



Intra Africa Assurance Co Ltd v Amuye (Suing on behalf of Dennis Mutiso Amuye (Deceased) & 3 others (Civil Appeal E127 of 2022) [2023] KEHC 23748 (KLR) (6 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23748 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E127 OF 2022
REA OUGO, J
OCTOBER 6, 2023**

BETWEEN

INTRA AFRICA ASSURANCE CO LTD APPLICANT

AND

**JOSEPH BLAME AMUYE (SUING ON BEHALF OF DENNIS MUTISO AMUYE
(DECEASED) 1ST RESPONDENT**

CHAIRMAN BOARD OF MANAGEMENT 2ND RESPONDENT

SECRETARY BOARD OF MANAGEMENT 3RD RESPONDENT

FRIENDS SCHOOL KAMUSINGA 4TH RESPONDENT

RULING

1. Before me is an application dated the 9th February 2023, the appellant /applicant is seeking an order of stay of proceedings in Sirsia PMCC No 42 of 2018 pending the hearing and determination of the appeal. He claims that he has been erroneously enjoined to the suit vide a consent dated 23rd March 2017 without its approval and or consent since the application for rejoinder was never served upon the appellant. That the lower court dismissed his application with cost. That aggrieved by the said ruling he appealed to the High Court vide Bungoma HCCA E073 of 2022 against the said decision. That despite the matter pending in the High Court the lower court delivered its ruling disallowing the application. That its appeal raises very serious issues and has high chances of success and therefore his application ought to be allowed to proceed and be determined before the case proceeds in the lower court. That it will suffer loss should the matter proceed before his appeal is heard and determined on the issues raised in its appeal and hence the need to stay the proceedings.
2. The application was opposed by the 1st respondent through a replying affidavit dated 21st March 2023. It is averred that the application has no merit and should be dismissed. That the case should proceed continue as the appellant is the insurer. That the application does not satisfy the provisions of Order 42



Rule 6(2) of the Civil Procedure Rules. That the respondent will suffer substantial loss if the application is granted.

3. Parties filed written submissions. I have considered the said submissions. The main issue for consideration is whether the applicant is entitled to a stay of proceedings in Sirisia PMCC No 42 of 2018. The applicant's complaint is that he was enjoined in the said matter vide a consent. It was not a party to the said consent.
4. In the case of Butt v Rent Restriction Tribunal 1979 eKLR the court held that the power of the court to grant of refuse an application for stay is discretionary. In Global Tours & Travels Limited WC No 43 of 2000 Ringera, J (as he then was) had held 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 interest of justice...the sole question is whether it is in the interest of justice to order for 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 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.”

5. In considering the application I am guided by the provisions of Order 42 Rule 6 (2) plus the two cases cited in the preceding paragraph . The ruling the subject of the appeal was delivered on the 7th December 2022. The application for stay was filed on the 14th March 2023 about 3 months from the date of ruling. The delay was not inordinate. The next issue is whether the applicant has persuaded this court that it will suffer substantial loss and whether it has an arguable appeal . The loss it will suffer has not been explained. No prejudice will be occasioned to the applicant at all as he will be heard in the lower court on the case against it. On the grounds of appeal, I find that though there could an arguable appeal however I am not persuaded that the proceedings in the lower court must be stayed, the case before the lower court has not been heard. Considering the pros and cons in this matter I find that it would not be in the interest of justice to stay the proceedings of the lower court.
6. I find no merit in the application and dismiss it. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 6TH DAY OF OCTOBER 2023.

R. E.OUGO

JUDGE

In the presence of;

Miss Esther Mbugu For the Appellant/ Applicant

Miss Komora h/b Mr. Namatsi For the Respondent

2nd to 4th Respondents- Absent

C/A - Wilkister

