



**Kenya Engineering Workers Union v Farm Engineering Industries Ltd & another
(Cause 47 of 2019) [2023] KEELRC 1538 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1538 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 47 OF 2019
S RADIDO, J
JUNE 21, 2023**

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
FARM ENGINEERING INDUSTRIES LTD 1ST RESPONDENT
VICTORIA BLUE AUCTIONEERING SERVICES 2ND RESPONDENT

RULING

1. On 9 March 2023, the Respondent moved the Court seeking orders:
 - (1) ...
 - (2) ...
 - (3) ...
 - (4) ...
 - (5) ...
 - (6) That this Honourable Court be pleased to grant stay of execution of the judgment entered against the Respondent/applicant on 29th September 2022 and the resultant decree thereof pending the hearing and determination of the application for stay of execution of the judgment delivered by Hon Justice Stephen Radido.
 - (7) That the Honourable Court be please to make any other orders as it deems fit in the circumstances.
 - (8) That costs of this application be in the cause.



2. The primary ground in support of the application was that despite the Respondent issuing the Grievant with post-dated cheques in settlement of the decree on or around 6 March 2023, auctioneers had moved in to execute without lawful instructions.
3. The General Secretary of the Claimant Union filed a replying affidavit to the Motion on 28 March 2023, deponing that the Union was not privy to the issuance of the post-dated cheques directly to the Grievant, that the Union had not instructed the auctioneer to execute the judgment and that the parties were in the process of negotiations when the auctioneer moved to execute.
4. The Claimant Union indicated that it supported the Respondent/applicant's Motion.
5. The auctioneer filed a replying affidavit on 3 April 2023, averring that it had received instructions from the Union's Area Secretary, Kisumu branch and the Grievant and that he moved to execute pursuant to those instructions.
6. The auctioneer also attested that by the date he moved to execute, the Respondent had not settled the decree.
7. To buttress his case, the auctioneer also filed affidavits sworn by the Area Secretary and the Grievant.
8. The Court took brief oral submissions on 8 June 2023.
9. The Court has considered the Motion, affidavits and submissions and makes the following findings.
10. One, the General Secretary of the Union as the authorised person under section 22 of the [Employment and Labour Relations Court Act](#) and section 73(3) of the [Labour Relations Act](#) did not instruct the auctioneer to execute.
11. Two, the Area Secretary of the Claimant Union was not an authorised person for purposes of the Cause herein as he did not exhibit any written or implicit instructions to act on behalf of the Union.
12. Three, the auctioneer did not prove that he received lawful or written instructions from the Claimant Union or its authorised official to execute.
13. Four, it was reckless and unprofessional of the auctioneer to act without lawful or written instructions.
14. Five, considering that the auctioneer did not act pursuant to lawful or written instructions from the General Secretary or his authorised representative in writing, the execution was not only unlawful but defective.
15. Six, the application for execution filed with the Court on 20 February 2023 was void.
16. Consequently, the Court finds merit in the Motion and orders:
 - i. The warrants of attachment and sale be and are hereby invalidated.
 - ii. The auctioneer to refund any charges/fees paid to it by the Respondent within 21 days.
 - iii. The auctioneer to meet the costs of the Motion.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 21ST DAY OF JUNE 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances



For Union Mr. Makale, industrial Relations Officer

For Respondent M.M. Gitonga & Co. Advocates

For auctioneer Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chrispo Aura

