



Mule v HFC Limited; M/S Milan Auctioneers (Interested Party) (Cause 1145 of 2016) [2025] KEELRC 1323 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1323 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1145 OF 2016**

**B ONGAYA, J
MAY 9, 2025**

BETWEEN

KEVIN ISIKA MULE CLAIMANT

AND

HFC LIMITED RESPONDENT

AND

M/S MILAN AUCTIONEERS INTERESTED PARTY

RULING

1. The Respondent filed a Notice of Motion application dated 12.08.2024 through Oraro & Company Advocates seeking the following orders:
 - a. That for reasons to be recorded service of this application be dispensed with and it be certified as urgent and heard ex parte in the first instance;
 - b. That pending the hearing and determination of the application, the Honourable Court do stay execution of the warrants of attachment issued by the Honourable Court on 02.08. 2024 to Milan Auctioneers.
 - c. That the Honourable Court do set aside warrants of attachment and sale of the applicant's property issued by this Honourable Court on 02.08.2024.
 - d. That the Honourable Court to declare that the applicant stands fully and finally discharged from all claims arising from the decree issued by the Honourable Court on 17.05.2019 and the ruling dated 11.03.2024.
 - e. That the costs of and occasioned by this application be provided for.
2. The application is supported by the affidavit of Regina Anyika and made on the following grounds:



- a. The case was heard and judgment delivered by the Honourable Court on 17.05.2019. Subsequently, a decree was issued on 06.04.2021 crystallizing the findings of the court in its judgment.
 - b. It is worth noting that during the subsistence of his employment relationship with the applicant, the claimant applied for and was indeed granted a car loan in the sum of Kshs 7,290,000 at an annual interest of 7% per annum.
 - c. The loan balance became non-performing upon his termination and upon entry of judgment aforementioned, the respondent recovered the sum of Kshs 5,872,371 from the decretal sum and proceed to credit the Claimant's account with the sum of Kshs 680,345.94 which was the balance.
 - d. Further, the claimant's advocate's bill of costs was taxed and by a ruling delivered on 11.03.2024 he was awarded Kshs 915,058 which amount was paid into his account on 16.04.2024.
 - e. Upon payment of the aforementioned sums, the applicant deemed that it had fully satisfied the decrees issued by this Honourable Court on 06.04.2021.
 - f. However, without any colour of right and in clear contravention of the law, the claimant took out warrants of attachment for the sum of Kshs 11,539,550.17 in purported execution of the decree issued on 06.04.2021 which the applicant had fully satisfied.
 - g. The applicant is therefore apprehensive that should this court fail to certify this matter as urgent, set aside the warrants of attachment, and grant a stay of execution, the plaintiff will proceed to cart away property within 7 days of 05.08.2024 despite the fact that the applicant has satisfied its obligations to the claimant.
3. In response the claimant/respondent filed a Replying Affidavit sworn on 03.09.2024 through K.N.Mburu & Associates Advocates and urged as follows:
- a. That the respondent/applicant is acting in bad faith and motivated by malicious intent to punish the claimant/respondent for instituting the proceedings, and is an extension of the hostility that saw the claimant's employment terminated unlawfully and that elicited the suit herein.
 - b. That over 5 years ago, the court entered Judgment in the claimant's favour on 17.05.2019 for the sum of Kshs 8,960,459.20 less due PAYE.
 - c. Before extracting the final decree, the claimant's advocates wrote to the judgment-debtor advocates requesting them to settle the amounts due. However, the letter elicited no response.
 - d. The claimant's advocates' letters of 16.06.2021, 21.10,2021 and 03.11.2021 informed the judgment-debtor that they found no merit in the respondent's attempt to mix the issue of a car loan with the judgment rendered in this suit. This the claimant states, gave the respondent sufficient opportunity to seek redress by way of judicial process.
 - e. That if indeed the claimant had been given a car loan it would have been subject to a contract/ agreement in writing setting out its terms and conditions and would have been secured by the car purchased using the loan, or there would be clear provisions therein as to the mode of recovery of the outstanding amount in the event of default; a right of set off does not



arise automatically, by unilateral fiat or at the pleasure of a party, nor is it beyond dispute or challenge.

- f. If the judgment debtor had been aggrieved by the judgment, or have a claim on the aspect of deducting any loans, taxes or other amounts from the awarded amount, it had the facility to address this by way of the legal instruments of appeal or review.
 - g. That claiming that the claimant has been fully compensated is dishonest.
 - h. The respondent/applicant is bound by its pleadings, and in those pleadings it did not raise the issue of the alleged car loan nor did it counterclaim or apply for set off up to the point where pleadings closed and the trial was conducted and concluded.
 - i. The applicant/judgment-debtor has no right at law to re-compute the judgment sum and depart from the sum declared by this Honourable Court.
 - j. There is no justification nor proper reason adduced by the applicant/judgment debtor to support setting aside of the warrants of attachments or granting of stay of execution.
 - k. A litigant is entitled to enjoy the full extent of the fruits of his judgment and that litigation must come to an end, and it is those principles that the applicant/judgment debtor is intent on defeating by introducing new evidence and selectively interpreting the judgment herein,
4. The parties filed their respective Submissions. The Court has considered parties' respective positions and returns as follows:
- a. The evidence is that after the judgment, the parties advocates engaged in correspondence about satisfaction of the decree. The correspondence related deduction of car loan amount and after parties agreed on the accurate amounts of the loan, the applicant paid out the outstanding decretal sum. After taxation of the costs, the applicant as well paid out per certificate of costs. The matter settled until the challenged warrants were taken out on 02.08.2024.
 - b. While it is true that the set off was not pleaded and parties were bound by their pleadings, it is also true that matters arising out of satisfaction of the decree are determinable by the Court which passed the decree and in the suit subject of the decree. In the circumstances, the applicant is entitled to raise the issue in the manner it has been done in the instant application.
 - c. It is also true that parties' advocates agreed by corresponded on the manner of settling the decree by setting off the loan amount. The respondent (claimant) does not deny owing the loan and does not dispute the computation. It must be that the decree was thereby duly settled.
 - d. As was held in *Serah Njeri Mwobi Versus John Kimani Njoroge Civil Appeal No. 314 of 2009*, the doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person. Again in *Evans Versus Bartiam (1937) 2 All ER 649* at page 652 Lord Russel of Killowen opined "The doctrine of approbation and reprobation requires for its foundation inconsistency of conduct, as where a man, having accepted a benefit given him by a judgment cannot allege the invalidity of the judgment which conferred the benefit". The Court upholds the submissions for the applicant in the cited cases and returns that the application must succeed. It cannot be that the respondent accepted the deduction of the undisputed loan from the decretal sum and then seeks to reject the validity of the deduction at ago. He is bound by the two principles as urged for the applicant and the Court refuses to aid an apparent injustice of unfair enrichment as urged for the respondent.



- e. The Court has considered all circumstance including that the respondent will bear, if any, costs of the auctioneers and application will be allowed with no costs.
5. In conclusion the application is hereby allowed with orders as follows:
1. The warrants of attachment and sale of the applicant's property issued by this Honourable Court on 02.08.2024 and all processes flowing therefrom are set aside.
 2. The declaration hereby issued that the applicant stands fully and finally discharged from all claims arising from the decree issued by the Honourable Court on 17.05.2019 and the ruling dated 11.03.2024.
 3. No costs of the application.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 9TH MAY, 2025**

BYRAM ONGAYA

PRINCIPAL JUDGE

