



REPUBLIC OF KENYA



Katulani “B” Self Help Group & 3 others v Kitui Teachers Dt Sacco Society Ltd (Civil Appeal E748 of 2024) [2025] KEHC 3532 (KLR) (Civ) (21 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3532 (KLR)

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

CIVIL

CIVIL APPEAL E748 OF 2024

JN MULWA, J

MARCH 21, 2025

BETWEEN

KATULANI “B” SELF HELP GROUP 1ST APPLICANT

KENNEDY M WAMBUA 2ND APPLICANT

BERNICE K. DAVID 3RD APPLICANT

LEONARD M. KAMWANZI 4TH APPLICANT

AND

KITUI TEACHERS DT SACCO SOCIETY LTD RESPONDENT

RULING

1. By the Notice of Motion dated 26/07/2024 pursuant to Section 1A, 1B, 3A and 63(3) of the [Civil Procedure Act](#) (CPA) and Order 42 Rule 6 of the [Civil Procedure Act](#), the 1st, 2nd, 3rd & 4th Applicants seek orders-
 - i. Spent.
 - ii. Spent.
 - iii. That the Honourable Court be pleased to permanently stay the Orders issued by the Co-operative Tribunal on 30/05/2024 and further stay the entire proceedings in Co-operative Tribunal Case No. E566 of 2023 pending hearing and determination of the appeal in the matter.
 - iv. That costs of this application be provided for.



2. The application is premised on the grounds on its face thereof and supported by an affidavit sworn by the 2nd Applicant. The gist of his disposition is that on 30/05/2024 the tribunal delivered a ruling in respect of the Applicants motion but failed to give reasons in its ruling as to why they ordered the Applicants motion to be held in abeyance yet they fully agreed with the issues that were raised in the said application.
3. Being dissatisfied with the said decision, the Applicants preferred an appeal however; the tribunal proceeded to fix the matter before it for hearing upon delivering the impugned ruling. He concludes by stating that it is in the interest of justice that this Court grants the orders sought for, failure to which the matter before the tribunal will proceed to hearing which will cause irreparable loss to the Applicants and rendering the appeal nugatory.
4. Kitui Teachers DT Sacco Ltd the Respondent opposes the motion by way of a replying affidavit deposed by Florence Mutua. She confirms that the application before the tribunal seeking to strike out the Respondent's statement of claim was held in abeyance vide a ruling of the tribunal with directions thereafter that the matter proceed for full hearing. She assails the appeal as being malicious and baseless as the Applicants have not shown what substantial loss they will suffer if the motion is not allowed. In summation, she deposes that the motion is an abuse of the Court process and that it ought to be dismissed with costs.
5. In rejoinder by way of further affidavit, the 2nd Applicant states that the claim before the tribunal appertains to debt recovery therefore if this Court does not grant the motion, the Applicants are likely to suffer prejudice given that if the claim before the tribunal proceeds to conclusion, execution will ensue yet the Respondent has not accounted for proceeds in respect of the sale of Mulango/Katulani "A"/1412, POSA shares amounting to Kshs. 666,670/- and Kshs. 1,200,000/- which is being held in a savings account with the Respondent.
6. Directions were taken on disposal of the Applicants motion by way of written submissions. Having considered the rival affidavit material alongside the respective parties' submissions, it is the Court's postulation that the issues for determination concerns: -
 - a. Whether the Court ought to grant an order of stay of proceedings pending hearing and determination of the instant appeal?
 - b. Who ought to bear the costs of the motion?

Whether the Court ought to grant an order of stay of proceedings pending hearing and determination of the instant appeal?

7. Alongside, Order 42 Rule 6 of the CPR the Applicants have equally cited Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court" as judiciously addressed by the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR and as such requires no restatement. That said, Order 42 Rule 6(1) of the CPR provides that: -
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any



person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

8. In urging the Court to allow the motion, counsel for the Applicants relied on the decision in *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000* and the decision in *Jacinta Nduku Masai v Leonida Mueni Mutua & 4 others* [2018] eKLR to submit that the motion has met all the requisite ingredients to warrant a stay of proceedings pending appeal as clearly provided at Order 42 Rule 6(2) of CPR.
9. In retort, the Respondent submitted that an order of stay of proceedings ought only to be granted in clear cases, as such an order essentially bars a party from proceedings with their claim. That in any event, the Applicant has not tendered any credible material to support the averment that they stand to suffer grave prejudice and loss if the order sought is denied. The decision in *Global Tours & Travels Limited (supra)*, *Niazsons (Kenya) Ltd v China Road & Bridge Corporation*, HCCC No. 126 of 1999, *George Gathura Karanja v George Gathura Thuo & 2 Others* [2019] eKLR and *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others*, Civil Appeal No. 31 of 2012 were called to aid in the forestated regard.
10. With the above in reserve, Ringera, J (as he then was) in the decision of *Re Global Tours & Travel Ltd Nairobi (supra)* spelt out the applicable considerations in determining an application for stay of proceedings, 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.”

11. Further, it may be observed that the need to avoid unnecessary proliferation of proceedings and needlessly dissipating limited judicial resources, are equally key considerations in an application of this nature. The Court of Appeal in *Raymond Ruto & 5 Others v Stephen Kibowen* [2021] eKLR exhorted that: -

“We acknowledge at the outset, that a court will sparingly and only in exceptional circumstances will it grant an order to stay of proceedings which essentially is an interruption of the other parties right to conduct their hearing....

“The learned authors of; *Halsbury’s Law of England*, 4th Edition. Vol. 37 page 330 and 332, have also given some principles to bring to bear while considering whether or not a court should stay proceedings as follows: -

“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...”

12. Aside from the above, due cognizance must be taken of the fact that there is an imposed duty on the Court by dint of Section 1A & 1B of the CPA to course the overriding objectives toward the just, expeditious, proportionate and affordable resolution of matters before a Court. Here, having considered the rival argument, the Court observes that as at presentation of the instant motion, the Applicants have since filed a complete record of appeal and it would seem that the appeal would be ready for admission and disposal, in any event. Further, a perfunctory perusal the record of appeal, the Court notes that the claim before the Tribunal appertains debt recovery and as argued by the Applicants should the claim succeed they are likely to be prejudiced by way of execution yet the Tribunal did not give any cogent reasons in its ruling upon holding the Applicant’s motion in abeyance.
13. Equally perusing the Applicant memorandum of appeal, it is the Court’s view that the same raises arguable issues that warrant canvassing before the appellate Court. In *Vishva Stone Suppliers Company Limited v RSR Stone (2006) Limited* [2020] eKLR the Court of Appeal stated that “an arguable appeal need not (be one that will) succeed so long as it raises a bona fide issue for determination by the Court.” The Court also gathers from the record that there was no inordinate delay in filing the instant motion that is for consideration. Consequently, I am persuaded that to facilitate the Applicants undisputed right of appeal as advanced in *Vishva* (supra), in order not to prejudice the Applicants or render the appeal nugatory, a stay of proceedings ought to be granted.
14. In the circumstance, applying the above considerations to the facts of this case, and bearing in mind the directions of tribunal on hearing and determination of the claim before it, the Court is prepared to invoke its inherent discretion in favour of the Applicants by granting the prayer for stay of proceedings before the Tribunal pending hearing and determination of the instant appeal, but subject to condition that the appeal shall be fully prosecuted within six (6) months’ of today’s date failing which, the stay order shall automatically lapse and the Respondent be at liberty to proceed with the claim before the Tribunal. Costs of the motion are awarded to the Respondent in any event.
15. Additionally, the Applicants/Appellants are directed to serve the Record of Appeal if not already done and attend to the Deputy Registrar of this court Hon. Wambu on 8/4/2025 for taking direction on hearing of the Appeal.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF MARCH, 2025

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JANET MULWA.

JUDGE

