



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE NO. 237 OF 2016

DORCAS NDANU DAVID.....CLAIMANT

-VERSUS-

JOSEPH NGIGI KANGETHE T/A NAKUBREEZE

TRAVELLERS INN.. .RESPONDENT/APPLICANT

RULING

1. This ruling is in respect of the Respondent/applicant's application dated 3rd January, 2021 filed under certificate of urgency on 4th February, 2021 via the firm of Mirugi Kariuki & Company advocates seeking the following orders;

1. That this matter be certified as urgent and service be dispensed with in the first instance.

2. That pending hearing and determination of this Application, this Honourable Court be pleased to stay the execution of the judgment of this Court delivered on 17th October, 2019.

3. That the Honourable court be pleased to quash the Warrants of attachment and sale issued on the 21st January, 2021 and the undated proclamation of Attachment served upon the Applicant by the Respondent's Agents DIRECT 'O' AUCTIONEERS.

4. That the costs of this application be awarded to the Applicant.

2. The application is supported by the grounds on the face of the application and the affidavit sworn on 3rd February, 2021 by the, **Kahiga Waitindi**, the advocate ceased of this matter and based on the following grounds: -

a. That, judgment in this case was delivered on 17th October, 2019 in favour of the claimant and the respondent being dissatisfied with the said judgment filed a notice of Appeal on 28th October 2019 and a stay application pending hearing and determination of intended appeal dated 31st October, 2019 which was unopposed and allowed and order issued on 22nd November, 2019.

b. That the said order was served upon the advocate for the claimant on 26th November, 2019 and the Applicant filed the Appeal on 18th December, 2019 being C.A NO. 331 OF 2019.

c. That the claimant in defiance of the Court Order, instructed Direct 'O' Auctioneers to proclaim the tools of trade of the of the Respondent when there are stay Orders in place which have not been discharged, varied or reviewed.

d. That they now seek that their actions of the Claimant and her agents be stopped by this Court.

3. In opposing the application, the claimant, **Dorcias Ndanu David**, swore undated replying affidavit filed in this Court on 16th February, 2021 on the following grounds;

a. That the application herein is scandalous, vexatious, and an abuse of court process, which is ripe for dismissal.

b. She stated that judgment was delivered by this Court on 17th October, 2019 in her favour for the sum of Kshs. 435,019/- and

immediately the Respondent filed a Notice of Appeal on 18th October, 2019.

c. She confirmed that his advocates on record were served with the Notice of Appeal together with the stay orders emanating from an application of 31st October, 2019.

d. She contends however that the applicant has never served her and her advocates on record with the Memorandum of Appeal or the Record of Appeal for over one year.

e. That, the application herein is a delay tactic by the Applicant/ Respondent. Further that the warrants were issued legally and no judiciary staff was compromised to issue the same.

f. That incase this Court allows the application then, the Applicant be ordered to release half of the decretal sum upon the claimant and the other half within a reasonable time

4. The parties herein disposed of the application by way of written submissions with the applicant filing on 4th May, 2021 and the Respondent on 19th April, 2021.

Applicant submissions

5. The applicant submitted that there are Court order issued on 20th November, 2019 and served upon the Claimant who has blatantly refused to obey the Court Orders. He argues that the said orders are in force and unless the same are reviewed by the Court and or discharge the Respondent is obligated under the law to obey the same. He cited the case of **Patrick Ndungu Waithaka & 2 others –v Nol Turesh Loitoktok water and sanitation Co. Ltd (Successor in the title of National water conservation and pipeline conservation) & another [2016] eKLR** Where the Court emphasized on obedience of Court Orders even when the same are based on wrong principles until they are reviewed or set aside.

6. He further cited the case of **Commercial Bank of Africa Limited –v- Ndirangu, Nairobi COA, Civil Appeal No. 157 of 1991, KLR (1992)** Where the Court of Appeal equally emphasized on the need for all parties to obey Court Orders to maintain judicial authority and dignity.

7. Accordingly, it was submitted that the actions of the Claimant are contemptuous and urged this Court to quash the warrant of attachment in light of the stay Orders issued by this Court on 20th November, 2019.

Respondent's submissions

8. The Respondent/Claimant submitted that the applicant after obtaining a court Order went to slumber for more than a year and have not attempted to move the Court of Appeal with regard to their Appeal and the said execution of the decree was only carried out when the respondent realized that the applicant was taking advantage of the stay Orders.

9. It was argued that as much as Court Orders are meant to be obeyed, the applicant should not be allowed to abuse the said Order.

10. He concluded by urging this Court to dismiss the application herein and allow litigation to come to an end.

11. I have considered the averments of the parties herein. This being a stay of execution application, I refer to Order 42 Rule 6(2) which states as follows;

**2) No order for stay of execution shall be made under subrule (1) unless—
(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.**

12. In order to grant the stay sought this court must be convinced that the application was sought timeously which is the case herein. The court must also be convinced that if not granted, the applicant will suffer great loss and lastly the applicant should be willing to deposit in court security as directed by court.

13. As a start there are stay orders in force which were granted on 20/11/2019 and which have not been varied or overturned by this court.

14. It is therefore in contempt of this court for the respondent to purport to proceed with execution, this court orders not-withstanding.

15. In the circumstances I find the application for stay is in force and is hereby restated. If the respondent wishes to overturn the said orders, they should file a substantive application which they have not.

16. Costs to the applicants.

RULING DELIVERED VIRTUALLY THIS 29TH DAY OF JUNE, 2021

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Korongo for claimant present

Kibet for applicant – present

Court assistant - Wanyoike