



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Anglo Africa Property Holdings Limited v Mwaro & another (Civil Appeal
E106 of 2023) [2024] KEHC 994 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E106 OF 2023
M THANDE, J
FEBRUARY 9, 2024**

BETWEEN

ANGLO AFRICA PROPERTY HOLDINGS LIMITED APPELLANT

AND

FREDERICK KALUME MWARO 1ST RESPONDENT

MONARCH INSURANCE LIMITED 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 14.8.23, the Appellant/Applicant seeks stay of execution of the ruling delivered on 14.6.23 in Kaloleni PMCC No. E030 of 2023. The Application is supported by the grounds on its face and in the supporting affidavit sworn on even date by Samson Macharia Munene, the company secretary of the Appellant/Applicant.
2. The Respondent opposed the application through a replying affidavit sworn on 23.8.23 by Frederick Kalume Mwero, the 1st Respondent.
3. The Appellant/Applicant is aggrieved by the ruling of the trial court dismissing its objection proceedings. It is contended that the said ruling is fraught with irregularities prompting the Appellant/Applicant to file the appeal herein. Further that the 1st Respondent has embarked on execution and will cart away the Appellant/Applicant's goods leased to the 2nd Respondent, unless the court orders the stay sought. The appeal has a reasonable chance of success and will be rendered nugatory. Further if the stay sought is not granted, substantial loss may result as the 1st Respondent will execute by attaching and carting away its tools of trade leased to the 2nd Respondent, which will not be recoverable.
4. The Respondent's reply is that the ruling was justified as the Appellant totally failed to prove ownership of the goods attached. The Appellant/Applicant was served with the decree and the auctioneer's warrants on 9.5.23 and its action to register the sale of assets agreement on 10.5.23 was



aimed at frustrating the execution. The 1st Respondent urged that an order be issued that the decretal amount and auctioneers fees be deposited in Court, should the Court find the application meritorious.

5. The record shows that in the application dated 11.5.23 in respect of which the impugned ruling was delivered, the Appellant/Applicant sought the lifting of attachment on its moveable assets. It also sought that the orders sought do serve to permanently stop the auctioneers of judgment creditor, from proceeding with any adverse action in respect of the said moveable assets. In its ruling dated 14.6.23, the trial court dismissed the application.

6. The dismissal under challenge, is in the nature of a negative order. It is trite law that a negative order is incapable of execution. In the case of Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v Millimo, Muthomi & Co. Advocates & 2 others (Civil Appeal (Application) E383 of 2021) [2022] KECA 491 (KLR) (18 February 2022) (Ruling), the Court of Appeal considered an application for stay of execution of a negative order and stated:

17. We start by acknowledging the fact that the ruling appealed against was a compounded one dealing with 2 applications, which yielded two different results. The first application, which was made by the applicant, was dismissed. As submitted by learned counsel for the 1st respondent, the position taken by this Court in respect of applications for stay of execution in respect of negative orders is clear. Negative orders cannot be stayed.

7. The Court of Appeal went on to state:

Further, in the more recent case of Kenya Commercial Bank Limited v Tamarind Meadows Limited & 7 others [2016] eKLR, the Court of Appeal expounded on stay of execution stating:“

16. In Kanwal Sarjit Singh Dhiman v Keshavji Juvraj Shah [2008] eKLR, the Court of Appeal, while dealing with a similar application for stay of a negative order, held as follows:“The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on December 18, 2006. The order of December 18, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only (see Western College of Arts & Applied Sciences v Oranga & Others [1976] KLR 63 at page 66 paragraph C).”

8. The trial court did not in the impugned ruling order any of the parties to do or to refrain from doing anything, in respect of which an order for stay of execution can be granted. Duly guided by the Court of Appeal in the cited case, I find that given that the impugned ruling merely dismissed the application before it, there is nothing to say. Accordingly, the Application dated 14.8.23 lacking in merit is hereby dismissed with costs to the 1st respondent who filed a response.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 9TH DAY OF FEBRUARY 2024

.....

M. THANDE

JUDGE

In the presence of: -

..... for the Appellant/Applicant



..... for the 1st Respondent

..... Court Assistant

