



**Karanja & 12 others v Wells Fargo Limited (Cause 388, 379,
380, 381, 382, 383, 384, 385, 386, 387, 389, 390 & 535 of 2014
(Consolidated)) [2024] KEELRC 2582 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2582 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 388, 379, 380, 381, 382, 383, 384, 385, 386,
387, 389, 390 & 535 OF 2014 (CONSOLIDATED)**

**L NDOLO, J
OCTOBER 24, 2024**

BETWEEN

**SYMON MIGWI KARANJA 1ST CLAIMANT
STANLEY MUTUA MBIRITHI 2ND CLAIMANT
WILLIAM MUGO MAINA 3RD CLAIMANT
BONIFACE KABUCHO KAMAU 4TH CLAIMANT
PAUL LIVINGSTONE NGABA 5TH CLAIMANT
BENARD ROTICH KIPSANG 6TH CLAIMANT
JOHN GITUKU MUCHIRI 7TH CLAIMANT
SOLOMON KIMTAI CHELANGA 8TH CLAIMANT
RICHARD ORAMISI KICHWANGA 9TH CLAIMANT
ALBERT SUNGU AMTALA 10TH CLAIMANT
PAUL MACHARIA KIRUGUMI 11TH CLAIMANT
KENNEDY KIVITI 12TH CLAIMANT
PETER THUO MBURU 13TH CLAIMANT**

AND

WELLS FARGO LIMITED RESPONDENT



RULING

1. This is a classic case of post judgment processes gone awry. On 20th July 2018, Ongaya J delivered a consolidated judgment in favour of 13 Claimants, as against the Respondent. It would appear that the Respondent was dissatisfied with the judgment and therefore sought stay of execution pending appeal. On 11th October 2018, my brother Judge issued a conditional stay of execution in the following terms:
 - a. A stay of execution of the Judgment and Decree herein is hereby issued subject to the Applicant depositing the full decretal sum in an interest earning bank account in the names of the parties' Advocates.
 - b. The deposit be effected by 23rd November 2018.
2. According to the Respondent, it was prevented from complying with the conditions of stay because the Advocates on record for the Claimants failed to provide the documents required for opening of a joint interest earning account.
3. By a Notice of Motion dated 23rd November 2018, the Respondent's Counsel, Henry Omino sought and was granted enlargement of time to comply with the conditions of stay. The Motion also sought an order directing the firm of Waiganjo Wachira & Co Advocates to provide the following documents within 14 days:
 - a. Duly signed resolution of the partners of Waiganjo Wachira & Co Advocates approving the opening of a joint account with the firms of Walker Kontos Advocates and Betty Rashid & Co Advocates;
 - b. Certified copy of practicing certificate of the proposed signatory;
 - c. Certified copy of valid ID Card of the proposed signatory;
 - d. Certified copy of PIN Certificate of the firm of Waiganjo wachira & Co Advocates;
 - e. Certified copy of PIN Certificate of the proposed signatory;
 - f. Letter confirming the current residential address of the signatory; and
 - g. 1 passport size photo of the proposed signatory.
4. Counsel for the Claimants did not address the Court regarding actions taken by them to facilitate the opening of the joint interest earning account. What is clear is that the parties' Advocates did not open a joint account as contemplated in the order of stay of execution.
5. Instead, the Respondent's Advocates opened a call deposit account in the name of the three firms of Advocates but under the control of Walker Kontos Advocates. Counsel for the Respondent blames the Claimants' Counsel for the failure to progress and conclude the opening of a joint interest earning account.
6. In the meantime, the Respondent's journey at the Court of Appeal became bumpy. Its application seeking admission of its Appeal No 579 of 2019, which was filed a day out of time was rejected by a single Judge of the Court of Appeal. Thereafter, the Respondent filed a reference, pursuant to Rule 55(1) of the Court of Appeal Rules, to have the matter determined by full bench. At the time of writing this ruling, the Respondent's plea is yet to be determined by the Court of Appeal.



7. There seems to have been a lull in the matter until some of the Claimants commenced execution against the Respondent. It is at this point that the Respondent filed the present application dated 16th May 2024 seeking the following reliefs:
 - a. An order restraining the attachment, removal, sale, disposition or any other interference with the Respondent's assets, pursuant to the Warrants of Attachment issued to Chador Auctioneers on 25th April 2024;
 - b. An order for the immediate release of the Respondent's assets impounded pursuant to the Warrants of Attachment issued to Chador Auctioneers on 25th April 2024;
 - c. An order to set aside the Warrants of Attachment issued to Chador Auctioneers on 25th April 2024, together with the notification of sale issued by the said Auctioneers pursuant to the said Warrants of Attachment;
 - d. A declaration that the Respondent is not liable to pay any costs associated with the attachment of its assets by Chador Auctioneers, including auctioneer and storage costs.
8. The application is supported by an affidavit sworn by the Respondent's Group Human Resource Director, Willis Ayieko Odhiambo and is premised on the following grounds:
 - a. Judgment in this matter was delivered on 20th July 2018;
 - b. The Respondent thereafter applied for orders of stay of execution, pending the hearing and determination of its intended appeal;
 - c. A stay order was granted on 11th October 2018 and the Respondent duly complied with the conditions for stay as directed by the Court, by depositing the decretal sum in an account in the names of the parties' Advocates;
 - d. Thereafter, the Respondent filed its appeal in Civil Appeal No 579 of 2019: Wells Fargo Ltd v Symon Migwi Karanja & 12 others, and the matter is still pending at the Court of Appeal;
 - e. In blatant breach of the court order issued on 11th October 2018, 9 out of the 13 Claimants have purported to proceed to initiate execution and have instructed Chador Auctioneers, who have attached the Respondent's assets;
 - f. The purported execution by Chador Auctioneers is illegal and un-procedural and is for setting aside for the following reasons:
 - i. The warrants were issued in defiance of a stay of execution order issued by the Court on 11th October 2018;
 - ii. The decretal sum is currently held in a joint interest earning account and the Claimants' Advocates have always been aware of this fact;
 - iii. In view of the fact that the decretal sum is currently held in a joint account, it is unconscionable and illegal for the Claimants to purport to instruct auctioneers to proclaim against the Respondent's assets;
 - iv. The Warrants of Attachment are in execution of a decree that was issued in 2018, 6 years ago, and no notice to show cause was taken out before the Warrants were issued, as is mandatorily required by law;



- v. The Warrants have instructed only partial execution of the decree, in relation to 9 out of 13 Claimants, without leave of the Court;
 - vi. The Warrants are fatally defective for instructing the Auctioneer to attach for incorrect amounts which are inclusive of taxes, in violation of the mandatory provisions of Section 49 of the *Employment Act*, which provides that statutory deductions ought to be made from any award by the Court;
 - vii. The Auctioneer purported to attach and cart away the Respondent's motor vehicles before proclamation, in breach of the mandatory provisions of Section 12 of the *Auctioneers Act*;
 - viii. The attached motor vehicles form an intrinsic part of the Respondent's tools of trade and were therefore attached in breach of the mandatory provisions of the proviso in Section 44(1) of the *Civil Procedure Act*, which prohibits the attachment of tools and implements necessary for the performance of trade or profession.
- g. The Respondent has suffered and continues to suffer great loss to its business arising from the illegal conduct of the Claimants;
 - h. It is in the interest of justice that the Respondent's Notice of Motion application is allowed as prayed and the Respondent's motor vehicles be released forthwith.
9. The Claimants' response is contained in two replying affidavits sworn on 31st May 2024, by Counsel for the Claimants, Kisiang'ani Eddah and Ilham Hisham Said.
 10. Counsel Kisiang'ani depones that the conditional stay order of 11th October 2018, was not complied with, since no joint account was ever opened in the names of the Advocates on record as directed by the Court, and therefore there are no orders in place staying execution of the decree.
 11. Counsel further depones that there is no evidence that the decretal sum was ever credited in an account held by the Advocates on record. She asserts that the details of such account remain hidden, withheld and undisclosed.
 12. It is also deponed that the Claimants' Advocates are strangers to the averment that there exists a joint interest earning account, holding the decretal sum, since they have never signed any forms or given any details required for the same. Counsel claims that exhibit 'WA2' filed by the Respondent has been generated by the Respondent to defeat execution and circumvent the course of justice.
 13. According to the Claimants, they have a decree which remains unsettled and no just cause has been demonstrated why the attached motor vehicles should be released.
 14. Counsel for the Claimants states that proclamation notices were duly served on the Respondent prior to attachment.
 15. On his part, Counsel Said depones that several letters had been sent to the Respondent's Advocates inquiring whether the decretal sum had been credited but there was no response.
 16. Counsel further depones that the Respondent's application seeking to file an appeal out of time was dismissed by the Court of Appeal. He accuses the Respondent of filing a plethora of applications in order to forestall the Claimants' realisation of the fruits of their judgment.
 17. In response to the replying affidavits sworn by the Claimants' Counsel on 31st May 2024, the Respondent's Counsel, Henry Omino swore a further affidavit on 14th August 2024.



18. Counsel Omino blames the Claimants' Counsel for failure to provide the required documentation for opening of a joint interest earning bank account. He adds that because of this failure, the Respondent went ahead to open a call deposit account.
19. The Respondent attacks the execution process initiated by the Claimants on the grounds that; the decretal sum is well secured in an interest earning account, no notice to show cause was issued, no leave was sought to commence partial execution, the execution amounts are incorrect, there was no proclamation, and the attached goods form part of the Respondent's tools of trade.
20. The parties expended a lot of time advancing their respective positions as to whether the condition of stay of execution given by Ongaya J was complied with. In this regard, the Respondent sought to convince the Court that the call deposit account opened by the firm of Walker Kontos Advocates could pass for the joint interest earning account contemplated in the order of stay of execution.
21. This argument, though innovative is off the mark; when the Court directs Advocates to open a joint interest earning bank account, what is contemplated is an account where all the Advocates have equal control. A call deposit account under the control of only one side cannot qualify as a joint interest earning account.
22. There is however evidence that before opening the call deposit account, the Respondent's Advocates had sought documentation from the Claimants' Counsel, which were not supplied. The Claimants cannot therefore seek to benefit from a lapse emanating from their end. Further, as will be demonstrated in the succeeding part of this ruling, had the Claimants' Counsel followed due procedure, they would have learnt that the decretal sum had in fact been secured.
23. The second complaint by the Respondent is that the Claimants did not issue a notice to show cause, prior to commencement of the execution process. Order 22 Rule 18 of the Civil Procedure Rules Provides as follows:
 - 18(1) Where an application for execution is made-
 - a. more than a year after the date of the decree;
 - b. against the legal representative of a party to the decree; or
 - c. for attachment of salary or allowance of any person under rule 43, the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him.
24. The courts have consistently stated that this provision is mandatory. In *Mwaura Njoroge & another v County Council of Kiambu & another* [2015] eKLR and *Alfred Muyeyeli & another v Jamin Onyiri & another* [2020] eKLR it was held that issuance of notice to show cause in executing a decree that is more than a year old is mandatory.
25. But the Claimants argue that the decree in this case was issued on 23rd February 2024. The only thing to say on this is that the position taken by the Claimants regarding the date of the decree runs contrary to Order 21 Rule 8(1) of the Civil Procedure Rules, which provides that a decree shall bear the date on which the judgment was delivered. This position was affirmed in the *Mwaura Njoroge Case* (supra). Following the law as established, the date of the decree in this case was 20th July 2018, when the judgment was delivered. That is all I will say on this issue.



26. Next is the complaint that the Claimants proceeded on a partial execution without leave of the Court. Section 94 of the *Civil Procedure Act* provides that a party seeking to execute part of a decree must seek leave of the Court. In the submissions filed on behalf of the Respondent, reference was made to the decision in *Transmara Sugar Company v Charles O. Mbaka* [2021] eKLR where this principle was affirmed.
27. The decree which the Claimants sought to execute arose from a consolidated judgment and as held in *Hilton Walter Nabongo Osinya & another v Savings & Loans (K) Limited & another* (HCCC No 274 of 1998) a consolidated trial results in one common decree.
28. It is not in dispute that the firm of Waiganjo Wachira & Co Advocates represented 9 Claimants, while 4 Claimants were represented by the firm of Betty Rashid & Co Advocates. Only the Bill of Costs filed by Waiganjo Wachira & Co Advocates on behalf of the 9 Claimants has been taxed and the costs relating to the remaining 4 Claimants are yet to be taxed. This clearly demonstrates a partial decree being executed without leave of the Court.
29. The Respondent further takes issue with the Warrants of Attachment dated 25th April 2024, for setting out gross figures without taking into account deductible statutory dues as required under Section 49(2) of the *Employment Act*. I agree with the Respondent that the decretal sum ought to have been net of statutory deductions. As held in *Karuri Stores Pharmaceuticals Ltd & another v Acacia Medical Centre Limited* [2021] eKLR Warrants of Attachment based on an erroneous tabulation cannot stand.
30. Finally, the Respondent faults the Auctioneer for failing to issue a proclamation notice prior to attachment, as required under Rule 12 of the Auctioneers Rules. This was confirmed in the supporting affidavits sworn by the Respondent's Human Resource Director and the drivers who had command of the attached motor vehicles. The Auctioneer did not swear an affidavit to counter the corroborative averments by the Respondent's employees in this regard.
31. The foregoing findings present a complete picture of an execution exercise undertaken in contravention of the law and litigation decorum. I do not need to consider the question whether the attached goods were protected tools of trade. The entire execution process was unlawful and must be brought to a halt. In the circumstances, I make the following orders:
 - a. The Claimants and Chadon Auctioneers are restrained from attaching, removing, selling or otherwise interfering with the Respondent's assets, pursuant to the Warrants of Attachment issued on 25th April 2024;
 - b. The Auctioneers are directed to forthwith release the Respondent's assets impounded pursuant to the Warrants of Attachment issued on 25th April 2024;
 - c. The Warrants of Attachment issued on 25th April 2024 are hereby set aside;
 - d. The Claimants and the Auctioneers will bear all costs arising from the unlawful execution.
32. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF OCTOBER 2024

LINNET NDOLO

JUDGE

Appearance:

Ms. Kisiang'ani & Mr. Said for the Claimants



Mr. Omino for the Respondent

