



**Cooperative Bank of Kenya Ltd v Social Promotion Registered
Trustees t/a Basilica Self Help Group (Civil Appeal E137 of 2024)
[2024] KEHC 15843 (KLR) (Commercial and Tax) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E137 OF 2024
FG MUGAMBI, J
DECEMBER 13, 2024**

BETWEEN

THE COOPERATIVE BANK OF KENYA LTD APPELLANT

AND

**SOCIAL PROMOTION REGISTERED TRUSTEES T/A BASILICA SELF HELP
GROUP RESPONDENT**

RULING

1. For determination is the appellant's Notice of Motion application dated 19/6/2024 seeking a stay of proceedings order in Social Promotion Registered Trustees T/A Basilica Self Help Group V The Cooperative Bank of Kenya Limited, CMCC NO. E392/2022, pending the hearing of this appeal.
2. The application is premised on the grounds that the appellant filed an application in CMCC NO. E392/2022 seeking the dismissal of the respondent's suit for inter alia being time barred. The Learned Magistrate presiding over the matter delivered a ruling instead extending the respondent's time to file the suit. The appellant is aggrieved by the ruling and filed the instant appeal.
3. It is the appellant's assertion that the appeal raises substantial questions of law and fact with high chances of success. It is further contended that the appeal would be rendered nugatory if stay of proceedings are not granted as the issue on appeal is whether the respondent's suit in the lower court should be dismissed entirely for being time barred and whether there is a cause of action to go to trial.
4. The application is opposed through a replying affidavit sworn on 4/9/2024 and a further affidavit sworn on 27/9/2024 by Geoffrey Kinyua Mugwanjira, a member of the respondent.



5. He avers that the appellant filed an amended defence in the lower court but did not raise the issue of limitation as stipulated in the *Limitation of Actions Act*; that the respondent did not admit in its pleadings that the cause of action arose in 2014 but that it arose on 4/10/2018 when the DCI released its report confirming the breach of the banker-customer contractual relationship.
6. The respondent further contends that the ruling delivered on 18/4/2024 does not reveal an order by the trial court extending the time for filing a suit. Finally, that the cause of action is founded on breach of the admitted banker/customer contractual relationship and has a 6-year limitation period ending on 3/10/2024.
7. The respondent contends that a full hearing of the matter in the subordinate court would give the appellant a better opportunity to adduce any evidence it may have in its possession and subject the respondent's evidence to cross-examination and that it would be equitable to have the matter in the subordinate court proceed to full trial and a decision on merit of the case be made.

Analysis and determination

8. I have considered the pleadings, evidence, the written submissions and authorities cited by counsels representing both parties.
9. The issue arising for determination is whether the grounds for stay of proceedings pending appeal have been met. In *Kenya Wildlife Service V James Mutembei*, [2019] KEHC 10478 (KLR), the court held:

“Stay of proceeding 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 the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceedings is high and stringent.”

10. In the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000* the court persuasively stated thus:

“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.

(See also an illumination on the threshold for stay of proceedings in the following passages in *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332), 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.”

11. From the above pronouncements a stay of proceedings order is a discretionary one granted by the courts in the interest of justice. It is seldom granted due to the impact it has on a litigant's right to an expeditious and fair trial.
12. In this case, the appellant is dissatisfied by the ruling of the lower court delivered on 18/4/2024. In the ruling, the court considered the appellant's application dated 21/11/2023 which sought to strike out the respondent's suit against it on the grounds that the suit was time barred under the Limitations of Actions Act.
13. The Learned Magistrate dismissed the appellant's application stating that a conclusive decision on whether or not the suit before it was time barred would depend on the construction of the documents availed before the court and further evidence to be adduced at the hearing.
14. The appellant lodged an appeal against the said ruling vide a memorandum of appeal dated 17/5/2024 arguing inter alia that the Learned Magistrate erred by failing to appreciate that the suit was time barred and by relying on section 26 of the Limitation of Actions Act to extend the timelines. The Memorandum of Appeal is produced as 'LM-9' in the appellant's supporting affidavit.
15. The grounds raised in the Memorandum of Appeal touch on a weighty preliminary issue that is, whether or not the suit in the lower court can be sustained or ought to be dismissed due to the cause of action therein being time barred.
16. Having analyzed the record, I am of the view that the appeal before this court is arguable. If the proceedings in the lower court were left to continue running parallel to the appeal before this court, there is a possibility of conflicting decisions between the two courts which would embarrass the court. In any case, I agree with the appellant's submissions that this is one of the seldom reasons whereby it would be in the interest of justice and the efficient utilization of scarce judicial resources to await the outcome of this appeal before proceeding with the suit in the trial court.

Disposition

17. Accordingly, the application dated 19th June 2024 is allowed. There shall be a stay of proceedings in CMCC E392 of 2022 pending the hearing and determination of Civil Appeal No. E137 of 2024, before this court. Costs of this application to await the outcome of the appeal.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13TH DAY OF DECEMBER 2024.

F. MUGAMBI

JUDGE

