



REPUBLIC OF KENYA



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**Maersk Kenya Limited v Multiplan Packaging Limited (Civil Appeal E181 of 2022)
[2023] KEHC 2412 (KLR) (Commercial and Tax) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E181 OF 2022
A MABEYA, J
MARCH 23, 2023**

BETWEEN

MAERSK KENYA LIMITED APPELLANT

AND

MULTIPLAN PACKAGING LIMITED RESPONDENT

RULING

1. Before me is the application dated December 8, 2022 brought to Court pursuant to sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act 2010* and Order 42 Rule 6, Order 51 rule 1 of the *Civil Procedure Rules 2010*.
2. The application sought for stay of proceedings in CMCC No 8770 of 2021 Multiplan Packaging Limited v Maersk Kenya Limited and costs of the application.
3. The application was based on the grounds set out on the face of the application and in the affidavit sworn by Natasha Nyakerario Gichuki. It was the appellant's case that it had filed an application for striking out the suit for want of jurisdiction. However, the trial court dismissed the same thus the basis for this appeal.
4. That it would be a waste of judicial time to allow the proceedings in the lower court to proceed because the issue in question was with respect to jurisdiction which had the effect of disposing the suit in its entirety. That the appeal would be rendered nugatory if the proceedings were allowed to proceed at the lower court.
5. The application was opposed by the respondent vide a replying affidavit dated January 30, 2023 sworn by Michael Kingara who is the Managing Director of the respondent. He stated that the dispute in the lower court was a result of business transactions between the parties and it was yet to be determined.



- He contended that the order for stay of proceedings was grave and it would prejudice the respondents' right to justice. He observed that the appellant had not demonstrated that the circumstances of the case were in favour of the orders sought and that the appellant had already complied with the orders of the court.
6. He further averred that the appellant could prosecute the appeal while the proceedings in the lower court were still ongoing. That the respondent would be highly prejudiced as the appellant would still continue charging demurrage charges.
 7. The appeal was canvassed by written submissions which I have considered. The appellant submitted that the appeal was arguable and had high chances of success and it would be in the interests of justice to allow it. It was submitted that the application was filed expeditiously and since the appeal was on the issue of jurisdiction, the application ought to be allowed.
 8. On the other hand, the respondent submitted that the present application was filed six weeks after the ruling was delivered and there was no reason placed before the Court for the delay. That the appellant failed to demonstrate exceptional circumstances that would warrant the grant of the orders for stay of proceedings.
 9. I have carefully considered the Motion, the submissions made and the authorities cited. The question for determination is whether the applicant has demonstrated sufficient reasons for stay of proceedings pending the hearing and determination of the appeal.
 10. In *Re Global Tours & Travel Ltd HCWC No 43 of 2000* Ringera, J observed 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 case, 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.'
 11. The applicant's case is premised on the fact that, the Bill of Lading had conferred upon the High Court of London the jurisdiction to hear and determine the dispute between the parties. It was contended that, by virtue of clause 26 of the terms of carriage, the trial court lacked jurisdiction to determine the dispute. The appellant therefore faulted the trial court for failing to strike out the suit and observed that the appeal would be rendered nugatory if the application was not allowed.
 12. In its response, the respondent submitted that the appellant had complied with the orders of the court despite challenging the jurisdiction. That the respondent's right to a fair trial would be curtailed if the orders for stay of proceedings were granted. That the appellant would continue holding the respondent's goods and it would be subjected to storage/demurrage charges.
 13. In *Kenya Wildlife Service vs James Mutembei (2019) eKLR*, Gikonyo J held that: -

' Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It infringes on the right of access to justice, right to be heard without



delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent'.

14. In *Halsbury's Law of England, 4th Edition Vol 37* page 330 and 332, the Learned writers observe 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.'
15. In view of the foregoing, suffice it to state that stay of proceedings ought to be ordered sparingly based on the circumstances of each case. An applicant has to demonstrate sufficient cause and or reasonably compelling reasons if not special circumstances as to why the court should exercise its discretion and stop proceedings.
16. I have perused the Memorandum of Appeal dated November 24, 2022. The grounds upon which the appeal is based relate to matters of jurisdiction and interpretation of the contract between the parties.
17. While I appreciate that the appellant has an arguable appeal and that it was filed timeously, I find that the appellant has not given compelling reasons and special circumstances as to why the proceedings in the lower court should be stayed. I appreciate that matters jurisdiction goes to the core of a suit but driving a party peremptorily from the seat of justice is a serious and grave issue. It requires special circumstances to do so. I see no special circumstances here.
18. In any event, it was averred that were the orders to be given, the applicant will continue to hold onto the goods of the respondent and continue to charge storage and demurrage charges thereby eroding the value of the said goods. The applicant did not respond to that assertion and neither did it offer to release the goods and thereby obviate the mischief alluded thereto.
19. Accordingly, I find that the application lacks merit and I dismiss the same with costs.

It is so ordered.

DATED and DELIVERED at Nairobi this 23rd day of March, 2023.

A. MABEYA, FCI Arb

JUDGE

