

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO. 132 OF 2020

CIC GENERAL INSURANCE CO. LTD.....APPLICANT

VERSUS

VERONICA GATHONI NDUNGU.....RESPONDENT

RULING.

1. This court on **24th June 2021** dismissed the respondent's application for stay of the lower court case pending the determination of an appeal. It appears that immediately thereafter the respondent moved to the lower court and obtained a stay of execution of the decree which it had attempted but failed in this court.
2. The applicant aggrieved by the said action filed this notice of motion dated **26th June 2021** in which it has urge this court to vacate the said lower courts orders issued on **25th June 2021** by applying its supervisory jurisdiction.
3. The affidavit of the applicant sworn on **26th June 2021** states as much. She says that the respondent did not disclose to the said court that its application for stay of execution had been denied and in so doing the trial court was misled into granting it the impugned orders. She went on to state that the issue of costs raised by the respondent as being contentious had long been determined and it was not a ground to seek fresh directions from the court.
4. The respondent vide the replying affidavit of **Erastus Mbaka** its legal officer sworn on **30th June 2021** has denied that it misled the court. He said that the only reason that made the respondent to seek directions from the trial court was on the issue of costs and interest which had not been subjected to inter parties hearing in terms of **Order 21 rule 9 of the Civil Procedure Rules**.
5. He went on to state that the costs demanded by the applicant were exaggerated and not in tandem with the advocates remuneration order as well as interest on the decretal amount.
6. The court is well seized of this matter. The affidavit in support of the application **VNG 4** has a certificate of costs dated **12th March 2020** where the costs as per the provisions of **Order 21 rule 9 of the Civil Procedure Rules** were taxed at **Kshs. 252 997**.
7. The warrant of attachment attached to the replying affidavit of Erastus Mbaka indicates the same amount of costs. This figure respectfully has not been disputed. If there was any other amount demanded by the applicant especially on interest, then that would have called into more inquiry.
8. For now, it is my considered view that there was no basis for the trial court to have granted the respondent the orders it did. It must be noted that in this case judgement was entered by way of admission as per the decree dated **28th September 2020**. The principal sum as well as the costs are well known. Even for argument sake, the respondent should settle what has been consented to.
9. In the premises, this court finds that the respondent is guilty of material non-disclosure. This court hereby invokes its supervisory jurisdiction under **Article 165(6) of the Constitution** and sets aside the orders and proceedings of the lower court in respect to the application **24th June 2021** and issued on **25th June 2021**.
10. The applicant shall have the costs of this application.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 13TH DAY OF JULY 2021.

H. K. CHEMITEI.

JUDGE