



Jubilee Allianz General Insurance v CK Re Limited International Reinsurance Brokers (Civil Case E739 of 2021) [2024] KEHC 15784 (KLR) (Commercial and Tax) (13 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15784 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E739 OF 2021
A MABEYA, J
DECEMBER 13, 2024**

BETWEEN

JUBILEE ALLIANZ GENERAL INSURANCE PLAINTIFF

AND

**CK RE LIMITED INTERNATIONAL REINSURANCE
BROKERS DEFENDANT**

RULING

1. Vide a Motion on Notice dated 27/7/2023 made, inter-alia, under Order 42 rule 6 (1) and (2) of the [Civil Procedure Rules](#), the defendant prayed for an order to stay the proceedings in this matter pending the determination of its intended appeal before the Court of Appeal against the decision of this Court of 17/7/2023.
2. The grounds for the application were that; on 17/7/2023, the Court delivered a ruling dismissing the defendant's application dated 22/2/2022 which objected to this Court's jurisdiction to determine this matter and upheld its jurisdiction and directed the defendant to file and serve its statement of defence and supporting documents by 31/7/2023.
3. The defendant contended that it intended to appeal against the said decision on the grounds that it reasonably believed that this Court lacks the jurisdiction to entertain this claim and therefore sought a stay of these proceedings.
4. In opposition to the application, the plaintiff filed a replying affidavit sworn on 11/10/2023 by Nancy Kasyoka, its assistant legal manager, claims department. She averred that a stay of proceedings in this matter would be a grave judicial action which would interfere with the plaintiff's right to be heard without delay and would infringe on the plaintiff's right to access to justice under Article 48 of the [Constitution of Kenya](#) 2010.



5. Further, that the defendant had failed to demonstrate that the intended appeal was arguable and/or that it would be rendered nugatory if a stay of proceedings was not granted and that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded. She urged the Court to dismiss the application.
6. Vide a supplementary affidavit sworn on 25/10/2023 by Mr. Martin Wright, the Chief Executive of the defendant, the defendant responded to the plaintiff's replying affidavit.
7. He averred that it made sense that the important question of jurisdiction be resolved at the earliest stage instead of delving deep into the dispute. That the defendant had taken the necessary steps for purposes of the appeal and was only awaiting the typed proceedings to enable it file the appeal.
8. Further, that the defendant had provided valid reasons and exceptional circumstances for the grant of stay in this case, given the potential implications on the defendant's rights and the efficient utilization of judicial resources.
9. The plaintiff filed written submissions dated 19/3/2024 while those of the defendant were dated 6/12/2023 and 18/6/2024. The Court has considered the pleadings and submissions on record.
10. In the Court's ruling of 17/7/2023, the Court found that the application before it was challenging leave. That the issues being raised at the time should have been raised after the defendant had either entered appearance and subjected itself to the jurisdiction of this Court or at the trial. It followed that the Court made a finding that it was vested with the jurisdiction to determine the suit before it.
11. The defendant is convinced that the Court erred in finding that it had jurisdiction in this matter and has lodged an appeal before the Court of Appeal. That is evidenced by the Notice of Appeal and draft memorandum of appeal produced in the defendant's supporting affidavit.
12. This is an application for stay of proceedings. In *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR), the court held: -

“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 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.”
13. In the case of *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No. 43 of 2000, it was 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.”



14. And in *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, the learned authors state 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.”

15. A stay of proceedings is a grave measure granted under the court’s discretion if it is the interest of justice. It interferes with a party’s right to a fair hearing. In my view, it will be granted where the court feels compelling reasons that the suit is frivolous or is an abuse of the court process.
16. The discretion to order a stay of proceedings is one to be exercised sparingly. It is an order which infringes on the right to expedited justice under Article 159 of the *Constitution of Kenya*. If the proceedings are reversible, my view is that an order for proceedings should not be granted if an applicant can be compensated by an order for costs if the appellate court finds that the proceedings should not have been proceeded with.
17. In the present case, the defendant’s appeal as seen in its draft memorandum of appeal, is anchored on its argument that this Court erred in finding that it has jurisdiction to determine this matter. In the impugned ruling, the Court was clear in its mind that the issues that were being raised at that stage were so premature as they should have been raised after the defendant had entered appearance.
18. Looking at the circumstances of this case, I believe that it will be prejudicial to the plaintiff to grant the stay of proceedings order as this will hinder its constitutional right to be heard without delay. On the other hand, the defendant would not suffer any undue prejudice as it could be compensated by an award of costs were the Court of Appeal to find in its favour.
19. Accordingly, I find that it is the interest of justice not to grant the orders sought. The application is dismissed with costs to the plaintiff.

It is so ordered.

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

A. MABEYA, FCI Arb

JUDGE

