



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL CASE NO.17 OF 2015

EUNICE CHEPKOECH BETT

(Suing as Administrator and/or Personal representative of .

JOSEPH MALAKWEN BETT (Deceased).....PLAINTIFF/RESPONDENT

VERSUS

CHARLES NG'ENY.....RESPONDENT

R U L I N G

1. The Application coming for consideration in this ruling is the one dated 23/7/2020 seeking the following Orders:-

- (i) **THAT** the Application be certified urgent and be heard Ex-Parties (SPENT)
- (ii) **THAT** the Court be pleased to review its Orders dated 22/7/2020.
- (iii) **THAT** costs of this Application be provided for.
- (iv) **THAT** the Respondents do meet the costs of the Application.

2. The Application is based on the grounds on the face of it and supported by the Affidavit of EUNICE CHEPKOECH BETT (the Applicant) sworn on 23/7/2020 in which she deposed that on 22/7/2020, this Court delivered a ruling in the Application dated 22/6/2020 and did not mention Auctioneer's charges due to an inadvertent error which deserves to be corrected for the ends of Justice not to be defeated.

3. The Defendant/Respondent opposed the Application and filed a Replying Affidavit stating that the Application dated 23/7/2020 does not show any ground upon which a review can be granted.

4. Further that the Court Ordered release of the goods which have not been released to date despite the attached been lifted.

5. The Defendant/Respondent further submitted that the Applicant has not come to Court with clean hands and further that the process of attachment was levied without compliance with the law as it was done without ascertainment of costs which is contrary to Section 94 of the Civil Procedure Act and that the same is illegal and unprocedural.

6. The Defendant/Respondent further submitted that there is nothing new that the Applicant has discovered, and neither is there an error on the face of the record that can entitle the Applicant to have the Order reviewed as the court must have taken into Account the unlawful Execution in declining to order the Defendant/Respondent to pay auctioneers costs.

7. The parties were directed to file submissions in the Application which I have duly considered. The Application dated 22/6/2020 was allowed in the ruling dated 22/7/2020 in the following terms.

- (i) **THAT** half the decretal sum be deposited in an interest earning Account held by the two Counsels for the parties
- (ii) **THAT** the said Account be opened within 30 days of this date.

(iii) THAT the attachment and sale of the proclaimed property be and is hereby lifted.

(iv) THAT the costs of this Application be born by the Applicant.

8. I find that the issue of Auctioneers' costs was not canvassed by the parties and therefore there is no basis for saying that the Court declined the order costs for reasons that the attachment was not in accordance with the law.

9. This court ordered the Applicant in the Application dated 22/6/2020 to pay the costs of the said Application and by implication all costs coincidental to the attachment including auctioneer's charges.

10. The omission to order payment of auctioneer's charges can be corrected under Section 99 of the Civil Procedure Act.

11. Section 99 of the Civil Procedure Act provides that;

"Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties"

12. I accordingly find that the Auctioneer's costs were omitted from the order and I order that the Applicant in the Application dated 22/6/2020 pays the Auctioneer's charges to be agreed upon by the parties or assessed by the Deputy Registrar of the Court.

13. The Application dated 23/7/2020 is accordingly allowed and each party to bear its own costs of the said Application.

Delivered, signed and dated at Kericho this 23RD day of October 2020.

A. N. ONGERI

JUDGE