



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI
CAUSE NO. 1131 OF 2010

KENYA CHEMICAL & ALLIED WORKERS UNION.....
.....CLAIMANT

VERSUS

PHARMACEUTICAL MANUFACTURING CO. (K) LIMITED.....
RESPONDENT

RULING

1. The Claimant and Respondent have both moved the Court under what is manifestly Notice of Motion Applications dated 17th April 2013 and 14th March 2013 respectively. In its Application dated 14th March 2013, the Respondent seeks a stay of the Ruling of Rika J. made on 12th February 2013. The Ruling of the said judge was against a Review Application. The Application is opposed by the Claimant. As regards the Claimant's Application dated 17th April 2013, the Claimant seeks leave to commence contempt proceedings against the directors of the Respondent. The Respondent is opposed and filed both Grounds in Opposition as well as a Replying Affidavit sworn by Christine D'Souza. The parties filed submissions on the two applications and their submissions included a number of authorities in support of the rival positions taken.
2. What therefore falls for determination is the following two issues:-
 1. Whether the Respondent is entitled to an order for stay
 2. Whether the Claimant ought to be granted leave to commence contempt of Court proceedings
3. The matters to be considered before grant of stay are well settled. In this case the Respondent seeks to Appeal against a decision of Rika J. made on 12th February 2013. In the decision sought to be subject of an appeal. Rika J. dismissed an application for review. The Industrial Court (Procedure) Rules 2010 provide as follows regarding review:-

32. Review.

(1) A person who is aggrieved by a decree or an order of the Court may apply for a review of the award, judgment or ruling—

(a) if there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or

(b) on account of some mistake or error apparent on the face of the record; or

(c) on account of the award, judgment or ruling being in breach of any written law; or

(d) if the award, the judgment or ruling requires clarification; or

(e) for any other sufficient reasons.

(2) An application for review of a decree or order of the Court under subparagraphs (b),

(c), (d), or (e), shall be made to the judge who passed the decree, or made the order sought to be reviewed.

(3) A party seeking review of a Court decree or order of the Court shall apply to the Court in Form 6 set out in the First Schedule.

(4) An application under paragraph (3) shall be accompanied by a memorandum supporting the application and the Court shall proceed to hear the parties in accordance with section 26 of the Act.

(5) The Court shall, upon hearing an application for review, deliver a ruling allowing the application or dismissing the application.

(6) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

(7) An order made for a review of a decree or order shall not be subject to further review.

4. The considerations to be made before grant of stay are
 - a. If stay is not granted the appeal will be rendered nugatory,
 - b. there is an arguable appeal and
 - c. that the party intending to appeal has offered security.
5. The Respondent has an onus to demonstrate a proper basis for a stay. The mere filing of an appeal does not demonstrate an appropriate case or discharge the onus. While I have a wide discretion involving the weighing of considerations such as balance of convenience and the competing rights of the parties, I must be alive to the prospect of success on appeal and my preliminary assessment about whether the intended appellant has an arguable case. This I must do in order to eliminate the need to grant stay on basis of an appeal lodged without any real prospect of success simply to gain time. There is no arguable appeal, and there has been no offer of security. The Respondent sought a Review and cannot therefore seek a further review or even appeal. The intended appeal has no chance of success and is an academic exercise which this Court will not support by granting stay sought. I would therefore decline to grant stay and the Respondent's Notice of Motion Application dated 14th March 2013 is dismissed with no order as to costs.
6. Regarding the application seeking leave to commence contempt of Court proceedings, the Application before Court is not in accord with the Rules of the Supreme Court of England. The domestic law of contempt is being formulated in Kenya and so recourse is in our jurisdiction to the Judicature Act Section 5 and the Rules of the Supreme Court. In the present application there is no statement, there is no notice as prescribed and the application by the Claimant is woefully inadequate to facilitate the grant of leave. I dismiss the application dated 17th April 2013 with no

order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this 18th day of June 2014

NZIOKI WA MAKAU

JUDGE