

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL NO. 14 OF 2015

PANIJ AUTOMOBILES LIMITED

TIMOTHY KIMANTHI NYAMU.....APPELLANTS/APPLICANTS

VERSUS

PATRICK MBOGO MBUI (*Suing as the*

**MADRINE MAKENA MBOGO
(Deceased).....RESPONDENT**

RULING

1. This is an application brought under certificate of urgency dated 4th November 2016 seeking the stay of the warrants of attachment, because they are irregular and improper. The reason being that the conditions imposed by the court for the stay of execution pending the hearing and determination of this appeal were fully complied with. Additionally, the appellants/applicants have stated that the respondent has instructed Giant Auctioneers to issue a 7 days proclamation notice for the sale of the appellants' property.

2. The application is supported by an affidavit dated 4th November 2016. In that affidavit, counsel for the appellants/applicants has deponed amongst other matters that they were dissatisfied with the judgement that was delivered on 3rd March 2015 in favour of the respondent for the sum of Kshs 2,700,000/- plus costs and interest. She has further deponed that the appellants/applicants filed an appeal in the High Court being Embu HCCA No. 14 of 2015, which is still pending in this court for hearing and determination. She has also deponed that as a precondition for stay of execution pending the hearing and determination of the appeal, the applicants were ordered to pay part of the decretal sum of Kshs 800,000/- to the respondent's counsel and the balance of Kshs 1,900,000/- to be deposited in court. She has further deponed that they deposited in court the sum of Kshs 1,900,000/- as ordered by the court pending the hearing and determination of the appeal.

3. She has further deponed that despite there being a stay of execution and a valid appeal, the respondent proceeded to irregularly obtain warrants of sale and instructed the auctioneers to proclaim the applicant's property in execution of the decree. She has finally deponed that the warrants of sale and the notice of proclamation are unlawful and/or irregular in view of a valid order of this court staying the execution pending the hearing and determination of the appeal. She has also deponed that the warrants of sale and notice of proclamation are similarly irregular, because the conditions imposed by this court staying the execution were complied with.

3. It is for these reasons amongst others that the appellants/applicants seek an order of this court to declare the warrants of attachment and sale of the appellants/applicants' property issued on 21st October 2016 against the applicants to be set aside because the said warrants of attachment and sale together with the proclamation were irregularly issues and were therefore unlawful.

4. The appellants/applicants' application is unopposed. I was satisfied that they were properly served and had adequate notice of hearing of this application. The instant proceedings were properly conducted in the absence of the respondent.

5. I find from the unopposed affidavit evidence of the appellants/applicants that the warrants of

attachment and sale including the proclamation by Giant Auctioneers is credible. I therefore find that they were irregularly issued. I further find that they were issued in contravention of a stay order staying the execution in this matter. And for this reason, they are all hereby set aside pending the hearing and determination of the instant appeal.

6. The appellants/applicants will have the costs of this appeal.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **14th** day of **DECEMBER 2016**

In the absence of both the appellants/applicants and the respondents.

J.M. BWONWONGA

JUDGE

14.12.16