



Kenya Haulage Agency Limited v Stanbic Bank (K) Limited (Civil Suit 180 of 2012) [2024] KEHC 16923 (KLR) (7 February 2024) (Ruling)

Neutral citation: [2024] KEHC 16923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 180 OF 2012
F WANGARI, J
FEBRUARY 7, 2024**

BETWEEN

KENYA HAULAGE AGENCY LIMITED PLAINTIFF

AND

STANBIC BANK (K) LIMITED DEFENDANT

RULING

1. Judgment in this suit was delivered on 26/2/2021 where judgment was entered in favour of the Plaintiff as against the Defendant for USD 250,860 with interest and costs. The Defendant thereafter filed a Notice of Motion dated 10/8/2021 seeking to have a stay of execution of the said judgment pending inter-partes hearing of the application and the appeal.
2. By the ruling of this court dated 27/6/2022, stay of execution of the said judgment was granted pending hearing and determination of the appeal on condition that the entire decretal sum be deposited in a joint interest earning account in the name of the counsels for the parties herein, within 30 days from the date of ruling.
3. The Defendant did not comply with the condition of depositing the decretal sum within the 30 days period. The Plaintiff proceeded to have the bill of costs taxed and commenced execution proceedings.
4. The Defendant proceeded to file this Notice of Motion dated 31/7/2022 seeking to have the stay of execution orders granted on 27/6/2022 re-confirmed and/ or interim stay of execution orders pending hearing and determination of the appeal.
5. The Defendant also sought to have the time for depositing the decretal sum be extended and the decretal sum already deposited be deemed to have been deposited in compliance of the orders dated 27/6/2022.



6. The Plaintiff filed its Grounds of Opposition and Replying Affidavit dated 12/9/2023. It was stated that the Defendant did not come to court with clean hands as it disobeyed the court orders on conditional stay of execution, hence in contempt of court. The Plaintiff sought to have the application dismissed with costs.
7. Both parties filed submissions in support of their rival positions and which I have considered.

Analysis

8. I have analyzed the Applications, filed responses and the submissions and authorities filed by the parties in support and opposition to their respective positions. The issues for determination are;
 - a. Whether stay orders ought to be re-confirmed
 - b. Whether the execution proceedings were unlawful
9. It is not in dispute that the Defendant was granted a conditional stay of execution orders. The full decretal amount was to be deposited in a joint interest earn account in the names of the counsels for the parties herein. I have perused through the contents of the letters from the Defendant's Advocate to the Plaintiff's Advocates, and more specifically the letters dated 8/7/2022, 22/2/2022 and 24/8/2022. The Defendant's counsel was forwarding account opening documents to be duly signed by the Plaintiff's Advocates, and the later, was a reminder of the same.
10. The duly executed forms were forwarded by the Plaintiff's counsel via the letter dated 30/8/2022. This is after the lapse of the 30 days' period granted as a condition to the stay orders. After further correspondences between the two advocates, the decretal sum was eventually deposited though the Plaintiff's counsel said he was not in a position to confirm the same.
11. The join account opening was subject to both advocates meeting the timelines. It is on record that the delay in submitting the account opening documents on the part of the Plaintiff was occasioned by the fact that the counsel had been bereaved. On the other hand, even after the account opening documents were received by the Defendant's counsel, there was still delays on their part.
12. The issue is whether the stay orders ought to be deemed as lapsed or the court ought to re-confirm the stay orders granted by the court on 27/6/2022. The Defendant was found to have met the conditions as required under order 42 rule 6 of the *Civil Procedure Rules*. I need not reconsider the same.
13. On whether the failure to deposit the decretal sum on time was detrimental to the Defendant, I find that the Defendant made efforts to have the joint interest earning account opened in time, but that never happened. The Defendant seeks to have the time to deposit the decretal sum enlarged and the money deposited be deemed to have been deposited on time.
14. The court has the discretionary powers to enlarge time upon application by a party. Order 50 rule 6 of the *Civil Procedure Rules* state as follows;

Power to enlarge time

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case



may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

15. I find that since security has already been deposited, and directions on appeal have already been taken, by enlarging the time as prayed, no prejudice shall be occasioned on the Plaintiff. I find no reason to disturb the stay orders as previously granted by this court.
16. On whether the execution proceedings by the Plaintiff were unlawful, I confirm that an application of execution of Decree was made on 28/7/2023. I do agree with the Defendant that this was contrary to order 22, rule 18 of the *Civil Procedure Rules*.

Determination

17. In the circumstances I make the following orders: -
 - a. The Application dated 31/7/2023 is hereby allowed
 - b. Costs to abide the outcome of the Appeal.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 7TH DAY OF FEBRUARY, 2024.

F. WANGARI

JUDGE

In the presence of:-

Khagram Advocate for the Defendant/ Applicant

M/S Murage Advocate for the Plaintiff/ Respondent

Barile, Court Assistant

