



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 254 OF 2018

CHACKROS INVESTMENTS LTD.....APPELLANT

V E R S U S

HACO INDUSTRIES (K) LTDRESPONDENT

RULING

- 1) Chackros Investments Ltd, the appellant herein, filed an action by way of the plaint dated 13.6.2016 against **Haco Industries (K) Ltd**, the respondent herein, before the Chief Magistrate's court, Milimani Commercial Court, Nairobi.
- 2) In the aforesaid plaint, the appellant claimed for *inter alia* a sum of ksh.11,281,094/79 for loss of contract. The respondent on the other hand filed a defence to deny the appellant's claim. The respondent counter-claimed against the appellant for ksh.1,148,004/16.
- 3) The respondent filed a notice of preliminary objection against the appellant's action. The preliminary objection was heard and sustained by Hon. P. N. Gesora, learned Chief Magistrate who proceeded to dismiss the appellant's suit and gave the respondent the green light to prosecute its counter-claim.
- 4) Being dissatisfied by the aforesaid decision, the appellant filed this appeal and sought to impugn the same.
- 5) The appellant is now before this court vide the motion dated 11.6.2018 seeking for the following orders *inter alia*:
 - i. Spent.*
 - ii. Spent.*
 - iii. The proceedings in Milimani CMCC 3808 of 2016 Chackros Investments Limited versus HACO Industries (K) Limited be stayed pending the hearing and determination of this Appeal.*
 - iv. The costs of this application be provided for.*
- 6) The aforesaid motion is supported by the affidavit of Roselyn Njeri Njoroge. The respondent filed the replying affidavit of Peter Kang'ethe to oppose the motion. When the motion came up for interpartes hearing, this court gave directions to have the application determined by written submissions.
- 7) 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 application. I have also taken into account the rival submissions. It is the submission of the appellant that unless the order for stay of proceedings is given, the respondent will move with speed to have the counter-claim prosecuted to its utter detriment. The appellant further pointed out that the appeal raises serious points of law and arguable grounds on appeal.
- 8) The respondent is of the submission that the order sought, if granted, will amount to a clog of the respondent's right to be heard on the counter-claim. The respondent pointed out that there is no good and sufficient reason to grant the order.
- 9) It is further the submission of the respondent that the appellant has not shown the substantial loss it would suffer if the order for stay of proceedings is denied.
- 10) It is not in dispute that if the order for stay is not granted, the respondent will move to the trial court to prosecute its counter-claim. It has been argued that the appellant will suffer no prejudice if the counter-claim is allowed to go for hearing.

11) It is not in contention that the dispute between the parties before the trial court is based on a distribution agreement dated 5th November 2009 which was terminated by the respondent on 14.6.2014. A close perusal of the pleadings before the trial court shows that the counter-claim and the appellant's claim are intertwined.

12) I am convinced that the appellant's interest will be rendered illusory if the counter-claim is prosecuted without looking at the merits of the appellant's claim thus rendering the appeal nugatory and therefore the appellant is entitled to the orders sought in the motion. However in order to avoid the matter procrastinating further, I think the order sought should be granted for a limited period.

13) In the end, the motion dated 11.6.2018 is allowed in terms of prayer (iii) to last for 90 days within which period the appeal should have been fixed for hearing. Costs of the motion shall abide the outcome of this appeal.

Dated, Signed and Delivered in open court this 19th day of October, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondents