



**Hunjan v Khan (Environment & Land Case 865 of 2016)
[2021] KEELC 4723 (KLR) (30 June 2021) (Ruling)**

Neutral citation: [2021] KEELC 4723 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 865 OF 2016
EK WABWOTO, J
JUNE 30, 2021**

BETWEEN

SURJIT SINGH HUNJAN PLAINTIFF

AND

NAHEED A. KHAN DEFENDANT

RULING

1. This ruling is in respect to the Plaintiff's Notice of Motion dated 20th June 2022. The application seeks the following orders:-
 1. Spent...
 2. That the Honourable court be pleased to grant a stay of proceedings in Nairobi Environment and Land Court Cause No. 865 of 2016 pending the hearing and determination of this application.
 3. That the Honourable court be pleased to grant a stay of proceedings in Nairobi Environment and Land Court Cause No 865 of 2016 pending the hearing and determination of an intended appeal from the ruling and orders of Justice Eboso delivered on 25th September 2018.
 4. That the costs of this Application be provided for.
 5. That the court be pleased to grant any further orders if any in the interest of justice.
2. The application is premised on eight (8) grounds on its face which are explicated in the Supporting Affidavit of Surgit Singh Hunjan sworn on 20th June 2022.
3. The Defendant/Respondent opposed the application. The application was heard by oral submissions from Counsel present for the respective parties. During the plenary hearing of the application, on 30th



June 2022, Learned Counsel Mr. Okeyo submitted on behalf of the Plaintiff while Learned Counsel Ms. Athman submitted on behalf of the Defendant.

4. Mr. Okeyo relied on the grounds and Supporting Affidavit sworn in support of the Application. Counsel submitted that the Plaintiff had filed a Notice of appeal dated 26th September 2018 which was an appeal against the Ruling of Justice Eboso delivered on 28th September 2018.
5. Counsel argued that if the proceedings are not stayed, the Plaintiff would be greatly prejudiced.
6. Learned Counsel Ms. Athman in opposing the application relied entirely on the Replying Affidavit sworn by the Defendant on 27th June 2022. Counsel submitted that the application was meant to frustrate the proceedings since it was filed after the court had granted a last adjournment when the matter last came up in court on 24th May 2022. It was also submitted that the Plaintiff has not offered any sufficient reasons as to the delay of the filing of the application and as such the application is an abuse of the court process. For the said reason, the court was urged to dismiss the application.
7. I have considered the application, the affidavits filed and the oral submissions made by the respective counsel for the parties. The single issue which arises for determination is whether or not the Applicant has satisfied the criteria for grant of stay of proceedings.
8. This is essentially an application for stay of proceedings pending the hearing and determination of the appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. See Ringera J. (as he then was) in the case of *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No 43 of 2000 persuasively stated thus;

“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”

See also illumination on the threshold for stay of proceedings in the following passages 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.

9. It should be noted that this Court has powers to stay proceedings pending appeal and this jurisdiction is derived from both Order 42 rule 6 of the Civil Procedure Rules as well the inherent jurisdiction reserved in section 3A of the Civil Procedure Act. See *George Oraro vs. Kenya Television Network* Nairobi HCCC No. 151 of 1992.
10. The use of discretion is to ensure proper use of judicial time and resources to dispense justice for the parties. This is also to guard against multiplicity of applications which are meant to delay the finalization of matters which go against the spirit of Article 159 of the Constitution that enjoins the court to hear matters expeditiously. However, this is not to turn a blind eye on deserving applications for stay of proceedings.
11. In the case of Christopher Ndolo Mutuku & another v CFC Stanbic Bank Ltd (2015) eKLR, the Court observed that;

“...what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”
12. The provisions of Article 159(2)(a)(b)(c) and (d) of the Constitution of Kenya as read with Sections 1A and 1B of the Civil Procedure Act, cap 21 enjoin this court to foster and facilitate the overriding objective of the Act to render justice to parties in all Civil Proceedings in a just, expeditious, proportionate and affordable cost to parties.
13. The applicant has not adequately explained why it took long to file the present application. The Ruling by Justice Eboso was delivered on 25th September 2018. The Notice of Appeal was filed on 26th September 2018, however no memorandum of appeal was filed neither has any stay of proceedings issued by the Court of Appeal. In this regard, I am of the opinion that the application herein has not been filed expeditiously. I rely on the persuasive authority in Pius Kawinzi Kithoka v Jacinter Kavindu Makau [2012] eKLR the court made the following observation:-

“The applicant has given no explanation at all for this delay. In my view, it shows lack of seriousness in pursuing the appeal at worst, and at best a vexing tardiness which disentitles him from the Court’s discretion. Equity does not aid the indolent.”
14. In the instant case, upon perusal of the entire proceedings it is evident that there is no stay orders from the Court of Appeal. This is a matter that is still pending before this court. An order staying these proceedings would be counterproductive and would delay the finalization of this case. No compelling reason or prima facie case has been established to warrant the court to stay the proceedings. The delay that would be occasioned by the stay of the proceedings of this court would defeat the purpose of expeditious disposal of matters. A court will not be used or called upon to aid the indolent to cause injustice and hardship to blameless parties. Litigants must use reasonable expedition in conducting their cases. It is in the public interest that litigation should not be protracted unduly and it should be brought to an end.
15. In conclusion, it is my considered opinion that it would not be in the interest of justice to exercise court’s discretion and grant stay of proceedings as the same will only serve the purpose of delaying the suit to the detriment of the Defendant.



16. For the above reasons, the Application dated 20th June, 2022 is not merited and the same is dismissed with costs to the Defendant.

17. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JUNE 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Okeyo for the Plaintiff.

Ms. Athman for the Defendant.

Court Assistant; Caroline Nafuna.

E.K. WABWOTO

JUDGE

