



REPUBLIC OF KENYA



KENYA LAW
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**Family Bank Limited v Karonga & another (Civil Appeal
E172 of 2022) [2024] KEHC 10667 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 10667 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E172 OF 2022
DO CHEPKWONY, J
JUNE 26, 2024**

BETWEEN

FAMILY BANK LIMITED APPELLANT

AND

LILIAN NJERI KARONGA 1ST RESPONDENT

AFRICA MERCHANT ASSURANCE CO LTD 2ND RESPONDENT

RULING

1. What is before the court for determination is the Notice of Motion application dated 10th November, 2023 which seeks the following reasons:
 - a. That there be a stay of proceedings in this Appeal pending further Orders to be granted by the Honourable Court in Milimani Commercial Case No. E291 of 2022 (HCComm E291 of 2022 (O.S)) Family Bank Of Kenya Limited Vs Simon Muinde Nzioka & 10 others)
 - b. That the costs of this application be borne by the 2nd Respondent.
2. The Application is based on the grounds set out on its and the Supporting Affidavit of Shane Ngechu, the Legal officer of the Appellant sworn on the instant date. It is the Applicant's case that there are other proceedings in Milimani High court which is an interpleader suit and it seeks to have these proceedings stayed so to avoid the issues in this Appeal being determined in the Interpleader suit as this would be prejudicial to the Appellant.
3. The Application was opposed through the Replying Affidavit of Morris M. Karigi sworn on 1st December, 2023, wherein he has stated that the application is a non- starter, bad in law and an abuse of court process. He argues that stay of proceedings will cause serious and grave interference in the proceedings of this case. He holds that the Appellant had already deposited the entire decretal sum as



security in court and has not shown anything that has prevented it from participating in the current proceedings.

4. The 1st Respondent also depones that she stands to suffer immense prejudice should the proceedings be stayed as it shows that the Appellant and the 2nd Respondent are working in cahoots to deny her the fruits of the judgment, in her favour. She argues that the decisions of courts of concurrent jurisdiction are not binding horizontally and therefore the court is not bound by the ruling issued in Milimani HCOMM No. E291 of 2022.
5. She further holds that the Applicant has not demonstrated the prejudice he is likely to suffer should the proceedings not be stayed and this goes on to show that it is only meant to frustrate the determination of the appeal. The 1st Respondent has urged that the application should be dismissed since it does not conform with the requirements of *Civil Procedure Act* and Rules with regard to stay of proceedings.
6. On 23rd November, 2023, the court directed parties to canvass the application dated 10th November, 2023 by way of written submissions and they both complied.

Analysis and determination

7. The court has carefully read through the affidavit filed by respective parties in support and rebuttal of the application alongside their written submissions in consideration of the prayer being sought. The court finds the main issue for determination being whether the court should grant the orders sought.
8. The court has gone through the record and finds that the accident, which the suit is based on, occurred on 10th July, 2018 and the 1st Respondent filed a suit wherein she obtained judgment in her favour. The 1st Respondent then filed a Declaratory suit against the 2nd Respondent and obtained a Judgment of Kshs. 361,513/=. The 1st Respondent thereafter filed a Garnishee application dated 27th April, 2022 against the Appellant herein and the UBA Bank and the same was allowed vide a court order issued on 21st July, 2022 for the sum of Kshs. 445,223/=.
9. Being aggrieved, the Appellant filed the Memorandum of Appeal dated 26th July 2022 seeking to have the Garnishee Order made by the trial court set aside. The Appellant further filed the present application for the consideration of the court.
10. An application for stay of proceedings is granted based on the discretion of the court which and is dependent on the circumstances and justice of the case. In the case of *Re Global Tours & Travel Ltd HCWC No.43 of 2000 Ringera, J* (as he then was) held that:

“...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 case, 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. From the above finding, the Judge (as he then was) was clear then in considering whether the application herein has merits or not, the court has to consider the purpose of staying the proceedings,



the pros and the cons of the same and most importantly, whether it is in the interest of justice that the same be allowed or not.

12. On one hand, it is the court's view that, the application appears to be a means of delaying justice for the 1st Respondent who has been kept away from the fruits of her judgment since it was delivered on 18th March, 2022. However given that there is a suit as indicated by the Applicant being Milimani Commercial Case No. E291 of 2022 (HCComm E291 of 2022 (O.S)) Family Bank Of Kenya Limited vs Simon Muinde Nzioka & 10 others) which is said to be an interpleader suit it will be in the interest of justice for these proceedings to be stayed so that the interpleader suit, is heard and determined first so as to avoid canvassing the same issues to the detriment of the Appellant.
13. In the circumstances, the court proceeds to allow the Notice of Motion application dated 10th November, 2023 on the following terms;
 - a. That a stay of proceedings in this Appeal is hereby ordered pending further Orders to be granted by the Honourable Court in Milimani Commercial Case No. E291 of 2022 (HCComm E291 of 2022 (O.S)) Family Bank of Kenya Limited Vs Simon Muinde Nzioka & 10 others)
 - b. That the costs of this application be borne by the 2nd Respondent.
 - c. Mention on 17th September, 2024 for parties to confirm give the status of the Honourable Court in Milimani Commercial Case No. E291 of 2022 (HCComm E291 of 2022 (O.S)) Family Bank of Kenya Limited Vs Simon Muinde Nzioka & 10 others) and for further Directions to mine.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 26th DAY OF JUNE, 2024.

D.O. CHEPKWONY

JUDGE

In the presence of;

Martin - Court Assistant

Mr. Yegon Holding brief for Mr. Omogi for Appellant.

Non-appearance for and by the Respondent

