



REPUBLIC OF KENYA



Directline Assurance Company Ltd v Rachel & Angels Limited (Civil Appeal 567 of 2024) [2024] KEHC 12261 (KLR) (Civ) (15 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12261 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 567 OF 2024

JN MULWA, J

OCTOBER 15, 2024

BETWEEN

DIRECTLINE ASSURANCE COMPANY LTD APPLICANT

AND

RACHEL & ANGELS LIMITED RESPONDENT

RULING

1. An exparte judgment in the trial court Nairobi CMCC No. E2766/2023 was delivered on 17/11/2023 against the Appellant, Direct Line Assurance Co. Ltd in the sum of Kshs. 3,938,937/=. An attempt by the appellant to set aside the judgment in the trial court was denied by a ruling dated 5/04/2024. An order for stay of execution was also denied.
2. The trial court's ruling dated 5/04/2024 is the subject of the appeal filed herein.
3. By a motion dated 13/05/2024, the Applicant/Appellant seeks stay of execution of the impugned ruling and all consequential orders pending hearing and determination of the appeal filed by a Memorandum of Appeal dated 3/05/2024.
It is premised upon provisions of Order 42 Rule 6(2) of the *Civil Procedure Rules* (CPR) and Sections 1A, 1B and 3A of the *Civil Procedure Act*.
4. The motion is opposed by a Replying Affidavit sworn on 20/05/2024 by one Naomi Kwamboka Managing Director of the Respondent urging that the trial court's judgment was regular and valid.
5. It is the Respondent's averments that the Appellant had been served with summons which service is not disputed and therefore the process of execution need not be stayed as the appellant's Motor Vehicle Registration No. KCB 015A had already been attached due to its failure to comply with conditional interim stay orders issued on 15/09/2022 whereof the Appellant was ordered to deposit 1/3 of the



decretal sum, that due to its failure to comply with terms of the interim stay orders, the vehicle was sold by public auction on 15/09/2022.

6. In addition the Respondent deposes that the Appellant had filed another appeal in respect to the same subject vide HCCA No. E695/2021 and a similar application for stay of execution obtained interim stay orders but did not comply.
7. It is the Respondent's further deposition that the Appellant is only buying time, and deliberate delay made to deny enjoyment by the Respondent of its fruits of judgment by filing multiple applications and appeals.
8. There is no doubt that the Appellant had filed a similar appeal and application as stated above but which has not been prosecuted.

The habit of filing multiple appeals and/or applications on same issues by same party and seeking similar reliefs ought to be discouraged. It is an abuse of court process and wastage of valuable court time, and forum shopping to say the least.

9. Upon the above material facts which are not controverted the court finds the instant application to be unmerited and only made to the cause of justice and the Respondents actuation and enjoyment of its fruits of judgment delivered on 17/11/2023.
10. For the above, the court finds the application dated 13/5/2024 to be devoid of merit and is therefore dismissed with costs to the Respondent.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF OCTOBER, 2024.

JANET MULWA

JUDGE

