



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 289 OF 2016

JOB MUKHEBI MUTORO.....CLAIMANT

VERSUS

KITALE VOCATIONAL TRAINING CENTRE.....RESPONDENT

RULING

1. Application dated 27/6/2020 seeks stay of execution of the judgment of the Court delivered on 9/7/2019 and computation of award determined in a ruling dated 27/2/2020 in the sum of Kshs. 856,046.

2. Prayers 1 & 2 were granted exparte on 29/6/2020 staying the proclamation by M/s Agunja Auctioneers pending the hearing and determination of the application.

3. The application is premised on grounds set out on the face of the Notice of Motion marked 1 to 7, the nub of which is that the respondent/applicant is a government institution fully owned and run by Government of Kenya and the law prohibits attachment of government property as per the provisions of the Government proceedings Act.

4. That the Auctioneer proclaimed assorted properties of the respondent including motor vehicles for training office, desks, chair and computers which items are used by learners at the Training Centre.

5. That the interest on decretal amount has been grossly exaggerated to Kshs. 404,921 and Auctioneer's fees also is exaggerated in the sum of Kshs. 177,059.

6. Section 21(4) of the Government Proceedings Act Cap. 40 Laws of Kenya provides:-

“(4) save as provided in this section no execution or attachment or process in the nature thereof shall be issued out of any Court for enforcing payment by the Government of any money or costs and no person shall be individually liable under any order for the payment by the government or any government department or any officer of the government as such, of any money or costs.”

7. The respondent filed a replying affidavit sworn to by Job Mutoro, the claimant on 13/7/2020. The claimant does not dispute that the applicant is a government institution but only asserts his right to enjoy the fruits of his judgment.

8. There are lawful means of enforcing judgments and decree sounding in money against government institutions including but not limited to issuing of writs of mandamus and contempt of court proceedings.

9. The action by the claimant through his agents is unlawful and unprocedural.

10. The application is granted in terms of prayer 4 of the Notice of Motion and the following order issued against the claimant/respondent.

(a) The execution process by M/s Agunja Auctioneers resulting in proclamation of goods belonging to the respondent/Applicant a government institution is declared unlawful, null and void.

(b) The proclamation is lifted forthwith as against the goods described in the application.

(c) The claimant/respondent to use lawful methods to enforce the judgment and decree of Court herein.

(d) Costs to follow the event.

Dated and delivered at Nairobi this 4th day of March, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 has 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearance

M/s Okile & Co. Advocates for the respondent/Applicant

Claimant in person.

Chrispo: Court Clerk