



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. E194 OF 2021

LAICO REGENCY HOTEL...APPELLANT/APPLICANT

-VERSUS-

QUALITY MEAT PARKERS.....RESPONDENT

RULING

1. This ruling is the outcome of two applications. The first application is the motion dated 14th April 2021 taken out by the appellant/applicant where of the appellant sought for the following orders:

a. **THAT this application be certified urgent and be considered ex-parte in the first instance.**

b. **THAT pending the hearing and determination of this application an order be issued staying the execution orders contained in the ruling of the Chief Magistrate's Court at Nairobi (The Hon. D. W. Mburu (Mr.) Senior Principal Magistrate), made and/or delivered on 1st April 2021.**

c. **THAT pending the hearing and/or determination of this appeal an order be issued staying the execution of the orders contained in the ruling of the Chief Magistrate's Court at Nairobi (The Hon. D. W. Mburu (Mr.) Senior Principal Magistrate, made and/or delivered on 1st April 2021.**

d. **THAT pending the hearing and/or determination of this appeal and application there be a stay of proceedings including the enforcement of the ruling and orders of Hon. D. W. Mburu (Mr.) in MCCC E4345 of 2020, Quality Meat Parkers vs Lacio Regency Hotel**

e. **THAT costs of this application does abide the outcome of the appeal.**

2. The motion is supported by the affidavit sworn by Purity Njoroge.

3. The respondent filed the replying affidavit sworn by Rita Velji to oppose the motion.

4. The second application is the motion dated 27th April 2021 taken out by the respondent whereof it sought for the following orders:

i. **THAT this application be certified urgent and service be dispensed with in the first instance.**

ii. **THAT pending the hearing of this application interparty this honourable court be pleased to set aside its orders issued by the Hon. Justice Sergon on 15th April 2021 STAYING THE EXECUTION OF THE ORDERS OF HON. MBURU IN MCCC E4345 of 2020 issued on the 1st of April 2021.**

iii. **THAT in lieu to paragraph 2 above the appellant/ respondent herein be ordered to deposit kshs.8,055,429 in court as security for both the instant appeal and the trial that is yet to commence before the trial (subordinate) court vide CMCC E4345 of 2020.**

iv. **THAT this honourable court be pleased to dismiss with costs the appellant/respondents application dated 14th April 2021.**

v. **THAT this honourable court does issue any other order it deems fit in the interest of justice.**

vi. **THAT 1st defendant/judgment debtor caters for the cost of this application.**

5. The motion is supported by the affidavit sworn by Rita Velji.

The appellant filed the replying affidavit of Jamal Ahmed to oppose the aforesaid motion.

6. The two applications were heard together. It is important to set out the background of this dispute at this juncture. The respondent filed an action before the Chief Magistrate's Court vide C.M.C.C.C no. E4345 of 2020 seeking for payment of kshs.8,055,529/= from the appellant. The aforesaid sum is said to be in respect of meat and poultry products supplied to the appellant between the year 2013 and 2019.

7. The appellant filed a defence to deny the respondent's claim.

The respondent successfully obtained an order freezing the appellant's accounts and further restraining the respondent from transferring, alienating, charging or disposing in any way its properties to third parties pending the hearing and determination of the suit in subordinate court on 1st April 2021. Being aggrieved by the aforesaid orders, the appellant preferred this appeal.

8. In the motion dated 14th April 2021, the main order sought by the appellant is for an order for stay of proceedings including the enforcement of the ruling and orders made on 1st April 2021.

9. It is the submission of the appellant that if the orders are not granted it stands to suffer substantial loss from the enforcement of the freezing orders. It is said that the applicant relies on the said accounts to cater for its expenses like paying its employees. It is further argued that the freezing order may cause financial harm to the appellant and that the appeal may be rendered nugatory.

10. The respondent on the other hand urged this court to dismiss the appellant's motion on the basis that the appellant does not deserve to be granted the orders. This court was urged to find that the appellant had changed its name from Laico Regency Hotel to Ledger Plaza Hotel way back in April 2019.

11. The respondent pointed out that since the name of the appellant had changed, if the respondent turned successful and obtained judgment, the judgment and decree may not be enforced against the new entity on account of its changed personality of the appellant.

12. I think it is important to first consider the motion dated 27th April 2021 before determining the motion dated 14th April 2021 since both applications are interrelated.

13. In the aforementioned motion, the main orders sought are that the appellant should be directed to deposit the sum of kshs.8,055,429/= in court as security for both the appeal and the suit. This court has also been beseeched to dismiss the motion dated 14.4.2021.

14. The respondent/applicant pointed out that the appellant owes the respondent the amount claimed in the suit in respect of meat and poultry supplied to the appellant by the respondent. The respondent faulted this court for granting unconditional ex parte orders for stay of execution of the orders issued by the trial court on 1st April 2021.

15. It is pointed out by the respondent that the appellant had misrepresented to the trial court that it closed its doors yet on appeal it stated that it need the freezing orders to be stayed to enable it meet its financial obligations like paying salaries for its employees.

16. The respondent argued that if conditions are not imposed for the grant of the order for stay the proceedings before the trial court will be exposed and the same may be rendered moot if the appellant were to proceed to continue moving its monies from its accounts and or even transfer its assets to third parties.

17. The appellant responded to the respondent's arguments stating that there is no evidence that the appellant would move or transfer its assets out of the court's jurisdiction. The appellant further argued that if the stay orders are varied or set aside the appellant will suffer negative impact as its operations will be paralyzed.

18. It is also pointed out that the appellant requires to pay employees, electricity and water bills. It is said that some employees had not been affected by the temporary closure. The appellant denied that it changed its name from Laico regency Hotel to Ledger Plaza Hotel for the sole purpose of avoiding paying the respondent's disputed debt.

19. Having considered the arguments put forward in support and against the two applications, I have come to the following conclusions.

First, that if the order for stay of proceedings and or enforcement of the orders issued by the trial court on 1st April 2021, is granted the consequence is that the appellant will be at liberty to operate its accounts and deal with its property.

20. The respondent may have nothing to attach in satisfaction of the decree should its case turn successful since the appellant may empty the

bank accounts and transfer its properties to third parties making it difficult for the decree holder to access.

21. Secondly, if the order for stay is refused, then the appellant's accounts shall remain frozen and its properties shall remain encumbered. It is possible the appellant's operations may be paralyzed.

22. I find that each of the parties has partially succeeded in their respective applications. After balancing the interest of the parties and the justice of the matter I grant the following orders:

i. An order for stay of execution of the orders contained in the ruling/order delivered on 1st April 2021 is granted pending appeal on condition that the appellant deposits the sum of ksh.8,055,429/= in an interest earning account in the joint names of learned advocates and or firms of advocates within 30 days from the date hereof.

ii. In default, the order for stay shall automatically lapse and those issued by the subordinate court shall persist.

iii. Each party to meet its own costs of the application.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF JUNE, 2021

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent