



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION NO. 553 OF 2016

GLOBAL VEHICLES (K) LTD. APPLICANT

VERSUS

LENANA ROAD MOTORS LIMITED RESPONDENT

RULING

1. The applicant through an application by way of Notice of Motion filed on 16th August, 2016 brought under Order 1 rule 6, Sections 1A, 1B, 3A and 63(e), Order 5 rule 17(4) of the Civil Procedure Rules and all enabling provisions of the law seeks the following orders:-

- (i) That the Honourable court enters judgment for the amount of Kshs. 585,138.75 in the suit herein in terms of the certificate of costs dated 14th June, 2016;
- (ii) That pursuant to the judgment, a decree be issued for enforcement execution; and
- (iii) Costs be in the cause.

2. The application is predicated on the grounds on the face of it and the supporting affidavit of Philip Ojode, Advocate.

3. Mr. Gathuku, Learned Counsel for the respondent filed grounds of opposition on 3rd October, 2016 to the effect that:-

- (i) The application is misconceived, incompetent and an abuse of the court process;
- (ii) The application is brought under the wrong provisions of the law relating to executions of court decrees;
- (iii) The application is premature as the plaintiff/applicant is yet to tax his costs in the High Court; and
- (iv) That the application is frivolous and should be dismissed with costs.

APPLICANT'S SUBMISSIONS

4. Mr. Ojode Learned Counsel for the applicant informed the court that the applicant filed HCC No. 100

of 2014 in Mombasa which was dismissed. The applicant thereafter filed Appeal No. 7 of 2015 in the Court of Appeal at Mombasa. The appeal was allowed and a sum of Kshs. 19.5 Million was awarded to the applicant. The Deputy Registrar, Court of Appeal taxed the bill at the sum of Kshs. 585,138.75. Counsel sought that judgment be entered against the respondent for the sum awarded by the Taxing Master.

RESPONDENT'S SUBMISSIONS

5. Mr. Gathuku opposed the application and submitted that Mr. Ojode had filed a similar application being Mombasa High Court Miscellaneous Application No. 561 of 2016 which was struck out by Judge P.J. Otieno. Counsel further stated that the applicant's Counsel could execute without having to file the present application and relied on section 4 of the Appellate jurisdiction Act.

APPLICANT'S RESPONSE

6. Mr. Ojode clarified that the application that was heard by Judge P.J. Otieno was for lifting the veil of the respondent and was not similar to the present application. He further stated that he did not have a decree hence the present application.

ANALYSIS AND DETERMINATION

The issue for determination is if the applicant is entitled to judgment being entered against the respondent and to issuance of a decree thereof.

7. This court notes that the provisions of Order 1 rule 6 and Order 5 rule 17 (4) of the Civil Procedure Rules are not in any way applicable to the present application. Mr. Gathuku is therefore right in that regard. In addition to the foregoing provisions, Mr. Ojode's application is however properly grounded on sections 1A, 1B and 3A and 63(e) of the Civil Procedure Act. Section 3A of the said Act provides that nothing in the Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. This court will as such consider if the application is merited or not.

8. Section 51(2) of the Advocates Act provides that:-

“The certificate of a taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

9. In this matter, no reference was filed to challenge the taxation. I therefore hold that the certificate of taxation dated 14th June, 2016 is final and enforceable. See **Njeri Onyango & Co. Advocates vs Ufundi Co-operative Society** [2016] eKLR and **Lubulellah & Associate Advocates vs N.K. Brothers Limited** [2014] eKLR.

10. Mr. Gathuku submitted that the applicant had filed a similar application in Mombasa High Court Miscellaneous Civil Application No. 561 of 2016. This court has perused the said file for purposes of ascertaining the said submission and established that the application that Judge P.J. Otieno heard was for lifting of the veil of the defendant/judgment debtor. That application bears no semblance to the present application.

11. Mr. Gathuku cited section 4 of the Appellate Jurisdiction Act. The said section provides as follows:-

“Any judgment of the court of Appeal given in exercise of its jurisdiction under this Act may be executed and enforced as if it were a judgment of the High Court.”

12. Section 25 of the Civil Procedure Act provides that,

“the court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.”

It is thus clear from the foregoing provisions that the applicant is backed by the law in bringing this application.

13. It is my finding that the application filed on 16th August, 2016 has merit. For the foregoing reasons, Judgment is hereby entered in favour of the applicant as against the respondent for the sum of Kshs. 585,138.75, with interest at court rates. A decree shall issue for the said amount. Costs of the application are awarded to the applicant.

It is so ordered.

DELIVERED, DATED and SIGNED at MOMBASA on this 27th day of January, 2017.

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Gathuku for the respondent

No appearance for Ojode & Co. Advocates for the applicant

Oliver Musundi Court Assistant