



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

ELRCA E065 OF 2020

AFRICA APPARELS EPZ LTD.....CLAIMANT

VERSUS

JULIUS MUTUNGA MUINDI.....RESPONDENT

RULING

1. The application before the court I the Appellant's amended Notice of Motion dated 2.11.2020 seeking the following prayers:

- a. *That the Honourable Court in the first instance do certify this Application as urgent to be heard ex-parte in the first instance owing to the urgency of this matter.*
- b. *That the warrant of attachments issued by the lower court on 9th October, 2020 be stayed pending the hearing and determination of this application and the appeal/intended appeal.*
- c. *That a temporary injunction do issue against the Claimant, his servants, and /or agents restraining them from attaching, selling, transferring and/or interfering with the Applicant's/Appellant's assets whatsoever pending the hearing and determination of the appeal, intended appeal.*
- d. *That the judgment issued on 3rd August, 2019 and decree issued against the Applicant/Respondent on 18th November, 2019 be and is hereby set aside pending the hearing and determination of this application and appeal.*
- d (i) *That the judgment issued on 3rd August, 2019 be stayed pending hearing and determination of the Appeal/Intended appeal.*
- d (ii) *That the decree issued on 18th November, 2019 be set aside stayed pending the hearing and determination of the Appeal/Intended Appeal.*
- e. *That the Honourable court be pleased to issue any such further orders it may deem fit and convenient in the circumstances.*
- f. *That the Notice of Motion dated 19th October, 2020 be deemed amended with the requisite leave of this court.*
- g. *That costs of this application be in the cause.*

2. The application is supported by the affidavit sworn by applicant's counsel Ms Ateko Ingati on 2.11.2020. The applicant is opposed by the respondent vide the grounds of opposition dated 4.11.2020, and it was canvassed by written submissions.

Applicant's Case.

3. The applicant basically seeks injunction and stay of execution of the judgment in CMEL No 64 of 2018 pending hearing of the intended appeal. It contended that it has an arguable appeal which will be rendered nugatory if the order sought to halt the intended execution is denied. It relied on **Jaribu Holdings Ltd Vs Kenya Commercial Bank Ltd [2008] eKLR** and **Reliance Bank Ltd Vs Norlake Investments Ltd [2002] 1EA** for emphasis.

4. It was argued that the delay in filing the appeal was due to the failure by the trial court to provide typed proceedings and the impugned ruling.

5. The applicant further submitted that the application herein was made without unreasonable delay from 27.8.2020 when the impugned ruling was rendered.

6. Finally, the applicant contended that it has already deposited the decretal sum in a joint interest account as security and submitted that it has met the threshold for granting stay pending appeal.

Respondent's Case

7. The respondent opposed the application on grounds that the application was amended without the leave of the court; that the application has not met the conditions necessary for granting injunction or stay order; that no appeal has been filed and the time for filing appeal has since lapsed hence no stay order can be granted in the circumstances; that the applicant has no arguable appeal which would be rendered nugatory if stay is declined; and that the delay in making the application is inordinate and not explained.

Issues for determination

8. Having carefully considered the application supporting affidavit, grounds of opposition and the rival submissions, the issues for determination are:

- a. Whether the amended notice of motion dated 2.11.2020 is incompetent.
- b. Whether the application has met the threshold for granting injunction or stay of execution pending appeal.

Incompetent Motion

9. The respondent contended that the amended Notice of Motion dated 2.11.2020 is incompetent because it was amended without first obtaining leave of the court. The applicant did not rebut the said objection in any way but simply ignored the objection in its written submissions filed in support of the application.

10. I have carefully perused the court record and confirmed that indeed the applicant filed the amended Notice of Motion without the leave of the court. It is therefore incompetent and I proceed to strike it out with costs.

11. In view of the foregoing the applicant's application dated 19.10.2020 remains in place together with the interim order issued on 29.10.2020.

Dated, signed and delivered at Nairobi this 18th day of March, 2021

ONESMUS N MAKAU

JUDGE

In the presence of:

No Appearance for the Applicant

Maina for the Respondent

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE