



**REPUBLIC OF KENYA**

**IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI**

**TRIBUNAL CASE NO. 815 OF 2017**

**KENYA TECHNICAL TEACHERS' COLLEGE WORKERS ý**

**SAVINGS CO-OPERATIVE AND CREDIT SOCIETY ý.....CLAIMANT**

**-VERSUS-**

**NJUGUNA KAMAU.....1<sup>ST</sup> RESPONDENT**

**GILBERT OTIENO.....2<sup>ND</sup> RESPONDENT**

**OYARO MWAMBA.....3<sup>RD</sup> RESPONDENT**

**AGNES NGUNJIRI.....4<sup>TH</sup> RESPONDENT**

**CHARLES ONKUNDI.....5<sup>TH</sup> RESPONDENT**

**THE ADMINISTRATOR, ESTATE OF JAMES WASWA.....6<sup>TH</sup> RESPONDENT**

**WYCLIFE IMBAYA.....7<sup>TH</sup> RESPONDENT**

**JACKLINE NJERU.....8<sup>TH</sup> RESPONDENT**

**THE ADMINISTRATOR, ESTATE OF KENNEDY KERAMA.....9<sup>TH</sup> RESPONDENT**

**RAPHAEL MACHARIA.....10<sup>TH</sup> RESPONDENT**

**ZABLON MUKHAYE.....11<sup>TH</sup> RESPONDENT**

**RUBEN NDATHE.....12<sup>TH</sup> RESPONDENT**

**SUSAN JAMES.....13<sup>TH</sup> RESPONDENT**

**MARY HAJJAH.....14<sup>TH</sup> RESPONDENT**

**RULING**

1. The Applicant filed a Notice of Motion Application under Certificate of Urgency, dated **14<sup>th</sup> April, 2021**. In the said Application, the Applicant is seeking various orders, and particularly, one for Stay of proceedings, following the Tribunal's Orders dated **25<sup>th</sup> June 2020**, pending appeal in the High Court.

2. In opposition of the aforesaid Application, the Respondents filed a Replying Affidavit dated **19<sup>th</sup> April 2021** (sic), deponed by one **Nancy Kinyanjui**, as well as Grounds of opposition of even date. Parties were directed to proceed by way of written Submissions, which directions were complied with.

3. We have read and considered the Pleadings and elaborate submissions of both parties, which have assisted this Tribunal to come to the determination of these present issues.

#### **4. ISSUES FOR DETERMINATION**

Having carefully considered the documents and arguments by both parties, we have framed the following issue for determination:

**(a)** Whether this Tribunal should issue Stay of Proceedings.

#### **ANALYSIS OF THE ISSUES**

##### **(a) Whether this Tribunal has jurisdiction to Stay its Decision**

**Order 42 Rule 6** of the Civil Procedure rules provides as follows:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from **except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order**, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside”

5. An Application for Stay of proceedings is within the ambit of the Trial Court/Tribunal, as it is not in any way interfering with the Judgment. It is not a re-litigation of the case, neither is it a reopening of arguments on merits or otherwise of the Judgment. In view of the foregoing, we are persuaded that this Tribunal is clothed with Jurisdiction to entertain an Application for Stay of Proceedings. However, there ought to be sufficient grounds to warrant a stay of proceedings.

**Order 42 Rule 6** empowers the trial Court/Tribunal to grant stay of proceedings. This is to enable a party to pursue the appellate options, wherefrom a further stay can be sought. Indeed, we agree with the submissions of the Claimant, as cited in the case of **Kenya Wildlife Service -vs- James Mutembei [2019] eKLR** that:

*“...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 substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings 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.”*

6. This Tribunal has held that justice delayed is justice denied. A party seeking stay orders ought to demonstrate good faith, and also explicitly exhibit all efforts to have justice done and seen to be done timeously. The burden of proof is thus on a party seeking stay orders to convince the Tribunal that stay orders ought to be granted, by demonstrating the exceptional nature of the case.

7. The Respondents have not demonstrated any efforts made to have the Appeal heard. It would appear to us that the Applicant is not keen to have their Appeal, if any, heard and determined.

The Applicant’s Application in the present case smacks of bad faith, it is unreasonable and also presents undue delay, and more so, no basis has been laid to the satisfaction of this Tribunal to warrant the issuance of stay orders. It is important that litigation comes to an end, and the Decree Holder be permitted to enjoy the fruits of their judgment.

8. In the interest of justice, we find that the Orders sought should not be granted and the Application dated **14<sup>th</sup> April 2021** must fail. The Applicant, having lodged an Appeal, is at liberty to seek Stay of Proceedings at the Appellate Court within the ambit of **Order 42 Rule 6(1)** of the Civil Procedure Rules.

#### **ORDERS**

We therefore Order as follows:

**(a) The Applicant’s Application dated 14<sup>th</sup> June 2021 be and is hereby dismissed with costs.**

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF OCTOBER, 2021.**

**Hon. B. Kimemia Chairperson Signed 7.10. 21**

**Hon. J. Mwatsama Deputy Chairperson Signed 7.10.21**

**Mr. P. Gichuki Member Signed 7.10.21**

**Mr. B. Akusala Member Signed 7.10.21**

**Tribunal Clerk R. Leweri**

Sagimi holding brief for the Respondent.

Ashitiva & Company advocate: No appearance.

**Hon. J. Mwatsama Deputy Chairperson Signed 7.10.21**