



REPUBLIC OF KENYA



H Young & Company (E.A.) Limited v Yadini Holdings Limited (Miscellaneous Civil Case E007 of 2020) [2022] KEHC 11635 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 11635 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL CASE E007 OF 2020
MM KASANGO, J
MAY 26, 2022**

BETWEEN

H YOUNG & COMPANY (E.A.) LIMITED APPLICANT

AND

YADINI HOLDINGS LIMITED RESPONDENT

RULING

1. On March 18, 2021, this court by its ruling ordered there be a stay of execution of the decree issued by the Thika Chief Magistrate's Court in Civil Case No 665 of 2018. The condition for the stay was that H Young & Company (EA) Limited would deposit Kshs 3,000,000 into the joint interest earning account of both law firms representing the applicant and the respondent.
2. The applicant has filed a notice of motion application which is under consideration in this ruling. That application which is dated September 16, 2021 is for the following prayers:-
 1. That pending the hearing and determination of this application this honourable court be pleased to compel the respondent to provide the particulars of sale of motor vehicle registration number KAK 667C including the certificate of Auction.
 2. That this honourable court be pleased to set aside and or review the orders given on the March 18, 2021 by Lady Justice Kasango.
 3. That this honourable court be pleased to order that the Applicant has satisfied the judgment delivered on the October 8, 2020 by Hon MW Wanjala.
 4. That the sum of Kshs 3,000,000 deposited in the joint interest earning account in Equity Bank in the name of the parties' advocates and all the interests thereon be released to the applicant's KCB Bank Account No 1108470173 Industrial Area Branch.
 5. That cost of this application be provided for.



6. Any other orders that the court deems fit.
3. The above prayers are supported by a very scanty affidavit sworn by Veronica Njoki, the applicant's legal officer. That officer deponed that judgment was entered on October 8, 2020 in favour of the respondent by the Thika Chief Magistrate's Court. That the respondent, through Carnelian Enterprise Auctioneer, attached the applicant's motor vehicle KAK 667c on October 29, 2020 in execution of that judgment. This Court by its ruling of March 18, 2021 ordered the applicant to deposit into interest earning bank account of both law firms Kshs 3 million as a condition of stay of execution of the Thika Chief Magistrate's court decree. That amount was deposited as ordered. The deponent then stated:-

“That despite the subsisting stay of execution and the release orders above, the auctioneers proceeded to sell the applicant's motor vehicle registration number KAK 667C at a public auction.

That the applicant received reliable information that the respondent sold the motor vehicle for Kshs.4 million. As such, the applicant satisfied the judgment entered on the October 8, 2020.

That in light of the applicant satisfying the judgment, it is in the interest of justice that the deposited amount be released to the applicant.”

4. The above is the totality of the evidence the applicant brought to this court in seeking the above stated orders.
5. I have considered the affidavit sworn in reply to the application sworn by Anthony Gakaria, the respondent's advocate. I am in agreement with the depositions in that affidavit that the present application lacks merit.
6. To release or not to release the amount deposited in the joint interest earning account is really subject to the applicant withdrawing this action and thereafter making an application for such release. This court would then consider that application and opposition, if any, then rule whether such release of that deposit should be ordered. No application is made to withdraw this matter.
7. The second reason why the application lacks merit is because applicant relied on what it termed as “reliable information” it received that the respondent sold the attached motor vehicle for Kshs 4 million. That deposition is contrary to the provisions of order 19 rule 3(1) of the Civil Procedure Rules which states:-

“Affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove:

Provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof.”

8. The deposition that the applicant had obtained “reliable information” failed to disclose the source of that knowledge. The court therefore cannot lay any reliance on the same.
9. There is therefore no basis for reviewing the order of October 8, 2020 and no basis for ordering release of the deposited funds.
10. This court similarly cannot order that the applicant has satisfied the judgment of Thika Chief Magistrate's Court



11. The applicant's application dated September 16, 2021 for the reasons set above is dismissed with costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 26TH DAY OF MAY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For applicant : - No appearance

For Respondent : - Mr Gikaria

RULING delivered virtually.

MARY KASANGO

JUDGE

