



Case Number:	Civil Appeal 23 of 2014
Date Delivered:	28 Mar 2014
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Ruling
Judge:	Hatari Peter George Waweru
Citation:	Santam Services (E A) Ltd v Rentokil (K) Ltd & another (K) Ltd [2014] eKLR
Advocates:	-
Case Summary:	<p><u>An appeal from the Industrial Property Tribunal automatically stays the decision appealed against</u></p> <p>Santam Services (E A) Ltd v Rentokil (K) Ltd & Another</p> <p>Civil Appeal No. 23 of 2014</p> <p>High Court of Kenya at Nairobi</p> <p>H.P.G. Waweru, J</p> <p>March 28, 2014</p> <p>Reported by Andrew Halonyere & Anne Mbuthia</p> <p>Brief Facts</p> <p>The Appellant brought an appeal against the decision of the Industrial Property Tribunal to revoke its patent, Number AP 773, with costs on the higher scale, registered with the African Regional Intellectual Property Organization</p>

(ARIPO) on October 15, 1999.

Despite the fact that the Industrial Property Act did not require it, the Appellant brought an application under Order 42, rule 6 of the Civil Procedure Rules, 2010, seeking stay of the decision of the Tribunal pending the hearing and disposal of the appeal, as a matter of caution.

Issue

- i. Whether it was necessary to make a formal application for stay of a decision of the Industrial Property Tribunal, pending the hearing and determination of an appeal

Civil Practice and Procedure- *Stay of proceedings in case of appeal- Appeal to the High Court against a decision of the Industrial Property Tribunal— Civil Procedure Rules, 2010, Order 42, Rule 6*

Statutes – *Interpretation of statutes – Interpretation of section 104 of the Industrial Property Act - Whether section 104 of the Industrial Property Act implied that an appeal against a decision of the Industrial Property Tribunal operates as a stay of the decision*

Section 104 of the Industrial Property Act provided:

(1) *Any revoked or invalidated patent, utility model or industrial design or claim or part of a claim of a registered industrial design shall be regarded as null and void from the date of the grant of the patent or certificate of registration of the utility model or the industrial design.*

(2) *As soon as the decision of the Tribunal is no longer subject to appeal, the Chairman of the Tribunal shall inform the Managing Director who shall register and publish it as soon as possible in the Kenya Gazette or in the Industrial Property Journal.*

Held:

1. Although the wording of section 104 (2) of the Industrial Property Act was not express

	<p>enough, the provision implied that an appeal acted as a stay of registration and publication of the decision of the Tribunal in the Kenya Gazette or the Industrial Property Journal.</p> <p>2. There could not be any doubt, upon a closer look at section 104 (2), that the intention of the legislature was that an appeal once duly lodged, and as long as it remained undisposed of, operated as a stay of the decision of the Tribunal, which decision could not be registered or published in the Kenya Gazette or the Industrial Property Journal, pending disposal of the appeal.</p> <p>3. The Appellant needed not have applied for stay of the order of the Industrial Property Tribunal pending the hearing and disposal of the appeal. All it needed to do was to inform the Chairman of the Tribunal that it had appealed against its order, and to provide evidence of such appeal.</p> <p><i>Application was allowed.</i></p>
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	5 of 1999
Case Outcome:	-
History County:	Nairobi
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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IREPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO. 23 OF 2014

SANTAM SERVICES (E A) LTD.....APPELLANT

V E R S U S

1. RENTOKIL (K) LTD

2. KENTAINERS (K) LTDDEFENDANTS

(Appeal from the ruling of the *Industrial Property Tribunal* delivered on 21st January 2014 in *Nairobi IPT Case No. 5 of 1999*)

R U L I N G

1. By a ruling dated and delivered on 21st January 2014 the *Industrial Property Tribunal* (the Tribunal), established under the **Industrial Property Act, Cap 509** (the Act), in its **Nairobi IPT Case No. 5 of 1999**, revoked with costs on the higher-scale the Appellant's Patent Number AP 773 registered with the **African Regional Intellectual Property Organization** on 15th October 1999.

2. On 5th February 2014 the Appellant filed the appeal herein, thereby exercising its right of appeal conferred by **section 115 (1)** of the Act which provides –

“(1) Any party to the proceedings before the Tribunal may appeal in accordance with the rules made under this Part from any order or decision of the Tribunal to the High Court.

3. **Section 104** of the Act provides as follows –

“104. Effect of revocation or invalidation

1. **Any revoked or invalidated patent, utility model or industrial design or claim or part of a claim of a registered industrial design shall be regarded as null and void from the date of the grant of the patent or certificate of registration of the utility model or the industrial design.**

2. **As soon as the decision of the Tribunal is no longer subject to appeal, the Chairman of the Tribunal shall inform the Managing Director who shall register and publish it as soon as possible in the Kenya Gazette or in the Industrial Property Journal.”**

4. Though not stated in express terms, under subsection (2) of section 104 aforesaid an appeal acts as a stay of registration and publication of the decision of the Tribunal in the ***Kenya Gazette*** or the ***Industrial Property Journal***. So, all the Appellant needed to do in this case was to inform the Chairman of the Tribunal that it had appealed against its order of 21st January 2014 (and provide evidence of such appeal!).

5. But the Appellant did more. It applied under **Order 42, rule 6 of the Civil Procedure Rules** by **notice of motion dated 10th February 2014** for the main order that there be stay of the order of the Tribunal pending hearing and disposal of the appeal herein. Its learned counsel said that it applied out of abundant caution. I do not blame him as the wording of section 104(2) of the Act is not express enough.

6. However, upon a closer look at that wording of section 104(2), there cannot be any doubt that the intention of the legislature was that an appeal once duly lodged, and as long as it remains undisposed of, shall operate as a stay of the decision of the Tribunal, which decision may not be registered or published in the *Kenya Gazette* or the *Industrial Property Journal* pending disposal of the appeal. I so hold.

7. In the event I will allow the application and grant the stay sought for the avoidance of the doubt (if there be such) in the wording of section 104(2) of the Act. In the event also I need not consider the requirements of Order 42, rule 6 of the Civil Procedure Rules or any of the other arguments advanced by the learned counsels.

8. Costs of the application shall be in the appeal. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF MARCH 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 28TH DAY OF MARCH 2014



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