



Stepping Stones Preparatory School Company Limited v Ngugi & 3 others (Environment & Land Case E066 of 2021) [2022] KEELC 4781 (KLR) (15 September 2022) (Ruling)

Neutral citation: [2022] KEELC 4781 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E066 OF 2021**

**JG KEMEI, J
SEPTEMBER 15, 2022**

BETWEEN

**STEPPING STONES PREPARATORY SCHOOL COMPANY
LIMITED APPELLANT**

AND

**DAVID NJEHIAH NGUGI 1ST RESPONDENT
JANE NYAMBURA KARACHI 2ND RESPONDENT
LAND REGSITRAR, THIKA 3RD RESPONDENT
NATIONAL LAND COMMISSION 4TH RESPONDENT**

RULING

1. The applicant who is also the appellant in this appeal filed the motion dated the March 30, 2022 seeking the following orders;
 - a. Spent
 - b. Spent
 - c. Pending the hearing and determination of the appellants appeal, the honourable court be pleased to issue orders staying further arbitral proceedings between the applicant and the respondents.
 - d. Costs of the application.
2. The application is supported by the grounds set out thereto and the affidavit of Christopher Irungu Njoroge, the director of the applicant company. He gave the background of the dispute which stems from a contractual agreement dated the March 13, 2019 with respect to suit land Thika/Mun/Block19/1991. The applicant purchased the suit land from the 1st and 2nd respondents for an agreed



consideration. The suit land was registered in the name of the applicant. Before the release of the balance of the purchase price to the 1st and 2nd respondents by the applicant's financiers, the 4th respondent issued a gazette notice that the suit land was public land that had been reclaimed. The building approvals applied by the applicant for the development of the land was rejected by the Kiambu County on account that the property is in dispute.

3. Dissatisfied with the state of affairs the applicant filed suit against the respondents. Upon service, the 1st and 2nd respondents entered appearance by filing a memorandum of appearance on the April 12, 2021 and on the April 14, 2021 filed an application seeking stay of proceedings pending reference of the dispute to arbitration pursuant to the provisions of the agreement between the parties. The applicant filed grounds of opposition in rebuttal and, the court on consideration, delivered a ruling on the August 5, 2021 allowing the 1st and 2nd respondents application and ordered stay of the proceedings and referred the dispute to arbitration for resolution.
4. On the March 9, 2022 the applicant filed an appeal against the ruling of the trial court, which appeal is yet to be determined.
5. What followed according to the deponent was the appointment of an arbitrator by the Chartered Institute of Arbitrators to handle the dispute vide its letter dated the March 22, 2022.
6. The applicant is apprehensive that if no stay of proceedings is granted the arbitral proceedings will proceed despite lack of jurisdiction and in contravention of the applicants right to be heard before an independent and impartial tribunal. That the applicant has an arguable appeal and no prejudice will be suffered by the respondents if the proceedings before the arbitrator are stayed.
7. Responding to the application, the 1st and 2nd respondents filed their replying affidavit sworn by the 1st respondent on the April 13, 2022. He avowed that upon the execution of the agreement of sale, the applicant is now the registered owner of the suit land which they have charged and taken possession of the property. He contends that to the contrary, the title of the applicant was upheld by the 5th respondent and refuted claims that the land is public land. The dispute between the parties falls squarely under clause 15 of the sale agreement hence the same should be resolved in the arbitral manner prior to the institution of a suit. He maintains that the 1st and 2nd respondents have procedurally and rightly enforced the arbitral process which is being frustrated by the applicant with the sole aim of delaying the resolution of the dispute.
8. The deponent has decried prejudice that has been visited on them by the delay in hearing this matter as the longer it takes the longer the 1st and 2nd respondents are denied the proceeds of the sale of their property as the applicant is currently enjoying the contract and evading the consequences thereof with impunity. That the application has not been brought in good faith but merely to delay and frustrate the determination of the dispute.
9. Parties have filed written submissions which I have read and considered. The main issue for determination is whether the application is merited.
10. An order for stay of proceedings is discretionary in nature for deserving cases. The test for stay of proceeding is high and stringent as held by Ringera J in the persuasive case of *Global Tours & Travels Limited; Nairobi High Court Winding Up Cause No 43 of 2000* that;

' 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 courts 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.'

11. I rely on the further exposition of the subject in *Halsbury's Law of England, 4th Edition. Vol 37* page 330 and 332, that:

' The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.' 'This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.' 'It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.'

12. The applicant has sought stay of the arbitral proceedings pending the hearing and determination of the appeal that is pending before the court. I have read the memorandum of appeal and it is my view that the appeal is an arguable appeal not necessarily that it will succeed but, on the scope, that there is a question for inquiry before the court. Whether it succeeds or not is left for the appellate court to determine.
13. I rely on the provisions of section 1A and 1B of the [Civil Procedure Act](#) read together with article 159(2)(b) of the [Constitution](#) and I find that in the interest of justice and the expeditious disposal of disputes this is a case that the court shall exercise its discretion and stay the arbitral proceedings pending the hearing and determination of the appeal.
14. Speaking of expeditious disposal of suits, the court agrees with the respondents that there is inordinate delay in bringing this application given the ruling was in the trial court was issued on the August 5, 2021 and the application was filed on the March 30, 2022, a period of 7 months. The applicant has not offered any explanation for the delay in filing the application.
15. What prejudice will be suffered? The continued delay in disposal of the appeal is clearly prejudicial to the 1st and 2nd respondents, the dispute being a commercial one where time and effort is costly. I also note that the prejudice is not one that cannot be compensated in costs.
16. In the interest of justice, I exercise my discretion and allow the application on the following terms;
- The applicant to expeditiously list the appeal for hearing within the next 30 days from the date hereof.
 - In default the application shall stand dismissed with no further orders from this court.
 - Costs of the application shall be in favour of the 1st and 2nd respondents.
17. It is so ordered.



DELIVERED, DATED AND SIGNED AT THIKA THIS 15TH DAY OF SEPTEMBER 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Kazungu for Appellant

Ms Chege for 1st, 2nd, 3rd and 4th Respondents

Court Assistant – Phyllis Mwangi

