



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1761 OF 2015

SUSAN MISOKA a.k.a SUSAN KWETI LIKUNDA.....CLAIMANT

VERSUS

VEGPRO (K) LIMITED.....RESPONDENT

RULING

1. The Applicant in the notice of motion dated 11th October, 2021 prays for the following orders: -

Upon Inter partes hearing:

(1) **THAT** there be a stay of execution of the Judgment and Decree issued by this Honourable Court on 6th February, 2020 together with all consequential orders pending the hearing and determination of the Applicant's appeal at the Court of Appeal being **Civil Appeal No. E499 of 2021, Vegpro (K) Limited -vs- Susan Misoma a.k.a Susan Kwetu likunda.**

(2) **THAT** there be a declaration that the warrants of Proclamation of attachment and sale issued on 29th September, 2021 in furtherance of a decree issued on 7th July, 2021 be lifted, recalled and withdrawn.

(3) **THAT** there be and it is hereby ordered by way of an injunction restraining the Claimant/Respondent and her agents, auctioneers or any other person acting on its behalf from towing, carrying away goods belonging to the Applicant pending the hearing and determination of the of the Applicant's Appeal by the Court of Appeal in **Civil Appeal No. E499 of 2021, Vegpro (K) Limited -vs- Susan Misoma a.k.a Susan Kwetu likunda.**

(4) **THAT** the Interested Party herein be directed to tax its costs.

(5) **THAT** the Honourable Court do issue any other orders it deems fit and just to meet the ends of justice.

(6) **THAT** costs of this application be provided for.

2. The application is premised on grounds set out on the face of the notice of motion the nub of which is that a judgment was delivered in favour of the respondent on 6th February, 2020 by Hon. Wasilwa, J.

3. That the respondent was awarded Kshs 337,707 plus costs and interest.

4. That the applicant filed an appeal against the judgment.

5. That the appeal is arguable. That the respondent has commenced steps to execute the decree in the sum of Kshs 551,006.34.

6. That the appeal shall be rendered nugatory if the execution is done.

7. That the respondent is of unknown means and may not be able to refund the decretal sum if paid and the appeal is successful.

8. That the applicant is ready to deposit security for decretal sum, costs and interest within 90 days or as the Court directs in a joint account in the names of advocates for the parties.

9. The application is buttressed by the supporting affidavit of Cedric Lumidi, the Human Resource Manager of the Respondent.

10. The application is opposed by the respondent who states that the grounds that need to be satisfied by the applicant as set out under Order 42 of the Civil Procedure rules, 2010 have not been satisfied by the applicant.

11. That the applicant has not demonstrated that: -

(a) substantial loss may result to the applicant unless the order is made;

(b) that application has been made without unreasonable delay and

(c) That such security as the Court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.

11. The aforesaid requirements were well set out in the case of **Kenya Shell Limited -vs- Benjamin Karuga Kibiru & Another [1986] eKLR 410**. That execution is a lawful process and so evidence of commencement of execution process does not of itself demonstrate that the applicant will suffer substantial loss. See **James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2012] eKLR**.

12. That there is no evidence that the respondent is a man of straw and therefore the appeal will be rendered nugatory should the appeal succeed.

13. The Court has considered the deposition by the parties and the law applicable. The primary consideration is that a party should not be denied the right of appeal by failing to protect the subject matter of the suit.

14. In the present case, the Court is satisfied that the applicant has demonstrated that it has an arguable appeal and that the decretal sum is substantial and that the applicant may be unable to refund the decretal sum if same is paid and the appeal eventually succeeds.

15. Therefore, and in the best interest of justice, the Court allows the application and grants the following orders: -

(a) There be stay of execution of the judgment and Decree by the court dated 6th June, 2020 together with all consequential orders pending the hearing and determination of the pending appeal.

(b) That the Warrants of Proclamation of attachment and Sale issued on 29th September, 2021 in furtherance of a decree issued on 7th July, 2021 be and are hereby lifted, recalled and withdrawn.

(c) That the respondent and/or his agents are enjoined from towing, carrying any goods belonging to the applicant pending the hearing and determination of the pending appeal.

(d) That the applicant to deposit the decretal sum in an interest earning account in the joint names of the advocates for the applicant and advocates for the respondent within 30 days of this ruling and in default, the stay of execution to automatically lapse and execution to proceed.

(e) Costs in the cause.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF APRIL, 2022.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

APPEARANCE

MR OKWE ACHIADO FOR THE APPLICANT

NAMADA FOR THE RESPONDENT

EKALE – COURT ASSISTANT