



REPUBLIC OF KENYA



**Roy Parcel Services Limited v Abiero (Appeal E037 of 2021)  
[2022] KEELRC 13171 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13171 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E037 OF 2021  
CN BAARI, J  
NOVEMBER 10, 2022**

**BETWEEN**

**ROY PARCEL SERVICES LIMITED ..... APPELLANT**

**AND**

**PAUL ONYANGO ABIERO ..... RESPONDENT**

**RULING**

1. Before Court is a notice of motion application dated May 25, 2022 and filed on 26<sup>th</sup>, May, 2022, brought pursuant to order 51 rule 1 and order 22 of the [Civil Procedure Rules](#), and section 3A of the [Civil Procedure Act](#). The appellant/applicant seeks orders as follows: -
  - i. Spent
  - ii. That the Firm of Kenlee & Co. Advocates be granted leave to come on record for the Applicant.
  - iii. That this Honourable court takes into consideration the consent dated April 8, 2022
  - iv. That the court be pleased to issue a temporary order of injunction restraining the respondent either by themselves or agents, servants or any other person from proclaiming, attaching and selling properties belonging to the applicant pending hearing and determination of the appeal herein
  - v. That the appeal be heard on priority basis.
2. The application is supported by grounds on the face and the affidavits sworn by Kenneth Waithaka on May 25, 2022. The application is premised on a proclamation notice issued to Jimken Auctioneers to proclaim the applicant's assets, which include Motor Vehicles Registration Numbers KBV xxxx, KBT xxxx and KCE xxxx, and which may be attached and sold at the expiry of the notice.



3. The applicant avers that the respondent obtained a judgment against her on May 10, 2021, without due regard and consideration of the counterclaim, and that she appealed against the judgment and that the appeal is pending determination.
4. The appellant/applicant further avers that there is a consent for stay of execution of the judgment and decree in Kisumu Chief Magistrate's Court Cause No. 46 of 2020, pending hearing and determination of the appeal dated April 8, 2022, and which was signed by both Advocates in the matter.
5. The applicant avers that she has not defaulted the terms of the consent save for a delay in dispatch of security documents which was occasioned by a misplacement of a parcel in transit.
6. The respondent did not oppose the application.
7. The appellant/applicant filed submissions and which have been duly considered.

### **Determination**

8. I have considered the application, the grounds and affidavits in their support, and the appellant/applicant's written submissions. The issues for determination are:
  - i. Whether the Firm of Kenlee & Co. Advocates should be allowed to come on record
  - ii. Whether the respondent should be stayed from proclaiming, attaching and selling the appellant's properties before the appeal herein is heard and determined
  - iii. Whether the terms of the consent orders have been breached so as to allow the Respondent to execute.
9. On the issue of stay of execution, this court had earlier in a ruling rendered on February 10, 2022, made a determination of the issue and the court is thus functus officio in as far as the issue of stay is concerned.
10. The appellant can thus only seek recourse in the Court of Appeal on the issue.
11. Concerning the consent order, the order is dated April 8, 2022 and is said to have been filed before the lower court where the matter subject of the appeal was determined.
12. The documents filed together with the instant application indicate that the applicant has complied with the consent orders leaving nothing for the court to consider and/or make a determination on.
13. The application by the Firm of Kenlee & Co. Advocates to be allowed to come on record in this matter, is not opposed and the prayer is allowed.
14. The prayer for stay is dismissed for the reasons foregone.
15. It is so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**CHRISTINE N. BAARI**

**JUDGE.**

Appearance:

Mr. Waithaka Present for the Appellant/Applicant

N/A present for the Respondent



Ms. Christine Omollo-C/A

