



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CIVIL APPEAL NO. 774 OF 2016**

**SAFEPAK LIMITED.....APPELLANT**

**VERSUS**

**FINELINE INDUSTRIES LIMITED.....RESPONDENT**

**RULING**

1. The application before me is for the stay of further proceedings before the Industrial Property Tribunal until the appellant's appeal before this court is heard and determined.
2. In a nutshell, the Tribunal had extended the time for the filing of an application for the revocation of a design.
3. It is the appellant's contention that the tribunal lacked jurisdiction to extend time as it did.
4. If the tribunal were to proceed to hear and determine the revocation proceedings whilst there was an appeal challenging its very jurisdiction in respect to those proceedings, there is a possibility that the tribunal could allow the revocation.
5. If that were to happen, and if thereafter this court were to find that the tribunal lacked jurisdiction, the entire proceedings before the tribunal would have been in vain.
6. Of course, there is also the possibility that the tribunal could dismiss the revocation proceedings.
7. But even then, if the High Court were to ultimately decide that the tribunal had acted without jurisdiction when it extended time for the filing of the revocation proceedings, the decision of the tribunal would be a nullity.
8. At this moment in time, this court is not called upon to determine the merits or otherwise of the appeal. That is a function of the court when it is actually hearing the appeal.
9. At this stage, the court is actually called upon to guard against any mini-trial of the appeal or a pre-determination of the substantive appeal.
10. This court is called upon to only weigh the *pros* and *cons* of granting or of not granting the order for stay of proceedings pending appeal.
11. If I were to put the tribunal on hold for now, that would not be tantamount to an interference with the

exercise of the tribunal's discretion. I so hold because ultimately I do not know how the appeal may be determined; it may or may not be allowed.

12. I am satisfied that the interests of justice will be served by a stay of further proceedings before the tribunal until the appeal herein was heard and determined.

13. I am equally convinced that justice demands expedition in the determination of the appeal.

14. Consequently, the proceedings before the tribunal will now be stayed. However, this court will also immediately assign an early date for the hearing of the appeal.

15. Finally, the costs of the application shall abide the determination of the appeal. Whichever party succeeds in the appeal will also be awarded the costs of this application.

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>st</sup> day of July 2017.**

**FRED A. OCHIENG**

**JUDGE**

***Ruling read in open court in the presence of***

A. Jelle for the Appellant

Kuyo for the Respondent

Collins Odhiambo – Court clerk