



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KARANJA, KIAGE & MURGOR, J.J.A

CIVIL APPLICATION NO. NAI 34 OF 2020

BETWEEN

COMPANY FOR HABITAT AND

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

AND

SUNSET PARADISE APARTMENTS LIMITED.....RESPONDENT

*(An application for an injunction pending the hearing and determination of an appeal against the Ruling of the High Court of Kenya at Mombasa (P. J. Otieno, J.) dated and delivered on 23rd January, 2020*

in

*HCCA No. 198 of 2018)*

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**RULING OF THE COURT**

1. **Company for Habitat and Housing in Africa (Shelter Afrique)** (applicant,) initially sought 5 orders from this Court vide its Notice of Motion dated 12th February, 2020. In the main, the prayer sought was an injunction restraining the respondent from proceeding with the warrants of attachment of movable property in execution of the decree in Mombasa **Chief Magistrate’s Court Cause No. 1424 of 2017** pending the hearing and determination of its appeal. This was occasioned by dismissal of its application for injunction before the High Court (P. J. Otieno) on 23rd January, 2020.

2. Unfortunately for the applicant, by the time this application came up for hearing, circumstances had changed and the said prayers had already been overtaken by events and so in written submissions filed by Namachanja & Mbugua Advocates for the applicant, counsel explained that all the other prayers had been overtaken by events, but rather than withdraw the application, counsel submitted that they would be pursuing prayer No. 4 which reads as follows:-

**“That this Honourable Court be pleased to issue any other order to ensure the ends of justice.”**

In the said submissions however, the applicant appears to frame another prayer and urges the court to “*issue stay of any other execution of the decree in the event that the monies in the garnished account do not satisfy the decretal sum of Ksh. 17,429,322*”.

3. As would be expected, this was strenuously opposed by the respondent. In its submissions dated 13th July, 2020 filed by the firm of Gikandi & Co. Advocates, the respondent maintains that the application has been overtaken by events and further that prayer No. 4 is general and vague and the application amounts to an abuse of the process of the court. Placing reliance on the Supreme Court decision in **Rutongot Farm Limited vs Kenya Forest Services and 3 Others [2018] eKLR**, learned counsel reiterated that the court cannot be called upon to grant orders that have not been specifically prayed for, and after all, parties are bound by their pleadings.

4. Counsel submitted further that the applicant had not demonstrated arguability of the appeal, other than stating in a cursory manner that the appeal is arguable. He ultimately urged us to dismiss this application.

5. We have considered the application before us, the rival affidavits, submissions and the applicable law. The matter before us is very straight forward, and we need not say much. Learned counsel for the applicant concedes that the prayers sought in the application have been overtaken by events. We agree with counsel for the respondent that counsel for the applicant in a bid to breathe life into the application has crafted another prayer in the submissions. This in our view has not however been successful as the Court cannot be asked to grant prayers that have not been sought in the application. As submitted by counsel for the respondent, the Court cannot, from the material before it determine what the “justice of the case is”, and the Court is not in the business of granting omnibus open ended orders as sought in prayer No.4 of the application.

6. On whether the application meets the threshold set by this Court in respect of applications under **Rule 5(2) b**; (See **Stanley Kang’ethe Kinyanjui v Tony Keter & 5 Others [2013] eKLR**) it is evident that nothing has been placed before us in support of either the principle on arguability or the nugatory aspect. This application is clearly for dismissal, it having been overtaken by events. We therefore dismiss it with costs to the respondent.

**Dated and delivered at Nairobi this 20th day of November, 2020.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

**A. K. MURGOR**

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**JUDGE OF APPEAL**

*I certify that this is a true*

*copy of the original.*

*Signed*

**DEPUTY REGISTRAR**