



**Makindu Motors Limited v Subati Group Limited (Environment & Land
Case E032 of 2022) [2025] KEELC 1388 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1388 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE E032 OF 2022**

**EO OBAGA, J
MARCH 20, 2025**

BETWEEN

MAKINDU MOTORS LIMITED PLAINTIFF

AND

SUBATI GROUP LIMITED DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 1st October, 2024 in which the Plaintiff/Applicant seeks the following orders:
 1. Spent
 2. Spent
 3. That the Honourable court be pleased to grant stay of proceedings herein pending hearing and determination of Civil Application Number 308 of 2024 pending in the Court of Appeal Nairobi.
 4. That the costs of this application be provided for.
2. The Applicant states that on 8th November, 2023, this court delivered a ruling in which it dismissed its Notice of Motion dated 22nd November, 2023. The Applicant was aggrieved with the ruling and intends to appeal against the ruling. The Applicant was not aware of the delivery of ruling until after the time for appeal had expired.
3. The Applicant therefore states that it will be in the interest of justice to have these proceedings stayed pending the hearing and determination of Nairobi Civil Application No. 308 of 2024 where it has applied to be allowed to file an appeal out time. The Applicant further states that the case is set for pre-trials and that if hearing was to proceed before the determination of its application, it will suffer substantial harm.



4. The Applicant contends that the intended appeal raises substantial issues of law and fact with high chances of success and it is willing to deposit any security as may be determined by the court.
5. The application was opposed by the Defendant/Respondent based on a replying affidavit sworn on 8th November, 2023. The Respondent contends that the Applicant filed an application before the Court of Appeal being Civil Application No. 307 of 2024 in which it is seeking stay of proceedings. The Respondent states that as the orders sought herein are similar to the orders sought before the Court of Appeal, this application should be struck out as it is prudent for the court to await the outcome of the application before the Court of Appeal which is pending ruling.
6. The Respondent argues that stay of proceedings may prolong the completion of expeditious disposal of these cases.
7. The parties were directed to file written submissions. The Applicant filed submissions dated 20th January, 2025. The Respondent filed submissions dated 3rd February, 2025. I have considered the applicant's application, the opposition thereto by the Respondent, the submissions of the parties as well as the cited authorities. The only issue for determination is whether the Applicant has demonstrated that it deserves to have the proceedings stayed.
8. The principles which are to be considered in an application for stay of proceedings were well captured in *Global Tours & Travels Limited, Nairobi He Winding up cause No. 43 of 2000* where Justice Ringera (as he was) stated as follows:

“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.”
9. The other principles for grant of stay of proceedings were laid down in the case of *William Odhiambo Ramogi & 2 others -vs- The Honourable Attorney General (2019) eKLR*. One of the principles set out in the case of *William Odhiambo Ramogi & 2 others (Supra)* is that in as much as possible, an application for stay of proceedings should be filed in the court to which an appeal is preferred. This is because this is the court in a better position to interrogate whether the appeal is arguable and has chances of succeeding.
10. In the instant case, the Applicant has filed an application for stay of proceedings before the Court of Appeal and at the same time filed a similar application before this court. This I think is not proper and amounts to an abuse of the process of court. There is also a danger of this court giving orders which will conflict with the orders of the Court of Appeal. For this ground alone, I find that the proper approach is to have this application dismissed to await the ruling of the Court of Appeal in Civil Application No. 307 of 2024. Consequently, I proceed to dismiss the Applicant's application with costs to the Respondent.

It is so ordered.



RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF MARCH, 2025.

.....

HON. E. O. OBAGA

JUDGE

In The Presence Of:

Ms. Okinyi for Mr. Kivindyoo for Applicant.

Ms. Akonga for Respondent.

Court assistant - Steve Musyoki

