



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL APPEAL NO. 3 OF 2020**

**VINCENT PAUL BWIRE.....APPELLANT**  
**VERSUS**  
**ZUVILLE ENTERPRISES LIMITED.....RESPONDENT**  
**RULING**

1. The application that I am called upon to determine is the Motion dated 5<sup>th</sup> February 2020, which seeks stay of the decree made in Mumias SPMCCC Nos. 5, 6, 9 and 10 of 2019, pending the hearing and determination of the appeals emanating from the said suits. There is also a prayer for consolidation of pending appeals as they relate to suits between the same parties.
2. The grounds upon which the application is premised are that the trial court had on 17<sup>th</sup> October 2020, in Mumias SPMCCC Nos. 5 and 6 of 2019, declined to set aside default judgements against the appellant on grounds that he had been properly served, that on the same day the court set aside default judgements in Mumias SPMCCC Nos. 9 and 10 of 2019 on the finding that he had been properly served but required him to deposit the decretal sums in court, that in all the four suits the claim was against Suo Agencies Limited and not the plaintiff, in Mumias SPMCCC Nos. 5 and 6 of 2019, that the appellant was required to settle the decretal amounts within 31 days, that warrants of arrests were likely to be enforced against the appellant in Mumias SPMCCC Nos. 9 and 10 of 2019, that the appellant would be prejudiced if execution proceeds yet there was misjoinder, that there was abuse of procedure in filing several suits where the parties were the same, that the bills of costs were exorbitant and that the appeals had overwhelming chances of success.
3. In the affidavit in support of the application, sworn on 5<sup>th</sup> February 2020, the appellant essentially repeats the grounds set out on the face of the application, save that he has attached copies of the rulings and pleadings. He avers that warrants of arrest were likely to be enforced against him since he lacked funds to settle the decrees.
4. The appellant has attached copies of the rulings in Mumias SPMCCC NO. 5 of 2019 and Mumias SPMCCC No. 9 of 2019, copies of the pleadings in all the suits the subject of the appeal, notices of entry of judgement, requests for judgement, notices of entry of judgements, bills of costs.
5. In response to the application, the only director of the respondent, Zubeidah K. Rashid, swore an affidavit on 24<sup>th</sup> February 2020. She avers that there is no arguable appeal, asserting that the transactions in question were between different entities, hence the separate suits. She asserts that the appellant was a director of the Suo Agencies Limited, and the sole signatory to the transactions. She avers that the appellant had been served with the relevant notices of entry of judgement in the various cases. She further states that the orders sought had been overtaken by events, as the warrants of arrest had been executed on 4<sup>th</sup> February 2020, and the appellant had deposited a sum of Kshs. 200,000.00 as a sign of commitment. She avers that the appellant was indebted to her, and there was no misjoinder of parties at the trial court. She further avers that she had previously engaged the law firm of Victor Shivega & Company, Advocates, and for that reason she was entitled to fees and attendances. She states that the appellant had been given time to defend himself, and a stay of execution had been granted. She also mentions that there were serious negotiations going on at the family level.
6. To that affidavit, she has attached several documents. There are records from the registry of companies, showing that she is the sole director and shareholder of the respondent. There is a copy of a certificate of registration for Suo Agency, indicating that its proprietor was the appellant. Other certificates show the incorporation of Suo Agencies Limited, whose directors and shareholders include the appellant. There are court papers showing that some of the suits at the trial court were between her, as an individual, and the appellant, as a person; while others were between their companies; and others between her company and the appellant as a person. There are copies of the decrees issued in two of the cases, and copies of orders of stay of execution of the decrees. Finally, there are documents showing that the appellant did make some deposits into some bank account, whose ownership is not disclosed.
7. The Motion, dated 5<sup>th</sup> February 2020, seeks stay of execution of decrees made in in four suits that were determined at Mumias in Mumias SPMCCC Nos. 5, 6, 9 and 10 of 2019. According to the memorandum of appeal, dated 5<sup>th</sup> February 2020, this appeal, No. 3 of 2020, is in respect of the decree in Mumias SPMCCC No. 5 of 2019 only. The other decrees are not before me. There is no evidence that any appeals have been proffered with respect to them. I have perused through the record, and I have noted that the advocate for the appellant never applied to have the appeals relating to those other decrees, if at all any such appeals were filed, to be consolidated or disposed of together. That being the case, I will only make a determination with respect to Mumias SPMCCC No. 5 of 2019.
8. According to the affidavit, sworn on 5<sup>th</sup> February 2020, by the appellant in support of the Motion, he avers that the suit in Mumias SPMCCC No. 5 of 2019 was between Suo Agencies Limited and the respondent, and there was no documentary evidence to connect him to the suit. The affidavit of service lodged at the trial court, sworn on 4<sup>th</sup> February 2019, by the court process server who purportedly effected service on him, avers that he was personally served with the summons to enter appearance and the other relevant documents in his capacity

as proprietor of Suo Agencies Limited.

9. The respondent has, through the affidavit filed herein, sworn by Zubeidah K. Ibrahim, in response to the Motion, averred that the appellant herein was a director and shareholder of Suo Agencies Limited. She has attached, to that affidavit, copy of a letter from the Department of Registrar General, dated 7<sup>th</sup> March 2017, which confirms that Bwire Paul Vincent, and two others, were the directors and shareholders of the Suo Agencies Limited. The appellant has not replied to that affidavit, to controvert that averment by the deponent of the affidavit. The allegations made in that affidavit have to be taken to be true, that he was indeed connected to Suo Agencies Limited as shareholder and director, contrary to what he asserts in the affidavit that he swore in support of the Motion.

10. Secondly, having established that he was a director of Suo Agencies Limited, which then would mean that he was a proper person to serve with court process relating to Mumias SPMCCC No. 5 of 2019, I note that he does not deny, in his supporting affidavit, that he was served with the process relating to that suit. An interlocutory judgement is liable to setting aside for lack of service, it is incumbent upon him to demonstrate that there was no service, and he has made no attempt to do so.

11. Thirdly, the suit in Mumias SPMCCC No. 5 of 2019 was between the respondent and Suo Agencies Limited. The appellant was not named as a party in that suit. The decree on record, dated 20<sup>th</sup> November 2019, is against Suo Agencies Limited, and the name of the appellant does not appear anywhere on the face of it. Since the appellant was not a party in Mumias SPMCCC No. 5 of 2019 and the decree of the court was not against him, he would have no capacity to proffer an appeal against that decree in his personal capacity.

12. I note from the record of the trial court that execution proceedings have been initiated against him personally, on the basis that he is the proprietor of the defendant in that suit. Of course, that would be improper for execution proceedings ought to be against the company, and if they have to be trained against him, then that can only be in his capacity as director of the defendant, the term proprietor only applies to persons trading under business names as opposed to limited liability companies which have a separate identity from that of their shareholders. The fact that the respondent is executing the decree against him personally, ostensibly as proprietor of the defendant in the suit, that would still not make him a party in Mumias SPMCCC No. 5 of 2019, competent to file an appeal against the decree passed in that suit. If he feels aggrieved that execution is being levied against him personally, then the remedy he has lies, not with filing an appeal against a decree which is not against him, but, in making the relevant applications in Mumias SPMCCC No. 5 of 2019.

13. In view of what I have stated so far, there can be no doubt that there is no merit in the Motion dated 5<sup>th</sup> February 2020. The same is misconceived, incompetent and in abuse of court process. I accordingly dismiss the same, with costs to the respondent.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 8<sup>TH</sup> DAY OF MAY, 2020**

**W. MUSYOKA**  
**JUDGE**