



**Milly Logistics Limited v Karanja (Miscellaneous Application  
108 of 2024) [2024] KEHC 7073 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7073 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION 108 OF 2024  
RN NYAKUNDI, J  
JUNE 13, 2024**

**BETWEEN**

**MILLY LOGISTICS LIMITED ..... PLAINTIFF**

**AND**

**ANTHONY MWAURAH KARANJA ..... RESPONDENT**

**RULING**

1. Before me for determination is a notice of motion application dated 22<sup>nd</sup> March, 2024 expressed to be brought under the provisions of Section 18(1) (b) (i) of the [Civil Procedure Act](#), Sections 1A and 1B of the [Civil Procedure Act](#), Cap 21 Laws of Kenya and Order 51 Rule 1, Order 47 of the [Civil Procedure Rules](#) seeking reliefs as follows:
  - a. Spent.
  - b. That pending inter partes hearing of this application, this Honourable Court be pleased to order stay of proceedings in Eldoret SCCC No. E1038 of 2023 – Anthony Mwaurah Karanja vs Milly Logistics Limited.
  - c. That pending hearing and determination of this application, this Honourable Court be pleased to order stay of proceedings in Eldoret SCCC No. E1038 of 2023 – Anthony Mwaurah Karanja vs Milly Logistics Limited.
  - d. That this Honourable Court be pleased to remove and order the transfer of Eldoret Eldoret SCCC No. E1038 of 2023 – Anthony Mwaurah Karanja vs Milly Logistics Limited from the Small Claims Court at Eldoret to the Chief Magistrate’s Court at Eldoret for hearing and final determination.
  - e. That this Honourable Court be pleased to order the consolidation of Eldoret SCC No. E1038 of 2023 – Anthony Mwaurah Karanja vs Milly Logistics Limited and Eldoret CMCC No.



E047 of 2024- Milly Logistics Limited vs. Anthony Mwaurah Karanja which arise from the same cause of action for hearing and final determination.

- f. That this Honourable Court does make such other and further orders as it may deem fit, necessary and expedient in the interest of justice; and
  - g. That costs of this application be provided for.
2. The Application is anchored on 12 substantive grounds and a supporting affidavit sworn by Mohammed S. Rashid. The grounds have been reproduced as follows:
- a. The Applicant has been sued in the Small Claims Court in Eldoret SCCC No. E1038 of 2023 – Anthony Mwaurah Karanja vs Milly Logistics Limited, in a matter arising out of an accident that occurred between motor vehicle registration number KDK 379U/ZE 4656 and motor vehicle registration number KCC 212Q/ZC 1123 on 13<sup>th</sup> May, 2023.
  - b. In the Small Claims suit the Respondent herein claims the sum of Kshs. 846,000/= plus costs and interest from the Applicant.
  - c. The Applicant has filed a suit at the Eldoret Chief Magistrate’s Court, being Eldoret CMCC No. E047 of 2024 – Milly Logistics Limited v Anthony Mwaurah Karanja, in which the Applicant seeks to recover the sum of Kshs. 13,236,314/= plus costs and interest from the Respondent.
  - d. The two matters arise from the same set of facts and the same transaction and there is a risk that there might be two embarrassing outcomes on liability if determined by two different courts hence this application.
  - e. Motor vehicle registration number KDK 379U/ZE 4656 is owned by the Applicant herein while motor vehicle registration number KCC 212Q/ZC 1123 is owned by the respondent herein.
  - f. In the Small Claims suit, the Respondent herein is claiming for damages for the sum of Kshs. 846,000/= out of the aforesaid accident. The Applicant herein has already filed its reponse to the Statement of Claim and has a counter-claim of Kshs. 13,236,314/= which is above the pecuniary jurisdiction of the Small Claims Court. This is what has necessitated the Applicant to file a fresh suit before the Chief Magistrate’s Court.
  - g. The Applicant is apprehensive that the Small Claims Court case, slated for hearing on 2<sup>nd</sup> April, 2024, will proceed with the Claimant’s case to the detriment of the Applicant herein who has a counterclaim that will not be considered by the Small Claims Court for lack of jurisdiction.
  - h. The Small Claims Court timelines for hearing and determining cases are limited and there is a high possibility that the case in the Small Claims Court will be concluded before the case filed in the Chief Magistrate’s court is heard.
  - i. That once judgment is passed, the respondent may levy execution against the Applicant herein who does not have a chance with his counter-claim at the Small Claims Court.
  - j. The transfer, consolidation, hearing and determination ought to be done expeditiously taking into consideration the strict timelines of disposal of matters in the Small Claims Court.
  - k. It is therefore in the interests of justice that this application be heard to avoid a miscarriage of justice on the Applicant and the application be granted a hearing date on priority basis.



- h. The whole object of this application stands to be defeated/substantially prejudiced unless further proceedings in Eldoret SCCC No. E1038 of 2023 – Anthony Mwaurah Karanja vs Milly Logistics Limited are stayed pending the hearing and determination of this application.
- i. That this application has been brought and filed without undue delay.
3. In response to the application, the Respondent filed a replying affidavit sworn on 8<sup>th</sup> April, 2024. According to the Respondent, the application is misconceived and untenable in law for reasons that there are no sufficient reasons given to justify the stay of proceedings in Eldoret SCCC No. E1038 of 2023. That the Applicant’s misunderstanding of the test suit renders the application frivolous and vexatious causing unnecessary delay and expense.
4. That the applicant is misguided on instances when proceedings are stayed hence the application is merely intended to delay the conclusion of Eldoret SCCC No. E1038 of 2023 and thereby obstructing the course of justice.
5. The respondent further averred that stay of proceedings in the Small Claims Court awaiting conclusion of Eldoret CMCC No. E047 of 2024 will lead to inefficient use of Limited judicial resources and will be a bottleneck to the expeditious conclusion of the matter. That the stay of proceedings is an affront to the overriding objectives of the *Civil Procedure Act* and the Spirit of the *Small Claims Court Act*.
6. It was the Respondent’s averment that the application has been overtaken by events as the matter before the Small Claims Court has proceeded and the same is pending for defence hearing on 24<sup>th</sup> June, 2024. That the applicant is guilty of inordinate delay as they were duly served with copies of first mention and statement of claim on 8<sup>th</sup> November, 2023 but chose to fold their hands until the matter was set down for hearing on 2<sup>nd</sup> April, 2024.
7. Finally, the Respondent posited that the maxim of equity demands that equity aids the vigilant and not the indolent. The applicant herein has not given any reasons for the delay in filing this application almost 5 months upon service and being fully cognizant of the stringent timelines in the Small Claims Court. That it is trite law that Sections 1A and 1B of the *Civil Procedure Act* should be used to aid a litigant that has slept on their rights or one that has been indolent.
8. Finally, the Respondent averred that in the event the application is allowed and the orders sought granted the respondent will be greatly prejudiced since his right to access justice and fair hearing will be derogated.
9. The parties filed submission in support of their cases. The Applicant in supporting the application couched two issues for determination; whether the applicant has established sufficient cause to the satisfaction of the court, that it is in the interest of justice to grant the orders sought; what any or such orders as it may deem fit, necessary and expedient in the interest of justice can the honourable court make, in this scenario to meet the overriding objective and avoid a miscarriage of justice.

On the first issue, the applicant argued that it has sufficiently demonstrated the need for stay of the proceedings in Small Claims suit No. SCC No. E1038 of 2023. The parties herein are faced with two conflicting scenarios. That while the respondent is claiming an amount of Kshs. 846,000/= in his suit at the Small Claims Court, the applicant has filed a counter-claim to the tune of Kshs. 13,236,314/= plus costs and interest that is above the pecuniary jurisdiction of the small claims court. The applicant contended that the Respondent has filed another suit in the Chief Magistrate’s court being Eldoret CMCC No. E047 of 2024 – Milly Logistics Limited vs. Anthony Mwaurah Karanja. That these two matters arise from the same cause of action and the same set of facts and there is there is a likelihood that one may be heard and concluded before another.



On the second issue, the Applicant submitted that the whole object of this application stands to be defeated/substantially prejudiced if further proceedings in Eldoret Sccc No. E1038 of 2023 – Anthony Mwaurah Karanja vs Milly Logistics Limited are stayed. Further that the whole object of the Magistrate’s Court suit Eldoret CMCC No. E047 of 2024 will be rendered nugatory and an academic exercise if the Small Claims suit is allowed to proceed.

The applicant finally submitted that since the overriding objective aims, inter alia, to facilitate the just, expeditious, proportionate, and affordable resolution of the civil disputes governed by the Act, the balancing of the parties’ interest is paramount in an application for stay of proceedings.

The Respondent on his part made submissions to the effect that the decision to grant a stay of proceedings is a matter of judicial discretion, which is exercised after careful consideration of its impact on the administration of justice. On this he cited the decision in [Kenya Wildlife Service v James Mutembei](#) [2019] eKLR.

He further submitted that that the Applicant’s suit in the Eldoret Chief Magistrate’s Court, does not qualify to be selected as a test suit. On this he relied on the case of [Kubai Kithinji Kaiga \(suing as the Legal representative of the Estate of John Kaiga \(deceased\) v Kenya Wildlife Service](#) [2021] eKLR. To this end, he submitted that the application dated 22<sup>nd</sup> March, 2024 should be dismissed with costs to the Respondents.

#### DIVISION - Decision

10. I have read through and considered the application, the response and submissions and the two issues I find for determination are:
  - a. Whether the applicant ought to be granted the relief for stay proceedings in Eldoret SCCC No. E1038 of 2023 – Anthony Mwaurah Karanja vs Milly Logistics Limited.
  - b. Whether this court can its judicial discretion to transfer Eldoret SCCC No. E1038 of 2023 – Anthony Mwaurah Karanja v Milly Logistics Limited from the Small Claims Court at Eldoret to the Chief Magistrate’s Court at Eldoret for hearing and determination.
11. The conditions of granting stay of proceedings have been specified under Order 42 Rule 6(1) of the [Civil Procedure Rules](#) which stipulates:

“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.
12. Therefore, in granting the orders as to stay of proceedings, the court takes into account conditions that have been set in Order 42 of the [Civil Procedure Rules](#). The power as to grant the said order or not is discretionary. That power ought to be exercised judiciously.



13. 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”.

14. In the *Kenya Wildlife Case (Supra)*, Gikonyo J quoted *Halsbury's Law of England, 4th Edition*. Vol. 37 page 330 and 332, 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”.

15. In the case of *David Morton Silverstein vs. Atsango Chesoni (Supra)*, the Court of Appeal citing *Kenya Commercial Bank Ltd vs. Benjob Amalgamated Ltd & Another* [1998] e KLR held that it is not the law that a stay of proceedings cannot be granted but that each case depends on its own facts.
16. The foregoing authorities have put forth the principles that stay of proceedings is a serious matter that should only be entertained in the most deserving cases for reasons that it impacts on the right to an expeditious trial. The discretionary power is exercised by the court upon considering the circumstances of the case.
17. In the present case, one unique issue presents itself. The Applicants contend that there are two suits which have been filed in different courts owing to their pecuniary jurisdiction but the said suits arose out of the same transaction and there is a risk that there might be two embarrassing outcomes on liability if determined by two different courts.
18. The power of the high court to withdraw and transfer cases instituted in more than one court or in the subordinate court is provided for under Section 17 and 18 of the *Civil Procedure Act*

“17. Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice



to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.

- (18) on the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High court may at any stage:
- (b) withdraw any suit or other proceedings pending in any court subordinate to it, and thereafter –
    - (i) try to dispose of the same; or
    - (ii) Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same
    - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

19. In conclusion, the court exercises its power and discretion under Section 18 of the *Civil Procedure Act* to transfer SCC E1038 of 2023 and have it consolidate with CMCC E047 of 2024 to avoid multiplicity of suits involving same parties and correlated subject matter as deduced from the application. The suit pending in SCC E1038 of 2023 be and is hereby withdrawn and its hearing and determination be consolidated and sent to the chief magistrate’s court for hearing and determination.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 13TH DAY OF JUNE 2024**

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**R. NYAKUNDI**  
**JUDGE**

