



**Takaful Insurance of Africa Limited v Board of Governors, Matumbei Secondary School
(Civil Suit E008 of 2024) [2024] KEHC 12144 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E008 OF 2024
RN NYAKUNDI, J
OCTOBER 11, 2024**

BETWEEN

TAKAFUL INSURANCE OF AFRICA LIMITED PLAINTIFF

AND

BOARD OF GOVERNORS, MATUMBEI SECONDARY SCHOOL DEFENDANT

RULING

1. What is coming up for determination is the Plaintiff's Notice of Motion dated 3rd May, 2024 expressed to be brought under the provisions of Order 51 Rule 1 of the Civil Procedure Rules, Section 3A and 63(e) of the *Civil Procedure Act*. The applicant seeks orders to wit: -
 - a. Spent
 - b. That this court be pleased to stay proceedings in Eldoret Small Claims Court pending the hearing of the application being: Eldoret SCCC No. E1050 through E1078, E1080 through E1094 all of 2023.
 - c. That there be stay of proceedings before the Eldoret Small Claims Court pending the hearing and determination of the suits listed herein above.
 - d. That the costs of this application be provided for.
2. In support of the application are grounds and the Affidavit of Dolphin Moindi. The Plaintiff averred that suits have been filed in Eldoret Small Claims Court being Eldoret SCCC Nos, E1050, through E1078, E1080 through E1094 all of 2023 against the Defendant herein seeking damages resulting from an alleged Road Traffic Accident involving the Defendant's Motor Vehicle Registration No. KCH 709Q, and the same might proceed to completion thereby expecting the Plaintiff herein to make good the judgment which it should not.



3. That the primary suit in the subordinate court, Eldoret Small Claims Court being listed above are compensatory claims for loss and damages arising from a road traffic accident involving the defendant's Motor Vehicle Registration No. KCH 709Q wherein passengers were seriously injured.
4. The applicant further averred that the said motor vehicle registration KCH 709Q is the subject matter of an insurance policy cover No. P/ELD/2023/102/148396, issued to the defendant by the Plaintiff/Applicant.
5. That upon investigations it was discovered that at the time of accident the motor vehicle registration number KCH 709Q was used for carriage of a group of Sabaot community elders and not school students and/or staff contrary to the provisions of the insurance policy entered into by the Plaintiff and the Defendant.
6. That in the event the compensatory suits in the subordinate court proceed to conclusion and judgments issued, then the Plaintiff therein would be at liberty to enforce the judgment against the Plaintiff/Applicant herein as the insurer of the Defendant's motor vehicle, which event would render the instant application a mere academic exercise.

Determination

7. Having read through the application and the affidavit in support, the only issue to be determined is whether the court can stay the proceedings at the small claims court regarding the aforementioned suits. I have perused the record and I take note that the application has not been opposed as the Respondent did not file a response.
8. The guiding principles operative in this discussions are fairly settled. In the *William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others* [2019] eKLR, a 5-judge Bench of the High Court, after considering variety of decisions on this question, laid out concrete principles that our courts have established for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court. (See *Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000)*, *David Morton Silverstein v Atsango Chesoni* [2002] eKLR & *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] eKLR). The following principles were laid down:
 - a. First, there must be an appeal pending before the higher Court;
 - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favor of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal;



- f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
9. The above-mentioned factors are what the court ought to consider before making a decision as to whether to grant stay of proceedings or not.
10. In the case of *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 impinges on 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”
11. In *Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J*, (as he then was) stated 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 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”.
12. In *Halsbury’s Law of England*, 4th Edition. Vol. 37 page 330 and 332, it is provided 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.”
- This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”
- It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case”.
13. As it can be discerned from the above cited authorities, the question of stay of proceeding is such a serious and grave issue which can only be considered in deserving circumstances. This court is clothed with the wide discretion to issue such orders but the same ought to be exercised judiciously on a case to case basis.
14. The applicant approached this court on the strength of the suits filed at the Small Claims Court against the Respondent seeking compensation for personal injuries that occurred as a result of an accident



involving the Respondent's Motor Vehicle Registration No. KCH 709Q. The argument advanced by the Applicant is that the Respondent herein cannot be indemnified under the insurance policy in place as the Applicant is not liable to settle judgments that may arise for reasons that it was discovered that at the time of the accident the motor vehicle registration number KCH 709Q was used for carriage of a group of sabao community elders and not school students and/or staff contrary to the provisions of the insurance policy entered into by the Plaintiff and the defendant.

15. I share the opinion that the Small Claims Court has jurisdiction to preside over those suits and if anything, the question that curls itself from the applicant's arguments is that of liability. The applicant ought to have raised at the earliest opportunity the issue of liability and have the court determine the same. The applicant would have suffered no prejudice if it allowed the suits to be determined to the logical conclusion and if not satisfied with the trial court's judgement, it would then approach this stage on an appeal particularly on the question of liability. I have to bear in mind that the Small Claims Court operates on a limited timeline and therefore delaying these suits any further translates to denying justice. The Appellant's concern in this application and suit filed herein can be well ventilated in an appeal.
16. The upshot of it is that the claims at the Small Claims Court should proceed with haste and the question of liability shall be raised at the earliest. If dissatisfied by the outcome of the court, an appeal can be filed and the aggrieved party may seek stay of execution if need be. The application dated 3rd May, 2024 is hereby dismissed with costs to the Respondent.

SIGNED, DATED AND DELIVERED AT ELDORET THIS 11TH DAY OF OCTOBER 2024.

In the Presence of:

Ms. Kimathi, Advocate for the Applicant.

R. NYAKUNDI

JUDGE

Email: nsmatiri.mmcadv@gmail.com

