

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. 204 OF 2018

VIPUL **SHAH.....1ST**
PLAINTIFF/APPLICANT

KAMAL **SHAH** **.....2ND** **PLAINTIFF**
/APPLICANT

VERSUS

CREDIT **BANK** **LIMITED.....DEFENDANT**
/RESPONDENT

RULING

1. The Applicants, vide the Notice of Motion dated 16th August 2023, seek an order for stay of proceedings in this matter pending the hearing and determination of Court of Appeal *Civil Appeal No. E438 of 2021 - Vipul Shah & Kamal Shah v Credit Bank Limited.*

2. The application is premised on the grounds on its face and supported by the affidavit of Phoebe Mwaniki, who deposes that the Applicants filed an Originating Summons dated 28th May 2018 seeking to compel the Defendant to honour a Deed of Indemnity and pay the Plaintiffs Kshs. 68,452,054/= and Kshs. 2,592,721.64 being taxed costs arising from Misc. Applications Nos. 353 of 2017 and 239 of 2017, respectively.

3. In a judgment delivered on 14th October 2020, Hon. Lady Justice Grace Nzioka held that the parties ought to await the determination of **HCCC No. 28 of 2012** and consider a stay in this matter. Dissatisfied with the said judgment, the Applicants lodged Civil Appeal No. E438 of 2021, which is yet to be heard.
4. The Applicants state that they fear this suit may stand dismissed for want of prosecution in light of the existing directions and that the present application was brought without unreasonable delay. They argue that the appeal has overwhelming chances of success, and unless a stay is granted, the same may be rendered nugatory.
5. The application is opposed through a replying affidavit sworn on 14th February 2025 by Wainaina F. Ngaruiya, Head of Legal for the Defendant, who contends that the Applicants have not established a prima facie basis to warrant stay of proceedings; that the judgment delivered on 14th October 2020 had already stayed the suit pending the determination of HCCC No. 28 of 2012 or consolidation and therefore there is no positive order capable of being stayed; that the Applicants have demonstrated indolence by filing the instant application after three years; that the present application, brought three years after judgment, is inordinate and falls short of the threshold for granting stay; and that no prejudice will be suffered by the Applicants as judgment in HCCC No. 28 of 2012 is still pending and the two matters continue to be mentioned together..

6. I have considered the application, the affidavits, and the written submissions. The sole issue for determination is whether the Applicants have satisfied the legal threshold for stay of proceedings pending appeal.
7. Stay of proceedings is a grave judicial discretion that interferes with a party's right to be heard and is to be granted only in the clearest of cases. The applicable principles are well-settled. In **Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000**, Ringera J. (as he then was) stated that:

“The sole question is whether it is in the interest of justice to order a stay of proceedings, considering factors such as the prima facie merits of the intended appeal, the interests of the applicant, the prejudice to the respondent, and the expeditious disposal of cases.”

8. The judgment of 14th October 2020 effectively stayed this suit pending the determination of HCCC No. 28 of 2012 or consolidation. It did not direct any positive act against the Applicants. It is trite that negative orders cannot be stayed. The Applicants therefore seek to stay proceedings that are already stayed save for the mentioned directions. This significantly weakens the foundation of the present application.
9. The delay in filing the application is inordinate and remains unexplained. Judgment was delivered on 14th October 2020,

whereas the present application was filed on 16th August 2023, a delay of nearly three years.

10. While this Court cannot interrogate the merits of the pending appeal in depth, the Applicants placed no material before the Court to demonstrate that the appeal raises arguable or substantial issues beyond mere assertions.
11. On prejudice, I agree with the Defendant that this matter is tied to HCCC No. 28 of 2012 and is mentioned alongside it. There is therefore no imminent risk of dismissal for want of prosecution.
12. Accordingly, the Applicants have not shown how the refusal of stay would render their appeal nugatory.
13. On the contrary, granting a stay in a matter that is already stayed, except for mentions, would only serve to delay the final disposal of both matters, contrary to Article 159(2)(b) of the Constitution and the overriding objective under sections 1A and 1B of the Civil Procedure Act.
14. In view of the foregoing, I find that the Applicants have not met the threshold for the grant of stay of proceedings pending appeal.
15. The Notice of Motion dated 16th August 2023 is hereby dismissed with costs to the Defendant.

RULING delivered virtually, dated and signed at **NAIROBI**

This **11th** day of **December** 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Kisala h/b for Mr. Kimathi for Plaintiff

Mr. Wakhisi h/b for Mr. E. Wetangula for Defendant

Court Assistant: *Carlos*