



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 88 OF 2000

JULIUS K. TUWEIPLAINTIFF

VERSUS

JOSEPH BIRECH1ST DEFENDANT

SIMION ROTICH2ND DEFENDANT

SAMUEL NGELEL3RD DEFENDANT

R U L I N G

1. The Plaintiff/Applicant filed a Notice of Motion dated 2/11/2015 in which he seeks the following prayers;-
 - (a) That this matter be certified urgent and heard ex -parte in the first instance.
 - (b) That this Honourable court be pleased to issue an Order to stay of execution of the warrant of arrest in force against the Plaintiff/Applicant pending the interparties hearing.
 - (c) That this Honourable court be pleased to make an order that the warrant of arrest issued on 7/10/2015 is null and void *abinitio* and ought to be vacated forthwith.
 - (d) That costs of this application be provided for.
2. The Applicant contends that his suit was dismissed on 23/2/2010 under the then **Order XVI Rule 2(1) 2** of the **Civil Procedure Rules**. This was the equivalent of the current **Order 17** of the **Civil Procedure Rules of 2010**. The Applicant contends that the dismissal order was silent on costs and therefore the Defendants/Respondents move to tax their bill which has resulted in warrants of arrest in execution of the costs should not stand and that the warrant of arrest should be vacated forthwith.
3. The Respondents have opposed the Applicant's application based on a replying affidavit sworn by their lawyer on 2/12/2015. The Respondents contend that the Applicant is misinterpreting the law. That costs follow the event and that the Applicant has brought a number of applications after the dismissal of his suit which applications have all been dismissed with costs.
4. I have gone through the Applicant's application as well as the opposition thereto by the Respondents. The question which arises for determination is whether the Respondents are entitled to costs in this suit and secondly if warrants of arrest issued against the Applicant should be vacated. The finding on the first issue will effectively determine the second issue.

5. The Applicant had filed a suit against the Respondents in the year 2000. He did not prosecute his suit until 10 years later when the court issued Notice to show cause why the suit should not be dismissed. The Notice was duly served upon the advocate of the Applicant and Respondents. None of the advocates appeared in court and the plaintiff's suit was dismissed for want of prosecution on 3/2/2010.
6. The Respondents filed their bill of costs which was taxed in the presence of the advocate for the Applicant. There was no issue raised then. The Applicant started filing applications to forestall the execution process and or seek to set aside the order dismissing his suit. All these applications were dismissed with costs. The Applicant then came up with the present application in which he contends that the Respondents should not have taxed a bill in the first place as the dismissal order was silent on costs.
7. I do not find any merit in the Applicant's application. It is the Applicant who had brought the Respondents to court. When his suit was dismissed it followed that the Respondents had to pursue their costs. It does not matter that the court did not state that the case had been dismissed with costs. Costs follow the event. The event in this case is that the Plaintiff's suit had been dismissed. The court did not say that the Respondents were not entitled to costs. In any case, the Applicant actively participated in the taxation. He did not raise any issue then as to the issue of costs. The Applicant has come to raise the issue of costs after warrants of arrest have been issued against him. The Applicant only wants to shield himself from payment of the costs. In furtherance of his schemes, he has even gone ahead to petition for bankruptcy to avoid paying costs.
8. I find that the Applicant's application is an abuse of the process of the court. Since I have found that the Respondents are entitled to costs, it follows that the warrants in execution of the costs cannot be faulted. The upshot of this is that the Applicant's application fails and the same is hereby dismissed with costs. Orders of stay of execution which had been granted are hereby vacated.

It is so ordered.

Dated, signed and delivered at Kitale on this 21st day of April 2016.

E. OBAGA

JUDGE

In the presence of Mr Birir for Applicant.

Court Assistant – Isabellah

E. OBAGA

JUDGE

21/4/16