



**Mwongeli Self Help Group & 3 others v Kitui Teachers DT Sacco Society Limited (Civil Appeal E747 of 2024) [2024] KEHC 15591 (KLR) (Civ) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15591 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E747 OF 2024**

**CW MEOLI, J**

**DECEMBER 5, 2024**

**BETWEEN**

**MWONGELI SELF HELP GROUP ..... 1<sup>ST</sup> APPLICANT**  
**RUTH KIMANZI ..... 2<sup>ND</sup> APPLICANT**  
**IRENE MUMBI ..... 3<sup>RD</sup> APPLICANT**  
**FELISTUS KASINA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**KITUI TEACHERS DT SACCO SOCIETY LIMITED ..... RESPONDENT**

*(An order of stay of the ruling made by the Co-operative Tribunal (the Tribunal) on 30.05.2024 in Cooperative Tribunal Case No. E565 of 2023)*

**RULING**

1. The appeal herein and the Notice of Motion dated 26.07.2024 (the Motion) were brought by Mwongeli Self Help Group, Ruth Kimanzi, Irene Mumbi and Felistus Kasina (hereafter the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants). The substantive prayers seek an order to permanently stay the ruling and order made by the Co-operative Tribunal (the Tribunal) on 30.05.2024 in Cooperative Tribunal Case No. E565 of 2023 between Kitui Teachers DT Sacco Society Limited and Mwongeli Self Help group and 3 others (the suit) and a further order staying the proceedings in the suit, pending hearing and determination of the appeal in respect of the Tribunal ruling.
2. The Motion is expressed to be brought under Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* (CPA) and Order 42, Rule 6 and Order 51, Rule 1 of the Civil Procedure Rules (CPR). It is premised on the grounds laid out on its face and the affidavit of the 2<sup>nd</sup> Applicant. To the effect that by way of



- the impugned ruling, the Tribunal ordered that the Applicants' motion before it dated 23.10.2023 be held in abeyance; that the suit do proceed for full hearing and determination; and that the matter be mentioned for purposes of taking pre-trial directions on 8.08.2024. That being dissatisfied with the ruling, the Applicants preferred the present appeal on 22.06.2024 and that in arriving at its decision by way of the impugned ruling, the Tribunal did not give reasons. That unless the orders sought are granted, the suit will proceed for hearing, portending irreparable loss and prejudice to the Applicants.
3. The Motion was opposed by Kitui Teachers DT Sacco Society Limited (hereafter the Respondent) by way of the replying affidavit sworn by its Chief Executive Officer (CEO) Florence Mutua on 2.10.2024. The deponent averred that the Motion is inter alia, malicious and misconceived, and touches on substantial issues pertaining to the dispute. The deponent further averred that at the onset, the Respondent filed a statement of claim before the Tribunal, seeking the sum of Kshs. 2,068,024.32 against the Applicants herein, being loan arrears pursuant to a loan agreement entered into between the parties on 18.06.2020.
  4. She further deposes that upon being served with the statement of claim, the Applicants entered appearance and proceeded to file the application dated 23.10.2023 seeking to have the Respondent's statement of claim struck out on the premise that it was prematurely brought. That upon hearing the parties on the said application, the Tribunal vide the impugned ruling, ordered that the application be held in abeyance and that the matter proceed to full hearing. Hence, the orders sought in the instant Motion are unfounded, and the Applicants have not shown the manner in which they stand to suffer loss if the Motion is. She views the Motion as an attempt to prevent the Respondent from recovering the loan sums sought in the suit and delaying the hearing of the suit. The deponent urged that the Motion be dismissed with costs.
  5. The 2<sup>nd</sup> Applicant rejoined with a further affidavit sworn on 21.10.2024 where she stated inter alia, that the Motion raises valid grounds and arguments; and that the Applicants had filed a statement of defence in the suit, denying the sum claimed in the suit on the grounds that the securities previously offered by themselves were sufficient in offsetting any outstanding debts arising from the loaned amount. Explaining that basis of the application dated 23.10.2023 before the Tribunal was primarily that the Respondent had not exhausted all internal mechanisms available to it, pursuant to the terms of the loan agreement which stipulated that in the event of default, the Respondent would first realize the various securities provided to it by the Applicants, and upon doing so, provide the Applicants with a detailed account of the sums realized.
  6. The 2<sup>nd</sup> Applicant complained that by holding their motion in the suit in abeyance and in ordering that the suit proceeds for hearing, the Tribunal did not give reasons. And that if the orders sought in the instant Motion are denied, the Applicants will run the risk of not receiving an account from the Respondent regarding the realization of the securities previously offered to it in respect of the loaned sums.
  7. At the hearing of the Motion, the parties agreed that the Motion be determined on the basis of the affidavit material on record.
  8. The court has considered the rival material canvassed in respect of the Motion. It is worth mentioning that at this stage, the court is not concerned with the merits or demerits of the decision rendered by the Tribunal on 30.05.2024, which forms the substratum of the appeal, and to be considered at the appropriate time. For now, what is before the court for determination is the instant Motion, which seeks orders staying both the impugned decision and the suit proceedings, pending the hearing and determination of the appeal.



9. The first prayer seeks to stay the ruling from which the appeal arose. From a perusal of the said ruling a copy of which was annexed to the affidavits sworn on behalf of the respective parties, it is clear that the Tribunal ordered that the Applicants' motion dated 23.10.2023 be held in abeyance; and consequently ordered that the suit do proceed for full hearing and determination; and the matter scheduled for pre-trial directions on 8.08.2023. The latter order has since been overtaken by events. As pertains to the remaining orders above, the court is of the view that there is nothing within the context of the first order to be stayed, whereas the second order above relating to hearing of the suit gives rise to the second prayer of the instant Motion, concerning the stay of proceedings.
10. The court will therefore consider the merits of the Motion as pertains to the order seeking a stay of the suit proceedings pending appeal.
11. The power of the court to stay proceedings is donated by Order 42, Rule 6 (1) of the CPR which provides that:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court”
12. In the renowned case of *Re Global Tours & Travel Ltd HCWC No. 43 of 2000 (UR) Ringera, J.* (as he then was) succinctly set out the applicable considerations in determining an application for stay of proceedings in the following manner:

“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.”(emphasis added).

See also *Christopher Ndolo Mutuku and Anor. v CFC Stanbic Bank Limited (2015) eKLR*; and *Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi (2014) e KLR*.
13. As noted above, the need to optimize the use of judicial time is a paramount consideration in an application of such nature, as would be the question whether the appeal will be rendered nugatory if the subject proceedings are not stayed. As observed by Onyango Otieno, J (as he then was) in the



case of Niazsons (Kenya) Ltd v China Road & Bridge Corporation (Kenya) Ltd. Nairobi HCCC No. 126 of 1999:

“Where the appeal may have very serious effects on the entire case so that if stay of proceedings is not granted the result of the appeal may well render the orders made nugatory and render the exercise futile, stay (stay of proceedings) should be granted.”

14. Moreover, the Court of Appeal in the case of Wachira Waruru & Anor. v Francis Oyatsi [2002] 2 EA 664 rendered itself thus:

“In an application for stay of proceedings pending appeal where the judgment is entered in an application for striking out a defence, it cannot be gainsaid that unless a stay is granted the appeal will be rendered nugatory since if the process of assessing damages goes on and the appeal is allowed that process would be an exercise in futility.”

15. In this case, the Motion was expeditiously brought, just two (2) months after the delivery of the impugned ruling on 30.05.2024. From the memorandum of appeal on record, it is apparent that the appeal lies against the ruling by which the Tribunal ordered that the application of 23.10.2023 be held in abeyance and that the matter proceeds to full hearing.

16. By their memorandum of appeal, the Applicants complain inter alia that the Tribunal did not give any reasons for its decision above. The record reveals that the primary order sought in the application before the Tribunal was the striking out of the Respondent’s statement of claim for being prematurely brought. Upon considering the memorandum of appeal and depositions of the Applicants herein, and without going into the merits of the appeal, it is apparent that the basic issues arising in the appeal concerning the motion before the Tribunal are issues which have already been impleaded in the Applicants’ defence in the suit. Concerning the absence of reasons for the Tribunal’s ruling, the ruling speaks for itself.

17. In the court’s considered view, an order staying proceedings ought to be granted only in clear cases, as such order essentially bars a party from proceeding with its claim. An order staying proceedings “is a serious, grave and fundamental interruption in the right that a party....should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.” See the decision of the Court of Appeal in Raymond Ruto & 5 Others v Stephen Kibowen [2021] eKLR.

18. Here, it appears that the issues raised by the Applicants by their motion can be fully ventilated before the Tribunal during the hearing. The court considering the principles applicable to striking out of pleadings, the gist of the dispute in the lower court and on this appeal does not feel assured that the Applicants have demonstrated strong arguable grounds that would justify the staying of the suit proceedings.

19. Nor, in the court’s view, have the Applicants tendered any credible material to support the averment that they stand to suffer grave prejudice and loss if the stay order sought is denied and the suit proceeds for hearing and determination. As earlier mentioned, it appears that the Applicants have raised in their defence the issues giving rise to the striking out motion before the Tribunal and at the hearing will have the opportunity to ventilate them fully. Where is the prejudice? On the contrary, it appears to be in the interest of justice and in furthering of the overriding objective that the matter is heard, and the parties’ rights fully determined.



20. In *George Gathura Karanja v George Gathuru Thuo & 2 Others* [2019] e KLR, the Court of Appeal stated that:

“[A]n appeal/intended appeal is said to be rendered nugatory where the resulting effect is likely to be irreversible. See the case of *Stanley Kangethe Kinyanjui versus Tony Ketter & 5 Others*, Civil Appeal No. 31 of 2012 where this Court stated inter alia thus:

“Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is irreversible, or if it is not reversible whether damages will reasonably compensate the aggrieved party.”

21. On the facts of this case, no irreversible outcome appears possible because, even if stay is denied, the parties will proceed to full hearing of the suit pending before the Tribunal. That appears a more sensible use of judicial time in view of the overriding objective in Section 1A and 1B of the CPA. Consequently, the court finds the Notice of Motion dated 26.07.2024 to be without merit. It is hereby dismissed with costs to the Respondent.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 5<sup>TH</sup> DAY OF DECEMBER 2024.**

**C. MEOLI**

**JUDGE**

In the presence of

For the Applicant: Ms. Wakori h/b for Ms. Njeri

For the Respondent: Njuguna

C/A: Erick

