



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 150 OF 2016

KENYA LONG DISTANCE TRUCK DRIVERS AND

ALLIED WORKERS UNION.....CLAIMANT/RESPONDENT

VERSUS

MALVA COACH BUILDERS LIMITED....RESPONDENT/APPLICANT

RULING

1. The applicant in the application dated 1st July, 2021 prays for an order in the following terms:-

1. Spent

2. Spent

3. **THAT** this Honourable Court be pleased to set aside and or vary the warrants of attachment issued herein on 11th June, 2021 to the extent of its irregularity as to interest on decree which is at variance with the judgment of the Court dated 21st September, 2018.

4. **THAT** the claimant be ordered to settle the auctioneer's costs.

5. **THAT** the costs of this application be in the cause.

2. The application is premised on the grounds set out on the face of the notice of motion and buttressed in the affidavit of George Masese, Manager Legal Services of the respondent the nub of which is that the Court heard and determined the main suit in a judgment delivered on 21st September, 2018 in favour of the claimant.

3. That the respondent filed Civil Appeal No. 108 of 2020 at the Court of Appeal.

4. That the trial judge did not order for interest on the decretal sum but the claimant has now obtained warrants dated 11th June, 2021 and instructed a firm of auctioneers by the name **Kiriyyu Merchants** who have proclaimed the goods of the respondent and will proceed to attach them despite the anomaly and the pending appeal which is yet to be prosecuted.

5. That the warrants of attachment were extracted based on a decree dated 22nd January, 2021 which is not in tandem with the judgment of the Court as it contains interest on decretal sum contrary to the final orders of the Court in its judgment.

6. That the application be granted as prayed.

7. The application is opposed by a replying affidavit of **Nicholas Mbugua** sworn to on 6th July, 2021 in which he deposes that the claimant obtained judgment in its favour on 21st September, 2018 against the respondent.

8. That though the judgment did not award interest, Hon. Nduma, J. heard application dated 3rd December, 2020 and allowed the same on 20th January, 2021 since the application was unopposed.

9. That the effect of the ruling was to award interest to the decretal sum from the date of judgment till payment in full. That pursuant to the ruling the claimant requested the Deputy Registrar to draw the decree for the terminal dues of the 9 reinstated employees duly calculated by the respondent and the decree is regular and not irregular as alleged by the applicant or at all. That the applicant did not oppose the tabulation set out in the application which was granted *ex parte* and the ruling has not been set aside. That no appeal has been filed against the ruling of Nduma, J. dated 20th January, 2021.

10. That the Court is *functus officio* having dealt with a previous application of the same nature dealing with stay of execution on the same grounds as in the present application.

11. That the application be dismissed with costs.

12. The parties filed their respective submissions which the Court has fully considered.

13. The Court has carefully considered the Rulings by Hon. Justice Mbaru, J. delivered on 6th May, 2021 in respect of application dated 26th January, 2021 in which the respondent/applicant sought for orders that:-

(a) There be stay of proceedings pending hearing and determination of the pending appeal.

(b) There be stay of execution pending hearing and determination of the pending appeal.

(c) Costs be in the cause.

14. The Court considered the application and found:-

“stay of execution orders should be issued on good foundation. Following judgment herein on 21st September, 2018, it is now over 3 years and 6 months. The delay apparent, to issue stay of execution at this stage would be to visit injustice upon the claimant who has since moved and secured a decree with full knowledge of the respondent and who failed to file any responses and the Court has since allowed such application for the issuance of the decree herein.”

15. The present application deals with the same matters that were determined in this application by Mbaru, J. The same is a gross abuse of Court process since nothing new is before the Court for determination.

16. Furthermore, the computation upon which the decree has been drawn is in terms of the ruling of Nduma, J. on 20th January, 2021

17. The application is dismissed with costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 20TH DAY OF JANUARY, 2022

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Masese for Applicant

Mr. Mugambi for Respondent

Ekale – Court clerk