



**Ngono v Docwide Business Centre [K] Ltd (Cause 662 of 2015)
[2023] KEELRC 2621 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2621 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 662 OF 2015
AK NZEI, J
OCTOBER 26, 2023**

BETWEEN

CHRISTOPHER ONYANGO NGONO CLAIMANT

AND

DOCWIDE BUSINESS CENTRE [K] LTD RESPONDENT

RULING

1. Judgment in this matter was delivered on 28th April 2022, whereby the Claimant was awarded a total of Ksh. 313,665.87, costs of the suit and interest at Court rates. Costs are shown to have been subsequently taxed and certified at Ksh. 423,795.
2. On 2nd May 2023, the Respondent filed an evenly dated urgent Notice of Motion seeking orders: -
 - a. that pending inter-partes hearing of the application, a temporary order be, and is hereby issued restraining the Respondent and its employees, agents and/or servants from carting away, attaching, selling or from interfering with the Applicant’s property which are the subject of (a) proclamation dated 26th April 2023 issued by the Claimant’s appointed Auctioneer and/or agents M/S. Fantasy Auctioneers.
 - b. that pending the hearing and determination of the application, an order be and is hereby issued restraining the Respondent and its employees, agents and/or servants from carting away, attaching, selling or from interfering with the Applicant’s goods/office property which are the subject of (a) proclamation dated 26th April 2023 issued by the Claimant’s appointed auctioneer and/or agent M/S. Fantasy Auctioneers.
 - c. that the proclamation and the warrants of attachment be lifted.
 - d. that the auctioneers’ charges be paid by the Claimant.
 - e. that costs be provided for.



3. The application is premised on the supporting affidavit of one Michael Mwakio Mdoma, the Respondent/Applicant's director, sworn on 2nd May 2023. The said affidavit replicates the grounds on which the application is founded as set out on the face of the application. It is deponed in the said supporting affidavit that the Respondent/Applicant did not participate in the taxation of costs that no decree was served on it, and that it was not given sufficient notice to pay, which is usually 10 days.
4. It was further deponed on behalf of the Respondent/Applicant:-
 - a. that appointment of auctioneers was done without following procedure by serving a judgment notice.
 - b. that the Respondent/Applicant is willing to settle the claim by 8 monthly installments of ksh. 100,000 until payment in full, as its business is undergoing economic downturn and has not fully recovered from the effects of Covid-19 and introduction of the Standard Gauge Railway, which greatly affected transport business in Mombasa.
 - c. that the Respondent/Applicant is in rent arrears of ksh. 1,000,000.
 - d. that the Respondent /Applicant has 10 employees to whom it pays salary amounting to ksh. 400,000 every month.
 - e. that the Respondent/Applicant has an obligation to pay ksh. 132,000 monthly to settle the decree and costs in Civil Suit No. E029 of 2022 (Nidshan Trading Company Limited -vs Dockwide Business Centre (K) Limited) where the Respondent was ordered to pay ksh. 531,000 being the decretal sum.
 - f. that the Claimant shall not suffer any prejudice or injustice if the application herein is allowed.
5. The application is opposed by the Claimant/Respondent vide a replying affidavit sworn by him on 5th May 2023. It is deponed in the said replying affidavit:-
 - a. that the application herein was filed more than one year from the date that judgment was delivered, and that no reason has been given for the inordinate delay.
 - b. that the Respondent/Applicant has not made any step towards settlement of the decretal sum.
 - c. that the Applicant has not demonstrated any substantial loss that it may suffer if the decretal sum is paid to the Claimant.
 - d. that the application is an academic exercise meant to delay realization by the Claimant of the sum adjudged.
6. Both parties filed and exchanged written submissions for and against the application pursuant to the Court's directions in that regard, which I have considered.
7. It is to be noted that on 8th May 2023, this Court granted an interim stay of execution of this Court's decree. The stay order was subsequently extended severally. The prayers in the application seeking stay orders pending inter-partes hearing of the application herein are, therefore, already spend. The outstanding issues which are pending determination at this stage are whether or not the proclamation and warrants of attachment should be lifted, and whether the Claimant should pay the auctioneer's charges.
8. It is to be noted that the Respondent/Applicant's Notice of Motion herein dated 2nd May 2023 does not contain a prayer for the Applicant/Judgment Debtor to be allowed by the Court to settle



the decretal sum by instalments. The Applicant has not laid any basis for lifting of the warrants of attachment issued in execution of this Court's decree.

9. This Court's decree was never appealed against, and the Taxing Officer's decision on taxation was never objected to. It is my finding that the application dated 2nd May 2023 is without basis, and the same is hereby dismissed with costs.

10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26TH OCTOBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

