



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 95 OF 2020

KWACHA GROUP OF COMPANIES.....APPELLANT

-VERSUS-

PINDORIA HOLDINGS LIMITED.....RESPONDENT

RULING

1) The subject matter of this ruling is the motion dated 11th August, 2020 in which the appellant seeks for interalia:-

i. An order reviewing this court's orders given on 3rd July 2020 and grant the appellant unconditional stay of execution.

ii. In the alternative this court to extend by 120 days for the appellant to deposit the decretal sum in an interest earning account as ordered on 3rd July 2020.

iii. This court to admit this appeal for hearing and fix a hearing date on priority basis.

2) The motion is supported by the affidavit of Boniface Nginyo Mwaura. When served with the motion, the respondent filed the replying affidavit of Premji V. Pindoria to oppose the same.

3) When the motion came up for inter partes hearing, learned counsels appearing in this matter recorded a consent order to have the application disposed of by written submissions. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have also considered the rival written submissions.

4) The appellant has put forward two main grounds in support of its application. First, it is argued that the appellant's business operations have been paralysed by the Covid-19 pandemic therefore it is unable to raise the decretal sum within the time fixed by this court. Secondly, that the record of appeal has already been filed and served hence the appeal can easily be admitted and given a hearing date on priority.

5) The respondent opposed the motion arguing that the appellant has not given plausible reasons to be granted the orders. The respondent pointed out that the appellant contradicted itself as the prayer in the application vis-a-vis what is indicated on oath in the supporting affidavit.

6) The respondent also stated that the appellant's application has not complied with the requirements necessary in an application for review.

7) It is further the appellant's submission that its business was crippled by the covid-19 pandemic, cannot stand because the application subject of review was heard after covid-19 pandemic had long set in. The respondent also submitted that the application for review was filed after an inordinate delay.

8) Having considered the material placed before this court plus the rival submissions, it is not in dispute that on 3rd July 2020, this court issued an order for stay of execution of the decree issued by the trial court pending appeal on condition that the appellant deposits the decretal sum of kshs.15,547,950/18 in an interest earning account in the joint names of advocates and or firms of advocates appearing in this appeal within 45 days.

9) The appellant has now approached this court stating that it is unable to raise the decretal sum within the period fixed by this court because its business has been paralyzed by the outbreak of covid-19 pandemic.

10) The respondent has pointed out that the application which gave rise to the order now being sought to be reviewed was argued within the period when covid-19 pandemic was in existence.

11) Though the respondent disputes the appellant's assertion, I am persuaded that it is possible that during the time of hearing the first

application for stay, the effects of the covid-19 pandemic had not been felt. The appellant is seeking for indulgence of an extension of time by 120 days to enable it comply. A period of 30 days has already lapsed since the current motion was filed. I think the appellant's request is justified in the circumstances save that 30 days should be discounted.

12) The appellant has also sought for an order to have the disposal of this appeal expedited. The respondent appears not to be averse to the appellant's proposal. I have perused the court's record and it is apparent that the record of appeal has been filed. The trial court's file has also been forwarded to this court. This appeal is hereby admitted to hearing. It is now upon the parties to cause it to be listed for further directions on the hearing of the same.

13) In the end, the motion dated 11th August 2020 is allowed giving rise to the following orders:

i. There be an order for stay of execution of the decree pending appeal on condition that the appellant deposits the decretal sum of ksh.15,547,950/18 in an interest earning account in the joint names of the advocates and or firms of advocates appearing in this appeal within a further period of 90 days from the date of this ruling.

ii. This appeal is admitted to hearing before a single judge.

iii. Parties to cause the appeal to be placed before a judge for further directions on its hearing on priority basis.

iv. Each party to meet its own costs on the application.

Dated, signed and delivered online via Microsoft Teams at Nairobi this 18th day of September, 2020.

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J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent