



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 56A OF 2013

[Formerly Eldoret Hccc No. 130 2011]

SUNRISE ORTHOPAEDIC & TRAUMA HOSPITAL LTD.....1ST PLAINTIFF

DAVID LANGAT.....2ND PLAINTIFF

VERSUS

DR. LECTARY KIBOR KEIYO LELEI.....1ST DEFENDANT

SUNRISE ORTHOPAEDIC & TRAUMA HOSPITAL LIMITED.....2ND DEFENDANT

RULING

The 2nd defendant/applicant has come to court with an application dated 27.2.2019 seeking orders that the court be pleased to order for stay of proceedings in the present suit pending hearing and determination of appeal. The application is based on grounds that the applicant is dissatisfied with the ruling of this court delivered on 1.2.2019 in favour of the plaintiff.

There is a notice of appeal dated 7.2.2019 filed in court on the same date and lodged at the Environment and Land Court at Eldoret on 8.2.2019. According to the applicant, the appeal raises serious weighty and triable issues of both fact and law and has high chances of success.

In the supporting affidavit, the applicant states that the appeal has high chances of success.

The plaintiff filed grounds of opposition whose gist is that the applicant has not shown the substantial loss if any at all that will result to him if the order of staying proceedings is not granted.

According to the plaintiff, the applicant is guilty of delay in filing the application. Moreover, that the applicant has not provided any security. The plaintiff contends that staying the suit when which is 8 years old will delay the hearing and determination of the matter.

After discerning the law, it is obvious that for **Order 42 rule 6(2)** to come to the aid of the applicant. The court must be guided by other considerations in making its decision whether or not to grant stay of proceedings as sought herein but then, what are those considerations?

In answering this question, I wish to borrow from the wisdom of **Ringera J** (as he then was) when he stated the following when confronted by a similar application in the case of Global *Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000*.

“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)

In my view, the courts discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles;

a) Whether the applicant has established that he/she has a prima facie arguable case.

b) Whether the application was filed expeditiously and

c) Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.

I have considered the application, grounds of opposition and rival submissions and do find that on the 3.12.2018, this court granted the plaintiff leave to amend the plaint as prayed in the Notice of Motion dated 24th October, 2018. The plaintiffs were to amend plaint within 2 days and the defendants were to amend the defence within 3 days of service.

Subsequently, the plaint was amended by the plaintiff as ordered by the court. The second defendant complied by filing a further amended defence on the 17th December 2018 and a further list of documents.

The second defendants further filed an application to strike out the amended plaint and a preliminary objection seeking to declare that the court has no jurisdiction to determine the issues raised in the amended plaint.

There is no appeal against the orders allowing the plaintiff to amend the plaint. What the defendants sought in the application dated 14th December, 2018 was the striking out of the amended plaint for being an abuse of the process of the court. The application was dismissed on the 1st February, 2019. The application for stay of proceedings was filed on the 28th February, 2019 some 27 days after ruling which this court views as inordinate delay due to the age of the matter and the fact that the same had hearing dates. Failure to appeal against the earlier decision of the court made on 3rd December, 2018 renders this application an afterthought and only meant to delay the fair hearing of this suit. The applicants appear to be attempting to have a second bite at the cherry and they are estopped from doing so.

On the material placed before me, I do find that staying of the proceedings herein is not necessary since the applicant has already been granted leave to file amended defense and the intended appeal does not touch on the merits of the suit. I do not see how the hearing of the suit would render the intended appeal nugatory. It is my considered view that allowing this application would only cause unnecessary delay in the hearing of the respondent's suit and may have the effect of needlessly increasing costs for the parties which will be against the interests of justice. Taking into account the nature of the dispute between the parties and the fact that the suit sought to be stayed was filed on 22nd July 2011 nearly 8 years ago, and was formerly High Court Civil Case Number 130 of 2011 but transferred to this court due to jurisdiction, I find that allowing the application in the circumstances of this case would not only be against the interests of justice but will also frustrate the court's overriding objective of facilitating affordable and expeditious resolution of civil disputes.

There being no appeal in respect of the application for amendment of the plaint, I do find that the application to stay proceedings is not merited. The application is dismissed with costs.

Dated and delivered at Eldoret this 11th day of April, 2019.

A. OMBWAYO

JUDGE