



Muasya v Shell & Vivo Lubricants Kenya Limited (Cause E6554 of 2020) [2023] KEELRC 121 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 121 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6554 OF 2020
MN NDUMA, J
JANUARY 26, 2023**

BETWEEN

JOHN MUASYA CLAIMANT

AND

SHELL & VIVO LUBRICANTS KENYA LIMITED RESPONDENT

RULING

1. The notice of motion application serving before court seeks for an order in following terms:-
 1. That this honourable court be pleased to order stay of all Proceedings pending the hearing and determination of the respondent's appeal being Nairobi Civil Appeal No E297 of 2020 – (*Shell and Vivo Lubricants Kenya Limited v John Mwasiya*)
2. The application is premised on grounds set out in the affidavit of Naomi Assumani and summarized on the face of the notice of motion itself in paragraphs (a) to (j). The nub of the grounds is that it is in the interest of justice that this court allows the Court of Appeal to weigh in on the matters decided by the court in its ruling in which it declined to entertain a preliminary objection by the respondents on the basis the same was not a pure point of law and must await determination at the hearing of the suit on the merits.
3. The application is opposed *vide* a replying affidavit of the claimant setting out the facts of the case while emphasizing that no prejudice will be suffered by the respondent if the orders sought are not granted since the matters raised in liminie, will be the subject of hearing and determination on merits before this court and the matter may be appealed upon delivery of judgment by this court.
4. The court has considered the depositions by the parties and the written submissions and is persuaded by the decision in *Kenya Wildlife Service v James Mutembei* [2019] eKLR in which the court cited



with approval the *Halsbury's Law of England, 4th Edition*, Vol 37 page 330 and 332 which sheds light on the threshold for stay of proceedings as follows:-

“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 proceedings 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 pleadings and the facts of the case.”

5. Accordingly, the court finds the application lacks merit and declines to grant the orders sought by the respondent. The suit to proceed on the merits.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 26TH DAY OF JANUARY, 2023.

MATHEWS NDERI NDUMA

JUDGE

Appearances

Mr. Muchiri for Respondent/Applicant

Mr. Ochieng for claimant

Mr. Ekale – Court Assistant

