



**Nyagah v Jennings & 3 others (Civil Case 320 of 2015)
[2024] KEHC 1957 (KLR) (Civ) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 320 OF 2015

CW MEOLI, J

FEBRUARY 29, 2024

BETWEEN

NAHASHON NGIGE NYAGAH PLAINTIFF

AND

STEPHEN ARMSTRONG JENNINGS 1ST DEFENDANT

PRESTON MENDENHALL 2ND DEFENDANT

THE STAR PUBLICATIONS LIMITED 3RD DEFENDANT

WILFRED GITONGA 4TH DEFENDANT

RULING

1. For determination is the Notice of Motion (the Motion) dated 17th March, 2023 brought by the Plaintiff herein, Nahashon Ngige Nyagah (hereafter the Applicant). The substantive prayer therein seeks an order to stay the proceedings in the suit pending hearing and determination of HCCC No. 46 of 2015 Tatu City Limited & others v Stephen Armstrong Jennings & others and HCCC No. 230 of 2015 Kofinaf Company Limited v Nahashon Ngige Nyagah & others (the separate claims). The application is expressed to be brought under Sections 1A, 1B, 3, 3A and 6 of the Civil Procedure Act (CPA) and Order 11, Rule 3 (1) (h) (i) of the Civil Procedure Rules (CPA).
2. The Motion is premised on the grounds on its face and the affidavit of the Applicant, who stated that his present suit seeks various reliefs arising out of alleged defamatory statements made in respect of the affairs of Tatu City Limited and Kofinaf Company Limited (the Companies). That the plaint was accompanied by an application seeking injunctive orders; that by a ruling delivered on 27th October, 2016 the High Court determined that the suit could not be adequately adjudicated before the determination of the separate claims, the latter having preceded the present suit in order of institution.



3. That because the separate claims are still pending before the Commercial and Admiralty Division of the High Court, the Applicant stands to be greatly prejudiced if this suit proceeds before their determination. The Applicant averred that it is in the interest of justice for the separate claims to first be concluded before the parties can proceed with the instant suit, hence the Motion.
4. In opposing the Motion, the first Defendant, Stephen Armstrong Jennings (hereafter the 1st Respondent), swore a replying affidavit on 27th April, 2023 on his behalf and on behalf of the 2nd Defendant, Preston Mendenhall (hereafter the 2nd Respondent). He deposed inter alia, that the Motion is frivolous, scandalous, an abuse of the court process and purely aimed at delaying the suit. The 1st Respondent stated in addition that the ruling of 27th October, 2016 made no determination to the effect asserted regarding the pending separate claims in relation to the adjudication of the present suit, but rather an observation that the dispute concerning properties associated with the Companies could not be adjudicated upon in the subject application.
5. He asserted that the issues in dispute in the separate claims are distinct and independent from those arising in the present suit, and hence there is no reason for granting the stay order sought. It was the 1st Respondent's averment that the suit has not been actively prosecuted despite having been filed close to eight (8) years ago, stating further that the Applicant does not stand to be prejudiced if the suit proceeds for hearing.
6. The court directed that parties file written submissions on the Motion. Counsel for the Applicant submitted that while the causes of action in the separate claims are distinct from that in the present suit, the respective causes of action arise out of the same facts, namely a dispute between the Applicant and the 1st Respondent, concerning the management of the properties and assets belonging to Companies. Counsel further submitted that the Applicant will be prejudiced if the present suit proceeds during the pendency of the separate claims, as the outcome thereof will have a direct bearing on the separate claims. Thus, he urged the court to allow the Motion.
7. On his part, the Respondents' counsel cited the decision in *Watu Credit v Geoffrey Mokaya Aboki & Karen Chepkurui* [2022] eKLR to argue that the inherent power of the courts to stay proceedings is discretionary in nature. Counsel proceeded to argue that a stay of proceedings ought to be granted only in exceptional circumstances and where the interest of justice calls for such an order, citing the decisions in *Kenya Wildlife Service v James Mutembei* [2019] eKLR and *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000*. It was counsel's contention that the Applicant has not proffered sufficient reasons or demonstrated the manner in which he stands to be prejudiced, so as to warrant the grant of the stay order. Counsel submitted that the separate claims relate to different subject matter and involve different parties from the parties herein.
8. The Star Publications Limited and Wilfred Gitonga (the 3rd and 4th Defendants) did not actively participate in the hearing of the Motion.
9. The Court has considered the material canvassed in respect of the motion. The power of the court to stay proceedings, as sought in the instant Motion is donated by sections 3A and 6 of the [Civil Procedure Act](#) which state respectively, that:

Section 3A.

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Section 6:



No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed. Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

10. As to the nature and object of the inherent power of the court, the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR rendered itself as follows; -

“Also cited was Section 3A of the [Civil Procedure Act](#) which enshrines the inherent power of the Court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court. In *Equity Bank Ltd versus West Link Mbo Limited* [2013], eKLR, Musinga, JA stated inter alia, that, by “inherent power” it means that:

“Courts of law exist to administer justice and in so doing, they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure that the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without its being derived from [the Constitution](#) or statute. Such power enables the judiciary to deliver on their constitutional mandate.....inherent power is therefore the natural or essential power conferred upon the court irrespective of any conferment of discretion.”

11. The Supreme Court went further in *Board of Governors, Moi High School Kabarak and another versus Malolm Bell* [2013] eKLR, to add the following; -

“Inherent powers are endowments to the court as will enable it to remain standing as a constitutional authority and to ensure its internal mechanisms are functional. It includes such powers as enable the Court to regulate its intended conduct, to safeguard itself against contemplation or descriptive intrusion from elsewhere and to ensure that its mode of disclosure or duty is consumable, fair, and just.”

12. In *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 (UR) Ringera, J* (as he then was) succinctly set out the applicable considerations in determining an application for stay of proceedings in the following manner:

“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).

See also *Christopher Ndolo Mutuku and Anor. v CFC Stanbic Bank Limited* (2015) eKLR; and *Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi* (2014) e KLR.



13. As observed in the above decision, the need to avoid the dissipation of the court's time through parallel court proceedings and potentially conflicting outcomes regarding the same subject matter, is a relevant consideration in an application of this nature.
14. The suit herein is grounded on the tort of defamation, and according to the Applicant, the outcome of the separate claims will have a direct bearing on the present suit. For their part, the 1st and 2nd Respondents disputed the assertion and contended that the stay order sought is unjustified and unnecessary in the present circumstances.
15. Having perused the material annexed to the Motion and rival affidavits, alongside the record, the court observes that the separate claims filed earlier involve several parties, including the Applicant and the Respondents herein. Moreover, it is apparent from the record that the separate claims are founded on fraud and breach of trust/fiduciary duty, in relation to Company assets and properties. While the present suit, filed subsequently is one for defamation. Ex facie, the causes of action in the separate claims are independent and distinct from the cause of action in this suit, and other parties in addition to the Applicant and the 1st and 2nd Respondents are involved.
16. The operative words in section 6 of the CPA invoked in the motion is that the "matter in issue" in a subsequent suit "is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title." Clearly, the two sets of suits under consideration here do not satisfy this requirement.
17. Additionally, having read the court's ruling of 27th October 2016, the Court cannot find any statement therein that connects or predicates the determination of the present suit on the determination or outcome in the separate claims. Besides, the Applicant's material before the court does not demonstrate such nexus and or the manner in which the outcome of the separate claims will impact upon the present suit, hence likely prejudice if the stay prayer is denied. In any event, the Applicant has not demonstrated his own diligent efforts in ensuring the timely prosecution of the pending separate claims.
18. In *Raymond Ruto & 5 Others v Stephen Kibowen* [2021] eKLR, the Court of Appeal indicating that the stay of proceedings cannot be predicated on flimsy grounds stated:

"We acknowledge at the outset, that a court will sparingly and only in exceptional circumstances will it grant an order to stay of proceedings which essentially is an interruption of the other parties right to conduct their hearing....

"The learned authors of; Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332, have also given some principles to bring to bear while considering whether or not a court should stay proceedings as follows: -

"The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue."

"This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases."

"It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might



not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

19. No exceptional circumstances have been demonstrated in this case to justify staying a suit filed nearly eight years ago. The Defendants who were dragged to court are entitled to a speedy determination of the dispute. Indeed, bearing in mind the imperative in Article 159 of *the Constitution* and the overriding objective in Section 1A of the *Civil Procedure Act*, it would be contrary to the interest of justice, in the circumstances here, for the court to allow the stay of proceedings as sought by the Plaintiff. Hence, the court is not persuaded to exercise its discretion in favour of the Applicant.
20. The Notice of Motion dated 17th March, 2023 is without merit and is hereby dismissed with costs to the 1st and 2nd Respondents.
21. In closing however, the Court is conscious of its duty under Section 1A and 1B of the *Civil Procedure Act*, and related pronouncements by superior courts, including *Karuturi Networks Ltd & Anor v Daly & Figgis Advocates*, Civil Appl. NAI. 293/09 where the Court of Appeal said that: -

“The jurisdiction of this Court has been enhanced and its latitude expanded in order for the Court to drive the civil process and to hold firmly the steering wheel of the process in order to attain the overriding objective..... and its principal aims. In our view, dealing with a case justly includes inter alia reducing delay, and costs expenses at the same time acting expeditiously and fairly. To operationalize or implement the overriding objective, in our view, calls for new thinking and innovation and actively managing the cases before the court...”.

See also: *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR.
22. Taking into account the nature and age of this suit, the fact that the Applicant has since October 2016 not taken serious steps to progress it, and the apparent reluctance in that regard, as disclosed in his motion, the court hereby directs the Plaintiff/ Applicant to fully prosecute his suit by 30th November 2024, failing which the suit shall automatically stand dismissed for want of prosecution, and with costs to the Defendants.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 29TH DAY OF FEBRUARY 2024.

C.MEOLI

JUDGE

In the presence of:

For the Plaintiff/ Applicant: N/A

For the 1st & 2nd Defendant/Respondents : Ms. Khadija

For the 3rd Defendant/ Respondent: Mr. Angwenyi

For the 4th Defendant/Respondent: N/A

C/A: Carol

