



Trans Africa Energy Limited & another v Alten Renewable Energy Developments Africa, BV & another; Standard Bank of South Africa Ltd & 2 others (Objector) (Civil Suit E023 of 2023) [2024] KEHC 8538 (KLR) (15 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8538 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E023 OF 2023
RN NYAKUNDI, J
JULY 15, 2024**

BETWEEN

TRANS AFRICA ENERGY LIMITED 1ST PLAINTIFF

KENSID SOLAR SYSTEMS LIMITED 2ND PLAINTIFF

AND

**ALTEN RENEWABLE ENERGY DEVELOPMENTS AFRICA,
BV 1ST DEFENDANT**

ALTEN KENYA SOLAR FARMS BV 2ND DEFENDANT

AND

THE STANDARD BANK OF SOUTH AFRICA LTD OBJECTOR

STANBIC BANK KENYA LTD OBJECTOR

THE EMERGING AFRICAN INFRASTRUCTURE FUND LTD OBJECTOR

RULING

Representation:

M/s Nyachoti & Company Advocates

M/s Kaplan & Stratton Advocates

M/s Iseme, Kamau & Maema

1. There are two oral applications in this matter pursuant to the delivery of the ruling by this court by Wananda J. on 24th June, 2024, together with the initial judgment delivered on 8th February, 2024. The gist of the applications is hinged on stay of proceedings as they relate to the above decisions.



2. Learned counsel for the defendants Mr. Rao submitted as follows:
 - a. That this court grants leave to appeal against the judgement and also an interim stay of ruling pending an application before the Court of Appeal.
 - b. Counsel further prayed that the stay operates as stay o the interlocutory judgment as well as a stay of proceedings pending filing of a formal application before the Court of Appeal. He also made a prayer for a copy of proceedings and the Ruling.
3. On the 2nd Limb, Learned Counsel Mr. Nyachoti for the Plaintiffs contested the prayer for interim stay pending filing of an application at the court of appeal for reasons that in the ruling of the court, the prayer for execution and stay of proceedings were duly dismissed in the instant ruling that was read to the parties.

Decision

4. Generally speaking, any application addressing stay of execution or proceedings in a substantive suit pending the outcome of an appeal is premised under Order 42 Rule 6(1) of the Civil Procedure Rules. On the face of it from the oral submissions, there is no formal application to address the condition precedent outlined in the premised provisions. The principles governing the grant of stay of executions of proceedings have been established by a line of judicial decisions such as James Wangalwa & Another versus Agnes Naliaka Cheseto (2013) eKLR, Machira T/A Machira & Co. Advocates versus East Africa Standard (No. 2 (2002) 2 KLR 63, Onesmus Mburu Njuguna versus Samson Kitire Kuna (2007) eKLR, Turbo Transporters Ltd versus Absalom Dova Lumbasi (2012) eKLR, Northwood Service Ltd V Mac & More Solution Ltd (2015) eKLR and Stephen Wanjohi v Central Glass industries Ltd, Nairobi High Court Civil Case No. 6796 of 1991.
5. The major principles upon which the court can exercise its discretion to grant stay of proceedings pending appeal are as follows:
 - a. There must be a pending appeal;
 - b. The appeal must be competent and arguable on its merits;
 - c. A stay of proceedings will be granted to preserve the Res;
 - d. Where a stay of proceedings will cause greater hardship that when it is refused, the court will not grant it;
 - e. Where a stay is likely to render the rights sought to be protected null void it will be refused.
 - f. Sufficient cause
 - g. Substantial loss
 - h. No unreasonable delay
 - i. Security.
6. Applying the foregoing principles to the present oral application, the strongest consideration appears to be on the principle of jurisdiction as a ground of appeal. The ruling which the applicants are seeking leave to appeal and stay of further proceedings is on the jurisdiction of this court to entertain the suit. I bear in mind that the issue of jurisdiction is fundamental to every suit. However, I must point out that that it is not the law that once jurisdiction is raised the court must grant an application staying



proceedings. The controversy on the jurisdiction of this court was determined vide the ruling dated 8th February, 2024.

7. The second application filed by the defendant/ applicants was also in line to that question of jurisdiction in seeking to set aside the interlocutory judgment. Having made the pronouncements as the court did, I will welcome all judicial pronouncements from the apex court on the matter to shed some light on this vexed subject in so far as the defendants/applicants are concerned. It also follows that with regard to the learned counsel for the Plaintiffs, the fine line of seeking relief on stay is on being aggrieved with the stay granted to the objector in exercise of discretion by this court. That to me is an evidential threshold which ought to be canvassed by notice of motion and an affidavit in support.
8. In the first instance, with regard to the defendant's application from the factual matrix of their oral application, I am persuaded that Section 7 of the *Civil Procedure Act* and on the doctrine of Res Judicata may be invoked on the strength that this is a re-litigation between the same parties on the same cause of action. The oral application on stay essentially as contained by the applicants was the re-opening of particular points which were raised in the previous applications which specifically determined the interlocutory issue between the parties to this suit.
9. In my considered view, any subsequent litigation between the Plaintiffs and defendants on any cause of action depended upon the fulfilment of the jurisdiction this court to have entertained the suit to that extent lies wholly in the next superior court. It is implicit from the impugned ruling on setting aside the interlocutory judgment, the efforts to revisit jurisdiction by the applicant was unsuccessful.
10. The present oral application plainly requires this court to examine the application afresh and exercise its original jurisdiction to grant the reliefs sought. Therefore, any such application must be tested within the parameters of Order 42 Rule 6(1) of the Civil Procedure Rules. I am also not convinced by the applicant's contention that leave is required to entitle them a right of appeal to the next forum commonly known as the Court of Appeal. It is to be remembered that by dint of *the Constitution* and *Civil Procedure Act*, the applicants have a right to appeal arising out of the grievances on the decisions of this court. In these circumstances, the applicants have a right to appeal as prescribed by the provisions in the applicable statute.
11. On the other hand, counsel for the Plaintiff argued for leave to appeal in so far as the findings of the court were in the ruling dated 24th June, 2024. So the facts of this instant oral application was actually submitted as the ground work of the decision itself at an opportune when this court's jurisdiction is appropriately invoked within the framework of our procedural law.
12. In trying the questions, I believe being agitated by learned counsel for the Plaintiffs, the court requires that a formal application be filed to bring forward the whole case. It is therefore obvious from both learned counsel that what is contemplated in their oral submissions is for the court to exercise its discretion for temporary preservation of the rem pending formal applications. The issues formulated by the parties but couched in different words are hotly contested. I bear in mind also that a court cannot be bound by a previous decision to exercise its discretion in regimented way because it will be as it were putting an end to discretion.
13. In the broad conceptual approach, the greater precision of this competing interests arising in part on the trajectory raised by the defendants/ applicants and on the other hand, the issues being advanced by learned counsel for the Plaintiffs, the limitation device is to exercise discretion grant temporary stay of 21 days that may generate novel applications that may answer these two questions in the right forum on the merits. That therefore means, the sketchy oral submissions before the session forum presided over by Wananda J is not sufficient to render a judicious decision to resolve the complexity of the matter.



DATED, SIGNED AND DELIVERED AT ELDORET THIS 15TH DAY OF JULY 2024

In the Presence of

Mr. Nyachoti Advocate for the Plaintiff.

Mr. Rao Advocate for the Defendant

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R. NYAKUNDI

JUDGE

