



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. E086 OF 2021

LAUREEN OMONDI SHEEN.....1ST DECREE DEBTOR/APPLICANT

JOHN OKWANYO OGY.....2ND DECREE DEBTOR/APPLICANT

DIRECTLINE INSURANCE CO.....3RD DECREE DEBTOR/APPLICANT

VERSUS

SALIM OMME ABDULKHALIK.....DECREE HOLDER/RESPONDENT

RULING

1. This is the notice of motion dated 26th February 2021 where the applicants are seeking the following orders:

- (1) *THAT this application be certified urgent, service thereof be dispensed with in the first instance and the same be heard ex parte.*
- (2) *THAT this Honourable court be pleased to stay any further proceedings in the matter Milimani Chief Magistrate's Court Civil Case No. 1980 of 2013 and in particular the imminent attachment and sale of the 3rd Applicant's proclaimed goods pending the hearing and determination of this Application.*
- (3) *THAT this Honourable Court be pleased to grant the Applicant leave to appeal against the Ruling of Hon. M. W. Murage (Ms), Senior Resident Magistrate delivered on 15th February 2021 in Milimani Chief Magistrate's Court Civil Case No. 1980 of 2013.*
- (4) *THAT this Honourable court be pleased to stay any further proceedings in the matter Milimani Chief Magistrate's Court Civil Case No. 1980 of 2013 and in particular execution of the decree pending the hearing and determination of the Applicant's intended appeal.*
- (5) *THAT the costs of this Application be in the cause.*
- (6) *Any other and/or further orders that this Honourable Court deems fit to grant.*

2. The application is premised on the grounds on the face of the application plus the sworn affidavit of Kevin Ngure which is from paragraph 9 – 25. The first 8 paragraphs are missing. The applicants claim that the respondent obtained a judgment in Milimani Chief Magistrate's Civil Case No. 1980 of 2013 against the 1st and 2nd applicants on 5th February 2020. He has however proceeded to proclaim the 3rd applicant's personal goods. From the grounds and affidavit the applicants are referring to an application dated 15th February 2021 which they filed before the trial court, under certificate of urgency.

3. The duty magistrate (*Hon. M. W. Murage (M/s)*) certified the application urgent and gave an interpartes hearing date for 4th March 2021 and declined to issue temporary stay orders.

4. It is the "Ruling" denying them stay orders that they are seeking leave to appeal against.

5. The respondent has not filed any response to this application despite being given several opportunities by this court.

6. On perusal of the notice of motion dated 26th February 2021 I noted that the applicants did not annex a copy of the impugned "Ruling". I therefore called for the lower court file (*Milimani CMCC No. 1980 of 2013*) which was promptly availed. Upon perusal of the file I have noted the following:

(i) The 1st and 2nd applicants filed before that court an application dated 18th February 2021 seeking stay of execution.

(ii) The matter was placed before the duty magistrate on 19th February 2021 for directions which were given.

(iii) On 4th March 2021 when the application was to be heard interpartes none of the parties was present. Nothing has proceeded on the said application to date.

7. The applicants obtained ex parte stay orders before this court on 3rd March 2021. The same have remained in force until now.

8. It is very clear from the record that there is no Ruling that was delivered by M. W. Murage Resident Magistrate on 18th February 2021. What were given were clear directions, which have not been complied with by the applicants.

9. There is nothing to appeal against for this court to grant the leave sought. This is a clear abuse of the court process. The applicants are directed to go back to the Magistrate's court and prosecute their pending application.

10. The application dated 26th February 2021 is dismissed with costs.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF MAY 2021 AT NAIROBI.

H. I. ONG'UDI

JUDGE