



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 593 OF 2017

MIKE OYOO WAGUNDA.....PETITIONER

VERSUS

ADVOCATES DISCIPLINARY TRIBUNAL.....1ST RESPONDENT

AFYA CO-OPERATIVE & CREDIT

SOCIETY LIMITED (KMTC BRANCH).....2ND RESPONDENT

AND

OKUKU AGENCIES AUCTIONEERS.....INTERESTED PARTY

RULING

1. Through the notice of motion application dated 18th November, 2019, Mike Oyoo Wagunda, seeks orders as follows:-

“a. THAT this Honourable Court be pleased to certify this application as extremely urgent and the service of the same be dispensed with in the first instance.

b. THAT pending the inter partes hearing and determination of this application this Honourable Court be pleased to issue temporary stay order of execution against the 1st respondent and the interested party herein (Okuku Agency Auctioneers) from attaching the proclaimed goods of trade from the Petitioner’s office.

c. THAT pending the inter partes hearing and determination of this application this Honourable Court be pleased to issue order of stay of the execution of the proclaimed goods or any further action including attachment, sale that may be carried out by the auctioneer.

d. THAT pending the final determination of this application, the Honourable Court be pleased to set aside, vary or review the order issued on 22nd day of October 2019.

e. THAT the cost of this application be borne by the Auctioneer.”

2. The application is supported by the grounds on its face and the supporting affidavit of the Applicant. The 1st Respondent, the Advocates Disciplinary Tribunal, the 2nd Respondent, Afya Co-operative & Credit Society Limited (KMTC) Branch and the Interested Party, Okuku Agencies Auctioneers did not respond to the application.

3. The grounds upon which the application is premised are:-

“a. That the method and procedure used by the 1st respondent and the Interested Party to execute for costs is irregular and illegal therefore null and void.

b. That there is no decree which was served on the petitioner herein to warrant execution, if there exist any decree on record, then the same is irregularly obtained as it does not show the costs which is the subject of this application.

c. That the proclaimed goods, are tools of trade or equipment which cannot be attached on execution of costs.

d. That the purported proclamation is due to party to party costs and a party cannot attach nor proclaim by way of certificate of costs unless there is a decree as envisaged under Order 22 Rule (7)(b).

e. It is therefore in the interest of justice that the order sought in the application herein be granted to avert further loss and prejudice to the applicant.”

4. The supporting affidavit essentially reiterates the grounds of opposition. The Applicant challenges the execution of the decree on the ground that the same has been attended by illegalities. The fact however remains that there is a bill of costs taxed in the sum of Kshs.87,135/- in favour of the 1st Respondent. The application before me does not seek to set aside that bill of costs. The Applicant has not indicated that he wishes to appeal the decision awarding costs to the 1st Respondent or challenge the taxing master's decision.

5. A stay of execution is normally issued pending the taking of a particular step by the applicant. Generally, an applicant will be filing of an appeal or seeking a review of the order that is being stayed. The Applicant herein has not indicated what will follow once the stay of execution is granted. Issuing an order staying execution will not assist the Applicant because the costs will have to be paid any way. As such, I find that this application is without merit.

6. The application is therefore dismissed with no order as to costs as it was not defended.

Dated, signed and delivered at Nairobi this 3rd day of April, 2020.

W, Korir,

Judge of the High Court