



REPUBLIC OF KENYA



Directline Assurance Co. Limited v Martha (Miscellaneous Application 53 of 2023) [2023] KEHC 26251 (KLR) (29 November 2023) (Ruling)

Neutral citation: [2023] KEHC 26251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS APPLICATION 53 OF 2023
SM GITHINJI, J
NOVEMBER 29, 2023**

BETWEEN

DIRECTLINE ASSURANCE CO. LIMITED APPLICANT

AND

NKIROTE MARTHA 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 11th January, 2022 issued in CMCC E391 OF 2021, the Applicant paid a sum of Kshs. 92,913/- to the Respondent's advocates being part of the decretal sum (inclusive of costs). 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. 119, 538.65 amount which is inclusive of the auctioneer fees.



3. He expressed the Applicant's willingness to pay Kshs. 140,767/- 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 E40 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 NOVEMBER, 2023.

S.M. GITHINJI

JUDGE

In the absence of:-

1. Parties absent. They be notified.

S.M. GITHINJI

JUDGE

29/11/2023

