

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL APPEAL NO. E003, E004, E005, E006 & E007 OF 2021

KENNEDY WABUKE.....1ST APPELLANT/1ST APPLICANT

ISAAC GIRAGWA ISAGI.....2ND APPELLANT/2ND APPLICANT

VERSUS

BILASIO EPUS EJILIT.....RESPONDENT

RULING

The Applicants have filed an application seeking to stay further proceedings before the trial Magistrate's Court. The reasons for seeking the orders of stay, inter alia, is that the Applicant was not satisfied with the manner in which the proceedings were conducted before the trial magistrate's court. From the submissions made, it emerged that at one point during the proceedings, the Respondent had proceeded ex parte in one case in the series of five (5) cases. This aspect of the case was cured when a consent was recorded by the parties setting aside the ex parte proceedings. However, it appears that the trial Magistrate ordered the case to start de novo. The Applicants were not happy with this order. They wanted an order to be made that they be allowed to cross-examine the Respondent on the basis of the evidence that the Respondent had adduced during the ex-parte proceedings. This court is unable to discern what prejudice the Applicant suffered when the order was made that the case starts de novo. Such order granted the Applicant the opportunity to put forward their case by properly cross-examining the Respondent.

Another issue that seems to have caused ire to the Applicants is the order made by the trial magistrate to the effect that the evidence adduced by a Police officer regarding a Police abstract should not apply to the other cases in the series. From the submission made, it appears that the police abstract in question was produced without any objection by the Applicants. In any event, the Applicants will still have the opportunity to interrogate the veracity or otherwise of the Police Abstract when the other Plaintiffs in the series will be testifying.

It is trite that an appellate court should not entertain interlocutory appeals and applications that may result in the delay of the hearing and conclusion of a case before a trial court unless there is reasonable cause or justification. In the present application, this court is unable to discern any procedural injustice in the trial before the Magistrate's court that may require this court's intervention by issuing the order staying the proceedings before the trial Magistrate's court. The proper procedure that ought to have been followed was for the Applicant proceed with the case until its conclusion, and if dissatisfied with the procedural aspect, file an appeal challenging the same in the substantive appeal, assuming that the judgment of the trial court will not be in his favour.

The application lacks merit and is hereby dismissed with costs to the Respondent. The orders herein shall apply in the similar applications in E004/2021, E005/2021, E006/2021 and E007/2021. It is so ordered.

DATED AT KITALE THIS 3RD DAY OF JUNE 2021.

L. KIMARU

JUDGE