

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

Civil Case 1193 of 2004

HANNAH NJOKI KAMITI.....PLAINTIFF

VERSUS

MBOI KAMITI FARMERS CO. LTD.....DEFENDANT

RULING

The defendant by way of this Chamber Summons expressed to be brought under Order XXI Rule 22 of the Civil Procedure and (e) of the Civil Procedure Act seeks orders that there be a stay of execution pending the hearing of this application and or further orders of this Honourable Court.

The application is premised on the grounds that the newly elected Board of Director was confirmed by the court on 6th February 2006 and they are yet to settle in office and so have no knowledge of the case herein that the decree holder proclaimed the goods on 31st January 2006 immediately after elections of the new directors and before their confirmation by the court and the grace period of days expired on 13th February 2006, that the proclaimed goods constitute office furniture and equipment and should they be carted away the company's operations would be crippled, that the decree holder unlawfully proclaimed goods from the wrong premises and contrary to the court order, and that the new Board of Directors should be allowed time to settle in office to enable resolve the problems and possibly pay the debt if any.

The application is also supported by a sworn affidavit by PETER WAHINYA MUIRURI the secretary of the Judgment/Director Company who avers that on 31st January 2006, the decree holder sent auctioneers to the offices of the Judgment/Debtor at ANMER FARM to proclaim goods for eventual attachment and sale to satisfy alleged decretal sums awarded to her amounting to Sh.1,064,920.95, that previously the judgment debtor company was being ran by persons who mismanaged its affairs and finances to which fresh elections were ordered by the court, that the elections were held on 12th January 2006 and the new Board of Directors was confirmed by the court on 6th February 2006 and is yet to settle in office to enable the company to re-organise the company and its operations, that handing over has not even taken place to enable the new directors to address some of the issues as the instant one and possibly settle them, that the Judgment/Debtor has just appointed the firm of M/S Muchangi Nduati & Co. Advocates as the company lawyer to enable study the proceedings and advise it accordingly, and that the Judgment/Debtor be given time to settle down and familiarize itself with the on goings of the company and if necessary settle the debt if truly owned.

The Respondent in reply swore an affidavit in which she avers that the defendants are employing delaying tactics in this matter by serving documents at the last hour, that there a judgment of this court which was challenged to no avail, that the defendants have not come out clearly as to whether they are willing to settle the debt or they want to challenge the judgment of the court. Mr. Nduati for the Judgment/Debtor submitted that the decree was issued on 27th January 2005 and there was an order specifically directing the attachment be effected in a specific premises by the name Black Gate Farm in Ruiru but the goods proclaimed are in a different premises known as Anmer Farm which is contrary to the Court Order. He further submitted that the Judgment/Debtor is challenging the validity of the proclamation because it does not itematise the particular goods to be attached and their value and finally he concluded that should the court find that money must be paid then they seek time to arrange to liquidate the decretal sum.

The application is opposed by the Decree Holder who submitted that the property proclaimed belonged to

the Judgment/Debtor since both farms belong to the Judgment Debtor, the issue of wrong goods does not arise and therefore there is nothing wrong with the decree. Further she submitted that the Judgment Debtor does not deserve more time as they have not shown commitment to settle the debt.

The Judgment Debtor had filed a similar application for stay of execution dated 9th February 2005 which was dismissed on 28th April 2005. Judgment was entered in favour of the plaintiff on 17th December 2004. Application to set it aside was dismissed. No attempts made to settle the debt. Despite the fact that attempts to set aside the judgment failed and no appeal filed, the Judgment Debtor still requests to be given time to make arrangement to settle the debt if any. This portrays lack of commitment on the part of the Judgment Debtor and if this application is granted it would cause prejudice to the Decree Holder as no proposal as to the mode of payment has been made. The Judgment Debtor's Chamber Summons dated 13th February 2006 is dismissed with costs.

Dated and delivered at Nairobi this 28th March, 2006.

J.L.A. OSIEMO

JUDGE