



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITUI
CIVIL MISC. APPLICATION NO. 96‘B’ OF 2019
(FORMERLY HCC.A 9 OF 2019)

LIVINGSTONE MUSYOKA.....APPLICANT

VERSUS

APHIA WAMBUA.....RESPONDENT

R U L I N G

1. The origin of this matter is that on the **16th January, 2019**, the trial Court pronounced itself in its Judgment that was in favour of the Respondent. Being dissatisfied with the decision of the Court, the Applicant preferred an Appeal and filed an application for stay of execution. After consideration of the application, this Court allowed it on condition that the Applicant pays the Respondent **50%** of the decretal sum and the balance (**50%**) to be deposited in a joint interest earning account in the names of the Advocates that were representing the parties.
2. The Applicant now seeks injunctive orders to issue restraining the Respondent from executing the decree or any part thereof issued in **CMCC 116 of 2018, Kitui** or stay of further execution thereof.
3. Secondly, he seeks clarification and interpretation of the Court Ruling of **2nd October, 2019** to the effect that the amounts payable be deposited in an interest earning bank account do not include any interest and costs.
4. The application is premised on grounds that the Appellant has fully complied with the conditions set by the Court for grant of stay of execution; the Respondent has misinterpreted the Ruling of the Court dated **2nd October, 2019** by insisting that the Appellant should pay interest and costs and unless an order of stay is issued, the Respondent is likely to carry out an illegal execution of the decree in **CMCC No. 116 of 2018**.
5. In response thereto, the Respondent swore an affidavit where he deponed that the application that seeks an injunction is misconceived, brought out of ignorance of the law hence unnecessary in the proceedings. That the Ruling delivered on **2nd October, 2019** was clear hence requires no interpretation. That the Applicant chose to pay and deposit the Judgment sum and therefore has not intended to comply with the Court order.
6. It is urged by the Applicant that at the time of the Ruling there was no decree hence the amount which was definite and which could form the basis of the application of the default clause was **Kshs. 700,000/=**

that had been disclosed to the Court.

7. I have considered arguments of both parties.

8. The impugned order of this Court provides thus:

“In the premises, I grant stay of execution on condition that the Applicant pays the Respondent 50% of the decretal sum and the balance thereof to be deposited in an interest earning account in the names of the Advocates of both parties herein within fourteen (14) days.”

9. The stated figure that was disclosed to the Court as argued by the appellant, **Kshs. 700,000/=** was the principal sum stated in the Judgment of the trial Court.

10. A Judgment is a decision of a Court regarding rights and liabilities of parties in a legal action. The trial Court having considered the case before it reached a decision based on reasons that were given. It ruled thus:

“(4) I hereby order the defendant to pay Kshs. 700,000/= within 30 days.

(5) Costs of the suit to the Plaintiff.”

The Judgment thereof had to be translated into a decree so as to make it capable of execution.

11. The decretal sum is what is ultimately documented in the decree, which comprises the principle sum, interest, Court fees, disbursement and costs. In the instant case, per what the learned trial Magistrate pronounced, the decretal sum was the stated **Kshs. 700,000/=** plus costs.

12. To issue an injunctive order, a Court of law is required to balance the rights of a party to act in a certain manner. The order herein was made by the Court which was specific and required no interpretation. In the premises, the order sought is misconceived.

13. Accordingly, it is dismissed with costs to the Respondent.

14. It is so ordered.

Dated, Signed and Delivered electronically through Skype this 27th day of May, 2020.

L. N. MUTENDE

JUDGE