



Milele Homes Limited v Mambomoto Homes Limited (Environment and Land Appeal 6 of 2023) [2025] KEELC 3233 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3233 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL 6 OF 2023**

LC KOMINGOI, J

APRIL 8, 2025

BETWEEN

MILELE HOMES LIMITED APPELLANT

AND

MAMBOMOTO HOMES LIMITED RESPONDENT

RULING

1. This is the Notice of Motion Application dated 26th September 2024 brought under: Section 1A, 1B, 3, 3A and 95 of the *Civil Procedure Act*, Order 42 Rule 6(2), Order 45 and Order 50 Rule 1, 2, 3, 4, 5, 6 and 7, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of Law. It seeks:
 - i. Spent
 - ii. That this Hon. Court be pleased to issue an order for stay of any further proceedings in this matter pending the hearing and determination of this Application and the Appeal that has been filed.
 - iii. That the costs do abide the outcome of the intended Appeal.
2. The grounds are on the face of the application and are set out in paragraphs 1 to 8. The same is supported by the sworn Affidavit of Evance Otieno, the property manager of the Appellant sworn on 26th of September 2024. In an application dated 12th October 2023, the Applicant applied for orders that the Respondent be compelled to deposit Kshs. 1,348,9000 as security of costs. In a Ruling dated 11th July 2024, this Court dismissed the application with costs. It is this Ruling that the Applicant wishes to Appeal against and has sought stay of these proceedings pending Appeal.
3. The Applicant claims that this Court did not address its mind to the procedural and substantive issues enumerated by the Applicant and failed to appreciate the Respondent's inability to clear its rent arrears as per the previous bounced cheques. The Applicant also claims that the financial standing and



whereabouts of the Respondent are unknown and might be flight risk, therefore might not honour its financial obligations. It is on these grounds that the Appellant seeks stay of these proceedings pending Appeal.

4. The Application is opposed. There is a Replying Affidavit sworn by Lucy Kamau the Director of the Respondent. She opposes this application on grounds that it was a delaying tactic aimed at frustrating the Respondent, while delaying the original suit at the Subordinate Court. She pointed out that the Applicant had filed several interlocutory applications in this Appeal as well as at the subordinate court, which had all been dismissed. The Respondent also claimed that the application was defective since it was akin to asking the Court to sit on its own appeal and the reference of Order 42 Rule 6(2) and 6(3) meant that there was existence of a substantive judgement and decree but there was none. As such, the application should be dismissed with costs for being a waste of judicial time.
5. This application was canvassed by way of written submissions.

The Appellant/Applicant's submissions

6. Counsel for the Applicant submitted that the issue for determination was whether the Applicant was entitled to an order for stay of proceedings pending the hearing and determination of this application and the Appeal.
7. Counsel submitted that if the proceedings are not stayed, then the Appellant would suffer substantial loss due to the Respondent's inability to meet its financial obligations. And this could only be recovered through security of cost. It was therefore necessary for the proceedings to be stayed to prevent any abuse of the Court process. Reference was made to the case of Global Tours & Travels Ltd H.C No. 43 of 2000 where Ringera J. held that in deciding whether to stay or not, a Court should weigh the pros and cons.

The Respondent's submissions

8. On whether the application was proper in form and grounding, counsel submitted that the wording of the application was "an appeal against the Ruling and orders of Hon. Justice Loice Komingoi on 11th July 2024 in ELC Appeal Case No. 006 of 2023". This was erroneous because it appeared as asking the Court to sit on its own appeal. Therefore, reliance on Order 42 Rule 6 was legally untenable because there was no substantive judgement or orders citing RWW vs EKW [2019] KEHC 6523 (KLR) and Kenya Wildlife Service vs James Mutembei [2019] KEHC 10478 (KLR).
9. On whether an order for stay of proceedings should be issued, counsel submitted that stay interferes with a litigant's rights and should only be issued in exceptional circumstances also citing the Global Tours & Travels Ltd case (supra). Counsel pointed out that this application among others was an aim for the Applicant to delay the Appeal and main suit at the subordinate Court with reference to AG vs Owako; Otieon; Yogo Ojuro & Co. Advocates & 6 others (Interested Parties) [2023] KEHC 19858 (KLR). Counsel also submitted that the Applicant had not demonstrated the existence of an arguable appeal deserving of the relief and should therefore be dismissed with costs.

Analysis and determination

10. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited. I find that the issues for determination are:
 - i. Whether the Application for stay of these proceedings is merited;
 - ii. Who should bear the costs of this application?



11. The Appellant seeks stay of these proceedings pending appeal of the Ruling delivered on 11th July 2024. The impugned ruling dismissed the Appellant's Application for Security of costs of Kshs. 1,348,900 against the Respondent on grounds that the Respondent did not have financial capacity to pay the accruing rent arrears as well as the legal costs of the suit.
12. It is not in contention that every person has a right to access justice and a right to Appeal. However, Section 1A of the *Civil Procedure Act* implores Courts to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes. The Applicant has sought stay of this Court's proceedings pending Appeal of its Ruling delivered on 11th July 2024.
13. In making its determination, it is imperative to outline the history of this Appeal.
14. This Appeal was lodged on 6th September 2022 at the High Court before being transferred to this Court for want of jurisdiction. This Court in its Ruling dated 27th April 2023 granted the Applicant the reliefs sought for Stay of execution of the Lower Court's orders and decree, and also stayed proceedings of the Lower Court pending the hearing and determination of this Appeal. The Court also ordered the Appellant to deposit Kshs. 200,000 as security of costs within 30 days. This was almost two years ago and there is no evidence of this having been adhered to.
15. The hearing was not set down for hearing because the Applicant filed another application dated 12th October 2023 seeking the Respondent to be ordered to give security for costs of Kshs. 1,348,900. This Application was dismissed by this Court in its Rulings dated 11th July 2024, which the Applicant seeks to Appeal against.
16. A perusal of the Record of Appeal shows that the Respondent (therein the Plaintiff) filed a suit against the Applicant herein for unlawful seizure of their goods and fixtures. The trial Court in its Ruling dated 6th July 2022 ordered the Appellant to release the goods carried away among other orders. As already highlighted, execution of this order and the Lower Court's proceedings were stayed by this Court. Unfortunately, to date, this Appeal is yet to be set down for hearing and the Applicant once again seeks that these proceedings equally be stayed.
17. It is settled that stay of proceedings is a judicial discretion which must be exercised judiciously taking into consideration judicial tenets of expeditious disposal of cases, access to justice and utilization of judicial time and resources. The Court of Appeal in the case of *M/S Karsan Ramji & Sons Limited v Athumani & another (Suing for and on behalf of the Wamwanyundo Clan & 6 others [2024] KECA 563 (KLR)* held as follows regarding the issue of stay of proceedings:

“... We agree with the respondent that whereas the considerations for granting stay of execution pending appeal are the same as those for stay of proceedings pending appeal, when it comes to the nugatory aspect, in the latter case a higher threshold is required to be met than in the former case. This must be so because an order staying proceedings has the effect of derailing the pending proceedings before a determination is made therein. It interferes with the hearing schedules of the trial court and may lead to injustice being occasioned to the respondent whose constitutional right under Articles 159(2)(d) may thereby be curtailed...

.... 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 whether or not the intended appeal 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...”



18. From the outlined history, there are pending proceedings at the Lower Court which have been stayed. The Applicant once again seeks to stay these proceedings. Section 1B of the Civil Procedure Act espouses that the Court has a duty to ensure:
- (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.
19. This Court therefore has a duty to ensure that proceedings are determined in a just and efficient manner and Section 3A of the Civil Procedure Act provides that: Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
20. From the foregoing, the Court as well as the parties should ensure expeditious dispensation of justice which saves both judicial and litigants' time and resources. The Court of Appeal in the case of *Gathoni v Ethics and Anti-Corruption Commission & 2 others* [2023] KECA 222 (KLR) held as follows regarding stay of proceedings:
30. Halsbury's Laws of England, 4th Edition. Vol. 37 has this to say at p 330 and p 332
- “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 the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.
21. I do not think that seeking stay of proceedings at every stage is judicious and in line with the spirit that justice should not be delayed. I therefore decline to grant the order of stay of these proceedings and the Applicant is ordered to set down this Appeal for hearing.
22. I find that this order is not prejudicial to the Applicant because if the Court is in error in its decision, the Applicant has recourse at the Appellate.
23. This Application is therefore dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8TH DAY OF APRIL, 2025.

L.KOMINGOI

JUDGE

In the Presence of:

Mr Gachie Mwanza for the Appellant

Mr Wanjala for the Respondent

Court Assistant: Mutisya

