



**Rural Electrification Authority v Limelight Creations Limited  
& 2 others (Miscellaneous Civil Application 410 of 2017)  
[2023] KEHC 1758 (KLR) (Commercial and Tax) (3 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1758 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION 410 OF 2017  
A MABEYA, J  
MARCH 3, 2023**

**BETWEEN**

**RURAL ELECTRIFICATION AUTHORITY ..... APPLICANT**

**AND**

**LIMELIGHT CREATIONS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ALLAYS SOUTHERN CORPORATION LTD ..... 2<sup>ND</sup> RESPONDENT**

**GLOBAL TRADE MARKETPLACE (EA) LTD ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before Court is the applicant's Notice of Motion dated 28/3/2022. It was brought, inter-alia, under Order 21 Rules 7 and 8, Order 22 Rules 7 and 18 and Order 49 of the [Civil Procedure Rules 2010](#).
2. In it, the applicant sought an order to extend time within which to appeal the decision of the Deputy Registrar of January 27, 2022; an order to stay the proclamation and attachment dated March 23, 2022 by the respondents pending the determination of the intended appeal; an order to set aside/vacate the decision of the Deputy Registrar of January 27, 2022 and all consequential orders thereto.
3. Further, the applicant sought the setting aside of the decree of December 19, 2019 for being irregular, un-procedural and non-compliant with the mandatory provisions of the law.
4. The grounds for the application included that; the respondents purported to extract warrants of attachments that were contrary to the judgment of the court and are seeking to execute the said warrants which would be tantamount to countenancing an illegality.



5. That the Deputy Registrar was directed to confirm the amounts paid from the decree dated December 19, 2019 and remit the matter to the judge who has the power to alter a decree emanating from a judgment. That on March 23, 2022, the applicant was served with warrants of attachment and proclamation notices purporting to execute a decree of December 19, 2019, which decree is non-existent and was not attached to the attachment proceedings. That in the said warrants of attachment, the decretal amount had been reviewed by the Deputy Registrar from Kshs 167,122,291.72 to Kshs 101,052,317.13.
6. The applicant contended that the Deputy Registrar had no jurisdiction to review the decree. That the respondents did not adhere to the mandatory condition that a notice to show cause be issued to the applicant before execution and attachment. That pursuant to the decision of the Deputy Registrar of January 27, 2022, no decree has been subsequently extracted as the basis of execution under Order 21 of the Civil Procedure Rules.
7. The applicant argued that the Deputy Registrar did not have jurisdiction to vary the decree and the amount due therein as it would fundamentally alter the character of the original decree issued by the Court. That the applicant could not appeal against the decision of the Deputy Registrar on time as it was not aware that it had been delivered on January 27, 2022 as the cause list had indicated that the matter would be listed for a mention on that day.
8. In opposition, the respondents jointly filed a replying affidavit sworn by their Chief Executive Officer on January 16, 2022. It was averred that contrary to the grounds of the instant application, a decree dated December 19, 2018 was extracted and issued by the Deputy Registrar on September 17, 2019 in conformity with the ruling of Justice Ngetich dated December 19, 2018 adopting the arbitral award dated May 16, 2017 as a judgment of this Court.
9. That the draft decree was forwarded by the respondents' previous advocate to the applicant's advocate requesting them to approve or amend the same but the same was not responded to. Consequently, the respondents' then advocates applied to the Deputy Registrar of this Court to approve and extract the decree which was issued on September 17, 2019.
10. Further, that the issue of the existence of a valid decree dated December 19, 2018 was raised by the applicant before Lady Justice Muigai who expressly found in her ruling that the decree was served on the respondents' advocate but there was no reply thus the decree was approved for execution. In the premises, the issue of existence of the decree dated December 19, 2018 is res judicata. That in her ruling of October 15, 2021, Muigai J appreciated that her orders were limited to the execution process as she sought the verification and confirmation of the payment which merely requires that the decree holder certifies to the court the payment he has received from the judgment debtor for the court to record such payment.
11. The respondents contended that Order 22 Rule 2 of the [Civil Procedure Rules](#) do not require the decree to be amended as contended by the applicant. That the Deputy Registrar did not need to remit the matter back to a judge to alter the decree after certifying part payment of the decree. That the decree dated December 19, 2018 was extracted and issued in accordance with the simple interest awarded by the Arbitrator.
12. The respondents contended that the Deputy Registrar erred in her calculation of the amount due as the total outstanding amount as at January 31, 2022, inclusive of arbitration costs and interest, ought to have been Ksh107,668,277.60/-. That in the premises, the respondents were denied a sum of Kshs 4,956,295.60 and that this is the part that requires to be corrected.



13. Finally, that the outstanding principal and arbitration costs continues to accrue interest at 12% per annum which meant that as of May 2022, the outstanding balance stood at Kshs 110,640,218.51 owed by the applicant to the respondent.
14. The Court has considered the parties contestations and the submissions. Vide an award dated May 16,2017, a sole arbitrator found in favour of the respondents as against the applicant and awarded the respondents the sum of Kshs 101,427,905.27 plus interest at the rate of 12% per annum from the date of filing the claim. The award was adopted as a judgment of the Court by Ngetich J on October 18, 2021.
15. In the said ruling of October 18, 2021, the Court ordered the stay of execution of the proclamation and decree pending the issue of part payment/performance of the Final Award being determined by the Taxing Officer.
16. On January 27, 2022, the Deputy Registrar, as the Taxing Officer, delivered a ruling wherein she determined the issue of part payment of the final award. She found that the total amount payable was Ksh102,711,982/- after factoring the sums that had already been paid by the applicant. Pursuant thereto, a Proclamation and Attachment dated March 23, 2022 was issued by the Court.
17. The applicant is aggrieved by the aforementioned proclamation and attachment and the ruling of January 27, 2022. It argued that the Deputy Registrar was directed to confirm the amounts paid from the decree dated December 19, 2019 and remit the matter to a judge who has the power to alter a decree emanating from a judgment. That the Deputy Registrar does not have the jurisdiction to review a decree.
18. The respondents on the other hand argued that the Deputy Registrar did not vary or set aside the decree and the only role that she performed was to certify the amount paid.
19. Order 22 Rule 2 of the [Civil Procedure Rules](#) provides:-

“Where any money payable under a decree of any kind is paid direct to the decree-holder or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree- holder may certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly.”
20. I have considered the record. The view I take is that what the Deputy Registrar did was to merely determine the issue of the part payment of the decretal sum as ordered by Ngetich J in her ruling of October 18, 2021. The parties sent proof of the payments made post judgment and the Deputy Registrar adjusted the amount owing based on the information supplied. The proof was sent via correspondences marked ‘KW3’ in the applicant’s supporting affidavit. She did not review/alter the judgment and decree of the court as contended.
21. The applicant alleged that the execution by the respondents was on the basis of a ruling by the Deputy Registrar and not founded on any decree that has been extracted.
22. The warrants of attachment of property and movable property dated March 23, 2022 indicate that they were issued pursuant to the decree of December 19, 2018. Therefore, the applicant’s allegations that the execution was based on the Deputy Registrar’s ruling is without basis. There was no need to extract a further decree as there was already one in operation.
23. Further, the record shows that the aforementioned decree was served upon the applicant’s advocates for approval but they declined to respond. Consequently, the decree was approved by the Court. Muigai



J did consider this issue and settled the same in her ruling of October 15, 2021. The issue is therefore res judicata.

24. The applicant prayed for leave to file an appeal out of time on the basis that its appeal raised glaring errors on the Deputy Registrar's decision. Further, that there be a stay of execution of the proclamation pending appeal.
25. Under Order 42 Rule 6 of the *Civil Procedure Rules*, the elements that must be proved for a stay of execution include that substantial loss may result to an applicant, the application has been made without unreasonable delay and the applicant has furnished security for the due performance of the decree being appealed against.
26. The applicant has not demonstrated how it would suffer substantial loss nor provided security for due performance of the decree. Thus, I find no justifiable reason to grant a stay of execution sought. Further, there was no explanation as to why the intended appeal was not filed timeously.
27. Accordingly, I find the application dated March 28, 2022 to be without merit and dismiss the same with costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF MARCH, 2023.**

**A. MABEYA, FCIArb**

**JUDGE**

