

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 108 of 2004

TIMOTHY MANYARA & 144 OTHERS.....PLAINTIFFS

VERSUS

PYRETHRUM BOARD OF KENYA.....DEFENDANT

RULING

By an application made under **Order XLI rule 4(1) of the Civil Procedure Rules** and dated the 15th of December 2005, the defendant sought the order of this court to stay the proceedings in this case pending the hearing and determination of the appeal filed to the Court of Appeal against the ruling of this court delivered on the 11th of November 2005. The grounds in support of the said application are that the defendant contends that the said appeal would be rendered nugatory and the defendant would suffer prejudice and great loss if the proceedings herein are not stayed. The application is supported by the annexed affidavit of Kevin Infanta Mpaka, the corporation secretary of the defendant. The application is opposed. The plaintiffs have filed grounds in opposition to the said application. In summary, they have stated that the application was an abuse of the due process of the court, was made in bad faith, and was meant to delay the just determination of this case. They further stated that they would suffer irreparable loss if the order sought is granted.

At the hearing of the application, Mr. Orege Learned Counsel for the defendant submitted that the defendant was dissatisfied with the ruling of this court delivered on the 11th of November 2005 and had filed an appeal against the said decision to the Court of Appeal. He submitted that the said appeal had already been admitted by the Court of Appeal and a hearing date of the said appeal fixed. He submitted that the defendant would suffer irreparable damage and loss if the proceedings herein are not stayed pending the hearing and determination of the said appeal. He further submitted that if stay of proceedings is not granted, the said appeal filed in the Court of Appeal would be rendered nugatory. The defendant argued that it had filed the application in good faith and further that it had made the application without undue delay. He submitted that the balance of convenience tilted in favour of the defendant as the plaintiffs would suffer no prejudice if the proceedings herein are stayed. He urged the court to allow the application.

Mr. Wamaasa Learned Counsel for the plaintiffs opposed the application. He reiterated the grounds of opposition filed by the plaintiffs. He submitted that the application by the defendant was made in bad faith as it was meant to delay the expeditious disposal of this suit. He submitted that the defendant had already filed two appeals against the two rulings delivered by this court. It was therefore his submission that the present application was meant to frustrate the hearing of this case. He argued that the defendant had not established that it would suffer irreparable loss or that the appeal would be rendered nugatory if the hearing of the case proceeds before the said appeal is determined. He submitted that there was no evidence that such an appeal to the Court of Appeal had been filed by the defendant. He therefore submitted that the plaintiff should be allowed to proceed with their case so that they may know the outcome of their case which would have been determined on merits. He urged this court to disallow the application.

I have carefully considered the rival submissions made before me by learned counsel for the defendant and learned counsel for the plaintiffs. I have also read the pleadings filed by the parties to this application. The issue for determination by this court is whether the defendant has established a case to

enable this court grant it an order of staying proceedings in this suit. The defendant has submitted that it was aggrieved by the ruling of this court delivered on the 11th of November 2005 which disallowed the application by the defendant to have the plaintiffs deposit a sum of at least Kshs 10,000,000/= as security for costs. The material part of the said ruling stated at page 4 as follows;

“In the current application, the defendant has already admitted part of the plaintiffs’ claim. The plaintiffs’ suit cannot therefore be said to be frivolous. Although the claim for the sum of Kshs 612 million by the plaintiffs may be said to be far fetched (as claimed by the defendants), that is no reason why this court should make an order for security for costs. Further the fact that the plaintiffs may be persons of little financial capability is no reason why they should be hampered in their pursuit of what they perceive to be their legal right.”

This is the ruling of this court that the defendant was dissatisfied with and has appealed to the Court of Appeal. The defendant now wants this court to stay the proceedings of this case pending the hearing and determination of the said appeal filed by the Court of Appeal. The defendant stated that it would suffer irreparable loss and damage and further that it would be prejudiced if stay of proceedings is not granted. They have further stated that the said appeal filed would be rendered nugatory if stay of proceedings is not granted.

Having carefully considered the reasons advanced by the defendant in support of its application, and in light of the requirement of the provisions of **Order XLI rule 4(2) of the Civil Procedure Rules** that require a party seeking to have proceedings stayed must establish that it would suffer substantial loss if stay is not granted, I am of the opinion that the defendant has not made a case to be granted such orders. This court wonders what prejudice the defendant would suffer if the hearing of this case proceeds without a deposit of the sum sought by the defendant from the plaintiffs as security for costs is made. From the nature of the case filed by the plaintiffs, it would take a long time for the case to be heard and determined and if the defendant is diligent enough, his appeal would have been heard and determined by the Court of Appeal. In my considered view, the defendant would not suffer any substantial loss if this case is heard before the determination of the said appeal.

I am inclined to agree with the submission made by the plaintiffs that the application for stay made by the defendant has been made for the sole purpose of frustrating the hearing of the case. Further the application has been made in bad faith and in view of the previous applications made by the defendant which were similarly disallowed by this court, it is clear that the defendant does not wish to relent in its determination to frustrate the hearing of this case by putting up legal hurdles at every stage of the proceedings. This is one such application. I will disallow it.

I therefore hold that the application for stay of proceedings lacks merit and is hereby dismissed with costs to the plaintiffs.

DATED at NAKURU this 23rd day of June 2006.

L. KIMARU

JUDGE