup>st</sup> ruling the court dismissed the objection to the applicant producing the treatment documents and the police abstract and required the makers of the documents to be cross-examined.

5. The appellants' application for leave to have the documents deemed as properly filed was equally declined. The applicant having sought leave to appeal against the two rulings declined by the court, the applicant decided to lodge the instant appeal.

6. 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 Mbithi [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”***

7. The *first* principle concerns whether the application has been expeditiously filed. From my study of the record and the impugned ruling, I note that it was delivered on 2<sup>nd</sup> February, 2022 which is barely one (1) month prior to the filing of the instant Motion. I therefore find that there has been no unreasonable delay in bringing the Motion.

8. The *second* principle concerns itself with whether the appellant has an arguable appeal with reasonable chances of success. That upon expunging the applicant's documents from the record, the court closed the it's case unheard and the applicant is apprehensive that the trial court may proceed for hearing in the absence of an opportunity to be heard in court thereby rendering the appeal nugatory and a mere academic exercise.

9. The applicant submitted that it has demonstrated a *prima facie* case warranting the issuance of the orders staying the proceedings.

10. The respondent on the other hand, stated that it is their considered opinion that the applicant was indolent and the impugned ruling/orders of the lower court were lawful and justifiable in the circumstances and thus the appeal is not arguable or tenable.

11. The respondent further stated that the orders sought will delay the finalization of the matter before the lower court which delay will only benefit the applicant and thus deny justice to the respondent.

12. From my study of the grounds featured in the memorandum of appeal, it is apparent that the appeal seeks to challenge the ruling delivered by the trial court where the court declined the request to call the applicant's witness on the objection of the respondent and expunged the applicant's documents and witness statement from record and constructive closure of its case hence condemning then unheard contrary of the canon laws of natural justice and right to be heard.

13. 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.

14. The *third* principle touches on the interest of justice vis-à-vis the subject of prejudice, the applicant stated that no prejudice whatsoever shall be visited upon by the respondent if the orders sought are granted and the issue in dispute determined on merits and upon hearing the respective parties submissions and evidence.

15. Upon the foregoing circumstances hand in hand, I am satisfied that the applicant has reasonably shown that unless there is a stay of proceedings during the pendency of the appeal, there is a likelihood that prejudice and hardship will result to them.

16. Concerning the *fourth* 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.

17. In the end therefore, the Motion dated 7<sup>th</sup> February, 2022 is hereby allowed on merit. Consequently:

**i. There shall be an order for stay of all further proceedings in Milimani CMCC NO. 1304 of 2020 this appeal is heard and determined.**

**ii. Costs of the Motion shall abide the outcome of the appeal.**

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF MARCH, 2022.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent