



**Mwaniki v Kenya Wildlife Service (Employment and Labour Relations Cause
792 of 2017) [2024] KEELRC 13184 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13184 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 792 OF 2017
K OCHARO, J
NOVEMBER 22, 2024**

BETWEEN

ABEDNEGO MUSAVI MWANIKI CLAIMANT

AND

KENYA WILDLIFE SERVICE RESPONDENT

RULING

1. By its Notice of Motion application dated 13th February 2024, the Respondent seeks a stay of proceedings of the proceedings herein pending an intended appeal against the ruling of this Court delivered on 20th December 2023. The application is supported by the grounds set out on the face of it, and the supporting affidavit sworn by Ismen Feksi, its legal officer, sworn on the 13th of February 2024.
2. The application is anchored on two prime grounds; the intended appeal raises three arguable points, and the intended appeal shall be rendered nugatory unless the proceedings herein are stayed, as the court will proceed to hear and determine the claimant's claim when the Respondent's appeal is still pending determination by the Court of Appeal.
3. The Claimant resists the application through his replying affidavit sworn on 19th February 2024. He contends that the issues intended to be raised by the Respondent in its intended appeal aren't arguable. The Respondent's action is an afterthought and only intended to impede him from expeditiously getting justice in the matter considering that this matter was filed seven years ago.
4. He further contends that a stay of proceedings is a grave matter only grantable in the most deserving cases as it impacts his right to an expeditious trial and right to access justice.
5. The Respondent's instant application is a fit candidate for dismissal for want of merit.
6. The Respondent/ Applicant submitted that its application is premised on the inherent powers of this Court. This Court has the inherent jurisdiction to order a stay of proceedings just like the High Court



does, a court of equal status. To support the point reliance has been placed on the decision of Harnam Singh and others v Mistri [1971] E.A.

7. It is further submitted that for the Court to exercise its discretion to grant an application for a stay of proceedings, it must ask itself; whether the applicant has established a prima facie case; whether the application was filed expeditiously; and whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought. To support the submission that these are the factors considerable in an application like the instant one, reliance has been placed on the case of Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi [2014] eKLR.
8. The Respondent argues that the intended appeal is arguable. An arguable appeal is that which raises even a single bonafide ground of appeal. An arguable appeal must not necessarily succeed, but one which ought to be argued fully before the court and which isn't frivolous. To support this point the case of Kenafric Matches Limited vs Match Masters Limited and Anti-Counterfeit Agency Civil Application No. E 092 of 2021, has been cited.
9. Considering the date when the ruling sought to be assailed was delivered, 20th December 2023 and that the Respondent asked for typed proceedings immediately after the Court resumed from recess, it cannot be fairly held that the application herein wasn't filed timeously.
10. It is in the interest of justice that the application herein be granted. If the proceedings herein are not stayed, and the appeal succeeds, the appeal shall be rendered nugatory. In the interest of justice, an order of stay of proceeding should be granted to avoid the result. To support this, the Respondent places reliance on the case of Easy Coach Limited vs Patrick Watani Maende & 2 Others [2018].
11. The overriding objective of this Court per section 3 of the [Employment and Labour Relations Court Act](#), commands timely disposal of suits at an affordable cost to the parties and the effective use of judicial time. Grant of the order sought will align with the overriding objective.
12. The Claimant submits that the question for this Court to address is whether the Applicant herein has satisfied the criteria for grant of an order of stay of proceedings pending appeal. He urges the Court to be persuaded and apply the criteria set out in the case of Turbo Highway Eldoret Ltd v Muniu [2022] KEHC 10197[KLR].
13. According to the Claimant, the matters that this Court should certify itself on, as can be discerned from the above-stated decision, are whether there is an appeal pending before a higher court, whether the appeal raises substantial issues and is arguable; whether the appeal would be rendered nugatory if the stay of proceedings is not granted; whether the application for stay was filed expeditiously; Whether any special circumstances warranting stay of proceedings exist; and the issue of costs.
14. The Respondent/Applicant hasn't demonstrated that he has filed any appeal in a higher court, and indeed, it has clearly stated that the stay is pending an intended appeal. The instant application ought to have been filed in the Court of Appeal and not before this Court. The Respondent/Applicant hasn't explained to this Court why the application wasn't filed in the Court of Appeal instead of this Court.
15. It is argued further that the Respondent/Applicant hasn't placed forth any memorandum of appeal from which this Court can conclude that the intended appeal raises arguable grounds. The Respondent has therefore failed to demonstrate that there is going to be an appeal with substantial and arguable issues.
16. The Respondent hasn't demonstrated that the intended appeal shall be rendered nugatory if the stay sought is not granted. It isn't enough for the Applicant to allege that it fears that if the order isn't



granted, this Court shall proceed to hear and render itself on this matter, thus rendering the appeal nugatory. To support this point, he places reliance on the Turbo Highways Eldoret case [supra].

17. The Claimant argues further that the Applicant has not demonstrated the existence of any special circumstances in this matter to warrant this Court's exercise of discretion in favour of their application. Absent of the demonstration, the instant application should be dismissed. To support this point, the Claimant places reliance on the holding in Kenya Wildlife Services vs Mutembei [2019] eKLR.
18. The application should be dismissed with costs.

Analysis and Determination.

19. The Claimant though faintly, suggests that this Court doesn't have the jurisdiction to entertain the instant application for a stay of proceedings as there, isn't, or hasn't been shown by the Respondent/Applicant a specific provision of the law that donates such jurisdiction. Section 12[3][viii] of the *Employment and Labour Relations Court Act*, read liberally reveals that the power to entertain an application for a stay of proceedings before it pending appeal is inherent in the Employment and Labour Relations Court. Additionally, I am not persuaded by the Claimant's suggestion that the decision of Turbo Highway Eldoret Ltd decided that an application for stay is supposed to be made to the higher court only, in this case, the Court of Appeal. In my view, the Judge's view was that it is desirable to so approach.
20. However, it is pertinent to point out that the power is exercised discretionarily depending on the circumstances of each case and considering the general conditions that legal precedents have identified as considerable. The discretion must be exercised judiciously, not whimsically and based on sympathy. This has to be so because a grant of stay of proceedings has far-reaching implications on; the adversary's right to an expeditious determination of the matter, access to justice, and the constitutional imperative that courts in the exercise of their judicial authority should determine matters expeditiously.
21. There is no dispute that the Respondent did herein file a Notice of Appeal within the statutory period. I have no doubt, that the legal position is that a Notice of Appeal, is deemed an appeal for purposes of stay of execution or proceedings or injunction pending appeal. The Claimant's argument that the Respondent hasn't demonstrated the existence of an appeal, therefore, stands on quicksand. In the supporting affidavit to the application, the Respondent has put forth the grounds of its intended appeal. To this Court, that suffices for its consideration whether or not the issues raised are arguable.
22. I have considered the fact that one of the grounds upon which the Respondents wants to assail this Court's ruling on the point that a counterclaim being a suit independent of the Claimant's, cannot relate back to the statement of claim. There isn't much jurisprudence on this specific aspect from the Court of Appeal. It becomes imperative therefore that the issue be ventilated in the higher court. Jurisprudence in this area shall as a result be firmed up for the benefit of the populace at large.
23. By reason of the foregoing premises, I am convinced that the justice of this case demands that there be a stay of further proceedings pending the intended appeal in the Court of Appeal.
24. However, this matter shall be mentioned within 120 days of today for the Applicant to confirm to this Court filing of the appeal. A failure to file the appeal within 120 days, shall occasion the order of stay of proceedings herein lifted automatically.

READ, SIGNED AND DELIVERED THIS 22ND DAY OF NOVEMBER 2024.

OCHARO KEBIRA

JUDGE



In the Presence of:

Mr. Adan for Mr. Ochieng for the Applicant.

Mr. Mwinzi for the Claimant/Respondent.

