



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 359 OF 2016

EDITH KATHURE MUNYUA.....CLAIMANT

VERSUS

MOI TEACHING AND REFERRAL HOSPITAL.....1ST RESPONDENT

DR WILSON ARUASA.....2ND RESPONDENT

ANNE CHEMORSIO.....3RD RESPONDENT

THOMAS NGETICH.....4TH RESPONDENT

RULING NO. 2

1. Through a Motion dated 21 December 2021, the Respondents seeks orders:

3. THAT this Honourable Court do set aside and or quash the purported warrants of attachment and sale of the applicant's property erroneously issued by this Honourable Court on 17th December 2021.

4. THAT this Honourable Court do declare that the applicant has fully satisfied its obligations halting execution of the decree emanating from the judgment.

5. THAT this Honourable Court be pleased to set aside and/or quash the proclamation, attachment and/or sale of the applicant's moveable property as listed in the warrant of attachment dated 17th December 2021, namely motor vehicles registration number KDA 596P – Toyota Hiace, KDA 502P – Toyota Hilux, KBU 348T – Nissan Pickup, KBB 786S – Double Cabin Pickup and KAY 577U – Toyota Prado.

6. The Honourable Court be pleased to permanently restrain the Respondents by themselves or their agents from proclaiming, attaching and/or selling the applicant's moveable properties as listed in the warrant of attachment dated 17th December 2021 motor-vehicles registration number KDA 596P – Toyota Hiace, KDA 502P – Toyota Hilux, KBU 348T – Nissan Pickup, KBB 786S – Double Cabin Pickup and KAY 577U – Toyota Prado and or any such similar items in execution of the decree of this Court.

2. The grounds in support of the application were that the Court of Appeal had in Civil Appeal (Application) No. 212 of 2019, *Edith Kathure Munyua v Moi Teaching & Referral Hospital & Ors* granted a stay of execution of the decree herein on condition that the Respondents deposits Kshs 1,503,680/- into the Court of Appeal, a condition which had been complied with and that the warrants of attachment had not been sealed by the Court.

3. The Claimant filed a replying affidavit in opposition to the Motion on 14 January 2022.

4. The Claimant deponed in the affidavit that the Respondents had not complied with the condition to deposit security in Court; the deposit receipt could not be traced in the Court file; that the copy of the deposit receipt filed by the Respondents had discrepancies and was manual instead of computer-generated; the application had not been served upon the auctioneers;

that the deponent of the supporting affidavit had no legal capacity and that a Record of Appeal had not been filed.

5. The Respondents filed their submissions on 18 February 2022. The Claimant filed her submissions on 18 March 2022.
6. The Court has considered the Motion, affidavits, and submissions.
7. It is not in dispute that the Court of Appeal granted a stay of execution on 29 January 2021 because the Respondents deposited Kshs 1,503,680/- with the Court within 30-days.
8. The condition appears to have been complied with on 13 February 2021. Whether the deposit receipt attached to the supporting affidavit is genuine is not for this Court to determine. The determination of such concerns lies with the Court of Appeal.
9. The Claimant has not disowned knowledge of the stay order granted by the Court of Appeal despite having cross-appealed and participated in the stay execution application.
10. It was, therefore, mischievous of her to apply to execute the decree despite being aware of the stay orders granted by the Court of Appeal.
11. The Court has no option but to allow the instant Motion.
12. Before concluding, the Court notes that the warrants of attachment are the subject of investigations by the Directorate of Criminal investigations.
13. The Court finds the Motion dated 21 December 2021 with merit, and it is allowed with costs to the Respondents.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 30TH DAY OF MARCH, 2022

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

Claimant in person

For Respondents Owino Geoffrey Ochieng, Advocate

Court Assistant Chrispo Aura