



**Ole Rinka & 11 others v Brinks Security Services Limited (Employment and Labour Relations Cause 301 of 2016) [2023] KEELRC 611 (KLR) (6 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 611 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 301 OF 2016**

**HS WASILWA, J**

**MARCH 6, 2023**

**BETWEEN**

**SIMON OLE RINKA ..... 1<sup>ST</sup> CLAIMANT**  
**JAMES N THEURI ..... 2<sup>ND</sup> CLAIMANT**  
**VINCENT E LOKOBE ..... 3<sup>RD</sup> CLAIMANT**  
**HASSAN K MULONGO ..... 4<sup>TH</sup> CLAIMANT**  
**JOSEPH K NDUIKI ..... 5<sup>TH</sup> CLAIMANT**  
**SIMON MWAURA KINYANJUI ..... 6<sup>TH</sup> CLAIMANT**  
**PETER WAIRUGU ..... 7<sup>TH</sup> CLAIMANT**  
**JOHN MUGUNYI ..... 8<sup>TH</sup> CLAIMANT**  
**DAVID KARANJA WANJA ..... 9<sup>TH</sup> CLAIMANT**  
**SAMUEL NDUNGU ..... 10<sup>TH</sup> CLAIMANT**  
**JAMES N RINKA ..... 11<sup>TH</sup> CLAIMANT**  
**WILLIAM NANDI ..... 12<sup>TH</sup> CLAIMANT**

**AND**

**BRINKS SECURITY SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. Before me for determination is the Respondent/ Applicant's Notice of Motion dated December 6, 2022, brought pursuant to section 1A(1)&(2), section 3A and section 25 of the *Civil Procedure Act* (Cap21), Order 21 Rule 8 and Rule 12, Order 22 Rule 22(1) and (2) and Order 51 of the *Civil*



*Procedure (Amendment) Rules, 2020*, and all other enabling provisions of the law, Seeking for the following Orders;-

1. Spent.
  2. That this Honourable Court be pleased to stay the execution of the decree herein and specifically the warrants of attachment issued against the Respondent/Applicant on November 30, 2022 pending the hearing and determination of this application.
  3. That this Honourable Court be pleased to revoke and set aside the warrants of attachment and sale issued to Crater View Auctioneers on November 30, 2022.
  4. That in the alternative, this Honourable Court be pleased to direct that the Respondent/Applicant be allowed to settle the decretal amount, as will be confirmed, by way of 5 equal monthly instalments.
  5. That the costs of this application be provided for
2. The application is premised on the following grounds;
- a. That on December 2, 2022, the Claimants, through their agents Crater View Auctioneers, proclaimed motor vehicles registration numbers xxxx, xxxx, xxxx & xxxx, motor cycle registration number xxxx, 3 office chairs, 1 computer, 8 printers and 1 office table, which were at the Respondent/Applicant's premises in Nakuru, with the intention of removing the proclaimed properties and selling them at a public auction in execution of the judgment delivered in this matter.
  - b. Upon the proclamation, the Applicant was given 7 (seven) days' notice, failure to which the assets would be removed from its premises and be taken away for auctioning. This Notice period came to an end on December 9, 2022.
  - c. It is stated that the proclamation was done without any proper or prior service of notice to the Applicant concerning the intended execution by attachment of property, save for a Notice of Entry of Judgment which contained the award and interest together with a list of party and party costs, which costs were neither taxed nor agreed upon.
  - d. It is contended that the extraction and issuance of warrants of attachment and sale, and the entire execution process, are premature, irregular and unprocedural and ought to be set aside.
  - e. That the Applicant is apprehensive that without restraining orders from this Honourable Court the Claimants will dispose off its motor vehicles and all other proclaimed assets by way of public auction before this application is heard and determined to the prejudice and disadvantage of the Applicant; Who, due to hard economic times, is unable to raise the entire decretal amount at once and is now seeking for orders from this Court, the alternative, to permit it to settle the amounts owing by way of Five (5) equal monthly instalments.
  - f. It is averred that this Court has the discretion to order settlement of a money decree by instalments under Order 21 Rule 12 of the Civil Procedure (Amendment) Rules, 2020.
  - g. That the Applicant is apprehensive that if the execution is allowed to proceed, it will suffer great damage, injury and irreparable loss and this application will be rendered nugatory and the Applicant will be condemned to pay the unjustified and incorrect decretal amount claimed in execution, while it is willing to settle the award by instalments.



- h. Therefore, that it is in the interest of justice that orders for stay be granted to pave way for the hearing of this application, having been brought without any undue delay
3. The Application is also supported by the Affidavit sworn by Annastacia Mwendwa, the Applicant's Human Resource manager. She reiterated the grounds of the application and in addition stated that the goods that were proclaimed have been assessed at Kshs 2,800,000 as against the decretal sum demanded of Kshs 1,229,575 which goods are way more than the decretal sum required.
4. She also reiterated that the sum demanded included costs which have not been agreed by the parties neither have they been taxed as such the entire sum was improperly arrived at and thus not due for execution. Further that statutory deductions was not factored in the calculations.
5. He urged this Court to allow its application and make an order for it to pay the decretal sum by way of instalments as it is unable to pay the entire decretal sum at once.
6. The Application is opposed by the Respondents who filed grounds of opposition and a replying affidavit sworn by Simon Ole Rinka, the 1<sup>st</sup> Respondent herein, deposed upon on the January 2, 2023. The grounds of opposition came out as follows;
- a. That the application has been brought in bad taste to derail and prejudice the due process of this Honourable Court and further to defeat the cause of justice.
- b. That the same is frivolous, vexatious and brought in bad faith is time buying tactic with the intention of delaying the payment herein.
- c. That the Application is an abuse of the Court process and totally incompetent to the point that it is a non-starter and absolutely unsustainable.
- d. That the Applicant/Respondent has brought the application solely for the purpose of frustrating the Claimants/Respondents.
- e. The application is an afterthought.
7. In the replying affidavit, the Respondent stated that, judgement in this case was delivered on March 30, 2022 in presence of the Applicant's advocates as such the applicant was aware of the decision by this Court but choose to take 7 months without taking any action until execution proceeding were initiated that he came to this Court.
8. It is contended that this application has been filed as a delay tactics to frustrate the Respondents from enjoying the fruits of their judgements.
9. The affiant stated that the notice of entry of judgement and the proclamation notice were properly served upon the applicant.
10. The affiant also stated that the Applicant has not demonstrated their inability to pay the decretal sum to warrant the intervention by this Court. The affiant prayed for the application to be dismissed with costs.
11. Directions were given for the application to be disposed of by written submissions. The Applicant filed their submission on the February 16, 2023 while the Respondents sought to rely on their grounds of opposition and their replying affidavit.



### **Applicant's Submissions.**

12. The applicant submitted that the warrants of attachment were irregularly extracted by the Respondents because they did not follow the express provision of Rule 31 of the Employment and Labour Relations Court(Procedure) Rules, 2016. It was argued that the Respondents did not extract a formal decree as such there was nothing to execute and the warrants of attachment obtained was done so irregularly.
13. It was submitted that the Respondent relied on an entry of judgement in extracting the warrants of attachment, which they included costs which had not been agreed upon by the parties or taxed by the taxing master in line with Section 94 of the *Civil Procedure Act*. On that basis, the Applicant faulted the entire procedure and stated that the execution was premature, irregular and unprocedural. To support this, they relied on the case of *Simon Unda Katana V Deeman Cionstruction Co Limited & 4 others [2020] eKLR* where the Court held that;

' But there is the more fundamental accusation made against the Appellant by the 3<sup>rd</sup> Respondent that no decree was served and that there was a conflict in execution figures. Again, the Appellant chose not to respond to this grave issue. In the circumstances of this case and in the absence of any substantive response by the Appellant, I find and hold that the execution process was irregular and must be stopped. The result is that the warrants of attachment and sale of property issued on February 26, 2020 and the proclamation of attachment issued on February 27, 2020 are lifted.'
14. Accordingly, that the extraction of a decree and service thereof upon the opposing party should be undertaken before execution commence. They thus urged this Court to declare the warrants of attachment irregular having been obtained before a Decree was extracted.
15. It was also submitted that the decretal sum, subject of execution is Kshs 1.2 Million, but the Respondents, through their Auctioneers have proclaimed goods worth Kshs 2.8 Million, double of what they are owed and to allow execution to proceed could cause more financial loss to the Applicant because their goods which is double the decretal sum is up for auction.
16. The Applicant submitted the Court allows is empowered under Order 21 Rule 12 of the Civil Procedure Rules to order for decretal sum to be paid in installment and urged the Court to allow it pay the decretal sum and subsequent costs in 5 equal monthly installments. To support this argument, the applicant cited the case of *Esther Maringa Kinyua V Lilian Gakii Marete [2021] eKLR* where the Court held that;

' The Court has perused the Ruling of the trial Court. The trial Court was convinced that the Appellant had shown sufficient cause as to why she should be allowed to pay the decretal amount in installments on the grounds that she was sickly, elderly, a housewife and had no source of income and she depended on her daughter for upkeep. This Court agrees that on a balance of probabilities, these factors may have been persuasive to make the trial Court find that sufficient cause had been shown. However, this Court is also mindful of the fact that the Appellant was the same person who had earlier on intended to sell property to the Respondent. Although the Court is aware that ownership of property may not directly translate to cash, this Court finds that there was reason to doubt her alleged inability to settle the decretal amount. The Court however considers that the Covid-19 pandemic came with harsh economic constraints and her claim for inability to pay may have been genuine. This Court will, therefore, order that the Appellant pays the Respondent half of the decretal



amount due as at the date of this Ruling, and thereafter to settle the balance by way of 12 equal monthly installments so as to have the entire debt cleared in 12 months.'

17. In conclusion, the applicant urged this Court to find the warrants of attachment for sale issued to the Respondents on November 30, 2022 are irregular, defective and unprocedural and set them aside. In the alternative, the Court allows the prayer for the decretal sum to be paid in 5 equal monthly instalments.
18. I have examined all the averments and submissions of the parties herein.
19. The applicant herein has sought stay of execution on the ground that the execution was being done improperly and without even considering that costs have not been taxed yet included.
20. I have looked at the warrant of attachment annexed to this application Exh AM 1. I note that there is no figure on taxed costs and therefore the submission that untaxed costs are included is not true.
21. However from the same warrants, I note the property attached for execution is way worth more than the 931,346/= that the Respondents are seeking to execute.
22. In the circumstances of the case, I will allow stay of execution and direct the attached goods released subject to payment of auctioneers costs by the Judgment Decree Holder.
23. The warrants of execution may be corrected for proper execution accordingly.

**RULING DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF MARCH, 2023.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of:-

M/s Mutua for Respondent Applicant – present

Masese for Claimant Respondent – present

Court Assistant – Fred

