



Al Wakil Tranference & General Trading Company Limited v SOS-Kinderdoff International (Civil Suit 2277 of 1998) [2025] KEHC 4976 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4976 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 2277 OF 1998
PM MULWA, J
APRIL 24, 2025**

BETWEEN

**AL WAKIL TRANFERENCE & GENERAL TRADING COMPANY
LIMITED PLAINTIFF**

AND

SOS-KINDERDOFF INTERNATIONAL DEFENDANT

RULING

1. The Defendant/applicant has filed the Notice of Motion dated 7th November 2023, seeking an order for stay of proceedings in this matter pending the hearing and determination of Civil Appeal No. E688 of 2023 which arises from a ruling of this Court dated 23rd June 2023. The Applicant further prays that the costs of this application be in the cause.
2. The application is supported by the affidavits of Dr. Fred N. Ajiambo, Advocate, and is opposed through a Replying Affidavit sworn by Ismail Abdullahi Said on 15th November 2023. The application was canvassed by way of written submissions.

Brief background

3. The instant application stems from the ruling of this Court (Chacha Mwita, J.) delivered on 23rd June 2023, by which the Defendant's application to further amend its defence was dismissed. Aggrieved by that decision, the Defendant lodged an appeal to the Court of Appeal in Civil Appeal No. E688 of 2023.
4. The Applicant contends that unless these proceedings are stayed, the hearing and determination of the main suit will render the appeal nugatory. It is submitted that the proposed amendment is necessary



in light of multiple amendments made by the Plaintiff, and that the issue of jurisdiction is central to the dispute.

5. In response, the Respondent asserts that the application is an abuse of court process. It is contended that the proposed amendment raises issues unrelated to the core dispute, which concerns an alleged breach of contract. The Respondent further argues that the application has been brought after an inordinate delay of over two decades and after the close of its case.
6. The parties filed and exchanged written submissions. The Defendant/Applicant filed submissions dated 12th March 2024, while the Plaintiff/Respondent filed submissions dated 16th December 2024.

Issues for determination

7. Having considered the pleadings, affidavits and rival submissions, the sole issue for determination is whether the Defendant has satisfied the legal threshold for the grant of a stay of proceedings pending appeal.
8. The principles governing stay of proceedings pending appeal were laid out in *Global Tours & Travels Ltd; Nairobi HC Winding Up Cause No. 43 of 2000* [2000] eKLR, where Ringera J. (as he then was) held that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings...is a matter of judicial discretion to be exercised in the interests of justice...The sole question is whether it is in the interests of justice to order a stay of proceedings, and in answering it, the Court is to bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal and whether the appeal, if successful, would be rendered nugatory.”
9. Further guidance was offered in *Kenya Power & Lighting Co. Ltd v Esther Wanjiru Wokabi* [2014] eKLR, where the Court stated:

“A stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation...It ought to be granted only in the clearest of cases.”
10. It is therefore trite that a stay of proceedings pending an interlocutory appeal is an extraordinary remedy, granted only in rare and compelling circumstances. The discretion must be exercised judiciously, considering the unique facts of each case.
11. An applicant must demonstrate that the appeal raises arguable issues and that, if the proceedings are allowed to continue, the appeal would be rendered nugatory.
12. In the present case, the Applicant’s appeal challenges this Court’s refusal to grant leave to amend its defence. It is asserted that, without a stay, the hearing of the main suit will proceed, thereby defeating the appeal.
13. However, the Court is not persuaded that the appeal would be rendered nugatory. If the appeal succeeds, the appellate court retains the power to allow the proposed amendment or direct the reopening of proceedings. The possibility of prejudice is, therefore, speculative.
14. It is not lost upon this Court that the present suit has been pending for over twenty years. The Plaintiff’s case has since been concluded. The proposed amendment and the corresponding stay application have been made after an inordinate and unjustified delay.



15. A stay of proceedings, by its nature, stalls the judicial process and has the effect of interfering with the right of a party to have their case heard and determined without unreasonable delay. As held in *Kenya Wildlife Service v James Mutembei* (2019) eKLR, Gikonyo J. held that:

“Stay of proceedings should not be confused with stay of execution pending 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.”

16. In the present case, it has not been demonstrated that the intended appeal raises novel or substantial legal issues, nor has it been shown that the issue of jurisdiction cannot be raised during the trial. As rightly submitted by the Plaintiff, the jurisdictional issue may still be addressed during the substantive hearing.

17. In balancing the scales of justice, the Court must also give effect to the constitutional imperative of expeditious disposal of cases under Article 159(2)(b) of *the Constitution*. Having weighed all relevant considerations, including the principle of proportionality and the interests of justice, I find no compelling reason to halt proceedings in this matter. The balance of convenience tilts in favour of allowing the suit to proceed to final determination on its merits.

18. In the result, I find the Notice of Motion dated 7th November 2023 lacks merit and is hereby dismissed with costs to the Plaintiff/Respondent.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Towett h/b for Ms. Asli Osman for Plaintiff/respondent

Mr. Wasonga h/b for Ms. Onyango for Defendant/applicant

Court Assistant: Carlos

