



**Okeyo v Great Lakes University of Kisumu (Cause 387 of 2018)
[2022] KEELRC 1574 (KLR) (8 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1574 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 387 OF 2018**

S RADIDO, J

JUNE 8, 2022

BETWEEN

STEPHEN OKEYO CLAIMANT

AND

GREAT LAKES UNIVERSITY OF KISUMU RESPONDENT

RULING

1. For determination is a Motion by the Great Lakes University of Kisumu (the Respondent) seeking orders:
 - (1) ...
 - (2) ...
 - (3) ...
 - (4) That execution and attachment process as commenced by the Claimant/Respondent herein be declared void ab initio.
 - (5) That this Honourable Court be pleased to order that the warrant of attachment of moveable property and warrant of sale of property issued to ms Eshikoni Auctioneers on 14.03. 2022 be recalled and/or cancelled and that the resultant proclamation notice dated 15.03.2022 be lifted.
 - (6) That the costs of this application and of the execution process be borne by the Claimant/ Respondent.
2. On 21 March 2022, the Court ordered the Respondent to serve the Motion ahead of further directions on 22 March 2022.



3. The Claimant filed a replying affidavit in opposition to the Motion on 22 March 2022, and when the parties appeared in Court for the further directions, the Court granted the Respondent leave to file and serve a further affidavit and submissions.
4. The Claimant was also directed to file and serve his submissions with the Ruling scheduled for today. The Court also issued an order to stay the warrants.
5. The Respondent filed its submissions on 6 April 2022 and the Claimant on 9 May 2022.
6. The main grounds advanced in support of the Motion were that the Claimant had commenced execution before his bill of costs had been taxed and without leave as contemplated by section 94 of the *Civil Procedure Act*, and that no draft decree had been shared with the Respondent as required by Order 21 Rules 7 and 8 of the *Civil Procedure Rules*.
7. In a replying affidavit sworn by the Claimant's advocate and filed in Court on 22 March 2022, it was deponed that there was no requirement under the Employment and Labour Relations Court (Procedure) Rules, 2016 for a party to share a draft decree for approval by the opposing party and that the function of preparation of a decree is left to the Deputy Registrar of the Court; that the *Civil Procedure Act* and more so section 94 thereof does not apply to the execution of the decrees of the Court and that execution herein commenced only after attempts to settle had failed.
8. On 30 March 2022, the Claimant instructed the auctioneers to stop the attachment considering the objections raised by the Respondent.
9. The Court has considered the Motion, affidavits, and submissions, including the authorities, even though they have not been referred to in this Ruling.
10. The Court will first deal with the question of the validity of the decree, considering that a draft decree was not shared with the Respondent.
11. Rule 31 of the Employment and Labour Relations Court (Procedure) Rules, 2016 anticipates the Registrar/Deputy Registrar drawing, sealing, and issuing a decree after judgment. This is unlike the provision under the Civil Procedure Rules, which requires the parties to approve a draft decree before it is issued by the Registrar.
12. The suggestion therefore that the execution was based on an irregular decree cannot stand.
13. On the question of execution before costs have been ascertained, it is not in dispute that under section 94 of the *Civil Procedure Act*, it is not open to a party to move to execute before costs have been assessed, unless the Court grants leave.
14. The Claimant herein moved to execute before his bill of costs had been taxed. The Respondent asserted that the execution was therefore unlawful.
15. The Claimant argued that the said provision of the *Civil Procedure Act* did not apply to proceedings or executions of judgments of this Court because Rule 32(2) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 referred to the Civil Procedure Rules and not the *Civil Procedure Act*.
16. The Court finds the argument lacking in substance because the Civil Procedure Rules are a legal progeny of the *Civil Procedure Act* and cannot be legally severed from the parent Act.
17. The legal heritage is recognised in section 13 of the *Employment and Labour Relations Court Act* which provides that awards of the Court are to be enforced in accordance with the Rules made under the *Civil Procedure Act*.



18. Further, addressing the interplay between the *Civil Procedure Act* and the Civil Procedure Rules, the Court of Appeal stated in *Maersk Kenya Limited v Murabu Chaka Tsuma* (2017) eKLR that:

In determining the issue, a consideration of section 33 of the *Interpretation and General Provisions Act* will be of necessity. It provides;

An act shall be deemed to be done under an Act by virtue of the powers conferred by an Act or in pursuance or execution of the powers of or under the authority of an Act, if is done under or by virtue of or in pursuance of subsidiary legislation made under a power contained in that Act.

The Civil Procedure Rules have been made pursuant to the provisions of the *Civil Procedure Act*....

19. The gist of the decision by the Court of Appeal is that the Civil Procedure Rules cannot be interpreted in isolation from the *Civil Procedure Act*. The two cannot be severed.
20. The Claimant herein proceeded to execute before ascertainment of costs and without leave.
21. The question then is, should the execution be declared unlawful and voided or it should be allowed to proceed with an order that the Claimant forfeits the costs he had been awarded in the judgment.
22. In this Court's view, the execution before ascertainment of costs and without leave was an irregularity which can be cured by making an order that the costs which had been awarded in the judgment be forfeited.

Conclusion and Orders

23. From the foregoing, the Court finds no substance or merit in the Motion, and it dismissed but with a rider that the costs awarded to the Claimant in the judgment stand forfeited.
24. Each party to bear own costs of the application.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN NAIROBI ON THIS 8TH DAY OF JUNE 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mr Washika instructed by Wafula, Washika & Associates Advocates

For Respondent Mr Otieno instructed by Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura

