



Farah & 2 others v Adan & another (Environment & Land Case E229 of 2022 & E156 of 2021 (Consolidated)) [2024] KEELC 6788 (KLR) (15 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6788 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E229 OF 2022 & E156 OF 2021 (CONSOLIDATED)
JA MOGENI, J
OCTOBER 15, 2024**

BETWEEN

HUSSEIN AHMED FARAH 1ST PLAINTIFF

HUSSEIN UNSHUR MOHAMMED 2ND PLAINTIFF

AND

YUSUF ABDI ADAN 1ST DEFENDANT

MOHAMMED ABDIKADIR ADAN 2ND DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE E156 OF 2021**

BETWEEN

YUSUF ABDI ADAN PLAINTIFF

AND

MOHAMMED ABDIKADIR ADAN DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion dated 2/10/2024 filed by the 1st defendant seeking the following orders:
 1. Spent
 2. That this Honorable Court be pleased to issue orders for stay of proceedings on the substantive suit pending the hearing and determination of the instant application



3. That this Honorable Court be please to issue orders of stay of proceedings pending the hearing and determination of the Court of Appeal in Nairobi CoacaNo. 680 of 2023; Hussein Unsur Mohamed vs Yussuf Abdi Adan AND Hussein Ahmed Farah & 2 Others
4. That cost of this application be provided for.
2. The grounds upon which the application is predicated are contained on the face of the application listed as ground (a) to (h) I see no need to repeating the same.
3. The application is opposed by the 2nd plaintiff who filed a replying affidavit sworn on 9/10/2024 by Hussein Unsur Mohammed who avers that he swore the affidavit on his behalf and that of the 1st plaintiff.
4. He contends that the matters in the High Court Milimani and Admiralty Case No. 100 of 2016, Yusuf Abdi Adan v Hussein Ahmed Farah & 3 Others, and the appeal from the ruling therefrom being Nairobi Civil Appeal No. E680 of 2023 Hussein Unsur Mohamed v Yusuf Abdi Adan & 3 others, on the one part and the consolidated suits have distinct and different prayers and that the suit property is owned by different parties in their individual capacities and not by Bluebird Aviation Limited.
5. He states that a determination of either case has no bearing on the other and that a buy out of the Applicant's shares in Bluebird Aviation Limited does not include the suit property or Bangkok Shopping Mall as the applicant is alleging.
6. The 2nd plaintiff avers that the court ordered the Applicant to deposit half the monthly rent with the Respondents' Advocate. The Applicant has since April 2023 failed to do so and is in contempt of court. That this application according to the 2nd plaintiff is meant to further delay the determination of the suit and enable the Applicant to collect rent alone for his benefit to the detriment of is co-owners.
7. It is his contention that Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules does not support stay of proceedings as envisaged in the 1st defendant's application. That the application lacks merit, it is groundless or an abuse of the court process and should be dismissed.
8. That since the applicant claims to be an octogenarian and in poor health the more reason why the suit should be fast tracked and heard expeditiously. Further that the Court of Appeal matter is a commercial matter emanating from High Court Commercial Suit No. 100 of 2016, Yusuf Abdi Adan v Hussein Ahmed Farah & 3 others, a commercial dispute concerning the valuation of the shares of Bluebird Aviation Limited, and thus it has no correlation to the matter before this Court.
9. On his part the 2nd defendant filed grounds of opposition dated 9/10/2024 where he stated that there is no appeal pending in the Court of Appeal to warrant issuance of the orders of stay sought. Further that the court has no jurisdiction to grant the orders sought and that the application is an abuse of the court process.
10. The application was canvassed by way of written submissions and the parties filed their submissions which I have considered. The defendant's submissions are dated 9/10/2024 whereas the plaintiff had not filed their submissions by the time I was writing this ruling

Determination

11. Upon consideration of the application dated the 15th March, 2019 including the supporting affidavit, Grounds of Opposition as well as the submissions filed herein, the only issue for determination is whether the proceedings herein should be stayed pending the outcome of the Appeal.



12. The Applicant has stated that there is an appeal Nairobi CoacaNo. 680 of 2023; Hussein Unsur Mohamed v Yussuf Abdi Adan and Hussein Ahmed Farah & 2 Others in respect of a ruling in the High Court and Admiralty Case No. 100 of 2016, Yusuf Abdi Adan vs Hussein Ahmed Farah & 3 Others. The Applicant hence seeks for an order to stay the proceedings herein as according to him it relates to the matter before the Court of Appeal. The 2nd defendant has opposed the application and insists this Court lacks jurisdiction to deal with a matter touching on commercial issues with regard to valuation of the Bluebird company.
13. Now, the court in the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 Ringera J (as he then was) when dealing with an application for stay of proceedings pending appeal, had this to say:

“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)

14. From the evidence before me, I note the Applicant seeks to stay the proceedings herein since there is an ongoing Appeal in Nairobi CoacaNo. 680 of 2023; Hussein Unsur Mohamed vs Yussuf Abdi Adan and Hussein Ahmed Farah & 2 Other which as has been submitted by the 2nd defendant is a different matter since the appeal emanates from an order from the High Court in a Commercial suit and not land matter. Thus the two are not related at all. The Applicant has admitted that it is a commercial matter but he wants to link it to the suit herein which is not in order. Further the applicant reason for seeking stay is that he an octogenarian who is of ill-health and advanced age.
15. Infact for me this would be a good reason to expedite the hearing. Therefore, I would be very reluctant to grant a stay of proceedings or even an adjournment for that matter to enable us to expeditiously dispose of the matter at hand. Thus, I decline to grant a stay as requested and confirm the hearing of this matter for 22/10/2024 virtually as already scheduled. All parties shall appear virtually for the hearing of the matter on 22/10/2024 at 10:30 a.m.
16. Given the foregoing I find the instant application is unmerited and I dismiss it with costs.
17. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 15TH DAY OF OCTOBER, 2024.

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MOGENI J

JUDGE

In the virtual presence of: -

Mr. Otieno holding brief for Mr. Biriq for Plaintiffs



Mr. Lorot holding for Mr. Kibet for 1st Defendant/Applicant

No appearance for 2nd Defendant

Caroline Sagina - Court Assistant

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MOGENI J

JUDGE

