



Karomo & Seinfert (Suing as the Chairman and Secretary, Respectively of the New Nyali Residents Association) & 4 others v Pam White Limited & another (Environment & Land Case 219 of 2020) [2024] KEELC 3358 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3358 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 219 OF 2020
NA MATHEKA, J
APRIL 25, 2024**

BETWEEN

**BENSON KAROMO AND HUBERT SEINFERT (SUING AS THE CHAIRMAN AND SECRETARY, RESPECTIVELY OF THE NEW NYALI RESIDENTS ASSOCIATION) 1ST PLAINTIFF
IDEAL LOCATIONS LIMITED 2ND PLAINTIFF
KIRKE LIMITED 3RD PLAINTIFF
CONRAD PROPERTIES 4TH PLAINTIFF
THE COUNTY GOVERNMENT OF MOMBASA 5TH PLAINTIFF**

AND

**PAM WHITE LIMITED 1ST DEFENDANT
THE COUNTY GOVERNMENT OF MOMBASA 2ND DEFENDANT**

RULING

- 11 The 1st Defendant's application is dated 28th November 2023 and is brought under Sections IA, 1B. & 63 (e) of the *Civil Procedure Act* (Cap 21) and Orders 42 Rule 6 & 51 Rule 10 the *Civil Procedure Rules* 2010 Laws of Kenya seeking the following orders;
1. That this application be certified as urgent and the Plaintiffs' and the 2nd Defendant's presence be dispensed with in the first instance.
 2. That this Honourable Court be pleased to stay any further proceedings in the matter, pending hearing and determination of this application.



3. That this Honourable Court be pleased to stay any further proceedings in the matter, pending hearing and determination of the Appeals filed in the Court of Appeal, being Civil Appeal Nos. E015 of 2023 and E113 of 2023 (Mombasa).
 4. That costs of this application be provided for.
- 2 It is based on the following grounds that the 1st Defendant filed an Appeal against a Ruling delivered herein on 5th May, 2022, being Civil Appeal No. E015 of 2023 (Mombasa), which said ruling dismissed the 1st Defendant's notice of Preliminary Objection on a point of law dated 2nd June, 2021, which sought to strike out the entire suit. That the 1st Defendant also filed another Appeal against a Ruling delivered herein on 18th July, 2022, being Civil Appeal No. E113 of 2023 (Mombasa), which said ruling dismissed the 1st Defendant's notice of Motion application dated 13th May, 2021, which sought to dismiss the entire suit. That the said appeals came up for case management on 1st November 2023 and directions were made for filing of written submissions and highlighting of the same in the month of March, 2024. That this suit is scheduled for on 30th November 2023 the pendency of the said appeals notwithstanding and therefore it would be in the interest of justice not only to the 1st Defendant but also to the other parties in the matter as well as the court for the proceedings herein to be stayed pending hearing and determination of the appeals, hence this application and the urgency of it. That there shall be no prejudice to any party if this application is allowed but the 1st Defendant shall be greatly prejudiced if the same is disallowed.
- 3 The Plaintiffs submitted that the Applicant has not met the threshold for grant on the orders sought. That they are guilty of filing numerous applications in this case so as to delay the trial. That the Applicant is deliberately delaying the case because the Plaintiffs had been ordered to give an undertaking as to damages and therefore the Applicant can afford to delay the case knowing that any delay will be compensated by damages from the Plaintiffs. That the delay in hearing this case has been inordinate and if it is stayed further the Plaintiffs will suffer prejudice.
 - 5 This court has considered the application and the submissions therein. The order of stay of proceedings is a drastic order and should only be allowed in exceptional circumstances. This is because it restricts the right of a party to be heard. In the case of *Meru Civil Appeal 40 of 2018, Kenya Wildlife Service vs James Mutembei* (2019) eKLR, the court stated that;

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".
 - 6 The learned judge went further to quote *Halsbury's Law of England, 4th Edition. Vol. 37* page 330 and 332, where it was stated that;

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".



7 In *Re Global Tours & Travels Limited, (Nairobi High Court Winding Up* Cause No. 43 of 2000), the court stated 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 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”.

8 I have perused the court file and find that by a ruling dated 5th May 2022 the court dismissed the 1st Defendant’s notice of Preliminary Objection on a point of law dated 2nd June, 2021, which sought to strike out the entire suit. The 1st Defendant filed an Appeal against a Ruling delivered herein on 5th May, 2022, being Civil Appeal No. E015 of 2023 (Mombasa). That the 1st Defendant states that they have also filed another Appeal against a Ruling delivered herein on 18th July, 2022, being Civil Appeal No. E113 of 2023 (Mombasa), which said ruling dismissed the 1st Defendant’s notice of Motion application dated 13th May, 2021, which sought to dismiss the entire suit. That the said appeals came up for case management on 1st November 2023 and directions were made for filling of written submissions and highlighting of the same in the month of March, 2024.

9 When I weigh the pros and cons of either proceeding with the matter, which already had a hearing date, or staying the proceedings, it is my view that it is would be proper to stay the proceedings as the results of the said Appeals if successful will be the striking out of the entire suit and closing the matter. I am thus persuaded to stay the proceedings herein. Of course this court will have to down its tools if the Court of Appeal allows the appeal. I find for these reasons that this application is merited and I grant the prayer 3. Costs to be in the cause.

10 It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE

