



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 12 OF 2019

DR. ERASTUS NDEGWA WANGAL.....PLAINTIFF

-VERSUS-

KLM ROYAL DUTCH AIRLINE.....1ST DEFENDANT

AIR FRANCE..... 2ND DEFENDANT

CONSOLIDATED WITH

CIVIL CASE NO. 13 OF 2019

PAL KINUTHIA KAGWE.....PLAINTIFF

VERSUS

KLM ROYAL DUTCH AIRLINE.....1ST DEFENDANT

AIR FRANCE.....2ND DEFENDANT

CONSOLIDATED WITH

CIVIL CASE NO. 14 OF 2019

GRACE NGINA KINUTHIA.....PLAINTIFF

VERSUS

KLM ROYAL DUTCH AIRLINE.....1ST DEFENDANT

AIR FRANCE.....2ND DEFENDANT

CONSOLIDATED WITH

CIVIL CASE NO. 15 OF 2019

PRISCILLA NDUKU WANGARI.....PLAINTIFF

VERSUS

KLM ROYAL DUTCH AIRLINE.....1ST DEFENDANT

AIR FRANCE.....2ND DEFENDANT

RULING

1. KLM Royal Dutch Airline and Air France the 1st and 2nd Defendants respectively took out the motion dated 13th October 2020 whereof they sought for the following orders:

i. HCCC 12 of 2019 be and is hereby consolidated with

a. HCCC 13 of 2019 (Paul Kinuthia Kagwe –vs- KLM Royal Dutch Airline & air France);

b. HCCC 14 of 2019 (Grace Nigna Kinuthia –vs- KLM Royal Dutch Airline & air France);

c. HCCC 15 of 2019 (Priscilla Nduku Wangari –vs- KLM Royal Dutch Airline & air France);

ii. The proceedings in the consolidated suit be and are hereby stayed pending the hearing and determination of Nairobi Court of Appeal Civil Appeal E262 of 2020 – KLM Royal Dutch Airline & Air France –vs- Dr. Erastus Ndegwa Wangai.

iii. The costs of this application be the defendants in any event.

2. The motion is supported by the affidavit sworn by Arthur Dieffenthaler. When served the plaintiff filed grounds of opposition to oppose the application. On 24th November 2020, parties recorded a consent order allowing prayer 1 of the motion. Learned counsels made oral submissions.

3. I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit plus the grounds of opposition. I have also taken into account the rival oral submissions. The main order sought by the defendants/applicants is for a stay of proceedings pending the hearing and determination of Nairobi Court of Appeal E262 of 2020, KLM Royal Dutch Airline & Air France –vs- Dr. Erastus Ndegwa Wangai.

4. It is the submission of the defendants that they have filed an appeal against the decision of this court delivered on 25th October 2019 where this court held that the Kenyan Court ad jurisdiction to h ear and determine this suit.

5. The defendants argued that it will result in the optimum Utilization of limited judicial if proceedings in the consolidated suits are stayed to avoid a scenario where the Court of Appeal finds the High Court does not have jurisdiction yet the consolidated suit in the High Court has already commenced hearing and or been concluded. In other words, the defendants are of the submission that if the order for stay of proceedings is given wastage of judicial time will be avoided and utilized in hearing other deserving cases.

6. The plaintiff on the other hand urged this court to dismiss The defendant’s application since they failed to demonstrate what prejudice they would face if the order for stay of proceedings is denied. The plaintiff argued that if the order for stay of proceedings is issued he will be kept for a long time waiting to be heard since there is no definite period as when the Court of Appeal will hear and conclude the appeal.

7. The impact of granting an order for stay of proceedings is enormous. **First**, it will cause serious and fundamental interference to the right of any party to conduct litigation. **Secondly**, parties are likely to be kept waiting for the determination by the Court of Appeal. The period is indeterminate because none of the parties is in control of the Court of Appeal diary. The main argument put forward by the defendant is that if the order for stay of proceedings is granted, the court would avoid wastage of precious judicial time. The record shows that the decision of this court which is now the subject of appeal was delivered on 25th October 2019.

8. The principles to be considered in determining an application for stay of proceedings or further proceedings have been developed over time through judicial pronouncements and in various treaties. In Halsbury’s Law of England 4th Edition vol. 37 pp 330-333 it is stated inter alia as follows:

“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 substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings 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.

9. The power of the court whether to grant the order for stay of proceedings is discretionary and is dependent on a case by case basis. I have already set out the arguments put forward by both sides. The instant application was filed after a year had lapsed from the date of delivery of this court’s decision.

10. The Deputy Registrar of this court issued a certificate of delay dated 21st August 2020 indicating that there was a delay in supplying the

defendants with certified copies of the proceedings and ruling. I find the explanation of the delay to be plausible.

11. Taking into account the applicable principles in determining such an application, I am not convinced that the ground advanced by the defendant is a strong ground to grant the order. The defendants have not shown the prejudice they would suffer if the order is denied. In fact if order is granted the plaintiff will be more inconvenienced than the defendants. **First**, the plaintiff will be prevented from prosecuting his case for an indeterminate period of time. **Secondly**, the plaintiff will have been denied access to justice to expeditiously have his case heard and determined.

12. In the end, I find no merit in the motion dated 13.10.2020.

The same is dismissed with costs to the plaintiff

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 17th day of December, 2020.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant