



**Sehit Investments Limited v Onyango & 3 others (Civil Case
705 of 2009) [2024] KEHC 1217 (KLR) (Civ) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1217 (KLR)

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

**CIVIL
CIVIL CASE 705 OF 2009**

**FG MUGAMBI, J
FEBRUARY 9, 2024**

BETWEEN

SEHIT INVESTMENTS LIMITED PLAINTIFF

AND

JOSEPHINE AKOTH ONYANGO 1ST DEFENDANT

SIMON OTIENO 2ND DEFENDANT

SAVINGS & LOAN [K] LIMITED 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This ruling determines the Notice of Motion application dated 22nd September 2023, brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Order 42 rule 6, and Order 51 rule 1 of the Civil Procedure Rules. The 1st and 2nd defendants, who are the applicants, seek a stay of the proceedings in this suit, that is HCCC No. 705 of 2009 pending the hearing and determination of this application as well as pending hearing and determination of the Civil Appeal no. COA CA E783 of 2022 filed in the Court of Appeal.
2. The application is premised on the grounds on the face of it and the supporting affidavit sworn by Josephine Akoth Onyango, the 1st applicant.
3. It is the applicants' case that the plaintiff by a plaint dated 25th September, 2009 instituted the instant suit against the defendants concerning the illegal transfer of LR No. 1160/784. Vide a Notice of Motion dated 14th December 2021, the plaintiff sought orders to amend the plaint and the court in its ruling dated 14th October 2022 delivered by Hon Justice W.A. Okwany, allowed the plaintiff's application.



4. The applicants are aggrieved by the said ruling and have preferred an appeal in the Court of Appeal. They argue that unless a stay of proceedings is granted the current application and the appeal will be rendered nugatory.
5. In opposing the application, the plaintiff/respondent filed Grounds of Opposition dated 9th October, 2023 together with a replying affidavit sworn on the same day by Chris Mulwa, a director of the plaintiff. The plaintiff's case is that the intended appeal would not be rendered nugatory if the orders of stay are denied, that the application is not brought without unreasonable delay and that the applicants have not exhibited any exceptional circumstances to allow the application.
6. The plaintiff argues that the intended appeal is unarguable and raises no triable issues. The plaintiff prays that the Court finds that the current application is contrary to the overriding objectives for just, expeditious, proportionate and affordable resolutions of disputes.
7. The application was canvassed by way of written submissions. The 1st and 2nd applicant's submissions are dated 25th October, 2023 while the plaintiff filed written submissions dated 9th October, 2023. The 3rd and 4th defendants/respondents neither filed a response nor submissions as they took no position on the application.

Analysis

8. Upon careful consideration of the pleadings, submissions, and cited authorities, the sole issue for determination is whether this court should stay the proceedings in this case pending the hearing and determination of the interlocutory appeal.
9. Both parties referenced Order 42 rule 6 of the Civil Procedure Rules, 2010, as the governing provision outlining the conditions for granting a stay of proceedings. To succeed in such an application, the applicant must establish that the following three principles outlined in various authorities have been met, namely:
 - i. The application has been filed without delay.
 - ii. The intended appeal is arguable.
 - iii. The intended appeal, if successful, will render the ongoing proceedings nugatory.
10. The contested ruling was issued on 14th October 2022. The application for a stay of proceedings was filed nearly a year later, although the Notice of Appeal is dated 21st October 2022. The applicant contends that they intended to expedite the appeal, but faced delays. They have provided a certificate of delay, revealing that the application for typed proceedings and judgment was submitted on the same day the ruling was delivered, on 14th October 2022. The copies of proceedings were not made available to the applicant until 22nd August 2023. This delay prompted the application for a stay of proceedings, explaining the one-year delay in filing the application.
11. The applicants argue that the pivotal issue before the Court of Appeal pertains to the amendment of pleadings, and the decision's outcome significantly impacts the direction of the suit at the High Court. They assert that if proceedings are not stayed in the event the appeal succeeds, the ongoing suit will become futile and a waste of judicial time. Conversely, the plaintiff argues that the request for a stay of proceedings is tantamount to asking the court to sit in appeal over its own decision.



12. The high and stringent test for a stay of proceedings has been emphasized in legal precedents, such as *Global Tours & Travels Limited V Nairobi*, HC Winding Up Cause No. 43 of 2000. Judicial discretion is crucial, as was noted by the Court (Ringera, J), who stated that the decision should consider factors such as the need for expeditious case disposal, the merits of the intended appeal, the optimal use of judicial time, and the expeditious filing of the application for stay.
13. These factors were further elucidated by a 5-Judge bench in *William Odhiambo Ramogi & 2 Others V The Honourable Attorney General & 3 Others*, [2019] eKLR as follows:
 - i. There must be an appeal pending before the higher Court;
 - ii. Where such stay is sought in the Court hearing the case as opposed to the higher Court to which the appeal has been filed and there is no express provision of the law allowing for such an application, the applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - iii. The applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - iv. The applicant must demonstrate that the appeal would be rendered nugatory if the stay of proceedings is not granted;
 - v. The applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal;
 - vi. The applicant must demonstrate that the application for stay was filed expeditiously and without delay.
14. In light of the judicial pronouncements and statutory provisions I have cited, I am not convinced that the appeal will be rendered nugatory if proceedings are not stayed. I note from the Memorandum of Appeal that the appeal primarily challenges this court's decision to allow the amendment of the plaint. Even if the appeal were to succeed and the amended pleadings are expunged, the case would still have to proceed to its conclusion.
15. I concur fully with the sentiments of the court in *Turbo Highway Eldoret Ltd V Muniu*, (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) (30 June 2022) (Ruling). The Learned Judge observed that an appeal is not automatically rendered nugatory merely because the trial may proceed and a judgment on merits given, as such judgment is also subject to a potential stay.
16. Besides, I do also recognize that this case is longstanding, having been filed in 2009, with the hearing yet to commence 14 years later. Ordering a stay of proceedings would contradict the logical progression of the case.
17. Ultimately, the applicant has not provided a reason for not pursuing a stay of proceedings at the Court of Appeal, which is currently seized of the appeal, rather than at this court. Although there are no specific rules preventing the application from being made in the High Court, seeking it from the Court



of Appeal could prevent unnecessary trial delays. This is because the Court of Appeal is acquainted with its own caseload and as such, can tailor any orders it issues more effectively.

18. In conclusion therefore, I am of the view that granting orders for stay of proceedings in this case will only serve as an impediment to the expeditious disposal of the matter thereby occasioning prejudice to the respondent. In my view, it would serve the best interests of justice if the matter were to proceed.

Determination

19. For all the above reasons, the application dated 22nd September 2023 is dismissed with costs to the respondents. Top of Form

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 9TH DAY OF FEBRUARY 2024.

F. MUGAMBI

JUDGE

