



REPUBLIC OF KENYA



**KENYA LAW**  
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**Keraka v Gal Baking Services Limited (Civil Appeal E813 of 2022)  
[2022] KEHC 15839 (KLR) (Civ) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15839 (KLR)

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

**CIVIL**

**CIVIL APPEAL E813 OF 2022**

**JK SERGON, J**

**NOVEMBER 30, 2022**

**BETWEEN**

**SHEM OMOKE KERAKA ..... APPELLANT**

**AND**

**GAL BAKING SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. Shem Omoke Keraka, the appellant/applicant herein took out the motion dated October 13, 2022 whereof he sought for inter alia an order for stay of proceedings in Nairobi SCC No E1815 of 2022 *Gal Baking Services Ltd vs Shem Omoke Kerara* pending appeal.
2. The appellant filed the affidavit sworn by Paul Kabira Kibiku in support of the motion. Gal Baking Services Ltd filed grounds of opposition to resist the motion. Learned counsels made oral submissions at the interpartes hearing of the aforesaid motion.
3. I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. I have further considered the grounds of opposition plus the rival oral submissions. It is the submission of the appellant/applicant that the suit before the Small Claims Court was filed outside the statutory period of 3 years. It is pointed out that the respondent was required to have filed the claim on or before July 9, 2022.
4. The applicant pointed out that he raised a preliminary objection on that point but the trial court dismissed the objection and that the court is scheduled to proceed to hear the case.
5. The appellant has preferred this appeal seeking to overturn the decision of the Small Claims court. This court was urged to grant an order staying proceedings of the trial court until the appeal is heard and determined.



6. It is the submission of the applicant that unless the order for stay is granted he would suffer irreparable damage and substantial loss in that the court would proceed to hear a defective suit which should have been struck out.
7. The respondent on the other hand has urged this court to find that the application is a non-starter in that it is supported by an affidavit sworn by an advocate over contentious issues hence it should be struck out and expunged from record under Order 19 rule 6 of the Civil Procedure Rules.
8. It is also argued that the application does not meet the requirements for granting an order for stay of proceedings. It is also said that the same lacks merit.
9. The main order the applicant is seeking is for stay of proceedings pending appeal. There are a plethora of decided cases indicating the principles to be considered in determining such applications. It suffices to cite the decision of Ringera J, (as he then was) in *Global Tours & travels Ltd* Nairobi HC Winding Up Cause no 43 of 2000 in which Justice Ringera expressed himself in part as follows:
 

“in deciding whether to order for a stay, the court should essentially weight 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.”
10. There is no doubt that the instant application was filed without unreasonable delay. The appellant has specifically stated that if the order for stay of proceedings is denied he would suffer substantial loss and irreparable damage. It is also argued that the court will have proceeded to hear a defective suit.
11. I am unable to comprehend the substantial and irreparable loss that would be visited upon the appellant/applicant if the order is denied.
12. The appellant/applicant’s main ground on appeal is that the suit before the Small Claims Court is time barred. In my humble view, the appellant will still have a chance to argue the issue on appeal, hence the claim that the applicant will suffer substantial loss or irreparable loss cannot arise. It cannot therefore be said that the appellant will suffer substantial or irreparable loss. Under the Small Claims Court’s Act, the claims filed before that court must be determined expeditiously and specifically within 60 days.
13. If the order for stay of proceedings is issued, the expeditious disposal of the case as envisaged by the Statute will be frustrated and yet the applicant still has a chance to argue the same issue on appeal.
14. The circumstances of this case does not warrant the issuance of an order for stay of proceedings.
15. In the end, I find no merit in the motion dated October 13, 2022. The same is ordered dismissed with costs abiding the outcome of the appeal.

**Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 30<sup>th</sup> day of November, 2022.**

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**J. K. SERGON**

**JUDGE**

**In the presence of:**

..... for the Appellant



..... for the Respondent

