



Presbyterian Church Hosptial & 2 others v Murila & 2 others (Cause 1695 of 2016) [2023] KEELRC 2758 (KLR) (24 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2758 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1695 OF 2016
DKN MARETE, J
OCTOBER 24, 2023**

BETWEEN

PRESBYTERIAN CHURCH HOSPITAL 1ST APPLICANT

CHURCH OF EAST AFRICA 2ND APPLICANT

AND

JOHNSON LISAMULA MURILA CLAIMANT

AND

JOHNSON LISAMULA MURILA 1ST RESPONDENT

PRESBYTERIAN CHURCH HOSPITAL 2ND RESPONDENT

**REGISTERED TRUSTEES OF THE PRESBYTERIAN CHURCH OF EAST
AFRICA 3RD RESPONDENT**

RULING

1. That there be a stay of further proceedings in this suit pending the hearing and determination of an appeal by the Respondents from the Ruling and Order of this Court (Hon. Mr. Justice J. N. Abuodha) dated 22nd September, 2017.
2. That costs of this application be provided for.

It is grounded as follows;

- i. The Respondents have appealed against this court's decision given on 22nd September, 2027, being Civil Appeal No. E779 of 2021, at the Court of Appeal.
- ii. The Respondents' appeal has high chances of success.



- iii. If an order of stay of further proceedings is not granted and the appeal eventually succeeds, considerable time and expense will go to waste.
 - iv. It is in the interest of justice that a stay of further proceedings is granted so that hearing of this case is not undertaken in vain, in the likely event that the Respondents' appeal eventually succeeds.
3. The Claimant/Respondent in a Replying Affidavit sworn on 14th June, 2023 opposes the application for want of merit and pray that it be dismissed with costs.
 4. The Respondents/Applicants in their written submission dated 4th September, 2023 seeks to buttress their case by relying on the authority of *Global Tours & Travels Limited; Nairobi HC Winding Up cause No. 43 of 2000*, where the courts made the following pronouncement on stay of proceeding pending appeal;

“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 cases, 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 arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.
 5. She further sought to rely on the authority of *UAP Insurance Company Ltd v Michael John Beckett* [2004] where the court of Appeal held as follows;

“...all an applicant is required to show is that he has an arguable appeal which is not frivolous and that the appeal will be rendered nugatory if the stay of proceedings is not granted.”
 6. It is her case that in addition to the principle of negation in the event of a successful appeal, the applicant has and an arguable case warranting the court to exercise its discretion in her favour.
 7. The Claimant/Respondent vide his written submissions dated 6th September, 2023 rubbishes the application and submits thus;
 - 2.1 The Claimant filed an Application on 19th May 2016 vide Miscellaneous Application 64 of 2016, seeking to have Nairobi CMCC No. 7973 of 2010, an employment dispute which the Claimant had filed at the Chief Magistrate's Court at Milimani, transferred to the Employment and Labour Relations Court in Nairobi. The Application for transfer was allowed on 26th May 2016 by Honourable Justice J. N Abuodha.
 - 2.2 Upon successful transfer of the suit to this Honourable Court, the Applicants vide the application dated 31st May 2016 sought review of the order of 26th May 2016. The Court in its Ruling of 22nd September, 2017 found that there was no error in its earlier ruling and dismissed the Application.
 - 2.3 Aggrieved by the ruling, the Applicants filed an Appeal vide Nairobi Civil Appeal Number E779 of 2021 at the Court of Appeal, four years after the same had been delivered. The instant application seeking stay was further filed five years after the delivery of the said ruling.



- 2.4 The delay in seeking the stay of proceedings before this Court has neither been addressed nor explained. It shall be argued that the Respondents are guilty of laches and the application herein is clearly an afterthought.
- 4.1 The Court’s power to stay proceedings is discretionary and is meant to be exercised judiciously. The intention for the exercise of this discretion is to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error. Such discretion is not to be exercised and is not designed to assist persons who have deliberately sought to abstract or delay, either by evasion or otherwise, the course of justice. The Applications have not put forth any reason why this Honourable Court should exercise its inherent discretion in their favour. We rely on the decision of *Shah v Mbogo* [1967] E A 116 and 123B which was quoted with approval in the case of *Ephantus Gathua Muiyuro v Kenya Power & Lighting Company Ltd* [2016] eKLR which states as follows:
- “...The principles governing the exercise of such judicial discretion are that there are no limits or restrictions on the Judge’s discretion except that it should be based on such terms as may be just because the main concern of the Court is to do justice to the parties. However, this discretion is intended to be exercised to avoid injustice or hardship resulting from accidents, inadvertence or excusable mistake or error but is not designed to assist a person who has sought, whether by evasion or otherwise, to obstruct or delay the cause of justice – *Shah v Mbogo* 1967 E.A 116, *Shabir Din v Parkash Anand* [1955] 22 E.A.C.A 48 and *Maina v Mugiria* 1983 K.L.R 78. And in *Sebei District Administration v Gasyali & Others* 1968 E.A 300, SHERIDAN J...”
8. Further, the Claimant/Respondent faults the application on grounds that at all times, the Respondent/Applicant has not displayed a case of expeditious disposal of the matter, or at all. It is his case that this is a critical safeguard for the court to observe in granting stay of execution as is the case here. He submits as follows;
- 4.16 Pursuant to Section 1A (3) of the *Civil Procedure Act*, 2010, parties to civil proceedings have a duty to assist the Court to facilitate the just, expeditious and proportionate resolution of civil disputes and to comply with the directions and orders of the Court. Accordingly pursuant to Section 1A as read together with 1B of the *Civil Procedure Act* and Order 2 Rule 15 of the *Civil Procedure Rules*, this Court is under a duty to dispense justice to all parties in a timely manner. If an application is meant to delay the wheels of justice then this Court must put a stop to it. See *Peter Kariuki Mburu & another v Neema Shah* [2021] eKLR at para 27.
- “...27. 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 a just, expeditious, proportionate and affordable cost to parties.”
9. The Claimant/Respondent couples this by citing authority of *Kenya Wildlife Service v James Mutembei* (*supra*) and *Peter Kariuki Mburu & another v Neema shah* (*supra*) where it was held that inordinate delay in filing an application as is the case here is a denial of stay.
10. The Claimant/Respondent cites and demonstrates dalliance in the filing of both this application and the appeal at hand. This is not explained. They do not explain why the appeal has not being prosecuted so far.



11. The Claimant further submits that contrary to the claims of the Applicant, there are no sufficient reasons as to why granting stay of proceedings would be in the best interest of justice.

This is because:

- i. The Application has been filed after a significant amount of time has passed. The Applicants are clearly guilty of the doctrine of laches. An application that seeks to stay proceedings pending an appeal filed over five years ago cannot be said to be in the interests of justice.
- ii. The filing of the appeal was without leave of this Honourable Court and no application has been filed to address this issue.
- iii. The Applicants have neither provided an explanation for the delay in prosecuting their interests of all parties to the suit.
- iv. The Respondents have also failed to serve a complete Record of Appeal meaning that insufficiently prepared to respond to the Appeal and argue his case.

12. This court takes sides with the Claimant/Respondent. He has suffered the ignominy of injustice, having been disabled from effectively prosecuting his matter since 2005. This is a whooping eighteen (18) years down the line. What injustice!

13. I would agree with the Claimant/Respondent that there is suspected mischief in the conduct of the Respondent/Applicant culminating in this application. The issue of delay is evidenced in the background.

14. The Respondent/Applicant has in toto failed to display a case to warrant this court to exercise its discretion in her favour. In any event, it is evidenced that doing so would result in grievous injustice to the Claimant/Respondent. It would amount to delayed justice. This would be unjust in the circumstances.

15. I am therefore inclined to dismiss the application with costs to the Claimant/Respondent.

DELIVERED, DATED AND SIGNED THIS 24TH DAY OF OCTOBER 2023.

D. K. NJAGI MARETE

JUDGE

Appearance:

1. Mr. Amuga instructed by Amuga & Company Advocate for the Respondent/Applicant.
2. Mr Rao holding brief for the Dr. Ojiambo for the Claimant/Respondent.

