



Manchester Outfitters Suiting Division Now Called King Woolen Mills Ltd & another v Standard Chartered Financial Service Limited & another (Civil Case 340 of 2006) [2023] KEHC 4014 (KLR) (Commercial and Tax) (8 May 2023) (Ruling)

Neutral citation: [2023] KEHC 4014 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 340 OF 2006**

A MABEYA, J

MAY 8, 2023

FORMERLY HIGH COURT CIVIL SUIT NO 5002 OF 1990

BETWEEN

**MANCHESTER OUTFITTERS SUITING DIVISION NOW CALLED KING
WOOLEN MILLS LTD 1ST PLAINTIFF
GALOT INDUSTRIES LTD 2ND PLAINTIFF**

AND

**STANDARD CHARTERED FINANCIAL SERVICE LIMITED . 1ST DEFENDANT
A.O GREGORY C.D CAHILI 2ND DEFENDANT**

RULING

1. On May 24, 2023, this Court dismissed two applications by the firms of Odera Were Advocates and Kenyatta Odiwuor & Co, Advocates seeking leave to come on record for the 2nd and 1st plaintiffs respectively.
2. The said firms have now come back to Court vide Notices of Motion dated April 4, 2023 and March 27, 2023, respectively. In those applications, they both seek leave of Court to appeal that decision to the Court of appeal and stay of proceedings pending the said appeal. The applications were expressed to be brought, *inter alia*, under Order 42 Rule 6 of the Civil Procedure Rules and Article 50 of the Constitution of Kenya.
3. The grounds for the said Motions were set out in their bodies and in the supporting affidavit of Pravin Galot and Rajesh Galot. These were that; their respective applications had been dismissed by this Court. That the former Advocate on record Meshack Odera was working for Pravin Galot who was



- paying his salary until he died. That the 2nd plaintiff would be highly prejudiced if the application was not allowed.
4. It was further contended that the intended appeal raised weighty matters which require to be given an opportunity of being heard. That with the dismissal of the aforesaid applications Mohan Galot had become the sole authority on all matters relating to the plaintiff to the exclusion of all other directors. That the said Mohan might deal with the proceeds of any judgment to be obtained as he may wish. That the 1st plaintiff stands to suffer irreparable harm and damage if the orders sought are not granted.
 5. The applications were opposed vide a replying affidavit of Mohan Galot sworn on April 14, 2023. He averred that he had been confirmed by the Supreme Court as the one having mandate to appoint advocates for the plaintiff and he applicants had acknowledged that fact. That the intended appeal has no chances of success.
 6. That the applicants had not demonstrated how they will suffer substantial loss if the stay sought is not granted. That the application had not the criteria set by law for grant of a stay of proceedings. That the application was an attempt to disrupt the proceedings on assessment of damages for ulterior motives and purposes.
 7. All the parties filed submissive which I have carefully considered. This is an application for leave to appeal and for stay of proceedings pending appeal.
 8. The applicable principles are that a party should demonstrate that there is a serious issue to be urged before the Court of Appeal. As regards stay, a party must demonstrate that he shall suffer substantial loss if stay is not granted, the party should offer security in addition to the application being made timeously.
 9. On leave, I have seen the proposed grounds of appeal. The issue is whether in the circumstances of this case as follows: -
 - a). this is a 33-year-old case,
 - b). Under Article 159 of the Constitution, expeditious determination of justice is called upon,
 - c). the advocates representing the plaintiffs, who represented them on appeal could continue to do so in this Court,
 - d). the conduct of the parties the Court was right in allowing the firm of Nyachoti & Company Advocates to continue representing the plaintiffs.
 10. I believe that the intended appeal is arguable but it will be good to let the Court of Appeal scrutinize those issues and render itself for the ends of justice. I will grant the leave sought.
 11. As regards stay of proceedings, there was nothing in the supporting affidavit that was said to show that the applicants had brought themselves within the four corners of Order 42 Rule 6 of the Civil Procedure Rules.
 12. I admit that the applications were made timeously. As regards substantial loss, nothing was offered to demonstrate that fact. The plaintiffs are represented by a competent firm of advocates. It must be recalled that it is the same firm that that represented the plaintiffs in the Court of Appeal that ended up overturning the Judgment of this Court. It is the same firm that continue to represent the plaintiffs. There was no allegation that the plaintiffs would not have legal representation. Accordingly, no substantial loss was demonstrated.



13. As regards security, none was offered. The Court cannot speculate on the same as it was neither pleaded nor submitted.
14. I would like however to comment on the effect of granting the stay sought, I have already said that the case is one of the oldest in this Court. It has been in the Court Corridors for now 33 years. Article 159 (2) decree that justice should be given without delay. The Court is not a parking place for disputes. The earlier disputes are properly determined the better.
15. At this juncture, I will echo the words of Ringera J in *Global Tours & Travels Ltd* (NBI HC Winding up Cause No 43 of 2000 (UR) wherein he stated: -

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings or a decree or order appealed from is a matter of Judicial discretion to be exercised in the interests of justice. The sole question is whether it is in the interests of justice to order a stay of proceedings and if it is, or 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”.
16. In the present case, I have found that the intended appeal is not arguable. The case is too old to continue being a statistic in the Judiciary’s records. The plaintiffs are represented by a competent firm of advocates who have represented them hitherto in the Court of Appeal. The plaintiffs cannot be said that they will be without legal representation. To my mind, there arises no need of having to stay the current proceedings.
17. In the premises, I find that the applications are partially successful. Leave to appeal is granted. The prayers for stay of proceedings is dismissed. Each party to bear own costs.
18. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MAY, 2023.

A MABEYA, FCIArb

JUDGE

