



Paul Mwangi & Company Advocates v PVR Rao (Receiver of Athi River Steel Plant Limited in Receivership) & another (Miscellaneous Cause E218 of 2023) [2024] KEELRC 13300 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13300 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E218 OF 2023
S RADIDO, J
NOVEMBER 14, 2024**

BETWEEN

PAUL MWANGI & COMPANY ADVOCATES APPLICANT

AND

PVR RAO (RECEIVER OF ATHI RIVER STEEL PLANT LIMITED IN RECEIVERSHIP) 1ST INTERESTED PARTY

DANCY AUCTIONERS 2ND INTERESTED PARTY

RULING

1. For determination is a Motion dated 19 July 2024 by P.V.R. Rao (Receiver of Athi River Steel Plant Ltd) seeking orders:
 - i. ...
 - ii. ...
 - iii.
 - iv. ...
 - v. ...
 - vi. That the warrants of attachment of movable property in execution of movable property in execution of decree of money given on 17th July 2024 be set aside.
2. The grounds in support of the application are that Athi River Steel Plant Ltd was placed under receivership by a debenture holder on 18 May 2018 and the debenture holder has first priority over assets of the company; Paul Mwangi & Co. Advocates was instructed by the company before it was placed under receivership; approval of the Court had not been sought before commencement of



execution; the auctioneer had proclaimed against the Receiver; the execution was contrary to the *Insolvency Act* and the execution would defeat the claims of secured and other creditors.

3. When the Motion was placed before the Court ex-parte, it granted interim stay of execution of the warrants.
4. The advocate filed a replying affidavit in opposition to the Motion on 3 October 2024, contending that the Motion was incompetent because it had been filed by an advocate who is not formally on record; the motion was raising issues which were res judicata; the judgment was against the Receiver personally and therefore execution was proper and this Court lacked jurisdiction and was bound by the judgment delivered on 11 June 2024.
5. On 14 October 2024, the Court directed the filing and exchange of a further affidavit and submissions.
6. The parties did not file the submissions despite the clear orders of the Court.
7. The Court has considered the Motion and affidavits.
8. The record indicates that the advocate moved against the Receiver through a Motion dated 24 October 2023, and the Court granted leave to the Receiver to defend the Motion on 6 March 2024, but it snubbed the opportunity.
9. The Court entered judgment for the advocate in the sum of Kshs 1,656,890/84 on 11 June 2024 together with interest.
10. The proceedings leading to the execution were against the Receiver and he had the opportunity to defend the Motion on both grounds of procedural and substantive law. He snubbed the opportunity.
11. The instant Motion is thus not only without merit but also incompetent.

Orders

12. The Motion dated 19 July 2024 is not only without merit but is also found to be incompetent and is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 14TH DAY OF NOVEMBER 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For advocate Paul Mwangi & Co. Advocates

For Respondent Keaton & Keaton Advocates

Court Assistant Wangu

