



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

[CORAM: MRIMA, J.]

CIVIL APPEAL NO. 95 OF 2019

PAMELA ADHIAMBO GOGO

t/a ALPHA JOLI HARDWARE.....APPELLANT

VERSUS

KENYA WOMEN MICROFINANCE LTD.....RESPONDENT

(Being an appeal from the ruling and order by Hon. M. Obiero, Principal Magistrate in Migori Chief Magistrate's Civil Suit No. 101 of 2019 delivered on 02/08/2019)

DIRECTIONS

1. The Appellant herein, **Pamela Adhiambo Gogo**, preferred an appeal against the ruling in *Migori CMCC No. 101 of 2019* which was rendered on 02/08/2019. The Appellant filed a Memorandum of Appeal evenly dated 28/08/2019.
2. Contemporaneously with the filing of the Memorandum of Appeal the Appellant filed two applications. One was a Chamber Summons dated 28/08/2019. It sought that the matter be heard during the Court's recess. The other was a Notice of Motion dated 28/08/2019 which sought for a stay of execution of the orders made by the lower court on 02/08/2019. Both applications were brought under certificates of urgency.
3. On 04/09/2019 this Court (**Karanja, J.**) ordered that the *status quo* be maintained and fixed the *inter partes* hearing of the Notice of Motion on 17/09/2019. The matter then came before me on 17/09/2019.
4. By an order of this Court the Appellant/Applicant was granted leave to file a supplementary affidavit within 3 days. The Notice of Motion was fixed for hearing on 14/10/2019. The Applicant filed the Supplementary Affidavit on 19/09/2019.
5. When the matter came up for hearing on 14/10/2019 Counsel for the Applicant **Mr. Roche Odhiambo** made two applications. The first one was a request that the lower court file be availed before this Court. The second application was for leave to adduce oral evidence on the application. Counsel submitted that there were grey areas in the matter which needed to be put to light by way of oral evidence.
6. **Mr. Abisai**, Counsel for the Respondent did not oppose the first application. He however opposed the application for leave to adduce oral evidence on the application.
7. This Court reserved its directions and orders on the second application pending the perusal of the lower court file. The file is now before this Court.
8. I have perused the lower court file. I will allow parties to make references to that record in the course of the hearing of the Notice of Motion application.
9. I must however, and so respectfully, decline the application to adduce oral evidence in prosecuting the Notice of Motion. I have three reasons for the holding. **One**, the Applicant was granted leave to and duly filed a supplementary affidavit. **Two**, the alleged grey areas that require to be clarified by way of oral evidence were not stated. **Three**, there is a likelihood that the intended oral evidence may result on new and further evidence. In such cases applications to adduce new and additional evidence on appeal must be formal and based on settled principles.
10. Having said so, I hereby order that the Notice of Motion dated 28/08/2019 be heard on 12/11/2019.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 30th day of October 2019.

A. C. MRIMA

JUDGE

Directions given in open Court and in the presence of: -

Mr. Roche Odhiambo Counsel instructed by Messrs. Odhiambo & Company Advocates for the Applicant.

Mr. Abisai Counsel instructed by Messrs. Abisai & Company Advocates for the Respondent.

Evelyne Nyauke - Court Assistant