

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL CASE 575 OF 2003

JAMES KARIUKI NGANGA.....PLAINTIFF

VERSUS

JOSEPH NGAI NJUGUNA.....1ST DEFENDANT

CROSSBOW LIMITED.....2ND DEFENDANT

R U L I N G

The defendants by their application dated 14th March 2005 seek an order that “the plaintiff and or their agent be ordered by this Honourable court to forthwith give an account of all the goods already attached and sold in execution of this decree, before any other warrant of attachment or any other process in execution of the decree can be issued.”

It is clear from the above the defendant desires to have an account of the amount realized in execution of the decree by the plaintiff. Defence counsel in support of the application took the court through the amounts claimed by the plaintiff in the previous execution application. Counsel said that the decree when passed on 10th February 2004 the decretal amount was shs 8, 820, 000. The first proclamation dated 20th February 2004 indicated the decretal amount was kshs 9, 026, 894. 52. The next proclamation dated 3rd November 2004 indicated the decretal amount to be kshs 16, 321, 783. 33. The proclamation dated 8th March 2005 indicated the decretal amount to be kshs 18, 975, 350/- . Defence counsel argued that the plaintiff has failed to explain why there is an increase of 200% to the decretal amount and consequently he prayed that there be a stay of execution to await that explanation by the plaintiff. Defence counsel argued that the defendants are suffering an injustice because the auctioneers fees are pegged on the decretal amount.

Although in opposition plaintiff’s counsel argued that the defendant ought to have filed a memorandum of appeal to the High court from the orders of the Deputy Registrar which resulted in the various execution applications; I am of the view that dictates of justice demand that the account of the amount due be properly identified. I accept the defendant’s counsel argument that there is need for the plaintiff to give a correct account of the amount realized and the dates of such realization so that the decretal amount can be confirmed. I find that for the end of justice to be reached it is necessary to invoke the court’s inherent power, to ensure the defendants do not suffer an injustice, and accordingly the court will require the plaintiff to give an account.

The orders of this court are: -

- (1) That the plaintiff be and hereby ordered to file within seven days from the date this ruling at this court an account of all the funds realized in execution of the decree hereof;
- (2) That this matter will be mention in court at a date to be given at the reading of this ruling, for further orders of this court

Dated and delivered this 16th day of June 2005.

MARY KASANGO

JUDGE