



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 3 OF 1999

WALTER MUSI ANYANJE.....PLAINTIFF

VERSUS

HILTON INTERNATIONAL KENYA LIMITED.....1ST DEFENDANT

TOM NJIRI.....2ND DEFENDANT

R U L I N G

1. The Applicant, Walter Musi Anyanje filed an Application on 19th December 2003 seeking stay of execution of the decree for costs passed against him pursuant to a judgment entered on 1st March 2001. The Application is brought under Order XLVI Rules 4, (3) (4) and (6) of the Civil Procedure Rules.
2. The Applicant appeared in person and quite ably, for a layman, argued his Application aforesaid. He relies on his Affidavit in support and the Grounds set out at Page 1 of the Chamber summons dated 19th December 2001. 3. The facts are not disputed as it is generally agreed that the suit failed and the Applicant was condemned to pay costs. He filed an Appeal which was struck out. He filed an Application for stay of execution on 19th March 2001 but did not prosecute it. He filed another Appeal which was admitted and is still pending in the Court of Appeal (C.A. No. 25/2003). I am not certain on this last point as the Applicant says that it is yet to be heard and the Respondents say that it has been struck out.
4. Nonetheless, the Respondents taxed their Bill of Costs on 26th July 2001 in the sum of Kshs.79,923.50 and the Applicant was present when this was done. The Applicant did not pay and a Notice to Show Cause was issued. The same came for hearing before Learned Senior Deputy Registrar, Martin Muya on 18th December 2003 and it was found that contrary to his assertions, the Applicant was not a man of straw. The Applicant in fact said the same thing to this court; that he was a man thinly spread financially.
5. The Senior Deputy Registrar went into great lengths to detail out the Applicant's attempts to stop execution by filing two applications which were not granted and even by offering to pay the costs if given time. Time was given but again the Applicant did not pay a cent. In the end the Applicant was ordered to be committed to Civil Jail. He then filed the instant Application.
6. I will not grant the orders sought for these reasons; firstly, the delay in the matter is so inordinate that it is clear that the Application filed on 19th December 2003 was meant to reactivate the one dated 19th March 2001. In fact prayer 3 of the instant Application is in the following terms: -  
  

*“that the court to fix (sic) a convenient hearing date for the Application dated 19 th March 2001 inter -partes and costs be in the cause.”*
7. Once the Applicant saw the threat of committal to civil jail he remembered that he had an Application for stay of execution that had been in court for close to three years and he now wanted it to be heard. He does not stay why he delayed and yet it is a necessity in matters of this nature to explain even a day of delay. Equity does not aid those who sleep through their right to come to court in good time.
8. Secondly, the Applicant canvassed the issue of his impecuniosity before the Senior Deputy Registrar and the alleged loss, prejudice and embarrassment he would suffer if he was committed to civil jail. It was found and I shall quote Martin Muya's Ruling in part, that *“to me, the Judgment -Debtor (Applicant) does not appear a pauper as he would like this court to believe. He has told this court that he has three accounts though they are according to him all overdrawn. He has put up a spirited fight on the issue lodging numerous Appeals and Applications. That is his right but it does not portray him as a man of*

*straw.*”

9. When he came to this court, he repeated his impecunious status and on prodding admitted that he has spent a lot of money on the Appeals and Applications. However, he did not say what should be done about the Respondents who were entitled to their costs. He did not for example offer any security nor did he say why he made proposals to pay and side-stepped the issue and bought time. He has not shown the loss that he will suffer. Granted, committal to civil jail is embarrassing and prejudicial to him but his own conduct has not helped matters here.

10. All in all, the Applicant although obviously very passionate about his case, and as I said earlier argued it quite well, missed a few steps. I understand but he did so to his detriment.

11. For the reasons that I have given, I do not see that the Application is with merit and I dismiss it with costs.

Orders accordingly.

Dated and delivered at Nairobi this 9th day of February 2004.

I. LENAOLA  
Ag. JUDGE