



**SBM Bank (Kenya) Limited v Nyaachi & another (Miscellaneous Application
77 of 2023) [2024] KEHC 2573 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS APPLICATION 77 OF 2023
TA ODERA, J
MARCH 12, 2024**

BETWEEN

SBM BANK (KENYA) LIMITED APPLICANT

AND

BENJAMIN ONKOBA NYAACHI 1ST RESPONDENT

CHASE BANK (KENYA) LTD 2ND RESPONDENT

RULING

1. The Applicant has approached this court this instant Application dated 15th May, 2023 seeking the following orders;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. This honorable court be pleased to call the record of the original file Kisii CMCC no.370 of 2017 Benjamin Onkoba Vs Chase Bank for examination of the proceedings with a view of arresting an imminent miscarriage of Justice.
 - e. Pending the hearing and determination of the Application 15th May, 2023 in Kisii CMCC no. 370 an order of stay of execution be issued
 - f. Costs of the Application be provided for.
2. The Application supported on grounds outlined on its face and the Affidavit of Kimani the Legal officer of the Applicant. the applicant claimed that;



- a. On 12th May, 2022 the trial court delivered its judgment in favor of the 1st Respondent herein as against the 2nd Respondent, Chase Bank (Kenya) Limited, in Kisii CMCC No. 370 of 2017; *Benjamin Onkoba Nyaachi v Chase Bank (Kenya) Limited*;
 - b. One (1) year later on 12th May 2023, the applicant herein, SBM Bank (Kenya) limited, was served with Warrants of Attachment seeking the payments, within 7 days, of a decretal sum of Kes. 716,611 issued in the suit foretasted.
 - c. Simultaneous with the Warrants of Attachment, SBM Bank (Kenya) Limited's office property, to wit, office chairs, computers, tablets, water dispenser and photocopying machine were also proclaimed.
 - d. The applicant promptly filed a Notice of Objection with an application dated 15th May 2023 under Certificate of Urgency in the trial court, on 15th May 2023, for stay of execution, under Order 22 rule 51 of the [Civil Procedure Rules](#) pending the determination of the objector application on Kisii CMCC No. 370 of 2017; *Benjamin Onkoba Nyaachi v Chase Bank (Kenya) Limited*;
 - e. The application was heard ex-parte on 15th May 2023 wherein the court declined to order stay of execution pending inter partes hearing of the application and fixed the application for hearing on 31st May 2023;
 - f. The grace period under the Warrants of Attachment lapsed on 19th May 2023. There therefore existed a real and imminent risk that the Applicant's property will be sold after 19th May 2023 before the inter partes hearing of 31st May 2023, thereby occasioning a cruel and egregious miscarriage of justice. As a result, thereof and in a bid to safeguard;
 - g. The substratum of the application that is yet to be determined but the applicant preferred the current application, which was filed before this Honourable Court on 18th May 2023, barely two (2) days after the filing of and/or being notified of the outcome/directions issued by the trial court and that;
 - h. The application was not filed with unreasonable delay as per Order 42 rule 6(2) (a) of the [Civil Procedure Rules](#).
3. In the response to the Application the 1st Respondent filed a replying Affidavit dated 30th June, 2023 wherein he averred that; the application does not merit the orders being sought and is an abuse of the court process. he claimed too that contrary to the applicant's allegation in its supporting affidavit that it had only acquired 75% of the value of deposits from the 2nd respondent and that 25% of the remaining value of the deposit along with the assets and liabilities remained in the name of the 2nd respondent and KIDC, it did not disclose the items that liabilities inherited from the 2nd respondent. The 1st Respondent equally revealed that contrary to the assertion of the Applicant regarding liabilities he acquired from the 2nd Respondent, the Applicant was prosecuting another KISII CMCC NO. 619 OF 2020, which is pending determination before Hon Mutai (PM) against him on behalf of the 2nd Respondent. he contended that the Applicant could not therefore claim that it was totally a different entity from the 2nd Respondent herein.
 4. He therefore based on the above reasons urged the court to dismiss the Applicant application.
 5. During the Inter-partes hearing of the Application the court directed the Application to be canvassed by way of written submission. Both parties to this Application filed their submissions which for my consideration.



Issues of Determination

6. On perusal of the Application, the response thereto and the submissions of the parties the sole issue for determination is whether this Application is properly before this court.

Analysis And Determination of The Issues

7. The Applicant has approached this court seeking to secure stay of execution the decree of the trial court issued in favor of the 1st Respondent against the 2nd Respondent pending the hearing and determination of its objection it had filed at the lower court against the sale of its movable properties that the 2nd Respondent had issued a 7-day proclamation notice against.
8. It is outright this is not the first time the Applicant has filed an application for stay pending its objection given that the Applicant has in its Application disclosed that prior to filing its objection in the lower court, it had filed another Application seeking orders of stay but the lower court declined to *exparte*.
9. The Applicant has contended that it has filed this Application without unreasonable delay under Order 42 rule 6 of the [Civil procedure rules](#) which rule governs Applications filed seeking stay of execution of decrees pending Appeal. One would therefore wonder why the Applicant would file an Application seeking stay of execution of a decree under order 42 Rule of the [civil procedure rules](#) while there is no pending Appeal before this court or indicating that there is an intention to file one. What is before this court is a miscellaneous which is application which is not an appeal.
10. If the Applicant was dissatisfied with the ruling of the trial court denying it orders of stay of execution Exparte pending the hearing and determination of its objection, only legal way available to it was to file an Appeal against the said ruling together with an Application for stay of execution of Judgement of the lower court pending the hearing and determination of its Appeal.
11. It is therefore my finding that this Application has no legs on which to stand and must fail. In the result, the same is struck out with costs to the 1st Respondents.
12. It is so ordered.

DELIVERED VIRTUALLY IN THE PRESENCE OF;

Ouru for the applicant

Miss Nyaata for the 1st respondent

Court Assistant -Oigo

Order: Copy of the ruling be supplied.

T.A ODERA

JUDGE

12.3.24

