



Sokoni Mattress Ltd v Bellamy Milling Company Limited & another (Civil Appeal E093 of 2024) [2024] KEHC 15913 (KLR) (6 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15913 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E093 OF 2024
RM MWONGO, J
DECEMBER 6, 2024**

BETWEEN

SOKONI MATTRESS LTD APPLICANT

AND

BELLAMY MILLING COMPANY LIMITED 1ST RESPONDENT

CHADOR AUCTIONEERS 2ND RESPONDENT

RULING

1. The matter arises from the Small Claims Court (SCC), Kerugoya. In the claim in the Small Claims Court, the 1st Respondent Claimant was awarded Kshs.644,360.35/= against Spear Supermarket Ltd Alias Spear Mattress Limited. A decree was duly issued by the Small Claims Court.
2. In order to execute the decree, the Small Claims Court issued to Chador Auctioneers, the 2nd Respondent a Warrant of Attachment (Form Civil 7D) and Warrant of Sale (Form Civil 26 D) in favour of Claimant. These were dated 11th July 2024, commanding the 2nd Respondent to sell auction after giving fifteen days previous notice and making and making proclamation the judgment debtors property duly attached under the warrant.
3. The 2nd Respondent attached goods allegedly belonging to the Respondent on 15th July 2024.
4. Sokoni Mattress Ltd, the applicant herein, filed an objection to the attachment, claiming that the attached good belonged to it. After hearing the objection, the Small Claims Court Adjudicator ruled on 14th August 2024 that the objection lacked merit, and dismissed the objection application.
5. Aggrieved, the applicant filed an appeal against the said Ruling in the High Court. Stay of execution was granted in the trial court and extended by the High Court pending inter parties hearing of the application.
6. The applicant notice of motion dated 16th August, 2024 and seeks the following orders:



1. Spent.
2. Spent.
3. That pending the hearing and determination of this appeal, this Honourable Court be pleased to issue an order for stay of the execution and an order stopping and restraining the respondents from selling, disposing of or in any other manner dealing with the goods attached by the 2nd respondent in execution of the warrants of attachment and sale issued on 11th July, 2024 in Kerugoya Small Claims Court Case No. SCCCOMM/E010/2024.
4. That the costs of this application be paid by the respondents.
7. The application is supported by the affidavit of Grace Waiyego Kairu, a director of the applicant. In essence she asserts that the 2nd Respondent auctioneer visited their premises known as Sokoni Mattress Ltd and proclaimed and attached its goods. The attachment was in execution of a warrant is SCC COMM E010 of 2024 Kerugoya, Small Claims court where the judgment debtor was Spear Supermarket Limited.
8. She asserts that her company and the judgment debtor are distinct entities; hers is Sokoni Supermarket Ltd and the judgment debtor is Spear Supermarket Ltd. She further states that their premises was clearly marked “Sokoni” at the time of Proclamation.
9. The applicant therefore filed objection proceedings before the Small Claims Court seeking release of proclaimed goods.
10. On 2nd August 2024 the Small Claims Court dismissed the objection proceedings with costs directed that sale of the proclaimed goods should proceed.
11. The applicant then filed an appeal and the present motion for stay.
12. The 1st Respondent filed a Replying Affidavit sworn by James Waititu its Finance Director. In it he asserts in essence that; they contacted the 2nd Respondent after receiving a warrant from the Small Claims Court; the 2nd Respondent went to the judgment debtors premises in an area called “Sokoni” The building was marked ‘Spear Sokoni’ as shown in photograph marked ‘JW1’ annexed; That they proclaimed the goods shown in the list marked ”JW2”; that the appellant produced a business permit which is indicated that the appellant operates in a locality called Sokoni, but does not specify the building or actual premises; that this lack of specificity indicates that the appellant is; located in a marked place and not necessarily on the judgment debtors premises; that the appellant failed to produce any lease, tenancy agreement or proof of payment of rent and that the goods were found in the premises and control of the judgment debtor.
13. The parties filed written submissions as required by the Court.

Analysis and Determination

14. I have carefully considered the parties’ representations, submissions and documents availed in respect of the application.
15. I have also considered the fact that after the court ordered professional valuation of the proclaimed goods, there was a massive difference in the values returned, which was rather intriguing, if not befuddling. The valuation report by the Applicant’s Valuers (Valuer Mbugua J.K) gave a figure Kshs.9,611,100/=; the valuation report of the same items by the Respondent’s valuer (Poly Tech Assessors gave a figure of Kshs.852,100/=.



16. Quite obviously, this difference in valuation opens up a Pandora's box that will invoke a query on the integrity of the valuations. This goes to the question of the substantiality of loss that the appellant could suffer if the report has propriety, or to the propriety of selection of items for proclamation by the 2nd Respondent Auctioneer.
17. Mind you, the claim arose from a Small Claim in the Small Claims Court.
18. I have perused the authorities referred to by the applicant: *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] eKLR and *Butt v Rent Restriction Tribunal* [1979] eKLR. These set out the long-standing principles for grant of stay of execution.
19. The Respondent relied on the following cases: *Kuria v Gachanja & Another: Gathara & Another (Objector)* Misc. Civil Application No. 444 of 2017 (2023) KHEC 18476 (KLR) (Commercial & Tax (12 June 2023) where Mongare J stated:
- “To prove that the property had been leased out the 2nd Objector annexed a copy of the lease between the 1st Objector and herself. I note that matter of the objectors provided existence of payment of rent.”
20. In my view the Respondent's authority goes not to the question of stay, but to the core question as to whether or not the objector is the owner of the goods. That will be the question in issue in the appeal and cannot be delved in at this stage.
21. Ultimately, stay is a matter of the discretion of the court, within the well laid out principles in the Butt and Kenya Shell cases cited above. In exercising that discretion in each case, the court is advised to take the position stated by Madan JA in Butt quoting Colton LJ in *Wilson v Church* (No.2) 12 CHD (1879) 454 at page 459
- “It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory.”

Conclusion and Disposition

22. Given the contrasting values of the proclaimed goods; and given the nature of information as to the identity of the judgement debtor; whether “Spear Sokoni” as evidenced in the photograph availed by the 1st Respondent or “Sokoni” as asserted by the Appellant; and given that these are issues for determination in the appeal, I am persuaded to grant stay.
23. In so doing and given that this matter is essentially a Small Claims Court matter, the principle of expedition has a highlighted or more pronounced meaning in light of the principles underpinning the *Small Claims Court Act*.
24. Accordingly, I grant stay on the following conditions:
1. The applicant shall file and serve their Record of Appeal, within 30 days of the date hereof.
 2. The Respondent shall be entitled to file a Supplementary Record of Appeal within 14 days after being served.
 3. The appeal shall be fast-tracked and heard in priority in the new term.
 4. The hearing shall be on 27th January 2025.



5. The Lower Court file to be returned forthwith to the lower court and proceedings typed and certified within ten (10) days from the date hereof.
6. Orders accordingly.

DATED AT KERUGOYA THIS 6TH DAY OF DECEMBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:-

Njogu for Applicant

Wenene for Respondent

Court Assistant, Murage

