



**THE REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC APPEAL NO. 11 OF 2017**

**LUCIA WANJIKU MUIRURI .....APPELLANT**

**VERSUS**

**NAOMI WAITHIRA WANYOIKE.....RESPONDENT**

**RULING**

1. This court [Gacheru J] rendered a judgment in this appeal on 8/1/2020. The court allowed the appeal in the following terms:

*(a) The judgment of the lower court awarding Kshs 915,823 to the plaintiff and costs of the suit be and is hereby set aside.*

*(b) The plaintiffs entire claim be and is hereby dismissed with costs.*

*(c) Costs of the lower court and costs of the appeal are awarded to the plaintiff.*

2. Subsequently, on 22/2/2021, the respondent brought an application of even date, seeking an order of stay of further proceedings in this appeal, pending the hearing and determination of an intended appeal in the Court of Appeal. The application was expressed as having been brought under Order 22 rule 22 and Order 42 rule 5(1) and (2) [sic], among other provisions. The said application is the subject of this ruling.

3. The application was supported by the affidavit of the respondent sworn on 15/2/2021. She deposed that she was aggrieved by the decision of this court and had preferred an appeal in the Court of Appeal. She further deposed that costs of this appeal were awarded to the respondent who had commenced execution proceedings by filing a bill of costs. It was her contention that it was premature to commence taxation of costs by filing a bill of costs at that stage, given that there was an appeal pending determination in the Court of Appeal. It was her further contention that should taxation proceed and the pending appeal subsequently succeeds, the same would amount to an exercise in futility and wastage of judicial time. She added that she was awarded costs in the lower court and she never executed because this appeal was pending.

4. The application was opposed by the appellant through grounds of opposition dated 25/6/2021. She contended that judgment having been delivered on 8/4/2020, the only proceedings pending before the court were taxation proceedings; the respondent had failed to demonstrate any prejudice upon her should taxation proceed; this court had no jurisdiction to stay further proceedings; and that the application was bad in law and an abuse of the court process and ought to be dismissed with costs.

5. The court directed that the application be canvassed by way of written submissions. The respondent filed her written submissions dated 26/7/2021 through the firm of *Muchangi Nduati & Co. Advocates*. It was counsel's submission that should the bill of costs be taxed and executed before the appeal is heard and determined, in the event the appeal succeeds, the whole taxation proceedings would be rendered nugatory. It was counsel's further submission that no prejudice would be suffered if taxation proceedings are stayed. Counsel cited the decisions in *Kerugoya HCA No. 93 of 2019 MWK v JDK (2020) eKLR* and *Nairobi H.C Winding up Cause No 43 of 2020 Global Tours Travellers Ltd* and urged the court to grant the orders.

6. The appellant filed her submissions dated 7/10/2021 through the firm of *Njuguna & Partners Advocates*. Counsel submitted that the single issue falling for determination was whether the application had been overtaken by events. It was counsel's submission that taxation having been concluded, the respondent's application had been overtaken by events and the orders sought would serve no purpose if granted. Counsel relied on the decision in *Nadeem A Kana v Lucy Wambui Mwangi(2021) eKLR* and urged the court to reject the application.

7. The court has considered the application alongside the grounds of opposition and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence on the key question falling for determination in the application. The single question falling for determination in the application is whether the application satisfies the criteria upon which our courts exercise

jurisdiction to grant an order of stay of proceedings pending appeal.

8. The prevailing criteria was best captured by Ringera J [as he then was] in **Global Tours & Travel Limited; Nairobi HC Winding Up Cause No 43 of 2000** as follows:

*“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.”*

9. The circumstances of the application under consideration are, first, that final judgment was rendered in this appeal on 8/1/2020. Secondly, taxation of the appellant’s bill of costs was concluded on 8/9/2021 and a certificate of costs was issued on 11/11/2021. In essence, there are no pending judicial proceedings. There is therefore no proper basis upon which to issue an order of stay of proceedings.

10. In my view, if the appellant desired to stay enforcement of the decree of the court in terms of the awarded costs, she should have filed an application for stay of execution [as opposed to stay of proceedings] and demonstrated that the application met the requisite criteria for grant of an order of stay of execution in terms of Order 42 rule 6(2) of the Civil Procedure Rules. She has not done that because what is before court is an application for an order of stay of proceedings [not an order of stay of execution].

11. The result is that the application has failed to satisfy the criteria upon which our courts exercise jurisdiction to grant orders of stay of proceedings pending an appeal. That is the finding of the court on the single issue falling for determination in the application dated 22/2/2021. Consequently, the application dated 22/2/2021 is dismissed for lack of merit. The respondent in this appeal shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 9TH DAY OF FEBRUARY 2022**

**B M EBOSO**

**JUDGE**

**COURT ASSISTANT: LUCY MUTHONI**