



REPUBLIC OF KENYA



KENYA LAW
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**Directline Assurance Company Limited v Wambua (Miscellaneous Application
E055 of 2023) [2024] KEHC 11576 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS APPLICATION E055 OF 2023
SM GITHINJI, J
OCTOBER 1, 2024**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED APPLICANT

AND

VERONICAH MONICAH WAMBUA RESPONDENT

RULING

1. For determination is the application dated 21st June, 2023 by the Appellants/ Applicants brought under Order 22 Rule 22, Order 42 Rule 4,6 and 7, Order 51 Rule 1 and 3 of the [Civil Procedure Rules](#), Sections 1A, 1B and 3A of the [Civil Procedure Act](#) seeking the following orders;
 1. Spent.
 2. Spent.
 3. That this Honourable Court be pleased to issue an order of stay of execution of the proclamation, warrants of attachment, warrants of sale of property and Auctioneer Invoice issued to the Applicants by Moran Auctioneers dated 13th June, 2023, 12th April, 2023 and 13th September, 2023 respectively pending hearing and determination of this application.
 4. That Moran Auctioneers be directed to tax their costs.
 5. Spent.
 6. That the costs of this application be in the cause.
2. The application is supported by the grounds on the face of it and the supporting affidavit sworn by Kelvin Ngure on the 21st day of June, 2023. He deposed that on 28th April, 2023 the Applicant paid a sum of Kshs. 176, 760 to the Plaintiff's advocate and that the Applicants are ready and willing to pay the balance of costs amounting to Kshs. 46, 339/-. He also deposed that they are also willing to pay



the costs for the declaratory suit upon service by the respondent of their taxed bill of costs and being granted 45 days upon service to process payment.

3. In response to the said application, the Respondent filed a Replying Affidavit sworn by Geoffrey Kilonzo on the 30th day of June, 2023. He stated that the application lacks merit and that it is only meant to deny the Respondent from enjoying the fruits of litigation. He also contended that the applicant has not explained why it has failed to make full payment on time. Further, that this is a matter that was filed in 2020 and the Plaintiff will greatly be prejudiced if the court is inclined to grant the orders that are being sought by the applicant.

Determination

4. I have considered the grounds in support of the application dated 21st June, 2023, the grounds in opposition thereto and the submissions by the advocate for the Respondent. Having weighed the application before me, I derive that the same is wanting; I note that it is brought under a number of provisions of the law among them being Order 42 Rule 4, 6 and 7 of the *Civil Procedure Rules*, and Section 79 G of the *Civil Procedure Act*. However, a perusal of the application reveals that it contains no prayer with regard to Section 79 G, Order 22 Rule 22 and Order 50 Rule 6. In my view it is not vivid of what the Applicant intends to achieve out of the said application and more so given the manner in which it is drafted. It is nebulous on whether the applicant is seeking for enlargement of time within which to file an appeal as there's no indication that they intend to appeal the trial's court judgment.
5. Attempting to figure out the intentions of the parties should not be a task of this court; parties ought to come clear on what they intend to achieve from the prayers made to the court. An attempt to determine what the applicant wants would only amount to a charade and a waste of this court's time. There is no substantive prayer sought and as such, I find that this application is incompetent and misconceived. The upshot is that the application dated 21st June, 2023 is defective and the same is dismissed with costs to the Respondent.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 1st DAY OF OCTOBER, 2024.

S.M. GITHINJI

JUDGE

In the absence of; -

Ms Nyambuto for the Respondent

Ms Najira for the Applicant

