



REPUBLIC OF KENYA



Avtar Singh Bahra & another v Chief Lands Registrar & 3 others (Environment & Land Case 799 of 2014) [2022] KEELC 2672 (KLR) (27 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2672 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 799 OF 2014**

**JO MBOYA, J
JUNE 27, 2022**

BETWEEN

AVTAR SINGH BAHRA 1ST PLAINTIFF

AMARJIT KAUR BAHRA 2ND PLAINTIFF

AND

CHIEF LANDS REGISTRAR 1ST DEFENDANT

KATESTATES ESTATE LIMITED 2ND DEFENDANT

MANSOOR ISSA T/A ISSA & CO. ADVOCATES 3RD DEFENDANT

KENYA MEAT COMMISSION 4TH DEFENDANT

RULING

Introduction

1. *Vide* the Notice of Motion Application dated the 7th December 2021, the Plaintiffs'/ Applicants' have sought for the following Ordres:
 - a. The 1st and 2nd Plaintiffs be granted Leave to Appeal to the Court of Appeal against the whole of the Ruling and Decision of Honourable Justice Oguttu Mboya J, given on 1st December 2021.
 - b. This Honourable Court be pleased to grant an Order for Stay of Proceedings pending the hearing and determination of this Application.
 - c. This Honourable court be pleased to grant an Order for Stay of Proceedings pending the hearing and determination of the Intended Appeal.
 - d. The Costs of this Application be provided for.



2. The subject Application is premised and/or anchored on the various grounds which have been enumerated at the foot thereof and same is further supported by the affidavit of one, namely, Avtar Singh Bahra, the 1st Plaintiff/Applicant.
3. Upon being served with the subject application the Defendants/Respondents filed their Responses thereto and therefore signalled their intention and/or desire to oppose the Application. For clarity, the 2nd Defendant filed Grounds of opposition dated the 13th December 2021, whereas the 3rd Defendant filed a Replying Affidavit sworn on the 9th February 2022.
4. On her part, the 4th Defendant filed Grounds of Opposition dated the 9th February 2022.

Submissions By the Parties’:

(a): Plaintiffs’/applicants’ Submissions:

5. The Plaintiffs’/Applicants’ herein filed their written submissions on the 28th February 2022, and in respect of which same raised two Issues for determination.
6. First and foremost, the Plaintiffs’ have submitted that the Application for Leave to Appeal and Stay of Proceedings pending the hearing and determination of the intended Appeal are meritorious and thus same ought to be granted.
7. According to the Plaintiffs/Applicants, the Application for leave has been made and/or mounted within 14 days from the date of delivery of the impugned ruling and/or order, which is sought to be appealed against.
8. In the premises, the Plaintiffs’ have thus contended that same have complied with and/or adhered to the Provisions of Section 75 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya, as read together with Order 43 Rule 1 of the *Civil Procedure Rules*, 2010.
9. On the other hand, the Plaintiffs’ have similarly submitted that the court ought to grant the stay of proceedings to enable the Plaintiffs herein to pursue the intended appeal to the Court of Appeal.
10. Further, it is the Plaintiffs’/Applicants’ submission that same have established and/or satisfied the pre-requisite conditions, to warrant the grant of stay of proceedings pending appeal.
11. In the premises, the Plaintiffs’/Applicants’ have relied on the decisions in the case of *Re-Global Tours & Travels Ltd* Winding up Cause No. 43 of 2000, *Kenya Power & Lighting Company Ltd versus Esther Wanjiru Wokabi* (2014)eKLR and *Niazons Kenya Ltd versus China Road & Bridge Corporation Kenya Ltd* HCC No. 126 of 1999.
12. Other than the foregoing, the Plaintiffs’/Applicants’ have further submitted that the issuance of the Witness Summons to the Chief Land Registrar and the former Commissioner of Land, namely, Zablon Agwata Mabeya, for purposes of attending court and giving evidence in the matter, would not have caused and/or accessioned any prejudice to the Defendants/Respondents.
13. In any event, the Plaintiffs’/Applicants’ have proceeded to and submitted that no prejudice was ever alluded to and/or proven by the Defendants/Respondents.
14. Besides, it has also been submitted that the Defendants/Respondents herein would have a right to Cross-examine the intended Witnesses and therefore no prejudice would have arisen and/ or occurred, whatsoever.



15. In support of the foregoing submissions, the Plaintiffs’/ Applicants’ have relied on the decisions in the case of *Deshpal Omprakash v Habib Ali Mohamed & 4 Others* (2018)eKLR, to fortify the contention that where a right of cross examination would avail to the adverse Party, no prejudice would thus be suffered.

(b) The 2nd Defendant’s Submissions:

16. On her part, the 2nd Defendant filed her written submissions on the 8th March 2022 and in respect of which same raised and or ventilated to two topical issues for consideration.
17. Firstly, the 2nd Defendant has submitted that Parties to civil proceedings are enjoined under the law to comply with the Rules of Procedure and particularly, on the issue of Discovery of documents and disclosure of witnesses to be called.
18. Further, the 2nd Defendant has submitted that in respect of the subject matter, it was therefore incumbent upon the Plaintiffs and their counsel to disclose at the earliest point in time that same would be intent and/or desirous to apply for Witness summons to issue to the Chief Land Registrar and the former Commissioner of Lands, namely, Zablon A. Mabeya.
19. At any rate, the 2nd Defendant submitted that the Application for Witness Summons to issue to the Chief Land Registrar and the former Commissioner of Land, could only be made in compliance with the provisions of Order 16 rule 1 of the *Civil Procedure Rules* 2010 and not otherwise.
20. Other than the foregoing, the 2nd Defendant has further submitted that prior to and/or before applying for Witness Summons, subject to the provisions of Order 16 rule of the *Civil Procedure Rules*, it behooves the Plaintiff to disclose the names of the witnesses, if any, in the List of Witnesses, which by law, is required to be filed in accordance with Order 3 rule 2 of the *civil Procedure rules*, 2010, in case of a Plaintiff
21. Based on the foregoing, the 2nd Defendant has submitted that the Application for issuance of Witness Summons to the Chief Land Registrar and the former Commissioner of Lands, namely, Zablon Mabeya, which was made after the testimony of the two witness that had been disclosed in the List of witnesses was therefore rightly dismissed and declined by the court.
22. Be that as it may, the 2nd Defendant has further submitted that the issue as to whether or not witness summons shall issue to the designated witnesses, in this case, to the Chief Land Registrar and the former Commissioner of Lands, is a matter of discretion of the Court. In this regard, it was submitted that the Court having exercised its discretion, the Intended Appeal does not therefore disclose any sufficient cause.
23. Secondly, the 2nd Defendant has submitted that the grant of stay of proceedings pending Appeal, is similarly, a discretionary order and same can only issue upon proof of special and exceptional circumstances by the Applicant.
24. Further, the 2nd Defendant has equally submitted that prior to and/or before granting an order of stay of proceedings pending Appeal, the court must be satisfied that the Applicant has established a sufficient cause or Prima facie Case, capable of attracting the discretion or the power of the court.
25. Finally, the 2nd Defendant has submitted that stay of proceedings has the effect or implication of delaying and/or defeating the expeditious hearing and finalization of cases and hence same ought to be issued sparingly and not as a matter course.



26. At any rate, the 2nd Defendant has submitted that the Constitution 2010 underlines and underscores the need for proceedings to be carried out and undertaken without undue delay. In this regard, the 2nd Defendant has therefore submitted that the grant of the order of stay of proceedings pending Appeal herein, shall be contrary to the dictates of the Constitution, 2010, and in particular Articles 159 2(b) of the Constitution 2010, which underpins speedy/ expeditious determination and resolution of Disputes.
27. In support her submissions, the 2nd Defendant has relied on the decisions in the case of Independent Electoral Boundaries Commission versus Stephen Mutinda Mule (2014)eKLR, Raila Amollo Odinga & Others v Independent Electoral and Boundaries Commission & Others (2017)eKLR and Nicholas Kiptoo Arap Salat v Independent Electoral and boundaries Commission & Others (2017)eKLR.

(c) Submissions by the 3rd Defendant:

28. The 3rd Defendant herein filed his written submissions dated the 14th March 2022 and in respect of same, the 3rd Defendant has also itemized two issues for determination.
29. According to the 3rd Defendant, the first issue for determination is whether the intended appeal, for which Leave is being sought is *ex-facie*, arguable.
30. To start with, it has been submitted that a Party who seeks to procure and obtain Witness Summons in respect of any witness required during the trial, must first and foremost disclose the name of that witness in the List of Witnesses in line with the provisions of Order 3 Rule 2 of the Civil Procedure Rules 2010 or Order 7 Rule of the Civil Rules, whichever is applicable.
31. Further, the 3rd Defendant has similarly submitted that after such disclosure of the name of the witness, the applicant is thereafter required to make the requisite application for the issuance of the witness summons at any time before the Trial conference and obviously, before the commencement of the hearing.
32. To vindicate the foregoing submissions, the 3rd Defendant has drawn the attention of the Court to the provisions of Order 16 Rule 1 of the Civil Procedure Rules 2010.
33. On the other hand, the 3rd Defendant has invoked and/or relied on the case of Pinnacle Projects Ltd v Presbyterian Church of East Africa, Ngong Parish & Another (2019)eKLR to underline the significance of timely discovery of documents and disclosure of witnesses, to ensure Fair trial.
34. Secondly, the 3rd Defendant has submitted that the Plaintiffs' herein have not established and/or satisfied the requisite conditions to warrant the grant of stay of proceedings pending Appeal.
35. In any event, the 3rd Defendant has submitted that the subject proceedings can proceed and/or be progressed during the pendency of the intended appeal and that when the intended appeal is ultimately determined, the proceedings herein, shall abide by the directions and/or orders by the Court of Appeal, if at all.
36. As concerns the grounds which must be satisfied before an order of stay of proceedings pending Appeal is granted, the 3rd Defendant has relied on the decision in the case of Kenya Wildlife Service versus James Mutembei (2019)eKLR, as well as Thomas Kinyua Mbeu versus Morris Ndambuki Kitio (2022)eKLR.
37. On the issue of prejudice, the 3rd Defendant has submitted that same shall be substantially prejudiced, if the orders of stay of proceedings pending Appeal herein are granted, insofar as the subject suit shall continue to subsists and thus subject him (3rd Defendant) to mental anguish and anxiety.



38. Besides, the 3rd Defendant has also submitted that other than being subjected to mental anguish and anxiety, the prolonged subsistence of the subject matter and/or proceedings is prejudicial unto his reputation and standing as an advocate insofar as same is called upon to disclose the existence of any suit/case existing against him, if at all, whenever same tenders for any work which is advertised by Public bodies.
39. In the premises, the 3rd Defendant has implored the court to dismiss the Application dated the 7th December 2021.

(d) Submissions by the 4th Defendant:

40. On her part, the 4th Defendant herein filed written submissions dated the 27th April 2022, and in respect of which same has raised one Fundamental issue for determination.
41. For coherence, the 4th Defendant herein has submitted that the Plaintiffs have not established and/or met the requisite threshold for the grant of orders of stay of proceedings pending the hearing and determination of the intended appeal to the Court of Appeal.
42. In fact, the 4th Defendant has submitted that the intended appeal by and/or on behalf of the Plaintiffs, is merely calculated and/or intended to delay the hearing and determination of the subject suit.
43. On the other hand, the 4th Defendant has also submitted that the Plaintiffs have not established Substantial cause and/or prima facie case to warrant the grant of the Order of stay of proceedings pending the hearing and determination of the Intended Appeal.
44. In support of her submissions, the 4th Defendant has relied on various decisions including, Global Tours & Travel Ltd Winding Up Cause 43 of 2000, *Kenya Wildlife Service versus James Mutembei* (2019)eKLR, *Independent Electoral and Boundaries Commission versus Stephen Mutinda Mule & 3 Others* (2014)eKLR and *Raila Amollo Odinga versus Independent Electoral and Boundaries Commission & Others* (2017)eKLR.
45. Similarly, the 4th Defendant has also sought to have the Application under reference dismissed with costs.

Issues for Determination:

46. Having reviewed the Application dated the 7th December 2021, the Supporting Affidavit thereof, the Responses by the Defendants, as well as the Written submissions filed by and/ or on behalf of the Parties, the following issues are germane for determination;
- a. Whether the Plaintiffs'/Applicants' have established and/or proven a case to warrant the grant of Leave to Appeal.
 - b. Whether the Plaintiffs'/Applicants' have established a basis for the grant of Stay of Proceedings pending the Intended Appeal.

Analysis and Determination:

ISSUE NUMBER 1 Whether the Plaintiffs'/Applicants' have established and/or proven a case to warrant the grant of Leave to Appeal.

47. Before venturing to deal and/or address the issue herein, it is appropriate to briefly state the circumstances preceding the filing and/ or mounting of the subject application.



48. At the time when the Plaintiffs' filed and/or mounted the subject suit, same lodged and/or filed a List of witnesses, Lists of Documents and Bundle of documents which same intended to adopt and rely upon in the course of the hearing of the subject suit.
49. On the other hand, having filed the Documents alluded to in the preceding paragraph, the Plaintiffs and the Defendants, respectively, thereafter went through pre-trial conference and signified that same had filed all the requisite documents, as well as witness statements, to be relied upon during and in the course of the hearing of the subject matter.
50. Subsequently, the subject matter was listed for hearing and indeed the Plaintiffs herein summoned and called the two witnesses, whose details/identities, had been captured or Disclosed in the list of witnesses.
51. Be that as it may, on the 1st December 2021, after the 2nd and final witness listed in the List of witnesses had testified, Counsel for the Plaintiffs applied for witness summons to issue to the Chief Land Registrar and the former Commissioner of Lands, for purposes of same attending court to produce various, nay assorted documents and to give evidence.
52. Suffice it to note, that the application under reference was vehemently opposed by the Defendants and thereafter the court was called upon and/ or enjoined to render a ruling thereon.
53. It is also imperative to note that the court proceeded to and rendered a ruling, whereby the court observed that the application for issuance of witness summons to the Chief Land Registrar and the former Commissioner of Lands to attend court, to produce assorted documents and give evidence, was mounted too late in the day and in contravention of the established Rules of Procedure.
54. On the other hand, it is also important to recall that the court also found and held that the issuance of the witness summons and the intended production of documents which had not been discovered, would occasion or cause undue prejudice to the Defendants and in any event, would amount to trial ambush.
55. Based on the foregoing observations, the Court proceeded to and dismissed the informal application for issuance for witness summons to the Chief Land Registrar and the former Commissioner of Lands and it is the dismissal of the said application, that is now the subject of the current application for Leave to appeal.
56. In view of the foregoing, the pertinent question to be considered and/or addressed is whether the intended appeal to the court of appeal, upon which Leave is sought is ex-facie arguable.
57. For purposes of determining what constitutes an arguable appeal, it is important to take cognizance of the holding of the Court of Appeal in the case of *Kwale International Sugar Company Ltd v Epco Builders Ltd & 2 Others* (2020)eKLR, where the court stated as hereunder;

“On the aspect of arguability, it is trite that an arguable appeal need not be one with high chances of success but one that raises issues that deserve the consideration and determination by this Court on appeal. The grounds raised by the appeal against the impugned ruling include what constitutes a dispute, the arbitration clause in the contract, the import of determination of indebtedness, the interpretation of the provisions of Regulations 16 and 17 of the Insolvency Regulations 2016, matters of form of statutory declaration and procedural technicality and the issue of recall of an insolvency petition advertisement. We are satisfied that these are indeed arguable points and intended appeal is not frivolous”.



58. Guided by the meaning and import of what constitutes an arguable appeal, it is now appropriate to venture and consider whether the intended appeal to the Court of Appeal raises any arguable issue to warrant grant of Leave to appeal.
59. In this respect, the starting point is by considering the provisions of Order 16 Rule 1 of the *Civil Procedure Rules* 2010, which underline and underscore the timelines for an application for issuance of witness summons.
60. For convenience, the Provisions of Order 16 Rule 1 of the *Civil Procedure Rules* 2010 are reproduced as hereunder;

Summons to attend to give evidence or produce documents [Order 16, rule 1.]

At any time before the trial conference under Order 11 the Parties may obtain, on application to the court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

61. My reading of the foregoing provisions, which are express, connotes that a Party who is keen to procure and/or obtain witness summons in respect of some designated officer or witness, must make the requisite Application to the court at any time before the Trial conference and obviously, before the commencement of the hearing.
62. Besides, according the provisions of Order 3 Rule 2 and Order 7 Rule 5 of the *Civil procedure Rules*, it is incumbent upon the Parties to the proceedings to make full discovery of Documents and disclosure of the Names/Identities of all the Witnesses to be called, inclusive of the Expert witness, if any.
63. To my mind, before a litigant can mount and make an application for the issuance of witness summons to a particular witness, for purposes of production of any documents or adduction of Evidence, it is paramount that the name of the intended witness must have been captured and/ or disclosed in the List of Witnesses.
64. Put differently, before an Application for Witness summons can be made and/or granted, it is incumbent upon the applicant to have made disclosure of the Name/ Identity of the said Witness, in the list of witness envisaged under Order 3 Rule 2 as read together with Order 7 Rule 5 of the *Civil Procedure Rules* 2010.
65. Notwithstanding the foregoing, the Plaintiffs herein, neither disclosed the names/identities of the Chief Land Registrar and the former Commissioner Of Land, as witnesses in their list of witnesses or at all.
66. Perhaps, it is important to discern why such disclosures are important and ought to be made at the onset and essentially, before the commencement of the Hearing of the matter. For clarity, the Court is called upon to calibrate on the number of witnesses to be called by the Parties and therefore be able to draw a plan/ timetable for the hearing and apportion time appropriately, in line with the provisions of Section 1A of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.
67. Be that as it may, the Plaintiffs' commenced and prosecuted their case until the last disclosed witness testified, before springing up with an application for issuance of witness summons to the designated witnesses, who were to attend court and produce assorted documents, which Documents, had similarly not been discovered beforehand.
68. In my humble view, the Provisions of Order 16 Rule 1 of the *Civil Procedure Rules*, 2010, are explicit and devoid of ambiguity.



69. In the premises, a grammatical/contextual interpretation of the said provisions of the Law, shows that the intended appeal, which seeks to impugn the ruling rendered on the 1st December 2021, in my humble view, is ex-facie not arguable.
70. Based on the foregoing, it is my finding and holding that the Plaintiffs herein have not established a basis to warrant the grant of leave sought by the Plaintiffs herein. For clarity, leave to appeal does not lie as a matter of course, but can only be granted upon proof of existence of some arguable appeal that needs to be escalated to the higher court for interrogation.
71. It is also imperative to observe that Parties and/or litigants are obligated to comply with the Rules of Procedure and that same must be aware that failure to comply with and/or abide by the Rules of Procedure have their own consequence.
72. To buttress the foregoing observation, it is worthy to take cognizance of the decision in the case of *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 6 Others* [2013] Eklr, where Kiage, JA held as follows:
- “I am not in the least persuaded that Article 159 of *the Constitution* and the Oxygen Principles which both command Courts to seek to do substantial justice in an efficient, proportionate and cost effective manner...were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice...it is in the even-handed and dispassionate application of rules that Courts give assurance that there is clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity.”
73. In a nutshell, I am afraid that no basis has been laid and/or established to warrant the grant of Leave to appeal, either in the manner sought or at all.

ISSUE NUMBER 2 Whether the Plaintiffs’/Applicants’ have established a basis for the grant of Stay of Proceedings pending the Intended Appeal.

74. Having dealt with and/or addressed the first issue herein, relating to whether or not leave to appeal ought to be granted and having come to the conclusion that no basis has been laid to warrant such leave, it would have been unnecessary to venture to and deal with the second issue herein.
75. Nevertheless and for purposes of completeness, it is appropriate to speak to and deliberate upon the subject issue and authenticate whether basis has been laid to warrant the stay of proceedings pending appeal.
76. Firstly, it is imperative to observe that without leave to appeal, no tenable appeal can lie to the Court of appeal. Consequently, the foundation for the grant of the stay of proceedings, namely, the intended appeal or appeal to the court of appeal, would be non-existent.
77. However, even assuming that leave to appeal was granted (with is not the case), an order of stay of proceedings pending appeal does not ordinarily, issue as a matter of course.
78. Suffice it to observe that the parameters of Stay of proceedings pending appeal were discussed extensively in the case of *Kenya Wildlife Service versus James Mutembei* [2019] eKLR. For coherence, the nature and import of the stay was described thus:

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard



without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.”

79. On the other hand, Ringera J, as he then was, in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up* Cause No. 43 of 2000, aptly captured the matters to be considered by the court in making its determination of stay of proceedings. He rendered himself as follows:

“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 interest of Justice 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 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” (emphasis added)

80. Notwithstanding the foregoing, the following passages in *Halsbury’s Law of England*, 4th Edition. Vol. 37 page 330 and 332, are equally instructive:

“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...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.”

81. To my mind, the Plaintiffs herein have not established and/or proven any prejudice that same would accrue and/or suffer if the proceedings herein were to be continued with, while same pursues (*sic*) the intended appeal, for which no Leave has been granted.
82. It is also important to note that the outcome and/or decision of the Court of Appeal, if any, shall impact on the proceedings and orders, if any made by this court and the proceedings herein shall abide by the decision of the Court of Appeal.
83. Simply put, the Plaintiffs’ would not accrue and/or suffer any prejudice and in this regard, the holding of the Court of Appeal in the case of *David Morton Silverstein v Atsango Chesoni* [2002] eKLR, is apt. For clarity, the Court observed as hereunder;

“These remarks aptly apply to the application before us. What will happen if we do not grant the stay sought is that the appeal in the High Court will be heard and may well be determined. But when the appeal already lodged is heard, determined and, if it succeeded, what would automatically follow is that the proceedings in the High Court would have been rendered unnecessary, but an appropriate order for costs can be made to remedy that. However, the appeal in this Court would not have been rendered nugatory.



84. In short, I have not found any basis to decree and/ or grant an Order of stay of proceedings, whose effect would militate against expeditious hearing and disposal of the subject proceedings.
85. Put differently, the grant of the Orders of Stay of proceedings sought shall culminate into and result in the delay of the hearing and determination of the subject matter and thus run contrary to the spirit and Letter of *the Constitution*, 2010.
86. To vindicate, the need and/or requirement for expeditious hearing and disposal of cases generally, it is sufficient to take succor in the holding of the Court of Appeal in the case of *Said Sweilem Gbeithan Saanum v Commissioner Of Lands (being sued through Attorney General) & 5 others* [2015] eKLR, where the Court stated as hereunder;

“Justice shall not be delayed” is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the *Civil Procedure Act* are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure.

We agree, with respect, with the learned Judge’s conclusion that the suit in the High Court was not properly handled by the appellant’s advocate. The court cannot be invited to turn a blind eye in the face of such inordinate delay and in the absence of sufficient explanation. Likewise it cannot be fashionable for parties to blame their advocate and disclaim that the mistakes made by their advocates, who they have themselves appointed cannot be visited upon them.

Final Disposition:

87. Having reviewed and evaluated the issues for determination which were outlined herein before, it must have become obvious, apparent and/or evident that the subject Application is devoid of merits.
88. Consequently and in the premises, the Application dated the 7th December 2021, which sought for Leave to Appeal and for the grant of stay of proceedings pending Appeal, be and is hereby dismissed with costs to the Defendants/Respondents
89. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2022.

OGUTTU MBOYA,

JUDGE

In the Presence of;

Kevin Court Assistant

Ms. Owora h/b for Anyango Opiyo for the Plaintiffs/ Applicants.

Mrs Maina h/b for Mr. Okeyo for the 2nd Defendant/ Respondent.

Mrs Maina for the 3rd Defendant / Respondent.

Mrs Maina h/b for Mr. Cohen Amana for the 4th Defendant/ Respondent.

