



Paragon Electronics Ltd v Land Registrar & 2 others; Ngum & 2 others (Interested Parties) (Environment & Land Petition 1 of 2021) [2024] KEELC 13213 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13213 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 1 OF 2021
OA ANGOTE, J
NOVEMBER 14, 2024**

BETWEEN

PARAGON ELECTRONICS LTD PETITIONER

AND

THE LAND REGISTRAR 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

KENYA REVENUE AUTHORITY 3RD RESPONDENT

AND

OUSAINOU NGUM INTERESTED PARTY

KHADIJATOU FRANCES NGUM INTERESTED PARTY

MWANIKI GACHOKA INTERESTED PARTY

RULING

1. The Petitioner has filed a Notice of Motion application dated 20th May 2024 under Sections 1A,1B and 3A of the Civil Procedure Act, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules and Article 159(2) of the Constitution of Kenya, seeking for the following orders:
 - a. There be a stay of further proceedings in this matter including the determination of the suit pending the hearing and determination of the Appeal instituted against the Ruling and Order of this Honourable Court on 8th May 2024.
 - b. Costs of this application be provided for.



2. The grounds of the application are that through its ruling delivered on 8th May 2024, this court declined to hear the Petitioner's application dated 2nd April 2024 for viva voce examination of the 1st Respondent, on the grounds that parties had already taken directions on hearing of the main Petition.
3. The deponent asserts that the Petitioner has instituted an appeal challenging the said ruling, by filing a Notice of Appeal dated 13th May 2024; that the appeal has merit and is arguable, based on the Memorandum of Appeal which was annexed to the Supporting Affidavit and that the Petitioner will be greatly prejudiced and stands to suffer substantial loss if the suit proceeds to judgment before the determination of the appeal.
4. Counsel for the Petitioner deponed that the success of the Appeal will be rendered nugatory if the orders sought in the application are not granted, and that the Respondents and the Interested Parties will not suffer any prejudice if the application is allowed.
5. The 1st and 2nd Interested Parties opposed the application vide a Replying Affidavit dated 5th June 2024, sworn by Ousainou Ngum, who asserted that the application was filed to cause delay in the determination of the Petition and in the pending arbitration which was filed in 2016. He deponed that the Petitioner has thus far filed 10 cases to scuttle the said arbitration.
6. The 1st Interested Party deponed that pursuant to the directions of the court issued on 30th September 2022 in the presence of the Petitioner's advocates, the 1st and 2nd Interested Parties filed their reply to the Petition and filed their closing submissions; that what is remaining is highlighting of the submissions and taking a judgment date and that the application has not been filed in good faith.
7. The deponent averred that the 1st and 2nd Interested Parties have complied with the court's directions, and stand to be prejudiced by the Petitioner's conduct of filing parallel proceedings to the arbitration and that the Petitioner's Notice of Appeal is fatally defective because it was not served on the parties within the required timelines and does not disclose any meritorious appeal.
8. He asserts that the Petitioner is a frivolous litigant who has filed ten cases, including this case and that this court should exercise its discretion to prevent abuse of court process.
9. The Petitioner responded through a Supplementary Affidavit dated 18th June 2024 and sworn by Ms. Valentine Ataka. She averred that the Interested Party's Replying Affidavit has not addressed the core planks of an application for stay of proceedings and that they have not contended whether the appeal is arguable or whether the intended appeal will be rendered nugatory.
10. It was deposed that while the Interested Parties stated that they will suffer prejudice, no material has been placed before the court to detail the prejudice complained of and that the Interested Parties are not substantive parties to this suit and they do not seek any remedy which will be delayed by the court in this matter.
11. Ms. Ataka deponed that this court recognized the Petitioner's right of appeal and as the issue touches on how to proceed with the prosecution of this matter, it ought to be approached cautiously before the court makes its final determination. She further deponed that the form and nature of the Notice of Appeal is in satisfaction of the rules and that the Interested Party has not demonstrated the rule which the Petitioner did not adhere to.
12. The deponent stated that the Petitioner has sought for proceedings, a copy of the ruling and the orders given on 8th May 2024 and once they receive these documents, the appeal will be filed. Lastly, she stated that the Petitioner will be greatly prejudiced and stands to suffer substantial loss if this application is not allowed, as they will be denied the chance to prosecute their case accordingly.



Submissions

13. Counsel for the Petitioner submitted that in an application for stay pending appeal, the Petitioner only requires to demonstrate that the intended appeal is arguable and has a high chance of success. It is the Petitioner's counsel's submission that the Petitioner has satisfied this condition. Counsel relied on the Court of Appeal case of Ahmed Musa Ismael vs Kumba Ole Ntamorua & 4 Others [2014] eKLR.
14. Counsel submitted that the application dated 2nd April 2024, which was the subject of the ruling of 8th May 2024, was only opposed by the Interested Parties, who are not substantive parties to this suit. Counsel relied on the case of William Odhiambo Ramogi & 3 Others vs Attorney General & 4 Others: Muslims for Human Rights & 2 Others (Interested Parties) [2020] eKLR on the peripheral role of an interested party in proceedings.
15. Counsel submitted that the Appellate court is likely to be persuaded by the facts that the primary parties were in agreement that the Petition should proceed viva voce; that the right to adduce evidence is a constitutional right entailed in the right to fair hearing under Article 50 and that the order of 8th May 2024 was therefore a curtailment of a right to fair hearing, which under Article 25, is not capable of limitation.
16. It was Counsel's submission that the Notice of Appeal was duly served on all the parties; that should this matter succeed and the appeal is successful, the outcome of the appeal would be rendered nugatory. And that an order for stay of proceedings pending appeal is purely a matter of judicial discretion that is exercised in the interests of justice, and in a way not prevent an appeal.
17. Counsel submitted that should the court decline the order for stay of proceedings, this would amount to the court withdrawing and negating the Petitioner's right to appeal, yet the court granted the Petitioner leave to appeal.
18. Petitioner's Counsel submitted that none of the parties can claim to be worse off if the proceedings are stayed; that the 1st Respondent has the subject lease, whose cancellation and release the Petitioner seeks; that the underlying arbitration was terminated and the Interested Parties, who were the claimants in the arbitration have no taken any steps to reinstitute the same and that the Interested Parties are presently in occupation of the suit property.
19. It was submitted that the idea behind the application dated 2nd April 2024 was to subject the Respondents, who are holders of crucial public officers to answer to allegations of corruption in execution of their mandate, and that should the appeal succeed and the Court of Appeal order that the matter starts afresh, this would render the proceedings an academic exercise and would be contrary to the principle that judicial time should not be wasted. Counsel relied on the case of Port Florence Community HealthCare vs Crown HealthCare Limited [2022] 2KLR.
20. Counsel for the 1st and 2nd Interested Parties submitted that these proceedings ought not to be stayed. They relied on the principles of an application for stay of proceedings in the case of Turbo Highway Eldoret Ltd vs Muniu [2022] eKLR. Counsel submitted that there is currently no appeal pending before the Court of Appeal, as what is there is a Notice of Appeal, which is an expression of the Petitioner's intention to appeal.
21. It was argued that stay of proceedings should not be imposed unless it is beyond reasonable doubt that the proceedings ought not to be allowed to continue; that while the Petitioner had an opportunity from the very beginning to dispose the Petition by viva voce evidence, they took directions early on to proceed by way of written submissions.



22. It was submitted that the Interested Parties had already filed their closing submissions on the main Petition when the Petitioners filed its application dated 2nd April 2024; that the Petitioner has filed its closing submissions dated 31st May 2024 and that the Petitioner has not established that there are exceptional circumstances which warrant the stay of these proceedings.
23. Counsel for the Interested Parties submitted that following the court's decision of 8th May 2024, they do not believe that leave was sought and granted to the Petitioner to appeal against the said decision; that this Petition stems from an arbitration which commenced in 2016 and has not been concluded due to the Petitioner's dilatory tactics and that by allowing this application, the arbitration, which has been pending for more than seven years would have to wait for more years, calling into question the place of arbitration as an efficient, cost-effective and constitutionally recognized dispute resolution mechanism.

Analysis and Determination

24. The issue before this court is whether to stay the proceedings herein pending the determination of the appeal, which has been filed against this court's ruling dated 8th May 2024.
25. In *William Odhiambo Ramogi & 2 Others vs the Honourable Attorney General & 3 Others* [2019] eKLR, a 5-judge Bench of the High Court authoritatively laid out the principles for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher court as follows:
 - a. First, there must be an appeal pending before the higher Court;
 - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
 - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay."
26. It is trite that an order for stay of proceedings is a radical remedy which is only granted in very exceptional circumstances, particularly in the hearing of interlocutory appeals. Such circumstances are determined at the discretion of a court. In *Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000)*, Ringera J stated:

"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 (emphasis added).”

27. In this matter, the Petitioner filed a Notice of Appeal dated 13th May 2024, which was served on the parties through email on 22nd May 2024. This is in accordance with Order 42 Rule 6 (4), of the Civil Procedure Rules which provides that for purposes of stay pending appeal to the Court of Appeal, an appeal shall be deemed to have been filed when under the Rules of that Court, Notice of Appeal has been given.
28. Under Rule 77, of the Court of Appeal Rules, 2022, a Notice of Appeal should be filed within 14 days of the determination of a court. In this case, this court is satisfied that an appeal has been duly filed.
29. While the Interested Parties have challenged the validity of the Notice of Appeal, they have not presented any evidence to impeach the same. Further, noting that the impugned decision was issued on 8th May 2024, and this application was filed on 20th May 2024, this court finds that there was no delay in the filing of the application.
30. The Petitioner has argued that the appeal is arguable, and that if not granted, the appeal will be rendered nugatory. The definition of an arguable appeal was set out by the Court of Appeal in Ahmed Musa Ismael vs Kumba Ole Ntamorua & 4 Others [2014] eKLR, which case the Petitioner has relied on:-

“An arguable appeal need not raise a multiplicity of explorable points, a single one would suffice. That point or points need not be such as must necessarily succeed on full consideration of the appeal – it is enough that it is a point on which there can be a bona fide question to be explored and answered within the context of an appellate adjudication.”
31. This court takes note that this Petition was filed on 10th December 2020. The court issued directions on 30th September 2022, that this suit be disposed by way of written submissions. These directions were issued in the presence of the advocates for all the parties.
32. Since then, the parties have appeared on several occasions before the court, including on 31st January 2024 when the Petitioner’s counsel indicated that he had prepared the submissions and would serve them before the end of that day. The Petitioner thereafter filed an application dated 2nd April 2024 seeking the suit to be dispensed through viva voce evidence.
33. The Petitioner’s appeal is on the grounds that the Petitioner will be greatly prejudiced and stands to suffer substantial loss if the suit proceeds to judgment before the determination of the appeal. The Petitioner has not established any exceptional circumstances that would require this court to stay the proceedings pending hearing and determination of the appeal.
34. This court takes notice that all the parties to this suit have filed their final submissions, including the Petitioner, and the only pending issue is issuance of a date for judgment. Allowing the Petitioner’s application will undoubtedly prejudice the parties to this suit by delaying the matter further. Moreover, the arbitration between the parties to this suit is still pending. While the Petitioner asserts that the same was concluded, no evidence has been provided to that effect.



35. In any case, the judgment of this court is capable of being stayed in the event a positive order is issued. This was aptly stated in the case of Turbo Highway Eldoret Ltd vs Muniu (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) (30 June 2022) (Ruling) as follows:

“I am not persuaded, however, that the appeal will be rendered nugatory by the mere fact that the trial may proceed and a judgment on merits given. A judgment given is capable of being stayed. Whether the fact that a party had preferred an interlocutory appeal is entitled to a stay of proceedings cannot, therefore, merely be based on the fact that the Trial Court might consider what the appellant considers to be erroneous conclusions in its judgment. If the rule were otherwise, it would seriously impede proceedings in the trial Courts. This is because a party who is keen on obstructing a case from proceeding would simply prefer multiple appeals against interlocutory rulings by the Trial Court and then seek stay of proceedings in the Trial Court.

The rule is more exacting for a party requesting for a stay of proceedings. In particular, an Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal.”

36. In conclusion, this court is of the view that it is not in the interest of justice to stay the proceedings herein.

37. Consequently, the application dated 20th May 2024 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 14TH DAY OF NOVEMBER, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Ataka for Petitioner/Applicant

Ms Ochieng holding brief for Obuku for 2nd & 1st Interested Party

Ms Karubi for Futma for 1st and 2nd Respondent

Court Assistant: Tracy

