



Kasisi & 9 others ([Suing in a representative capacity in respect of 257 employees of Kenya Broadcasting Corporation]) v Kenya Broadcasting Corporation (Cause 845 of 2017) [2022] KEELRC 4060 (KLR) (19 May 2022) (Ruling)

Neutral citation: [2022] KEELRC 4060 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 845 OF 2017**

**M MBARŪ, J
MAY 19, 2022**

BETWEEN

**CHARLES KASISI 1ST CLAIMANT
BEATRICE MUTHONI 2ND CLAIMANT
ROSELYNE ANINDO 3RD CLAIMANT
JANE WAMBOKA 4TH CLAIMANT
FRANCIS OLE NASIEKU 5TH CLAIMANT
JANEROSE A ONGORO 6TH CLAIMANT
AGGREY S KHAYANJE 7TH CLAIMANT
IBRAHM S DAWE 8TH CLAIMANT
ALEX OUMA 9TH CLAIMANT
ZAKARY DINDA 10TH CLAIMANT**

**[SUING IN A REPRESENTATIVE CAPACITY IN RESPECT OF 257
EMPLOYEES OF KENYA BROADCASTING CORPORATION]**

AND

KENYA BROADCASTING CORPORATION RESPONDENT

RULING

1. The claimants filed application dated March 18, 2022 under the provisions of rule 32 of the *Employment and Labour Relations Court (Procedure) Rules* and seeking for orders that;

1. ...



2. The court be pleased to grant the decree/holder/applicants agents M/s Viewline Auctioneers a breaking in order into the respondent's premises located in Nairobi central business to complete the execution process by attaching the proclaimed goods.
 3. This court do issue an order directed to the OCS-Central Police station to assist in prayer 2 above.
 4. The respondent be condemned to pay the applicants costs of incidental and/or costs related hereto.
2. The application is supported by the affidavit of Gitonga Ringera and on the grounds that the respondents have denied the applicant's agents M/s Viewline Auctioneers access to their premises to carry away the proclaimed good with a view to frustrate execution process or decree herein and hence the instant application.
 3. Mr Ringera avers in his affidavit that he is a court Bailiff and on September 20, 2021 he received instructions from the claimants to execute the warrants against the respondent and on September 23, 2021 he collected he same and served but as soon as he proclaimed the attachable goods of the respondent at the premises, upon return on October 8, 2021 to collect if payment had not been effected, no payment had been made.
 4. On October 14, 2021 he made efforts to attach the respondent's assets but was denied access to the premises. Despite various efforts to execute, the same has not been successful and now requires the assistance of the police to enforce the same.
 5. In reply, the respondent filed the replying affidavit of Paul Jilani the corporation secretary and who avers that on November 25, 2021 the court delivered ruling and held that pursuant to section 47(a) of the *Kenya Broadcasting Corporation Act* the warrants of attachment were not valid and execution not lawful. The instant application is therefore defective and should be dismissed with costs.

Both parties attended and made oral submissions.

Determination

6. As submitted by the respondent, execution against a state corporation such as the respondent is regulated under the provisions of section 47(a) of the *Kenya Broadcasting Corporations Act*. The property of the corporation cannot be attached in execution of a judgement/order. Save under the same provisions, the respondent corporation is required to pay the judgement sum without delay from the revenue of the corporation.
7. Despite notices of intention to execute for non-payment since judgement delivered herein on November 11, 2020 and the decree issued on September 19, 2021 the respondent has opted to apply technicalities to avoid paying the judgement sum a stand point which does not foster peaceful industrial relations. No efforts whatsoever are taken to address what measures are in place to ensure the judgement sum is paid from the revenue collected by the respondent.
8. On the orders sought to allow the police to assist the claimants to execute judgement herein, the court taking account of section 47 of the Kenya Broadcasting Corporations Act is not left without a remedy.
9. Pursuant to section 3 and 20 of the *Employment and Labour Relations Court Act*, 2011 the court is given general powers to act without undue regard to technicalities and direct as deemed just and to summon any party, person, entity and direct such party to furnish in writing or otherwise, such particulars in relation to such matters as it may require.



10. Section 20 of the *Employment and Labour Relations Court Act*, 2011 directs that;
1. In any proceedings to which this act applies, the court shall act without undue regard to technicalities:
Provided that the court may inform itself on any matter as it considers just and may take into account opinion evidence and such facts as it considers relevant and material to the proceedings.
 2. ...
 3. ...
 4. For the purpose of dealing with any matter before it, the court may by order in writing signed by or on behalf of the court require any person to—
 - (a) Furnish in writing or otherwise, such particulars in relation to such matters as it may require;
 - (b) Attend before it;
 - (c) Give evidence on oath or otherwise; and
 - (d) Produce any relevant documents.
 - (5) An order made under subsection (4) may include a requirement as to the date on which or the time within which the order is to be complied with.
11. These provisions are relevant to apply in this case to forestall further costs and expenses upon the claimants who are in possession of a lawful and legitimate court decree.
12. In this regard, on the court ruling dated November 25, 2021 and on the instant application by the claimants dated March 18, 2022 the following orders are hereby issued;
- a. Execution against the property of the respondent is stayed;
 - b. The respondent through its managing director shall within the next 14 days attend court and furnish in writing the modalities of payment of the judgement sum herein;
 - c. The respondent shall be at liberty to produce any relevant documents as pertains (b) above;
 - d. Attend court on June 6, 2022 for (b) and (c) above; and
 - e. Costs herein awarded to the claimants.

Orders accordingly.

DELIVERED IN COURT AT NAIROBI THIS 19TH DAY OF MAY, 2022.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

