



**Katana v Kassam Hauliers Limited (Cause 581 of 2015)  
[2023] KEELRC 1663 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1663 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 581 OF 2015**

**M MBARŪ, J  
JULY 6, 2023**

**BETWEEN**

**EMMANUEL THOYA KATANA ..... CLAIMANT**

**AND**

**KASSAM HAULIERS LIMITED ..... RESPONDENT**

**RULING**

1. The respondent, Kassam Hauliers Limited filed application dated 23 March 2021 seeking for orders that there be stay of execution of the judgment and the decree issued on 9 June 2017 and that the warrants of attachment dated 9 September 2019 be found to be premature, irregular and unlawful. The respondent is also seeking costs of the application and the claimant to pay the auctioneers costs.
2. The application is made on the grounds and the supporting affidavit of Stephen Ndeti Mackenzi the head of insurance and claims department that upon judgment and decree herein dated 9 June 2017 in favour of the claimant, the claimant proceeded and instructed auctioneers to attach the respondent's property which was later sold and the decretal sum paid in full. The claimant never gave an account or informed the respondent of the proceeds of the sale of its Probox motor vehicle and has now instructed other auctioneers to proclaim and attach its assets and property over alleged non-payment of the full decretal sum.
3. Before such action issued there was no notice to show cause issued against the respondent. There has been no knowledge of any unpaid amounts since there was no information with regard to the previous proceeds of the attachment and sale of its motor vehicle. The second attachment and notice of sale is premature, irregular and unlawful and the application should be allowed with costs.
4. In reply, the claimant filed his Replying Affidavit and aver that the execution proceedings are proper and justified since the execution of the warrants and sale of the respondent's property attached did not fully satisfy the decretal sum and a balance remains unpaid. The respondent has been aware of the



judgment and decree herein but has failed to ascertain if it was fully satisfied. The respondent as the judgment- debtor should satisfy the same. The instant application is filed way after the judgment of the court issued 5 years ago and the same should be dismissed with costs.

Both parties attended and made oral submissions.

5. The respondent as the applicant submitted that judgment herein was delivered on 9 June 2017 in favour of the claimant who proceeded and executed through the sale of its Probox vehicle but never rendered an account. To move again to execute without issuing notice is irregular, improper and unlawful and contrary to Order 22 Rule 17 and 18 of the Civil Procedure Rules and should be restrained and stay of execution issued. The Warrant of Sale and Attachment issued without the claimant following the due process and is therefore irregular. There is no fresh decree stating the exact amount outstanding or unpaid to justify the instant execution proceedings.
6. In response, the claimant submitted that the judgment award was Ksh.160,000 and Certificate of Costs issued with a total of Ksh.194,204.80. Warrants of Attachment issued and the respondent has not settled a balance of Ksh.400,000 and the instant application is in abuse of court process and should be dismissed with costs.
7. It is not in dispute that on 9 June 2017 judgement herein issued in favour of the claimant for the sum of Ksh.160,000. A decree issued for Ksh.469,343.80 and the claimant proceeded and executed through sale of the respondent's motor vehicle.

The decree is dated 9 September 2019.

Proclamation and attachment are dated 19 August 2020.

8. There is no account rendered after the proclamation and warrants issued.
9. The provisions of Order 22 Rule 18(1)(a) of the Civil Procedure Rules are express and mandatory in nature that;

O.22 r.18(1) Where an application for execution is made –

- (a) more than one year after the date of the decree
- (b) ....
- (c) .....

The court executing the decree shall issue a notice against the person whom execution is applied for requiring him to show cause on a date to be fixed why the decree should be executed against him...

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom the execution as applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him:

Provided further that no such notice shall be necessary on any application for the attachment of salary or allowance which is caused solely by reason of the judgment-debtor having changed his employment since a previous order for attachment

10. Under these provisions, once execution has commenced and realised, if such is not sufficient, a judgment – creditor should not apply the same proceedings at will. Recourse should be to go back to



the same procedures applied. It is imperative to apply the provisions of Order 22 rule 17 and 18 and particularity where a notice to show cause against the judgment – debtor should issue.

11. The notice to show cause serves two purposes. It gives notice to the judgment - debtor to pay the decretal sum in the case where due to the lapse of time, one may have forgotten about the existence of the decree and secondly, the requirement of notice is meant to put the Decree-holder on notice that if there is delays in pursuing due rights, the process of execution will be subjected to the notice and that delay in execution results in escalation of costs and interest.

Without notice, a decree-holder is locked.

12. The claimant cannot wait for 5 years and suddenly commence execution proceedings against the respondent under the belief that there is an unpaid balance of the decretal sum. Notice is imperative to issue to ensure the due performance of a valid order of the court.
13. Accordingly, application dated 23 March 2021 is with merit, the secondary execution proceedings herein commenced by the claimant are irregular and unlawful and are hereby set aside. For these proceedings, the respondent is awarded costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 6 DAY OF JULY, 2023.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**

**Court Assistant: Japhet**

..... **and** .....

