



**Gumba v Faulu Micro Finance (Miscellaneous Civil Application
E093 of 2022) [2024] KEHC 14931 (KLR) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 14931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
MISCELLANEOUS CIVIL APPLICATION E093 OF 2022**

**A. ONG'INJO, J
AUGUST 15, 2024**

BETWEEN

LEONARD OKUMU GUMBA ADVOCATE

AND

FAULU MICRO FINANCE RESPONDENT

RULING

1. The Respondent filed the Notice of Motion Application dated 24th July 2024 seeking to halt executions process that was commenced by the warrants of attachment and proclamation. Notice dated 18th July 2024 issued to Ms. Stellan Auctioneers pending hearing and determination of the application herein as well as the intended appeal.
2. The Application is brought pursuant to Section 1A, 1B and 3A of the *Civil Procedure Act* and Orders 43 (2), and 51(1) of the *Civil Procedure Rules*.
3. The Application is supported by the grounds on the face of the application and supporting affidavit sworn on 24th July 2024 by Fredrick Nyabuti the Legal officer of the applicant. The application was opposed by the Replying Affidavit sworn by Respondent Leonard Okumu Gumba on 29th day of July 2024, the Applicant's contention was that the matter was pending taxation of the Respondent's Bill of Costs on 6/8/2024 when the Respondent took out warrants of attachment in execution of the decree of the court delivered on 18th July 2023. It was argued it was premature for the warrants to be taken out when the matter was pending assessment of costs which the judge determined to be half costs of the lower court and half costs of the appeal. The Applicants also argued that a Notice of Appeal had been lodged and that the Memorandum of Appeal had not been filed because the proceedings were not ready for purposes of filing Memorandum of Appeal and Records of Appeal.



4. This court has considered the application and finds that the application for warrants of attachment and issuance of the same by the Deputy Registrar was premature as there was no decree duly signed by the Deputy Registrar that was ready for execution.
5. The Respondent ought to have awaited the outcome of assessment of costs to be done before the Deputy Registrar could issue warrants of attachment and executions.
6. Whether or not the Notice of Appeal filed/lodged on 24/8/2023 can bar the Respondent from executing decree herein for reasons that the Applicant has not obtained proceedings, there is nothing to show that the Applicant has been following up on the proceedings and it is this courts view that it is sufficient for the Applicant to have filed the intended appeal without the typed proceedings. The typed proceedings would be required when directions are taken for filing and serving Records of Appeal. There is no stay of execution for simple reason that no appeal has been lodged for over one year since the appeal herein was heard and judgment delivered on 18th July 2023. The Application for stay for purposes of concluding the process of a taxation of costs is allowed on condition that the Deputy Registrar expedites the taxation of costs and issues the Respondent with a dully certified decree. Prayers for stay of execution pending intended appeal is disallowed. No orders as to costs.

DELIVERED, DATED AND SIGNED AT MIGORI THIS 15TH DAY OF AUGUST 2024

A. ONGI'NJO

JUDGE

