



REPUBLIC OF KENYA



**Mwandundu v Ngondi (Miscellaneous Civil Application E044 of 2023)
[2024] KEHC 10885 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10885 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CIVIL APPLICATION E044 OF 2023
LM NJUGUNA, J
SEPTEMBER 18, 2024**

BETWEEN

BENJAMIN JULO MWANDUNDU APPLICANT

AND

NJERU NDWIGA NGONDI RESPONDENT

RULING

1. The applicant filed notice of motion dated 2nd October, 2023 seeking orders that:
 1. Spent;
 2. Pending hearing and determination of the application, this honourable court be pleaded to stay execution through public auction of the applicant's movable properties and household goods which shall take place in the next 2 days initiated by the respondent's auctioneers;
 3. The Honourable court do issue a temporary injunction restraining the respondent, his servant, and/or agents and in particular Vintage Auctioneers from effecting the public auction of the movable properties and household goods pending the hearing and determination of this application;
 4. The Honourable court do issue a temporary injunction restraining the respondent, his servant, and/or agents and in particular Vintage Auctioneers from effecting the public auction of the movable properties and household goods pending the hearing and determination of the application dated 14th August 2023 scheduled for hearing on 23rd October 2023;
 5. Pending hearing and determination of this application inter parties, this Honourable court be pleased to grant an order that status quo be maintained; and
 6. The costs of this application be in the cause.



2. The application is premised on grounds that judgment was entered against the applicant in the sum of Kshs.691,725/= and the respondent moved to execute through warrants of attachment and sale and he has proclaimed the applicant's movable properties and household goods. It was his prayer that status quo be maintained until the application is heard and determined.
3. The application was opposed through a replying affidavit through which the respondent deposed that the court had stayed the decree arising from Embu CMCC 74 of 2020 but the stay order was lifted. That the court directed that the application herein be canvassed by way of written submissions within a limited time but the applicant failed to serve his submissions to the respondent within the specified time. That the application herein was served upon the respondent on 28th February 2024 and not within time as the applicant has insinuated.
4. That there is a pending application dated 14th August 2023 which was never served upon him and he does not know its status. That the applicant is using this application to stay execution pending the hearing of the application dated 14th August 2023 yet the said application does not have a date neither has it been served. Further, that the applicant's submission dwell on the application dated 14th August 2023 yet the application herein remains unattended. He stated that the application is an abuse of the court process and it ought to be dismissed given that the interim orders have since been vacated and have not been reinstated.
5. The court directed parties to file their written submissions but only the applicant complied. However, the applicant submitted on an application seeking orders for stay of execution and leave to appeal out of time even though the application herein seeks no such orders.
6. The issue for determination is whether the application has merit.
7. Through the application herein, the applicant is seeking stay of execution and temporary injunction pending determination of the application dated 14th August 2023. The applicant had filed an application dated 14th August 2023 seeking orders for stay of execution and leave to appeal out of time against the decision of the trial court delivered on 17th August 2022 in Embu CMCC no. 74 of 2020. The application was filed during vacation and the duty court directed that the application be served and a hearing date be fixed in the registry. The Honourable Judge noted that there was no proof of intended execution and he ordered that the matter be mentioned on 23rd October 2023.
8. On 04th October 2023, before the said mention date, the applicant filed the application herein. Upon perusal of this application, this court certified the matter as urgent and granted temporary stay of execution of the decree issued in Embu CMCC no. 74 of 2020 to last until 07th November 2023 when the application was scheduled to be heard inter parties. Come the said hearing date, the respondent told the court that he had not been served with the application and the court adjourned the matter to 24th January 2024. The court also vacated the interim orders that had been granted.
9. On 24th January 2024, the court directed that the parties file their written submissions, each having 14 days to do so. When the matter was mentioned before the Deputy Registrar for compliance, the respondent stated that he had not been served with the application. When the parties appeared before the Judge, the respondent stated that he did not wish to file submissions but the applicant confirmed having filed and the matter was listed for ruling.
10. Through this application, the applicant is apprehensive that the respondent will proceed to execute through public auction since his property has already been proclaimed. He produced proof in the form of warrants of attachment and sale and a proclamation. In the replying affidavit, the respondent stated that the court had initially granted temporary stay of execution of the decree in Embu CMCC no.



74 of 2020 to last until inter parties hearing of the application herein. This order was vacated at the hearing since the respondent had not been served with the application. That is to say, there was nothing impeding the respondent from executing for the decretal amount.

11. It is important to note that between filing of the application dated 14th August 2023 and the hearing of the application herein, it was the duty of the applicant to pursue execution of the initial application which had a mention date, but this was not done. Noting that the former application was also a subject of the later one, the court granted interim orders as a way of extending an olive branch to the applicant to expedite the first application alongside the second one. In any event, when the court vacated the temporary orders, the applicant did not pursue reinstatement of the said orders.
12. The orders sought herein are prayed for, pending hearing and determination of the application itself. They are interim orders which have since been surpassed by time and so this court will not delve into their determination. The Court notes the conduct of the applicant throughout the proceedings herein as nonchalant and disinterest to prosecute the applications filed despite the court giving directions.
13. Therefore, I find that the application lacks merit and the same is hereby dismissed with costs to the respondent.
14. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF SEPTEMBER, 2024.

L. NJUGUNA

JUDGE

..... for the Applicant

..... for the Respondent

