



**Rosslyn Suites Limited v Britam General Insurance Company (K) Ltd & another (Commercial Case E503 of 2022) [2024] KEHC 305 (KLR) (Commercial and Tax) (23 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 305 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E503 OF 2022  
NW SIFUNA, J  
JANUARY 23, 2024**

**BETWEEN**

**ROSSLYN SUITES LIMITED ..... PLAINTIFF**

**AND**

**BRITAM GENERAL INSURANCE COMPANY (K) LTD ..... 1<sup>ST</sup> DEFENDANT**

**ROKOH (K) CONSTRUCTION LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a Chamber Summons dated 6<sup>th</sup> October 2023, the 2<sup>nd</sup> Defendant sought to have this suit refer to arbitration. This Court in a ruling delivered on 31<sup>st</sup> October 2023 with reasons cited therein declined that Application and ordered that this suit proceeds to hearing as the principal Defendant is the 1<sup>st</sup> Defendant. In fact the prayers in this suit are against the 1<sup>st</sup> Defendant. Dissatisfied with that ruling, the 2<sup>nd</sup> Defendant filed an undated Notice of Appeal intending to file an Appeal to the Court of Appeal.
2. Thereafter it by a Notice of Motion Application dated 9<sup>th</sup> November 2023 sought a stay of further proceedings in this Court, pending filing, hearing and determination of the intended Appeal. The Application proceeded by way of written submissions.

**Determination**

3. The issue for determination in the Application, is whether this Court should under pursuant to Order 42 Rule 6 of the *Civil Procedure Rules*, stay the proceedings in this suit to await the said intended Appeal. I have considered the submissions by the parties' advocates, the applicable law and relevant legal principles regarding stay pending Appeal. I have also considered the fact of the intended Appeal being an interlocutory Appeal, as well as the need for the expeditious disposal of cases and the hitherto infamous backlog of cases that result from the parking of case files in the court registries.



4. From the material before me, and my earlier ruling in this matter, the Applicant has to meet the legal threshold for granting a stay of proceedings pending Appeal. It has failed to with particularly demonstrate the prejudice that will be suffered if this matter proceeds, as the Plaintiff's claim and cause of action herein is squarely against the 1<sup>st</sup> Defendant only, yet the arbitration the 2<sup>nd</sup> Plaintiff is clamouring for, can only be between it and the Plaintiff- with the 1<sup>st</sup> Defendant having nothing to do with it as it did never signed for it.
5. I still find as I did in my earlier ruling of 31<sup>st</sup> October 2023, that this suit is not a dispute that the Construction Contract between the Plaintiff and the 2<sup>nd</sup> Defendant has set for arbitration. It is a determination on the enforceability or otherwise of the Performance Security Guarantee provided by the 1<sup>st</sup> Defendant Britam Insurance Company Ltd (hereinafter referred to as Britam).
6. The main issues for determination in this suit are whether the said guarantee is enforceable, and whether Britam should be ordered to pay the Plaintiff's the money it guaranteed under the said guarantee. These are not issues that an arbitrator can determine as between the Plaintiff and the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant is not a party to the liability or indemnity claimed between the Plaintiff and the 1<sup>st</sup> Defendant. Besides, none of the prayers touches on the 2<sup>nd</sup> Defendant.
7. In consequence of the above analysis, the 2<sup>nd</sup> Application to stay these proceedings must fail, and I politely decline it. It is therefore hereby dismissed with costs. With a further consequence that this suit having been slated for hearing today, shall proceed. The 2<sup>nd</sup> Defendant is at liberty to pursue a stay from the Court of Appeal, now or after it files its intended Appeal.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2024.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

