



**Neba v African Academy of Sciences (Cause E370 of 2022)
[2025] KEELRC 941 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 941 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E370 OF 2022
DKN MARETE, J
MARCH 26, 2025**

BETWEEN

ALPHONSUS NEBA CLAIMANT

AND

THE AFRICAN ACADEMY OF SCIENCES RESPONDENT

RULING

1. This is an application by way of Notice of Motion dated 7th November, 2023. It seeks the following orders of court;
 1. That the Honorable Court be pleased to stay the proceedings herein pending the hearing and determination of Civil Appeal No. E815 of 2023: African Academy of Sciences v. Alphonsus Neba.
 2. That the Honourable Court be pleased to issue any other or further orders as the Honourable Court may deem fit to grant.
 3. That costs of this application be provided for.
2. The application is grounded on the basis that the Respondent is aggrieved by the ruling of court made on 26th June, 2023 and as launched a notice of appeal dated 5th July, 2023 in this respect. It has subsequently lodge its appeal No. 815, at the same Court of Appeal and served the same onto the Respondent.
3. The Claimant/Respondent in opposition to the application filed a Replying Affidavit sworn on 28th November, 2023. It is his case that this application is devoid of merit and an abuse of process of court.
4. It's intent is to deny him the fruits of the ruling of 26th June, 2023.



5. The Claimant/Respondent further argues and submits that the Applicant ought to have demonstrated that either she had a arguable appeal or that her intended appeal would be rendered nugatory if orders of stay of proceedings were not granted by this court.
6. It is his case that Claimant/Respondent's appeal is frivolous and has no chances of success in that she has not demonstrated a case of any immunity. This evidentiary burden of proof was never met and these proceedings are a ploy to further delay this suit. She further avers as follows;
 10. That Applicant was authorized to establish its headquarters in Nairobi by the Government of Kenya vide the Establishment of the Organization's Headquarters in Kenya data 125/2005, and the said agreement succinctly outlines the Applicant's terms of engagement while operating its headquarters within the territory of Kenya.
 11. That the Applicant has approached this court with mischief and lying lips. Article IV of the said Head Quarter Agreement provides that the Applicant has legal capacity with the right to enter into contracts and right to sue and be sued In addition, Article 1 of the said Head Quarter agreement provides that the Applicant must adhere to *the constitution* of Kenya and statutes, including the *Employment Act*.
 12. That the immunity and privileges conferred upon the Applicant and its officials are not absolute, and the same is limited by provisions of Article V of the said Headquarter Agreement, and are limited to issues of taxation of the Applicant's public utility services business income, equipment, materials, motor vehicles and items acquired for official use by the Applicant
 14. That I am not a foreign diplomatic mission and I have never been engaged in any activity on behalf of my home country Cameroon, and that I only enjoyed the immunities anal privileges outlined in the Headquarter Establishment agreement, wherein the immunities and privileges were limited to matters of taxation
7. Again, the Respondent/Applicant has failed to establish that her intended appeal would be rendered nugatory in the absence of an order of stay of proceedings or even a demonstration prejudice if these orders are not granted.
8. The Applicant argues and avers that the said appeal will have grave effects on the entire case before this court and if stay of proceeding is not granted, the proceeding herein shall be rendered nugatory at great expense to scarce judicial resources.

Further,

6. Section 6 of the *Civil Procedure Act* bars this court from proceeding with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties before another court including the Court of Appeal.
7. Similarly, Order 42, rule 6(1) of the Civil Procedure Rules empower this honorable court to order those proceedings before it be stayed pending the hearing of an appeal.
9. The Respondent/Applicant in the penultimate submits as follows on the requisition for issue of stay of proceedings;
 - a. There is an arguable and strong appeal;
 - b. The application is filed expeditiously; and



- c. It is in the interest of justice that the court ought to grant the orders sought
10. She further seeks to rely on authority of Global Tours & Travel Limited Nairobi HC Winding up Cause No. 43 of 2000 where the court restated these prequalification as follows;

“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 case, 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 equitable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

11. The Claimant/Respondent in his written submission dated 12th March, 2024 reiterates his case of a non-merited and frivolous application that failed to satisfy the notion of arguable appeal or even that such appeal would be rendered nugatory should the appeal succeed.
12. It is also his case that this application for stay of proceedings in the circumstances would not be in the interest of justice and not with intent to frustrate his effort to enjoy the ruling. On this, he chose to rely on authority of Machira T/A Machira & Co Advocates vs East African Standard (2002) KLR 63 where the court held thus;

...the ordinary principle is that a successful party is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage...”

13. Overall, this application comes out in favour of the Claimant/Respondent. It is not set for success. This is because the Applicant has not demonstrated or even established meeting the basic requirement for issue of stay of proceedings. She has failed to establish the ingredients of his appeal being merited or being rendered nugatory in the event of non-issue of the orders for stay of proceedings.
14. Lastly, like is argued and submitted by the Claimant/Respondent, it is not in the interest of justice that this application be granted in the event of such glaring anomalies.
15. I am therefore inclined to dismiss the application with order that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF MARCH 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. Ochieng holding brief for Prof Mumma instructed by Prof Abert Mumma & Company Advocates for the Respondent/Applicant.
2. Makau instructed by Janet, Jackson & Susan (LLP) Advocates for the Claimant/Respondent.

