



REPUBLIC OF KENYA



KENYA LAW
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Ombere v Summerfield Management Co Ltd & 3 others (Commercial Appeal E006 of 2024) [2025] KEHC 9872 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KEHC 9872 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
COMMERCIAL APPEAL E006 OF 2024
DO CHEPKWONY, J
MAY 23, 2025**

BETWEEN

CAJETAN PHIDELIS OMBERE APPELLANT

AND

SUMMERFIELD MANAGEMENT CO LTD 1ST RESPONDENT

LYDIA IHUTHIA 2ND RESPONDENT

NYOKABI KANYAGIA 3RD RESPONDENT

DAVID MUKARU 4TH RESPONDENT

RULING

1. This ruling determines the Appellant's Notice of Motion application dated 8th October, 2024 which seeks the following orders: -
 - a. Spent.
 - b. That pending the hearing and determination of this appeal there be stay of proceedings at the lower court Civil Case No. E036 of 2024.
 - c. That the Honourable Court be pleased to give directions.
 - d. That the Honourable Court be pleased to grant any other order in the interest of justice.
 - e. That the costs of this application be borne by the Respondents.
2. On the face of the application and Supporting Affidavit sworn on instant date, the Applicant contends that the trial court dismissed his application dated 7th February, 2024 without considering the bank deposit slips he presented as evidence in a suit filed before it after the Respondents refused to issue him with the same in respect of service charge for Town House No.5 at Summer Field Estate. Subsequently,



the trial court fixed the matter for pre-trial on 16th October, 2024. The Applicant argues that unless these proceedings are stayed, the Appeal will be rendered nugatory he will suffer irreparable loss and will be left at the mercy of the Respondents as the payments made will be embezzled. The Appellant also contends that he stands to suffer reputational damage, mental anguish or a suit by the homeowner and lack of financial gain since all the homeowners in the estate use his services.

3. The 1st, 3rd and 4th Respondents opposed the application through a Replying Affidavit sworn on 11th October, 2024 by their advocate, Mr. John Njongoro. He avers that this Appeal arises from a Ruling delivered on 15th August, 2024 in dismissing the Applicant's interlocutory application which sought, among other orders, a mandatory injunction compelling the Respondents to issue payment receipts for deposits made into the 1st Respondent's Bank Account No. 1180698916 at KCB Gigiri Square Branch. According to Mr. Njongoro, the Applicant will suffer no prejudice if the lower court proceedings continue. He also contends that the Applicant has not demonstrated any arguable issues in the Appeal.
4. The 2nd Respondent similarly opposed the application via an affidavit sworn on 11th October 2024 by his advocate, Mr. Francis Njanja. He states that the Applicant's earlier application was dismissed for lack of merit and because its prayers were overly broad, making them difficult to enforce. He further notes that the instant Appeal essentially reintroduces the same prayers that were dismissed by the trial court, and it is paradoxical for the Applicant to seek a stay of proceedings in his own suit. He emphasizes that a stay of proceedings should be granted sparingly and only in the most exceptional circumstances. That, since the Applicant has not proven he would suffer irreparable harm, granting a stay would, in Mr. Njanja's view, defeat the ends of justice.
5. Pursuant to directions from this Court, the application was argued by way of written submissions and all parties complied. The Appellant/Applicant filed submissions dated 24th October, 2024; the 1st, 3rd, and 4th Respondents filed theirs dated the 4th November, 2024; while the 2nd Respondent's submissions were dated 21st November, 2024. The Court has considered all submissions and the Applicant's Supplementary Affidavit sworn on 22nd October, 2024. Therefore, to avoid repetition, this Court will not reproduce the submissions filed herein in detail, as the same will be taken into account in the analysis aimed at arriving at a determination of the application.

Analysis and Determination

6. Having considered the application, the affidavits sworn and filed in support and in rebuttal of the same as well as the written submissions filed by the parties, the sole issue arising for determination is whether the Appellant/Applicant has demonstrated sufficient grounds to warrant the orders sought for stay of proceedings.
7. Courts within our jurisdiction have widely discussed that whether or not to grant stay of proceedings on an order appealed from is a matter of judicial discretion which ought to be exercised judiciously in the interest of justice. Given that the Kenyan *Civil Procedure Act* and its subsidiary Rules have not laid down with precision, the principles guiding the grant of orders for stay of proceedings, on and above considering the pros and cons of granting or not granting the said orders, Ringera J (as he then was) observed in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000*, that the court ought to stretch a notch higher to establish whether the Applicant has established: a prima facie arguable case/appeal, that the application was filed timeously, that there exist other sufficient cause to establish that it is solely in the interest of justice the orders for stay of proceedings are granted.



8. In other cases, the court has taken caution that stay of proceedings is such a serious, grave and fundamental interruption of a litigant's right to conduct the litigation to its determination on merits in an expeditious manner, and thus stay of proceedings should not be imposed unless the proceedings, beyond all reasonable doubt ought not to be allowed to continue. Such would be a case where the applicant establishes that the proceedings are frivolous, vexatious, and with no clear cause of action in law or in equity.
9. Now, applying the above principles to facts within the present application, the first hurdle is whether the application was filed timeously or after an inordinate delay. The uncontested fact is that the ruling sought to be appealed against was delivered on 15th August, 2024 whereas the present application was filed fairly one and half months thereafter which was on or about the 8th October, 2024. Neither of the parties intimated that there was inordinate delay in filing the application hence the court finds no reason to opine that there was inordinate delay in filing the application.
10. As regards the arguability of the Intended Appeal, I have perused the Grounds of Appeal adduced by the Appellant/Applicant in its Memorandum of Appeal dated 26th August, 2024 and wish to point out that at this interlocutory stage, it is not possible for the court to make any finding on the merits of the appeal. On its face, it does not entirely appear hopeless, and the court is prepared to find on the basis of the material placed before it that the appeal cannot be said to be a frivolous one. I say so because an arguable appeal is not one that will necessarily succeed but one which raises triable issues. However, that alone cannot suffice to warrant the grant of the orders sought.
11. Lastly, on whether the Applicant has established other sufficient cause to convince the court that it would be in the interest of justice to allow the instant application, the Applicant asserts that proceeding with the lower court matter will effectively undermine or render his appeal nugatory. He claims that if the lower court moves on to pre-trial and possibly to a final determination, his appeal rights could be overshadowed. However, it is also pertinent to note that the 2nd Respondent and other Respondents have argued that staying the suit in the lower court, particularly one filed by the Applicant himself, would prejudice them by delaying the resolution of the dispute indefinitely.
12. In the view, Substantial loss is the cornerstone upon which an application for stay of proceedings is anchored and the Applicant bears the burden of demonstrating how he will suffer such loss. A general statement of prejudice or inconvenience in such a scenario is insufficient and the Applicant must show specific hardship. In this case, the Applicant has not elaborated on how proceeding with the pre-trial in the lower court irreparably prejudices or causes him undue hardship that cannot be remedied on appeal. While it is true that an adverse ruling on any interlocutory application can be inconvenient, inconvenience alone does not necessarily meet the threshold of substantial loss. Nonetheless, the Court must also be cautious not to render the appeal moot if the lower court finalizes the matter prematurely.
13. On the record before this Court, it appears that the lower court matter is only at the pre-trial stage. There is no immediate threat of execution of a decree or final orders that would irreversibly affect the Applicant's position. Moreover, even if the lower court proceedings move forward, the Applicant retains the right to challenge any orders or directions issued therein if they are adverse to him. Consequently, it is not readily apparent that refusing a stay would automatically render his appeal nugatory.
14. However, the Court must consider the Respondents' right to expeditious disposal of their case. This is because delaying the lower court proceedings may unjustly deny the Respondents the opportunity to prosecute or defend their positions. On the flip side, if the lower court conclusively determines



substantive issues, there is a risk that the appeal's subject matter could be overtaken by events. This outcome, however, is not automatic.

15. Given the conflicting interests at stake, this Court is guided by the principle that a stay of proceedings is a discretionary and exceptional remedy. Based on the material placed before the Court, the Applicant's primary complaint is that the lower court did not consider certain evidence such as provision of bank slips to substantiate the payments made since the Respondents have refused to acknowledge the payments and issue him with receipts and that the dismissal of his interlocutory application was unjust. With such grounds, this Court finds that the Applicant has demonstrated that there might be an arguable point on appeal, and he has sufficiently established that he stands to suffer substantial and irreparable loss, or that his appeal would be rendered wholly nugatory if proceedings in the lower court were allowed to continue.
16. Accordingly, this Court finds that stay of proceedings in this case is necessary, the application dated 8th October, 2024 meritable and proceeds to allow the same in the following terms:-
 - a. That, there be stay of proceedings in Kiambu Civil Case No.E030 of 2024 pending the hearing and determination of this Appeal.
 - b. The Appellant to file and serve a Record of Appeal within twenty-one (21) days from the date of this ruling.
 - c. The Deputy Registrar to call for and avail the original record of proceedings in the said suit before the trial court.
 - d. Mention on 23rd June, 2015 for parties to confirm compliance and take directions on hearing of the appeal.
 - e. These directions and Notice to issue upon the Respondents and or their respective counsel.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF MAY 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Appellant – present in person

No appearance for and by the Respondents or their counsel.

Court Assistant - Martin

