



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADMIRALTY DIVISION

CLAIM NO.4 OF 2017

JAMAL MOHAMED BANDIRA.....CLAIMANT

VERSUS

THE OWNERS OF THE MOTOR VESSEL “NASIBU”RESPONDENT

AND

MUMIN ALI MUMIN.....DECREE HOLDER/APPLICANT

RULING

1. The Applicant herein **MUMIN ALI MUMIN** has filed an application dated **9th December, 2020** pursuant to **Section 3 A** of the **Civil Procedure Rules** and all other enabling provisions of the Law. The Application seeks the orders: -

1) Spent;

2) THAT this Honourable Court do issue an Order directing that all lawful and legally requisite steps be taken by the relevant Registry personnel and Judicial Officers, or whatever ranks and/or description to assist in the execution and/or facilitation execution of the Decree issued to the Decree Holder thereby finalizing execution for therefore not exist any legal impediment preventing and/or barring him from execution of the said Decree;

3) THAT this Honourable Court do issue any further Orders and/or do anything necessary that shall enable the ends of justice to be met;

4) THAT costs be in the cause.

2. The **Motion** is premised on the grounds set out in the face of it as supported by an **Affidavit** sworn by **MUMIN ALI MUMIN** (the Applicant) on **9th December, 2020**.

THE RESPONSE

3. The Claimant in the suit (Respondent herein) filed a **Replying Affidavit** sworn on **20th January, 2021** by himself, **JAMAL MOHAMED BANDIRA**. It was deponed by the Claimant that the Application dated **9th December, 2020** should be dismissed as it is without merit.

4. The Claimant avers that he filed this Admiralty suit which was heard and determined by Hon. Lady Justice Njoki Mwangi who entered **Judgment** on **13th December, 2018** for the sum of **Kshs.10,290,000/=** in favour of the Applicant/ Defendant on the Counter-claim against the claimant (Respondent).

5. Being dissatisfied with the award, the Claimant filed an Appeal in the Court of Appeal vide **Civil Appeal No.23 of 2019 Jamal Mohamed Bandira ..Vs.. The Owners of the Motor Vessel “Nasibu”** against the whole Judgment. The Court of Appeal allowed the Appeal and overturned the decision of the High Court setting aside the amount awarded of **Kshs.10,290,000/=** on **8th May, 2020**. It then follows that all Orders and Decrees capable of being executed were vacated in their entirety.

6. It is further averred that the Applicant is notorious for filing various application in an effort to have a Decree that is non-existent executed. The Claimant referred to this court's **Ruling** delivered on **11th December, 2020** that took into consideration that the matter herein had already been handled by the Appellate Court and thus the court lacks jurisdiction to entertain it further. The same was dismissed with an Order that each party to bear its own costs.

ANALYSIS AND DETERMINATION

7. I have considered the application and response filed thereof together with the oral submissions by the parties. This Court finds that the issue for determination is whether the application dated **9th December, 2020** is merited.

8. First, the orders as sought are vague and ambiguous and incapable of being issued as the court is unable to identify the Decree being referred to by the Applicant. Secondly, the Applicant has no recourse before this Honourable Court as there is no Decree at present capable of execution.

9. It has since come to this court's attention that the Decree that was issued by Hon. Lady Justice Njoki Mwangi on **13th December, 2018** for the sum of **Kshs.10,290,000/=** has since been set aside by the Court of Appeal decision in **Civil Appeal No.23 of 2019 Jamal Mohamed Bandira ..Vs.. The Owners of the Motor Vessel "Nasibu"**.

10. Further, this Court in a **Ruling** dated the **11th December, 2020** informed the Applicant that this court lacks jurisdiction to hear and determine applications in relation to the Motor Vessel as the same has been lawfully released and an appeal successfully filed setting aside the sum of **Kshs.10,290,000/=**.

11. There is no Decree before this court that is capable of being executed. The Applicant has been a participant in both the High Court and Court of Appeal proceedings but is still unable to comprehend the import of a decision of an Appellate Court that is binding to all subordinate courts.

12. The High Court is not allowed to interfere in matters that have already been determined by the Court of Appeal. In the case of **National Bank of Kenya Ltd..Vs..Wilson Ndolo Ayah, Civil Appeal No.119 of 2002; [2009] KLR 762,** where it was held:

"...It is good discipline in courts for the proper smooth and efficient administration of justice that the doctrine of precedent be adhered to. If for any reason a Judge of the High Court does not agree with any particular decision of the Court of Appeal, it has been the practice that one expresses his views but at the end of the day follows the decision which is binding on that court. The High Court has no discretion in the matter..."

13. This Court reiterates its **Ruling** and adds emphasis that this court lacks jurisdiction to grant orders as sought by the Applicant, as where there is a decision of court of higher hierarchy, the same is binding on this court. This is to mean that once a Court of Appeal issues a decision it is binding on all subordinate courts and tribunals.

14. In view of the above, I do dismiss the Application dated **9th December, 2020** as there is no Decree before this Court capable of execution.

15. Each party to bear their own costs.

It is so ordered.

DELIVERED, DATED AND SIGNED VIRTUALLY AT MOMBASA THIS 24TH DAY OF MARCH, 2021.

D. O. CHEPKWONY

JUDGE

24/3/2021