



Karuturi Global Limited

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Date: 25.03.2019

To

**The Manager – Listing
National Stock Exchange of India Ltd.
Exchange Plaza, Plot No. C/1, G Block,
Bandra Kurla Complex, Bandra (E)
Mumbai – 400 001**

To

**The Manager – Listing
The Bombay Stock Exchange Limited.
25th Floor, Phiroze Jeejeebhoy Towers,
Dalal Street, Mumbai – 400 051**

Sub: Karuturi Global Limited Court case update/Supreme court stays sale of Karuturi Kenya.

Dear Sir/Madam,

This is to keep you as well as our shareholders informed regarding the Supreme court stay awarded.

Also attached is the court order

For Karuturi Global Limited


Hari Upadhyaya
Authorized Signatory

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

(Coram: Mwilu DCJ & VP, Ibrahim, Ojwang, Wanjala, & Njoki SCJJ)

APPLICATION NO. 8 OF 2019

— BETWEEN —

- | | | |
|--|---|-------------------|
| 1. SURYA HOLDINGS LIMITED | } | APPLICANTS |
| 2. RHEA HOLDINGS LIMITED..... | | |
| 3. KARUTURI LIMITED..... | | |

— AND —

- | | | |
|--|---|--------------------|
| 1. CFC STANBIC BANK LIMITED..... | } | RESPONDENTS |
| 2. MUNIU THOITHI AND KURIA MUCHERU
<i>(Joint receivers and Managers of)</i> | | |
| KARUTURI LIMITED..... | | |

*(Being an application under Article 163 (3) (2) (b) of the Constitution;
Section 24 of the Supreme Court Act (No. 7 of 2012) as read with Rule 23 of
the Supreme Court Rules, 2012, and all other enabling provisions of the law)*

RULING

A. THE APPLICATION

[1] The application before the Court, dated 14 February 2019 and supported by an affidavit of even date, seeks Orders that:

- (a) this Court be pleased to certify this application as urgent, and the same be heard *ex parte* in the first instance;
- (b) a conservatory Order do issue to restrain the respondents, by themselves, their servants, agents, employees or whomsoever, from offering for sale, alienating, or in any manner disposing of the 1st and 2nd applicants' parcels of land, namely L.R Nos. 12248/19;

12248/20; 12248/21; 12248/38; 25261 and 25262 and L.R. No. 10854/60 (Title No. L.R 87312) — pending the hearing and determination of the appeal;

- (c) execution and/or enforcement of the Orders issued on 19 January 2018 in *High Court Civil Suit No. 78 of 2014, Surya Holdings Limited & 2 Others v. CFC Stanbic & Another*, upholding the decision of the High Court, be stayed, pending the hearing and determination of the appeal herein;
- (d) costs of this application do abide the appeal.

- [2] The brief background to this matter is that the 1st and 2nd applicants are guarantors to a facility agreement between the 3rd applicant and the 1st respondent. The 3rd applicant defaulted in its repayment obligations to the bank. This led to the appointment of receivers on 10 February 2014, pursuant to the power annexed to the debenture issued by the 3rd applicant. This appointment was challenged by the applicants at the High Court, by way of plaint dated 28 February 2014.
- [3] By a Ruling dated 11 June 2014, the High Court confirmed the appointment of the receivers, but restrained them from selling the charged properties, and ordered the 3rd applicant to continue operating as a going concern in the interest of all the parties.
- [4] By yet another Ruling dated 13 October 2016, the Court found that the applicants had admitted the pre-receivership debt of US\$4,028,194.30 and Ksh.2,706,966.13, with interest. The Court further directed the parties to agree on a forensic audit to determine the post-receivership debt, after which it would make further Orders. The parties agreed on the auditor: Deloitte Consulting Group.
- [5] The audit report was duly filed, and parties addressed the Court extensively on it. The High Court (*Tuiyot J*) thereafter, made the following Orders:

- “(a) It is hereby declared that the 3rd plaintiff owes the defendant a sum of USD 4,028,194.30 and Shs. 2,706,994.13 together with contractual interest as contained in the facility agreement executed between the 3rd plaintiff and the defendant being the pre-receivership debt.***
- “(b) The pre-receivership debt set out above shall be paid by the 1st and 2nd plaintiffs within sixty (60) days hereof.***
- “(c) The 1st and 2nd plaintiffs shall within 90 days hereof pay to the defendant the following sums:***
- (i) USD (US dollars) 6,337,120.48 being the sums outstanding to the Creditors other than the Defendant during the receivership period;***
 - (ii) USD (US dollars) 6,734,083.25 being monies advanced by the Defendant post the receivership period upto 31st December 2016; and***
 - (iii) USD (US Dollars) 978,849.36 being expenses incurred by the bank in preserving the assets of the Company from 1st January 2017 to 31st July 2017.***
- “(d) The firm of Deloitte Consulting Limited shall undertake an immediate audit to establish further expenses that may have been incurred in the preservation of the assets of the Company from 1st August 2017 to date, and shall within 30 days hereof file the said Report for further Orders of this Court.***
- “(e) In default of payment of the monies as set out in (a), (b) and (c) above, the Orders of injunction granted on 11th June 2014 in favour of the plaintiffs shall stand discharged and the defendant shall be at liberty to exercise all or any of its rights in respect of the advances made to the 3rd plaintiff including but not limited to the right to sell assets covered or contained in the securities given by the plaintiff to the defendant.***

“(f) Each party shall bear its own costs of the application of the 21st June 2016.”

- [6] This Ruling aggrieved the applicants, and prompted the appeal to the Appellate Court, being ***Surya Holdings Ltd & 2 Others v. CFC Stanbic Bank Ltd & Another***, Civil Appeal No. 114 of 2018. In its Judgment dated 25 January 2019, the Appellate Court was not convinced that the Orders granted by the learned Judge on 19 January 2018 constituted a wrong exercise of judicial discretion. As such, the Court did not interfere with the Orders, and dismissed the appeal with costs to the respondents.
- [7] The applicants, dissatisfied with the Judgment and decree given by the Court of Appeal on 25 January 2019, filed a notice of appeal dated 25 January 2019; a petition of appeal dated 14 February 2019, and the instant application.
- [8] The respondents filed a preliminary objection dated 22 February 2019, on the grounds that this Court lacks jurisdiction under Article 163 (4) of the Constitution to entertain this application and the petition. Accordingly, they urged that both be struck out. The applicants object to this preliminary objection in a response dated 22 February 2019.
- [9] The respondents have also filed a Notice of Motion dated 25 February 2019, contesting the jurisdiction of this Court to entertain the petition of Appeal.

B. SUBMISSIONS

- [10] The applicants in their written submissions dated 22 February 2019, urge that the Appellate Court wrongly dismissed their appeal, without considering their constitutional grievances.
- [11] They urge that their Article 25 and 50(1) constitutional rights, were infringed, contrary to the established precedent in ***Evans Odhiambo***

Kidero & 4 Others v. Ferdinand Ndung'u Waititu and 4 Others
(Petition No. 18 as consolidated with Petition No. 20 of 2014), 2014 eKLR.

- [12] The applicants submit that the Court erred in adopting a contested audit report, without testing its veracity, and in denying the applicants an opportunity to cross-examine upon it.
- [13] They urge that the conservatory Orders will preserve the subject matter of the appeal, and prevent irreversible loss, and irreparable damage. They submit that they will seek in their intended appeal, that this matter be remitted back to the High Court for a fair trial, and it is thus necessary to preserve the charged properties.
- [14] In this regard, the applicants rely on ***Narok County Government v. Livingstone Kunini Ntutu & 2 Others***, Petition No. 3 of 2015; [2018] eKLR, where this Court determined that it has inherent and/or residual power to act in a fair or equitable manner in the interest of justice, and/or to ensure the observance of due process of the law.
- [15] With regard to the preliminary objection, the applicants contend that it fails to meet the test envisaged in law under the definition in ***Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd*** [1969] E.A.
- [16] The applicants submit that they had raised constitutional issues before the Court of Appeal, though the same were overlooked; and hence the appeal herein is merited.
- [17] The applicants submit that the respondents' Notice of Motion of 25 February 2019 is similar to the preliminary objection dated 22 February 2019. It is urged that the respondents seek to re-litigate the issues raised in the preliminary objection. The applicants, therefore, submit that the respondents' Notice of Motion is an abuse of the Court process, and should be struck out.

- [18] The respondents, in their written submissions dated 26 February 2018 urge submit that the issue of contestation did not revolve around that application, or upon the interpretation by the Court of Appeal. They contend that an exercise of discretion by a superior Court Judge, in determining an application, is not a constitutional issue.
- [19] They submit that the application of Articles 25 (c) and 50 (1) was not an issue for determination before the Appellate Court, and cannot be an issue for determination before this Court. They buttress this assertion with this Court's decision in ***Aviation & Allied Workers Union v. Kenya Airways & 2 Others***, Supreme Court Petition No. 4 of 2015, eKLR 2017.

C. ANALYSIS

(i) Jurisdiction

- [20] From the history of this matter, it is evident that the High Court heard an interlocutory application, and gave Orders as it deemed fit. Aggrieved, on account of their belief that the Orders of the High Court determined the entire suit, the applicants appealed to the Court of Appeal. The Appellate Court granted interim Orders, during the pendency of the appeal.
- [21] However, the Appellate Court dismissed their appeal, thereby discharging the interim Orders in place. The applicants now come to this Court seeking redress, but they also seek conservatory Orders to restrain the respondents from selling the charged assets, pending the hearing and determination of the appeal.
- [22] The respondents on the other hand, challenge this Court's jurisdiction to entertain both the Notice of Motion application and the appeal. The record speaks for itself on this issue.
- [23] The record reveals that the cause of the dispute at the High Court arose from the 3rd applicant defaulting in his obligations under the banking

arrangements. The Bank then recalled the facilities, and proceeded to serve statutory notices intending to exercise its statutory power of sale over the securities.

[24] Eventually, as already outlined herein, Deloitte Consulting Group undertook a forensic audit, in a bid to determine the post-receivership debt. They furnished an audit report which the applicants challenged as inconclusive. The applicants sought to adduce evidence in opposition to the findings.

[25] In its Ruling of 19 July 2018, the High Court did note that the applicants had disputed the post-receivership debt as set out in the report, and that the auditor ought to be given a hearing in response thereto. Despite making this finding, the learned Judge ordered the applicants to pay both *pre- and post- receivership debt*.

[26] The applicants perceived, therefore, that this Ruling disposed of the entire suit, on the basis of a disputed audit report, and curtailed their non-derogable right to adduce evidence against this report. Being aggrieved, they sought redress in the Appellate Court.

[27] Their amended memorandum of appeal dated 12 July 2018, which was filed on 13 July 2018, had the following ground of appeal:

“8. The learned judge erred in law and fact in failing to conduct the proceedings before him in a judicious manner envisaged by Article 25 (c) & 50 (1) of the Constitution of Kenya, 2010 by issuing orders intended to irretrievably cripple the Appellants, thereby exposing them to liquidation and/or total loss of their valuable properties.”

[28] The Court of Appeal took note of the applicants’ submission (paragraph 19) that *“the Judge made a final determination without conducting a*

trial, and that in violation of Article 50 of the Constitution the Orders issued are intended to irretrievably cripple the appellants.”

[29] The Appellate Court also noted the applicants’ submission (paragraph 26 of the Judgment) that “*the Judge erred in making a final determination at an interlocutory stage without granting the appellants an opportunity to be heard on merit.*”

[30] The Appellate Court eventually determined this cause by isolating the sole issue, *as to whether the trial Judge exercised his discretion properly*. The learned Judges determined this in the affirmative.

[31] It is indeed the case, that an interlocutory application determination by the High Court, can properly lay a foundation for an appeal as of right, before this Court (***Hassan Ali Joho & Another v. Suleiman Said Shahbal & 2 Others***, Petition No. 10 of 2013 [2014] eKLR).

[32] Further, as we stated in ***Bia Tosha Distributors v. Kenya Breweries Ltd & 6 Others***, Sup. Ct. Application No 10 of 2017 [2018] eKLR (paragraph 43), “*the determination must be of [a] constitutional issue[s] canvassed before the High Court, a determination rendered, [and] that decision appealed, thus properly rising through the Court of Appeal, before finally coming to the Supreme court.*”

[33] In the instant matter, the issues arising out of the interlocutory application determined by the High Court, the Court of Appeal, and now before this Court, are issues of law that touch directly on the application of the Constitution in particular — the non-derogable right to fair hearing. It was an issue of contestation in both superior Courts. In addition, the intended appeal raises questions of constitutional interpretation or application.

[34] This Court maintains its stand in relation to the discharge of judicial work by other Courts. In ***Fahim Yasin Twaha v. Timamy Issa Abdalla***

& 2 Others, Sup. Ct. Civil Application No. 35 of 2014 [2014] eKLR, we remarked as follows (paragraph 65):

“Subject to the obligation on the part of all Courts to ensure efficiency and dispatch in proceedings before them, as required under the Constitution, it is an important principle guiding the judicial function, that the Courts are independent, and are committed to the judicious and conscientious discharge of their mandate. Upon this premise, this Court will in general, keep faith in the other Courts, in the absence of any plain situation to the contrary, that merits judicial notice.”

[35] This is one matter, however, in which we deem it necessary to interfere with the proceedings of both superior Courts, notwithstanding the foregoing principle.

[36] As we pronounced ourselves in ***Deynes Muriithi & 4 others v. Law Society of Kenya & Another***, Civil Application No. 12 of 2015 [2016] eKLR (paragraph 49), this Court’s mandate is not limited if it is “convinced that values of the Constitution including human rights, equity, equality and integrity are departed from; or that grave injustice is occasioned by the decision in question; or that the decision in question is inconsistent with the same Court’s earlier decisions. In such instances, the Supreme Court takes into account such objective criteria as it may determine, or formulate, on the basis of comparative jurisprudential perspectives, being constantly guided by the object of averting any grave injustice.”

(ii) Stay of Execution Orders

[37] This Court has jurisdiction to grant interlocutory Orders in the nature of a stay of execution, as sought by the applicant. This was settled in ***Board of Governors, Moi High School, Kabarak & Another v.***

Malcolm Bell, SC Applications Nos. 12 and 13 of 2012, where the Court stated as follows (paragraph 33):

“It is clear to us that if interlocutory applications are excluded as a necessary step to preserve the subject-matter of an appeal, the Supreme Court’s capability to arrive at a just decision on the merits of an appeal would be substantially diminished. Both the Constitution and the Supreme Court Act have granted the Court the appellate jurisdiction; and within that jurisdiction, the parties are at liberty to seek interlocutory reliefs, in a proper case.”

- [38] We explained the concept of stay Orders in *Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others*, Application 5 of 2014 [2014] eKLR, as denoting (paragraph 85) “that no party nor interested individual or entity is to take action until the Court has given the green light.”
- [39] A party seeking an Order for stay of execution must satisfy the Court that: (i) the appeal, or intended appeal is arguable, and not frivolous; that (ii) unless the Order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory; and (iii), that it is in the public interest that the Order of stay be granted.
- [40] In the instant case, the applicants are impugning the Court of Appeal’s stand on several grounds, the main ones being that: their non-derogable right to fair hearing, guaranteed by Articles 25 (c) and 50 (1) of the Constitution, has been infringed; the Appellate Court failed to determine constitutional issues; and that, the constitutional issues could not be answered by reference to judicial discretion, as the Appellate Court had maintained. In light of this, we do not think that this appeal can be anything but arguable. It cannot be characterized as frivolous.

[41] If the Orders sought by the applicant are not granted, the respondents will sell the charged assets, which will destroy the substratum of the intended appeal, and thus the appeal will be rendered nugatory.

[42] It is also in the public interest to issue the Orders sought, as the charged premises comprise vast agricultural land, in which is located a hospital, and which is the habitation of over 3000 families.

D. ORDERS

[43] Consequently, we will make Orders as follows:

- (a) The Notice of Motion application dated 14 February 2019 is allowed.*
- (b) The Preliminary Objection dated 22 February 2019 is dismissed.*
- (c) The Notice of Motion application dated 25 February 2019 is dismissed.*

DATED and DELIVERED at NAIROBI this 22nd day of March 2018.

.....
P. MWILU
DEPUTY CHIEF JUSTICE & VICE-
PRESIDENT OF THE SUPREME
COURT

.....
M. K. IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
J. B. OJWANG
JUSTICE OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

I certify that this is a
true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA



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