



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 478 OF 2012**

**FRANCIS OKELLO.....APPLICANT/JUDGMENT DEBTOR**

**VERSUS**

**ALEXANDER OCHWO ALELA....RESPONDENT/DECREE HOLDER**

**RULING**

1. This is the Notice of Motion dated 31<sup>st</sup> March 2017 brought under Order XXII Rule 22 (1) of the Civil Procedure Rules, Section 3A and 63(e) of the Civil Procedure Act and all other enabling provisions of the law.

2. It seeks order:-

***(1) Spent***

***(2) Spent***

***(3) That the court be pleased to stay execution of the decree herein pending the hearing and determination of this application.***

***(4) That in the alternative to Order No. 3 above the applicant prays that this honourable court grants him 90 days to offset the total proclamation amount of Kshs175,056/- and the proper prescribed auctioneers fee.***

***(5) That costs be provided for.***

3. The grounds are on the face of the applicant and are set out in paragraphs 1 to 10.

4. The application is supported by the affidavit of Ben Munyasya Advocate for the Judgment Debtor/Applicant, undated but filed in court on 31<sup>st</sup> March 2017.

5. The application is opposed. There is a replying affidavit sworn by the respondent/decree holder on the 25<sup>th</sup> April 2017.

6. On the 25<sup>th</sup> April 2017, the court directed that the application be canvassed by way of written submissions.

7. I have gone through the court record and it appears the judgment debtor/applicant submissions are not on record.

8. It is the respondent/decree holder's submissions that the auctioneers were valid and in any case this is not the appropriate forum to contest auctioneers fees. The applicant has no interest in settling the costs of this suit and intends to further delay the course of justice. There is no evidence adduced to show that the proclaimed goods are not registered in the applicant's name. The applicant has failed to show sufficient cause to merit the orders sought.

9. They have relied on the case of **Kenya Commercial Bank Ltd vs Stage Couch Management Ltd [2016] eKLR**. Further that the applicant has so far paid Kshs 70,000 towards the settlement of the decree and costs. Finally that this application is intended to delay the court of justice and prays that the application be dismissed with costs to the respondent.

10. I have gone through the said notice of motion ground no 6 provides:-

***“That the auctioneers fee stipulated is grossly exaggerated and exorbitant and is not in-tandem with the Auctioneers Act.”***

I agree with counsel for the respondent/deed holder that this is not the forum in which the applicant/judgment debtor can challenge the auctioneers fees.

11. I also note that by 31<sup>st</sup> March 2017 he was seeking 90 days to offset the proclamation amount plus the auctioneers fees.

It is almost two years since then. There is nothing to show that he has been making any payments to offset the said amounts.

12. Under Order XXII rule 22 (1) of the Civil Procedure Rules, Order 2 of the stay of execution can only be granted upon sufficient cause being shown. I have considered the circumstances of this case and I find that the applicant/judgment debtor has not shown sufficient cause to warrant the grant of the orders of stay of execution.

13. In conclusion, I find no merit in this application and the same is dismissed with no orders as to costs.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 29<sup>TH</sup> day of NOVEMBER 2018**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for Applicant

.....Advocate for the Respondent

.....Court Assistant