



**Stubbs v Fourth Generation Capital Ltd (Cause E272 of 2023)
[2025] KEELRC 1117 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1117 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E272 OF 2023**

**S RADIDO, J
APRIL 8, 2025**

BETWEEN

ALEXANDER JOHN FRANK STUBBS CLAIMANT

AND

FOURTH GENERATION CAPITAL LTD RESPONDENT

RULING

1. The Claimant's testimony was taken on 5 November 2024, after which the Court adjourned the taking of the Respondent's case to 29 January 2025.
2. When the Cause was called out for the Respondent's case on 29 January 2025, the Respondent's advocate applied for adjournment. The reason given was that the witness had a prior engagement elsewhere. The nature of the engagement was not disclosed. When the Court inquired, the advocate stated that the witness was engaged in a personal errand, and the Claimant's advocate had been informed in writing.
3. The Claimant opposed the application for adjournment, and the Court declined to grant the adjournment.
4. Before the Court's ink could dry, the Respondent made another application for adjournment, which the Court declined and set for the hearing for 11.15 am.
5. At 1130am, the Respondent made an oral application requesting the Court to review its decision declining to grant an adjournment. The Court declined to review its decision declining to grant an adjournment.
6. The Respondent sought and was granted leave to appeal against the decision, and it filed a Notice of Appeal on 29 January 2025.
7. On 20 February 2025, the Respondent filed a Motion seeking orders:



- i. ...
 - ii. That the Honourable Court be pleased to stay proceedings with respect to this matter pending the hearing and determination of this application and subsequently the hearing and determination of the application before the Court of Appeal.
 - iii. That the Honourable Court be pleased to fix this matter for an early mention date for the purpose of taking directions on the Ruling delivered on 29th January 2025 by Hon Stephen Radido.
 - iv. That costs of this application be provided for.
8. The main grounds in support of the Motion were that the Deputy Registrar of the Court of Appeal had declined to approve an application made to that Court to stay the proceedings before this Court because of failure to attach a copy of the Ruling of this Court; this Court delayed in providing the Respondent with a certified copy of the Ruling; the intended appeal is arguable and has high chances of success and that the interests of justice favoured granting the orders prayed for.
 9. The Court gave directions on the Motion on 21 February 2025.
 10. The Claimant filed Grounds of Opposition to the Motion on 25 February 2025 contending that the application was incurably defective since there was no evidence an appeal had been lodged; the application was vexatious; the Respondent had failed to comply with directions issued on 20 February 2025; the proceedings had been closed and judgment reserved; the application was seeking a disguised adjournment and thus a review application of the earlier declined adjournment applications; any intended appeal was a non-starter and a draft application directed to the Court of Appeal was seeking similar orders.
 11. The Respondent filed its submissions on 26 February 2025. In the submissions, the Respondent cited Nairobi High Court Winding Up Cause No 43 of 2000, Re: Global Tours and Travels Ltd to submit that an order of stay of proceedings was at the discretion of the Court to be exercised in the interest of justice.
 12. The Respondent also cited Kenya Medical Lab Technicians and Technologists Board v Prime Communications Ltd [2014] KECA 303 (KLR) to urge that it had an arguable appeal.
 13. A failure to grant an order of stay of proceedings, the Respondent asserted, would render its appeal nugatory.
 14. The Claimant filed his submissions on 26 February 2025, wherein he agreed that the order sought by the Respondent was discretionary and had to be granted sparingly and in extreme cases (Halsbury's Laws of England, 4th Edn. Vol. 37, page 330 and 332)
 15. The Claimant further cited Lucy Waithera Kimanga & 2 Ors v John Waiganjo Gichuri [2015] KEHC 6120 (KLR) to contend that the Court had to balance the need for expeditious determination of cases with a right of appeal.
 16. According to the Claimant, the instant Motion was sub judice as the Respondent had indicated that it had also approached the Court of Appeal seeking similar orders.
 17. The Claimant maintained that the Motion was a disguised application for review of two earlier applications for adjournment that had been declined.
 18. The Court has considered the Motion, affidavits, and submissions.



19. The record bears out that the Respondent twice applied for adjournment, but the Court declined to grant the adjournments for reasons on record. Of particular note, and for which reason the Respondent has admitted, is that its witness did not want to disclose the nature of engagements she was involved in which made her fail to appear to prosecute her case.
20. The Respondent is seeking an exercise of the Court's discretion. A party seeking an exercise of a Court's discretion ought to approach the Court with clean hands and make candid disclosure.
21. Proceedings in this Cause were ready immediately after the Court delivered its ex-tempore Rulings on 29 January 2025. The Rulings sought to be impugned were embedded in the copy of the proceedings. The assertion that a copy of the Ruling(s) was not ready or was delayed is, therefore, incorrect.
22. Save for exhibiting a draft application to the Court of Appeal, the Respondent has not indicated whether the said application was formally registered with the Court of Appeal.
23. On the arguments that its intended appeal is arguable, that is a factor that is for the Court of Appeal to consider and not this Court. A Court renders a determination on the firm legal belief that its findings and holdings are sound in law. It cannot turn around and find that its decision was faulty or not sound in law, thus warranting being overturned by a higher Court.
24. However, if the Respondent has filed an application before the Court of Appeal seeking a stay of the proceedings herein, and it is good to mention that the only step remaining before this Court is the delivery of judgment, then, it would not be legally prudent for this Court to grant the orders sought.

Orders

25. The Court declines to grant the orders sought in the Motion dated 7 February 2025. It is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAKURU ON THIS 8TH DAY OF APRIL 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Murage Juma & Co. Advocates

For Respondent Andrew & Steve Advocates

Court Assistant Wangu

