



**East Meat Supplies Limited v Nunow (Civil Appeal E025 of 2023)
[2023] KEHC 22505 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22505 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E025 OF 2023
GMA DULU, J
SEPTEMBER 21, 2023**

BETWEEN

EAST MEAT SUPPLIES LIMITED APPELLANT

AND

ABDI MOHAMED NUNOW RESPONDENT

RULING

1. Before me is an application dated June 14, 2023 filed under Order 42 Rule 6 and Order 5 rule 1 of the [Civil Procedure Rules 2010](#) by the appellant/applicant through counsel Edam Associates Advocates.
2. The application has several prayers, some of which have been spent as follows:-
 1. (Spent).
 2. (Spent).
 3. Pending the hearing and determination of this appeal, the court be pleased to stay all the proceedings in the lower court specifically the taxation of the respondents Bill of Costs dated March 21, 2023 and the Ruling herein slated to be delivered on July 4, 2023 arising from the Ruling of Hon A M Obura (Mrs) delivered on June 8, 2022.
 4. That under supervisory jurisdiction of the High Court over subordinate courts, the proceedings, file and records of all rulings in respect of Voi CMCC E141 of 2022 be moved to this court to aid in the determination of the appeal.
 5. That the lower court be ordered to supply the appellant with copy of the said ruling having written to it requesting for a copy of the ruling in vain.
 6. Costs of this application be provided for.



3. The application has grounds on the face of the Notice of Motion, that the Magistrate's court on June 8, 2023, struck out the applicant's application seeking to set aside the proceedings, judgment and consequential orders in Civil Suit No E141 of 2022 Abdi Mohamed Nunow =Versus= East Meat Supplies Ltd, that the applicant has appealed against the said ruling, that a ruling on the Bill of Costs was slated for delivery on July 4, 2023, and that the consequence of the ruling might trigger execution which will render the appeal nugatory.
4. The application was filed with a supporting affidavit sworn on July 14, 2023 by Meshack Mwau Mulevu a director of the appellant which amplifies the grounds of the application and adds that the applicant had already been condemned to pay costs of Kshs 50,278.20.
5. The said Meshack Mwau Mulevu also filed a supplementary affidavit he swore on June 24, 2023 in response to the replying affidavit of the respondent sworn on June 26, 2023.
6. The application is opposed through a replying affidavit sworn by Abdi Mohamed the respondent on June 26, 2023 in which it was deponed that the application is fatally flawed, defective, misconceived and incompetent.
7. It is also deponed in the said affidavit that the applicant had not specifically prayed for stay of execution of the judgment and or orders of 1st December 2022, that the applicant had not met the requirements of Order 42 Rule 6 of the Civil Procedure Rules, and that judgment had already been entered for Kshs 16,737,520/= plus costs and interest.
8. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Edam & Associates Advocates for the appellant, as well as the submissions filed by Garane & Somane Advocates for the respondents. Both sides relied on decided court cases.
9. I note that in this matter a judgment was delivered by the Magistrate's court on December 1, 2022 in an undefended suit in favour of the respondent who was plaintiff in Voi CMCC No E141 of 2022 and awarded Kshs 16,737,520/ for sale of cattle, costs and interest. That judgment was not appealed from.
10. The appellant/applicant however, filed an application dated May 5, 2023 seeking to set aside the exparte judgment, which was dismissed on June 8, 2023. The appellant/applicant filed an appeal against the ruling.
11. The appellant/applicant has now come to this court through the present application seeking stay of the ruling in the Bill of Costs application, whose ruling was scheduled to be delivered on July 4, 2023 and also stay of any proceedings in the Magistrate's court pending the appeal which he has filed against the ruling delivered on June 8, 2023.
12. This being an application for stay of execution, and stay of proceedings, it is governed by the provisions of Order 42 Rule 6 of the Civil Procedure Rules.
13. The broad considerations to be taken by a court in determining an application for stay of proceedings were highlighted by Ringera J, as he then was, in the case of *Global Tours & Travels Ltd – Nairobi Winding Up Cause No 43 of 2000* wherein the learned Judge stated as follows:-

“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 interests of justicethe sole question being whether it is in the interest of justice to order a stay of the proceedings, and if so on what terms it should be granted.”



14. In coming to this court, the appellant/applicant had filed a Memorandum of Appeal dated June 14, 2023, which was filed on June 19, 2023. He later filed an amended Memorandum of Appeal on June 27, 2023 together with a supplementary affidavit, but there is no record that he was granted leave by the court to file an Amended Memorandum of Appeal.
15. In my view however, this application for stay orders is merited, as the applicant has not been able to be heard in the trial where judgment was delivered ex-parte, and additionally he has sworn under paragraph 6 of his supporting affidavit that the court has not provided him with the ruling as follows:-
 - “6. That despite numerous formal requests to be supplied with the ruling to enable us study it further, the court is yet to favour us with a copy of the ruling (attached and marked MMM 1 are copies of letters attesting as much).”
16. Having seen and perused the two letters under reference, I am persuaded that indeed the applicant has formally requested to be supplied with copy of the ruling but the court has not done so, which in my view denied him a chance to adequately pursue his legal rights.
17. The trial court being a court of justice cannot be justified in withholding necessary documents from a party, and then proceed to further hear and make decisions in the same matter. Such conduct in my view, amounts to denial a party of the rights to fair hearing enshrined in Article 50 of the Constitution.
18. On that account alone, I allow the application and order as follows:-
 - i. Pending the hearing and determination of this appeal this court do hereby grant stay of all proceedings of the lower court herein specifically the taxation of the respondents Bill of Costs dated March 21, 2023 and the intended ruling therein slated to be delivered on July 4, 2023.
 - ii. That the lower court be and is hereby ordered to forthwith supply the appellant with a copy of the ruling of June 8, 2023 having written to it requesting for a copy of the said ruling in vain.
 - iii. I order that the subordinate court file and proceedings in Voi CMCC E141 of 2022 be availed to this court on the mention date hereunder. The Deputy Registrar is ordered to call for the trial court file (but excluding the pending ruling).
 - iv. The costs of the application will be on the cause.
 - v. Mention on October 16, 2023 for further directions.

DATED, SIGNED AND DELIVERED THIS 21ST DAY OF SEPTEMBER 2023 AT VOI VIRTUALLY IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of:-

Nusura/Alfred – court assistants

Mr. Abdullahi for respondent

