



**Twaweza Apparel (EPZ) Limited v Mlala & another (Appeal
E161 of 2024) [2024] KEELRC 2794 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2794 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E161 OF 2024
M MBARŪ, J
NOVEMBER 14, 2024**

BETWEEN

TWAVEZA APPAREL (EPZ) LIMITED APPELLANT

AND

PHENNY NYADZUA MLALA 1ST RESPONDENT

HANTEX GARMENTS (EPZ) LIMITED 2ND RESPONDENT

RULING

1. The appellant filed an application dated 2 August 2024 seeking orders;

Pending the hearing and determination of the appeal, there be a stay of execution of the judgment delivered on 15/2/23, decree, warrants of attachment and sale given on 22/3/2024 and proclamation served on the appellant on 27/3/2024.

2. The application is supported by Aye Aye Soe the general manager on the basis that the trial court delivered judgment on 15 February 2023 against the 2nd respondent but the 1st respondent through Makini Auctioneers served warrants of attachment and sale issued on 22 March 2024. A proclamation of attachment was served on the appellant's premises at Warehouse No. 1 to 10 on LR No.1043/111/ Mazeras Kenya (EPZ) Limited on 27 March 2024.
3. The 1st respondent threatened to execute for Ksh.127, 456.30 against the property of the appellant through the warrants of attachment and proclamation of motor vehicles. The appellant filed Objection proceedings on 2 April 2024 seeking to lift the attachment of the properties because it had a legal and equitable interest in the proclaimed properties.
4. Soe Avers in the Supporting Affidavit that the trial court delivered a ruling on the objection application on 1st August 2024 and dismissed it/ dissatisfied with the ruling, the appellant filed this appeal. The appellant is seeking to preserve the subject matter of the objection application before the hearing of



the appeal. Unless the orders sought are issued, the 1st respondent will proceed and execute and render the appeal nugatory. A Memorandum of Appeal is filed, the appeal has a high chance of success and unless the orders sought are issued, there will be loss and damage.

5. In reply, the 1st respondent filed a Replying Affidavit and aver that the appellant filed objection proceedings after the execution had commenced following judgment on 15 February 2024 in Mombasa CM ELRC E337 of 2019. The trial court delivered a ruling dismissing the objections on 1st August 2024.
6. The instant application is based on an alleged appeal which has not been served which renders this application fatal. The appellant has not satisfied the conditions of Order 42 rule 2 of the Civil Procedure Rules. There is no demonstration of the substantial loss to be suffered or offer of security for the due performance of the judgment. The loss to be suffered if the orders sought are not granted is not addressed.
7. The 1st respondent avers that where the court finds the orders sought justified, the appellant should issue a condition that the decretal sum of Ksh.127, 456.30 be deposited in a joint interest-earning account held in the name of both parties.
8. The appellant filed a Further Affidavit of Soe aver that the 1st respondent has been served with the Memorandum of Appeal and there is no judgment against the appellant that should be satisfied and that is the gist of the appeal herein.
9. The appellant and the 1st respondent attended court and made oral submissions.

Determination

10. The appeal arises from the ruling delivered on 1st August 2024 following objection proceedings by the appellant. At the core of the appeal is the contestation by the appellant that the judgment delivered in Mombasa CM ELRC No.331 of 2019 was against the 2nd respondent and not the appellant. The goods proclaimed in execution proceedings are properties of the appellant and not the judgment debtor, the 2nd respondent.
11. Of interest, the 2nd respondent, though served did not attend in these proceedings.
12. The background thus addressed, the motions of Order 42 Rule 2 and 6 of the Civil Procedure Rules do not apply. The appeal follows objection proceedings and the legal and equitable title for the proclaimed goods in execution must be addressed first to determine who should satisfy the decree arising out of Mombasa CM ELRC No.331 of 2019.
13. However, the stay of execution sought should be conditional. The appellant should file the Record of Appeal and serve the respondents within 60 days from the date the impugned ruling was delivered on 1st August 2024 as required under Rule 15(2) of the Employment and Labour Relations Court (Procedure) Rules, 2024.
14. Accordingly, pending the hearing of the appeal, an order of stay of execution of the judgment and ruling delivered on 15 February 2023 and 1st August 2024 respectively is hereby issued; the appellant is to file and serve the Record of Appeal within 60 days from 1st August 2024.
15. Mention for taking hearing directions on 16 December 2024 for taking hearing directions.
Orders accordingly.

DELIVERED VIA TEAMS VIRTUAL PLATFORM THIS 14TH DAY OF NOVEMBER 2024.



M. MBARŪ
JUDGE

