



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**CIVIL SUIT NO. 83 OF 2011**

**BHUPENDRA SOMABHAI PATEL.....PLAINTIFF/APPLICANT**

**VERSUS**

**KINGSWAY TYRES LIMITED .....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**MANOJ SHAH .....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

The application before me is dated 11<sup>th</sup> October 2019, and is for the unconditional discharge of the Order for stay of execution, which was made on 28<sup>th</sup> February 2018.

1. The Plaintiff/Applicant asked this court to order the Defendants/Respondents to immediately release to him the following items;

*(a) Motor Vehicle Registration No. KBF 222W, together with its Original Log Book, and an Original Transfer Form executed in favour of the Plaintiff.*

*(b) The Original Certificate of Lease/Title Deed of L.R. KISUMU MUNICIPALITY/ BLOCK 8/174, together with a Transfer Form executed by the Plaintiff; original passport photos of the Plaintiff; and the copy of the Plaintiff's PIN Certificate No. A0002026870.*

*(c) Kshs 6,670,000/= together with all interest accrued thereon, which is currently held at Diamond Trust Bank Account No. 001FDLC120400007, or in any other Account at the said Bank.*

2. The application is premised upon the Judgment dated 21<sup>st</sup> December 2017.

3. Pursuant to the Decree dated 21<sup>st</sup> December 2017, the Defendants were ordered to, inter alia;

*(i) Unconditionally release the Plaintiff's motor vehicle Registration No. KBF 222W, together with the original logbook and a duly signed Transfer Form;*

*(ii) Unconditionally release the original Lease Certificate for L.R. KISUMU MUNICIPALITY/BLOCK 8/174;*

*(iii) Refund of Kshs 6,750,000/= which had been deposited in an Interest- earning Account, which was in the names of the advocates representing the parties herein. The said amount was to be refunded together with all the Interest that had accrued.*

4. Being dissatisfied with the Judgment, the Respondents lodged an appeal. The Respondents also filed an application for stay of execution pending appeal.

5. On 28<sup>th</sup> February 2018, Hon. Lady Justice E. N. Maina delivered a Ruling, granting a stay of execution. The said stay of execution was granted on the following grounds;

***"1) That the Applicant shall deposit the Certificate of Lease/Title Deed of the Respondent's property L.R. KISUMU MUNICIPALITY/BLOCK 8/174 with the Deputy Registrar of this court within 21 days of this order.***

*2) That the Applicant shall deposit with the Deputy Registrar, the Log Book of the Plaintiff's Motor Vehicle KBF 222W within 21 days of this order and that the Motor Vehicle itself shall remain the property of this court pending hearing and determination of the appeal.*

*3) That the sum of Kshs 6,750,000/= shall continue to be held in the interest earning account in the joint names of the Advocates for the parties.*

*4) That the sums awarded to the Respondent by this Court shall be deposited in an interest earning account in the joint names of the Advocates for the parties within 21 days of this order.*

*5) That there shall be no dealings with the properties of the Respondent either by the Applicant or by himself pending hearing and determination of the appeal.*

*6) That the costs of this application shall abide the appeal.”*

6. The Defendants failed to comply with the time-lines for the deposit of the Certificate of Lease/Title Deed, as well as the deposit of the sums awarded to the Plaintiff.

7. On 20<sup>th</sup> November 2018 this court delivered a Ruling, through which the Defendants were granted a period of 7 more days to comply with the conditions that had been imposed by the court on 28<sup>th</sup> February 2018.

8. By an affidavit sworn on 11<sup>th</sup> October, 2019, the Plaintiff's advocate deponed that the Defendants had failed to deposit the Certificate of Lease with the Deputy Registrar of the High Court.

9. He further deponed that the Defendants had failed to deposit the extra sum of Kshs 400,000/= into a joint account which was required to be in the names of the advocates for the parties herein.

10. In answer to the application, the Defendants filed the Replying Affidavit sworn by Advocate Leonard Anyonje.

11. He told the court that the Defendants deposited the Certificate of Lease/Title Deed of **LR KISUMU MUNICIPALITY/BLOCK 8/174** and the Logbook for the motor vehicle Registration No. KBF 222W, vide the letter dated 19<sup>th</sup> March 2018.

12. The Defendants stated that by so depositing the title document and the logbook, they had complied with the orders which required them to comply within 21 days.

13. As there was contestation about whether or not the Logbook and the title document had been deposited with the Deputy Registrar; and if so, whether there had been compliance with the Orders of the Court, I caused a search to be conducted to verify the correct factual position.

14. After a diligent search, the learned Deputy Registrar of the High Court reported to me that we do not have the Title document for **L.R. NO. KISUMU MUNICIPALITY/BLOCK 8/174**.

15. The results of the said search have been relayed to the parties, through a letter dated 30<sup>th</sup> January 2020.

16. In the light of the said results, I find that the Respondents failed to comply with one of the pre-conditions for the grant of the order for stay of execution.

17. Accordingly, the order for stay of execution is not in force. Therefore, it is now open to the Plaintiff to institute appropriate proceedings for the execution of the Decree.

18. In my considered opinion, the application before me does not constitute an application for execution of a Decree.

19. Nonetheless, because the Respondent has been a beneficiary of the orders for stay of execution, which order was conditional upon the specified terms, I find that justice demands that the sum of Kshs 6,750,000/=, together with all the interest earned in respect thereto shall continue to remain in the Bank Account where the money was deposited, until further order of the court.

20. Although the Applicants have not obtained the orders sought, I find that justice demands that each party should meet their own costs of the application dated 11<sup>th</sup> October 2019. I so find because the application has, at least, unlocked one facet of the suit, thus opening the way for execution of the Decree.

**DATED, SIGNED at DELIVERED at KISUMU**

This 6<sup>th</sup> day of February 2020

**FRED A. OCHIENG**

**JUDGE**