



Rogoi v Regional Manager Kenya Power & Lighting Co Ltd Mt Kenya Region (Environment & Land Case E09 of 2022) [2024] KEELC 6009 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6009 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E09 OF 2022
JO OLOLA, J
SEPTEMBER 20, 2024**

BETWEEN

EMILUS KIIRU ROGOI PLAINTIFF

AND

**THE REGIONAL MANAGER KENYA POWER & LIGHTING CO LTD MT
KENYA REGION DEFENDANT**

RULING

1. By the Notice of Motion dated 13th October 2023, the Defendant/Applicant prays for an order of stay of proceedings in this suit pending the hearing and determination of Nyeri Court of Appeal Civil Miscellaneous Application No. E063 of 2023; The Regional Manager Kenya Power & Lighting Co. Ltd Mt. Kenya Region v Emilius Kiiru Rogoi.
2. The application which is supported by an affidavit sworn by the Defendant's Advocate Dennis Maanzo is premised on the grounds inter alia:
 - i). That on 16th June 2023, this court delivered its Ruling on the Defendant's Notice of Preliminary Objection dated 25th May 2022 thereby dismissing the objection;
 - ii). That the Ruling was initially scheduled for 27th April 2023 when the Defendant got notice that it was not ready and shall be delivered on notice. No notice was however given to the Defendant for the Ruling delivered on 16th June 2023 and the Defendant only got a copy of the Ruling on 6th July 2023;
 - iii). That by the time the Defendant learnt of the court's decision, the requisite time allowed for lodging the Notice of Appeal had lapsed and the Defendant has had to lodge an application in the Court of Appeal seeking leave to file an Appeal out of time;



- iv). That despite the fact that the Defendants intends to appeal against the decision of this court, there is a risk that the Plaintiff may proceed to move this court and continue to prosecute this matter as he has already moved to fix the matter for hearing;
 - v). That it would amount to a judicial disaster of colossal proportions if this court proceeds to hear this matter, while at the determination of the matter pending appeal, the Court of Appeal grants the Defendant leave to appeal the Ruling of the court;
 - vi). That it would further amount to a judicial disaster of colossal proportions if this court proceeds to hear this matter while at determination of the intended Appeal, the Court of Appeal rules that this court is devoid of jurisdiction to hear and determine this matter; and
 - vii). That the intended appeal may have a serious impact on those proceedings, and if stay is not granted, the result of the intended appeal may well render any orders made in these proceedings nugatory, and render the exercise futile.
3. Emilius Kiiru Rogoi (the Plaintiff) is opposed to the application. In his Replying Affidavit sworn on 3rd November 2023, the Plaintiff avers that the Advocates who have instituted the application and sworn the Supporting Affidavit are not properly on record for the Defendant and that they are only out to create confusion in the matter.
 4. The Plaintiff further avers that both himself and one Irene Walala Advocate who was properly on record for the Defendant were properly served by the court's registry for the Ruling that was delivered by the court on 16th June 2023 and that the application filed herein is without merit and should be dismissed with costs to himself.
 5. I have carefully perused and considered the Defendant's application as well as the response thereto by the Plaintiff. I have similarly perused and considered the submissions and authorities placed before me by the Learned Counsel representing the Defendant as well as the Plaintiff who is acting in person.
 6. By this application, the Defendant has urged the court to stay the proceedings in this suit pending the hearing of an application for leave to file an Appeal out of time that the Defendant had instituted in the Court of Appeal and further that the proceedings be stayed pending the hearing and determination of the intended Appeal.
 7. As was manifested in the Further Affidavit sworn on behalf of the Applicant by its in-house counsel Dennis Maanzo and filed herein on 4th January 2024, the Court of Appeal has by a Ruling delivered on 10th November 2023 granted the Applicant leave to Appeal the Ruling of this court as delivered on 16th June 2023.
 8. Given that position I did not think that this court needs to delve any further into the claim by the Defendant that its Advocate had not been given notice for the Ruling delivered on 16th June 2023 and hence their failure to file the Notice of Appeal in time. Suffice it to say that from the records of this court, one Ms. Irene Walala Advocate who was on record for the Defendant until one week after this application was filed was duly served with the Notice of the Ruling in the address she had provided to the court.
 9. In support of its case for stay of these proceedings, the Defendant asserts that it would amount to a judicial disaster of colossal proportions if this court proceeds to hear this matter while at the determination of the intended Appeal, the Court of Appeal rules that this court is devoid of jurisdiction to hear and determine this matter.



10. As Gikonyo J. observed in the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be heard without delay and overall, the right to a fair trial. Therefore the test for stay of proceedings is high and stringent.”

11. Considering a similar matter earlier in the case of *Global Tours & Travel Limited; Nairobi H.C. Winding up Cause No. 43 of 2000*, Ringera J (as he then was) stated thus:-

“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.

12. In the *Kenya Wildlife Case (supra)* Gikonyo J quoted *Halsbury's Laws of England*, 4th Edition, Vol. 37 Page 330 and 332 where the renowned author holds thus:-

“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.”

13. From my reading of the above authorities, it was clear to me that the grant of an order of stay of proceedings is a grave matter to be entertained only in the most deserving of cases as it seriously impacts the right of a litigant to an expeditious trial of his case.

14. In the matter herein, the Plaintiff has come to court accusing the Defendant power company of installing power lines on his parcels of land without his permission or authority. The Defendant denies installing the power lines and insists that this court has no jurisdiction to hear the matter and that the dispute ought to have been referred first to the Energy & Petroleum Regulatory Authority for hearing.



15. I have looked at the Plaintiff's pleadings vis-à-vis those of the Defendant. I am not persuaded that the Plaintiff's case is frivolous or vexatious. Neither am I persuaded that the claim is manifestly groundless and /or that the Plaintiff has no possible cause of action against the Defendant.

16. It follows that I am not persuaded that there is any merit in the Defendant's Motion dated 13th October 2023. The same is dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20TH DAY OF SEPTEMBER, 2024.

In the presence of:

No appearance for the Plaintiff.

Mr. Muchai for the Defendant.

Court Assistant: Michael

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J. O. OLOLA

JUDGE

