



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL MISC. APPLICATION NO. 332 OF 2012

P. M. WAMAE & COMPANY ADVOCATES..... PLAINTIFF

VERSUS

DICKSON DANIEL KARABA DEFENDANT

RULING

1. Dickson Daniel Karaba, the respondent herein, took out the motion dated 30th October 2015, and amended on 1.11.2015 in which he sought for interalia:

1. *That the firm of E. W. Kamuyu & Co. Advocates be granted leave to come on record in this matter.*
2. *That the honourable court be pleased to stay execution of the costs taxed by the taxing master on 7th day of October 2015 pending the hearing and determination of this application.*
3. *That the warrants of attachment issued herein be vacated and the attached goods be unconditionally released.*
4. *That the applicant's personal effects taken by the 2nd respondent in the attached motor vehicle be released immediately and unconditionally to the applicant.*
5. *That the respondent herein be called upon to file accounts of payment of money received.*
6. *That without prejudice to the foregoing the liquidated sums if any found due and owing to be made payable by way of monthly instalments of kshs.500,000/= till payment in full.*
7. *That costs be in the cause.*

2. He swore two affidavits he filed in support of the motion.

3. The applicant filed the replying affidavit of P. M. Wamae to oppose the motion.

4. When the motion came up for inter partes hearing, learned counsels appearing in this matter made oral submissions. I have considered the grounds set out on the face of the motion plus the facts deposed in the affidavits filed in support and against the motion. I have also taken into account the oral submissions of learned counsels. It is the submission of the respondent that the amount of money due to the applicant was settled from the funds received from I.E.B.C paid vide Nairobi H.C Misc. Application no. 368 of 2012 through the firm of Kimani Kiarie & Co. Advocates.

5. It is for this reason that the respondent is of the view that the warrant of attachment and sale should be suspended pending the taking of accounts between the applicant and the respondent. The respondent has also complained that the notice of sale of his attached motor vehicle indicted that the motor vehicle is undervalued at ksh.750,000 yet the market value is ksh.6 million. The respondent further argued that he was never served with any proclamation of attachment as required by the law.

6. The applicant strenuously opposed the motion arguing that the bill of taxation arising from this file is different and distinct from Nairobi H.C. Misc. Application no. 368 of 2011. It is argued that not a single cent has been settled in respect of this file hence the applicant is right in instituting execution proceedings to recover the outstanding taxed bill. The applicant the amount paid through Nairobi H.C. Misc application no. 368 of 2011 fully settled the bill in respect of the above file as outstanding and unpaid. The applicant further pointed out that he committed a clerical error when he referred to 368 instead of 332 in his pleadings and affidavit. The applicant admitted that the value attached to the respondent's attached motor vehicle as mere approximated value and not the actual value.
7. After a careful consideration of the rival submissions, I have come to the conclusion that the respondent was under mistaken view that the amount paid through Nairobi H.C. Misc. Application no. 368 of 2011 to the applicant settled the taxed bill arising out of Nairobi H.C. Misc. Application no. 332 of 2012.
8. However it is no clear that the aforesaid amount paid through Nairobi H. C. Misc. Application no. 368 of 2011 was actually meant to settle the applicant's fees arising from the same file. I am also convinced that the respondent some payments in cash and by R.T.G.S to settle part of the fees arising from this file. Those payments have not been factored while making calculations of the outstanding fees in this file. I find that there is some merit in the respondent's proposal that the parties to this dispute should take accounts before the execution and sale can be allowed to proceed. I am also satisfied that the proposal to settle the outstanding amount by monthly instalments is not a bad idea.
9. In the end, I find the motion dated 30.10.2015 and amended on 1.11.2015 to be well founded.
10. The same is allowed in the following terms:
 - i. There be a stay of sale of the attached motor vehicle registration no. KBV 200N.
 - ii. The applicant's and the respondent's advocates to jointly take accounts and file the same in court within a period of 14 days from date hereof.
 - iii. The matter to be mentioned on 29.12.2015 before the vacation duty judge for the following purposes:
 - a. Ascertain whether or not there is an outstanding amount due to the applicant.
 - b. To determine the mode of settlement of the outstanding amount if any.
 - c. To make further orders and directions on whether or not the attached motor vehicle should be released to the respondent and on what terms.
 - iv. Each party to meet its own costs of the motion.

Dated, Signed and Delivered in open court this 11th day of December, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant