



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

CIVIL APPEAL NO. 14 OF 2020

BETWEEN

ISAAC GICHUNGE LEAKEYAPPELLANT

AND

NJOGU TITUS GICHURU.....RESPONDENT

RULING

1. By a judgment dated 06th May, 2021, this court dismissed Appellant's appeal with costs to the Respondent/Applicant.
2. Subsequently on 24th May, 2021, this court ordered that Kshs. 700,000/- deposited by the Appellant with Kenya Commercial Bank, Meru Branch be released to Applicant's advocate Ms. Mwirigi Kaburu Advocates.
3. Afterwards and more particularly on 31st May, 2021, Appellant filed a notice of motion for stay of execution of attachment of warrants in **MERU CMCC NO. 40 OF 2019** seeking to avoid payment of auctioneer charges and also to pay costs in the lower court and in the appeal in instalments. A temporary stay order was granted on 03rd June, 2021.
4. The application is based on grounds among others that the Respondent has obtained warrants of attachment for Kshs. 943,319/- which includes Kshs. 700,000/- deposited in the joint names of both advocates and further on the ground that Applicant has not refused to pay costs.
5. The application is also supported by an affidavit sworn by the Appellant on 02nd June, 2021 in which he reiterates the grounds on the face of the application.
6. The application is opposed on the basis of grounds of opposition dated 19th July, 2021. Respondent contends that having dismissed the Appellant's appeal, the court was *functus officio*, it has no jurisdiction to stay execution of warrants validly issued by the trial court and further that costs which the Appellant seeks to pay in instalments have not been taxed.
7. I have considered the application in the light of the supporting affidavit, the grounds of opposition and submission on behalf of both parties.
8. As I have stated above, this court has already rendered its decision in this matter and dismissed the appeal. This application raises new issues that Appellant did not raise in the appeal and this court having heard and determined the appeal is not seized of jurisdiction to determine those issues. Further the dismissal of the appeal resulted in this court confirming the orders of the trial court. I am in agreement with the Respondent's submission that this court is *functus officio* and any dispute concerning the warrants of attachment ought to be tried by the trial court.
9. In the end, it is hereby ordered:

1. The order of stay of execution of warrants dated 03rd June, 2021 and issued on 04th June, 2021 is set aside

2. The application dated 31st May 2021 is dismissed with costs to the Respondent

DATED AT MERU THIS 30TH DAY OF SEPTEMBER,2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Appellant - Ms. Otieno for M/s Maitai Rimita & Co. Advocates

For Respondent - Mr. Mwirigi for M/s Mwirigi Kaburu & Co. Advocates