



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 1261 OF 2002

KENYA POSTEL DIRECTORIES LIMITED.....PLAINTIFF

- VERSUS -

YELLOW PAGES PUBLISHING & MARKETING LTD.....DEFENDANT

- AND-

BY COUNTER CLAIM

YELLOW PAGES PUBLISHING & MARKETING LTD....PLAINTIFF(COUNTER CLAIM)

- VERSUS -

KENYA POSTEL DIRECTORIES LIMITED.....1ST DEFENDANT (TO COUNTERCLAIM)

- AND -

TELKOM KENYA LIMITED.....2ND DEFENDANT(TO COUNTERCLAIM)

RULING

1. This case was filed in the year 2002 by *Kenya Postel Directories Ltd (Kenya Postel)* against *Yellow Pages Publishing and Marketing Ltd (Yellow pages)*.

2. *Yellow pages* filed its defence and counter claim against *Kenya Postel* and a new party *Telkom Kenya Ltd (Telkom)* was added to the proceedings.

3. The claim by *Kenya Postel* was dismissed for want of prosecution by this court's ruling of *2nd March, 2016*.

4. *Kenya Postel* filed a *Notice of Motion* dated *25th May, 2016* seeking the dismissal of the counter claim for want of prosecution. By that application, the *Kenya postel* also sought review of the ruling of *2nd March, 2016* which ruling dismissed its claim. The application was dismissed by this court's ruling on *1st November, 2017*.

5. *Kenya Postel* now seeks stay of the suit pending appeal, by its *Notice of Motion* dated *29th November, 2017*. The proposed appeal is against the dismissal of its application for dismissal of the defence and counter claim and for review. That application is based on the grounds:

a. That the trial of the counter claim cannot proceed because the issues in the counter claim are directly and substantially in issue in the dismissed original suit.

b. That Kenya postel will suffer gross injustice and/or loss if the counter claim proceeds to hearing and determination.

6. The application was opposed by *yellow pages*. *Yellow pages* submitted that *Kenya Postel* had failed to demonstrate the loss, it would suffer, and any stay would be to prevent *yellow pages* enjoying the fruits of the judgement It may obtain. *Yellow pages* was of the view that there is no merit in the application.

7. Telkom did not wish to participate in the application.

8. The court has the discretion of staying a suit pending an appeal. That discretion was discussed in the case of *Global Tours & Travels Limited - Winding-Up Cause No. 43 of 2000*, where the *Hon. Ringera J* (as he then was) expressed himself thus, on the principles governing applications for stay of proceedings;

“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 interests of justice. Such discretion is unlimited save that by virtue of its character as a judicial discretion it should be exercised rationally and not capriciously or whimsically. 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 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 grounds which **Kenya postel** shall raise, and the Court of Appeal will consider, is if the High Court erred to have refused to review its ruling dismissing the main suit, or to have refused to dismiss the counter claim. If indeed the Court of Appeal does decide to review the order dismissing the main suit, it will mean that the suit of **Kenya postel** will be reinstated. If it is reinstated, and the hearing of the counter claim has taken place, there is a likelihood of **Kenya postel** suffering prejudice. If that occurs, the High Court will have to hear the main suit after the counter claim has been heard.

10. Those circumstances make it appropriate for stay to be granted as sought.

11. Accordingly, this suit is hereby stayed until further orders of the court. At the reading of this ruling, a mention date will be given to monitor this matter.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of July 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of

Court Assistant.....Sophie

..... for the Plaintiff

..... for the 1st Defendant

..... for the 2nd Defendant