

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.2622 OF 1994

BARNABAS KARIUKIPLAINTIFF
VERSUS
SAID MOHAMED.....DEFENDANT

RULING

The plaintiff is a licenced Court Bailiff. He obtained a court order and had gone to the premises of the defendant to levy distress. The defendant was not happy with this and he became furious and attacked him causing him bodily injuries. The plaintiff filed this suit against the defendant seeking damages. Judgment was entered in his favour and was awarded Shs.158,000/= damages. In execution the plaintiff applied for orders to commit the defendant to civil jail. A warrant was issued for the defendant's personal arrest and committed to civil jail.

On 23rd December 2004 the defendant filed this application by way of Chamber Summons seeking orders for stay of execution and orders of committal to civil jail issued against the defendant be set aside.

The application was based on the ground that the defendant had filed a petition for Bankruptcy which had been allowed and Receiving Orders had issued. Miss Were on behalf of the defendant submitted that Receiving Orders had been made against the estate of the defendant and as such execution proceedings cannot proceed against him and urged the court to set aside the orders for committal to civil jail. She produced the Receiving Orders dated 24th December 2004 and signed by the Deputy Registrar High Court Milimani Commercial Court.

A Receiving Order having been issued against the defendant Judgment Debtor, execution of any decree or warrants cannot in law be executed against him or his estate without involving the Official Receiver. The execution proceedings against the defendant Judgment Debtor, are stayed and the order of committal to civil jail issued against him are hereby set aside.

These are the orders of this court.

Dated at Nairobi this 5th day of May 2005.

J.L.A. OSIEMO
JUDGE