



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**MISC. CIVIL APPLICATION NO. 5 OF 2021**

**LENOX ABIOLA MIGWAMBO.....APPLICANT**

**VERSUS**

**OVERSEAS COURIER RESORT LIMITED.....RESPONDENT**

**R U L I N G**

1. The Applicants in E03 of 2021, E04 of 2021 and E05 of 2021 filed similar Applications dated 11/1/2021 seeking stay of Execution of the consent Judgments entered into on 23/7/2020 in PMCC No.413 of 2019, No.418 of 2019 and No.432 of 2019 respectively.
2. The Applicants also seek stay of sale of the respondent's Motor Vehicles Reg. No.KCJ 296F, KBQ 531 U and KCU 933Z and further that the said Motor Vehicles be released on a running attachment pending the hearing and determination of this Application interpartes.
3. The Applications are supported by the Affidavit of **HARON MONDA** of even date in which he has deposed that the consent Judgments were irregularly recorded at the Court Registry on 5/10/2020 in the absence of the Applicant or his authorized agent.
4. It is further deposed in the said Affidavit that pursuant to the said consent Judgments **IKIMWANYA** Auctioneers have been instructed to attach and sell the Applicant's Motor Vehicles and further that the said consent Judgments have not been adopted by the Court.
5. The Respondents filed Replying Affidavits in the respective files dated 19/1/2021 stating that the consents were entered into by the parties settling the matters and that the Applications filed by the Applicant are an abuse of the court process and that the same are incompetent, fatally defective, bad in law and made in bad faith as they are designed to delay the Respondents' entitlement to the fruits of their Judgments.
6. The parties filed written submissions in the Applications which I have duly considered. The Applicant submitted that the consent Judgments dated 23/7/2020 were unilaterally adopted in the Civil Registry and the Respondents instructed **IKIMWANYA** Auctioneers to extract warrants of attachment and attach the Respondents Motor Vehicles aforesaid.
7. The Applicant further submitted granting of orders of Stay of Execution is conferred upon the Court pursuant to Order 22 Rule 22 of the Civil Procedure Rules and that a part applying for the orders is only required to establish sufficient cause and that sufficient cause is a cause for which the Defendant could not be blamed.
8. The Applicant further submitted that the Applications they filed raise triable issues in that the Applicant disputes the process of adoption of the consent Judgments recorded at the Civil Registry and the Applicant is exposed to risk of loss of the Motor Vehicles which are still in the custody of the Auctioneers.
9. The Respondents opposed the application and submitted that this Court lacks jurisdiction to entertain the said Applications since no appeals have been filed from the orders of the Trial Court and therefore this Court cannot entertain Applications for Stay of Execution.
10. The Respondents also submitted that the applicant was granted sufficient time to settle the claims but did not take action until the proclamation was levied and further that the motive by the Applicant was to stop Execution and drag the Respondent into further litigation unjustifiably.
11. The Respondents further stated that they obtained valid Judgments and they are entitled to enjoy the fruits of their Judgments and further that the Applicant did not attempt to ventilate any issues before the Trial Court before seeking the intervention of this Court.
12. Upon considering the submissions by both parties, I find that the consent Judgments which gave rise to the Execution are disputed by the

Defendant/Applicant.

13. It is in the interest of Justice to allow the applicants an opportunity to readdress that issue. The Applicant deposed in the supporting Affidavits to the application that they were not involved in the recording of the said consent Judgments and further that the same were not adopted by the Trial Court.

14. It is not clear why the Trial Court declined to grant Stay of Execution if indeed the consent Judgments were not adopted in Court.

15. The Respondents in their Replying Affidavits did not give details of the said consent Judgments. No particulars have been given of the parties who entered into the alleged consent Judgments.

16. The Applicant is granted Stay of execution pending determination of his application before the Trial Court.

17. I allow the applications dated 11/1/221 filed in E03, E04 and E05 of 2021 on condition that the Applicant pays the costs of the said Applications.

18. The Motor Vehicles attached to be released on running attachment on condition that the Applicant meets the Auctioneers fees.

Order to issue accordingly.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 16TH DAY OF APRIL, 2021.**

**A. N. ONGERI**

**JUDGE**