



**Nuclear Investment Limited v Nairobi County Government & 2 others (Environment & Land Case 393 of 2018) [2024] KEELC 4414 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4414 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 393 OF 2018  
EK WABWOTO, J  
MAY 30, 2024**

**BETWEEN**

**NUCLEAR INVESTMENT LIMITED ..... PLAINTIFF**

**AND**

**NAIROBI COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**NAIROBI METROPOLITAN SERVICES ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This Ruling is in respect to the 1<sup>st</sup> Defendant's/Applicant application dated 12<sup>th</sup> February 2024 and accompanied by a supporting affidavit sworn by Charles M. Ongoto Advocate where the 1<sup>st</sup> Defendant sought the following orders:
  - a. ...Spent.
  - b. That the Honourable Court be pleased to grant an order of stay of proceedings in this matter pending the ruling at the Court of Appeal in Civil Appeal E874/2023-Nairobi County Government vs Nuclear Investment Limited.
  - c. That the Honourable Court be pleased to grant an order of stay of proceedings in this matter pending the hearing and determination of the Appeal at the Court of Appeal in Civil Appeal E874/2023- Nairobi County Government vs Nuclear Investment Limited.
  - d. That costs of this Application be provided for.
2. The Application was based on the following grounds:
  - i. That the hearing of this matter was conducted on 28<sup>th</sup> March 2023, where the 2<sup>nd</sup> Defendant's case was heard and closed. The hearing was conducted without the presence of the 1<sup>st</sup>



Defendant upon which an application dated 24<sup>th</sup> April 2023 was filed, seeking to have hearing proceedings be set aside.

- ii. That the application was dismissed in a ruling dated 12<sup>th</sup> October 2023.
  - iii. Consequently, the 1<sup>st</sup> Defendant appealed the said ruling at the Court of Appeal by Civil Appeal E874/2023 through a Memorandum of Appeal and a Certificate of urgency application dated 16<sup>th</sup> November 2023 seeking a stay of proceedings in this matter.
  - iv. The Appeal and Application at the Court of Appeal is yet to be determined and is currently ongoing.
  - v. That the Application proceeded for hearing on 30<sup>th</sup> January 2024 whereupon it was scheduled for ruling on 12<sup>th</sup> April 2024.
  - vi. The matter involves a large sum of money to the tune of more than 190,050,000 and it is only fair and just that the 1<sup>st</sup> Defendant be given a chance to maximally present their case.
3. The 1<sup>st</sup> Defendant filed submissions dated 8<sup>th</sup> May 2024 in which it was argued that it was only fair that the Court do stay all proceedings until the said ruling is delivered and the appeal is determined at the Court of Appeal. Relying on the cases of *Kenya Commercial Bank Limited v Nicholas Ombija* [2009] and *Mbarak Said Ali & another v Sultan Palace Development Limited* [2021] eKLR, it was posited that the main test for stay of proceedings was whether the matter was an arguable appeal but not whether it would be successful. Additionally, a further consideration is whether if stay is allowed, the damage would be reversible or could be reasonably compensated.
  4. Having considered the written submissions and supporting documents the sole issue for determination is whether the application dated 12<sup>th</sup> February 2024 is merited?
  5. Stay of proceedings primarily at the discretion of the court. Application of this discretion is to ensure prudent use of judicial time and resources to dispense justice for the parties and guard against multiplicity of applications which are meant to delay the pursuit of justice. Undoubtedly, it is a serious judicial action which greatly interferes with the right of a litigant to conduct his litigation.
  6. In *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, 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.” [Emphasis Mine]
  7. The provisions of Article 159(2)(a)(b)(c) and (d) of the *Constitution* of Kenya as read with Sections 1A and 1B of the *Civil Procedure Act*, Cap 21 enjoin this court to foster and facilitate the overriding objective of the Act to render justice to parties in all civil Proceedings in an expeditious manner.



8. In this instance, this case had progressed through hearing and was scheduled for judgement on 30<sup>th</sup> April 2024. I have considered that this application is hinged on the parties' assertion to right to fair hearing and the financial gravity of the suit. I have further considered that the Court in its ruling dated 12<sup>th</sup> October 2023, determined that since the hearing date was taken by parties' consent, the failure to attend Court was wholly attributable to an error on 1<sup>st</sup> Defendant's Counsel.
9. The Court recognizes the systematic processes during appeal can be lengthy. To my thinking, I believe that the stay of proceedings pending final determination of the appeal would completely delay a process that has nearly run its course. Nonetheless, I agree with the submitted precedent that for stay of proceedings, we consider a prima facie requirement of an arguable case and not a successful case on merit. In essence, the learned judges intended to make the appeal process accessible to all through open doors and not akin to a needle's eye. The court has also considered the fact that the Court of Appeal is seized with the matter and is scheduled for delivery of its Ruling any day from now.
10. In the foregoing, the Court hereby allows the Application dated 12<sup>th</sup> February 2024 under the following terms:
  - a. An order of stay of proceedings is hereby issued in this matter pending further directions and or ruling of the Court of Appeal in respect to Nairobi Civil Appeal No E874/2023 Nairobi.
  - b. Each party to bear own costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY 2024.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

N/A for the 1<sup>st</sup> Plaintiff.

Mr. Ongoto for the 1<sup>st</sup> Defendant/Applicant.

N/A for the 2<sup>nd</sup> Defendant.

N/A for 3<sup>rd</sup> Defendant.

Court Assistant; Caroline Nafuna.

