



REPUBLIC OF KENYA



KENYA LAW
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**Intercessory Deliverance and Counselling Ministry v Tack Holdings Limited & another
(Civil Appeal 265 of 2020) [2022] KEHC 11438 (KLR) (Civ) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11438 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 265 OF 2020

JN MULWA, J

MAY 26, 2022

BETWEEN

**INTERCESSORY DELIVERANCE AND COUNSELLING
MINISTRY APPELLANT**

AND

TACK HOLDINGS LIMITED 1ST RESPONDENT

NAIROBI CITY COUNTY 2ND RESPONDENT

RULING

1. The Applicant by its application dated November 18, 2020 seeks for orders that;
 1. Spent;
 2. Spent;
 3. There be an order for stay of proceedings in Nairobi First Class Magistrates Court Civil Case No. 17 of 2008 between City Council of Nairobi Vs Tack Holdings Limited & Intercessory Deliverance and Counselling Ministry pending the hearing and determination of this Appeal;
 4. Costs of this Application be provided for.
2. It is anchored on the grounds on the face of the Application and the depositions in the supporting affidavit of Nancy Nduku Mutemi sworn and dated November 18, 2020. It is averred that the applicant is aggrieved and has since appealed against the whole ruling or delivered on May 29, 2020 by Hon. M.W Njagi, Principal Magistrate at Nairobi in Civil case no. 17 of 2008 between City Council of Nairobi vs Track Holdings Limited and Intercessory Deliverance and Counselling Ministry dismissing the plaintiff/appellant's Notice of Motion dated September 19, 2020 seeking review of the orders given



on July 22, 2020. Further that the applicant has a good and arguable Appeal from the ruling of the Magistrate's court; that it raises substantial points of law and facts and has high chances of success.

3. It is further stated that the Application has been brought without undue delay and that the respondent will suffer no prejudice if the Application is allowed in the interest of justice so as not to render the appeal nugatory.
4. The Application is opposed by the 1st respondent vide the replying affidavit sworn by Maxwel Otieno Odongo on December 23, 2020. It is deposed that the ruling that the applicant is aggrieved by is not against itself but the 2nd respondent who has no problem with the said ruling, hence the application is only meant to block the cause of justice by delaying conclusion of the case, in breach of article 159 of the Constitution of Kenya, 2010. It is urged that granting the orders sought will not prejudice the Respondents in any way.
5. The 2nd respondent did not file any Response to the Application and it suffices to say that it does not oppose the Application.
6. The Application was canvassed by way of written submissions. I have considered the Application, the affidavits for and against and the submissions by the applicant. The 1st respondent is yet to file its submissions which it was directed to do so two weeks before the ruling date, which it has failed to do, one week to the ruling date.
7. On stay of proceedings, I am persuaded by the celebrated case of *Global Tours & Travels Limited*; Nairobi HC Winding up Cause No. 43 of 2000 where the court stated: –

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice....the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, 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. Similarly, in Halsbury's Law of England, 4th Edition. 4th Edition. Vol. 37 page 330 and 332, it is stated that:

“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 proceeding beyond all 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 the case.”

(See also *Benson Khwatenge Wafula v. director of Public Prosecutions; Ethics and Anti-Corruption & 2 others (Interested Parties)* (2020) eKLR)

9. The court has discretion to grant the orders of stay of proceedings. The discretion must however be exercised judiciously. In the present case, although the Memorandum of Appeal has been filed, the hearing of the Appeal will take an indeterminate period. In the meantime, the hearing of the case before the trial court will be delayed.
10. The impugned ruling, subject of this Application and the Appeal has not been annexed to the affidavit in support of the application, nor its contents disclosed to the court, other than the court being told that the order/ruling is not against the 1st Respondent, the court remains in darkness as to its content and import.
11. The Applicant has not sufficiently demonstrated the prejudice it will suffer if the application herein is not allowed. To the contrary the 1st Respondent stands to suffer if the proceedings in the trial court are stayed, for reasons stated above.

For the the foregoing, I find no merits in the application dated November 18, 2020. It is dismissed with costs.

DATED SIGNED AND DELIVERED THIS 26TH DAY OF MAY 2022.

J.MULWA

JUDGE

