



Dias Bakery (1996) Limited & another v Ameen Motors Limited (Civil Appeal E114 of 2025) [2025] KEHC 11530 (KLR) (30 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11530 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E114 OF 2025**

**G MUTAI, J
JULY 30, 2025**

BETWEEN

DIAS BAKERY (1996) LIMITED 1ST APPELLANT

VIKESH SHAH 2ND APPELLANT

AND

AMEEN MOTORS LIMITED RESPONDENT

RULING

1. Before this honourable court is a Notice of Motion application dated 11th April 2025 vide which the appellants/applicants seek the following orders:-
 - a. Spent;
 - b. Spent;
 - c. Spent;
 - d. That this honourable court be pleased to issue an order of stay of further proceedings, Mombasa CMCC No. 2581 of 2018, and the ruling delivered on 11th March 2025, pending the hearing and final determination of the appeal filed herein; and
 - e. That the costs of this application be in the cause.
2. The application is premised on the grounds stated in the body of the Motion and also the supporting affidavit of the 2nd applicant, sworn on 11th April 2025. The said deponent stated that the court in its ruling of 11th March 2025 in Mombasa CMCC 2581 of 2018 dismissed its application through which it had sought stay of further proceedings, setting aside of proceedings/orders/directions issued on 30th September 2024 and the entire proceedings in the matter and that the matter to proceed de novo, leave to for the defendants to institute proceedings against Mombasa County Government and to have the



- 2nd defendant struck out from the suit. Aggrieved by the said ruling, they appealed to this court vide the appeal herein.
3. The said deponent stated that their appeal has high chances of success and if allowed, it would serve the interest of justice and that there would be no prejudice to the respondent. He urged that if the application is not granted, the appeal would be rendered nugatory.
 4. In response, the respondent, through its advocates Peter Omwenga, filed a replying affidavit sworn on 22nd April 2025.
 5. Mr Omwenga deposed that the respondent's claim is liquidated at US\$70,000 plus interest and costs, and the appellants have not shown or demonstrated that they are willing to give security by way of depositing the entire sum before the court exercises its discretion in their favour. He stated that the appellants have no arguable appeal and that merely filing an appeal does not grant a party the right to a stay. The orders granted by the trial court are negative, and therefore, there is nothing to stay. He urged the court to dismiss the application with costs.
 6. The appellants/applicants filed a supplementary affidavit sworn by the 2nd applicant on 5th June 2025. The deponent stated that the matter herein is highly contested regarding liability in the claim and that they have an arguable appeal, which should be allowed to proceed. If the proceedings are not stayed, the trial court will proceed to issue a judgment rendering the appeal nugatory. He urged the court to allow the application.
 7. The application was canvassed by way of written submissions.
 8. The applicants, through their advocates, WM Njagi & Associates, filed their written submissions dated 12th June 2025. Counsel reiterated the applicant's position and submitted that the ruling failed to address the applicant's issues. The trial magistrate neither gave any consideration to the applicant's averments nor cogent reasons for declining the prayers in the application, and therefore, the appeal is arguable. If a stay is not granted, judgment would be entered, rendering the appeal nugatory.
 9. On whether there are exceptional circumstances, counsel submitted that the trial court file went missing for a period of time and reconstruction of the file had to be done, and that the applicant's previous lawyers failed to file third-party proceedings. Any judgment that will be rendered will be unjust to the applicants. The applicants have not presented any documents to rebut the claim, and the judgment that would be rendered would cause grave injustice that cannot be remedied even on appeal.
 10. Counsel submitted that the application was filed without delay, as it was filed a day after the filing of the appeal, and urged the court to allow the application as prayed.
 11. The respondent, through its advocates, Mogaka Omwenga & Mabeya Advocates, filed written submissions dated 19th June 2025. Counsel submitted that the order of stay proceedings is not merited and that the applicants do not have any arguable appeal and urged the court to dismiss the application with costs.
 12. I have considered the application, the responses thereto and the rival submissions by both counsel. The issue that needs to be determined is whether the orders sought should be issued.
 13. Stay of proceedings is a drastic remedy which is granted sparingly in the clearest of cases. The court in the case of *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 [KLR] stated: -

“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. See Ringera J in the case of *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No. 43 of 2000, persuasively 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” [emphasis added].”

14. The applicants submitted that they have an arguable appeal, and if an order staying the proceedings is not issued, the appeal would be rendered nugatory. It was urged that the applicants filed the application without undue delay. Having considered the grounds of appeal raised in the Memorandum of Appeal dated 10th April 2025, it is my view that the applicants have an arguable appeal and that the application herein was filed without undue delay. It's also my view that it will be in the interest of justice for an order of stay of proceedings to be issued.
15. Flowing from the foregoing, it is my view that the application has merit. The same is hereby allowed. In the interests of justice, I order that the appeal be fast-tracked and heard on a priority basis.
16. The costs of the application will abide the outcome of the appeal.
17. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 30TH DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Hassan, for the Appellant /Applicant;

Ms Saringi, for the Respondent; and

Arthur – Court Assistant.

