



**Muchiri Gachara & Thimba Advocates v Benhard (Environment & Land Miscellaneous Case 187 of 2019) [2024] KEELC 758 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 758 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE 187 OF 2019  
EK WABWOTO, J  
FEBRUARY 15, 2024**

**BETWEEN**

**MUCHIRI GACHARA & THIMBA ADVOCATES ..... ADVOCATE**

**AND**

**RONOH BENSON BENHARD ..... CLIENT**

**RULING**

1. The Client/Applicant filed a Notice of Motion Application dated 8<sup>th</sup> August 2023 which was accompanied by a Supporting Affidavit sworn by Ronoh Benson Benhard in which the following orders were sought:
  - i. ... Spent.
  - ii. That pending interpartes hearing and determination of this application this Honourable Court be and is hereby pleased to issue a stay of execution of warrants of attachment and warrants of sale dated 29th June, 2023 and the consequential actions arising thereof.
  - iii. That the Applicant be and is hereby permitted and ordered to defray/pay the decretal sum of Kshs. 326,155/= by way of instalments of Kshs. 50,000/= per month from the date of this order until payment in full.
2. The Application was based on several grounds including that:
  - a. Warrants of attachment and sale have been issued against the Applicant for recovery of a decretal sum of Kshs. 326,155/=
  - b. The Applicant visited the Respondent/Advocate in chambers on 20th July, 2023 to plead his case about his liquidity challenges, the Advocate advised him to resolve auctioneers' fees first and get back to agree on settlement of the decretal sum.



- c. The met the auctioneer and agreed on payments to be made, the Applicant was able to settle after receiving support of a friend, Nelson Ashitiva Advocate.
  - d. The Applicant vide a letter dated 25th July, 2023 requested the Advocate/Respondent to allow him to settle the same in instalments of Kshs. 50,000/= per month until settlement in full effective from 1st September, 2023.
  - e. Monthly sum of Kshs 50,000 against 300,000 is a very reasonable proposal. 6. Later on the Respondent/Advocate made a u-turn and demanded an instant payment of Kshs. 200,000/= and in default execution to issue.
  - f. The Applicant is not refusing to settle the debt but only to the challenging economic times, he has no money but is willing to settle in instalments.
  - g. What has put the Applicant in financial tatters is the fact that he resigned from his job from Kenya Rural Roads Authority (KERRA) to vie for a parliamentary position, Konoin Constituency, Bomet County.
  - h. Political campaigns completely depleted the Applicant's resources and is unable to pay the decretal sum at once but he is willing to settle in installments and pleads for a chance to do that rather than being auctioned.
  - i. Vide a letter dated 7th August, 2023 the Advocate/Respondent has instructed the auctioneer to proceed with proclamation and attachment of the Applicant's wife household goods.
3. The application was canvassed by way of written submissions pursuant to directions issued by this court.
  4. In opposition of the application, the Advocate filed a replying affidavit dated 25<sup>th</sup> October 2023 sworn by Hiram Thimba Advocate in which it was averred that there existed no agreement for payment on instalments. Moreover, it was submitted that the Applicant made a personal choice to resign from his employment and therefore that could not be a defence or excuse for non-payment of debts.
  5. Having considered the application and supporting documents, it is clear that the issues for determination before this court is whether the Applicant's application dated 8<sup>th</sup> August 2023 is merited.
  6. Order 22, rule 52 of the [Civil Procedure Rules](#) outlines the process of stay of execution of warrants as follows:
 

“Upon receipt of a valid notice and application as provided under Rule 51, the court may order a stay of the execution for not more than fourteen days and shall call upon the attaching creditor by notice in writing to intimate to the court and to all the parties in writing within seven days whether he proposes to proceed with the attachment and execution thereunder wholly or in part.”
  7. In addition, this Court has also considered Order 42 rule 6 of the [Civil Procedure Rules](#), 2010 which provide as follows;
 

“.....No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court



appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

No order of stay shall be made under sub rule (1) unless-

- a) The court is satisfied that substantial loss may result to the applicant unless the order is made and the application has been made without unreasonable delay; and
- b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

8. In view of the foregoing, it is an established principle that granting of stay is within the broad discretion of the Court. In *Machira T/A Machira & Co Advocates v East African Standard (No 2)* [2002] KLR 63 It was held that:

“..... to be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court..” [Emphasis Added]

9. A perusal of the court records confirms that the initial interim orders for payment of instalments was made on 11<sup>th</sup> August 2023. The orders were further extended on 25<sup>th</sup> October 2023 and yet to date the decretal sum remains unpaid. I am of the opinion that if the Applicant was true to his intention to settling the decretal sum, be it in instalments or otherwise, payment would be almost complete. However, for over five (5) months, the Applicant has merely sat back and folded his arms and the court is inclined to consider that the Applicant is employing a delay tactic and conclusively acting in bad faith. Considering the age of the matter, it is paramount importance for the suit to come to an end in the most effective, judicious and reasonable means available.

10. In view of the foregoing, the Court hereby finds that the application dated 8<sup>th</sup> August 2023 is unmerited and the same is hereby dismissed in its entirety with costs. The Applicant/Client shall pay costs of this application assessed at Ksh 10,000/-.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024.**

**E. K. WABWOTO**

**JUDGE**

