



City & Style Homes Limited & 2 others v Sheikh & another (Environment and Land Appeal E183 of 2024) [2024] KEELC 13973 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13973 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E183 OF 2024**

**MD MWANGI, J
DECEMBER 18, 2024**

BETWEEN

**CITY & STYLE HOMES LIMITED 1ST APPELLANT
GEOFREY KITHUKA MWANGANGI 2ND APPELLANT
JACKLINE MUKAI MWANGANGI 3RD APPELLANT**

AND

**ABDUL WAHEED SHEIKH 1ST RESPONDENT
ABDUL HAMEED SHEIKH (SUING AS THE REGISTERED TRUSTEES OF
SHEIKH FAZAL NOORDIN CHARITABLE TRUST 2ND RESPONDENT**

RULING

(In respect of the Notice of Motion Application dated 18th November 2024 brought under the provisions of Order 42, Rule 6 and Order 51, Rule 1 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the [Civil Procedure Act](#)).

Background

1. The Appellants appealed to this court vide the Memorandum of Appeal dated 13th November 2024 against the Ruling and Order of the Trial Magistrate dated 31st October 2024 in Milimani MCELC/E066 of 2023. The Appellant's appeal is premised on three grounds namely;
 - a. That the Learned Trial Magistrate gravely erred in law by failing to appreciate sufficiently or at all that a suit by a party lacking the legal capacity to sue such as the Respondent herein cannot disclose a reasonable nor any cause of action at all.
 - b. That the Learned trial Magistrate gravely erred in law and fact by holding, contrary to evidence on record and express pleading, that Sheikh Faisal Ilahi Noordin Charitable Trust is also named



as a Plaintiff in the suit while it is not thereby arriving at an erroneous finding and/or order that the objection by the Appellants lacked merit.

- c. That the Learned trial Magistrate erred in law in striving to sustain an incompetent suit contrary to the express pleading by the party.
2. The Appellants in the Notice of Motion application under consideration seek to stay the proceedings before the trial court pending the hearing and determination of the appeal. The application is supported by the grounds on the face of it and the affidavit of Geoffrey Kithuka Mwangangi.
3. In a nutshell, the Appellants affirm that their appeal is arguable and has high prospects of success and may render further proceedings at the subordinate court a nullity at law. They opine that it is in the interests of justice and the overriding objective espoused at Sections 1A and 1B of the [Civil Procedure Act](#) that the prayers sought be granted.
4. The Appellants reiterate that by their Notice of Motion application dated 5th September 2024, they challenged the legal capacity of their Respondents to sue in their pleaded capacity and sought to strike out the suit before the trial court for failure to disclose a reasonable cause of action. The trial court dismissed their application and the suit is fixed for hearing on 10th February, 2025. They are apprehensive that the suit may be heard before the determination of this appeal which obstinately challenges the competency of the suit.
5. The Appellants argue that it would amount to an imprudent use of judicial time if the suit is heard before this appeal is determined. It is therefore prudent that there be a stay of further proceedings in the primary suit pending the hearing and determination of this appeal to save on both costs and scarce judicial time and for orderly administration of justice.
6. The Appellants' application is not opposed. The Respondents, in spite of service, evidenced by the Affidavit of Service of Isaac Okach, did not file any response to this application.

Issues for Determination

7. The sole issue for determination is whether it is in the interest of justice to grant a stay of proceedings before the trial court pending hearing and determination of the appeal herein.

Determination.

8. Order 42, Rule 6 (1) of the [Civil Procedure Rules](#) gives the court to which an appeal has been preferred, the discretion to, on an application being made, to consider such an application and grant an order of stay of execution or stay of proceedings as may to it seem just.
9. In the case of *KWS –vs- James Mutembei* (2019) eKLR, the court cautioned that 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 to access to justice, right to be heard without delay and overall, the right to a fair trial. Therefore, the test for stay of proceedings is higher and more stringent than that of stay of execution of pending appeal.



10. Earlier on, Ringera, J. (as he then was) had in the case of Re-Global Tours and Travel Ltd HCWC No. 43 of 2000, spelt out the principles to be considered in an application for stay of proceedings in the following words.

“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”.

11. In the instant case, I note that the application for stay of proceedings was filed expeditiously within 18 days of delivery of the impugned ruling. The Appellants have further gone ahead and filed the record of appeal already. In terms of prudent use of judicial time, the Appellants have demonstrated utmost diligence. Granting an order of stay of further proceedings, considering that the record of appeal is already filed, will not occasion delay in the expeditious disposal of the primary suit.
12. I have further looked at the grounds of appeal raised by the Appellants against the ruling of the trial court. I am persuaded that the Appellants indeed have an arguable appeal.
13. In my view, it is in the interest of justice to order a stay of further proceedings, which I hereby do, of the case Milimani MCELC E066/2023 (*Abdul Wabeed Sheikh and Abdul Hameed Sheikh suing as the registered Trustees of Sheikh Fazal Ilahi Noordin Charitable Trust – vs- City Styles Homes Ltd & 2 Others*) pending the hearing determination of this appeal.
14. The costs of this application shall abide the outcome of the appeal.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF DECEMBER, 2024.

M.D. MWANGI

JUDGE.

In the virtual presence of:

Mr. Mungla for the Appellants/Applicants

N/A by the Respondents

Joan: Court Assistant

M.D. MWANGI

JUDGE.

