



**Okoth v Absa Bank Kenya Plc (Environment & Land Case  
E051 of 2023) [2025] KEELC 3164 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3164 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E051 OF 2023**

**YM ANGIMA, J**

**APRIL 3, 2025**

**BETWEEN**

**CAROLINE OKOTH ..... PLAINTIFF**

**AND**

**ABSA BANK KENYA PLC ..... DEFENDANT**

**RULING**

**A. Defendant's Application**

1. By a notice of motion dated 25.07.2024 brought under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, and Order 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*, and the defendant sought, inter alia, a stay of proceedings pending the hearing and determination of an intended appeal at the Court of Appeal.
2. The application was supported by the supporting affidavit sworn by Samuel Njuguna on 25.07.2024. It was deposed that the court had dismissed the defendant's notice of preliminary objection dated 06.02.2024 on jurisdiction vide a ruling dated 13.06.2024. It was stated the defendant, being dissatisfied with the ruling, intended to appeal against it to the Court of Appeal. As a result, the court was urged to stay the proceedings until the intended appeal is heard and determined.

**B. Plaintiff's Response**

3. The plaintiff filed grounds of opposition dated 18.09.2024 opposing the application. It was stated that the application was unmeritorious and an abuse of the court process since the defendant was yet to file a memorandum of appeal in the Court of Appeal. The application was said to be a delaying tactic since the defendant had not demonstrated any arguable appeal. The court was urged to find that the plaintiff stood to suffer prejudice if the application was allowed. It was the plaintiff's plea that the application be dismissed with costs.



### C. Directions on Submissions

4. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the defendant filed submissions dated 08.10.2024 whereas the plaintiff filed submissions dated 28.02.2024.

### D. Issues for Determination

5. The court has perused the application dated 25.07.2024, the response thereto and the material on record. The court is of the view that the following key issues arise for determination herein:
  - a. Whether the defendant has made out a case for the grant of a stay of proceedings pending the determination of the intended appeal.
  - b. Who shall bear the costs of the application.

### E. Analysis and Determination

#### Whether the Defendant has made out a Case for the Grant of a Stay of Proceedings Pending the Determination of the Intended Appeal

6. The defendant sought to stay further proceedings herein pending the hearing and determination of an intended appeal to the Court of Appeal. The defendant appears to have filed a Notice of Appeal before this court on 21.06.2024 pursuant to Rule 77 of the *Court of Appeal Rules*. A stay of proceedings disrupts the fundamental right to a fair hearing and the right to access to justice of a party seeking to conduct his litigation to a logical conclusion. The defendant cited the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR, whereby it was held that;

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the 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. See Ringera J in the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 persuasively stated thus;

“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)

7. In the instant case, the defendant has intimated its desire to appeal against the ruling which dismissed its preliminary objection on the jurisdiction of this court to entertain the suit. It is therefore in the interest of justice for the court to allow the application since the appeal concerns the jurisdiction of this court to hear and determine the suit. If the court denies the application and continues hearing the suit and the appellate court finds in favour of the defendant, that would render all proceedings before this



court a nullity. The court is, therefore, persuaded that there is in sound basis to stay the proceedings herein and wait for the Court of Appeal to rule on the jurisdiction of this court. The prejudice that the plaintiff may suffer, if the appeal fails, can be compensated by costs.

### **Who Shall Bear the Costs of the Application**

8. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA. The defendant in this matter prayed for costs of the application to be in the cause. The court finds this to be reasonable bearing in mind the nature of the application.

### **F. Conclusion and Disposal Order**

9. The upshot of the foregoing is that the court finds and holds that an appeal on jurisdiction is an exceptional circumstance which warrants a stay of proceedings. Consequently, the court finds the application dated 25.07.2024 is merited and is hereby allowed, and the court makes the following orders for the disposal of the application.
- a. The defendant's notice of motion dated 25.07.2024 is hereby allowed as prayed.
  - b. Costs of the application shall be in the cause.

It is so decided.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 3<sup>RD</sup> DAY OF APRIL 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence

Court assistant Gillian

Ms. Maiga for the plaintiff

Ms. Diru for the defendant

