



Sore v Nation Media Group Limited & another (Civil Suit E002 of 2023) [2025] KEHC 12096 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12096 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E002 OF 2023
F WANGARI, J
MAY 22, 2025**

BETWEEN

DR PETER ASEYO SORE PLAINTIFF

AND

NATION MEDIA GROUP LIMITED DEFENDANT

AND

ANGELA OKETCH RESPONDENT

RULING

1. This is a Ruling on an Applications dated 10/09/2024. The Application seeks the following Orders:
 - i. Spent
 - ii. Spent
 - iii. That pending the hearing and determination of the Appeal, there be stay of execution of the judgment of this court.
 - iv. That warrants of attachment issued to M/s Icon Auctioneers and the Proclamation Notice issued in execution of the judgment be lifted.
 - v. That costs be provided for.
2. The Application is premised on the Grounds stated *inter alia* as follows:
 - i. The Respondent has commenced execution by proclaiming the Applicants movable assets.
 - ii. That the Applicant is dissatisfied with the judgment of this court and has filed a Notice of appeal



- iii. The Applicant has a meritorious appeal.
 - iv. The Appeal will be rendered nugatory if stay is not granted.
3. The Respondent through the Replying Affidavit dated 19/09/2024 opposed the Application materially on the ground that the execution process commenced about 5 months after the judgment, and the Applicant never moved the court to have the stay of execution extended after the expiry of the temporary stay.
 4. It was stated that nothing stopped the Respondent from executing since the decretal sum and interest have already been declared by the court. The Applicant was said not to have met the threshold for stay of execution orders. The application was therefore meant to defeat and deny the Respondent justice.
 5. The Applicant was also said to have paid the decretal sum plus interest hence this application has been overtaken by events.
 6. The Applicant filed a further Affidavit dated 18/10/2024 stating that the Respondent having failed to obtain leave to proceed with execution as per the requirement of Section 94 of the Civil Procedure Act, hence the execution process was irregular.
 7. In respect to the payment of the decretal sum, the same was paid under duress as there was imminent threat of execution, movable assets having been proclaimed, and the interest of the Applicant had to be safeguarded.
 8. The court directed that the application be canvassed by way of written submissions. Both parties complied by filing rival submissions. I have considered the submissions and authorities relied upon.

Analysis

9. I have analyzed the Application, response, submissions and the authorities cited by the parties in support and in opposition to their respective positions. The issues for determination are;
 - a. Whether the application has been overtaken by events
 - b. Whether the Appellant has satisfied the conditions for the grant of stay of execution pending Appeal.
10. On the first issue, it has not been disputed that the decretal amount and interest has already been paid. The Applicant says they paid out of duress as there was imminent risk of execution. The auctioneer had already proclaimed the motor vehicle registration no. KBC 441S belonging to the Applicant. Upon being informed that the decretal sum had been paid, the court ordered the release of the motor vehicle back to the Applicants. The court was later informed that the decretal sum had been released to the Respondent.
11. The Applicant says that the payment was done under duress. It has been stated that duress occurs when a party is under the improper pressure from the other party to make a certain decision or act in a certain way not consistent with free will. In John Mburu v Consolidated Bank of Kenya [2018] eKLR, the Court of Appeal the Privy Council decision in Pao & Others v Lau Yiu & Another [1979] 3 All ER 65, which addressed the issue of duress as follows: -

“...Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree...that in a contractual situation commercial pressure is not enough. There must be present some fact on which could in law be regarded as a coercion of his will, so as to vitiate his consent.....In determining whether there was a coercion of will such that



there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy, whether he was independently advised; and whether after entering the contract he took steps to avoid it...”

12. It is not denied that prior to execution proceedings commencing, the decree holder shared a draft decree with the Judgement Debtors’ Counsel for approval within seven (7) days failure which the draft decree shall be presented for signature. Indeed, no action was taken within the stipulated period and the Decree Holder was well within his right to present the draft decree which was then done.
13. Having obtained a decree, nothing stopped the Decree Holder from executing. It is equally not denied that when the proclamation happened on 5th September, 2024, the Judgement Debtors did not do anything to forestall the impending execution but only waited until a day to attachment to move the court. Further, it is not denied that the Judgement Debtors’ Counsel sought for an extension which was granted until 16th September, 2024 when the decretal sum plus interests was paid.
14. A look at the annexure marked “PAS-2” in the Decree Holder’s response leaves no doubt that the extension sought was for purposes of payment. If the Judgement Debtors intended otherwise, nothing was easier than to state so. Applying the factors material to determine whether there was coercion and/or duress as set out by the court in *John Mburu (supra)*, it is imperative to consider whether there was any protest by the Judgment Debtors as alleged by their Counsel that there was any duress when they sent the email dated 12th September, 2024.
15. I am least persuaded that there was any iota of duress. One cannot be under duress and proceed to call for bank details and promise to discuss the auctioneers’ charges directly with the auctioneers in issue. This is where I find the issue of promissory estoppel coming into play. The Judgement Debtors’ Counsel having sought for extension of time in order to make payment cannot be allowed to turn around and say that the say was under duress. Promissory estoppel prevents a promisor from reneging on a promise that the promisee has relied upon to their detriment.
16. I have said enough to show that the issue of duress does not arise. Having proceeded to pay the decretal sum plus interests, the horse already bolted. Before concluding on the matter, the Applicants have raised an issue that the warrants ought to be recalled unconditionally since costs had not been taxed.
17. I am unable to agree with this line of argument. Section 94 of the *Civil Procedure Act* provides for execution of this court’s decrees before costs are taxed and/or ascertained. It provides as follows: -

“Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.”
18. The above position is restated in Order 21 Rule 9 (2) of the *Civil Procedure Rules*. The fact that costs have not been taxed or ascertained is not a bar to execution of the decree so long as it has emanated from this court. The position is different in the subordinate courts more so after the introduction of Sub-rules 9A, B and C under the *Civil Procedure (Amendment) Rules, 2020*. This argument therefore fails.
19. Having found as above, it is my finding that the application dated 10th September, 2024 has been overtaken by events and it would an academic exercise to consider the issue of stay of execution.



20. On the issue of costs, the court reserves the discretion to award or deny the same. for avoidance of further proceedings before this court, each party to bear its own costs.

Determination

21. The upshot of the foregoing is that the following orders do issue: -

- a. The Notice of Motion application dated 10th September, 2024 having been overtaken by events is hereby dismissed;
- b. Each party to bear its own costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 22ND DAY OF MAY, 2025.

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F. WANGARI

JUDGE

In the presence of;

M/s Kariuki Advocate for the Plaintiff/ Respondent

N/A by the Defendant/ Applicant

M/s Norah, Court Assistant

