



Mana Pharmacy Limited v Alliance Pharmaceuticals Limited (Civil Appeal E202 of 2023) [2024] KEHC 8863 (KLR) (Civ) (20 June 2024) (Judgment)

Neutral citation: [2024] KEHC 8863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E202 OF 2023

AB MWAMUYE, J

JUNE 20, 2024

BETWEEN

MANA PHARMACY LIMITED APPELLANT

AND

ALLIANCE PHARMACEUTICALS LIMITED RESPONDENT

(Being an Appeal against the Ruling and Orders of the Hon. M. Mutua (Adjudicator/RM) delivered on 27th February, 2023 in Milimani SCCCOM No. E3184 of 2022)

JUDGMENT

1. The Appellant is aggrieved with the Ruling and Orders of the Hon. M. Mutua (Adjudicator/RM) delivered on 27th February, 2023 in Milimani SCCCOM No. E3184 of 2022, Alliance Pharmaceuticals Limited V Mana Pharmaceuticals Limited. The impugned Ruling was with respect to the Appellant's Application dated 12th September, 2022 which sought to set aside the Interlocutory Judgment of the Small Claims Court and the consequent Proclamation Notice dated 14th October, 2022.
2. The Memorandum of Appeal dated 17th March, 2023 raises the following grounds, which I reproduce verbatim:
 - a. The Learned Magistrate erred in law and misdirected himself when he failed to consider the Applicant's submissions on points of law and facts on granting an interlocutory judgment.
 - b. The Learned Magistrate erred in fact in failing to analyze or give consideration to the evidence adduced by the Appellant and thereby arriving at a decision which was erroneous in the circumstance.



- c. The Learned Magistrate erred in law and in fact by failing to find that the Appellant was unable to sufficiently file a response without being served with all the claim supporting documents. This was despite several requests made by the Appellant's Advocates to the Respondent's Advocates.
 - d. The Learned Magistrate erred in fact in granting an interlocutory judgment without any claim supporting documents on the court record. The only document that was attached was a one-paged document purporting to be the Respondent's Statement of Account, whose source cannot be established and cannot be verified.
3. The Appellant filed a Record of Appeal dated 4th November, 2023 containing all the relevant documents from the Small Claims Court's proceedings.
4. The Appellant's Written Submissions dated 28th March, 2024 expound on the Appellant's arguments. The Appellant framed three issues for determination by this Court, being:
 - a. Whether the Appellant's (the Respondent before the Small Claims Court) case was decided without the Appellant being given an opportunity to present their case;
 - b. Whether the Respondent (the Claimant before the Small Claims Court) provided enough evidence to deserve an entry of an interlocutory judgment in its favour; and
 - c. Who should bear the costs of this Appeal?
5. On the first issue, the Appellant's contention is that it was not served with any pleadings by the Respondent. Additionally, the Appellant argues that its failure to file responses leading to the entry of an interlocutory judgment was due to this lack of service of pleadings, as well as the Respondent taking court dates unilaterally.
6. On the second issue, the Appellant's contention is that the Respondent did not provide enough evidence to the lower court to justify the entry of an interlocutory judgment. The Appellant claims that the Respondent did not place before the Small Claims Court the expected transactional documents such as contracts, orders, invoices, delivery notes, waybills, and daily correspondences between the parties.
7. On costs, it is the Appellant's contention that the Respondent should be condemned to pay the costs of this Appeal as well as those of the case before the Small Claims Court.
8. The Respondent has opposed this Appeal by way of written submissions dated 2nd April, 2024. The Respondent has essentially framed the same issues for determination as the Appellant. It is the Respondent's contention that the Interlocutory Judgment was properly entered as the Appellant was notified and served but failed or refused to enter appearance and defend itself. The Respondent also contends that it served the Appellant with all the materials filed by it and those materials were sufficient for the Small Claims Court to proceed to enter an interlocutory judgment. In light of the foregoing, the Respondent prays for costs of this Appeal.
9. The Appellant has confirmed in its written submissions that its principal officer received text messages informing him that the Appellant had been sued in the matter. Indeed, the submissions proceed to state that:

“He instructed his advocates to peruse the matter and if the same was genuine to come on record on his behalf.”



10. The Appellant's Application dated 12th September, 2022 before the Small Claims Court was supported by the Supporting Affidavit of one Maina Kenneth Macharia, the Appellant's Advocate who had conduct of the matter before the Small Claims Court. In that Supporting Affidavit, Counsel made the following averments under oath:
 - a. Paragraph 2 – "We received instructions from the Respondent/Applicant therein to defend this matter on their behalf.
 - b. Paragraph 3 – "We immediately requested for mapping of the matter to our account. We also requested for copies of the entire claim, particularly the supporting documents, to enable us file a response. (Annexed and marked 'MKM 1' is a copy of my whatsapp conversation with Counsel Elias Kibathi, a Managing Partner for the Claimant's Advocates.)"
 - c. Paragraph 4 – "After the mention on 6th June, 2022, a further mention of 11th July, 2022 was set to enable us complete mapping, enter appearance, and file our defence."
 - d. Paragraph 5 – "The said set mention date of 11th July, 2022 fell on a public holiday to celebrate Eid-al-Adha."
 - e. Paragraph 7- "We have now learnt that judgment was entered on 29th July, 2022 in our absence."
 - f. Paragraph 8 – "We have a good defence that raises triable issues to the Plaintiff's/Respondent's Claim. Attached hereto and marked 'MKM 2' is a copy of that draft defence."
11. The Respondent's Replying Affidavit dated 20th September, 2022 in response to and in opposition of the Notice of Motion Application dated 12th September, 2022 tells a different story. The Replying Affidavit annexed a copy of an email print out of 20th June, 2022 by dint of which the Respondent avers that the Appellant's Advocates were served with the Statement of Claim together with its accompanying documents. The Respondent also avers that the Appellant was properly served with a Mention Notice dated 25th July, 2022 informing the Appellant that the matter would come up for direction on 29th July, 2022; and the Respondent annexed the Certificate of Service of Antony Muli Ndolo dated 27th July, 2022 to that effect.
12. Having considered the foregoing, I am satisfied that the Appellant was properly served with the Claim documents and was given an opportunity to defend itself, an opportunity it did not take up.
13. With respect to the second issue for determination, I find that the Claim and its accompanying documents, being the Ledger Account for the period 1st January 2018 – 14th January 2022 and the Demand Letter dated 11th February, 2022, were sufficient to support the entry of an Interlocutory Judgment.
14. Turning now to whether the Hon. Adjudicator erred in not setting-aside the interlocutory judgment and thereafter reopening the case, I agree with the Hon. Adjudicator's finding at Paragraph 4 of the impugned Ruling that the Appellant did not set out any triable issues in the Application dated 12th September, 2022.
15. The Appellant only placed before the Small Claims Court a bare denial of the Claim rather than substantive grounds that raise triable issues of sufficient weight to warrant the setting aside of the interlocutory judgment and the reopening of the case. Annexure 'MKM 2' to the Supporting Affidavit dated 12th September, 2022 raised a defence in the following words:

"The Respondent paid all outstanding sums to the Claimant and puts them to strict proof."



This bare denial was insufficient for the Appellant to be granted the orders it sought.

16. Furthermore, the Appellant's Application dated 12th September, 2022 as well as the Written Submissions dated 3rd October, 2022 failed to mention or present a case for any significant prejudice that the Appellant would suffer if the interlocutory judgment was not set-aside and the case reopened. In that regard, the Ruling dated 27th February, 2023 cannot not be faulted on that account.
17. Consequently, this Appeal is without merit and I dismiss the matter with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20TH DAY OF JUNE, 2024.

BAHATI MWAMUYE

JUDGE

In the presence of:

Ms. Mugo Counsel for the Respondent

Counsel for the Appellant Absent

Mr. Guyo, Court Assistant

