



**Sustainet Group Limited v Wanguhu (Civil Application  
E220 of 2022) [2024] KECA 1106 (KLR) (30 August 2024) (Ruling)**

Neutral citation: [2024] KECA 1106 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E220 OF 2022  
HM OKWENGU, HA OMONDI & JM NGUGI, JJA  
AUGUST 30, 2024**

**BETWEEN**

**SUSTAINET GROUP LIMITED ..... APPLICANT**

**AND**

**JOHN WANGUHU ..... RESPONDENT**

*(Application for stay of proceedings pending the hearing and determination  
of the Ruling and Order of the Employment & Labour Relations Court at  
Kisumu (Baari, J.) dated 21st July, 2022 in ELRC Case No. E085 of 2021)*

**RULING**

1. On 5<sup>th</sup> February 2024, the Court allowed the applicant's motion dated 2nd November 2023 seeking stay of proceedings in Kisumu ELRC No. E085 of 2021, pending the hearing of an intended appeal by the applicant, Sustainet Group Limited, from the ruling of the Employment and Labour Relations Court (C.N. Baari, J) dated 21<sup>st</sup> July, 2022. We now give our reasons for allowing that motion.
2. In the ruling subject of the intended appeal, the learned Judge of the ELRC had dismissed an application dated 17<sup>th</sup> December, 2021 by the applicant, in which the applicant sought orders for stay of the proceedings pending arbitration, and an order that the dispute between the parties be referred to arbitration. The applicant contended that it had entered into a contract with the respondent, John Wanguhu, for him to be employed as Capacity Building Officer at a starting salary of Kshs. 350,000/= per month, with effect from 31<sup>st</sup> November, 2021, and that clause 11 of the employment contract provided for arbitration in case of a dispute. However, when a dispute arose, the respondent instituted Kisumu ELRC No. E085 of 2021 prematurely, and in violation of clause 11 of the agreement.
3. In response to the application, the respondent explained that upon being dismissed from employment, he sought the assistance of the Kisumu Labour Office, whereby a letter was written to the applicant



inviting it for negotiations, but the applicant ignored the invitation, and this caused him to file Kisumu ELRC No. E085 of 2021.

4. In dismissing the application, the learned judge of the ELRC noted how the applicant handled the calls to settle the respondent's claim out of court, and concluded that the arbitration agreement embodied in the contract was incapable of being performed because of the applicants' attitude. The judge further stated that pursuant to Section 12 of the Employment and *Labour Relations Act*, the ELRC had original jurisdiction to hear the dispute, and that jurisdiction, could not be ousted by dint of clause 11 of the contract of employment entered into between the applicant and the respondent.
5. It is that ruling that led the applicant to prefer to this Court, the appeal, together with the notice of motion under Rules 5(2)(b) and 49 of the Court of Appeal Rules 2022, seeking stay of proceedings in Kisumu ELRC No. E085 of 2021, pending the hearing and determination of the intended appeal. The application was supported by an affidavit sworn by Thomas Owidi Apina, a director of the applicant, and grounds stated on the face of the motion. In a nutshell, the director deposed that the dispute between the applicant and the respondent was premised on an employment agreement, which provided for arbitration, and, therefore, the dispute ought to have been referred to arbitration. The applicant contended that the intended appeal raises arguable issues and that unless the orders sought were granted, the respondent would proceed to have Kisumu ELRC No. E085 of 2021 heard on 21<sup>st</sup> November 2023 as scheduled, and the applicant's appeal which advocates for arbitration, would be of no use.
6. The applicant filed written submissions in which it cited *Butt -vs- Rent Restrictions Tribunal [1982] eKLR 417* urging that the Court has the discretion to grant the orders sought. It also relied on *Trust Bank Limited & Another -vs- Investech Bank Limited 3 Others [2000] eKLR*; and *Stanley Kangethe Kinyanjui -vs- Tony Ketter & 5 Others [2013] eKLR*, urging that its appeal raises arguable issues, which includes, the ELRC's misapprehension of facts and misguided interpretation of Section 6(1) of the *Arbitration Act*, and the ELRC's failure to enforce the mutually agreed and express terms of the employment agreement.
7. The applicant's notice of motion was opposed through a replying affidavit sworn by the respondent, in which the respondent maintained that the motion had been filed with inordinate delay, as the impugned ruling was delivered on 21<sup>st</sup> July, 2022, while the motion was filed on 16<sup>th</sup> November, 2023. The respondent deposed that the applicant was not deserving of the orders sought as he was a person with no regard to the law or orders of any court, and was, therefore, not deserving of the exercise of the Court's discretion.
8. During the plenary hearing of the motion, Mr. Nderitu appeared for the applicant while Mr. Tawo appeared for the respondent. Mr. Nderitu argued that the ruling of the ELRC is contrary to established legal principles and the provisions of the *Arbitration Act*, and that unless the Court granted an order for stay of proceedings, the applicant would be prejudiced as its appeal would be a mere academic exercise. In response, Mr. Tawo argued that the applicant's motion was only intended to delay the respondent's suit. He admitted that the applicant's intended appeal is arguable, but maintained that the appeal would not be rendered nugatory if the hearing in the ELRC proceeds, as on appeal, the Court can easily set aside the judgment of the ELRC.
9. Upon considering the application, the written and oral submissions and the memorandum of appeal, we were satisfied that the applicant's intended appeal is arguable as it raises issues that are capable of ventilation on appeal. In particular, the issue regarding the ELRC's jurisdiction to entertain the dispute, in light of the arbitration clause in the employment contract between the applicant and the respondent is a pertinent issue.



10. As regards the nugatory aspect, it was evident that absent an order of stay of proceedings, the ELRC would proceed to hear the respondent's suit and may issue orders that would unnecessarily complicate the appeal. Although this Court on appeal could set aside any judgment of the ELRC in this regard, it was important, in our view, and in the interest of expediency, to grant the order of stay of proceedings, as this would save judicial time and also save the parties unnecessary expense. We note that the ruling subject of the intended appeal was delivered on 21<sup>st</sup> July, 2022, and the motion before us was filed on more than a year later. In the circumstances of this case, we did not consider such delay inordinate.
11. Accordingly, we issued the order for stay of proceedings pending the hearing of the appeal. We further order that the costs of the motion shall abide the outcome of the appeal.

**DATED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF AUGUST, 2024.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

**JOEL NGUGI**

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**JUDGE OF APPEAL**

