



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 20 OF 2018

JOB MADEDE.....CLAIMANT

v

ACACIA VENTURES LIMITED.....RESPONDENT

RULING NO. 2

1. The Court delivered Judgment on 20 December 2018 in which it found that the Acacia Ventures Ltd (the Respondent) had unfairly terminated the employment of Job Madeде (the Claimant).
2. The Court granted the Claimant compensation among other reliefs.
3. The Respondent did not pay, and the Claimant moved to execute. An objector called Hassan Orwe Abdullahi objected to the execution and in a Ruling delivered on 30 April 2020, the Court lifted the warrants and directed that a vehicle which had been attached be released.
4. The Claimant moved to execute afresh.
5. On 8 October 2020, the Respondent moved the Court seeking orders *injuncting* the fresh proclamation and/or attachment and lifting warrants of attachment in place.
6. The Court allowed the Motion and directed that it be served, the parties file and exchange affidavits and submissions before mention on 11 November 2020.
7. The parties did not attend the Court on 11 November 2020 and the Court dismissed the application. There was also nothing on record to show the application had been served or affidavits and submissions filed.
8. On 3 December 2020, the Respondent filed another Motion seeking orders:
 1. ...
 2. **THAT** this Honourable Court be pleased to grant an order of stay of the intended proclamation, attachment and subsequent sell by public auction of the applicant's movable properties, pending the hearing and determination of this application *inter-partes*.
 3. **THAT** this Honourable Court be pleased to set aside, vary and/or review the orders issued on 11 November 2020 dismissing the Respondent's application dated 8 October 2020.
 4. **THAT** upon the grant of prayer (3) above, this Honourable Court do reinstate the orders issued on 8 October 2020 and issue further directions as to the mode and timelines of hearing of the aforesaid application.
 - 5 **THAT** the costs of this application be provided for.
9. The Court granted an interim stay on condition the decretal sum was deposited into Court before end of 8 December 2020. The sum was deposited on 8 December 2020.
10. On 9 December 2020, the Respondent filed yet another Motion seeking an order for the release of a vehicle which had been attached.
11. The Court gave directions on the Motion on the same day and reserved Ruling to today, and on 10 December 2020, the Court ordered that the attached vehicle be released.

12. The Claimant caused to be filed a replying affidavit in opposition to the Motion of 3 December 2020 on 21 December 2020.
13. The Respondent filed its submissions on 19 January 2021 while the Claimant filed his submissions on 26 January 2021.
14. The Court has considered the record, the Motion, affidavits and submissions and come to the conclusion that the Motion has no merit for the following reasons.
15. One, although citing illness as the reason for failing to attend the Court on 11 November 2020 prompting the dismissal of the application dated 8 October 2020, it is clear that the Respondent did not comply with the orders on the service of the application and filing of affidavits and submissions.
16. The Respondent had been directed to serve the application within 14 days.
17. In the replying affidavit filed on behalf of the Claimant, the advocate on record deposed that the Motion dated 8 October 2020 had not been served. The Respondent did not rebut the assertion.
18. Two, the Respondent did not appeal against the Judgment delivered on 20 December 2018 and without any pending Appeal, there was no demonstrable reason why the Respondent has failed to satisfy the decree.
19. Without any legal impediment to the execution, the Claimant was at liberty to seek to enjoy the fruits of the Judgment.
20. Three, the Respondent did not even attempt to show that the execution sought to be stopped was defective or irregular.
21. In the circumstances, it would be a waste of the court's precious time if it were to allow the Respondent to attempt to run-rings around it and the Claimant's entitlement to secure his rights as declared and granted in the Judgment.
22. The Court would be acting in futility in allowing the application.
23. The Court finds no merit in the Motion dated 3 December 2020, and it is dismissed with further costs to the Claimant.
24. Unless the Respondent secures stay orders from the Appellate Court within the next 10 days, the decretal sum deposited in Court should be released to the Claimant's advocate on record.

Delivered through Microsoft teams, dated and signed in Kisumu on this 17 February 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Wambeyi Makomere & Co. Advocates

For Respondent Okoyo Omondi & Co. Advocates

Court Assistant Chrispo Aura