

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 65 OF 2014

SINOHYDRO CORPORATION LTD.....APPELLANT

VERSUS

GEORGE OTIENO WAUDI.....RESPONDENT

RULING

This ruling pertains to the Notice of Motion dated 1st September 2016 in which the appellant/applicant sought an order to recall the warrants of attachment issued in this matter for being unlawful and irregular. The gist of the application was that on 26th July 2016 a consent was recorded giving a stay of execution for thirty days but the respondent had allegedly applied for warrants and proclaimed the respondent's motor vehicle prior to the consent being adopted by the Court and without disclosing that the principal sum had been paid. It is also the Appellant/Applicant's case that as the respondent's Advocate did not send a draft decree to his Advocate for approval as required under Order 21 Rule 8 of the Civil Procedure Rules the proclamation was unlawful.

I have considered all the material placed before me. From the record what was being executed were the costs of the appeal which by consent of the Advocates for the parties were taxed at Kshs.90,000/= with a stay of execution for thirty days. It is evident from the record that the application for execution and warrants were issued more than thirty days after the consent was filed in Court. The thirty days stay had therefore lapsed. At the hearing of this application Mr. Oyuko, for the Respondent informed this Court that the costs were settled as soon as the auctioneers went to attach meaning that by the time this application was filed the matter was settled. This application is therefore no more than an academic exercise. It is misconceived and mischievous and if I may also say so is an abuse of the Court process. There is nothing to recall as was done in the case cited by Mr. Ojuro in this case the matter having been fully settled. Moreover the costs having been consented to the appellant/applicant did not suffer any prejudice for want of approval of the decree by his Advocate. The application is dismissed with costs to the respondent and as was agreed this ruling will apply mutatis mutandis to **Kisumu High Court Civil Appeal No. 66 of 2014 Sinohydro Corporation Limited VS Hellen Amondi Odero**. It is so ordered.

Signed, dated and delivered at Kisumu this 16th day of February 2017

E. N. MAINA

JUDGE

In the presence of:-

Mr. Nyanga for the Applicant

Mr. Echura for the Respondent

C/A: Serah Sidera