



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 270 OF 2016

PETER MURIUNGI.....1ST PLAINTIFF

KABURU LERIA.....2ND PLAINTIFF

VERSUS

TRUSTEE REGISTERED – CATHOLIC PARISH D.O.M.

LAARE.....RESPONDENT

RULING

1. Through an application dated 28.4.2021 Peter Muriungi seeks the warrant of arrest issued on 7.10.2020 be set aside or varied, his property be released and the O.C.S leave to ensure compliance of the orders.
2. The grounds upon which the application is made are the warrants were issued without a notice to him; mistakes of his advocates should not be visited upon him; he will be prejudiced if the warrants are not set aside; goods wrongly attached should be returned.
3. The application is supported by his own affidavit sworn on 28.4.2021. He claims he has filed a complaint against his former advocates, was condemned unheard and that it is only fair and just that the orders be set aside.
4. The record shows the applicant filed a similar application for stay and have to pay the costs in instalments. By a ruling delivered on **19.2.2020**, the court ordered the applicant to pay a deposit of **Kshs. 50,000/=** by **19.3.2020** and thereafter to be paying **Kshs. 10,000/= every month** until the costs were cleared and in default execution to issue. A stay of execution was therefore granted on those terms.
5. On 1.10.2020 the decree holder told the court no payment was ever made hence warrants of execution were issued to be executed by the O.C.S Laare.
6. On 3.11.2020 the applicant filed a notice of motion dated 2.11.2020 seeking for stay of the warrants of arrest. Before the said application could be disposed of he filed the current application which is similar to the earlier one.
7. It is not also lost that a similar application had been filed herein and was determined on 26.11.2018.
8. In the circumstances it is apparent the current two applications are resjudicata and therefore an abuse of the court process. Further the warrants sought to be stayed and or set aside or varied were regularly issued after the applicant failed to honour the orders to liquidate the decretal costs in instalments.
9. The two supporting affidavits are very silent on whether or not the applicant paid a single instalment as ordered.
10. Again the record shows the applicant failed to honor court's orders to vacate the suit premises decreed to the defendant as a result of which auctioneers evicted him. He cannot therefore turn around and deny that there were regular orders of this court for his eviction.
11. The court has previously determined so far as the above issues of stay and setting aside of the decree hence the court is **functus officio**. The two applications are therefore dismissed with costs.

File closed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 8TH DAY OF DECEMBER, 2021

In presence of:

Mr. Kariuki holding brief for respondent

Haron Gitonga for respondent

HON. C.K. NZILI

ELC JUDGE