



Njoroge v Ongicho p/a Ongicho and Company Advocates (Miscellaneous Application 148 of 2019) [2022] KEELRC 13016 (KLR) (27 October 2022) (Ruling)

Neutral citation: [2022] KEELRC 13016 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 148 OF 2019
MN NDUMA, J
OCTOBER 27, 2022
IN THE MATTER OF THE ADVOCATES' ACT**

BETWEEN

JACQUILINE NJOROGE APPLICANT

AND

**EVANS ONGICHO P/A ONGICHO AND COMPANY
ADVOCATES RESPONDENT**

RULING

1. The respondent/applicant in the notice of motion application dated February 2, 2022 seeks the following orders: -
 1. Spent.
 2. The court to admit Kingoina-Obuya Advocates *ex parte* as the advocates on record for the applicant and expunge Ogado Advocates from acting for applicant.
 3. The court ruling issued on January 25, 2022 be stayed *ex parte* pending the inter-party hearing of this application.
 4. The court ruling issued on January 25, 2022 be stayed pending the hearing and determination of this application.
 5. The court sets aside the entire *ex parte* ruling and all other consequential orders issued on January 25, 2022.
 6. The court to allow the applicant to file responses and be heard on merit.
2. The application is premised on grounds set out on the face of the application and in the supporting affidavit of the respondent/applicant the butt of which is that on January 25, 2022, when the court



gave the ruling the applicant/respondent misled the court that the matter was coming up for a hearing while the same was coming up for mention for directions.

3. That the applicant is preparing to file its response upon leave of the court. That Mr Ogado who was on record for the respondent/applicant has been sick and did not inform the applicant on the progress of the matter hence prompting the respondent/applicant to change advocates because of the urgency of the consequential orders issued by the court.
4. That the applicant needs to be given an opportunity to be heard on merit. That the applicant's/respondent's application that was allowed required accounting and not civil jail as being contemplated by the applicant/respondent through its steps of moving this court to issue warrants of arrest.
5. That the respondent/applicant is an officer of the court and needs to be allowed to be heard on the merits.
6. The application is opposed *vide* a replying affidavit of Jacqueline Njoroge in which she deposes that the respondent/applicant is barred from making this application for disobeying a court order as per the decision of the court in *Mawani -vs- Mawani* [1977] eKLR 159 and other cited cases.
7. That the respondent/applicant has failed to pay off the decretal sum awarded and he is in contempt of court and has failed to comply with the court's directions severally. That the court should decline to exercise its discretionary power in favour of the applicant as was stated in *Mbogo and Another -vs- Shab* [1968] EA 93.
8. That in any event the prayers sought in the application are unmerited.
9. That the suit was filed when the respondent/applicant failed to release to the applicant/respondent her share of terminal dues pursuant to a decree of the court in Nairobi Employment and Labour Relations Court Cause No 305 of 2019 - *Jackson Mutiso Mwalili and 19 others -vs- Radio Frequency Systems Limited* despite the same being paid into his client bank account held with the Barclays Bank on July 19, 2019. The suit was heard and determined by a judgment dated May 29, 2020.
10. That the respondent/applicant was granted 7 days stay of execution to file an appeal if he so wished. That the 7 days lapsed on June 5, 2020.
11. That the respondent/applicant served the firm with a notice of appeal but there are no further orders staying execution of judgment.
12. That application for execution of judgment before taxation was not responded to by the respondent/applicant despite service. That the application was allowed on October 7, 2020. That a demand note was subsequently sent to the respondent/applicant on November 24, 2020 via email. The respondent/applicant did not respond to the same and the decision was never appealed.
13. That an application for execution of decree by committal to jail was filed which the respondent/applicant failed to respond to despite various notices to do so.
14. That Mr Ogado always represented the respondent/applicant.
15. That the decretal sum has not been paid since July 23, 2019, a period of over two years despite the decretal sum being in the respondent's /applicant's account, but he elected to pay some employees minimal amounts or none at all. The respondent herein was never paid any sum at all. It is surprising that the applicant, despite being an advocate failed to follow up from Mr Ogado on the progress of the matter where he had been sued.



16. That the respondent/applicant had previously been suspended by the Law Society of Kenya and was found to have failed to remit decretal sum for another client who opted to lodge a complaint with the police against him.
17. That the application be dismissed with costs.
18. Having considered the deposition by the parties and the submissions, the court is satisfied that the respondent/applicant is in willful default to satisfy payment of a decretal sum of Kshs 2,980,000 less his fees to the claimant/respondent.
19. The respondent/applicant is in contempt of the orders of the trial court and is underserving of any exercise of discretion in his favour by this court. The judgment of the court is not subject of any stay orders and or any pending appeal. The court is satisfied that at all material times the respondent/applicant was aware of the execution proceedings before court.
20. Accordingly, the court finds that the application lacks merit and the same is dismissed with costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 27TH DAY OF OCTOBER, 2022

MATHEWS N. NDUMA

JUDGE

Appearances

Evans Ongicho Advocate, respondent/Applicant

Kamau Kuria & Co. Advocates for Applicant/Respondent

Ekale – Court Assistant

