



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: MURGOR, J.A.

CIVIL APPLICATION NO. 34 OF 2020

BETWEEN

COMPANY FOR HABITAT AND HOUSING

IN AFRICA (SHELTER AFRIQUE).....APPLICANT

AND

SUNSET PARADISE APA.....RESPONDENT

*(Being an application for injunction pending the hearing and determination of an appeal against the Ruling of the High Court of Kenya in Mombasa (P.J. Otieno, J) delivered on 23<sup>rd</sup> January 2020 in*

*HCCC No. 198 of 2018)*

RULING

On the 13<sup>th</sup> February 2020, I declined to certify this matter as urgent for reasons that no urgent circumstances were presented to this Court to warrant the issuance of a certificate of urgency.

The certificate of urgency was filed by *the applicant, Company For Habitat And Housing In Africa (Shelter Afrique)* in support of a Notice of Motion dated 12<sup>th</sup> February 2020 seeking an injunction to restrain *the respondent, Sunset Paradise Apa* from proceeding with the warrants of attachment of moveable property in execution of the decree of the High Court. No particulars of urgency were outlined to this Court in support of the certificate, which was the reason I declined to certify the certificate as urgent.

As a consequence, the applicant sought a review of the Court's decision under *rule 47 (5)* of this Court's rules.

In a replying affidavit sworn by Dr. Fredrick Gikandi, a director of the respondent on 29<sup>th</sup> February, 2020, it was deponed that the decree in question is a money decree, and that the applicant is capable of paying the sums due; that after the applicant's goods were proclaimed on 6<sup>th</sup> February 2020, a court appointed auctioneer proceeded to the applicant's offices on 14<sup>th</sup> February 2020 and attempted to remove the proclaimed items, but the applicant resisted the attempt and called the police; that on account of the applicant having invoked its right of immunity, further execution cannot proceed until the issue of the applicant's immunity is resolved.

In the submissions, *Mr. Mbugua*, learned counsel for the applicant contended that the application is urgent as, after the respondent had extracted the warrants of attachment it had since attempted to attach the applicant's property on 14<sup>th</sup> February 2020 but were unable to do so after the applicant invoked the immunity provisions stipulated under the Shelter- Afrique Act. It was asserted that if the injunction orders sought are not granted there is likely to be a conflict between the Kenya Police and the Diplomatic Police, if the respondent continues its quest under the warrants of attachment.

*Ms. Murage* learned counsel of the respondent's submitted that the application is opposed, because a similar application was made before the High Court and dismissed; that the applicant failed to move the court with urgency, and did not provide any explanation for the delay in filing the application. It was further argued that on the face of the application the applicant neglected to demonstrate the need for urgency of the injunction orders sought.

I have carefully considered the pleadings and the arguments urged before me. Under *rule 47 (5)* of this Court's rules, for an applicant to succeed in an application for urgency he or she must demonstrate that the application sought to be heard is indeed urgent. In the application for urgency dated 12<sup>th</sup> February 2020, the applicant stated that in its Notice of Motion of the same date seeking injunction orders against the

judgment of the High Court dated 23<sup>rd</sup> January 2020 was urgent as the respondent had taken out warrants of attachment of moveable property in execution of the decree against the applicant and had also proclaimed its goods, and intended to proceed to attach the goods unless restrained by this Court. The application for urgency was not supported by a sworn affidavit, and as a consequence, no particulars were provided to support the question of urgency. As a result, it was not possible to ascertain the urgency of the case.

In the submissions before me, the applicant asserted that since proclaiming the applicant's assets and serving the applicant with warrants of attachment on 6<sup>th</sup> February 2020, the respondent has attempted to attach its property, but was unsuccessful, on account of the applicant having invoked its rights of immunity specified under **section 3** of the schedule set out in the **Shelter- Afrique Act, Cap 493C**, but this notwithstanding attachment of its property remains imminent.

In view of the foregoing circumstances, I hereby do certify the application as urgent.

***It is so ordered.***

***Dated and delivered at Nairobi this 3<sup>rd</sup> day of April, 2020.***

**A.K. MURGOR**

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**