



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Suit 754 of 2009**

**KENYA AIRWAYS ..... PLAINTIFF**

**VERSUS**

**DONALD OSEWE OLUOCH ..... DEFENDANT**

**RULING**

1. On 26<sup>th</sup> March 2010 this court delivered a ruling in which the application by the defendant seeking for an order that the plaintiff's suit be struck out and be dismissed with costs to the defendant was dismissed. The defendant contends that he has filed a notice of appeal against that ruling. The defendant has also filed a notice of motion under sections 1A and 3A of the Civil procedure Act and order 41 rule 4 seeking for stay of further proceedings pending the hearing and determination of the pending appeal.
2. This application is premised on the grounds that the defendant is aggrieved by the decision of this court of 26<sup>th</sup> March 2010 and a notice of appeal has been filed on 7<sup>th</sup> April 2010. The plaintiff has also filed an application for summary judgment. It will be in the interest of justice to save costs and judicial time by staying any further proceedings until the Court of Appeal renders an opinion. **Mr. Issa**, learned counsel for the defendant submitted that this court can make an order of stay of proceedings in exercise of its unfettered discretion. There is a serious issue of law regarding labour matters to be canvassed before the Court of Appeal. In support of this proposition he relied on the case of **In the Matter of Global Tours & Travels Limited and in the Matter of Companies Act Milimani HC Winding Up Cause No.**

**43 of 2000 (unreported).**

3. This application was opposed by the respondent; Miss Ogembo learned counsel for the plaintiff relied on the grounds of opposition filed on 14<sup>th</sup> June 2010. This application was faulted for having been brought under the wrong provisions of the law. Moreover the defendant has not established sufficient cause to enable this court exercise its inherent powers. It was submitted that if stay of proceedings is granted the plaintiff will suffer prejudice which is grater than the costs that the defendant gives as the reasons of granting the order of stay. Moreover if there are any costs to be incurred if the defendant succeeded in the appeal, it is the plaintiff who will suffer loss and not the defendant. Counsel relied on the cases of **Solace Hotel Limited vs Catering & Tourist development Levy Trustees Civil Appeal No. 959 of 2006 and Benjamin Kimani Romoka, Elizabeth Kakai & Ruth Lungai vs Eveready Batteries (K) Ltd, Civil Case No. 185 of 2002.**

4. It is generally agreed that the power to stay proceedings is an exercise of the courts inherent discretion which is exercised in furtherance of substantive justice. In all matters calling for the exercise of the courts discretion, it must be exercised based on cogent reasons but not whimsically or capriciously. The overarching objective is to promote the interest of justice and not to aid a party who intends to abuse or delay the process. The reasons given by the applicant is that there is an appeal on an important point of law regarding labor relations and it will also save costs if stay of proceedings is granted.

5. Those reasons must be balanced against the plaintiff's interests, as a party who filed a case before the court seeking a determination of its claim. Access to court is a fundamental right and for a suit to be stayed, I agree with counsel for the plaintiff that,, sufficient reasons must be shown. It is the plaintiff who should be worried about costs if the appeal by the defendant succeeds. The plaintiff is not worried and wishes to proceed with their case. For those reasons I find no justifiable reasons to stay these proceedings.

This application is dismissed with costs to the plaintiff.

**RULING READ AND SIGNED ON 23<sup>RD</sup> JULY 2010 AT NAIROBI.**

**M.K. KOOME**  
**JUDGE**