



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
CIVIL CASE NO. 253 OF 2006

.WILEX GMBH.....PLAINTIFF

VERSUS

AFRO FOREX BUREAU LIMITED.....DEFENDANT

RULING

The Applicant in the Chamber Summons dated 13th August, 2010, prays that this court makes orders staying the execution of the Judgment entered herein against it on 30th January, 2009, and that the execution proceedings commenced before the Deputy Registrar of the Court be set aside.

The application is premised on the grounds that the Respondent has, through auctioneers, commenced the execution process and has proclaimed against the applicants' property, despite the fact that the execution of the judgment was, by an order of the court made on 24th July, 2009, stayed on condition that the applicant do deposit a sum of Euros 7,218.53 within 30 days of the order which it did. Annexed to the affidavit filed in support of the Chamber Summons are copies of the order of 24th July, 2009 issued on 8th March, 2010. A copy of a court deposit receipt for Kshs 700,000/= dated 24th August, 2009, application for execution, warrant of attachment, the proclamation and related correspondence are also annexed to the Supporting Affidavit.

Opposing the application, the Respondents filed a Replying Affidavit sworn by one Gordon Ogado stating that the deposit of Kshs 700,000/=, though not disputed, was only partial since at the time the same was made the rate of exchange for the Euro as against the Kenya Shilling had escalated and that the Kenya Shilling equivalent of Euros 7,218.53 at the date of the deposit was Kshs 795,624.38/=.

I have considered the submissions made before me on 19th October, 2010, by learned counsel for the parties herein. I have perused the Complaint and the judgment of the Court and the subsequent orders made herein. The judgment clearly spelt out that a sum of Euros 7,218.53 with interest at court rates was what was awarded to the Defendant/Respondent. The same sum was ordered to be deposited as security when granting the stay.

In making the order for stay and granting a 30 days period of compliance, the court was alive to the fact that the rate of exchange was likely to change, yet it did not order that the Kenya Shilling equivalent as at the time of payment be deposited. In my view, the court would have sated so if that was its intention. The Respondents did not request for an order in those terms either. One wonders what the scenario would have been had the exchange rate gone down.

Considering all the facts, I am persuaded that the applicant did comply with the orders of the Hon. Lady Justice Lesiit as recorded, since the deposit itself is not disputed. Having been made on 24th August, 2009, in compliance with the orders made on 24th July, 2009, I agree with counsel for the applicant that the deposit was made within time, as stipulated under **Order XL1X Rule 4** of the Civil Procedure Rules.

For all the above reasons I find that the execution herein cannot be justified and must be deemed to have been put in motion in breach of the orders of the court. The proceedings in relation thereto are hereby annulled and struck out. This court recognizes the stay orders as subsisting until the determination of the appeal.

Hence, the Chamber Summons dated 13th August, 2010, is hereby allowed with costs to the applicants.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH day of NOVEMBER, 2010

M. G. MUGO

JUDGE

In the presence of:

Miss. Mwau

For the Applicant

No appearance

For the Respondent