



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 256 OF 2020**

**ORACLE MOTOR LIMITED.....1<sup>ST</sup> APPELLANT/APPLICANT**

**NEW STATUS MOTOR LIMITED.....2<sup>ND</sup> APPELLANT/APPLICANT**

**-VERSUS-**

**JOHNSON MUTISYA MUNGUTI.....1<sup>ST</sup> RESPONDENT**

**TAHIDI MOTORS.....2<sup>ND</sup> RESPONDENT**

**MARGARET ANINDO T/A**

**IGARE AUCTIONEERS.....3<sup>RD</sup> RESPONDENT**

**MORAN AUCTIONEERS.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> and 2<sup>nd</sup> appellants/applicants filed the Notice of Motion dated 9<sup>th</sup> March, 2021 supported by the grounds set out on the face thereof and the facts stated in the sworn affidavit of Adeel Akbar, Director of the 1<sup>st</sup> applicant. The applicants sought an order that there be a stay of execution of the judgment and decree issued by the trial court in Milimani CMCC NO. 1219 of 2017 pending the hearing and determination of the appeal.
2. The Motion stands opposed by way of the replying affidavit sworn by the 1<sup>st</sup> respondent on 9<sup>th</sup> April, 2021, to which the applicants filed a further affidavit sworn by Adeel Akbar.
3. The Motion was argued by way of written submissions. I have considered the grounds set out on the face of the Motion, the facts deponed in the affidavits in support of and in opposition thereto, and the rival written submissions. It is apparent from the record that the 2<sup>nd</sup> to 4<sup>th</sup> respondents did not file any documents in respect to the Motion or take part in the hearing thereof.
4. Before I consider the merits of the Motion, I note from the averments made by the 1<sup>st</sup> respondent that the applicants had previously filed a similar application dated 26<sup>th</sup> June, 2020 and which application has not been withdrawn or determined. According to the 1<sup>st</sup> respondent, this constitutes an abuse of the court process. The applicant did not offer any response on this specific issue.
5. Upon perusal of the record, I established that as correctly put by the 1<sup>st</sup> respondent, the applicants had previously lodged the application dated 26<sup>th</sup> June, 2020 before the High Court seeking an order for a stay of execution of the judgment delivered by the trial court. According to the record, there is nothing to indicate that the said application was ever withdrawn, though the record shows that the court declined to grant any interim orders. Subsequently, the applicants brought the instant Motion dated 9<sup>th</sup> March, 2021 seeking the same orders as those previously sought.
6. From the foregoing, it is clear the Motion of 9<sup>th</sup> March, 2021 is incompetent before this court. I further find that the failure on the part of the applicants to disclose to this court the existence of the application dated 26<sup>th</sup> June, 2020 constitutes an abuse of the court process, which this court cannot condone.
7. For that reason, the Motion dated 9<sup>th</sup> March, 2021 is hereby dismissed with costs to the 1<sup>st</sup> respondent.

**DATED AND SIGNED AT NAIROBI THIS..... DAY OF..... 2021**

**A. MBOGHOLI MSAGHA**

**JUDGE**

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 7<sup>TH</sup> DAY OF JULY, 2021.**

**J. K. SERGON**

**JUDGE**

In the presence of:

Mr. Osoro for the Appellant

Mr. Mwenda for the Respondent