



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL APPEAL NO.E004 OF 2020

ABDI KARIMI ALI.....1ST APPELLANT
DIAMOND WHOLESALERS LIMITED.....2ND APPELLANT
VERSUS
CATHERINE MASITSA KHAYADI (Suing as Legal Administrator of the
Estate of ELISHA MATONDOBI (DECEASED).....RESPONDENT

JUDGMENT

1. The application coming for determination in this case is dated 17/12/2020 seeking the following orders:-

(i) SPENT

(ii) Pending the inter-parties hearing of this Application herein, the Honourable Court be pleased to grant Interim Orders of Stay of Execution of the Warrants of Attachment/sale dated 2nd day of December, 2020 and the Proclamations dated 4th day of December, 2020.

(iii) The Honourable Court be pleased to annul/quash the Warrants of Attachment/Sale dated 2nd day of December, 2020 and the Proclamations dated 4th day of December, 2020.

(iv) The Honourable Court be pleased to grant Stay of Execution of Courts Decree/Judgment in Kericho CMCC.285/2018 delivered 30th day of April, 2020 pending hearing and determination of the Appeal filed herein KERICHO HCCA. NO.E004 of 2020.

(v) Costs of this Application.

(vi) Such other and/or further orders as this Honourable Court may deem just and expedient be granted.

2. The parties partially compromised the Application and filed submissions only on the issue of who pays the Auctioneers' fees.

3. The Applicant submitted that despite complying with all the conditions set down by the Court for Stay of Execution, the Respondent proceeded to proclaim the Plaintiff's goods.

4. Further, that the Respondent did not have any justification whatsoever in instructing the Auctioneer to proclaim the Appellant's goods.

5. The Respondent on their part submitted that the Appellant was granted 30 days to file an appeal from 23/10/2020 but on 2/12/2020 which was 41 days after the order was made, no record of appeal has been served by the Appellant and neither had the Appellant approached the Respondent for opening a Joint Account and the Record of Appeal was served after the Proclamation was done on 4/12/2020.

6. The parties also filed written submissions in the Appeal. The Appellant narrowed his appeal to one ground that the suit was statute time barred in that the Deceased died on 29th January, 2017 and the suit was filed on 14/11/2018 which was more than one year after the Deceased died.

7. Upon considering the submissions filed by both parties, I find that it is not in dispute that the Accident occurred on 29/1/2017 and the suit filed on 14/11/2018.

8. I find that there is no requirement that the suit has to be filed within one year. The suit was filed before the expiry of 3 years and I find that the same is not statute time barred.

9. On the issue as to who pays the Auctioneer's charges, I find that the Appellant did not serve the Record of Appeal within the required time and the Respondent cannot be faulted for instructing an Auctioneer to proclaim the Appellant's goods in Execution of the Decree.

10. I accordingly dismiss the appeal with costs to the Respondent. The Appellant also to pay the Auctioneers' charges.

Delivered, signed and dated at Kericho this 9th day of April, 2021.

A. N. ONGERI

JUDGE