



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

CAUSES NO 773 OF 2016

AMINA NYADZUA CHARA.....CLAIMANT

VERSUS

HANTEX GARMENTS (EPZ) LIMITED.....RESPONDENT

RULING

1. By a ruling delivered on 15th April 2021, I declined the Respondent's application to file an amended response, supplementary supporting documents and witness statements. I therefore directed that the Respondent's case would proceed on the basis of the pleadings, documents and witness statements on record.

2. Thereafter, the Respondent filed another Notice of Motion, under Certificate of Urgency, dated 8th July 2021, seeking stay of proceedings pending the hearing and determination of an appeal against the ruling of 15th April 2021, before the Court of Appeal.

3. The present Motion is supported by an affidavit sworn by the Respondent's Human Resource Manager, Christopher Kinyanjui and is based on the following grounds:

- a) The Respondent's case is scheduled for hearing on 15th September 2021;
- b) On 15th April 2021, the Court dismissed the Respondent's application dated 5th February 2021, seeking leave to amend its pleadings and adduce additional evidence;
- c) Being dissatisfied with the said ruling, the Respondent filed a Notice of Appeal dated 22nd April 2021, expressing its intention to appeal to the Court of Appeal, against the ruling delivered on 15th April 2021;
- d) The appeal is arguable as shown by the draft Memorandum of Appeal;
- e) The Respondent will suffer substantial injury in the event the order for stay of proceedings is not granted because;
 - i) The matter is already fixed for hearing on 15th September 2021;
 - ii) This case is the lead file for 25 other cases filed by different claimants;
 - iii) The Respondent will be unjustly denied its constitutional right to a fair hearing by being denied the opportunity to present its evidence at the trial;
 - iv) No amount of compensation will compensate for the injustice of denying the Respondent an opportunity to adduce sufficient evidence before the trial court.
- f) The appeal will be rendered useless, especially if the trial proceeds as planned, and the Court of Appeal reverses the ruling and order of 15th April 2021;
- g) Consequently, it is in the interest of justice to order stay of proceedings and the Claimants will suffer no prejudice if stay is

granted.

4. The single issue for determination in this Motion is whether the Respondent has made out a case for stay of proceedings.

5. The **Halsbury's Laws of England, 4th Edition, Vol. 37 at page 330** states the following regarding stay of proceedings:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond all reasonable doubt, ought not to be allowed to continue. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

6. The threshold for granting an order of stay of proceedings was articulated by **Ringera J** (as he then was) in **Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000)** in the following terms:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice.....the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is so, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

7. In declining the Motion dated 5th February 2021, I indicted the Respondent for inordinate delay and by bringing the current Motion, the Respondent seeks to delay this case even further. No credible explanation has been offered for this and the only conclusion to make is that the Respondent has failed to establish any exceptional circumstances to persuade the Court to exercise the rare power to stay proceedings.

8. The Motion dated 8th July 2021 is therefore dismissed with costs to the Claimant.

9. It is so ordered.

DATED SIGNED AND DELIVERED AT NAIROBI VIRTUALLY ON THIS 15TH DAY OF SEPTEMBER 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Mr. Otieno for the Claimant

Mr. Karina for the Respondent