



REPUBLIC OF KENYA



KENYA LAW
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KHS East Africa Limited v Maina; Sentech Limited (Respondent) (Employment and Labour Relations Cause 1710 of 2013) [2023] KEELRC 2797 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2797 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1710 OF 2013
MA ONYANGO, J
NOVEMBER 2, 2023

BETWEEN

KHS EAST AFRICA LIMITED APPLICANT

AND

JERUSHA NYAMBURA MAINA CLAIMANT

AND

SENTECH LIMITED RESPONDENT

RULING

1. The objector/applicant filed an application dated 27th May 2022 seeking orders that:
 - i. Spent
 - ii. Spent
 - iii. That this court be pleased to grant an interim stay of execution of the decree dated 7th December 2018 and/or the Warrant of sale dated 20th May 2022 as against the Objector pending hearing and determination of the objector's application for review of the ruling of this court dated 12th May 2022.
 - iv. That the costs of the Application be provided for.
2. The grounds upon which the application is made are contained on the face of the application and in the supporting affidavit of Denise Schnieder Walimohamed. They are that the court erred in law and fact in reaching its findings in the ruling dated 12th May 2022, that there are meritorious grounds for the honourable court to review its ruling of 12th May 2022 in respect of its decision to dismiss the Objectors Notice of Objection dated 1st August 2019 and Chamber Summons dated 5th August 2019 and thereby allowing the Decree Holder to execute the Decree, the Objector on 27th May 2022,



filed an application for review of the ruling of the court delivered on 12th May 2022, that the objector remains an independent and separate legal entity from the defendant and has no relationship with the defendant in any shape, form or manner; the movable property in respect of which the Proclamation of Attachment has been issued by the Claimant's Auctioneers are wholly owned, legally and beneficially by the Objector; that no prejudice will be occasioned on any party if the Application is allowed and the suit heard on merit and that unless the orders herein are granted, the Objector stands to suffer greatly as its business operations will be stalled.

3. The application is opposed vide a replying affidavit dated 15th June 2022 sworn by Counsel Bosire, the Claimant's advocate on record. Mr. Bosire depones that the orders sought are meant to circumvent the law to frustrate and deny the claimant the fruits of her judgment; that the applicant has not demonstrated the existence of any new evidence which it could not obtain even after exercising due diligence for the orders herein; that in reading the ruling holistically, this honourable court was fair, just, comprehensive and addressed itself to all issues before it; that the court analysed all the facts before it as evidenced by paragraph 21 and 22 of the ruling; that in the unlikely event that the court grants the orders sought, the applicant/objector should deposit the decretal amount in court pending the hearing and determination of this application.
4. The application was canvassed by way of written submissions. The Claimant filed her submissions dated 8th November 2022. The Respondent did not file submissions.
5. I have carefully considered the application, the affidavits both in support and against the application and the submissions on record. The issue that I am supposed to determine in my considered view is whether I should grant an interim stay of execution of the decree and the warrants of sale dated 20th May 2022 issued against the Objector pending the hearing and determination of the objector's application for review of this court's ruling dated 12th May 2022.
6. The power of the court to grant or refuse an application for a stay of execution is discretionary.
7. In the case of *Samvir Trustee Limited v Guardian Bank Limited* (Ur), Justice Warsame observed as follows;

“The Court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the court in a particular manner. But the yardstick is for the court to balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgement. It is a fundamental factor to bear in mind that, a successful party is *prima facie* entitled to the fruits of his judgement; hence the consequence of a judgement is that it has defined the rights of a party with definitive conclusion”.
8. The application herein is substantially similar to the one dated 5th August 2019 where the same party sought stay of execution pending hearing and determination of the Objector's application dated 2nd August 2019.
9. In the ruling delivered on 12th May 2022 I observed that the Objector did not file documents to prove acquisition of the original Respondent's assets and CR 12 evidencing company shareholding. The submissions of the Applicant were not filed in support of that application pretty much like in the instant application where the Objector sought extension of time to file submissions in 3 days 9th November 2022 which application was granted, but never did so. The said submissions are not on record even as of today.



10. The orders sought being discretionary, the Applicant must demonstrate seriousness in prosecuting the application which in this case has been lacking. By failing to file submissions the Applicant has denied the court the opportunity to understand the explanation of the Applicant legal basis for the application.
11. The court further notes the fact that the application for stay and the application for review were filed separately yet the two could have been filed and disposed of together. Apart from clogging the court system, the same has the effect of delaying the finalization of the matter.
12. This is a very old matter in which judgment was delivered in 7th December 2018. The Objector has denied the decree holder the fruits of the judgment since then. The applicant has not given justification to continue doing so.
13. For the forgoing reasons I find no merit in the application and dismiss it with costs.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 2ND DAY OF NOVEMBER, 2023.

M. ONYANGO

JUDGE

