



**Round Square Properties Limited v Director-General, National Environment
Management Authority & another (Tribunal Appeal 21 of 2022)
[2023] KENET 479 (KLR) (Environment and Land) (29 August 2023) (Ruling)**

Neutral citation: [2023] KENET 479 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
ENVIRONMENT AND LAND
TRIBUNAL APPEAL 21 OF 2022**

**EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS**

AUGUST 29, 2023

BETWEEN

ROUND SQUARE PROPERTIES LIMITED APPELLANT

AND

**DIRECTOR-GENERAL, NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY 1ST RESPONDENT**

WINCHESTER VENTURES KENYA LIMITED 2ND RESPONDENT

RULING

1. Before the Honourable Tribunal is the 2nd respondent's application dated August 9, 2023, which is principally seeking stay of proceedings herein pending the hearing and determination of the Appeal in ELC No. 71 of 2022- Winchester Ventures Kenya Ltd Vs Pearl of Riverside Garden Limited and 2 others.
2. The said application is expressed to be brought undersections 1A, 1B and3A of the [Civil Procedure Act](#), order 42 rule 6, order 51 rule 1 of Civil Procedure Rules, and all other enabling provisions of the law.
3. The application did not go unopposed, and the appellant has in that regard filed its replying affidavit in opposition sworn by Benson Namutali on August 14, 2023. The appellant also filed submissions dated August 17, 2023. However, the same were filed without directions and the leave of the Tribunal, and therefore will not be considered.



Issues for determination

4. Having considered the 2nd respondent's application together with the supporting affidavit thereto, the appellant's replying affidavit, and other documents filed by parties, we find that the only issue that arises for determination is whether the 2nd respondent's application dated 9th August 2023 is merited.

Whether the 2nd respondent's application dated 9th August 2023 is merited

5. As already indicated hereinabove, the 2nd respondent's application is seeking stay of proceedings herein pending the hearing and determination of the Appeal in ELC No. 71 of 2022- Winchester Ventures Kenya Ltd Vs Pearl of Riverside Garden Limited and 2 others.
6. It is now well settled law that whether or not to grant stay of proceedings is a matter of judicial discretion to be exercised judiciously and in the interest of justice. This was the holding in the case of *Global Tours & Travels Limited*; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J, (as he then was) stated 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 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’.

7. Similarly, in the case of *Kenya Wildlife Service vs James Mutembei* (2019) eKLR, Gikonyo J held 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 right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent’

8. The learned Judge went on to borrow heavily from *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, where the Learned authors state 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.”

9. We are persuaded by the above authorities which lay down the clear principles that stay of proceedings is a grave matter to be entertained only in the most deserving cases as it impacts the right to expeditious trial. It is a discretionary power exercisable by the court upon consideration of the facts and circumstances of each case. As stated by the Court of Appeal in the case of David Morton Silverstein vs. Atsango Chesoni (2002) eKLR: -

‘The court is not laying down any principle that no order for stay of proceedings will ever be made; that would be contrary to the provisions of rule 5 (2) (b) of the court’s own rules. But as the court pointed out in the case we have already cited, each case must depend on its own facts and the facts of this particular case before us, as were the facts in the earlier case, do not show that the appeal will be rendered nugatory if we do not grant a stay’

10. Now turning to the instant application, we note that the reasons advanced by the 2nd respondent for the stay of the proceedings herein pending the hearing and determination of the Appeal in ELC No. 71 of 2022- *Winchester Ventures Kenya Ltd Vs Pearl of Riverside Garden Limited and 2 others* is that the nature of the appellant’s application dated June 12, 2023 and the Appeal before the Environment and Land Court are intertwined and determination of the Appeal will have the potential of determining the application dated June 12, 2023.
11. This cannot be further from the truth as the appellant herein is not a party to the said appeal pending before the Environment and Land Court. We therefore agree with the appellant that staying the proceedings herein pending the hearing and determination of the said Appeal, and thereafter apply that determination in dealing with the application dated June 12, 2023, will have the effect of limiting the appellant’s right to be heard on merit.
12. Further, the 2nd respondent argues that if the Honorable Court proceeds with the application dated June 12, 2023, the same could have the possibility of having conflicting decisions with the Environment and Land Court in ELC E071 of 2022. We find this argument to be legally untenable for the reason that if trial courts were to stay proceedings pending to determination of appeals involving other similar matters, the same would lead to absurdity and unnecessary and unwarranted delay of judicial proceedings. Indeed, this Honorable Tribunal is obligated by article 159(2)(b) of the Constitution to administer justice expeditiously.
13. Furthermore, the 2nd respondent has not demonstrated how the pending appeal in the Environment and Land Court will be prejudiced by the hearing and determination of the appellant’s application considering that the said appeal arises from a different matter.
14. In the end, the sole issue for determination answers in the negative; the 2nd respondent’s application dated August 9, 2023 is not merited.

Orders

15. We, therefore, find that the 2nd respondent’s application dated August 9, 2023 is unmeritorious and the same is hereby dismissed.
16. Each party shall bear its own costs.

DATED AT NAIROBI THIS 29TH DAY OF AUGUST 2023

EMMANUEL MUMIA.....CHAIRMAN



WINNIE Tsuma.....VICE-CHAIRPERSON
KARIUKI MUIGUA.....MEMBER
DUNCAN KURIA.....MEMBER
RONALD ALLAMANO.....MEMBER

