



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 174 OF 2017

(FORMERLY MOMBASA ELC NO. 286 OF 2017)

COAST APPAREL (EPZ) LIMITED.....PLAINTIFF

VERSUS

MTWAPA (EPZ) LIMITED.....1ST DEFENDANT

I & M BANK LIMITED.....2ND DEFENDANT

RULING

1. I have before me for determination two applications. The 1st Application was filed by the 1st Defendant on 13th October 2017. The said application prays for Orders that:-

- a) This application be certified as urgent and be heard ex parte in the first instance;*
- b) Directions be given for the expeditious hearing and determination of this application in priority over other business of the Court;*
- c) The Orders made on 11th October 2017 be stayed ex parte pending the hearing and determination of this application.*
- d) The Orders made on 11th October 2017 be reviewed and be set aside in their entirety; and*
- e) Costs of this application be paid by the Plaintiff to the 1st Defendant in any event.*

2. When the said Application was placed before me under Certificate of Urgency on 16th October 2017, I granted Prayers 'a' 'b' and 'c' thereof in the interim pending inter-partes hearing on 19th October 2017. On the said date however, the matter did not proceed as Mr. Muthama, Learned Counsel for the Plaintiff was unwell. The application was therefore adjourned to 31st November 2017 for hearing with the interim orders being extended until then.

3. However on or about 23rd October 2017, the 2nd Application dated the same day was filed by the Plaintiff. The same sought orders as follows:-

- 1. That this Motion be and is hereby certified urgent and heard ex parte in the first instance.*
- 2. That pending the hearing and determination of this Motion inter partes or until further orders of the Court, this Court be and is hereby pleased to suspend, lift and/or vacate the ex parte stay order made by the Court on 16/10/17 in so far as it applies to the previous Court order made on 11/10/17 stopping the payment of Bank Guarantee No. 021/COM/LG/0109/2016 by the 2nd Defendant to the 1st Defendant pending the determination of the dispute between the parties.*
- 3. That upon the inter partes hearing of this Motion and also pending the inter partes hearing and determination of the 1st Defendant's Motion Application dated 13/10/17, and filed in Court on 16/10/17, this Court be and is hereby pleased to suspend, lift and/or vacate the ex parte stay order made on 16/10/17 in so far as it applies to the previous Court Order made on 11/10/17 stopping the payment of Bank Guarantee No. 021/COM/LG/109/2016 by the 2nd Defendant to the 1st Defendant pending the*

determination of the dispute between the parties.

4. That the costs of this Motion be borne by the 1st Defendant.

4. Given my absence from the Station, the matter which was brought under certificate of urgency was placed before the Honourable Justice Anne Omollo in Mombasa who proceeded to suspend the Stay Orders made by this Court on 16th October 2017 pending the hearing of the 2nd Application, before me.

5. Subsequently, when the matter came up for hearing, it was agreed that the two applications be heard together and that the Plaintiff's Application dated 23rd October 2017 would be treated as a response to the 1st Defendant's application dated 13th October 2017. After the parties argued the matter before me on 31st October 2017, I reserved my Ruling thereon for 8th February 2018. In the meantime, an order of status quo was made suspending the payment of Guarantee in line with the Orders issued by the Honourable Justice Omollo in Mombasa until the Ruling was delivered.

6. Dissatisfied with the Orders suspending the payment of the Guarantee, the 1st Defendant lodged a Notice of Appeal herein on 13th November 2017 and subsequently filed an application under Rule 5(2) (b) of the Court of Appeal Rules in Mombasa Court of Appeal Civil Application No. 65 of 2017(UR 53/2017); **Mtwapa EPZ Ltd –vs- Coast Apparel EPZ Ltd & Another**. In a Ruling delivered on 15th February 2018, the Learned Judges of Appeal determined that the 1st Defendant stands to suffer irreparable harm in light of the looming statutory notices that may issue against the suit property on account of default in payment of the loan and stayed the orders suspending the payment of the Guarantee.

7. As it were, the issue of whether or not the 2nd Defendant should continue with the payment of the Guarantee was at the heart of the dispute in the two applications before me.

8. In view of the decision of the Court of Appeal the two applications before me have been overtaken by events and are hereby considered spent.

9. Each party shall bear their own costs.

Dated, signed and delivered at Malindi this 25th day of May, 2018.

J.O. OLOLA

JUDGE