



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 1381 OF 2010

BETWEEN

ERNEST MORARA MOKUA.....CLAIMANT

VERSUS

KENYA RAILWAYS CORPORATION.....RESPONDENT

RULING

1. Judgment was delivered in favour of the Claimant, in the sum of Kshs. 1,364,000, on 29th March 2019.
2. The Claimant was also granted costs, which have since been taxed at Kshs. 308,954.
3. He has obtained warrants of attachment against the movable property of the Respondent.
4. The Respondent is opposed to attachment, and filed an Application dated 23rd July 2020, asking the Court to grant order of stay of execution pending Appeal, and order setting aside of the warrants of attachment.
5. The Application is founded on the Affidavit of Respondent's General Manager Legal Services and Corporation Secretary, David Njogu, sworn on 23rd July 2020.
6. The Respondent states it filed a Notice of Appeal on 9th April 2019, and applied for certified proceedings from the Court, which are yet to be supplied. The Intended Appeal is arguable with great chances of success. The Respondent is a public utility and attachment of its property would lead to loss to the general public. The Respondent holds the properties in trust for the general public.
7. The Respondent submits that attachment is illegal, because Section 88 of the Kenya Railways Corporation Act, prohibits execution of Judgments of the Court against the Respondent, by way of attachment and sale of the Respondent's property.
8. The Claimant relies on Grounds of Opposition dated 19th October 2020.
9. He states that Judgment was delivered by a Court of competent jurisdiction; there is inordinate delay in filing of the Application; the Application is an afterthought and the Respondent has no interest in pursuing the Intended Appeal; the Respondent has not proposed deposit of any security; the Intended Appeal has no chance of success and is a ploy, to delay the Claimant from enjoyment of the fruits of his Judgment; the Claimant is capable of refunding the decretal sum, to the Respondent in event the Intended Appeal succeeds; and the Respondent has not shown, it would suffer substantial loss if execution is not stayed.
10. Parties agreed in Court on 16th September 2021, to have the Application considered and determined on the strength of the record. They confirmed filing of the submissions at the last mention on 22nd October 2021.

The Court Finds: -

11. Unfortunately, the Claimant has said nothing in his Grounds of Opposition and Submissions, about Section 88 of the Railways Corporation Act, which prohibits the course he has taken.
12. If the law does not allow for attachment of the Respondent's property, it would not be necessary for the Respondent to file an Application

for stay of execution pending Appeal. It is presumed that a process of attachment and sale would not be initiated. The Application was filed against the background of an illegal process, instigated by the Claimant. The submission by the Claimant that the Respondent filed its Application late, is neither here nor there, as it is the illegal action by the Claimant, which prompted its filing.

13. The Court does not think it is necessary to go into other principles, which relate to Applications for stay of execution pending Appeal. These principles do not come into play, if in the first place, execution is not allowed by the law.

IT IS ORDERED: -

a. Section 88 of the Kenya Railways Corporation Act prohibits execution of Judgments against the Respondent by way of attachment and sale of its property.

b. The warrants of attachment issued herein are illegal, and are hereby recalled and set aside.

c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 26TH DAY OF JANUARY 2022.

JAMES RIKA

JUDGE