



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO. E393 OF 2021

CS CORPORATION E.A LIMITED.....PLAINTIFF/RESPONDENT

-VERSUS-

KENYA FOREST RESEARCH INSTITUTE.....DEFENDANT/APPLICANT

RULING

1. The defendant/applicant brought the Notice of Motion dated 2nd December, 2021 supported by the grounds presented on its face and the facts stated in the affidavit of advocate Pauline Brenda Karanja. The applicant sought for the orders hereunder:

i. Spent

ii. THAT the Honourable Court be pleased to stay any further proceedings in the suit and/or extraction of the order issued on the 29th of November, 2021 pending hearing and determination of this application.

iii. THAT this Honourable court be pleased to set aside the proceedings and the subsequent order entered against the defendant herein on the 29th of November, 2021 and all other consequential orders thereto.

iv. THAT this Honourable court be pleased to reinstate the respondent's Application dated the 16th of August, 2021 for inter-partes hearing and disposal on merit.

v. THAT the annexed draft Grounds of Opposition herein and marked "PBK1" be deemed as properly filed.

vi. THAT the costs of this application be provided for.

2. The respondent put in a replying affidavit sworn by advocate John Odera Were on 22nd December, 2021, to oppose the Motion.

3. When the Motion came up for interparties hearing before this court, the parties respective advocates chose to rely on the averments made in their respective affidavits.

4. I have considered the grounds laid out on the body of the Motion, the facts deponed in the affidavits supporting and opposing the Motion and the brief oral arguments.

5. A brief background of the matter is that the respondent filed an application vide the originating summons dated 16th August 2021 and sought for orders appointing an arbitrator with wide experience in law to hear and determine a dispute that arose between the applicant and the respondent under an agreement dated 29th May 2020.

6. When the matter came up for hearing before this court, the court upon finding that the said application was unopposed, proceeded to allow the same as prayed in the absence of the applicant's counsel. Being aggrieved by the aforementioned ruling, the applicant decided to file this application.

7. 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”

8. 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 29th November, 2021 which is barely five days prior to the filing of the instant Motion. I therefore find that there has been no unreasonable delay in bringing the Motion.

9. The *second* principle concerns itself with whether the defendant has an arguable opposition with reasonable chances of success. The defendant avers that it has an arguable opposition to the plaintiff’s application which raises weighty issues of law that ought to be heard on merit.

10. The plaintiff on the other hand avers that this application is frivolous, unmerited and an abuse of due process since it is only aimed at wasting this Court’s valuable judicial time and nothing else.

11. The plaintiff stated that the defendant has been unreasonably stubborn for no apparent reason and have been out to frustrate the plaintiff in a matter which is clear and straight forward and in any event does not require wasting of time and resources.

12. From my study of the draft defendant’s grounds of opposition, it is apparent that the defendant has an arguable objection to the plaintiff’s application which have raised issues of law hence condemning them unheard will be contrary of the canon of natural justice and right to be heard.

13. In my view, I am satisfied that the defendant has an arguable objection to the plaintiff’s application and fact and that if an order for a stay of proceedings is denied then the defendant who will be condemned unheard will suffer grave injustice.

14. The *third* principle touches on the interest of justice vis-à-vis the subject of prejudice, the defendant stated that plaintiff will not suffer any prejudice if the orders issued on the 29th of November, 2021 are set aside and the plaintiffs’ application is heard on merit.

15. Upon the foregoing circumstances hand in hand, I am satisfied that the defendant 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 application before undertaking any further proceedings in the present suit.

17. In the end therefore, the Motion dated 2nd December, 2021 is hereby allowed on merit.

18. That the costs shall be in cause.

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 Plaintiff

..... for the Defendant