



Southfork Investments Limited v Esquire Investments Limited & 5 others (Environment & Land Case 23 of 2020) [2024] KEELC 687 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELC 687 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 23 OF 2020**

**JO MBOYA, J
FEBRUARY 15, 2024**

BETWEEN

SOUTHFORK INVESTMENTS LIMITED PLAINTIFF

AND

ESQUIRE INVESTMENTS LIMITED 1ST DEFENDANT

ADAN MAALIM MURSAL 2ND DEFENDANT

NAIROBI CITY COUNTY 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

DIAMOND TRUST BANK KENYA LIMITED 5TH DEFENDANT

THE HONORABLE ATTORNEY GENERAL 6TH DEFENDANT

RULING

Introduction and Background:

1. The 3rd Defendant/Applicant has approached the Honourable court vide Notice of Motion Application dated the 6th January 2024, brought pursuant the provision Order 42 Rule 6; Order 43 Rule 2 and Order 51 Rule 1 of the Civil Procedure Rules 2010 and Section 1, 1A, 1B, 3, 3A and 63(e) of the *Civil Procedure Act*, and in respect of which the Applicant has sought for the following reliefs;
 - i.Spent.
 - ii. That pending the hearing and determination of the instant Application, the Honorable court be pleased to grant stay of Execution of proceedings and in particular the scheduled further hearing.



- iii. That this Honorable court be pleased to grant an order of stay of proceedings pending the hearing and determination of the appeal to the Court of Appeal.
- iv. Any order that the court may deem fit to grant in the circumstances.
2. The instant Application is premised and anchored on various grounds which have been enumerated at the body thereof. Furthermore, the Application is supported by the affidavit of one W S Ogola, sworn on even date; and in respect of which, same has annexed a copy of the Ruling delivered on the 20th December 2023.
3. Suffice it to point out that upon being served with the instant Application, the Plaintiff/Respondent proceeded to and filed Grounds of opposition dated the 29th January 2024, whereas the 5th Defendant filed Grounds of opposition dated the 30th January 2024.
4. Other than the Plaintiff/Respondent and the 5th Defendant herein, the rest of the Defendants/ Respondents neither filed a Replying affidavit nor Grounds of opposition.
5. Be that as it may, the instant Application came up for hearing on the 30th January 2024; whereupon the Parties covenanted to canvass and dispose of the Application by way of written submissions. Consequently and in this regard, the court thereafter circumscribed the timelines for the filing and exchange of written submissions.
6. Moreover, the Applicant herein thereafter proceeded to and filed two [2] sets of submissions dated the 28th January 2024 and the 1st February 2024; whilst the Plaintiff/Respondent filed written submissions dated the 6th February 2024.
7. For coherence, all the sets of written submissions, [details in terms of the preceding paragraph], form part of the record of the court.

Parties' Submissions:

A. Applicant's Submissions:

8. The 3rd Defendant/Applicant filed two [2] sets of written submissions, namely, the submissions dated the 28th January 2024 and 1st February 2024 and in respect of which the Applicant herein has highlighted and canvassed four [4] salient and pertinent issues for consideration by the Honourable court.
9. Firstly, Learned counsel for the Applicant has submitted that the Applicant herein filed an Application dated the 5th December 2023; and wherein same sought to be granted Leave to file Further documents and witness statements, albeit out of time. However, Learned counsel has contended that the said Application was heard and disposed of vide Ruling rendered on the 20th December 2023, whereupon the court dismissed the application by the Applicant.
10. Arising from the dismissal of the Application dated the 5th December 2023, Learned counsel for the Applicant has now contended that the Applicant has been denied and deprived of the requisite opportunity to place before the Honourable court credible evidence that would enable the court to arrive at and/or reach an informed decision pertaining to the ownership of the suit property.
11. Premised on the foregoing, Learned counsel for the Applicant has submitted that in the event that the subject matter proceeds for hearing and same is ultimately determined prior to and before the hearing of the intended appeal, then the Applicant shall suffer undue prejudice, which cannot be remedied or otherwise.



12. In support of the foregoing submissions, Learned counsel for the Applicant has cited inter-alia, the case of Timmeh Ibrahim vs Tipapa Ole Kirokor & Another (2014)eKLR; Tours & Travels Ltd , Nairobi HCC Winding Up Cause No. 43 of 2000 (UR); Tabro Transporter Ltd vs Absalom Dora Lumbani (2012)eKLR.
13. Secondly, Learned counsel for the Applicant has also submitted that the intended appeal, which the Applicant desires to mount before the Court of Appeal raises arguable issues; and hence the Applicant herein deserves to be afforded the requisite latitude and opportunity to pursue her undoubted right of appeal to the Court of Appeal.
14. In support of the foregoing submissions, the Applicant herein has cited and relied on inter-alia, the case of Stanley Kinyanjui vs Tony Keter & 5 Others (2013)eKLR; William Odhiambo Ramogi & 2 Others vs The AG & 3 Others (2019)eKLR, respectively.
15. Thirdly, the Applicant herein has submitted that the Application beforehand, which essentially seeks an order of stay of proceedings, has been filed and mounted without unreasonable and or inordinate delay.
16. Conversely, Learned counsel for the Applicant has submitted that the instant Application has been filed promptly and timeously and thus the Applicant has displayed due diligence and promptitude in her pursuit of the order for stay of proceedings.
17. Fourthly, Learned counsel for the Applicant has submitted that whereas the Applicant shall be disposed to suffer undue prejudice, if the Application is not allowed, the Respondent herein shall not suffer any prejudice and/or injustice or at all.
18. In view of the foregoing, Learned counsel for the Applicant has therefore implored the Honourable Court to find and hold that the Applicant has established and demonstrated sufficient cause to warrant the grant of the orders of stay of proceedings.

B. Plaintiff's/respondent's Submissions:

19. The Plaintiff/Respondent filed written submissions dated the 6th February 2024; and in respect of which same has raised and highlighted Five [5] salient and pertinent issues for consideration by the court.
20. First and foremost, Learned counsel for the Plaintiff/Respondent has submitted that upon the filing and service of the Grounds of opposition, the Applicant herein proceeded to and filed a Further affidavit which is stated to be in response to the grounds of opposition.
21. Nevertheless, Learned counsel for the Respondent has submitted that the impugned Further affidavit, was however filed without Leave of the court and hence same is a nullity ab initio and thus ought to be expunged from the record of the court.
22. In support of the foregoing submissions, Learned counsel for the Respondent has cited and relied on, inter-alia, the case of Kirinyaga County Council vs Kimmi Housing Cooperative Society Ltd (2007)eKLR, Kiprotich Bore vs Joseph Twei Koech & Another (2014) and Tread Setters Tires Ltd vs Hussein Dairy Ltd (2002)eKLR, respectively.
23. Secondly, Learned counsel for the Respondent has submitted that even though the Applicant has sought for an order of Stay of proceedings pending the hearing and determination of an Appeal before the Court of Appeal, it is evident that no Record of Appeal has since been filed and/or lodged.



24. Further and in any event, Learned counsel for the Respondent has submitted that even where a Notice of Appeal has been filed and thus evidencing an intention to appeal, the existence of a Notice of Appeal by its self does not constitute sufficient cause and/or basis to warrant the grant of an order of stay of proceedings.
25. Besides, Learned counsel for the Respondent has also submitted that the intended appeal which the Applicant desires to pursue, is in any event, not arguable and hence the court ought not to grant an order of stay of Proceedings pending the hearing and determination of an intended appeal, which is contended to be frivolous.
26. Thirdly, Learned counsel for the Respondent has submitted that the Applicant herein has neither established nor demonstrated that the intended appeal shall be defeated and/or otherwise rendered academic, if the proceedings herein were to be continued with, despite the pendency of the appeal.
27. According to counsel for the Respondent, the intended appeal before the Court of Appeal may very well be prosecuted and disposed of and when same is determined, the proceedings before this court shall abide by the orders and directions, which shall have been granted by the Court of Appeal.
28. Nevertheless, Learned counsel has pointed out that the Applicant herein shall not suffer any prejudice, hardship and/or grave injustice, if the orders sought are not granted.
29. Finally, Learned counsel for the Respondent has submitted that an order of stay of proceedings like the one sought by the Applicant herein is a grave order, insofar as same, [if granted], has the consequence of keeping the instant matter in abeyance and/or suspense and thereby infringing upon the Respondent's constitutional right to Fair Hearing as entrenched in Article 50 of *the Constitution*.
30. Furthermore, Learned counsel for the Respondent has submitted that prior to and before a court of law can venture forward and grant an order for stay of proceedings, it behooves the court to appreciate that such an order can only be issued and/or be granted in peculiar and exceptional circumstances and not as a matter of course.
31. To this end, Learned counsel for the Respondent has cited and relied on, inter-alia, the holding in the case of David Moton Silvastein vs Atsango Chesoni (2002)eKLR and Kenya Wildlife Service vs James Mutembei (2019)eKLR.
32. Other than the foregoing, Learned counsel for the Respondent has also submitted that contrary to the averments by and on behalf of the Applicant, the Respondent herein shall be disposed to suffer undue prejudice and grave injustice, if the orders of stay of proceedings are granted in the manner sought. In this respect, Learned counsel has added that the Respondent herein shall have a right to expeditious and proportionate determination of the subject matter, infringed upon and/or violated.
33. Based on the foregoing submissions, Learned counsel for the Respondent has thereafter invited the Honorable court to find and hold that the Application beforehand does not meet and/or satisfy the requisite threshold to warrant being allowed/granted or at all.
34. In a nutshell, Learned counsel has thus implored the Honourable court to invoke the provisions of Section 1A and 1B of the *Civil Procedure Act*, Chapter 22 Laws of Kenya as read together with Article 159(2)(b) of *the Constitution* 2010; and thus to dismiss the instant Application.



c. Rest of the Respondents:

35. Though the rest of the Defendants/Respondents were present when directions were given for the filing and exchange of the written submission, same have neither filed the written submissions within the circumscribed timeline nor at all.
36. In any event, when the matter came up for mention on the 8th February 2024, Learned counsel for the rest of Respondents intimated to the court that same shall not be filing written submissions.
37. In view of the foregoing, the only submissions which are on record are the ones filed by and on behalf of the 3rd Defendant/Applicant and the Plaintiff/Respondent, [whose details have been highlighted hereinbefore], respectively.

Issues For Determination:

38. Having appraised and reviewed the Application beforehand and the Response thereto and upon taking into consideration the written submissions filed on behalf of the named Parties, the following issues do emerge and are thus worthy of determination;
 - i. Whether the Applicant herein has established and demonstrated the existence of a Sufficient cause.
 - ii. Whether the Applicant has demonstrated a basis to warrant the grant of an order of stay of proceedings or otherwise.

Analysis And Determination:

Issue Number 1 Whether the Applicant herein has established and demonstrated the existence of a Sufficient cause.

39. Before venturing to answer the issue herein, which touches on and/or concerns, whether the Applicant has espoused and established a sufficient cause, it is imperative to take cognizance of certain backgrounds facts, which are paramount and would thus enable this Honorable court to discern whether sufficient cause has been established.
40. Firstly, it is important to underscore that when the instant matter was filed, same was accompanied by an Application under Certificate of Urgency and wherein the Plaintiff/Respondent sought for, inter-alia, orders of Temporary injunction.
41. Suffice it to point out that the said Application under Certificate of Urgency was placed before the designated Judge [namely, Lady Justice K. Bor, Judge], who thereafter duly certified the application as urgent and granted interim orders.
42. Be that as it may, on the 7th July 2020; the advocates for the respective Parties covenanted to have the substantive dispute heard and disposed of on priority basis. In this regard, the Application that had hitherto been filed was compromised and the Parties agreed to pursue the substantive hearing.
43. Furthermore, it is also important to underscore that the court also proceeded to and gave directions for the filing and exchange of, inter-alia, the pleadings, List and Bundle of documents, as well as the witness statements, which were to be filed and exchanged within a circumscribed timelines.
44. First forward, on the 4th December 2020; all the Parties appeared before the court and intimated to the court the manner in which same shall proceed with the hearing. In particular, Learned counsel for the 3rd Defendant intimated to the court that the 3rd Defendant shall not be calling any witness.



45. Other than the foregoing, the instant matter came up for Further defense hearing on the 24th October 2023; and on which date the 3rd Defendant was duly represented by counsel. Instructively, Learned counsel for the 3rd Defendant informed the court that insofar as the 3rd Defendant had neither filed any List and Bundle of documents nor witness statement, same was closing the 3rd Defendant's case albeit without summoning any witness.
46. Pursuant to and in line with the intimation by Learned counsel for the 3rd Defendant, the Honourable court proceeded to and closed the 3rd Defendant's case.
47. Be that as it may, on the 5th December 2023, the 3rd Defendant herein approached this court seeking for Leave to be allowed to (sic) file fFurther documents and witness statement, albeit on behalf of [sic] the 1st Defendant.
48. Invariably, the Application dated the 5th December 2023; was duly canvassed and thereafter disposed of by this court vide Ruling rendered on the 20th December 2023. For coherence, the Honorable court found and held that the Application under reference was devoid of merits and dismissed same.
49. Arising from the said Ruling, the 3rd Defendant/Applicant has since filed a Notice of Appeal and same is thus desirous to pursue an appeal before the Court of Appeal.
50. It is on the basis of the said Notice of appeal that the Applicant has now approach the court seeking to procure an order of stay of proceedings pending (sic) the hearing and determination of the said intended appeal.
51. Even though the 3rd Defendant/Applicant has since filed a Notice of Appeal, it is instructive to note that the filing of the Notice of appeal per se does not constitute a sufficient basis to warrant the grant of an order of stay of proceedings.
52. To my mind, even though the filing of a Notice of appeal is critical and paramount by dint of the provisions of Order 42 Rule 6(1) of the Civil Procedure Rules 2010, a person who has filed a Notice of Appeal, [the Applicant herein not excepted], must venture forward and place before the court some evidence to underscore that the intended appeal for which stay of proceedings is sought, espouses some arguable grounds.
53. In my humble view, the factual background which I have endeavored to enumerate hereinbefore, demonstrate that the 3rd Defendant/Applicant herein had been afforded wide latitude to file and serve the requisite documents and witness statement, but same spurned the opportunity/indulgence granted, for reasons only known to her.
54. On the other hand, it is also not lost on this court that having not filed any previous List and Bundle of documents, the 3rd Defendant/Applicant could not be heard to seek to file "Further documents and witness statements", yet no initial documents were filed. Quite clearly, by adopting and applying the term Further documents, the Applicant was being dishonest and devoid of candour.
55. Be that as it may, it is also important to recall that whereas the 3rd Defendant/Applicant was seeking to file Further documents and Further witness statement, the order closing the 3rd Defendant's case remains in situ and has not been disturbed to date. Consequently, even if the Leave was to be granted, the Applicant would still have met another hurdle.
56. In view of the foregoing position, I hold the humble view that despite having an undoubted right of appeal, the intended appeal being espoused by the Applicant herein "appears" from the onset to frivolous.



57. Back to the issue of sufficient cause. At the onset this court had stated that any Applicant desirous to partake of and/or procure an order of stay of proceedings, the Applicant not excepted, must demonstrate the existence of a sufficient cause.
58. However, the question is what does sufficient cause mean ? Or better still, what are the ingredients that underpin sufficient cause.
59. To answer the question posed in the preceding paragraph, it suffices to take cognizance of the holding of the Court in the case of Wachira Karani v Bildad Wachira [2016] eKLR, where the court held as hereunder

“I again repeat the question what does the phrase "Sufficient cause" mean. The Supreme Court of India in the case of Parimal vs Veena observed that:-

"sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man.

In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously"

60. From the except cited hereinbefore, it is evident and apparent that sufficient cause embodies and embraces several perspective/nuances, which include a demonstration of diligence, bona fides and candour, by an Applicant and not otherwise.
61. Be that as it may, having evaluated the totality of the facts surrounding the subject matter and taking into account the meaning, import and tenor of sufficient cause, I am unable to hold that the 3rd Defendant/Applicant herein has indeed espoused and established sufficient cause.

Issue Number 2 Whether the Applicant has demonstrated a basis to warrant the grant of an order of Stay of proceedings or otherwise

62. The Learned counsel for the Applicant has contended that if the instant matter proceeds to hearing prior to and before the hearing and determination of the intended appeal, then the intended appeal shall be rendered nugatory and academic. In any event, counsel has ventured further to contend that the Applicant shall suffer undue prejudice, unless the orders of stay of proceedings are granted.
63. To the extent that the Applicant herein contends that same shall suffer prejudice, unless the orders sought are granted, it is therefore imperative that the court does interrogate the various perspectives that may arise, if the orders sought are not granted.
64. To start with, if the orders of stay of proceedings are not granted, no doubt the subject matter which has substantially proceeded and is now pending the hearing of the 4th, 5th and 6th Defendants' cases, shall proceed to conclusion and most probably, a Judgment may be rendered one way or the other.



65. But the question is, if the Applicant's appeal before the Court of Appeal were to succeed, would the Applicant herein suffer any prejudice or grave injustice. In my humble view, no injustice would accrue and/or arise insofar as the proceedings and Judgment, [if any], that shall have been taken and/or entered by this court, shall have to abide by the directions of the Court of Appeal.
66. In respect of the foregoing proposition, this court adopts and reiterates the holding of the Court of Appeal in the case of David Morton Silverstein versus Atsango Chesoni [2002] eKLR, where the court held thus;
- “What will happen if we do not grant the stay sought is that the appeal in the High Court will be heard and may well be determined. But when the appeal already lodged is heard, determined and, if it succeeded, what would automatically follow is that the proceedings in the High Court would have been rendered unnecessary, but an appropriate order for costs can be made to remedy that. However, the appeal in this Court would not have been rendered nugatory”.
67. Secondly, it is not lost on the Honourable court that there is also a window for a Party, the Applicant herein not excepted, subject to the outcome of the appeal to seek to tender and/or adduce additional evidence. For good measure, the adduction/production of additional evidence can even be made before the Court of Appeal.
68. To my mind, the prejudice, if any, that the Applicant may suffer, is capable of redress and redemption.
69. On the other hand, the Plaintiff/Respondent who filed the subject matter before the court and who in any event has exercised due diligence from the onset, will have to suffer the anxiety attendant to delayed determination of the suit and thus delayed Justice. In this regard, it behooves the court to undertake a delicate balance between the rights and interests of the Plaintiff/Respondent on one hand; and the 3rd Defendant/Applicant on the other hand.
70. Notwithstanding the foregoing, it is important to underscore that one of the Constitutional dictates espoused vide Article 159(2)(b) of *the Constitution* 2010, touches on and concerns expeditious hearing and disposal of Legal disputes.
71. In my humble view, the totality of the facts and circumstances surrounding the instant matter necessitate that the dispute beforehand be heard and disposed of expeditiously and proportionately taking into account the necessity to avert delayed Justice.
72. Further and in any event, there is no gainsaying that an order of stay of proceedings is such a grave order and thus prior to and/or before same [an order of stay of proceedings] is granted, it behooves the Applicant to demonstrate exceptional circumstances, to warrant such an order being issued.
73. Suffice it to point out, that the circumstances under which an order of stay of proceedings can be granted have hitherto been elaborated upon in various decisions. In particular, the holding of the Court in the case of Kenya Wildlife Services vs James Mutembei (2019)eKLR, is succinct, paramount and apt.
74. For coherence, the Court after reviewing various texts stated and held thus;
- “Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceeding is high and



stringent. See Ringera J in the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 persuasively stated thus;

“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)

75. Other than the foregoing decision, it is also important to point out that the circumstances to be considered prior to and or before an order of stay of proceedings can be granted, have also been highlighted at the foot of Halsbury’s Law of England, 4th Edition. Vol. 37 page 330 and 332, as hereunder;

“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.”

76. Arising from the foregoing, it is common ground that an order of stay of proceeding therefore ought to be granted with necessary circumspection and reluctance, given the grave consequences that are attendant thereto or flow therefrom.
77. At any rate, it is incumbent upon the court to always endeavor to balance the competing rights between the Parties, albeit without losing site of the Constitutional dictates underpinned by the provisions of Article 159(2)(b) of *the Constitution*, 2010.
78. Before departing from this issue, it is important to recall and reiterate the holding of the Court of Appeal in the case of Said Sweilem Gheithan Saanum versus Commissioner Of Lands (being sued through Attorney General) & 5 others [2015] eKLR, where the court held as hereunder;

“Justice shall not be delayed” is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the *Civil Procedure Act* are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot



therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure.

79. Without belaboring the point, the Parties herein, the 3rd Defendant/Applicant not excepted had covenanted to first track the hearing and disposal of the instant suit and in this regard, agreed to file and exchange documents timeously. However, midstream the process, the 3rd Defendant/Applicant is now seeking to suspend and/or hold in abeyance the proceedings herein, merely because of an act of want, or lack of diligence on her part.
80. Surely, the Equity of the case does not warrant the grant and/or issuance of an order of stay of proceedings, either in the manner sought or at all.
81. In a nutshell, my answer to issue number two [2], is three-fold. Firstly, the Applicant herein has neither demonstrated nor established the nature of prejudice if any, that same is disposed to suffer, if the orders sought are not granted.
82. Secondly, the grant of an order of stay of proceedings would cause and/or occasion substantial prejudice, hardship and grave injustice to and in favor of the Plaintiff/Respondent, inter-alia, delayed determination and disposal of the suit.
83. Thirdly, an order of stay of proceedings can only issue with necessary circumspection, albeit upon proof of exceptional circumstances, which would occasion grave injustice and/or hardship to the Applicant, unless such an order is issued. However, in respect of the instant matter, the Applicant has neither established, nor demonstrated any exceptional circumstance or at all.

Final Disposition:

84. Having appraised the two [2] issues which were highlighted in the body of the Ruling, it is evident and apparent that the Applicant herein has neither established nor demonstrated the requisite ingredients, necessary prior to the grant of an order of stay of proceedings.
85. Consequently and in the premises, the court comes to the conclusion that the instant Application, namely, the Application dated the 6th January 2024; is devoid of merits and thus courts dismissal.
86. In short, the Application dated the 6th January 2024, be and is hereby dismissed with costs to the Plaintiff/Respondent; 4th, 5th and 6th Defendants only, insofar as the rest of the Defendants supported the Application under reference.
87. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF FEBRUARY 2024.

OGUTTU MBOYA,

JUDGE.

In the Presence of;

Benson - Court Assistant.

Ms Glory Kimani h/b for Mr. Elijah Mwangi for the Plaintiff/Respondent.

Ms Masara h/b for Dr. Jotham Arwa for the 1st Defendant/Respondent.

Mr Haggai h/b for Ms Ann Githongori for the 2nd Defendant/Respondent.

Mr. Duwane for the 3rd Defendant/ Applicant.



Mr. Allan Kamau for the 4th and 6th Defendants/Respondents.

Mr. Ludenyo h/b for Mr. Shah for the 5th Defendant/Respondent.

