

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS APPLICATION NO. 478 OF 2016

FRANCIS MO KADIMA t/a KADIMA & CO. ADVOCATES.....APPLICANT

AND

SUKARI SACCO SOCIETY LTD.....RESPONDENT

AND

IGARE AUCTIONEERS.....AUCTIONEER

RULING

1. What is for determination is a Motion, by the applicant herein, dated 9th September 2020. It principally seeks stay of execution of the decree in the matter, pending finalization of the receivership process of Mumias Sugar Company, hereafter referred to as the Company, which is heavily indebted to the respondent, from which the respondent states it would be able to settle the decretal amount. There is also a prayer for declaration that the proclamation by the auctioneer was improper, and that an order should issue restraining it.
2. The grounds upon which the application is premised, and which are aligned to the facts deposed in the supporting affidavit, sworn on 9th September 2020, are set out on the face of the application. The respondent acknowledges the debt and the decree, and expresses willingness to settle it. It is averred that most of the members of the respondent were farmers and employees of the Company, which is under receivership, a situation which has affected the operations the respondent given that the Company had not paid for cane supplied to it by farmers and dues for employees. It is averred that the Company owes the respondent sums of money in excess of Kshs. 318, 000, 000.00, and supporting documents have been exhibited. It is averred that execution would cripple the respondent. It is averred that the auctioneer had proclaimed movable assets of the respondent, based on a schedule, which is said to be internal to the respondent, and which it is averred must have been obtained illegally.
3. The respondent, in response, by way of an affidavit sworn on 30th September 2020, admits that the Company was under receivership, but asserts that there was no privity of contract with respect to the contractual arrangements between him and the respondent. He refers to one of the letters attached, which had communicated about the unfreezing of an account the Company, on the understanding that the Company would remit Kshs. 5, 000, 000.00 monthly to settle the debt it owed the respondent. He argues that from these amounts the respondent ought to have settled a portion of the debt. He opines that the Company's debts were so colossal that there was no hope of reviving it. He further argues that the respondent had not established what substantial loss it would suffer should its goods be attached.
4. The application was canvassed by way of written submissions. I have read through them and noted the arguments made. It is common ground that the applicant has obtained a decree in his favour, against the respondent. The respondent acknowledges the debt, and expresses willingness to settle it, once the Company pays it a colossal sum of money that it owes it. I have been told of the link between the respondent and the Company, but no proof was provided. I would agree with the applicant, that there was no private of contract with the Company, and in any case, the respondent has not provided proof that it is a secured creditor, and that there were chances that the Company was salvageable, for the stay sought is not limited in duration.
5. I am not persuaded that there is any merit in application dated 9th September 2020, and I hereby accordingly dismiss it with costs.
6. The orders made herein shall apply to files in Kakamega HC Miscellaneous Civil Application Nos. 480, 482, 486, 487, 490, 493 and 498 of 2016 where similar applications were made for stay of similar decrees, pending the coming out of receivership of the Company, and where the parties thereto are the same. It is so ordered.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 26th DAY OF NOVEMBER.. 2021

W MUSYOKA

JUDGE