



**Chabeda v Thuo (Commercial Case E278 of 2024)  
[2025] KEHC 4994 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4994 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E278 OF 2024**

**AA VISRAM, J**

**APRIL 24, 2025**

**BETWEEN**

**PETER SAGWA CHABEDA ..... APPLICANT**

**AND**

**SAMMY THUO ..... RESPONDENT**

**RULING**

1. I have considered the Notice of Motion Application dated 23<sup>rd</sup> October, 2024, together with the supporting affidavit sworn on even date and the replying affidavit sworn on 15<sup>th</sup> January, 2025, in opposition to the same, the submissions of Counsel, and the relevant law.
2. The Applicant seeks to stay the proceedings in Milimani Commercial Courts MCCC 9799 of 2018 pending the hearing and determination of the appeal arising out of the ruling of the lower court.
3. In the above matter, the Applicant sought leave to file an amended Defence out of time, more specifically, to include the issuance of a third- party notice, which application was dismissed.
4. In summary, the Applicant submitted that it had filed an appeal dated 20<sup>th</sup> September, 2024, and that said appeal raises substantial questions to be determined, or is otherwise arguable.
5. Finally, the Applicant argued that the appeal would be rendered nugatory if stay of proceedings is not granted.
6. In opposition to the Application, the Respondent submitted that the suit was filed in the year 2018, and it has been five years since the Defendant sought to amend its Defence.
7. The Respondent pointed out that the present Application is one of several applications that have been prosecuted by the Applicant with the intention to delay the proceedings in the lower court. Counsel



contended that because of the various applications, the main suit has been pending at a preliminary stage for over five years.

8. Finally, the Respondent submitted that the continuation of proceedings in the trial court would not necessarily spell doom, because at this point, the issue of prejudice may only be answered once the matter has been fully heard and determined.
9. Having considered the above, I note that the relevant law is as follows:-

In the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR, Gikonyo J held 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.”

10. Further, in the persuasive authority in *Global Tours & Travels Limited*; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J, (as he then was) stated 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 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.” (Emphasis mine)

11. Guided by the above, and having weighed relevant factors, I am not persuaded that the proceeding, beyond all reasonable doubt, ought not to be allowed to continue.
12. I say so, taking particular note of the delay in concluding the suit in the lower court, the pressing need for expeditious disposal of cases given perennial issue of backlog in our courts.
13. I have also considered the grounds set out in the Memorandum of Appeal and having done so, I caution myself not to make any determination on the merits of the appeal at this stage that may prejudice either of the parties. I will not therefore say more.
14. Finally, based on the record before me, I am not persuaded that the Applicant has shown the prejudice it will suffer in the event the orders sought are not granted. To the contrary, it appears more likely that further delay in proceedings will prejudice the Plaintiff in the lower court.



15. Based on the reasons above, and the further reasons stated by counsel, I am satisfied that the test for a stay of proceedings has not been met.
16. Accordingly, I find that the Application is without merit and the same is dismissed with costs.
17. The file is marked as closed.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF APRIL, 2025**

**ALEEM VISRAM, FCIArb**

**JUDGE**

In the presence of;

..... Court Assistant

..... for Appellant/Applicant

..... for Respondent

