



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 567 OF 2017

*(Before Hon. Lady Justice Maureen Onyango)*

**RULING**

NEHEMIAH KIPROP KIPLAGAT.....1<sup>ST</sup> CLAIMANT  
ELISHA DONALD KOLI.....2<sup>ND</sup> CLAIMANT  
HUDSON LIHANDA.....3<sup>RD</sup> CLAIMANT  
STANLEY OIRERE MOSOMI..... 4<sup>TH</sup> CLAIMANT  
GERALD KINGORI KARIUKI.....5<sup>TH</sup> CLAIMANT  
ENOCH MONARI..... 6<sup>TH</sup> CLAIMANT  
MUNGA EDWIN ODHIAMBO.....7<sup>TH</sup> CLAIMANT  
BENARD OWIT.....8<sup>TH</sup> CLAIMANT  
EDWIN ONGERI BOSIRE.....9<sup>TH</sup> CLAIMANT  
MICHAEL MUTAHL.....10<sup>TH</sup> CLAIMANT  
ASAPH JUMA KIVITE.....11<sup>TH</sup> CLAIMANT  
VICTOR KIPKOGEL.....12<sup>TH</sup> CLAIMANT  
MUNYAO ERICSON MUTUKU.....13<sup>TH</sup> CLAIMANT  
SAMMY KIRWA MUTUKU.....14<sup>TH</sup> CLAIMANT  
CLIVE OMARI RUOTI.....15<sup>TH</sup> CLAIMANT  
JACQUILENE MORAA.....16<sup>TH</sup> CLAIMANT  
EUNICE WAIRIMU WAITUIRI.....17<sup>TH</sup> CLAIMANT  
CHARLES KIAGE MAKORI.....18<sup>TH</sup> CLAIMANT  
WARUTERE DAVID MAINA.....19<sup>TH</sup> CLAIMANT

VERSUS

RADIO FREQUENCY SYSTEMS (E.A) LIMITED.....RESPONDENT

## RULING

1. The Court of Appeal in its Ruling delivered on 18<sup>th</sup> December, 2020 did Order the stay of execution of the Ruling and Order of this Court delivered by Wasilwa J. on 14<sup>th</sup> October, 2019 pending hearing and determination of the intended appeal. It however did not stay the proceedings of this Court.
2. Subsequently, this Court did direct parties to address it on the effect of the aforementioned Orders of the Court of Appeal on the instant proceedings.

### **Determination**

3. I have considered the issues raised by the parties with regards to the stay of execution orders and the ruling of the Court of Appeal. It is not in contention that this Court has powers to stay proceedings pending an appeal. This jurisdiction is derived from both Order 42 Rule 6 of the **Civil Procedure Rules** as well the inherent jurisdiction reserved in section 3A of the **Civil Procedure Act**.
4. The sole purpose of stay of proceedings where an appeal has been preferred is to avoid wastage of valuable judicial time; prevent duplication of efforts; prevent multiplicity of suits and applications; and to avoid rendering the appeal pending in the Court of Appeal a mere academic exercise.
5. Stay of proceedings is governed by principles as were set out in **Re Global Tours & Travel Ltd HCWC No. 43 of 2000**, Ringera, J (as he then was) held that:

*“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 matter, it should bear in mind such factors as the need for expeditious disposal of case, 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.”*

6. In the present case, the appeal challenges the decision made on 14<sup>th</sup> October, 2019 in which the Wasilwa J. dismissed the Respondent/Applicant’s application dated 11<sup>th</sup> September, 2019 which sought inter alia Orders setting aside the Consent dated 30<sup>th</sup> August, 2019 that was adopted as an Order of the Court on 2<sup>nd</sup> September, 2019.
7. It is not in doubt that the Appeal being Civil Application Number 341 of 2019 is yet to be heard and determined with finality by the Superior Court.
8. The Court of Appeal in the Case of **Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No. 25 of 2002 [2009] KLR 229** stated as follows:

*“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice.”*

9. Guided by the above, I hereby stay the proceedings herein pending the disposal of **Appeal No. 341 of 2019** and/or further orders of this Court.
10. Parties will move the Court once the appeal has been determined.
11. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 8<sup>TH</sup> DAY OF OCTOBER 2021**

**MAUREEN ONYANGO**

**JUDGE**

### **ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**