



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Miscellaneous Application 82 of 2009

PETER SARAI WEKHOMBA.....APPLICANT

VERSUS

DEPUTY REGISTRAR KITALE.....1ST RESPONDENT

LUIS MUYOKA WEKHOMBA.....INTERESTED PARTY

PETER KITUI WEKHOMBA.....EXPARTE APPLICANT

R U L I N G

By an ex-parte chamber summons dated 16th November 2009, pursuant to the provisions of section 8 and 9 of the Law Reform Act Cap 26 Laws of Kenya and order LIII Rule 1 and 2 of the Civil Procedure Rules, the applicant seeks orders:

1. That this honourable court be pleased to grant leave to the applicant to apply to this honourable court for an order of certiorari to remove into this court and quash the decision of Deputy Registrar Hon.T.A. Odera dated 26/10/09 and also grant leave to prohibit her from making further orders of stay of execution in this file.
2. That the grant of leave sought above do operate as stay of proceedings before the said Deputy Registrar Hon. T.A. Odera.
3. That costs be in the cause.

The application is based on the grounds:

- (a) That warrants of attachment were issued on 21st October, 2009 by the Senior Deputy Registrar Hon. D.M. Ochenja against the interested party to pay the applicants costs of Shs.324,280/- but on 26th October, 2009 the Deputy Registrar Hon. T.A. Odera could not legally stay the warrants of her Senior Deputy Registrar Hon. D.M. Ochenja.
- (b) That the fact that with the knowledge that her Senior Deputy Registrar had executed the warrants of attachment on 21/10/2009 and her going ahead on 26/10/2009 to stop the warrants of attachments of her Senior Deputy Registrar showed disrespect for her Senior and the law.
- (c) That the action of Hon. Deputy Registrar T.A. Odera on 26/10/2009 to stop the warrants of her Senior Deputy Registrar showed disrespect for her Senior and the law.
- (d) That the action of Hon. Deputy Registrar on 26.10.2009 staying the execution without the interested party depositing security showed bias and out to favour judgment/debtor the interested party on 21/10/2009 that the J/D had agreed to add to the costs Kshs.2,000/- to fixed costs of Kshs.324,280/-.
- (e) That she is attempting to re-do matters in which the interested party the J/D did not challenge the taxation by consent which was taxed on 28/7/2009 and certificate issued.
- (f) That a reasonable person would conclude that there is a abuse of process of the court.

The application is predicated upon the annexed affidavit of Peter Sarai Wekhomba sworn on the 16th November 2009 the statement of particulars dated 13th November 2009 and verifying affidavit sworn on 13th November 2009. On behalf of the applicant it was argued that the Deputy Registrar, T.A. Odera, had no jurisdiction to make the orders she made.

That the warrants of attachment were issued on 21st October, 2009 by the Senior Deputy Registrar, D.M. Ochenja, against the interested party who was ordered to pay the applicants costs in the sum of Sh.324,280/-.

However, on 26th October, 2009 the Deputy Registrar T.A. Odera purported to stay the warrants issued by the Senior Deputy Registrar D.M. Ochenja.

That the actions of the Deputy Registrar, T.A. Odera in stopping the warrants issued by the Senior Deputy Registrar D.M.Ochenja is evidence of bias in favour of the judgment debtor. This is more so in view of the fact that the judgment debtor did not challenge the taxation. That the said taxation was by consent of the parties and a certificate of taxation issued on 28th July, 2009.

The applicant's last and final position is that the Deputy Registrar is abusing the process of the court.

I have carefully considered the issues raised by this application. In my view the Deputy Registrar may have over-stepped her mandate. Assuming that to be the position, the only remedy open to the applicant was to make an application to review the orders.

In the alternative and without prejudice to application for review, the applicant was equally entitled to appeal against the decision of the Deputy Registrar/District Registrar in terms of the provisions of order XLVI of the Civil Procedure Rules.

Being of that persuasion, this application seems to me to be brought under the wrong provision of the law. I strike it out with no order as to costs. The applicant is at liberty to bring a fresh application.

Dated and delivered at Kitale this 1st day of December, 2009.

N.R.O OMBIJA
JUDGE

Mr. J.M. Wafula for applicant.