



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 39 OF 2014

CROWN BUS SERVICES LIMITED.....APPLICANT

VERSUS

THEOPHILUS KATUVA MWANZIA.....RESPONDENT

RULING

1. The applicant filed a Notice of Motion application dated 15/3/2021 praying for an order in the following terms: -

1. Spent

2. Spent

3. This Honourable Court be pleased to grant an Order of injunction restraining the Respondent whether by himself, his employee, servants, agents or auctioneers from advertising for sale, selling whether by public auction or private treaty, disposing or otherwise howsoever completing of any sale concluded by auction or private treaty, or otherwise interfering with the Applicant's ownership of the goods as indicated in the Proclamation Notice dated 10th March, 2021.

4. This Honourable Court be pleased to discharge and/or set aside the Warrants of Attachment issued on 10th March, 2021.

2. The application is premised on grounds set out in the Notice of Motion numbered 1 to 15 the nub of which is that the respondent on 10/3/2021 obtained warrants of attachment against the applicant in execution of a Decree of this Court.

3. That the warrants of attachment is fatally defective in that it makes reference to a decretal sum already fully paid to the respondent and/or his advocates.

4. That the respondent is guilty of material non-disclosure at the time warrants were issued in particular, that the entire Decretal amount of Kshs. 71,871 as per warrant of attachment was duly paid in two instalments dated 31/12/2020 and 11/3/2021 and therefore the attachment is illegal and unlawful.

5. That the respondent has already issued notice for attachment of the applicant's tools of trade and has threatened to dispose the tools at the expiration of 7 days following the proclamation which 7 days lapsed on 16/3/2021.

6. That the only issue pending between the parties is issue of costs which is being litigated upon in Employment and Labour Relations Court Misc. 1041/2021 – Crown Bus Services Limited –vs- Theophilus Katuva Mwanzia being a reference to ruling of the Taxing Master with a view of setting aside the Certificate of Costs emanating therefrom.

7. The applicant has demonstrated good faith in the matter and it is in the interest of justice that the execution is set aside, as being unlawful and unfair. These facts are buttressed in an affidavit of Cynthia Sheunda, Legal officer of the applicant.

8. The respondent instead of filing a replying affidavit filed a counter application dated 18/3/2021 seeking to have interim orders issued by the Court *ex parte* in the present application on 15/3/2021 set aside.

9. The application dated 18/3/2021 was treated by the Court as a reply to the present application wherein the respondent deposes in the supporting affidavit of Alfred Nyabena, advocate for the respondent that he understands the contents of the present application and that the

applicant intends to mislead the Court to stay warrants of attachment issued on 10/3/2021.

10. That the applicant herein filed Miscellaneous Application No. E041 of 2021 where he sought similar orders as in this application before Hon. Mbaru, J. which application was not granted ex parte on 8/3/2021. That the applicant was directed to serve the application for inter partes hearing to take place.

11. That instead, the applicant filed the present application on 15/3/2021 seeking similar orders as in earlier application and obtained expert orders from Nderi Nduma, J, having failed to disclose to the judge the existence of Miscellaneous Application No. E041 of 2021.

12. That the warrants issued on 10/3/2021 are not defective as they were issued pursuant to the judgment of the Court on 14/2/2020 and taxation of the party and party bill of costs on 29/9/2020.

13. That the applicant on 31/12/2020 partly paid the decretal sum in the sum of Kshs. 35,235 but did not inform the claimant's advocate of the payment.

14. That on 10/3/2021 Icon Auctioneers proclaimed the applicant's property in pursuant of the decretal amount and taxed costs in this suit in the sum of Kshs. 252,801.

15. That on 11/3/2021 the applicants paid the rest of the decretal amount of Kshs. 36,636 but did not make any payment of the taxed costs.

16. That there is unpaid balance of Kshs. 178,480 due and owing to the respondent herein. That the warrants of attachment are therefore lawful, and valid.

17 That the application lacks merit and it be dismissed with costs.

18. Mr. Nasimiyu for the Applicant and Mr. Nyabena for the respondent made oral submissions to the Court in support of the depositions aforesaid.

19. The Court is satisfied that the decretal amount including taxed costs was in the sum of Kshs. 252,802 and that the applicant has partly paid, the decretal sum in two instalments of Kshs. 35,235 on 31/12/2020 and Kshs. 36,636, on 11/3/3021 totaling Kshs. 71,871.

20. That there is still a balance of the decretal sum unpaid by the applicant in the sum of Kshs. 178,480.

21. That the applicant has challenged by way of a reference the taxed amount in Employment and Labour Relations Court Miscellaneous Application No. E041 Of 2021, which application is still pending before Court and in respect of which no interim orders were granted.

22. Based on the facts before Court, the application clearly lacks merit. The Warrants of Attachment obtained on 10/3/2021 were obtained lawfully and are valid.

23. The application is dismissed with costs.

Dated and delivered at Nairobi this 17th day of June, 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.

JUDGE

Appearances

Mr. Nasimiyu for the Applicant

Mr. Nyabena for Respondent

