



REPUBLIC OF KENYA



KENYA LAW
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**Nsejjere Sports, LLC v Kasavuli & 5 others (Civil Case 27 of 2015)
[2025] KEHC 2716 (KLR) (Civ) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2716 (KLR)

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

CIVIL

CIVIL CASE 27 OF 2015

JN MULWA, J

MARCH 11, 2025

BETWEEN

NSEJJERE SPORTS, LLC PLAINTIFF

AND

ALLAN KASAVULI 1ST DEFENDANT

PATRICK NGAIRA 2ND DEFENDANT

GEORGE ALADWA 3RD DEFENDANT

ESTHER LUVEMBE 4TH DEFENDANT

TIMOTHY LILUMBI 5TH DEFENDANT

AFC LEOPARDS FOOTBALL CLUB 6TH DEFENDANT

RULING

1. Before the court for determination is the Notice of Motion dated 21st June, 2024 (the Motion) brought by Patrick Ngaira, George Aladwa, Timothy Lilumbi and AFC Leopards Football Club (hereafter the 2nd, 3rd, 5th and 6th Defendants/Applicants). The following are the prayers sought therein:
 1. Spent.
 2. Spent.
 3. The Honourable Court be pleased to stay all and any other proceedings commenced by the plaintiff/Respondent and its Directors and/or Shareholders against the Defendants/Applicants arising from the same or substantially the same Parties and subject matter as the one before the Honourable Court.



4. That the Plaintiff/Respondent be ordered to furnish security for the costs of this suit and the Defendants/Applicants costs of defending/responding to any other proceedings commenced by the Plaintiff/Respondent that arise from the same facts as the instant proceedings.
 5. That upon granting prayer 4) above, the Plaintiff/Respondent be ordered to furnish security for costs by way of a bank guarantee of a reputable Kenyan Bank for the sum of Kshs. 81,782,732.50 or a substantial portion thereof, in favour of the 6th Defendant valid for the duration of these proceedings.
 6. That in default of which these proceedings and any other similar proceedings commenced by the Plaintiff or its Directors/Shareholders in respect of the same subject be struck out with costs.
 7. That the Plaintiff/Respondent be condemned to pay the costs of, and occasioned by, this Application in any event.
2. The Motion is brought under Sections 1A and 3A of the *Civil Procedure Act* (CPA) and is anchored on the grounds set out on its face and the sworn affidavit of the 6th Defendant's/Applicant's Chairman, Dan Shikanda, who states inter alia, that by way of its claim which is founded on an alleged breach of contract, Nsejjere Sports, LLC (hereafter the Plaintiff/Respondent) seeks to recover an exorbitant sum of USD 22,387,250. The deponent states that going by the information conveyed to him, the Plaintiff's/Respondent's Director and Shareholder (Isaac Nsejjere) has purported to commence related proceedings before the Superior Court of the State of Washington vide Case No. 23-2-01880-0 SEA against the Defendants herein, which proceedings relate substantially to the same subject matter, involve the same parties and seek substantially similar reliefs as those sought in the present suit. That the sum sought in the said proceedings aggregates USD 17,909,800 and hence the legal costs of defending such proceedings would constitute no less than Kshs. 80,590,162/-. That further to the aforesaid proceedings, the Plaintiff/Respondent has possibly instituted various other related legal proceedings against the Defendants.
 3. The deponent avers that it is evident from its actions mentioned hereinabove that the Plaintiff/Respondent is therefore intent on drowning the financial resources of the 6th Defendant/Applicant in litigation matters. That nevertheless, the said actions amount to an abuse of the court process and are vexatious in nature.
 4. The deponent further avers that the advocates representing the Plaintiff/Respondent have so far not admitted to the existence of the duplicity of suits in respect of the proceedings instituted in Washington.
 5. It is the assertion by the deponent that to add on, the Plaintiff/Respondent has no known assets in Kenya and its officials are not Kenyan nationals and hence it would be in the interest of justice that the orders sought in the instant Motion be granted.
 6. The Motion is opposed by the Plaintiff/Respondent, by way of a replying affidavit sworn by its Chairman/Chief Executive Officer, Isaac Nsejjere Gayi Mayanja on 7th November, 2024. Therein, the deponent avers that the 2nd, 3rd, 5th and 6th Defendants/Applicants had previously filed an application dated 28th January, 2019 seeking an order similar to one of the substantive orders presently sought; namely that the Plaintiff/Respondent be directed to deposit security for costs, which application was opposed and upon hearing thereof, the court dismissed the said application vide its ruling delivered on 25th March, 2022.



7. The deponent avers that the aforementioned ruling has not been varied and/or set aside and therefore, the said Defendants/Applicants cannot be heard to bring a fresh application seeking a similar order for deposit of security for costs.
8. It is equally the assertion by the deponent that the Washington proceedings referenced in the instant Motion were voluntarily withdrawn by on 15th October, 2024 and hence there are currently no other pending proceedings relating to the parties herein, save for the present suit. For those reasons, the deponent urges this court to deem the instant Motion unwarranted and deserving of dismissal.
9. When the parties attended court on 16th July, 2024 directions were given for the Motion to be dispensed with by way of written submissions. However, it is apparent that at the time of writing this ruling, only the Plaintiff/Respondent had complied. The 2nd, 3rd, 5th and 6th Defendants/Applicants did not avail their written submissions. Separately, counsel for Allan Kasavuli and Esther Luvembe (hereafter the 1st and 4th Defendants respectively) indicated that they would not be opposing the Motion.
10. The Plaintiff/Respondent on its part submits that the order seeking provision of security for costs is res judicata, pursuant to the ruling delivered in the present suit on 25th March, 2023 in respect of a previous application seeking a similar order, and by dint of Section 7 of the CPA which makes provision for the said principle. The Plaintiff/Respondent further cited inter alia, the case of Kenya Commercial Bank Limited v Benjoh Amalgamated Limited [2017] KECA 98 (KLR) where the Court of Appeal set out the elements associated with the doctrine, thus:

“The elements of res judicata have been held to be conjunctive rather than disjunctive. As such, the elements reproduced below must all be present before a suit or an issue is deemed res judicata on account of a former suit;

 - (a) The suit or issue was directly and substantially in issue in the former suit.
 - (b) That former suit was between the same parties or parties under whom they or any of them claim.
 - (c) Those parties were litigating under the same title.
 - (d) The issue was heard and finally determined in the former suit.
 - (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”
11. The Plaintiff/Respondent further challenges the instant Motion on the basis that the order seeking provision of security purports to ride on separate proceedings which according to the Plaintiff/Respondent, are non-existent. It is the argument by the Plaintiff/Respondent the Washington proceedings were dismissed on 15th October, 2024 and that there are currently no other proceedings pending before any court, involving the parties herein. That in the circumstances, the court cannot revisit the issue of security for costs.
12. On the subject of stay of proceedings, it is the Plaintiff's/Respondent's argument that this court is not precluded from entertaining a suit involving the same issues as those arising before a foreign court, pursuant to Section 6 of the CPA. That it therefore follows that the order seeking an order of stay of proceedings is baseless and cannot be granted, in any event. On those grounds, the Plaintiff/Respondent urges this court to dismiss the instant Motion with costs.
13. The court has considered the rival affidavit material and the submissions on record, plus the authorities cited therein, in respect of the Motion. It is clear that the orders therein are two (2)-fold: the foremost



order of which seeks orders of stay of all proceedings involving the parties herein arising out of the same subject matter; followed by an order for provision of security for costs by the Plaintiff/Respondent. The court will begin with the foremost order.

14. The power of the court to stay proceedings is found under Order 42, Rule 6 (1) of the Civil Procedure Rules which reads thus:

“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”

15. Upon the court’s study of the record and material presented, it is apparent that the 2nd, 3rd, 5th and 6th Defendants/Applicants purport that the Plaintiff/Respondent herein has instituted various other proceedings involving the same parties as those in the present proceedings, and relating to the same or substantially the same subject matter of the dispute; including but not limited to the Washington proceedings. However, from a perusal of the record, the court notes that the said Defendants/Applicants did not tender any material to support their assertions above. No documentation was placed before this court to ascertain which, if any, proceedings are pending between the parties herein.
16. As concerns the Washington proceedings, upon the court’s study of the documentation tendered by the respective parties, it is apparent that the same were lodged by the Plaintiff’s/Respondent’s Chairman/Chief Executive Officer, Isaac Nsejjere Gayi Mayanja, and against the Defendants herein, vide Case No. 23-2-01880-0 SEA. From a further study of the pleadings thereof, it is apparent that the said claim is founded on the actions of promissory fraud and estoppel, and equitable estoppel, arising out of funds purportedly loaned to the Plaintiff/Respondent by its Chairman, pursuant to an agreement entered into between the Plaintiff/Respondent and the Defendants. From the foregoing, the court is of the view that the Washington proceedings whilst involving the same parties as those in the present suit, relate to different causes of action from those arising in the present instance.
17. Be that as it may, the Plaintiff/Respondent annexed documentation to the replying affidavit opposing the instant Motion, to support its averment that the Washington proceedings were subsequently dismissed on 15th October, 2024 pursuant to its Chairman’s motion for voluntary dismissal. Even if it were that the said proceedings were similar to those presently before this court, Section 6 of the CPA would not preclude this court from entertaining the present suit notwithstanding the fact that a similar or related suit had been filed before a foreign court; as was rightly put by the Plaintiff/Respondent. For reference purposes, the aforesaid Section provides that:

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.



Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

18. Upon therefore considering the foregoing factors, the court finds that the order seeking stay of proceedings is unsubstantiated.
19. The second order sought is for provision of security for costs, which the 2nd, 3rd, 5th and 6th Defendants/Applicants seek by way of a bank guarantee in the sum of Kshs. 81,782,732.50 on the basis of the present suit as well as the separate proceedings filed by the Plaintiff/Respondent.
20. Upon its finding above that no material has been tendered to demonstrate which, if any, separate proceedings are pending in relation to the parties herein, the court finds that the prayer for security of costs in respect of the seemingly non-existent proceedings automatically collapses.
21. With regards to the present suit, the record shows that the aforesaid Defendants/Applicants previously filed an application dated 28th January, 2019 seeking a similar order for provision of security to be made, save that in the said application, a proposal was made to have the costs provided by way of deposit of the sum of Kshs. 25,450,000/- in a joint interest earning account. The record equally shows that the said application was opposed by the Plaintiff/Respondent. That upon hearing thereof, Serگون, J. dismissed it for lack of merit, vide the ruling delivered on 25th March, 2022.
22. Going by the record, there is nothing to indicate that the above mentioned ruling has either been varied or set aside. In the premises, the aforesaid Defendants/Applicants cannot be heard to move this court by way of a fresh application seeking a similar order on the basis of similar key issues which were previously canvassed and determined by Serگون, J.
23. To add on, the court observed that the costs sought by the abovementioned Defendants/Applicants in the instant Motion are based on a Certificate of Taxation dated 7th June, 2023 wherein a sum of Kshs. 80,782,832.50 was taxed in respect of an advocate-client bill of costs between the firm of Simba & Simba Advocates and the 6th Defendant/Applicant herein, arising out of Misc. Civil Application No. 646 of 2022. No credible material has been tendered to demonstrate the manner in which the said Certificate of Taxation relates to the present proceedings in order to support the sum sought on costs, in any event.
24. Upon considering all the foregoing circumstances therefore, the court declines to grant the order sought for provision of security for costs.
25. Consequently, the Notice of Motion dated 21st June, 2024 is hereby dismissed for want of merit, with costs to the Plaintiff/Respondent.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 11TH DAY OF MARCH 2025.

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JANET MULWA.
JUDGE

