



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISCELLANEOUS CIVIL APPLICATION NO. 3 OF 2019

KENYA POWER AND LIGHTING CO. LTD.....APPLICANT

VERSUS

JULIUS MUTHURI CYPRINA

BATHLOMEW KABURU CYPRIAN

CONSOLATA MWITIABI GITUMA.....RESPONDENTS

RULING

1. This ruling is in respect of the application dated 28.1.2019 where the applicant is praying for a stay of execution of Nkubu SRM CC No. 8 of 2013 as well as leave to file an appeal out of time. The application is supported by the grounds on the face of the application and on the affidavit sworn by one Daniel Wachira Ng'ang'a who is a way-leave officer of the applicant.
2. The application is opposed via the replying affidavit of the 1st respondent (Julius Muthuri Cyprina).
3. The applicant contends that judgment in the Nkubu matter was delivered on 7.11.2018 in absence of defendant and without notice. Defendant only learnt about the said judgment when its motor vehicles were proclaimed. Counsel for the applicant avers that on 22.1.2019, he travelled to Nkubu law court to ascertain what had happened and he indeed ascertained that judgment had been delivered. There was a decree (on page 69 of applicant's bundle) where the principle amount is indicated as Shs.750,000. Then the interest allegedly running from 7.11.2018 to 23.11.2018 (when decree was issued) is shs.500,000. Applicant wonders how interest can rise to this amount in a span of 3 weeks.
4. Applicant avers that injustice is further manifested on page 70 (Application for execution), whereby the decretal amount is shs.1,275,000 (Shs.750,000 plus shs.500,000), then there is an entry of taxed costs of shs.525,000 and further costs of shs.36,780, while the bill of costs was taxed at shs.330,750 again without any date for such assessment of costs.
5. On the issue of figures, applicant contends that someone is trying to enrich themselves with public money.
6. Applicant further contends that the case was heard by a resident magistrate (Hon. Idagwa) who had no jurisdiction to hear environment and land court matters (see page 30-32 of the applicant's documents).
7. Applicant avers that in order to meet the ends of justice, the application ought to be allowed.
8. The respondents on the other hand argue that it is too late in the day for applicant to complain as they were all along asleep during the prosecution of the case and only woke up when execution of the judgment ensued. The respondents invoke equity; that equity does not aid the indolent.
9. The respondents further state that the figures mentioned are based on the evidence adduced and they contend that this application is meant to forestall the execution of the decree.
10. I have weighed all the arguments raised herein and I have perused the material so far availed. I find that there is something about the figures that is not adding up. In particular applicant has raised the issue of interest amounting to over shs.500,000 in a span of three weeks and no plausible explanation has been advanced as to how the calculation was made. The figures mentioned in the warrant of attachment need further interrogation, otherwise how can it be that for damages awarded to the tune of shs.250,000 for each of the 3 plaintiffs the amount now due is shs.2.170 million.

11. I also note that the issue of jurisdiction has been raised and it is a fundamental question of law which the court needs to determine at the appropriate stage.

12. Finally, I find that applicant has averred that they were not notified of the judgment. **Order 21 rule 1** provides that;

“in suits where a hearing is necessary, the court after the case has been heard shall pronounce judgment in open courtnotice of which shall be given to the parties or their advocates”.

13. I am not certain as to whether the entire court record has been availed. However, it appears that the case was heard by a magistrate called Hon Idagwa who was transferred. Hence on 2.5.2018, the court gave directions that **“notices to issue once judgment is ready”**. I have not seen such notices. Respondents have not availed any. The court coram for 7.11.2018 has also not been availed. This is the date of delivery of judgment. There is hence a possibility that applicants were not aware of the date of judgment delivery.

14. In conclusion, I do find that the application dated 28.1.2018 is merited. The same is allowed on condition that the memorandum of appeal is filed and served within 14 days from the date of delivery of this ruling. The costs in this application shall abide costs in the appeal.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 25TH DAY OF APRIL, 2019 IN THE PRESENCE OF:-

C/A: Kananu

All parties absent

HON. LUCY. N. MBUGUA

ELC JUDGE