



REPUBLIC OF KENYA



**Asili Sacco Society Limited v Oduor (Civil Appeal E1218 of 2024)
[2025] KEHC 10812 (KLR) (Civ) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10812 (KLR)

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

CIVIL

CIVIL APPEAL E1218 OF 2024

LP KASSAN, J

JULY 22, 2025

BETWEEN

ASILI SACCO SOCIETY LIMITED APPLICANT

AND

MAURICE ONYANGO ODUOR RESPONDENT

RULING

1. For determination is the motion dated 17/12/2024 by Asili Sacco Society Ltd (hereafter the Applicant) seeking inter alia:-
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of the appeal there be a stay of any or further proceedings before the Co-operative Tribunal in Nairobi CTC No. 342 of 2015 (hereafter the Tribunal)
 - d. That the costs of the motion be provided for.
2. The motion is expressed to be brought among others pursuant to Section 1A, 1B, 3A & 79G of the Civil Procedure Act (CPA) on grounds amplified in the supporting affidavit dated 16/12/2024 sworn by Vincent Oreni. The gist of his deposition is that the Tribunal vide a ruling delivered on 26/09/2024 dismissed the Applicant's motion seeking leave to amend its defence and counter-claim and being aggrieved by the said ruling it has preferred an appeal. That the Tribunal as at filing and determination of the aforesaid motion had heard Maurice Onyango Oduor (hereafter the Respondent) claim to conclusion and has now set down the matter for mention to confirm filing of submissions. He goes on to depose that should the Tribunal proceed to fix the matter for judgment the same would be a



travesty of justice and contravene its right to fair hearing enshrined in Article 50 of the Constitution. That the Respondent will not be prejudiced if the motion were to be allowed whereas this Court has supervisory jurisdiction over all subordinate Courts and Tribunals. He surmises by deposing that it is interest of justice that the motion is allowed as he has always been keen on having the matter determined expeditiously.

3. The Respondent opposes the motion by way of a replying affidavit dated 17/01/2025. He assails by motion by deposing that stay of proceedings is a serious, grave and fundamental interruption of a party's right to litigate and ought to be exercised sparingly and in exceptional cases. That the Applicant having been accorded an opportunity to defend the matter before the Tribunal and closed their case has not demonstrated that it is likely to be prejudiced should the Tribunal proceed to render judgment on the matter. He concludes by stating that the matter before the Tribunal was filed in 2015 and any further delay by way of stay of proceedings will occasion him great prejudice therefore this Court ought to dismiss the motion with costs.
4. In rejoinder by way of a supplementary affidavit dated 10/02/2025, Vincent Oreni, iterates that the Respondent will not suffer any prejudice if the motion is granted pending hearing and determination of the appeal.
5. The motion was canvassed by way of written submissions of which this Court has duly considered alongside the rival affidavit material.
6. In presenting the instant motion, the Applicant has among other provisions relied on Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court", to wit, this Court's inherent powers was judiciously addressed by the Court of Appeal in Rose Njoki King'au & Another v Shaba Trustees Limited & Another [2018] eKLR, as such, the same requires no restatement. That said, this Court's authority to issue an order in the effect of stay of proceedings pending hearing and determination of an appeal is specifically donated by Order 42 Rule 6(1) of the CPR, which provides that: -
 1. 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 to have such order set aside.
7. In urging the Court to allow the motion, counsel for the Applicant relied on Article 50(1) of the Constitution and the decision in Pinnacle Projects Limited v Presbyterian Church of East Africa Ngong Parish & Another [2018] eKLR to summarily submit that it is in the interest of justice that the Applicant be accorded an opportunity to be heard on its appeal meanwhile the Respondent will not suffer any prejudice that cannot be remedied by award of damages therefore the motion ought to be allowed. In riposte, the Respondent while placing reliance on the of-cited dicta in Re Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 began by arguing that the power to grant stay of proceedings is an exercise of the discretion of the Court on sufficient cause being shown by an applicant. It was further submitted that the Applicant has not demonstrated that it has a prima facie arguable appeal or shown exceptional circumstances to warrant the granting of the order sought.



That in any event, given the age and history of the matter before the Tribunal the same ought to be allowed to arrive at its logical conclusion. Counsel urged the Court to dismiss the motion with costs.

8. At the outset, it merits mentioning that having considered the rival affidavit material and submissions, this Court has observed that the Applicant has gone at great lengths to address the substratum of the appeal, to wit, the Respondent has equally been guilty tripped to respond to the issues. At this stage, it is trite that the Court is only concerned with the question as to whether it ought to grant an order of stay of proceedings before the Tribunal pending determination of the appeal. It warrants reminder that the substantive appeal is a preserve of the appellate Court, as such, this Court will refrain from being drawn into the arena of addressing issues with respect to the substantive appeal at this interlocutory stage.
9. With the above in reserve, Ringera, J (as he then was) in the of-cited decision of *Re Global Tours & Travel Ltd* Nairobi (supra) spelt out the applicable considerations in determining an application for stay of proceedings pending appeal, as follows: -

“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 weighs 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.”

10. It may correspondingly be observed that the need to avoid unnecessary proliferation of proceedings and needlessly dissipating of limited judicial resources, are equally key considerations in an application of this nature. The Court of Appeal in *Raymond Ruto & 5 others v Stephen Kibowen* [2021] KECA 745 (KLR) exhorted that: -

“We acknowledge at the outset, that a court will sparingly and only in exceptional circumstances will it grant an order to stay of proceedings which essentially is an interruption of the other parties right to conduct their hearing....

“The learned authors of; Halsbury’s Law of England, 4th Edition. Vol. 37 page 330 and 332, have also given some principles to bring to bear while considering whether or not a court should stay proceedings as follows: -

“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...”

11. Concomitantly, due cognizance must be taken of the fact that there is an imposed duty on this Court by dint of Section 1A & 1B of the *CPA* to progress the overriding objectives towards the just, expeditious, proportionate and affordable resolution of matters before a Court. Here it would be useful to restate



the events pertinent to the motion as can be gathered from the respective affidavit material before this Court. Though it warrants this Court to tread carefully on the same so as not to be drawn into the arena of addressing the substantive appeal with the consequence of usurping and or embarrassing the appellate proceedings. It would appear that the Respondent filed a claim before the Tribunal that has since proceeded for hearing to its ultimate conclusion and is pending filing of submissions by the respective parties. The Applicant's complaint is that if the Tribunal were to proceed to render a determination on the matter before it, the Applicant would be condemned unheard given proceedings and resultant ruling in respect of its application seeking to set aside proceedings and leave to amend its statement of defence, that is the subject of the appeal before this Court.

12. At this risk of repetition, the rival parties' material before this Court appear to be a tacit invitation to this Court at this juncture to usurp the appellate proceedings, of which this Court mustn't. That said, applying my mind to the dicta in *Re Global Tours & Travel Ltd Nairobi* (supra) it is not in dispute that the impugned ruling was delivered on 26/09/2024, to wit, the Applicant moved with alacrity to lodge an appeal before this Court on 25/10/2024. Despite the above, the instant motion was filed on 17/12/2024, close to three (3) months after delivery of the impugned decision with no explanation for the said delay therein. Meanwhile, the memorandum of appeal before this Court challenges the Tribunal's decision and ex] facie, appears to raise issues serious enough to warrant consideration by this Court on appeal, or that are prima facie arguable. In *Stanley Kang'ethe Kinyanjui V Tony Keter & 5 Others* [2013] eKLR the Court of Appeal stated:

“The first issue for our consideration is whether the intended appeal is arguable. This court has often stated that an arguable ground of appeal is not one which must succeed but it should be one which is not frivolous, a single arguable ground of appeal would suffice to meet the threshold that an intended appeal is arguable”.

See also *Denis Mogambi Mong'are V. Attorney General & 3 Others* Civil Appeal No. Nairobi 265 of 2011 (UR 175/2011) where the Court of Appeal stated that:

“An arguable appeal is not one that must necessarily succeed, it is simply one that is deserving of the court's consideration.”

13. Thus, if the Tribunal were to proceed and render a determination on the matter and the appeal before this Court were to succeed there is a likelihood that the appeal may be rendered otiose and an academic exercise. As can be garnered from (Annexure VO-3) the Applicant had sought inter alia to set aside proceedings before the Tribunal; sought leave to amend its statement of claim and counterclaim; and sought to have the claim heard afresh. Thus, it may be that if stay is denied, the Tribunal may proceed to rendered a determination on the matter before it and at cross purposes with the success of the Applicant's appeal thereby dissipating precious judicial time and resources. Aside from expeditious disposal of matters imposed by Section 1B & 1A of the *CPA* as exhorted in *Osho Chemicals Ltd v Tabitha Wanjiru Mwaniki* [2018] eKLR, Courts are also mandated to guard against the dissipation of its time arising from the prospect of two different courts entertaining somewhat parallel and related proceedings. Not to mention the possibility of potentially conflicting outcomes. For good order and efficient utilization of the Court's resources it appears more prudent that the appeal ought to be determined as a priority.
14. Any prejudice to the Respondent arising from delay, as earlier identified, can be curbed through appropriate conditions concerning the appeal, especially because the matter touches on the rule of law aspect of a parties right not to be condemned unheard. Equally, an award of costs would adequately compensate the Respondent for any delay and inconvenience caused. Balancing the rights of the



respective parties, the Court is persuaded that the justice of the matter lies in allowing the motion upon conditions.

15. Therefore, the motion dated 17/12/2024 is granted upon the following conditions:
- a. The Applicant shall within 45 days of today's date file and serve the complete record of appeal.
 - b. The Applicant shall fully prosecute the appeal within six (6) months of filing the record of appeal.
 - c. In default of any of the above conditions, the stay order shall automatically lapse.
 - d. The costs of the motion are awarded to the Respondent in any event.

DATED DELIVERED VIRTUALLY AND SIGNED ON THIS 22ND DAY OF JULY 2025

L. P. KASSAN

JUDGE

In the presence of;

Getange for Applicant

No appearance for Respondent

Carol – Court Assistant

