



**Paragon Electronics Ltd v Land Registrar & 2 others; Ngum & 2 others (Interested Parties)
(Civil Application E015 of 2025) [2025] KECA 586 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 586 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E015 OF 2025
DK MUSINGA, M NGUGI & F TUIYOTT, JJA
MARCH 28, 2025**

BETWEEN

PARAGON ELECTRONICS LTD APPLICANT

AND

THE LAND REGISTRAR 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

KENYA REVENUE AUTHORITY 3RD RESPONDENT

AND

OUSAINOU NGUM INTERESTED PARTY

KHADIJA TOU FRANCES NGUM INTERESTED PARTY

MWANIKI GACHOKA INTERESTED PARTY

*(Being an application for stay of proceedings from the decision of the
Environment and Land Court of Kenya at Nairobi (O. A. Angote,
J.) given on 14th November 2024 in ELC Petition No. 1 of 2021)*

RULING

1. The applicant’s notice of motion dated 9th December 2024 seeks stay of proceedings in Nairobi Environment and Land Court (ELC) Petition No. 1 of 2021 pending hearing of an intended appeal by the applicant from the decision of the High Court (Angote, J.) rendered on 8th May 2024.
2. In an affidavit sworn by Anyango Ivy, the applicant’s advocate in support of the application, she deposes, inter alia, that in the impugned ruling the court declined to hear the applicant’s application dated 2nd April 2024 seeking viva voce examination of the 1st respondent on grounds that parties had already taken directions regarding hearing of the main petition; that the applicant (the petitioner),



being aggrieved by the said ruling, has filed a notice of appeal before the ELC dated 14th May 2024; and that the applicant filed an application dated 20th May 2024 seeking stay of proceedings pending appeal against the ruling of 8th May 2024, but Angote, J. dismissed the applicant's application vide a ruling delivered on 14th November 2024.

3. The applicant's advocate further states that the intended appeal is arguable, and makes reference to a draft memorandum of appeal annexed to the affidavit; that the applicant will be greatly prejudiced and stands to suffer substantial loss if the suit proceeds to hearing before the determination of the intended appeal; that the appeal will be rendered nugatory if the orders sought are not granted; that the respondents and the interested parties will not suffer any prejudice or hardship if the orders sought are granted; and for those reasons, the orders sought ought to be granted.
4. The respondents, though served with the application and a hearing notice, did not file any replying affidavit or submissions. The 1st and 2nd interested parties filed a replying affidavit as well as submissions. The 3rd interested party (now a judge of this Court), was the arbitrator in 2016 and it was not necessary for him to file any papers in response to the application.
5. In the replying affidavit sworn by the 1st interested party on his own behalf and on behalf of the 2nd interested party with whom they co-own a property known as Apartment No. 11, 5th Floor/Penthouse, Block A1 in Remax Terrace Apartments on LR. No. 330/335, (the suit property), he states, *inter alia*; that the applicant has filed at least ten (10) cases in various courts in an attempt to scuttle an arbitration that began in September 2016; that the ruling sought to be appealed from was delivered on 8th May 2024, and the application for stay of proceedings came eight (8) months thereafter, which is an unreasonable and unjustifiable delay, considering that the petition that is sought to be stayed began more than 8 years ago; that the intended appeal is not arguable; that the trial court had given directions that the petition would be disposed of by way of written submissions way back on 30th September 2022 in the presence of, and with the consent of the applicant's counsel; that on 31st January 2024, the applicant's advocate profusely apologised to the trial judge for not filing and serving submissions on the petition as directed by the court, and indicated that the submissions had been filed but not served, and would be served by close of business of that day, which was never done; that the application dated 20th May 2024 was dismissed on sound reasons that are properly set out in the impugned ruling; and that the applicant will not suffer any prejudice or substantial loss by refusal to stay proceedings as sought.
6. The 1st interested party added that the applicant's director, who is behind all the ten (10) court matters as aforesaid, Mr. Bulent Gulbahar, is a fugitive from justice in Kenya, after he viciously attacked security guards and injured one of them at Gateway Complex along Mombasa Road sometime in March 2019 and has not set foot in Kenya since then; that Mr. Gulbahar, through the applicant, is in a series of court cases with developers, tenants, Kenya Revenue Authority, banks and other corporations as highlighted by media reports as demonstrated in exhibits attached to the replying affidavit.
7. In addition, the 1st interested party stated that parties to the petition and the application for stay of proceedings are not parties to the arbitration agreement between the applicant and the 1st and 2nd interested parties; that the applicant's appeal will not be rendered nugatory if the orders sought are not granted; no exceptional circumstances have been demonstrated to warrant stay of the proceedings; that the 1st and 2nd interested parties will suffer immense prejudice if the orders sought are granted as that will occasion further delay in conclusion of the proceedings that relate to the suit property; that the petition whose hearing the applicant seeks to stall was filed by the applicant to avoid complying with the third order for directions dated 1st February 2017 requiring the applicant to deposit with the arbitrator the original lease belonging to the 1st and 2nd interested parties; and that considering all the relevant issues relating to the dispute, the application for stay of proceedings ought to be dismissed.



8. When the application came up for hearing on 10th March 2025, Mr. Ataka appeared for the applicant and Mr. Obok for the 1st and 2nd interested parties. There was no appearance for all the other parties. The said advocates briefly highlighted their respective clients' written submissions, which we have considered but need not rehash.
9. The principles that guide the Court in an application under rule 5(2)(b) of this *Court's Rules* are well settled. An applicant must demonstrate existence of an arguable appeal, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See *Kenafriic Matches Ltd. v Match Masters Limited* [2021] eKLR.
10. In addition, in an application for stay of proceedings pending appeal, the applicant must satisfy the Court that there are exceptional circumstances to warrant stay of proceedings because stay of proceedings is a serious and grave judicial intervention as it has the effect of delaying pending proceedings. (See *M/s Karsan Ramji & Sons Limited v Athuman & Another (Suing for and on behalf of Wamwanyundo Clan & 6 Others* (Civil Application No. E034 of 2023 [2024] KECA 563 (KLR). See also this Court's decision in *Zenith Pharmaceuticals Limited & 2 Others v Sidian Bank Limited* [2025] eKLR).
11. We have perused the draft memorandum of appeal annexed to the applicant's affidavit. The single ground of appeal states:

“That the judge erred in fact and in law by declining to hear the petitioner's application dated 2nd April, 2024, for viva voce examination of the 1st respondent on the grounds that parties had already taken directions on hearing of the main petition.”
12. We entertain doubts regarding arguability of the intended appeal, given that the directions as to the manner in which the petition before the trial court was to be determined were given in the presence and with consent of counsel for the applicant. We do not therefore understand how directions given by consent can be the subject of an appeal. Further, it is on record that on 31st January 2024 the applicant's counsel apologised to the trial court for his failure to file and serve submissions as directed and promised to serve the same by the close of business of that day, which was never done.
13. But even if the intended appeal is arguable, considering that an arguable appeal is not one that must succeed, but is one that ought to be argued fully as held in a plethora of decisions by this Court, we are not satisfied that the appeal, if successful, will be rendered nugatory by refusal to grant an order of stay of proceedings.
14. In our view, the applicant has also not demonstrated exceptional circumstances to warrant grant of stay of proceedings as sought. It is in the interest of both parties, and in the interest of justice, that the arbitration that started way back in 2016 be disposed of as soon as possible. The applicant filed this application 8 months after delivery of the impugned ruling, and that delay has not been explained. We were informed that the trial court proceeded with the hearing of the matter and judgment is scheduled to be delivered on 4th April 2025. It will be highly prejudicial to the 1st and 2nd interested parties to forestall conclusion of the proceedings at this late stage.
15. For these reasons, we find this application bereft of merit and dismiss it with costs to the 1st and 2nd interested parties.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH, 2025.

D. K. MUSINGA, (PRESIDENT)



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JUDGE OF APPEAL
MUMBI NGUGI

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JUDGE OF APPEAL
F. TUIYOTT

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

signed

DEPUTY REGISTRAR

