



REPUBLIC OF KENYA



**Directline Assurance Co. Limited v Nthenya (Miscellaneous Application
52 of 2023) [2023] KEHC 25924 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 25924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS APPLICATION 52 OF 2023**

SM GITHINJI, J

MAY 29, 2023

BETWEEN

DIRECTLINE ASSURANCE CO. LIMITED APPLICANT

AND

ANASTACIAH NTHENYA RESPONDENT

RULING

1. By a Notice of Motion dated 21st June, 2023, brought under section 1A, 1B, 3A, 3B, 79G and 95 of the [Civil Procedure Act](#); Order 22 rule 22, Order 42 Rule 4, 6 and 7, Order 50 Rule 6 and Order 51 rule 1 and 3 of the [Civil Procedure Rules](#), the Applicant seeks the following orders: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. That Misa Mugaro Auctioneers be directed to tax their costs.
 5. Spent.
 6. That the costs of this application be in the cause.
2. The said application is supported by the affidavit sworn on 21st June 2023 by Kelvin Ngure the Applicant's assistant claims manager who deposed that following a decree and certificate of costs dated 25th August 2022 issued in CMCC 67 OF 2020, the Applicant paid a sum of Kshs. 217,865 to the Respondent's advocates being part of the decretal sum (inclusive of costs) Kshs. 277,470/-. That before the Applicant could settle the balance, the Respondent has now commenced execution by obtaining warrants of attachment and sale dated 7th June 2023 claiming the sum of Kshs. 141, 681.30 an amount which is inclusive of the auctioneer fees.



3. He expressed the Applicant's willingness to pay Kshs. 59,605/- being the balance of the decretal amount together with costs within 45 days, and that the auctioneers be directed to tax their costs.
4. In opposing the application, the Respondent filed a Replying Affidavit sworn on 30th June 2023 by Geoffrey Kilonzo, counsel for the Respondent. Mr. Kilonzo deposed that the application is *sub-judice* another application filed in the lower court in declaratory suit Malindi CMCC E43 of 2022. That having remitted part of the decretal amount, the present application is an academic exercise intended to deny the Respondent fruits of her judgment and especially because there is no pending appeal.
5. The court directed that the application be canvassed by way of written submissions. Only the Respondent complied and I have carefully considered those submissions.
6. Notably, when the application came up for mention on 21st September 2023, I established from both counsel that what is being sought substantially is extension of time to settle the decretal sum, the applicant having been denied orders for stay of execution. I have perused the Application and affidavit thereto; I see no basis to allow extension of time to settle the decretal amount. The application was filed on 22nd June 2023. 45 days have since lapsed and no payment has been made by the Applicant. I agree with the Respondent that the Applicant has not been keen to clear the decretal sum. To me, this application is only intended to delay the course of justice and is an abuse of the court's process.
7. In any event, the prayers for stay as framed in the notice of motion have been overtaken by events. The Applicant pleaded that stay be granted pending the hearing and determination of their application, which is now spent. As it is, there is no substantive prayer for this court's consideration. Having said so, I find no basis to direct the auctioneers to tax their costs.
8. The outcome is that the notice of motion dated 21st June, 2023 lacks merit. It is hereby dismissed with costs.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 29TH DAY OF MAY, 2023.

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S.M. GITHINJI

JUDGE

