



Directline Assurance Limited v Obura (Miscellaneous Civil Application E033 of 2022) [2023] KEHC 1267 (KLR) (Civ) (24 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E033 OF 2022**

JK SERGON, J

FEBRUARY 24, 2023

BETWEEN

DIRECTLINE ASSURANCE LIMITED APPLICANT

AND

JOSEPH ONYANGO OBURA RESPONDENT

RULING

1. The applicant herein has brought the notice of motion dated January 24, 2022 supported by the grounds set out on the body thereof and the facts stated in the affidavit of Kelvin Nguire whereof the applicant sought for the following orders:
 - a. Spent
 - b. Spent
 - c. That further proceedings in Nairobi CMCC E6247 of 2020 be stayed pending determinant of the issue posed by this application.
 - d. That this honourable court be pleased to call up file no Nairobi CMCC E6247 of 2020 of the Chief Magistrate Court Milimani and order that the warrants of attachment and warrant sale of movable property issued to Hudlink Auctioneers on January 18, 2022 be recalled, cancelled and declared void in exercise of the court's inherent jurisdiction to redress irregularities in the record ex debito justitiae.
 - e. That the honourable court be pleased to order the unconditional release of all the applicant's movable assets as listed in the proclamation notice dated January 19, 2022 and subsequently attached by Hudlink Auctioneers.



- f. That the respondent be directed to pay the costs of this application.
2. In opposing the said motion, the respondent filed the replying affidavit of Advocate Edna Kanana, to which Lenin Owuor Awino rejoined with her supplementary affidavit sworn on March 7, 2022.
 3. When the parties came for interparties hearing, they chose to rely on the averments made in their respective affidavits.
 4. The applicant avers that the respondent herein filed a suit at the Nairobi Milimani Chief Magistrate Civil Case no E6247 of 2020 *vide* a plaint dated August 6, 2020 in which the respondent sought a declaration that the applicant was bound to satisfy the judgment in Nairobi civil suit 4529 of 2013.
 5. The applicant further avers that it controverted the respondent's claim *vide* a defence dated December 3, 2020, the respondent filed an application dated January 18, 2021 seeking to strike out the said defence and to have judgment entered as prayed in the plaint.
 6. The applicant stated that it opposed the said application which was heard and its ruling delivered, of which the applicant herein was granted a benefit of a hearing as the trial court found that the applicant's statement of defence had established triable issues worthy of a full trial.
 7. The applicant further stated that on January 18, 2022, the respondent through its agent Hudlink Auctioneers illegally obtained warrants of attachment of movable property as well as warrants in execution of a purported decree and in clear and blatant disregard of the law and proceeded to illegally proclaim the applicant's goods and property.
 8. The applicant avers that the proclamation notice dictated that the proclaimed goods will be removed from the applicant's possession after 7 days and sold by way of public auction which period lapses on January 26, 2022 unless the colossal amount of Kshs 5,122,326/= is paid within the seven days.
 9. In retort, the respondent stated that at no stage was the respondent herein estopped or did the court in any way reject the issuance of the decree and warrants of attachment in E6247 of 2020.
 10. The respondent further stated that the ruling which was exhibit marked KN-5 by the applicant had no indications to the parties who attended court and that there was no indication of which magistrate delivered the ruling and no case number has been evidenced and that what the applicant has exhibited are faint copies, difficult to read copies of a ruling allegedly belonging to Nairobi CMCC E6247 of 2020.
 11. In its supplementary affidavit, the applicant stated that upon the perusal of the physical court file their firm established that the ruling on record dated June 4, 2021 which was handwritten clearly declined to grant the orders sought by the respondent and directed that the matter be set down for hearing as the court held that the defendant's statement of defence had triable issues.
 12. Upon my perusal of the record, it is apparent that the parties herein have varied versions as to the order which was made in the ruling delivered by the subordinate court on June 4, 2021.
 13. Upon my further perusal of the record, I observed that the handwritten copy of the aforementioned ruling annexed to the instant motion is illegible and I am therefore unable to ascertain the true position regarding the order made therein.
 14. In view of the foregoing circumstances, I am unable to adequately make a determination on the instant motion.



15. Consequently, the motion dated January 24, 2022 is to be held in abeyance pending compliance with the following directions:
- i. The Executive Officer-Milimani Commercial Courts to avail to this court a certified typed copy of the ruling delivered on June 4, 2021 in CMCC no E6247 of 2020 within 14 days from today.
 - ii. The Executive Officer to also avail the court file in CMCC no E6247 of 2020 to this court within 20 days from today.
 - iii. This file to be mentioned before this court on 30/3/2022 to confirm compliance.
 - iv. Interim orders extended to last until then.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2023.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

