

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO. 41 OF 2018

MARK BUSHURU ANGATIA.....CLAIMANT

VERSUS

FRODAK KENYA LIMITED.....RESPONDENT

RULING

1. The ruling subject matter of the application dated 29th November, 2021 was delivered on 6th November, 2020. That ruling was in respect of an application dated 21st December, 2019 where the respondent sought orders among others that there be a stay of execution of the judgment and decree of the Court and that the judgment and decree of the Court passed against the respondent on 29th June, 2018 and consequential orders be set aside. The court in its considered ruling delivered on 6th November, 2020 dismissed the application with costs.
2. On 18th March, 2021 the respondent yet again brought an application dated same day seeking orders among others that this Court stay further execution pending the hearing of the application and further that execution proceedings as commenced by the claimant be set aside and the warrants of attachment be recalled and the costs of the execution including auctioneers charges be borne by the claimant.
3. The applicant further sought that the Court grants an order of stay barring execution pending the hearing and determination of the intended appeal to the Court of Appeal on the ruling or order dated 6th November, 2020.
4. The Court once more in its considered ruling delivered on 1st October, 2021 became of the view that the application lacked merit and dismissed the same with costs.
5. The present application before me dated 29th November, 2021 now seeks **“interim preservative order”** or injunction barring execution of the decree in the suit pending the hearing of the respondent’s motion for an injunction pending in the Court of Appeal on an appeal against the ruling/order dated 6th November, 2020.
6. The present application in the Courts view is not any different from the two previous applications which the Court considered on merit and was not persuaded that they deserved the exercise of the Court discretion in favour of the applicant.
7. The applicant in the three applications, seems bent on testing the patience of the Court by repackaging applications which the Court has more than once come to conclusion that they are not merited, and dismissed the same.
8. The Court may in the applicant’s view be wrong but its is within the jurisdiction of the Court to make an error of law or fact. That is why there is another tier of Courts above it to redress that. It is inconveniencing and outright abuse of the Court process to keep confronting a Judge with an application presenting itself as raising a new matter in the dispute yet in reality its intention is to repackage and rebrand issues upon which the Judge has taken into consideration and rendered a ruling on merit.
9. Under Order 42 of the Civil Procedure Rules and Rule 5(2) (b) of the Court of Appeal Rules a party can elect to apply for a stay order before the trial Court and if not successful pursue the same in the Court of Appeal under rule 5(2) (b) of that Court.
10. This Court has had more than one occasion to consider the merits of the orders sought by the applicant in the previous application and came to a particular conclusion on both occasions. It is therefore improper for Counsel to come to the Judge once again under the guise of raising a new issue yet the real intention is to seek orders which the Court has rejected on two previous occasions.
11. The application I once again found to be lacking in merit and is hereby dismissed with costs.
12. **It is so ordered.**

DATED AND DELIVERED AT ELDORET THIS 18TH DAY OF MARCH, 2022

ABUODHA NELSON JORUM

JUDGE ELRC