



**University of Nairobi v Ithira (Miscellaneous Application
E035 of 2022) [2022] KEELRC 1652 (KLR) (4 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1652 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E035 OF 2022**

AN MWAURE, J

AUGUST 4, 2022

BETWEEN

UNIVERSITY OF NAIROBI APPLICANT

AND

EDWARD R. ITHIRA RESPONDENT

RULING

1. The Applicant (University of Nairobi) *vide* a Notice of Motion a Certificate of Urgency dated 11th March 2022 sought the following orders from this Court:
 - (i) That this application be certified urgent, service of the same be dispensed with and it be heard *ex-parte* in the first instance owing to its urgency. (Spent)
 - (ii) That pending hearing and determination of this Application a temporary injunction do issue restraining the Respondent whether by himself, his agents and/or servants from offering for sale, selling, transferring, leasing, charging, occupying or in any manner whatsoever alienating or interfering with all that property known as motor vehicle Isuzu Bus Registration No. KBZ 180D. (Spent)
 - (iii) That pending hearing and determination of this application a mandatory injunction do issue compelling the Respondent, his agents and/or servants to forthwith release the irregularly attached motor vehicle Isuzu Bus Registration No. KBZ 180D to the Applicant and the Officer Commanding Muthaiga Police Station to assist in obtaining possession of the property which is currently at a yard on Kiambu Road and enforcing the Orders herein.
 - (iv) That pending hearing and determination of Nairobi ELRC Appeal No. E160 of 2021 a mandatory injunction do issue compelling the Respondent, his agents and/or servants to forthwith release the irregularly attached motor vehicle Isuzu Bus Registration No. KBZ 180D to the Applicant and the Officer Commanding Muthaiga Police Station to assist in obtaining



possession of the property which is currently at a yard on Kiambu Road and enforcing the Orders herein.

2. On 16th March 2022, this Court granted the Applicants Prayer (i) and (ii) and further ordered that the application be served upon the Respondent who responded via a Replying Affidavit sworn by Onenga Clement on 18th March 2022.

Applicants Case

3. The Applicant submits that it complied with the Stay Conditions issued by this Honourable Court on 30th November 2021 within 30 days by depositing Kshs. 2,034,625.30 being 70% of the decretal amount on 23rd December 2021 in a joint interest account and paid Kshs. 871,982 being 30% of the decretal amount to the Respondent.
4. The Applicant avers that having satisfied the stay conditions issued by the Honourable Court, the subsequent attachment is illegal.
5. Further the applicant states that it has a prima facie case before this Court with a probability of success and that it may suffer irreparable injury as motor vehicle Isuzu Bus Registration No. KBZ 180D is in danger of being wasted, damaged, alienated or wrongfully sold in execution of a decree by the Respondent.

Respondent's Case

6. It is the Respondent's submission that the application is a non-starter and a waste of judicial time. He further submits that the Applicant's advocates have not complied with the Stay Condition.
7. The Respondent avers that the Applicant did not undertake to open a joint interest earning account despite having been written to with regards to the same. It instead deposited sums in an already defaulted account to avoid execution in a similar matter being ELRC Appeal No. E066 of 2020.
8. Further, the Respondent submits that this application has been brought in bad faith and is a tactic by the applicant to frustrate the Respondent and that the application dated 11th March 2022 should be disallowed.

Issues for Determination

9. This Honourable Court has considered the rival submissions, authorities and exhibits in support and in opposition of the Application dated 11th March 2022. As a result it frames the following as issues for determination in this cause:

(a) Whether the Applicant complied with the Stay Conditions issued on 30th November 2021.

10. On 30th November 2021, the Court ordered the Applicant to deposit 70% of the decretal amount in a joint interest earning account of the advocates on record within 30 days and the remaining 30% be released to the Respondent within the same 30 days.
11. This Court having analyzed the financial statements (DBK-2A and SBK-2B) presented before it by the Applicant finds the documents are not official documents from the bank and cannot formally confirm the documents annexed thereto are genuine proof of payment of decretal sums as per the court orders of this court dated 30th November 2021.
12. The Court gave the respective advocates opportunity to bring the official bank documents to prove the decretal sum had been banked as per courts orders. The applicant's advocates did not endeavor to



bring any such bank detail but in fact brought the same old copies of some documents purported to be from the University of Nairobi but have no bank stamp.

13. The Court has informed the respective advocates its displeasure at the callous manner they are handling this matter and indeed misleading the court. That will not be tolerated.
14. The court is not convinced the applicant has complied with the stay conditions ordered by this honourable court and therefore finds no sound reason to grant the applicant's application dated 11th March 2022. The said entire application is dismissed accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 4TH AUGUST, 2022.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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 had 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 1B 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.

ANNA NGIBUINI MWAURE

JUDGE

