



**Kenya Chemical Workers' Union v Mac's Pharmaceuticals Limited (Cause E912 of 2023) [2025] KEELRC 1402 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1402 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E912 OF 2023  
S RADIDO, J  
MAY 15, 2025**

**BETWEEN**  
**KENYA CHEMICAL WORKERS' UNION ..... CLAIMANT**  
**AND**  
**MAC'S PHARMACEUTICALS LIMITED ..... RESPONDENT**

**RULING**

1. For determination is a Motion dated 25 February 2025 by Mac's Pharmaceuticals Ltd (the Respondent) seeking orders:
  - i. ...
  - ii. ...
  - iii. That this Honourable Court be pleased to set aside the judgment delivered on 3 April 2024, together with all consequential orders and reinstate the Respondent's Memorandum of Response and supporting documents for hearing and determination on merit to uphold the principles of natural justice and fair hearing.
  - iv. That this Honourable Court be pleased to grant leave to the Respondent/applicant to file its Memorandum of Response and supporting documents out of time, given that the delay was occasioned by circumstances beyond its control, including regulatory and financial constraints.
  - v. That the costs of the application be in the cause.
2. The primary grounds advanced in support of the Motion were that the failure to defend the Cause was occasioned by the suspension of the Respondent by the Pharmacy and Poisons Board around 26 February 2020; the Union was aware of the suspension; due to the suspension, the Respondent faced financial hardship thus unable to meet its obligations including implementation of a Collective



- Agreement with the Union; the Respondent was condemned unheard; the Respondent had an arguable case; the Court had the discretion to grant the orders sought and that the interests of justice favoured the grant of the orders.
3. The Court granted the Respondent an interim stay of execution on condition that it deposited the decretal sum of Kshs 500,000/- into the Court. The condition was not complied with.
  4. Despite the Court directing the Respondent to file and serve its submissions on or before 5 March 2025, the submissions were only filed on 15 April 2025.
  5. In the submissions, the Respondent contended that the Court had the discretion to grant the orders sought (*Shah v Mbogo & Ar* (1967) EA 116); its defence raised triable issues (*Tree Shade Motors Ltd v DT Dobie & Ar* (1995) eKLR); that it would be occasioned substantial loss if the orders sought were not granted (*Kenya Shell Ltd v Benjamin Karuga Kibiru & Ar* (1986) KLR 410) and that the Court had been moved without delay after finding out about the judgment (*Philip Chemwolo & Ar v Augustine Kubende* (1982-88) KAR 103).
  6. The Union filed a replying affidavit in opposition to the Motion on 14 March 2025. It filed its submissions the same day.
  7. In the affidavit, the National Secretary General of the Union deponed that the Respondent was served with Court process but opted not to participate; that the Court delivered a regular judgment; the Respondent had not met the test for stay of execution or setting aside of the judgment; the enforcement of the judgment was vital to secure the rights of former employees, and that the parties had over time entered into two Collective Bargaining Agreements.
  8. The Union reiterated the assertions in the affidavit in the submissions.
  9. The Court has considered the Motion, affidavits and submissions.
  10. The Respondent has not denied that it was served with Court process. Instead, its case for not defending the Cause or participating in the court process was due to its suspension by the regulator, the Pharmacy and Poisons Board, leading to the stoppage of production, hence financial difficulties.
  11. It is true that the Pharmacy and Poisons Board ordered the Respondent to stop manufacturing activities from 27 July 2023 until it took certain corrective and preventive actions.
  12. However, the Respondent has not established how the stoppage order from the Pharmacy and Poisons Board made it impossible for it to participate in the Court process or to instruct an advocate to act on its behalf and bring to the attention of the Court the difficulties it was facing.
  13. The Respondent was seeking an exercise of the Court's discretion. It did not comply with a condition upon which the Court granted it an interim stay of execution. It has not set out a sufficient ground for the Court to exercise the discretion in its favour.

### Orders

14. The Motion dated 25 February 2025 is found without merit and is dismissed.
15. Due to the late filing of submissions without any explanation, the Respondent is condemned to pay the Union's costs of the Motion.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 15<sup>TH</sup> DAY OF MAY 2025.**

**RADIDO STEPHEN, MCIARB**



## **JUDGE**

Appearances

For Claimant Mr Tongoi, Industrial Relations Officer

For Respondent Mr Bruno instructed by Chaudhri & Associates

Court Assistant Wangu

