

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 917 of 2003

JOSEPH KONZOLLO MUNYAO.....PLAINTIFF/RESPONENT

VERSUS

THE STANDARD NEWSPAPERS LIMITED.....DEFENDANT/APPLICANT

RULING

The Applicant in this Chamber Summons dated 18th January 2008 has told me through its learned counsel, Mr. Billing, that they want prayers 3,6 and 7 only. Prayer number 3 states as follows:

“The proclaimed and attached motor vehicle registration number KAX 691C, office desks, computers, telephone heads, reception desks and office chairs be released to the applicant unconditionally.”

Prayer number 6 says that the Court grants

“Any other relief or order that this Court may deem necessary or just.”

Prayer number 7 is for costs of this application.

It means the Applicant had been granted prayers 1, 2,4 and 5 in the said Chamber Summons. That is the certification of this application urgent, interim order of stay of execution pending hearing and final determination of this application, stay of the execution of the warrants of attachment and sale pending hearing and final determination of this application and the obtaining of the interpartes hearing date for this application.

As can be seen therefore, the Applicant did not want an order for a stay of execution on the decree passed on 30th May 2007 pending the hearing and determination of an appeal there from and indeed the Applicant has not told me during the hearing that he has filed an appeal which is pending to be heard. A specific prayer in those terms is so important that an applicant cannot afford to hide under a general and vague prayer like prayer number six (6) and expect the Court to grant him a specific prayer allowing him a stay of execution until the hearing and determination of his appeal.

In the circumstances therefore, what is the purpose of prayer number 3? If those things are already proclaimed and attached, I cannot see any purpose of prayer 3 other than completely frustrating the execution complained of. The Judgment being executed was passed on 30th May 2007. The Applicant has failed to pay the decretal sum for reasons other than the Applicant’s incapability or inability to pay the money. To-date no appeal has been filed as the time is too long to rely on a mere notice to appeal in this matter where typed copies of the Judgment were available to the parties right from the very date the Judgment was delivered.

The above being the position, I look at the grounds and reasons given by the Applicant to support this application as grounds and reasons to blind me from seeing the Applicant’s black side in the application and therefore have no problem in rejecting all those grounds and reasons in preference to what Counsel for the Respondent said, with the totality – (that is what counsel for Respondent said, plus what I have added) – leading me to the rejection of the Applicant’s application.

Accordingly this Chamber Summons is hereby dismissed with costs to the Respondent.

Dated and Delivered at Nairobi this 7th day of March 2008.

J.M. KHAMONI

JUDGE