



Kenya Broadcasting Corporation v Kasisi & 10 others (Suing in a Representative Capacity in Respect of 257 Employees of Kenya Broadcasting Corporation); Viewline Auctioneers (Interested Party) (Cause 845 of 2017) [2023] KEELRC 3121 (KLR) (17 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 3121 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 845 OF 2017
NJ ABUODHA, J
NOVEMBER 17, 2023**

BETWEEN

KENYA BROADCASTING CORPORATION APPLICANT

AND

CHARLES KASISI 1ST RESPONDENT
BEATRICE MUTHONI 2ND RESPONDENT
ROSELYNE ANINDO 3RD RESPONDENT
JANE WAMBOKA 4TH RESPONDENT
FRANCIS OLE NASIEKU 5TH RESPONDENT
JANEROSE A. ONGORO 6TH RESPONDENT
AGGREY KHAYANJE 7TH RESPONDENT
IBRAHIM S. DAWE 8TH RESPONDENT
ALEX OUMA 9TH RESPONDENT
ZAKARY DINDA 10TH RESPONDENT
COMMUNICATIONS WORKERS UNION 11TH RESPONDENT
SUING IN A REPRESENTATIVE CAPACITY IN RESPECT OF 257 EMPLOYEES OF KENYA BROADCASTING CORPORATION

AND

VIEWLINE AUCTIONEERS INTERESTED PARTY



RULING

1. The Applicant filed application dated 20th June,2023 under Section 47(a) and (b) of the [Kenya Broadcasting Corporation Act](#), Section 3 and 12(30 & (4) of the [Employment and Labour Relations Court Act](#) seeking for orders of injunction prohibiting execution of proclamation notices dated 12th May,2023 and any future proclamation notices in execution of decree issued by superior court on 17th September,2021 against the Judgement Debtor. The Applicant also sought the Interested Party to be compelled to unconditionally release motor vehicle registration Numbers KCT 800Y Nissan Urvan Van and KBT 699N being held by Interested Party on account of proclamation. The Applicant sought to stop the mode of execution as illegal, null and void.
2. The application was supported by the Affidavit of Samuel Maina the Acting Managing Director of the Applicant herein who averred that the Applicant is a State Corporation established under [Kenya Broadcasting Corporations Act](#) and section 47 of the [Act](#) provides for restriction on execution against property of Corporation. The Applicant averred that the Act does not allow the mode of execution through proclamation, seizure and or attachments and sale of the Applicant's assets to settle a decree hence the Respondent's actions of proclaiming against the Applicant and subsequently repossessing Applicant's Motor Vehicles were in clear violation of clear and express law.
3. The Applicant averred that while the Respondents through a judgment delivered in 11th November,2020 got a judgement against the Applicant who was aggrieved by the said Judgement and filed a Notice of Appeal and sought a stay of the execution of the Judgment and final orders; the Respondents proceeded to extract decree issued on 17th September,2021 and warrant of attachment of movable property was given on 23rd September,2021 with the Interested Party moving recently to the Applicant's premises on 12th May,2023 to serve them with proclamation notices in a move to execute the decree.
4. The Applicant averred that pursuant to above proclamation the Applicant filed a application dated 29th September,2021 which culminated in Hon. Lady Justice Monica Mbaru's Ruling of 25th November,2021. The Applicants appealed the ruling vide Misc. Civil Appeal Application No.E446 of 2021 in which stay orders were granted to the Applicant and the Court of Appeal found that the grounds the applicant were putting forth in line with Section 47(a) and (b) were not idle but arguable.
5. The Applicant averred that the process of execution of the decree was in blatant disregard of the law specifically section 47(a) of the [Kenya Broadcasting Corporation](#) and based on this, the Applicant filed Misc.Civil Appeal Application E225 of 2021 seeking stay. A conditional stay was issued by the court on 21st October,2022 but the Applicant did not meet the condition set by the Court of Appeal of depositing Kshs 15 Million as security which then opened the applicant to execution to satisfy the decretal sum.
6. The Applicant further averred that the parties have attempted an out of court settlement with the Respondents accommodating the Applicant in terms of payment plan but the Applicant's financial position did not allow it to meet the proposed terms in order to settle the matter. The Applicant stated that it relies on exchequer and does not make profit as it does not engage in any business.
7. The Applicant further averred that the Respondents through letters dated 16th January,2023 and 3rd April,2023 intimated that further discussions over the matter had ceased and they would proceed to recover the decretal sum. On 12th May,2023 and 5th June,2023 the Respondents through Interested



- Party seized two motor Vehicles belonging to the Applicant and the Applicant had already paid Kshs 5 Million in part settlement of the decretal sum.
8. The Applicant averred that the Interested Party was demanding Kshs 7,948,582/- as its fees out of an illegal proclamation and it should not benefit from an illegality and the mode of execution should be one that was in line with the law and not an illegal one forged with malice.
 9. In reply the Respondents filed their replying Affidavit sworn on 13th July, 2023 and averred that the orders sought by the Applicant in its application were not available to them given the history of the matter. The Respondents got the judgement on 11th November,2020 which the Applicant failed to satisfy and moved the Court of Appeal for stay of the decree. A conditional stay order to deposit 15 Million as security was issued on 21st October,2022 for 30 days which they failed to comply with and stay orders lapsed on 20th November,2022. The Applicant was put on notice of the consequences through their advocates on record.
 10. The Respondents averred that on 3rd April,2023 their advocates on record applied for the reissue of warrants to the Auctioneers which notice was copied to the Applicant's counsel on record and they never reacted until 13th June,2023 when the Applicant made a payment of Kshs 5 Million as part payment of the decretal sum to their Advocates Account awaiting negotiation on the payment of the balance which was done. The Applicant failed to honour the terms agreed upon.
 11. The Respondents further averred that on 24th May,2022 the Applicant's Managing Director was summoned to court by an order of Justice Mbaru issued on 19th May,2022 to show cause how the decretal sum would be paid and he failed to appear thereby leaving them with no option than to exercise alternative modes of execution to satisfy their decree.
 12. The Respondents averred that the Applicant's Application for injunctive orders is intended to avoid the use of the term stay orders which are *resjudicata* and not available and hence misleading court to issue orders not available to them at this stage.
 13. It was the Respondents' assertion that the failure to pay the decretal sum was a disobedience of court orders and violation of their rights of lawful expectation and that section 47 of the *KBC Act* could not be read and applied in isolation when its Managing director had snubbed court summons; exhibited arrogance in a such a matter where a valid court decree is being frustrated. That section 47 require the managing director to give permission for the property of the corporation to be sized or attached but he failed to obey summons to come to court and show cause why execution should not issue and why payment could not be effected.
 14. The Respondents urged the court to dismiss the Application for being *resjudicata*, misconceived and bad in law as it lacks merit and an abuse of the court process.

Determination

15. From the onset I note that this is quite an old matter and even though the application is coached to be seeking injunctive orders there can never be an injunctive order on a courts decree but only a stay of the same. The Applicant is merely seeking to stay the execution of the decree which was issued on 17th September,2021. It has previously made several applications to this court and the Court of Appeal seeking stay of the execution of the decree and both courts have pronounced themselves on those applications.
16. The Ruling of this court delivered on 19th May,2022 by Hon. Lady Justice Monica Mbaru on Respondents' Application dated 18th March,2022 seeking to stay of execution of the decree herein,



the court noted that section 47 of the KBC Act prohibited attachment of the Applicant's property by proclamation. The Managing Director was however mandated to give permission to the said attachment of the corporation's property. The court stayed the execution but ordered that the Applicant's Managing Director attends court within 14 days and furnish in writing the modalities of payment of the Judgment sum. He was to attend court on 6th June,2022. From the Court record, he never attended court which is a clear disobedience of a Court order.

17. The Applicant acknowledges that it never met the condition set by the Court of Appeal stating that it does not make profits as it relies on exchequer. The Court of Appeal made that recent ruling on 21st October,2022 and gave the applicant a conditional stay which it never complied with. The Court of Appeal being a Court superior to this court, this court cannot overturn its ruling.
18. I note that the parties were involved in an out of court settlement where the Respondents accommodated the Applicant to pay the decretal sum. The Applicant has only paid Kshs 5 Million to the Respondent's advocates in June,2022 but failed to settle the balance. The Respondents were entitled to recover the balance of their decretal sum when the Applicant did not meet the conditions set by the Court of Appeal which lapsed in 20th November 2022 and failure by the Applicant to settle the balance of the decretal sum as agreed.
19. The Applicant's action of approaching this court when the issue has been litigated in this court and the Court of Appeal and this Court and at either level failed to abided the orders of the two courts amounts to nothing but an abuse of the Court process and this court cannot allow this.
20. The application is therefore found without merit and is hereby dismissed with costs.
21. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY OF NOVEMBER, 2023 DELIVERED VIRTUALLY THIS 17TH DAY OF NOVEMBER, 2023

ABUODHA NELSON JORUM

JUDGE

