



Route Cruiser Logistics Limited v Kenafri Industries Limited (Civil Appeal E078 of 2023) [2024] KEHC 6763 (KLR) (7 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E078 OF 2023**

FR OLEL, J

JUNE 7, 2024

BETWEEN

ROUTE CRUISER LOGISTICS LIMITED APPELLANT

AND

KENAFRI INDUSTRIES LIMITED RESPONDENT

RULING

1. The application before this court is the Notice of Motion application dated 17th October 2023 brought pursuant to provisions of Section 1A, 1B, 3A of the *Civil Procedure Act*, Order 40 rule 1&2, Order 42 Rule 6(2), & Order 51 rule 1 of the *Civil Procedure Rules* and all other enabling provision of law. The applicant seeks for prayers that;
 - a. That this Honourable court be pleased to order for stay of execution of the judgment and order/decreed of Hon E Kimaiyo Suter (PM) delivered on 6th April 2023 allowing the plaintiff/ Respondent claim of Kshs 330,479/= with interest from the date of filing this suit until payment in full.
 - b. That this Honourable court be pleased to further order the respondent, its servants, workers or anyone acting as its servants, workers, auctioneers or anyone acting on its behalf from attaching, repossessing, selling, advertising for sale, transferring or dealing in any manner with the properties belonging to the Applicant pending hearing and determination of this Application and the Appeal herein.
 - c. That cost of this Application be provided for.
2. This application is supported by the grounds on the face of the said application and the Supporting affidavit of one Patrick Waganagwa, a director of the applicant company dated 17th October 2023, while the Respondent opposed this application through their replying affidavit dated 30th October



2023 sworn by one Symon Kipkemboi Lariak, an Assistant legal Manager working with GA Insurance Co Ltd, who are the Insurer of the Respondent.

3. The Appellant averred that they are wholly dissatisfied by the Judgment of Hon E. Kimaiyo Suter (PM) dated 6th April 2023 delivered in Mavoko CMCC No 901 of 2019 and had preferred an appeal against the said award. He avers that they have an arguable appeal which has high chances of success as demonstrated in the Memorandum of Appeal filed.
4. The appellant was apprehensive that there is strong likelihood that the respondent will apply for warrants of execution consequent of which they were likely to attach the appellant's assets and if sold that would cause them substantial loss and render the appeal filed to be rendered nugatory. Finally, the Appellant stated that they were ready and willing to furnish security and offered title deed being L.R No Kajiado/Dalale Kutuk/1780 situated within Kajiado Town and valued at Kshs.1,800,000/= as security for due performance of their obligation (if found due) under the said decree.
5. The Respondents did oppose this application through the Replying Affidavit filed deponed by one Symon Kipkemboi Lariak dated 30th October 2024. He stated that the applicant had filed a similar application before the trial court and a consent order was recorded on 24th May 2023 allowing the said Application on condition that the Applicant was to deposit the entire decretal sum in court within 45 days. This subsequent application as filed therefore constituted an abuse of the process of the court as the applicant was attempting to circumvent the consent order issued on 24th May 2023.
6. The respondent further pointed out the fact that, the security offered had been rejected by the respondent at the subordinate court as the said parcel of land did not belong to the Appellant as confirmed at page 10 and 11 of the Tysons valuation report annexed, it did not appear in the Registry index Map and it belonged to an individual who would need spousal consent before such land could be used as security.
7. The respondents therefore urged this court to find that the application was not merited and prayed that it be dismissed with costs.

B. Analysis & Determination

8. I have carefully considered the Application, its Supporting Affidavit, the Respondent's Replying Affidavit and submissions filed. The only issue for determination is whether the Appellant is circumventing the consent order recorded on 24th May 2023 directing them to deposit the entire decretal amount in court within 45 days and/or has met the conditions necessary for the grant of stay pending appeal.
9. The Applicant did not deny the fact that indeed, they had entered into a consent on terms of stay of the decree pending hearing and determination of the appeal and agreed to deposit the entire decretal sum in court within 45 days from 24th May 2023. As stated by the Court of Appeal in the case of [*Board of Trustees National Social Security Fund v Micheal Mwalo*](#) [2015] eKLR :

“A Court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.”



10. In *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd* [1982] KLR 485, Harris, J correctly held, *inter alia*, that -

“ A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.”

11. Court orders are not made in vain and are meant to be complied with. If for any reason any party had difficulty in complying with the same, the honorable thing to do is to go back before the same court and seek for review of the said consent orders. The basic principal of law therefore is that once a court order has been made in a suit the same remains valid unless set aside on review or on Appeal. In *Wildlife Lodgers Ltd County council of Narok & Another* (2005) 2EA 344(HCK) the court held that;

“ it was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it until that order is discharged, and disobedience of such and order would, as a general rule, result in the person disobeying it being in contempt.....”

C. Disposition

12. The upshot herein is that the application dated 17th October 2023 lacks merit and the same is dismissed with costs to the Respondent. The same is assessed at Kshs.30,000/= payable within the next 30 days. In default execution to issue.

13. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 7TH DAY OF JUNE, 2024.

FRANCIS RAYOLA OLEL

.....

JUDGE

I certify that this is a true copy of the original

SIGNED

DEPUTY REGISTRAR

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 7TH DAY OF JUNE, 2024.

In the presence of;

No appearance for Appellant

Mr. Kiplagat for Respondent

Sam Court Assistant

