



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 76 OF 2016

KOSAR SULTANA.....PLAINTIFF/ RESPONDENT

VERSUS

KHALID IQBAL.....DEFENDANT/APPLICANT

RULING

1. This Ruling relates to a Notice of Motion Application dated 19th May 2017, brought under the provisions of Section 1A, IB, 3A, 34 and 80 of the Civil Procedure Act, Order 22 Rule 1(c), 7(3), 22, and Rule 68 and Order 45 Rules 1 & 2, of the Civil Procedure Rules 2010.

2. The Applicant is seeking for orders that:-

- (a) There be a stay of execution of the decree in any manner whatsoever by the Plaintiff or her agents in any manner whatsoever or howsoever pending the determination of the Application and the order be served upon Kenya Shield Auctioneers;*
- (b) The Ruling dated 29th November 2016 granting the Plaintiff interest at Court's rates of 12% be reviewed to reduce the interest rate to simple interest at the rate of 4% per annum from the date of filing suit on the decretal sum/balance of GBP 225,000;*
- (c) In satisfaction of the decree, the Court do order the transfer of the property Unit 10 and 11 Urham Apartments L.R. 1/1159 situated in Wood Avenue, Nairobi valued at Kshs. 29,750,000.00 which sum be converted at the prevailing exchange rate into British Sterling Pounds at the time of execution of the transfer to the Plaintiff or her nominee;*
- (d) The Defendant be ordered to meet the stamp duty and government valuation expenses necessary to facilitate the transfer;*
- (e) The Plaintiff be ordered to forthwith return the title documents relating to Apartment number P 9 on L.R. No. 1/1159 Wood Avenue, Kilimani held as a lien for the debt to enable the Defendant sell the property to settle the decretal balance;*
- (f) The decretal balance be paid in Kenya shillings upon conversion at the prevailing British Sterling pound exchange rate upon terms to be mutually agreed within 30 days of the registration of the transfer failing which the Parties be at liberty to apply on the installments of payment;*
- (g) There be no order as to costs and the Court be at liberty to make any orders it deems fit in the interest of justice.*

3. The Application is premised on the grounds on the face of it and a Supporting Affidavit dated 1st September 2017, sworn by Khalid Iqbal, the Defendant/Applicant herein. He averred that, on 18th July 2016, the parties entered into and recorded consent on the main suit, for the sum of GBP 225,000.00 and costs of the suit, on undefended scale. However they could not agree if interest was payable as the Applicant's Advocates argued that, interest is not payable by Muslim Brethren and therefore the issue of what rate of interest should be applicable was not addressed by the parties though it was a fundamental and novel point.

4. The Court ordered the parties to file submissions on the issue of interest rates applicable on the amount claimed, and on 29th November 2016, the Court delivered a Ruling and ordered that, Court interest payable was the Court rates of 12% per annum on a loan, based on sterling pounds. That order is causing the Applicant financial distress as it exaggerates the debt.

5. The Applicant averred that the prevailing interest rates on sterling pounds are always single digit as shown below:-

(a) The 2016 British pound sterling LIBOR rates for 12 months averaged 0.891%.

(b) In Kenya, as obtained from the internet, I & M Bank gives a rate of 1.75% on sterling pound fixed deposits on amounts between 100,001-500,000 for a tenor of between 6-12 months.

6. That although he had filed a Notice of Appeal but he decided not to pursue the matter and instead instructed his Advocates to engage the Respondent's Advocates with a view to settling the matter by offering one of his properties, in substantial settlement of the decree, and also negotiate the rate of interest.

7. Subsequently by a letter dated 7th October 2016, the Applicant instructed his Advocates to offer his Apartment P 10 on LR. No. 1/1159, Wood Avenue, registered in the his Company's name Richmond Investments Ltd, to be transferred for a consideration of Kshs 29,750,000.

8. That the gist of that letter is that:-

(a) The sum of Kshs 29,750,000 be converted into British Sterling Pounds at the time of execution of the transfer;

(b) The original title documents for another apartment be released to the Applicant

9. As a result of the aforesaid, the valuation report for the Apartment, dated 5th September 2016, comprising of units 10 and 11, P10 on L.R. No. 1/1159, Wood Avenue was prepared by Redfean Valuers. However the Respondent's Advocates doubted the valuation report vide though a letter dated 11th October 2016, and asked that other valuations be considered.

10. By a letter dated 25th October 2016, the Applicant's Advocates advised the Respondent that she was at liberty to obtain her own valuation at her costs and meet the transfer costs. The Respondent's Advocates by a letter dated 19th January 2017, agreed to the proposal to appoint a joint valuer as discussed on 23rd June 2016.

11. By a further letter dated 28th March 2017, the Applicant's Advocates responded and clarified that the Apartment to be transferred comprised of two units. At the same time, the issue of negotiating on the issue of interest was raised and draft consent was enclosed in the letter. However, the negotiation collapsed on 5th April 2017, as the Respondent's Advocates declined to accept the transfers and her Advocates promised to revert with a substantive response on the issue of interest, and subsequently several reminders were sent on 25th April and 11th May 2017 culminating in the letter dated 15th May 2017, but all in vain and eventually the Respondent's former Advocates communicated that instructions had been withdrawn.

12. The Applicant therefore prays that:-

(a) That his property comprising units 10 and 11, P10 on LR No. 1/1159, Wood Avenue be transferred to the Respondent or its nominee based on the valuation of Kshs 29,750,000, to be converted into British Sterling Pounds at the time of execution of the transfer. The title documents can be held by the Applicant's Advocates on an express undertaking that they shall hold the title documents pending the completion of the transfer;

(b) The Applicant shall meet all the costs of the transfers to the exclusion of the Respondent's Advocates costs for conveyancing;

(c) The Respondent be ordered to forthwith return the title documents relating to the Applicant Apartment No. P9 on LR No. 1/1159 Wood Avenue, Kilimani held as a lien for the debt. That the Applicant is still looking for a buyer so as to meet the short fall after the bigger apartment is transferred to the Respondent;

(d) That the Court varies the rate of interest to the prevailing commercial interest rates on British Sterling pounds currently set at about 1.75% at the time the Applicant's Advocates wrote the letter offering 6% as the rate of interest, they had considered that the sterling pound rate was lower than the dollar rate. The Applicant is willing to round this simple interest at 2% per annum.

13. The Applicant averred that on or about 16th May 2017, he received copies of execution Application, filed by the Respondent instructing Kenya Shield Auctioneers to recover the sum of Kshs 37,520,000 and costs of Kshs. 550,257. Upon perusal of the Court file he found out that, despite the 10-day grace period, warrants were issued to Kenya Shield Auctioneers on 17th May 2017 to recover Kshs 551,682.05(sic) in respect of taxed costs. Yet the Applicant's Advocates have not been served with any decree or certificate of costs and therefore execution process undertaken by the Respondent is flawed. It is also unconscionable for the Respondent to take out warrants when she holds the Applicant's title document as a lien.

14. The Court should establish how warrants were issued when no decree had been extracted or certificate of costs and grant stay of execution as the execution process is irregular and the Applicant will suffer unnecessary costs and expenses. The moveable items will not even meet the decretal amount, the computation of which amount is also suspect.

15. The Applicant reiterated that:-

(a) The execution process is unlawful as no account has been given as to how the decretal sum of GBP 225,000.00 was converted to Kshs 33,000,000, as the applicable exchange rate was not given. That using a simple calculation, the Respondent's conversion rate comes to Kshs 147, while the Central Bank of Kenya mean rate as per the Daily Nation of 19th May 2017 is Kshs 133.74.

(b) There is a mistake or error on the face of the record by the Judge in awarding 12% interest on a sterling pound debt that fluctuates based on the exchange rate when it is converted into Kenyan Shillings.;

(c) The reasonable rate based on LIBOR and the rate offered on fixed deposits in Kenya is about 2% per annum. In any event, such a rate should not exceed 4% if one were to apply the formula used by the Central Bank of Kenya, in computing interest on fixed deposits and loans on Kenya Shillings lending;

(d) The issue of the applicable rate of interest was not argued at the time the matter was argued as the arguments focused on whether interest was chargeable on a friendly lending between Muslim brethren guided by the Holy Quran;

(e) The delay in applying for review was on account of the parties trying to resolve the issue of interest amicably;

(f) The Honourable Court has jurisdiction to stay execution of the decree pending determination of the Application

(g) No prejudice will be caused to the Respondent if the immoveable property is transferred as it will gain value and attract rental income.

16. However, the Application was opposed vide a Replying Affidavit dated 24th May 2017 sworn by Kosar Sultana, the Respondent. She averred that Judgment was delivered on 29th November 2016; and on 22nd February 2017 the costs were taxed by consent, at Kshs 549,232.50 and stay of execution granted, which is now over 3 months, yet the Advocate for the Applicant still seeks more time. The Court had earlier awarded her British Sterling pounds Two Hundred & Twenty Five Thousand (£ 225,000).

17. The Respondent averred that the rate claimed is based on the Court warrants that reflect the amount in British Sterling Pounds and not Kenya Shillings. Thus it is the Court to interpret and calculate the right figure, so that the Respondent can have a way forward. Even then, the Applicant's Advocates knows how to calculate but he just wants to buy time.

18. The Respondent submitted that she is opposed to the review of the interest, as the Court was very lenient to the Applicant by awarding interest from the date of filing the suit instead of the date of advance of money on 20th September 2015. That the Judgment debtor/Applicant is not a trusted person and all of his properties including Plot No. L.R. 1/1159 and even the cars are not in his name.

19. The Respondent argued that her desire is to recover Thirty eight Million Shillings (Kshs 38,000,000), and she is ready to surrender the title deed to Court so that the Court can assist her get her money from the Applicant. She submitted that this Application is brought in bad faith as the Respondent does not indicate how he will pay the decretal amount but is only disputing the interest, which is an issue already, dealt with by the trial Court.

20. Therefore the Application dated 19th May 2017 should be dismissed with costs and she be given orders to arrest the Applicant and commit him to civil jail so that he can satisfy the decretal amount in full. She reiterated that the Applicant wants to run away from Kenya; therefore the Court should order his passport be deposited in Court until the decretal amount is paid.

21. In response, the Applicant swore a further Affidavit dated 19th June 2017, in which he deposed that, he is a director of Richmond Investments Limited, which owns Apartment Number P9 erected on LR Number 1/1159, Nairobi and by an Agreement for sale dated 15th June 2017, the Company has sold the suit property.

22. By a letter dated 16th June 2017, the firm of Raffman Dhanji Elms & Virdee representing the Purchaser has requested for the original title documents over the suit property to complete the sale. The Applicant reiterated that, he intends to use the proceeds of sale to settle the decretal amount and remit all the payments received from the purchasers' Advocates to the Respondent within 5 days of receipt. That he had to fly to London on an emergency to attend to his sick wife but will be back sometime in mid-July 2017. He requested the Court to order the Respondent to forthwith release the original title as it is required to complete the sale Agreement.

23. He further averred that he would remit the first installment of Kshs 3 million in sterling pounds after conversion on or before 20th July 2017 and that the Respondent should provide the account details where the payment in sterling pounds can be made.

24. After the filing of the Affidavit and the responses as aforesaid, the Applicant filed submissions in which he averred that there was no delay in filing this Application and a delay if any was because the parties were negotiating the issue of interest.

25. The review Application is predicated on the basis that there was an error on the face of the record and for other sufficient reasons, as evidence has been provided to show the applicable rates of interest have been charged on both dollar and sterling pound currencies.

26. That under Article 159(2)(3) of the Constitution, the Court is enjoined to be guided by the principle and purpose and principle of the Constitution and Article 40(3) enjoins the State not to deprive a person of property of any description or of any interest in or right over property of any description.

27. The Applicant argued that applying interest at 12%, when local banks offer 1.75% on fixed deposits on sterling pounds amounts to a difference of 685.71% increase. The rate of 12% is only just in respect of Kenya Shillings, since foreign currencies fluctuate to the Kenya Shillings on a regular basis. The Plaintiff/Respondent has applied strange conversion rates and this has led to exaggerated and illegal demands that bring about uncertainty and confusion. Justice demands consistency in executing a judgment where the decretal amount to be recovered is certain.

28. The Applicant submitted that the Court has unfettered discretion under Section 80 of the Civil Procedure Act and Order 45 Rule 1 & 2 of the Civil Procedure Rules to allow a review Application after looking at evidence adduced to. Reliance was placed on the Court of Appeal case of; **VRM vs MRM & Another (2006) eKLR** where the Court summarized the principles that govern review as follows:-

(a) The Power to review is not confined to mistakes or errors in the decree. The power is given by section 80 of the Civil Procedure Act and Order 44 of the Civil Procedure Rules;

*(b) Any other sufficient reason need not be analogous with the other grounds set out in the Rule because such a restriction would be a clog on the unfettered right given to the Court by section 80 of the Civil Procedure Act. The current position would, then, appear to be that the Court has unfettered discretion to review its own decrees or orders for any sufficient reason – **Wangechi Kimita & Another vs Mutahi Wakabiru (C.A. No. 80 of 1985) (Unreported)**.*

(c) In our view, it is not incumbent upon the judges at the stage of the hearing of an Application for review, such as was before the judge here, to inquire fully into the correctness of facts. It would suffice if the Court is satisfied that the facts brought up after the event are such as to merit a review of the judgment.”

29. The Applicant cited several authorities on a single digit interest rates applicable on foreign currency judgments. The case of; **Skylink Aero management K. Ltd vs Aviatrend Ltd (2008) eKLR** where Hon. Justice Waweru entered judgment for the Plaintiff in the sum of USD 186,000.00 and held on the question of interest as follows;

“Regarding interest, I will award the same from the date of filing suit at 3% per annum if the principal sum shall be paid in US Dollars and at Court rates if it shall be paid in Kenya Shillings.”

30. That the case of; **Finejet Limited vs Five Forty Aviation Limited (2012) EKLR** was also cited where Hon. Justice Havelock observed that local banks quote differing rates on interest and stated:

“As I understand it, local commercial banks do quote differing rates of interest for borrowing in local currency or in a currency offshore. Kenyans can borrow from local banks in US Dollars but such borrowing always tends to be at a lower rate for US Dollars than for Kenya Shillings. It seems to me that the fairest way that I can find in fixing the interest rate in this matter is to direct that the judgment amount do attract a rate of interest that a local commercial bank would charge a customer borrowing in US Dollars at the date of my entering judgment being 14th February 2012.

Consequently and in accordance with Ojwang J’s guideline in his said judgment, I direct that the rate of interest to which the Plaintiff will be entitled on the judgment amount of US Dollars 656,304.49 will be the rate of the US Dollar LIBOR rate pertaining as at the 14th February 2012.

As I have already stated above, the judgment amount has been detailed in US Dollars. The Plaintiff did not pray for the judgment sum to be paid in Kenya Shillings. In my opinion, it is the prerogative and indeed the responsibility of the Plaintiff who has obtained an award in US Dollars to arrange with its bank to have the same converted into Kenya Shillings if it should so wish. However, it may be that the Plaintiff in this matter may wish to choose to be paid in Kenya Shillings, in which case, I would have thought that the pertinent conversion rate would be the mid-rate as declared by the Central Bank of Kenya as at the date of judgment – 14th February 2012.”

35. The Plaintiff/Respondent filed submissions dated 5th July 2017 in which she reiterated that the Defendant/Applicant is a flight risk who is likely to leave the jurisdiction of the Court and not come back. Therefore it will be very expensive to serve him outside the Court jurisdiction. Further, that the value of the property offered by the Applicant is exaggerated, so as to create a false impression that it can successfully satisfy the decretal amount. Yet, the said property is not sufficient to satisfy the sum, in that the purchase price (based on the sale Agreement annexed to the Applicant’s Supplementary Affidavit) shows that the property is valued at, Kenya Shillings Twenty million (Kshs 20, 000, 000) and the Applicant owes more than Kshs 20, 000, 000 but has not explained how he will meet the deficit of Kenya Shillings Thirteen Million (Kshs 13,000,000.)

36. The Respondent further submitted that, if the Applicant does not have any other property from which he can settle the decretal sum, then he should opt for appointment of a Receiver by instituting bankruptcy proceedings against himself, in which case the Respondent be a secured creditor. Reference was made to Section 38 of the Civil Procedure Act, Cap 21 Laws of Kenya.

37. It was further submitted that the Applicant bears the burden to prove that the only asset he has to satisfy the decretal sum is the title deed. Reference was made Section 107 of the Evidence Act and the case of; **Kirugi & Another vs Kabya & 3 Others (1987) KLR 347.**

38. The Respondent further submitted that an Application for review of a judgment or a ruling under Order 45 of the Civil Procedure Rules, 2010 has to be made without undue delay and where there is a delay, reasonable explanation must be given. In the instant case, the Applicant/Defendant seeks review a Ruling delivered on 29th November 2016, and the Application for review is dated 19th May 2017 and filed on 22nd May 2017. The delay is in of aggregate more than 5 and half months and need to be explained. The explanation advanced by Applicant is totally misleading, as a party cannot purport to be resolving, the issue of interest through negotiation, which is past the Court’s pronouncement on the same. The only remedy left to him is an Appeal.

39. That the case of; **Godfrey Ajuang Okumu vs Nicholas Odera Opinya HCCC No. 337 of 1996**, was cited where the Court held inter alia that:-

“An Aggrieved party seeking a review of a decree or order on whatever basis must apply without unreasonable delay.”

40. Similarly in the case of; **Abdulrahman Adam Hassan v National Bank of Kenya Ltd HCCC No. 446 of 2001**, an unexplained delay of three months was found to be unreasonable and in the case of; **Kenfreight (E.A.) Limited vs Star East Africa Company Limited (2002) 2KLR 783**, Onyango Otieno J (as he then was) found that a delay of three months was unreasonable and disallowed an Application for review.

41. In the case of; **Francis Origo & Another vs Jacob Kumali Mungala Civil Appeal No. 149 of 2001 (2001) LLR 4720, (2005) 2 KLR 307** Court of Appeal (Omolo, O’Kubasu & Githinji JJAs) stated;-

“In an application for review, an applicant must show that there has been discovery of new and important matter or evidence which after due diligence was not within his knowledge or could not be produced at that time or he must show that there is some mistake or error apparent on the face of the record or that there was any other sufficient reason AND most importantly, the applicant must make the application for review without unreasonable delay.” (emphasis added)

42. That a similar holding was made in the case of; **Muyodi vs Industrial and Commercial Dev. Corp and Another (2006) 1 EA 243**, where the Court emphasized that an Application for review must be brought to Court without unreasonable delay.

43. The Respondent submitted that, in light of the fact that the delay herein is more than five (5) and half months, and is not explained, the Application should be dismissed. That, the Applicant has not demonstrated with sufficiency why the Court should order the release of the title. Neither has he demonstrated honesty in ensuring that he settles the decretal amount owed to the Respondent, therefore the title should not be released. A person, who seeks Equity remedy, must have clean hands.

44. Before this Application was heard and determined the Applicant filed another Notice of Motion Application dated 31st August 2017, seeking for stay of execution of the decree herein, by the Plaintiff/Respondent and/or his agent, in particular Nyalgunga Traders Auctioneers. Further that the proclamation by the said Auctioneers be set aside for contravening the Auctioneers Rules of 1997, and the Auctioneer be summoned for cross examination on how he carried out the proclamation, and in the event that, the proclamation is nullified, the Court do make other orders as it deems appropriate against the Auctioneer and condemn the Auctioneer to pay costs.

47. On 1st September 2017, the Defendant/Applicant filed yet another Notice of Motion Application seeking for orders that;

(a) Michael Nyalgunga trading as Nyalgunga Trading Auctioneers be restrained from selling the Defendant’s moveable goods or in any manner whatsoever proceeding with execution of the decree by obtaining breaking orders to access the Defendant’s premises pursuant to the proclamation of attachment dated 24th August 2017;

(b) An order directing the firm of Raffman Dhanji Elms & Virdee Advocates to forthwith remit in Sterling pounds the equivalent of Kshs. 6,500,000 to Mohammed Yusuf Deen and all future installments as and when they fall due pursuant to the Agreement for sale dated 15th June 2017 in settlement of the decretal sum in terms of their undertaking dated 26th July 2017.

(c) Michael Nyalgunga trading as Nyalgunga Traders Auctioneers be ordered to forthwith return the Defendant’s motor vehicle KBY 838A to the Defendant’s premises;

(d) An order be issued summoning Michael Nyalgunga trading as Nyalgunga Traders Auctioneers to explain the circumstances surrounding the purported proclamation upon the Defendant’s goods and the attachment of the Defendant’s goods before the expiry of the Notice period;

(e) That the Court be pleased to consider suspending or revoking the license and/or imposing a fine on Michael Nyalgunga trading as Nyalgunga Traders Auctioneers in terms of Section 28 of the Auctioneer’s Act;

(f) The Costs of both Applications be borne by the Plaintiff and Michael Nyalgunga trading as Nyalgunga Traders Auctioneers on a full indemnity basis and on the higher scale.

48. On 21st September 2017, the Court considered the Application dated 1st September 2017 and the orders sought therein and directed the Parties to negotiate the matter in relation to the following issues;-

(i) how the principal sum owing to the Plaintiff will be paid;

(ii) the issues of interest rates applicable and

(iii) how execution was carried out and the need of examination of the Auctioneer on oath; and

(iv) the release and/or the detention of the motor vehicles seized.

49. On 18th October 2017, when the matter came before the Court for mention, the Court was informed by the Parties that, they were not able to reach an agreement and the Court directed that the Ruling on the issue of interest rate would be given on the 23rd October 2017. That if the execution was to proceed, it should be done lawfully, legally and procedurally. If it has been levied unlawfully, it should be set aside and proper execution takes place. Further as the Respondent has rejected the payment in installment the same was laid to rest.

50. Be it as it were, it is evident from the afore going that, there are at three Applications pending in this matter;

(a) Notice of Motion Application dated 19th May 2017,

(c) Notice of Motion Application dated 31st August 2017

(b) Notice of Motion Application dated 1st September 2017,

51. The issue of Interest is raised, in the Application dated 19th May 2017. However analysis of these three Applications reveals that they are all seeking for similar prayers, summarized as;-

(i) there be a stay of execution of the decree herein;

(ii) the interest rate ordered payable by the Court be reviewed;

(iii) the Auctioneer named herein be summoned for cross examination on the manner in which he conducted the proclamation of the Applicant's goods and if found culpable his license be ordered revoked

(iv) the Applicant be allowed to satisfy the decree through the transfer of proper named herein;

52. I shall deal first with the issue of execution of the decree herein. There is no dispute that the parties recorded consent, on 18th July 2016, where by judgment was entered in favour of the Plaintiff, as against the Defendant in the sum of £ 225,000, plus costs of the suit, awarded on undefended scale.

53. It is a fact that the decretal sum has not been fully satisfied. In that regard, the Plaintiff/Respondent has all the legal right to enforce the judgment and/or lawfully execute the decree. The fact that the Applicant wishes to satisfy the decree in the manner and mode proposed which has been rejected by the Respondent is not a ground for stay of execution of the said decree.

54. As regards the issue of interest rates, the Court awarded the Plaintiff interest, on the sum awarded from the date of filing of the suit to payment thereof in full at a rate of 12%, being the Court rates. In the Court's considered opinion, there is no error on the face of the record. The subject property is money paid in British Sterling Pounds, the interest should be payable in the same currency. If the principal sum is converted into Kenya currency, then the conversion from one currency to another will be based on the prevailing interest rate in the market at the time of transaction.

55. In the alternative, if the principal sum herein is paid directly in the Kenyan currency, the interest rate will also be paid in the same currency. However, for the purpose of clarity, and the interest rates, having been awarded is at Court rates, the Kenyan currency applies and therefore I order the principal sum be converted into Kenyan currency; attract interest at Court's rate and payable in Kenyan currency.

56. On the issue of transfer of the property mentioned herein to the Plaintiff or her nominee, and the Defendant meets stamp duty, government valuation to facilitate the transfer, and pay the balance of the decretal sum in Kenya Shillings. I find, the Court cannot direct how the decretal sum will be paid. It was advanced in British Sterling Pounds and should be so paid. The Plaintiff has rejected the proposed mode of payment in satisfaction of the decree; therefore the Court cannot force her to accept the transfer of the Property in satisfaction of the balance of the decretal sum.

57. However, as already stated in this matter, if the Plaintiff wishes to execute for the balance of the decretal sum, then she should consider releasing the title document relating to Apartment Number 9 Wood Avenue Kilimani to the Defendant/Respondent.

58. As regards the prayers relating to the manner in which the Auctioneer conducted the proclamation, I find that these prayers are not a subject of this Application. The Court is also aware that the Parties have dealt with that issue, where it was agreed that if the execution is unlawful it should be set aside.

59. It should also be noted that the Auctioneer is not a Party in this matter, and delving into the decision of these issues may prejudice him, as he may be condemned unheard which is against the Rules of Natural Justice. I will therefore not delve into them.

60. However, before I address the specific prayers in the subject Application, I wish to make an observation that from the time the Court delivered its Ruling on 29th November 2016, and the matter basically concluded, there have been more than four Applications filed by the Defendant/Applicant. The Court appreciates the fact that a Party cannot be denied access to a seat of justice.

61. However, a closer analysis of these Applications clearly reveals that they are duplicating prayers therein. It is the Court's considered opinion, that this kind of conduct clogs the justice system and may take unnecessary too much of Court's otherwise unavailable time. This kind of conduct does not encourage expeditious disposal of matters in accordance with overriding objective under the Civil Procedure Act.

62. In conclusion, I find that in view of the fact that the Plaintiff/Respondent has unsatisfied and undisputed decretal sum therefore Court cannot grant prayer (1) of the Application to stay execution of the decree and in any event that prayer was sought pending the hearing and determination of the Application.

63. As regards prayer (2) for review of the interest rates, so that the same be reduced to a simple interest of 4% per annum, no sufficient

reason has been given to support that prayer and I have ruled that there is no error cited on the face of the record therefore, Court upholds its order granting interest at Court rate, save that, if the principal sum is payable in Kenyan currency, then the interest payable will be in Kenyan currency. If the Applicant is dissatisfied with the rate the Court awarded, the legal recourse lies in an Appeal. That particular prayer is thus not granted.

64. The prayer seeking that the property named in prayer (4) of the Application be transferred to the Plaintiff or her nominee is also not allowed, as the Plaintiff has rejected that mode of payment. It therefore follows that prayers (5) and prayer (7) are also declined.

65. As regards prayer (6) on return of the title document held by the Plaintiff, the Court has already made an order in this matter, that, if the Plaintiff wishes to retain the said title documents, then she should not proceed with execution. In the alternative she releases the document and execute for the entire or outstanding amount.

66. The costs of this Application are awarded to the Respondent.

67. Those then orders of the Court.

Dated, delivered and signed in open Court at Nairobi this 14th day of December 2017.

G.L. NZIOKA

JUDGE

In the presence of:-

Mr. Muekefor the Plaintiff/Respondent

Mr. Wamalwa holding brief for Matundura for the Defendant/Applicant

TeresiaCourt Assistant