

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NO. 88 OF 2000

JULIUS K. TUWEI PLAINTIFF

VERSUS

JOSEPH BIRECH

SIMON ROTICH DEFENDANTS

R U L I N G

1. The applicant Julius K. Tuwei brought a notice of motion dated 9/5/2014 in which he seeks an order of injunction against the defendant/Respondents and Igare Auctioneers restraining them from attaching, advertising for sale, disposing and or in any way dealing with the plaintiff's household goods, cows and or any moveable assets proclaimed on 4/2/2014 pending hearing and disposal of the application herein.
2. The application had been served upon the Advocates for the respondents who neither filed any grounds of opposition nor replying affidavit. The application proceeded ex-parte. The applicants contends that his properties have been proclaimed for recovery of costs ordered against him as a result of dismissal of his suit against the respondents.
3. The applicant contends that the costs were taxed based on the Advocate's Remuneration order of 2006 instead of that of 1997. The applicant also contends that he has already filed an application seeking to set aside the order dismissing his claim against the respondent and that that application is set down for hearing on 14/7/2014.
4. I have looked at the supporting affidavit of the applicant as well as the proceedings herein. The suit herein was dismissed on 3/2/2010. This is after notices were given to the parties concern. The respondents filed their bill of costs for taxation on 14/6/2012. The advocates for the parties submitted on the bill on 12/7/2012. A ruling on the same was delivered on 7/2/2013.
5. The respondents thereafter started the process of execution. Execution was done partially after which the applicant became violent prompting the respondent's Advocate to seek orders for security during execution. It is this execution that the applicant seeks to stop. The issue which arises for determination is whether an injunction or stay orders can be given in the circumstances.
6. The applicant is seeking an injunction based on the ground that the bill of costs was taxed based on the Advocates Remuneration Order of 2006 instead of that of 1997. It is important to note that during the taxation, the applicant's Advocate was present and took part in the taxation. The issue which is now being raised was never raised then. If the applicant was dissatisfied with the taxation for any grounds, he should have filed a reference to the High Court which will then have addressed his concerns. He cannot raise it at execution stage.
7. The principles for grant of injunction are well known. I do not have to repeat the same. The applicant has not met any conditions for grant of injunction. The mere fact that he has filed an application seeking to vacate the orders of 3/2/2010 dismissing his suit cannot assist him to get an injunction or orders of stay. I find that the application herein has no merits. The proclamation was made on 4/2/2014. The application was filed on 12/5/2014. This is a period of over 3 months. The execution may as well have been completed. The application is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 4th day of June, 2014.

E. OBAGA

JUDGE

COURT: Ruling delivered at 9.39 a.m. in the absence of applicant's counsel who had notice of the same. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

4/6/2014