

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 235 of 2003

ROBERT MBEVI MALUKI.....APPELLANT/RESPONDENT

VERSUS

KENRUB INDUSTRIES LIMITED.....RESPONDENT/APPLICANT

R U L I N G

By a notice of motion dated 5th June, 2006, Kenrub Industries Limited the respondent to this appeal (hereinafter referred to as the applicant), seek an order for stay of proceedings in the CM's Court at Nairobi in Civil suit No. 9135 of 2000 pending the hearing and final determination of an appeal which the applicant has lodged in the Court of Appeal against the judgment of this court delivered on the 12th October, 2005.

It is the applicant's contention that it has an arguable appeal which stands very good chances of success. The applicant maintains that unless the order of stay of proceedings is granted, the lower court will proceed with the hearing of the suit and this will render the applicant's appeal in the High Court nugatory, as a result of which the applicant will suffer substantial loss.

The application is opposed by Robert Mbevi Maluki (hereinafter referred to as the respondent) but who was the appellant in this court. The respondent maintains that the applicant has not satisfied the conditions for granting an order of stay of proceedings as he has been guilty of inordinate delay in bringing the application and has also not shown how he stands to suffer any substantial loss. The respondent maintains that he will be prejudiced if an order of stay of proceedings is granted as the suit has already taken 6 years since it was filed and an order of stay of proceedings will delay it further.

I have carefully considered this application. It is evident that the application for stay of proceedings was filed on the 5th June, 2006 while the judgment of this court which is subject of the applicant's appeal was delivered on 12th October, 2005. The applicant has not given any good reason as to why the application was not brought immediately after that judgment. It is contended that the applicant had applied for typed copies of proceedings and judgment to enable it lodge an appeal in the Court of Appeal. That does not however provide a plausible explanation for the delay as the application for stay of proceedings did not require copies of the proceedings or judgment. All that was necessary was evidence to show that an appeal had been initiated and a notice of appeal was sufficient for that purposes. It would appear that the applicant only ran to this court a day before the suit in the lower court was scheduled for hearing to forestall the hearing of the suit in the lower court. That does not demonstrate any good faith on the part of the applicant. Further, the applicant has not demonstrated the substantial loss that it is likely to suffer if the order of stay of proceedings is not granted. The worst that can happen is that the hearing in the lower court will proceed. Should the applicant lose, it would have another opportunity to have a second bite of the cherry in an appeal in the High Court. No prejudice will therefore be caused to it. I find no just cause to grant an order for stay of proceedings as that will only have the effect of delaying the proceedings thereby prejudicing the respondent.

For these reasons, I find no merit in this application and do therefore dismiss it with costs.

Dated and delivered this 4th day of November, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Desai for the applicant

Advocate for the respondent absent