



Saptet Farm Company Limited v SK Soi Company Limited (Environment & Land Case 20 of 2006) [2025] KEELC 862 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 862 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 20 OF 2006
LA OMOLLO, J
FEBRUARY 27, 2025**

BETWEEN

SAPTET FARM COMPANY LIMITED PLAINTIFF

AND

S.K SOI COMPANY LIMITED DEFENDANT

RULING

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 16th April, 2024. The application is expressed to be brought under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B & 3A of the *Civil Procedure Act* and Article 159 of the *Constitution* of Kenya.
2. The application seeks the following orders;
 - a. Spent
 - b. That there be stay of proceedings herein pending the hearing and determination of the Applicant's appeal.
 - c. That the necessary directions be given.
3. The application is based on the grounds on its face and the supporting affidavit of one Charles Kiplangat Too sworn on 19th April, 2024.

Factual Background.

4. The Plaintiffs/Applicants commenced the present proceedings vide the Plaint dated 29th March, 2006 that was amended on 23rd March, 2011. The Plaintiffs/Applicants sought the following orders;
 - a. Eviction of the Defendant, all his servants, representatives, assigns and heirs from the said plot Kericho/Municipality Block 5/437.



- b. Costs and interest of this suit.
 - c. Interest of (b) at Court rates.
 - d. Any other relief this Honourable Court may deem just and expedient to grant.
 - e. A refund of all the rents received from 30th June, 2004, at a rate of Kshs. 58,500/= per month till the date, month and year when the refund is made in full.
5. The Defendant/Respondent filed a Statement of Defence and Counterclaim dated 26th April, 2006 which statement of defence and counterclaim was amended on 15th July, 2008 and further amended on 28th November, 2011.
 6. In the Further Amended Statement of Defence and Counterclaim the Defendant/Respondent prays for;
 - a. The sum of Kshs 9,361,398/= being the costs of improvement less the initial purchase price.
 - b. General Damages for breach of contract payable with interest at commercial rates.
 - c. In the alternative an order do issue against the Plaintiff (now Defendant) to execute transfer documents so as to effect a valid transfer of the said property to the Defendant (now Plaintiff) and in default the Deputy Registrar of this Court do execute the said documents.
 - d. Costs of the suit.
 - e. Any other relief the Court may deem fit to grant.
 7. On 12th July, 2023 the Plaintiff/Applicant's suit was dismissed pursuant to the provisions of Order 12 Rule 3(1) of the Civil Procedure Rules. The Court directed that the Defendant/Respondent's Counterclaim proceeds for hearing.
 8. The application under consideration first came up on 3rd June, 2024 when the Court directed that it be heard by way of written submissions.
 9. The application was mentioned severally to confirm filing of submissions and finally reserved for ruling on 17th October, 2024.

The Plaintiff/Applicant's Contention.

10. The affidavit in support of the application is sworn by Charles Kiplangat Too one of the directors of the Plaintiff/Applicant.
11. He contends that the Plaintiff/Applicant commenced the present proceedings seeking that the Defendant/Respondent be evicted from land parcel No. Kericho Municipality Block 5/437.
12. He also contends that the Defendant/Respondent filed a statement of defence and Counterclaim.
13. He further contends that on 12th July, 2023 the Court dismissed the Plaintiff/Applicant's suit for want of prosecution.
14. It is his contention that the Plaintiff/Applicant filed the application dated 24th October, 2023 to set aside the orders dismissing its suit which application was dismissed vide the ruling delivered on 29th February, 2024.
15. It is also his contention that the Plaintiff/Applicant was aggrieved by the said ruling and order of the Court and it therefore lodged an appeal against it.



16. It is further his contention that the Defendant/Respondent's Counterclaim was slated for mention on 25th April, 2024.
17. He contends that he has been advised by the Plaintiff/Applicant's advocates on record that the Plaintiff/Applicant has an arguable appeal with high chances of success.
18. He also contends that the Plaintiff/Applicant's suit was dismissed for non-attendance whereas the said failure to attend Court was predicated on the parties conduct which suggested that the suit therein was compromised.
19. He further contends that the Plaintiff/Applicant is willing to offer such security and/or abide by such terms as this Honourable Court may deem fit and just to impose.
20. It is his contention that this Court has the discretion to grant stay of proceedings against the terms of the ruling delivered on 29th February, 2024.
21. It is also his contention that unless the orders of stay of proceedings are granted, the Plaintiff/Applicant is apprehensive that the Court will proceed to hear and determine the Defendant/Respondent's Counterclaim.
22. It is further his contention that unless the application is allowed, the Plaintiff/Applicant stands to suffer substantial loss and prejudice as the substratum of their appeal would be lost in the event that the Counterclaim is heard and determined before the Court of Appeal renders itself.
23. He ends his deposition by stating that if the application is allowed, the prejudice and/or inconvenience likely to be suffered by the Defendant/Respondent if any would be miniscule compared to the Plaintiff/Applicant. He adds that if the application is dismissed, the Plaintiff/Applicant would have been driven from the seat of justice.

The Defendant/Respondent's Response.

24. The Defendant/Respondent filed a Replying Affidavit sworn on 14th August, 2024 by one Moses Kiptoo Langat.
25. He deposes that he is one of the directors of the Defendant/Respondent and therefore competent to swear the affidavit.
26. He also deposes that the Plaintiff/Applicant is indolent as it had dragged the Defendant/Respondent to Court but was not keen to have its case heard and determined. This led to the suit in the interest of justice being dismissed for want of prosecution.
27. He further deposes that the conduct of the Plaintiff/Applicant militates against the granting of the orders sought.
28. It is his deposition that on 27th September, 2021, the Court gave a last adjournment to confirm the finalization of negotiations.
29. It is also his deposition that on 22nd November, 2021 parties informed the Court that they had not reached an out of Court settlement and they were therefore given a hearing date.
30. It is further his deposition that the matter came up on 28th February, 2023 and the parties informed the Court that they had not reached any agreement and that the Court observed that the suit was filed in the year 2006 and added that if parties were not ready to proceed the suit would be dismissed for want of prosecution.



31. He deposes that on 13th July, 2023 the matter came up and the Plaintiff/Applicant informed the Court that the parties were still negotiating. The Court upon hearing the submissions of the parties dismissed the Plaintiff/Applicant's suit for want of prosecution.
32. He also deposes that he has demonstrated that the actions of the Plaintiff/Applicant were only intended to obstruct the cause of justice.
33. He further deposes that the reasons advanced by the Plaintiff/Applicant in the present application are the same reasons it advanced in the application dated 24th October, 2023. The said application was dismissed by the Court on 29th February, 2024.
34. It is his deposition that Article 159 (2)(b) of the Constitution of Kenya provides that justice shall not be delayed and since the Plaintiff/Applicant commenced this suit, it behooved it to prosecute the suit without undue delay.
35. It is also his deposition that the Plaintiff/Applicant's suit was dismissed for failure to comply with the orders issued on 28th February, 2023 which were explicit that if the matter would not proceed then it would be dismissed.
36. It is further his deposition that the Court does not issue orders in vain and therefore it does not condone deliberate disobedience of its orders.
37. He deposes that the Plaintiff/Applicant has not established whether it has an arguable appeal as it has not annexed any Memorandum of Appeal to show the Court the grounds upon which it is challenging the ruling of the Court. He urges the Court to therefore dismiss the Plaintiff/Applicant's application.
38. He also deposes that the Plaintiff/Applicant has not met the threshold established by law and precedent for grant of stay of proceedings.
39. He further deposes that in the judicial decision of Kenya Wildlife Service vs James Mutembei [2019]eKLR, stay of proceedings is a grave action that significantly disrupts a litigant's ability to pursue their case. It infringes upon the fundamental rights of access to justice, being heard promptly and ultimately receiving a fair trial. As a result, the test for granting stay of proceedings is high.
40. It is his deposition that he is inviting this Court to be cautious in granting the orders sought as they will greatly impede the Defendant/Respondent's right to a timely hearing.
41. It is also his deposition that Sections 1A and 1B of the Civil Procedure Act mandates this Court to promote and facilitate the overriding objective which is to provide fair, prompt, proportionate and affordable justice to all the parties involved.
42. It is further his deposition that the intended appeal is a planned maneuver by the Plaintiff/Applicant which goes against the timely and proportionate resolution of disputes in order to ensure access to justice by all the parties.
43. He deposes that it would not be in the interest of justice for this Court to exercise its discretion and stay the proceedings as the hearing and determination of this matter would be delayed.
44. He also deposes that if the present application is allowed, the Defendant/Respondent would be greatly prejudiced as the matter has been pending before Court for a period of over seventeen years.
45. He further deposes that the Plaintiff/Applicant has not given sufficient reasons for this Court to exercise its discretion and grant orders of stay of proceedings.



46. It is his deposition that this Court cannot exercise its discretion to assist a person who has deliberately sought to obstruct the cause of justice.
47. He ends his deposition by stating that the Plaintiff/Applicant only intends to vex the Defendant/Respondent and he invites this Court to stamp its authority and not countenance such acts.

Issues for Determination.

48. The Plaintiff/Applicant filed its submissions on 19th September, 2024 while the Defendant/Respondent filed its submissions on 15th October, 2024.
49. The Plaintiff/Applicant's submissions are on whether it has met the threshold for granting the orders sought.
50. The Plaintiff/Applicant relies on Order 42 Rule 6(2) of the Civil Procedure Rules, the judicial decision of William Odhiambo Ramogi & 3 Others v Attorney General & 6 Others; Muslims for Human Rights & 2 Others (Interested Parties) [2020] eKLR and reiterates that it was aggrieved by the decision of this Court delivered on 29th February, 2024 and it has preferred an appeal against it.
51. The Plaintiff/Applicant also submits that it has lodged the Notice of Appeal dated 1st March, 2024.
52. It is the Plaintiff/Applicant's submissions that it filed the application under consideration expeditiously.
53. The Plaintiff/Applicant acknowledges that even though it has filed a Notice of Appeal, it is yet to be supplied with the proceedings to enable it prepare the record of appeal.
54. The Plaintiff/Applicant reiterates that the intended appeal is not only arguable but has high chances of success as it raises substantial questions about its right to a fair hearing and access to justice.
55. The Plaintiff/Applicant reiterates the averments of its director in the affidavit in support of the application, relies on David Akongo Obilo v Dipen Hasmukhlal Faldu [2022] eKLR and submits that it is ready and willing to offer security or abide by any other terms imposed by the Court.
56. The Defendant/Respondent's submissions seek to answer the question whether the Court should order stay of proceedings.
57. The Defendant/Respondent relies on Order 42 Rule 6(1) of the Civil Procedure Rules, Article 159 (2), (a), (b), (c) & (d) of the *Constitution* of Kenya, Sections 1A & 1B of the Civil Procedure Rules, the judicial decisions of Re Global Tours & Travel Ltd HCWC No. 43 of 2000, Kenya Wildlife Service vs James Mutembei [2019]eKLR and submits that an order of stay of proceedings should only be granted where there is unquestionable evidence that the case should not be allowed to proceed because it is frivolous or vexatious.
58. The Defendant/Respondent reiterates the averments of its director in its replying affidavit and relies on the judicial decision of Ronald Mackenzie v Damaris Kiarie [2021] eKLR.
59. The Defendant/Respondent also submits that for this Court to grant an order of stay of proceedings, the Plaintiff/Applicant must demonstrate that it has an arguable appeal with high chances of success. The Defendant/Respondent relies on the judicial decisions of Stanley Kinyanjui vs Tony Ketter & 5 Others [2013]eKLR, University of Nairobi v Ricatti Business of East Africa [2020] eKLR and Muchanga Investments Limited vs Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR in support of its submissions.



60. The Defendant/Respondent concludes its submissions by urging the Court to dismiss the Plaintiff/Applicant's application.

Analysis and Determination.

61. I have considered the Plaintiff/Applicant's application, the response thereto and the rival submissions.

62. It is my view that the only issue that arises for determination is whether the proceedings in this matter should be stayed pending the hearing and determination of the Plaintiff/Applicant's appeal.

63. Order 42 Rule 6(1) of the Civil Procedure Rules provides as follows;

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set aside.

64. Halsbury's Law of England, 4th Edition. Vol. 37 pages 330 and 332, sheds light on stay of proceedings and states thus:

“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...”

65. In the judicial decision of *Port Florence Community Health Care v Crown Health Care Limited* [2022] eKLR the Court held as follows;

“The question of whether or not to grant an order for stay of proceedings is a discretionary one. This discretionary power must be exercised judiciously. The Court has to consider if it will be in the interests of justice to grant the same. The underlying interest ought to be that the appeal should not be rendered nugatory. Gikonyo J addressed the question of an order for stay of proceedings being an important consideration in the case of *Lucy Waithera Kimanga & 2 Others vs John Waiganjo Gichuri* (Supra).

15. This aspect of being rendered nugatory must be hinged on the fact of whether or not the appeal is arguable on appeal and not whether the appeal will be successful. The reason for this is that at this stage, a Court ought to be very cautious not to look into the merits or otherwise of the appeal as that is under the purview of the appellate Court. At this stage, the Court should only be concerned with the question of whether or not the appeal will be rendered nugatory.”

66. The Plaintiff/Applicant contends that its suit was dismissed for want of prosecution on 12th July, 2023.



67. The Plaintiff/Applicant also contends that it filed an application to set aside the said ruling which was also dismissed on 29th February, 2024.
68. The Plaintiff/Applicant further contends that it has filed an appeal against the said decision but the Court has already given a date for the hearing of the Defendant/Respondent's counterclaim. It is on this basis that the Plaintiff/Applicant is seeking that the present proceedings be stayed pending its appeal.
69. In response, the Defendant/Respondent contends that the present suit has been pending for over seventeen years now and it will be prejudiced if orders of stay of proceedings are granted.
70. As was held in *Port Florence Community Health Care v Crown Health Care Limited* (supra) cited above, a party seeking orders of stay of proceedings must demonstrate that it has an arguable appeal. The Plaintiff/Applicant submits that it has an arguable appeal and that if this Court proceeds to hear and determine the Defendant/Respondent's Counterclaim, its appeal would be rendered nugatory.
71. In *Turbo Highway Eldoret Ltd v Muniu* (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) (30 June 2022) (Ruling) the Court in considering whether to grant orders of stay of proceedings held as follows;

“In the present case, it is not possible to say that the preferred appeal is not arguable. As numerous decisions have held, an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous. The Appeal in the instant case relates to the question of whether the Trial Court correctly allowed the Respondent to produce a document without calling its maker. This is in my view an issue that this Court will need to consider and determine at the hearing of the appeal by weighing the reasoning given by the Trial Court vis a vis the Applicant's contestation and arrive at its own decision. The Appeal therefore passes the arguability test.

I am not persuaded, however, that the appeal will be rendered nugatory by the mere fact that the trial may proceed and a judgment on merits given. A judgment given is capable of being stayed. Whether the fact that a party had preferred an interlocutory appeal is entitled to a stay of proceedings cannot, therefore, merely be based on the fact that the Trial Court might consider what the appellant considers to be erroneous conclusions in its judgment. If the rule were otherwise, it would seriously impede proceedings in the trial Courts. This is because a party who is keen on obstructing a case from proceeding would simply prefer multiple appeals against interlocutory rulings by the Trial Court and then seek stay of proceedings in the Trial Court.

27. The rule is more exacting for a party requesting for a stay of proceedings. In particular, an 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 single appeal. The Applicant has not met this high threshold in this case.” [Emphasis Mine]

72. In the present case, the Plaintiff/Applicant has filed a Notice of Appeal against the ruling delivered on 29th February, 2024. The effect of the said ruling is that this court dismissed its application seeking to set aside the orders dismissing its suit for want of prosecution.
73. In *Turbo Highway Eldoret Ltd v Muni* (supra) cited above, the Court observed that an appeal will not be rendered nugatory by the mere fact that the trial may proceed and a judgment on merits given. It further observed that a party seeking orders of stay of proceedings must demonstrate that they have an



arguable appeal and that there are exceptional circumstances which would make stay of proceedings necessary.

Disposition.

74. Other than the Plaintiff/Applicant contending that its appeal would be rendered nugatory because this court may proceed to hear and determine the Defendant/Respondent's counterclaim, which contention does not warrant the grant of an order of stay of proceedings, the Plaintiff/Applicant has not demonstrated any exceptional circumstances that would warrant this Court to grant orders of stay of proceedings.
75. Consequently, I find that the Plaintiff/Applicant's application dated April 16, 2024 lacks merit and it is hereby dismissed with costs.
76. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 27TH DAY OF FEBRUARY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Koech for the Plaintiff/Applicant.

Mr. Okok for Defendant/Respondent

Court Assistant; Mr. Joseph Makori.

