



**Waiganjo v Kenpipe Co-operative Savings and Credit Society Limited (Miscellaneous Civil Application 1088 of 2011) [2022] KEELRC 1598 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1598 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS CIVIL APPLICATION 1088 OF 2011**

**MN NDUMA, J  
JUNE 16, 2022**

**BETWEEN**

**DANIEL GITHINJI WAIGANJO ..... CLAIMANT**

**AND**

**KENPIPE CO-OPERATIVE SAVINGS AND CREDIT SOCIETY  
LIMITED ..... RESPONDENT**

**RULING**

1. The applicant in the Notice of Motion dated 18<sup>th</sup> March, 2020 prays for an order:-
  1. Spent
  2. Spent
  3. The Honourable Court be pleased to set aside the decree issued herein, the warrant of execution dated – 10<sup>th</sup> March, 2020 and the Notice of Proclamation dated 13<sup>th</sup> March, 2020 against the Respondent herein and all the consequential orders flowing from the said decree.
  4. The auctioneer’s charges be borne by the claimant and
  5. Costs of the applicant be borne by the Claimant.
2. The application is premised on a set of facts set out on the face of the Notice of Motion and in the supporting affidavit of the Chief Executive Officer of the respondent Mr. Mwasambu Mbango Charles the nub of which is that Onesmus Makau J. delivered a judgment in favour of the claimant on 8<sup>th</sup> March, 2019 in the sum of Kshs 1,478,296.95 with costs and interest at Court rates from date of filing suit less statutory deductions. Thirty (30) days stay of execution was granted.



3. The respondent paid the claimant through his advocates the judgment sum of Kshs 1,043,151.08 by two cheques both dated 7<sup>th</sup> May, 2019, less statutory deductions as ordered by the Court. The payment was delivered on 8<sup>th</sup> May, 2019.
4. The claimants' advocates acknowledged receipt of payment and contended that the sum paid was not in "final satisfaction of the judgment herein and that we will be sending you a letter on our quantification of the payable amounts on or before 24<sup>th</sup> April, 2019."
5. The claimant's advocates did not quantify the sum payable and interest as they had intimated in their letter and did not as required by law submit a draft decree to the respondent's advocates.
6. The claimant filed a party and party bill of costs which was taxed in December, 2019 at Kshs 448,558.34.
7. The claimant's advocates did not send a copy of the certificate of costs from the taxing officer together with the promised letter on the quantification of payable amounts from the respondent to ascertain interest due and the taxed costs so as to effect payment.
8. The claimant's advocates did not send to the respondent's advocates a draft decree for approval as required by law and proceeded to extract a decree suo moto which is replete with errors and it is illegal and void ab initio.
9. That on 13<sup>th</sup> March, 2020, the respondent was contacted and served with warrants of attachment for an erroneous sum of Kshs 4,053,676.59, the auctioneer's invoice and a proclamation of attachable property which is based on a unilateral decree, that conceals and fails to compute and subtract the applicable statutory deductions and erroneous computation of interest.
10. The claimant did not take into account the already paid sum of Kshs 1,042,151.08; did not compute statutory dues and deduction; the claimant applied interest on the costs from date of filing the suit when it is trite law that interest is only charged on costs from the date of a Certificate of Costs, the amount having been ascertained by taxation.
11. That the computation is exaggerated by a sum of Kshs 1,857,822.29 to Kshs 2,502,900.17 and therefore an outright enterprise in unjust enrichment by the claimant and the auctioneers against the respondent contrary to the plain letter of the judgment.
12. The respondent stands to suffer irreparable harm if the illegal execution is carried out.
13. That the application be allowed. That the respondent is willing to pay the undisputed costs of Kshs 448,558.34 and the settled and correct interest as computed by the Court if the same is due under the decree.

### **Replying Affidavit**

14. The application is opposed vide an affidavit of Peter Kiiru Kamau, an advocate for the claimant.
15. He deposes that judgment provided for accrued interest on the principle sum and costs at Court rates from date of filing suit till payment in full.
16. That the respondent did not appeal or seek to review the judgment of the Court.
17. That the claimant in the application for execution filed in Court on 9<sup>th</sup> March, 2020 acknowledges the part payment paid by the respondent and the claimant only seeks payment of the balance of the decretal amount, taxed costs and interest. A copy of the proposed decree is annexed and marked "PKK1."



18. That the decree is in full compliance of Order 21, Rule 7 of the Civil Procedure Rules.
19. That the respondent was fully aware of the claimant's tabulation of the decretal sum as the same was filed and served upon the respondent in the taxation cause fully attended and defended by the respondent. Copy of tabulation is annexed and marked 'PKK2.
20. That the respondent has since paid the decretal amount and taxed costs but refuses to pay the full interest on the taxed fees. (emphasis added)
21. That therefore the decree and the consequent warrants of attachment are proper, lawful, regular and valid.
22. That the respondent's failure to settle the decretal amount, taxed costs and interest necessitated the proclamation and therefore the respondent is lawfully liable to pay the auctioneer's fees.
23. That the respondent is estopped from impugning the decree and resultant warrants of attachment now that it has offset the decretal amount.
24. That the applicant has not been candid with the Court and the Court ought not use its discretion in the applicant's favour.
25. That the application be dismissed with costs.

#### **Determination**

26. The Court has carefully considered the depositions by the parties and the attachments thereto. The Court is satisfied that the trial Judge delivered judgment in favour of the claimants for a sum of Kshs 1,478,256.25 with interest at Court rates from date of filing suit till payment in full and costs of the suit.
27. The Court is satisfied that the costs of the suit were properly taxed by the Court and a decree extracted taking into account the interest at Court rates from date of filing suit and taxed costs less the partial payment made by the respondent on 7<sup>th</sup> May, 2019.
28. The Court is satisfied that the respondent was aware of the draft decree as at the time of taxation of costs and was duly served with the decretal sum of Kshs 4,053,676.59 prior to the proclamation and attachment by the auctioneers.
28. The applicant did not present a counter computation of the decretal sum up to the time of filing this application but only engages in speculation that the decretal sum as presented by the claimant is riddled with errors.
29. The applicant has in any event paid the full decretal sum less the auctioneer's fees despite the protestations made in this application. Having paid the decretal sum after the proclamation and attachment, the applicant is legally bound to pay the auctioneers fees incurred in execution of the judgment.
30. Accordingly, the application lacks merit there being no alternative computation of the decretal sum made and or proposed by the applicant in terms of the judgment of the Court.
31. The application is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 16TH DAY OF JUNE, 2022.**

**MATHEWS N. NDUMA**

**JUDGE**



**Appearances**

Mr. Wesonga for Respondent/Applicant

Mr. Peter Kiiru Kamau for claimant/respondent

Ekale – Court Assistant

