



Paul Mwangi & Co Advocates v P.V.R. RAO (Receiver of Athi River Steel Plant Ltd in Receivership); Dancy Auctioneers (Interested Party) (Miscellaneous Cause E218 of 2023) [2025] KEELRC 269 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 269 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E218 OF 2023
S RADIDO, J
FEBRUARY 6, 2025**

BETWEEN

PAUL MWANGI & CO ADVOCATES APPLICANT

AND

P.V.R. RAO (RECEIVER OF ATHI RIVER STEEL PLANT LTD IN RECEIVERSHIP) RESPONDENT

AND

DANCY AUCTIONEERS INTERESTED PARTY

RULING

1. In a Ruling delivered on 14 November 2024, the Court dismissed a Motion dated 19 July 2024 filed by PVR Rao (Receiver of Athi River Steel Plant Ltd – In Receivership) (the Respondent).
2. The Respondent had sought orders setting aside warrants of attachment in the execution of a decree given on 17 July 2024.
3. On 21 November 2024, the Respondent filed another Motion dated 20 November 2024, seeking orders:
 - i. ...
 - ii. That the firm of Keaton & Keaton Advocates be granted leave to come on record for PVR Rao (Receiver of Athi River Steel Plant Ltd).
 - iii. That this Honourable Court be pleased to grant temporary order of stay of execution of warrants of attachment of movable property in execution of a decree given on 17th July 2024 pending the inter partes hearing of this application.



- iv. That pending the hearing and determination of this application, this Honourable Court be pleased to issue a stay of execution of the judgment entered on 11th July 2024 and decree issued on 17th July 2024.
 - v. That an order be and is hereby issued staying execution of the judgment entered on 11th June 2024 and decree issued on 17th July 2024.
 - vi. That judgment entered on 11th June 2024 and decree issued on 17th July 2024 be set aside.
 - vii. That leave be granted to the applicant to appeal the Ruling delivered on 11th June 2024 and/or judgment entered on 11th June 2024 out of time.
 - viii. That the costs of this application (sic).
4. The primary grounds in support of the Motion were that the Respondent desired to appeal against the Ruling delivered on 11 June 2024; the applicant had commenced execution without leave of the Court; the execution had been made against the personal property of the Respondent; the execution was against the *Insolvency Act*; that the Respondent was acting in his official capacity as Receiver of Athi River Steel Plant Ltd (In Receivership) since May 2018; the Respondent had not instructed the advocate then on record; the properties of Athi River Steel Plant Ltd (In Receivership) had a floating charge and were secured to creditors; the applicant would have an opportunity to prove its claim after secured creditors in due course and there were existing proceedings in Nairobi Milimani High Court Misc Application No. E550 of 2021 where the Respondent herein reports to the High Court.
 5. The Court gave directions on the Motion on 21 November 2024, and the directions included the filing and exchange of responses and submissions within set timelines.
 6. In the meantime, the Court granted an interim stay of execution on condition that the decretal sum and auctioneer's charges be deposited in Court before the end of 22 November 2024.
 7. Upon service, Paul Mwangi & Co Advocates (the applicant) filed Grounds of Objection on 13 December 2024, and a replying affidavit and Notice of Intention to Proceed with Execution on 16 December 2024
 8. According to the applicant, the Motion was an afterthought; execution had been commenced on 18 July 2024 and the Respondent only came to Court 4 months after the event; the Respondent's father had filed an application dated 19 July 2024, seeking a stay of execution on the ground that the proclaimed properties belonged to him; the application had been dismissed on 14 November 2024; the Respondent was now asserting that the attached properties belonged to him and that the Respondent was intent in defeating a lawful process and was acting in bad faith.
 9. Despite indicating to the Court on 21 January 2025 that he had filed submissions, the Respondent's submissions were not on the record. The applicant's submissions were also not on record.
 10. The Court has considered the record, Motion, affidavits and the Grounds of Objection and can make the following determinations.
 11. One Swaroop P. Rao, in an affidavit in support of Objection proceedings sworn on 21 November 2024, deponed that the proclaimed properties belonged to him.
 12. Now, in an affidavit sworn by one Ponangipalli Venkata Ramana Rao (the Respondent), the said Ramana Rao asserted that the proclaimed properties belong to him personally.



13. It has been contended that the two deponents are father and son. The Court has no hesitation in inferring that the two conspired to mislead the Court regarding the proclaimed properties' ownership.
14. Two, the Respondent has not explained why he did not lodge an appeal against the Ruling of 11 June 2024 or why it took him over 4-months' before moving the Court to be granted leave to appeal out of time.
15. Three, the Respondent was aware of the proceedings before the High Court in Nairobi Milimani High Court Misc Application No. E550 of 2021. When the Respondent moved the Court through the Motion dated 19 July 2024, he did not disclose the existence of the proceedings or relate their materiality to the proceedings herein.
16. Four, the Respondent sought a stay of execution in the Motion dated 19 July 2024. The Court declined to grant the stay in the Ruling delivered on 14 November 2024.
17. Lastly, despite service of the initial process and despite an advocate placing himself on record from the bar on behalf of the Respondent, the Respondent never bothered to defend the initial proceedings.
18. The Court even gave further leave to defend which the Respondent snubbed.
19. In the instant Motion, the Respondent has again moved the Court to grant him a stay of execution of the judgment.
20. By bringing a fresh Motion over an issue the Court had already expressed itself, the Respondent is not only abusing the court process but acting in bad faith, being an officer of the Court.
21. A party who approaches a Court has a duty to the Court to make truthful and honest disclosures whether through an affidavit or from the bar. If the disclosures emanate from an advocate, it is part of the advocate's professional duty to be honest, truthful and candid.
22. Both the Respondent and the advocate who seeks to come on record have not made honest and truthful disclosures as can be seen from the certificate of urgency, grounds in support of the Motion and the affidavits on record.
23. The advocate must have been aware of all these facts for when the Court declined to accommodate some of his off-the-record comments or suggestions, he threatened to report the Judge to the Judicial Service Commission.
24. The dishonesty and lack of truth disinclines the Court to grant any of the orders sought by the Respondent.

Orders

25. The Motion dated 20 November 2024 by the Respondent is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN MACHAKOS ON THIS 6TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For advocate Paul Mwangi & Co. Advocates

For Respondent Keaton & Keaton Advocates



