



**Alfalah Wholesalers Limited v Okongo (Civil Appeal 66 of 2018)
[2019] KEHC 12490 (KLR) (28 November 2019) (Ruling)**

Neutral citation: [2019] KEHC 12490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL 66 OF 2018
AC MRIMA, J
NOVEMBER 28, 2019**

BETWEEN

ALFALAH WHOLESALERS LIMITED APPELLANT

AND

GEORGE ODUOR OKONGO RESPONDENT

RULING

1. The application under consideration is the Notice of Motion dated 07/05/2018. The application mainly sought a stay of execution of the judgment/decreed passed by the trial court in favour of the Respondent.
2. The application was strenuously opposed. Parties filed written submissions to the application. They also relied on various decisions in support of their rival positions.
3. Judgment in the suit before the trial court was rendered on 16/05/2018. The Appellant preferred an appeal. Since then the parties have been engaged in interlocutory applications.
4. In view of the nature of the matter, this Court has on some occasions requested the parties to amicably resolve it, but in vain. Parties instead opted for a collision trajectory. As all that happens, the Respondent on one hand hopes that one day he may enjoy the fruits of the judgment. The Appellant on the other hand hopes that the appeal will eventually be fairly determined.
5. Matters degenerated further. I am alive to a complaint by one of the parties that there was a deliberate move to scuttle the course of justice by not availing a filed application for consideration by the Court. I dealt with the issue and the Deputy Registrar filed a Report on 16/05/2019.
6. I have carefully addressed my mind in this matter. To me, this is a matter which must be finally determined by the Court. Any further delay may result to many other issues which may derail the



ultimate determination. I choose to lay aside all the prevailing issues for the determination of the main appeal.

7. Article 159(2)(b) of *the Constitution* and Section 1A and 1B of the *Civil Procedure Act*, Cap. 21 of the Laws of Kenya vouch for expeditious delivery of justice. Courts have powers to ensure that the constitutional dictates are achieved. The Court of Appeal in *Stephen Boro Gitiha v. Family Finance Building Society & 3 Others* (2009) eKLR was very clear on the position by stating that: -

.... A new dawn has broken forth and we are challenged to reshape the legal landscape to satisfy the needs of our time. I must warn litigants and Counsel that the Courts are now on the driving seat of justice and the courts in my opinion have a new call to use the overriding objective to remove all the cobwebs hitherto experienced in civil process and to weed out as far as it is practicable the scourge of the civil process starting with the unacceptable levels of delay..... The challenge to the courts is to use the 'new broom' of overriding objective to bring cases to finality, by declining to hear unnecessary interlocutory applications and instead to adjudicate on the principal issues in a full hearing, if possible.....

8. To that end, I hereby make the following orders: -

- (a) The Notice of Motion dated May 7, 2018 and any other application(s), if any, shall stand dispensed with and no party shall file any other application without the leave of the Court;
- (b) The status quo shall be maintained pending the determination of the main appeal;
- (c) Since the Appellant has already filed the Record of Appeal, I do hereby direct that the Appellant shall file and serve written submissions to the main appeal within 21 days of this ruling. Upon service the Respondent to file and serve his written submissions within 14 days.
- (d) This matter shall be fixed for highlighting of the submissions on February 13, 2020.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MIGORI THIS 28TH DAY OF NOVEMBER, 2019.

A. C. MRIMA

JUDGE

Ruling delivered in open court and in the presence of: -

Mr. Marvin Odero instructed by the firm of Messrs. Okong'o Wandago & Company Advocates for the Appellant/Applicant.

Mr. Ouma instructed by the firm of Messrs. Khan & Associates for the Respondent.

Evelyne Nyauke – Court Assistant

