



REPUBLIC OF KENYA



**Mark Properties Limited (In Administration) v Globe Developers Limited (Arbitration Cause E001 of 2022) [2023] KEHC 20408 (KLR) (Commercial and Tax) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20408 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
ARBITRATION CAUSE E001 OF 2022  
JWW MONG'ARE, J  
JULY 17, 2023**

**BETWEEN**

**MARK PROPERTIES LIMITED (IN ADMINISTRATION) ..... APPLICANT**

**AND**

**GLOBE DEVELOPERS LIMITED ..... RESPONDENT**

**RULING**

1. On May 19, 2023 the Applicant/judgment debtor moved the court seeking the following orders;
  1. Spent
  2. SpentAnd/or
  3. Pending the hearing of this Application, the Honourable Court be pleased to stay any further proceedings in this matter.
  4. Spent
  5. Pending the hearing and determination of the Applicant's application filed in the Court of Appeal for leave and stay of execution dated May 2, 2023 this Honourable Court be pleased to issue an Interlocutory Order staying the adoption of the Arbitral Award issued by Eng Oliver C W Khabure CE. FCIArb dated December 12, 2021 as adopted by the Ruling and Orders of the High Court dated by Mongare J dated April 27, 2023 and delivered on May 2, 2023.
  6. Pending the hearing and determination of the Applicants application filed in the Court of Appeal for leave and stay of execution dated May 15, 2023 this Honourable Court be pleased to stay any further proceedings in this matter.



7. That costs of this application be provided for.
2. The application is supported by the grounds set on its face and the supporting affidavit sworn by Imraani Kasmani. The application is opposed. On 27/4/2023 the Honourable Court while enforcing the Arbitral Award in the present suit simultaneously dismissed an application to set aside the same that was filed by the Applicant in the present application.
3. In its decision, the court considered the two applications and made its decision, allowing the said application to recognise the arbitral award herein and enforce it as an order of the court in line with the *Arbitration Act*, upon due considerations of the issues raised therein and the parties submission before it. Simultaneously and having considered the application seeking to set aside the arbitral award, the court decided and dismissed the said application that sought to set aside the Arbitral Award.
4. During the hearing of this application before this court, it was submitted that an application similar to the one before this court, being Civil Appeal No. E193 of 2023-Globe Developers Limited v Mark Properties Limited (in Administration) was filed before the Court of Appeal and the same duly considered by the said court and a decision thereof was rendered. The Respondent argued, correctly, that the arbitral proceedings lasted over three years from inception to award and that any further delay in the matter is prejudicial to the Respondent who have an expectation of realizing the fruits of their award.
5. I have carefully considered at length the submissions by the Applicant and the issues raised therein. I have considered similarly the submissions by the Respondent herein. I note that what the Applicant is seeking before this court is to stay the proceedings before it and allow the Applicant time to file and argue an appeal before the Court of Appeal. At the moment, there is no appeal properly filed in the Court of Appeal annexed to this application and no order from the Court of Appeal staying the proceedings before this court.
6. Further, I have considered the draft Memorandum of Appeal and the grounds raised therein. The grounds raised there in my view I am not persuaded that the same raises a prima facie case with high chances of success. Similarly, and as it relates to the application for stay of proceedings before this court, I note that the grounds that the Applicant seeks to rely on in canvassing this application are to a large extent the same that were raised in the application that sought to set aside the award, to which I decided and hence rendering this court *functus officio* on the said subject matter.
7. Further and in addition to the above, it is my view that there is no appeal filed at the moment by the Applicant to warrant the orders of stay as sought in the application before me and in any event, the Applicant has already moved to the Appellate court seeking the same orders, it is only proper that all other applications herein relating to the decision emanating from this court and dated 27/4/2023 be canvassed and determined at that level.
8. In view of the above findings, I hold and find that the said application lacks merit and is hereby dismissed. The Applicant is at liberty to pursue the said prayers in the Court of Appeal, where the Applicant has already filed a similar application. Each party shall bear its own costs of this application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF JULY 2023**

**J. W. W. MONG'ARE**

**JUDGE**

