



Aspire Limited v Zedka Technical Services Limited & 2 others (Environment & Land Case 2 of 2021) [2024] KEELC 14061 (KLR) (16 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14061 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 2 OF 2021
EO OBAGA, J
DECEMBER 16, 2024**

BETWEEN

ASPIRE LIMITED PLAINTIFF

AND

ZEDKA TECHNICAL SERVICES LIMITED 1ST DEFENDANT

LAND REGISRTAR SERVCIES LIMITED 2ND DEFENDANT

HON ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. This is a ruling in respect of Notice of Motion dated 19th November, 2024 in which the 1st Defendant/Applicant seeks to stay proceedings in this case pending hearing and determination of an appeal against a ruling dismissing its application to strike out the plaintiff's suit.
2. This case proceeded to hearing and a judgement was delivered in favour of the plaintiff on 20.4,2022. The 1st Defendant made an application seeking to set aside the judgement. The 1st Defendant had been served with summons through substituted service but despite this, the court set aside the judgement to give it a chance to be heard.
3. The case started afresh. The Plaintiff presented evidence of three witnesses and was remaining with two to close its case when an application to strike out this case was made. In a ruling delivered on 14.10.2024, the court dismissed the application by the Applicant. This is how the Applicant came to file the present application seeking to stay proceedings.
4. The Applicant contends that it has preferred an appeal against the ruling of this court delivered on 14.10.2024. It argues that if stay of proceedings and particularly the hearing set for 16.12.2024 is not stayed, the case will go on and the Applicant will be barred in future from raising any grounds it is raising now.



5. The Applicant contends that the Plaintiff/Respondent has not taken any steps to regularize the matter despite the finding of the court and that as the suit is currently, it is highly irregular.
6. The Applicant's application was opposed through a replying affidavit sworn on 2.12.2024. The Respondent contends that this court is functus officio having rendered a ruling in this matter on 14.10.2024 and that the present application should have been filed before the Court of Appeal.
7. The Respondent further contends that this is a part heard matter which has proceeded by consent of the parties and that the Applicant will not suffer any prejudice as it will have a chance to file an appeal against the judgement of the court should the case go in favour of the Respondent.
8. The application was argued orally. The Applicant relied on the case of NIC Bank Ltd Civil Appeal No. 52 of 2020 and Githunguri –Vs- Jimba Credit Limited 1988 KLR and Utalii Transport Co. Ltd & 3 others –vs- NIC Bank Limited.
9. The Respondent relied on the case of William Odhiambo Ramogi & 2 others –vs- A.G & 3 others (2020) eKLR.
10. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. The only issue to be determined herein is whether this court should stay the proceedings herein. As I have stated hereinabove, this is a part heard matter. The Applicant tried to have it struck out on ground that there was no company resolution to file the suit but this court dismissed the application holding that the failure to file the resolution was not fatal. This was so given the fact that the suit had proceeded to hearing and the plaintiff was only remaining with two witnesses to close its case.
11. The five judge bench in the case of William Odhiambo Ramogi (Supra) discussed at length grounds upon which stay of proceedings can be granted. Stay of proceedings is a draconian step which should be exercised sparingly. In the instant case, the Applicant had participated in the hearing until when the Respondent was about to close its case when the application for striking out the suit was made.
12. As was observed in the William Odhiambo Ramogi case (Supra), litigants have to hold on until the suit is concluded so that they can prefer an appeal at once in case they lose the case. This is exactly the position herein. The Applicant will have a chance to pursue an appeal in case the Respondent's suit succeeds.
13. The Appeal which the Applicant intends to pursue will not be rendered nugatory should these proceedings not be stayed.
14. I therefore find no merit in the Applicants application which is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16TH DAY OF DECEMBER, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Kitiwa for Plaintiff.

M/s Chepkwony for Mr. Nyamweya for 1st Defendant.

Court Assistant –Laban

E. O. OBAGA



JUDGE

16TH DECEMBER, 2024

