



**Interstate Logistics Limited v Manzi (Civil Appeal  
187 of 2019) [2023] KEHC 4 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 4 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL 187 OF 2019  
OA SEWE, J  
JANUARY 4, 2023**

**BETWEEN**

**INTERSTATE LOGISTICS LIMITED ..... APPELLANT**

**AND**

**YUSUF ALI MANZI ..... RESPONDENT**

**RULING**

1. Before the Court for determination is the Notice of Motion dated May 13, 2022. The motion was filed under Sections 1A, 1B, 3, 3A and Section 63(e) of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya, as well as Order 22 Rule 22 and Order 51 Rule 1 of the *Civil Procedure Rules* for orders that the Court be pleased to recall the Proclamation and Warrants of Attachment of Movable Properties served upon the appellant on May 28, 2022 for purposes of being cancelled, set aside and declared void. The appellant further sought that all the other consequential orders be set aside and/or declared null and void as well; and that the costs of the application be provided for.
2. The application was premised on the grounds that, upon delivery of judgment herein dismissing the appeal, the decretal sum was paid by the appellant to the respondent's advocate together with an additional sum of Kshs 313,576/= in full and final settlement; including the respondent's advocate's costs. It was therefore the contention of the appellant that, since there is no basis for the respondent to seek execution for costs to the tune of Kshs. 311,662/=, the Warrants of Attachment issued herein on April 1, 2022 and the ensuing Proclamation of Attachment were illegally and unlawfully issued; and that the appellant is likely to suffer irreparable harm unless the orders sought are granted.
3. The appellant relied on the affidavit sworn by one of its directors, Muzahim Abdulhadi Taib, in which it was averred that, after the appellant's appeal was dismissed, it proceeded to pay the decretal sum together with an additional amount of Kshs 313,375/= as costs, in full and final settlement of the decree of the lower court. Annexed to the Supporting Affidavit are copies of the cheques in proof of payment as well as the Proclamation and Warrant of Attachment and Sale issued by Sure Auctioneers



to demonstrate that there was no basis for the attachment; and that the attached property comprise the appellant's tools of trade.

4. In response to the application, the respondent relied on the Replying Affidavit sworn on May 24, 2022 by his Advocate, Ms Lucy Ngigi. Counsel conceded that indeed this appeal was filed by the appellant against the judgment and decree of the lower court in Mombasa CMCC No 1824 of 2017: Yusuf Ali Manzi v Interstate Logistics Ltd in the sum of Kshs 2,613,908/= plus interest and costs. She also conceded that the sum of Kshs 2,981,572 held in a joint interest earning account pending the hearing and determination of the appeal was released to her firm towards payment of the decretal sum. It was however her contention that even then there was an outstanding balance of Kshs 314,903; and that it was on that account that the respondent proceeded to instruct an auctioneer to levy execution.
5. At paragraph 8 of the Replying Affidavit, counsel went on to state that the appellant thereafter settled the balance of Kshs 314,903 vide the cheques dated January 22, 2021 and May 25, 2021 for Kshs 156,768/= each, as exhibited by the appellant. Thereafter, the respondent filed Party and Party Bill of Costs in respect of the appeal which was taxed in the sum of Kshs 270,352.67 and a Certificate of Costs dated March 16, 2022 issued (per Annexure "LWN-5"), which is what the execution by M/s Sure Auctioneers related to. She therefore asserted that the subsequent execution is lawful and there is no basis at all for the recall of the Warrants of Attachment and Sale or Proclamation.
6. The application was canvassed by way of written submissions, pursuant to the directions given herein on May 25, 2022. On behalf of the appellant, Mr Gakuo proposed two issues for determination vide his written submissions dated October 18, 2022, namely: whether the decretal sum was fully settled; and whether the Warrants of Attachment and Sale as well as the ensuing Proclamation were illegally issued. He reiterated the appellant's stance that the decretal sum awarded to the respondent was fully paid along with an extra amount of Kshs 313,576/= to cater for costs; and therefore that there was no justification for execution. He relied on *Karuri Stores Pharmaceutical Ltd & Another v Acacia Medical Centre Limited* [2021] eKLR, for the proposition that interest should only run for the period the decretal sum remained unpaid after judgment on appeal. Thus, according to Mr Gakuo, the interest as calculated by the respondent is unfair, unjustified and illegal; and ought, for those reasons, to be set aside.
7. On behalf of the respondent, Ms Ngigi relied on her written submissions dated July 1, 2022. She proposed the following two issues for determination:
  - a What was the decretal sum in Mombasa CMCC No 1824 of 2017? And,
  - b Whether the appellant paid the costs of the appeal.
8. Ms Ngigi justified the execution levied by the respondent and endeavoured to demonstrate how the sum of Kshs 314,903.64 was arrived at. The computation includes interest in the sum of Kshs 436,522.64 and costs of the lower court suit in the sum of Kshs 242,595/=. She explained that the costs of the appeal had not been taxed by the time the appellant paid the decretal sum; and therefore the payment of Kshs 314,904/= by the appellant did not preclude the respondent from claiming and executing for costs of the appeal. She concluded her submissions by asserting that the appellant has not exhibited any evidence to prove that it indeed paid the sum of Kshs 270,352.67 in satisfaction of the Certificate of Costs dated March 16, 2022.
9. In the light of the foregoing, there appears to be no dispute that the decretal sum plus costs awarded by the trial court has been settled in full. It is common ground that, so far the appellant has complied with the orders of the court and paid a total sum of Kshs 3,294, 025.64/=. A perusal of the record also confirms that the respondent filed a Party and Party Bill of Costs on March 9, 2021 in the appeal



which was later amended on July 15, 2021. That Bill of Costs was taxed and a Ruling on Taxation by the Deputy Registrar, Hon J, Nyariki, was delivered on March 9, 2022 whereby the respondent was awarded Kshs 270, 352.67/= as costs of the appeal. It is manifest from the proceedings and the documents filed that both parties participated in the taxation of the Party and Party Bill of Costs in respect of which the Deputy Registrar issued the Certificate of Costs dated March 16, 2022.

10. There is no indication that the appellant settled the said costs after taxation or that a reference has been preferred in respect of the ruling on taxation. It is therefore fallacious for the appellant to claim that it is not aware of the alleged costs of appeal. Indeed, it is plain that since taxation took place on November 10, 2021 and a ruling given on March 9, 2022, it cannot be true that the amounts were paid for vide the two cheques dated January 23, 2021 and January 25, 2021 (Annexures MAT-1 to the Supporting Affidavit).
11. Being satisfied as I am that the appellant is yet to settle the costs of the appeal in terms of the Certificate of Costs dated March 16, 2022, it follows that the respondent's application for execution filed herein on March 30, 2022 was proper and the ensuing Warrants of Attachment and Sale, as well as the Proclamation dated were all warranted. Consequently, the appellant's application dated May 13, 2022 is devoid of merit and is hereby dismissed with costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT MOMBASA THIS 4<sup>TH</sup> DAY OF JANUARY 2023.**

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**OLGA SEWE**

**JUDGE**

