



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL APPEAL NO. 23 OF 2014**

SANTAM SERVICES (E A) LTD.....APPELLANT

V E R S U S

1. RENTOKIL (K) LTD

2. KENTAINERS (K) LTD .....DEFENDANTS

(Appeal from the ruling of the *Industrial Property Tribunal* delivered on 21<sup>st</sup> January 2014 in  
*Nairobi IPT Case No. 5 of 1999*)

**R U L I N G**

1. By a ruling dated and delivered on 21<sup>st</sup> January 2014 the *Industrial Property Tribunal* (the Tribunal), established under the **Industrial Property Act, Cap 509** (the Act), in its **Nairobi IPT Case No. 5 of 1999**, revoked with costs on the higher-scale the Appellant's Patent Number AP 773 registered with the *African Regional Intellectual Property Organization* on 15<sup>th</sup> October 1999.

2. On 5<sup>th</sup> February 2014 the Appellant filed the appeal herein, thereby exercising its right of appeal conferred by **section 115 (1)** of the Act which provides –

**“(1) Any party to the proceedings before the Tribunal may appeal in accordance with the rules made under this Part from any order or decision of the Tribunal to the High Court.**

3. **Section 104** of the Act provides as follows –

**“104. Effect of revocation or invalidation**

1. Any revoked or invalidated patent, utility model or industrial design or claim or part of a claim of a registered industrial design shall be regarded as null and void from the date of the grant of the patent or certificate of registration of the utility model or the industrial design.
2. As soon as the decision of the Tribunal is no longer subject to appeal, the Chairman of the Tribunal shall inform the Managing Director who shall register and publish it as soon as possible in the Kenya Gazette or in the Industrial Property Journal.”

4. Though not stated in express terms, under subsection (2) of section 104 aforesaid an appeal acts as a stay of registration and publication of the decision of the Tribunal in the *Kenya Gazette* or the *Industrial Property Journal*. So, all the Appellant needed to do in this case was to inform the Chairman of the Tribunal that it had appealed against its order of 21<sup>st</sup> January 2014 (and provide evidence of such appeal!).

5. But the Appellant did more. It applied under **Order 42, rule 6 of the Civil Procedure Rules** by **notice of motion dated 10<sup>th</sup> February 2014** for the main order that there be stay of the order of the Tribunal pending hearing and disposal of the appeal herein. Its learned counsel said that it applied out of abundant caution. I do not blame him as the wording of section 104(2) of the Act is not express enough.

6. However, upon a closer look at that wording of section 104(2), there cannot be any doubt that the intention of the legislature was that an appeal once duly lodged, and as long as it remains undisposed of, shall operate as a stay of the decision of the Tribunal, which decision may not be registered or published in the *Kenya Gazette* or the *Industrial Property Journal* pending disposal of the appeal. I so hold.

7. In the event I will allow the application and grant the stay sought for the avoidance of the doubt (if there be such) in the wording of section 104(2) of the Act. In the event also I need not consider the requirements of Order 42, rule 6 of the Civil Procedure Rules or any of the other arguments advanced by the learned counsels.

8. Costs of the application shall be in the appeal. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF MARCH 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 28<sup>TH</sup> DAY OF MARCH 2014**