



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 207 OF 2014 (UR 163/2014)

BETWEEN

BURA SECONDARY SCHOOL.....APPLICANT

AND

THE PROCUREMENT ADMINISTRATIVE REVIEW BOARD.....1ST RESPONENT

ABDI BUTHUL SHAFAT T/A BURA ENTERPRISES.....2ND RESPONENT

(An application for injunction pending the hearing and determination of an intended appeal from the judgment and decree of the High Court of Kenya at Nairobi (Odunga, J.) delivered on 14th day of July 2014

in

HC. MISC. NO. 65 OF 2014)

RULING

On 12th August 2014, the applicant, being aggrieved by the decision of the High Court, (Odunga, J.) rendered on 14th July, 2014, filed a Notice of Motion under certificate of urgency for orders of injunction and stay of execution under **Rule 5 (2) (b)** of the Court of Appeal Rules.

The application was placed before me for a certificate that it is urgent and therefore ought to be heard without delay.

Upon considering the affidavit in support of the certificate of urgency, I formed the opinion that it did not disclose any urgency and declined to certify the application urgent.

Hassan N. Lakicha & Company Advocates, representing the applicant, pursuant to the provisions of **Rule 47 (5)** of the Court’s Rules has informally, by a letter dated 25th September, 2014, applied to have the

issue of urgency heard *inter partes*.

Rule 47 (5) aforesaid, is designed to give the Judge another opportunity having heard both sides to reconsider his or her decision to reject the certificate of urgency.

In so reconsidering the application afresh, Court exercises a discretion based on sound reason and the interest of justice.

Mr. Lakicha has explained that if the application for injunction and stay of execution is not heard urgently, the 2nd respondent will continue to supply the applicant with goods, yet the procurement process, the basis of the supply, is being challenged.

Ms. Matunda for the 2nd respondent was of the view that the matter is not urgent because the 2nd respondent has over the years supplied the applicant with food stuff and the continued supply before the application for injunction is heard will not prejudice the applicant.

It is clear what is involved in the dispute is the supply of food stuff and other essential commodities to the applicant, a boarding school. Because of this, the applicant has persuaded me that there is merit to have the dispute resolved without further day.

Consequently, I now certify urgent the motion dated 11th August, 2014. Costs in the application.

Dated and delivered at Nairobi this 17th day of October 2014.

W. OUKO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.

