



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 132 OF 2016

MIT S ELECTRICAL COMPANY LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

MITSUBISHI ELECTRIC CORPORATION.....DEFENDANT/APPLICANT

RULING

This matter was being handled by Njuguna J up to the point where the plaintiff filed an application for the Judge's recusal on the basis that the Judge was biased in the proceedings. The application was opposed by the defendant and in the ruling dated 20th June, 2020 Njuguna J cited Order 45 rule 2 of the Civil Procedure Rules and concluded as follows,

“Upon reading the above provision, I established that there is nothing precluding this court from hearing the application for review: if anything, an application seeking the review of a decision ought to be heard by the Judge who made the relevant decision and it is only in the absence of such judge that the application may be placed before a different Judge.

Upon the foregoing, the reasons offered by the applicant do not meet the required threshold for recusal; however, the court notes that the applicant has lost faith in this court and it does not believe that justice will be done in this matter. For that reason alone, this court will not insist on hearing the matter so that justice is not only done but it can be seen to be done.

Consequently, the motion is hereby allowed with no order as to costs.”

The defendant was aggrieved by that ruling and filed a Notice of Appeal on dated 25th June, 2020. This was followed by an application by way of Notice of Motion dated and filed on 28th July, 2020 seeking a stay of further proceedings until the determination of the intended appeal to the Court of Appeal against the ruling of Njuguna J aforesaid.

The application is supported by an affidavit sworn by one Ryusuk Nishio alongside the grounds set out on the face of the application. The application is opposed by the plaintiff on the ground that it did not meet the legal threshold for the grant of stay orders and that it was brought after inordinate and unreasonable delay. Both parties have filed submissions and cited some authorities which I have noted.

Courts are enjoined to determine matters before them without undue delay, and that is the import of Article 159 (2) (b) of the Constitution and Section 1A of the Civil Procedure Act. Of course there are situations where intervening circumstances may impede that determination.

In the instant case, whereas the Notice of Appeal was filed only two days after the said ruling, the application was not filed until about one month thereafter. No reason has been advanced as to why the application was not filed soon after the ruling was delivered. However, since my final order may not turn on that issue, I leave it to rest at this point.

The defendant must demonstrate that if the order is not given prejudice shall be visited upon the defendant. This is an intended appeal which may lead the Court of Appeal to either compel the judge to continue with the proceedings or have another judge take over. One can easily read the discomfort of the Court of Appeal making such an order in view of what the High Court judge has stated in her ruling. It may also lead to the presumption that a party may insist on a judge hearing the matter, even when such a Judge is uncomfortable doing so in view of the application for recusal.

The question that begs an answer is whether or not if that appeal is arguable and may be rendered nugatory if stay of proceedings is not allowed. All judges of the High Court have concurrent jurisdiction. In the event another judge is not available for whatever reasons to hear, proceed or conclude a matter, another judge may take up the proceedings. In fact, Order 45 which relates to review applications addresses such situations. It is also common knowledge that judges are transferred from time to time. In fact, Njuguna J has since been transferred from the Civil Division and is currently in a station out of Nairobi. It is hard to hold the appeal is likely to be rendered nugatory in the circumstances of this case.

An order for stay of proceedings compromises expeditious disposal of cases. It is in the interest of all parties that courts must be alive to the parties' legitimate expectation that, once matters are lodged before the courts, all things being equal, should be determined expeditiously. This is an order that should therefore be granted cautiously and only in exceptional circumstances.

In Halsbury's Laws of England, 4th Edition Vol 37 page 330 it is stated,

“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 on the substantive merits of his case, and therefore the court's general practise is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.”

At page 332 it is stated,

“This is a power which it has been emphasised ought to be exercised sparingly and only in exceptional cases.”

In the case of **Daniel Walter Rasugu vs. Johana Nyakwoyo Buti & 2 others (208) e KLR** the Court stated,

“Stay of proceedings pending appeal is purely a matter of judicial discretion that is exercised in the interest of justice depending on the facts of each case. Of course the discretion has to be exercised judiciary and not whimsically.”

See also in the matter of **Global Tours And Travel Limited Winding Cause No. 43 of 2000 at Nairobi and David Motoron Silversein vs. Atsango Chesoni (2002) e KLR.**

Applying the above principles, I am not persuaded in the instant case, that is an order that should issue. Accordingly, the application is dismissed with costs to the plaintiff.

Dated, signed and delivered at Nairobi this 23rd Day of March, 2021.

A. MBOGHOLI MSAGHA

JUDGE