



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 5757 OF 1991

SIMON CHESOLI WACHIA PLAINTIFF

VERSUS

CONTINENTAL DEVELOPERS LTD..... DEFENDANT

RULING

1. On 12th November 2012 a Deputy Registrar issued a warrant of attachment and sale of the Defendant/Judgment-Debtor's moveable goods in execution of degree in this very old matter. This was after there was no appearance for the Defendant on a notice to show cause why execution should not issue.

2. The Defendant then filed **notice of motion dated 20th December 2012** seeking the main order that there be a stay of execution of the said warrants of attachment. The main ground for the application is that there is a **moratorium** in operation barring all executions and other proceedings against all persons insured by **United Insurance Company Limited** (under Statutory Management). There is a supporting affidavit sworn by one BERNARD KINGORI THIGA, a director of the Defendant. To this affidavit are annexed two documents one of which is an order given on 20th and issued on 24th September 2012 in **Nairobi HC Misc. Case NO. 67 of 2012** by which the appointment of the Statutory Manager of the insurance company was extended "for a further period of one (1) year commencing 28th September 2012" subject to certain stated limitations.

3. The Plaintiff/Decree-Holder opposed the application by his **replying affidavit filed on 17th January 2013**. The grounds of opposition include –

- (i) That the Defendant was not vigilant and is guilty of laches.
- (ii) That the Defendant has not given any reason for failure to attend the Deputy Registrar to show cause why execution should not issue despite service.
- (iii) That the application has been brought with unreasonable delay.
- (iv) That the Plaintiff is not a party to any contract of insurance between the Defendant and its insurer.

4. The application was canvassed by way of written submissions. Those of the Defendant were filed on 12th April 2013 while the Plaintiff filed his on 23rd April 2013. I have considered those submissions,

including the one case cited.

5. The Defendant has not exhibited the moratorium it seeks to rely upon. Nor has it exhibited any order of a court of law staying proceedings against the insurance.

6. It is submitted for the Defendant that the Plaintiff admitted in paragraph 3 of his replying affidavit that he was aware of the moratorium. But that is plainly not so. The stay of execution referred to by the Plaintiff is the interim stay of the warrants of attachment granted by this court on 24th December 2012 upon the Defendant's present application.

7. This is an application that has been made casually and belatedly; it lacks seriousness. I find no merit in it. It is dismissed with costs to the Plaintiff/Decree-Holder. The interim stay of execution now in place is hereby lifted. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF JUNE 2013

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF JUNE 2013