



G4S Kenya Limited v Belle Africa Tours and Travels Ltd (Civil Appeal E070 of 2020) [2021] KEHC 41 (KLR) (Commercial and Tax) (16 September 2021) (Ruling)

Neutral citation: [2021] KEHC 41 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E070 OF 2020
WA OKWANY, J
SEPTEMBER 16, 2021**

BETWEEN

G4S KENYA LIMITED APPELLANT

AND

BELLE AFRICA TOURS AND TRAVELS LTD RESPONDENT

(CMCC No.3647 of 2017 Belle Africa Tours and Travels Ltd v G48 Kenya limited dated 6th November, 2020 by Hon, G. A. Mmasi)

RULING

1. This ruling is in respect to the application dated 23rd November 2020 wherein the applicant seeks the following orders: -
 1. Spent
 2. Spent
 3. Spent
 4. There be a stay of execution and proceedings arising from the ruling of the trial court dated 6th November, 2020 in CMCC No.3647 of 2017 Belle Africa Tours and Travels Ltd v G48 Kenya limited pending the hearing and determination appellant's appeal.
 5. The costs of this application be provided for.



2. The application is supported by the affidavit of the Appellant's Director Mr. Alvar Lawrence Okelo and is premised on the grounds that: -

- a. On 6th November, 2020 Hon. G. A. Mmasi (SPM) delivered a ruling in Nairobi Chief magistrate's court civil case number 3467 of 2017 with orders that:
 - I. Summons issued compelling two (2) directors of the Appellant to appear before the trial court on 27th November, 2020 for mitigation as to the Appellants continued contempt.
 - II. The Appellant do file within fifteen (15) days a financial plan on rectifying the contempt of the trial court's orders.
 - III. The Managing Partner of Hamilton Harrison & Mathews Advocates, being an officer of the court ensure effectual service of summons and compliance of orders (i) and (ii) above.
- b. The appellant is dissatisfied with the ruling of the subordinate court and has lodged an appeal to this court. The appeal has high chances of success.
- c. The orders were given following an application dated 3rd August, 2020 made by respondent.
- d. The Appellant opposed the application through grounds of opposition dated 2nd September, 2020 and a replying affidavit sworn by Alvar Lawrence Okelo on 1st September, 2020. The Appellant also filed a preliminary objection dated 2nd September 2020 challenging the trial court's jurisdiction to grant the orders in a matter where the court is *factus officio*.
- e. The trial court delivered a final judgment on 2nd March, 2020 and determined the dispute between the parties with finality.
- f. At no point did the Appellant act in contempt of the final judgment delivered on 2nd March, 2020
- g. The honorable Magistrate directed that the preliminary objection be determined before the Respondents application in a bizarre turn of events however, the Honourable Magistrate's proceeded to issue a ruling in relation to both the Appellants preliminary objection and the respondent's application which had not be argued.
- h. The consequent orders are legally untenable and unjust considering the fact that:
 - I. They arise from a ruling with respect to the respondent's application dated 3rd August 2020 on which parties had not made arguments on.
 - II. The alleged debt is not due and does not arise from the pleadings. The court declined to grant the sums sought in the judgment delivered on 2nd March, 2020.
- i. The Appellant obtained a temporary stay of execution of the ruling and consequential orders for a period of thirty (30) days. The temporary stay



lapses on 7th December 2020. To the respondent's surprise, they were served with summons requiring the two (2) directors in question to attend court for examination on 27th November, 2020 this is an abuse of the court process that requires the intervention of this court.

- j. The respondents will abide by any condition this court may give for grant or stay. This is however not a proper case to order security.
- k. This application has been made without delay.

3. The respondent opposed the application through the replying affidavit of its Director Mr. Titus Kigo Koigi who states that the applicant has misrepresented the facts regarding the directions issued by the subordinate court on the respondent's application dated 3rd August 2020. He avers that the court directed that the applicant's grounds of opposition be dispensed with by way of written submissions and a ruling was delivered on 6th November 2020 dismissing the same.
4. The application was canvassed by way of written submissions which I have considered. The main issue for determination is whether the applicant has made out a case for granting of the orders sought. The applicant seeks orders to stay the proceedings before the Lower Court and execution pending appeal.
5. The threshold to be met in an application for stay of proceedings was laid out in the following passages in *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, as follows: -

“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.”

6. In *Re Global Tours & Travel Ltd HCWC No. 43 of 2000* it was held 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 matter, it should bear in mind such factors as the need for expeditious disposal of case, 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.”



7. Having regard to the *dictum* in the above cited cases, it is clear that an order for stay of proceedings is discretionary in nature and that the applicant should provide sufficient grounds when seeking such stay.
8. In the present case, I note that the applicant's intended appeal is based on the ground that the trial court adjudicated on an application where parties had not been heard. Needless to say, the right to be heard is a fundamental right that is enshrined in the Constitution under the bill of rights.
9. It is therefore my finding that it will be in the interest of justice to grant the prayer for stay of proceedings before the Lower Court so as to give the applicant the opportunity to ventilate its case on the appeal.
10. In the upshot the application dated 23rd November 2020 is hereby allowed with orders that costs shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 16TH DAY OF SEPTEMBER 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17TH APRIL 2020.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Owiti for Makori for the Appellant.

Mr. Ochako for the respondent.

Court Assistant: Sylvia.

