

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT MACHAKOS

APPEAL NUMBER E004 OF 2025

NODOR KENYA EPZ LIMITEDAPPELLANT

VERSUS

JACKTONE ANYOMA OBUYA.....RESPONDENT

*(Being an Appeal from the Ruling and Orders of the Hon. E. Mburu (PM) delivered on 8th
December, 2024 in Mavoko CMCC Cause No. 1213 of 2017)*

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Appellant herein, dissatisfied with the Ruling and Orders of the Hon. E. Mburu (PM) delivered on 8th December, 2024, in Mavoko CMCC Cause No. 1213 of 2017 between the parties, filed a memorandum of appeal dated the 16th of January 2025 seeking the following orders:-
 - a) The Appeal be allowed.
 - b) The Ruling delivered on the 8th day of December, 2024 in the Chief Magistrates Court in Mavoko Chief Magistrates Court No. 1213 of 2017 be set aside.
 - c) There be no orders as to costs.

GROUNDINGS OF THE APPEAL

2. The Honourable Magistrate erred in law and in fact by finding that the Plaintiff's suit was properly before court while multiple similar suits were still active and running in different courts over the same subject matter.
3. The Honourable Magistrate erred in law and in fact in failing to consider the evidence and authorities cited by the Defendant/Applicant in support of their case and only placing reliance on the authorities of the Plaintiff.
4. The Honourable Magistrate erred in law and in fact, by failing to find that the Plaintiff filed three similar matters being Milimani CMCC No. 1693 of 2017, Milimani CMCC No. 1692 of 2017 and Mavoko CMCC No. 1213 of 2017 all of which bear similar parties over the same cause of action; and all of which are still active in court.
5. The Honourable Magistrate erred in law and in fact, by failing to accurately find that Milimani CMCC No. 1693 of 2017 is scheduled for Hearing on 6th March, 2025 while Milimani CMCC No. 1692 of 2017 is scheduled for Mention on 29th January, 2025.
6. The Honourable Magistrate erred in law and in fact by failing to consider the overall evidence, submissions and authorities the Defendant/Applicant filed in support of their application.
7. The Honourable Magistrate erred in law and fact in failing to analyze the totality of the evidence adduced and thereby dismissing the Defendant's application.

8. The Honourable Magistrate failed to adequately evaluate the totality of the entire application and take note of the multiple suits filed and thereby arrived at a decision which is unsustainable in law.
9. The Honourable Magistrate erred in law and in fact by being biased against the Appellant.
10. The Honourable Magistrate erred in law and in fact by exercising her discretion capriciously and not judiciously.

BACKGROUND TO THE APPEAL

14. The Respondent filed suit against the Appellant vide a Complaint dated the 13th of March 2016 claiming that he was involved in an accident at the Appellant's premises on 12th April 2014 during the course of his employment with the Appellant which resulted in injury to his right-hand little finger, and seeking the following orders:-
 - a. General damages on account of pain, suffering and loss of amenities.
 - b. Special damages in the sum of Kshs. 13,000/- plus interest from the date of filing this case until full payment.
 - c. Interest thereon.(pages 1-2 of Appellant's ROA dated 27th August 2025).
15. In support of his claim, the Respondent filed a witness statement on 14th March 2017; (pages 4-5 of ROA).

16. In a confusing twist of events, the Respondent filed another Plaint dated 28th September 2017 in the same matter (11-12 of ROA), supported by a list of documents filed on 28th September 2017; list of witnesses dated 28th September 2017; and witness statement of even date (pages 15-26 of ROA).
17. The Appellant entered appearance on 8th November 2017, and filed a statement of defence dated 8th November 2017 (see pages 27-29 of ROA). In support of their defence, the Appellant filed the witness statement of ALEX NDEGWA KABURA dated 6th February 2018; further list of witnesses of even date; and further list of documents of even date with the bundle of documents attached (pages 38-45 of ROA). The Appellant later filed a further list of documents dated 4th July 2018 (page 50 of ROA); and a supplementary list of documents dated 25th April 2024 (page 55 of ROA).
18. Vide a Chamber Summons application dated 10th July 2024, the Appellant prayed for dismissal of the Respondent's suit on the premise that it was sub judice. The said chamber summons application was supported by the affidavit of ROSELYNE KIHARA sworn on 10th July 2024, and annexures thereto (pages 56-72 of ROA).
19. The application was opposed by the Respondent who filed a replying affidavit dated 22nd October 2024 admitting that there was another pending suit Milimani CMCC No. 1693 of 2017 but claiming that it was mistakenly filed. He filed a notice of withdrawal of suit of even date (pages 76-79 of ROA).

20. The Appellant filed a further affidavit of Roselyne Kihara sworn on 7th November 2024 (pages 87-92 of ROA).
21. The court issued directions that the application be disposed of by way of written submissions. The Appellant complied, and also filed a Further Affidavit of Roselyne Kihara sworn on 14th February 2025.
22. The Trial Magistrate Court delivered its ruling on the 18th of December 2024, dismissing the Appellant's chamber summons application on the basis that case number Milimani CMCC 1693 of 2017 was withdrawn (ruling at pages 93-94 of ROA).

DETERMINATION

23. The appeal was canvassed by way of written submissions. Only the Appellant filed.

Issues for determination

24. In their submissions dated the 30th of September 2025, the Appellant submitted generally on the appeal.

Whether the trial court erred in finding no case of subjudice.

Appellant's Submissions

25. THAT the Appellant/Applicant herein filed an application for the stay of proceedings in Mavoko CMCC No. 1213 of 2017 for reasons that the Plaintiff had filed multiple suits simultaneously against the Appellant being Milimani CMCC No. 1692 of 2017, Milimani

CMCC No. 1693 of 2017 and Mavoko CMCC No. 1213 of 2017. THAT as such, the Applicant sought for the dismissal and/or stay of proceedings in Mavoko CMCC No. 1213 of 2017 as the other matters were still running and the matter in Mavoko Law Courts was thus sub-judice and greatly prejudiced the Applicant. THAT the learned magistrate vide a Ruling delivered on 18th December,2024 dismissed the Applicant's application dated 10th July,2024 and maintained that the suit was not subjudice which is an apparent mistake as the various aforementioned suits are still running and active in court. The Applicant in the previous application dated 10th July,2024 and the instant application that is the subject of these submissions attached proof that the other matters were still active in court. THAT the aforementioned matters are still pending and ongoing in court being Milimani CMCC No. 1692 of 2017 and Milimani CMCC No. 1693 of 2017 are scheduled for Ruling on 28th March,2025 and Hearing on 6th March,2025 respectively. Further, the instant matter in Mavoko Law Courts, Mavoko CMCC 1213 of 2017 where the appeal herein emanated from is scheduled for Hearing on 25th February, 2023. THAT, as such, a verdict might be delivered in any of the matters that are still active in court, and that might greatly prejudice the Applicant, as the Respondent might get a favourable award in all the suits against the Applicant and proceed to execute. That a stay of the proceedings in Mavoko CMCC 1213 of 2017 is therefore necessary lest the intended appeal will be rendered nugatory. The Court in Re Global Tours & Travel Ltd, High Court Winding up Cause No.43 of 2000, Ringera J. 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 for 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." Further, in the case of William Odhiambo Ramogi & 2 others v the Honourable Attorney General & 3 others [2019] eKLR, the High Court comprising a five Judge bench laid out the following principles that should be considered when dealing with an application for stay of proceedings pending Appeal - (i) First, there must be an Appeal pending before the higher court; (ii) Second, where such stay is sought in the court hearing the case as opposed to the higher court to which the appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay Trial, there is a policy in favour of applications for stay being handled in the court to which an appeal is (iii) preferred because such a court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly; Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable; (iv))Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted; (v) Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a (vi) single appeal; and Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay. The Applicant has satisfactorily demonstrated the above reasons to this honourable court specifically, that there is

an appeal pending before this honourable court, one that raises substantial questions and that would be rendered nugatory if the stay of proceedings is not granted.

26. The court in the case of Daniel Walter Rasugu NBI HCCC No 15 of 2006 ; Global Tours & Travel Limited; Nairobi HC Winding Up Cause No.43 of 2000; and Kenya Power & Lighting Company Limited vs. Esther Wanjiru Wokabi [2014] eKLR. The guiding legal principles gathered from these cases may be summarized as follows: - a. The decision 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. b. 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. c. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. d. 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. We pray that this honourable court exercises its judicial discretion in the interest of justice and grant the stay of proceedings sought as the Applicant has promptly brought this application before this honourable court without any inordinate delay. We therefore submit that this honourable court is clothed with the requisite discretion to allow the Applicant's application to stay the proceedings in Mavoko Cmcc No. 1213 of 2017 pending the hearing and determination of the Appeal. The Appellant's appeal has high chances of success and there is no prejudice that will be occasioned to the Respondent if the Application herein is allowed as prayed.

27. The respondent did not file written submissions.
28. The respondent admitted he had filed another similar matter in the Milimani Commercial Laws Courts case no. 1693 of 2017 through Namada and Company advocates. The respondent, in the replying affidavit, alleged to have filed a notice to act in person and a notice of withdrawal of the suit, both dated the 22nd October 2024. This was an admission of subjudice which he sought to remedy by the aforesaid notices. The notices were produced in court and had no evidence that they had been filed. The document had no court stamp, and no fee receipt was attached (notices at pages 78 and 79 of ROA). This was a critical issue, taking into account the affidavit of Roselyn Kihara dated 7th November 2024 in response, in which they annexed a response to their email by Namada advocate dated 24th October 2024. Namada informed the appellant his law firm was still on record and the suit 1693 of 2017 was slated for hearing on the 6th March 2025. The trial court noted that the notice of withdrawal, once filed, was effective even when not adopted by the court. This is true if there is evidence it was lodged in court.
29. The appellant further produced evidence of a further suit of 1692 of 2017 by the claimant alleging a different date of accident of 12th April 2017, while the other accident was on 5th April 2016. The respondent was treated from 14th April 2016 for an accident of 5th April 2026 .(page 4 of the ROA is suit no 1693 of 2017, witness statement of the claimant). The respondent, in response to the application, did not mention Suit no. 1692 of 2017(page 7 of ROA). The court finds that the trial court erred in fact by failing to find there was no evidence of filing of notice to withdraw No. 1693 of 2017, failing to factor the email by the respondent's advocate that the suit had not been withdrawn and had a hearing date, and further

the Respondent did not controvert the allegation of the existence of 1692 of 2017 at the Milimani Commercial law courts between the parties on similar cause of action. The court is satisfied the trial court erred in failing to find the suit in Mavoko Law Courts Civil Suit 1213 of 2017 was subjudice.

30. The appeal is allowed. The Ruling and Orders of the Hon. E. Mburu (PM) delivered on 8th December, 2024 in Mavoko CMCC Cause No. 1213 of 2017 is set aside and ruling entered in place that the suit is struck out for being subjudice with costs to the respondent.

31. The appellant is awarded costs in the appeal.

32. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 6TH DAY OF FEBRUARY, 2026.

J.W. KELI,
JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Karuhaga

Respondent: absent

