



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

CIVIL APPEAL NO. E34 OF 2021

CROWN BUS SERVICES LIMITED.....APPLICANT

VERSUS

JUDITH WERE MUKANI.....RESPONDENT

RULING

1. The Notice of Motion dated **12th April 2021** seeks among other orders stay of proceedings in case No. CMCC 89 of 2013 pending the hearing and determination of this application and thereafter the appeal. It also prays that the advocate now acting for the said appellant be allowed to come on record as per their consent.
2. The application is supported by the sworn affidavit of Mohamed Jumale Awale the applicants managing director dated the same date. He deponed that previously there was an appeal no **Nakuru HCCA no. 115 of 2015** concerning the same parties which judgement was delivered in their absence. It has however since paid a sum of Kshs 3 million through its insurance company.
3. Despite this the respondent has proceeded to apply for execution proceedings against the applicant and to support this he attached copies of execution process indicating that the applicant's goods have been proclaimed.
4. The applicant goes on to state that the lower court has failed to consider its application despite the fact that execution has been commenced. He gave a chronology of the events showing how the trial court has failed to determine its application dated **23rd March 2021**. That it was the fault of the court not to list the matter for hearing at the appropriate time.
5. In his conclusion he stated that the applicant should be allowed to apply to pay the decretal amount by monthly instalments seeing that they were facing tough economic situation as a result of the Covid pandemic.
6. In his replying affidavit through his counsel **Mukisu Mkoyandali**, dated **14th June 2021**, the respondent has opposed the application on the grounds that the applicant has not in fact fixed the application for hearing at the lower court but has instead rushed to this court prematurely.
7. That appeal in respect to the suit herein (**Cmcc no. 89 of 2013**) was heard and determined and there was nothing pending at the lower court. In any case the applicant has not given any proposal on how it intends to liquidate the decretal amount by instalments.
8. The court has perused the application as well as the annexures to the supporting affidavit. Without going into much details it is clear that the parties have had a long litigation history. The attached judgement of this court in Civil Appeal no.115 of 2015 speaks as much.
9. The applicant as clearly explained by the respondent has not fixed the application at the lower court for hearing. All that he has explained is how the court failed to hear its application on various dates. There is no order or ruling allowing or dismissing its application.
10. This application in my view is simply a panic mode. The applicant was apprehensive that the respondent may carry out an attachment before it obtained the favourable orders. The application so to speak and even the appeal as it stands now has no substratum. There must be an order or a decree appealed against. One cannot appeal based on some court proceedings only.
11. In my view the applicant ought to go back to the trial court and list its application for hearing and whatever the outcome then it can come to this court.
12. Deducing from the supporting affidavit, all that the applicant seems to be asking the court is to allow the debt to be settle by way of

instalments because of hard economic situation it is facing. Unfortunately, that has not been brought forth as rightly observed by the respondent.

13. For now, this court does not find any merit in the application save to allow the counsel to formally come on record as the same was not opposed and at any rate there is a consent already on record.

14. The application is otherwise dismissed with costs. There shall be however stay of execution for 14 days to allow the applicant fix its application at the lower court for hearing and in default execution should proceed.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 8TH DAY OF JULY 2021

H K CHEMITEI

JUDGE