



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.845 OF 2017

CHARLES KASISI.....1ST CLAIMANT
BEATRICE MUTHONI.....2ND CLAIMANT
ROSELYNE ANINDO.....3RD CLAIMANT
JANE WAMBOKA.....4TH CLAIMANT
FRANCIS OLE NASIEKU.....5TH CLAIMANT
JANEROSE A ONGORO.....6TH CLAIMANT
AGGREY S KHAYANJE.....7TH CLAIMANT
IBRAHM S DAWE..... 8TH CLAIMANT
ALEX OUMA..... 9TH CLAIMANT
ZAKARY DINDA.....10TH CLAIMANT

VERSUS

KENYA BROADCASTING CORPORATION.....RESPONDENT

AND

COMMUNICITONS WORKERS UNION.....INTERESTED PARTY

And

VIEWLINE AUCTIONEERS.....INTERESTED PARTY

RULING

The respondent, Kenya Broadcasting Corporation filed application dated 29th September, 2021 and seeking for orders that;

There be a permanent injunction prohibiting the respondent [claimants herein] either by themselves, their agents, principals, employees, workers or servants from executing and or effecting the Proclamation Notices dated 27th September 2021 in execution of the decree of the Superior Court issued on the 17th day of September 2021 against the application [respondent] and seeking for orders that;

A declaratory order that the Proclamation Notices dated 27th September 2021 in execution of the decree of the Superior Court issued on the 17th September 2021 against the application are bad in law and of no legal consequence.

There be a declaratory that the Proclamation Notices dated 27th September 2021 in execution of the decree of the Superior Court

issued on the 17th September 2021 is in blatant breach of section 47(a) of the Kenya Broadcasting Corporation Act

Costs of this application be provided for.

The application is supported by the affidavit of Paul Jilani the Corporation Secretary and on the grounds that judgement herein was delivered on 11th November, 2020 in favour of the claimants without the court indicating the total amounts of the award save the award was for 12 months compensation, costs and interests. Parties were directed to file a schedule of payments indicating the amounts owing to the claimants and the same was confirmed by the court on 26th January, 2021 at Ksh.39, 807,518 but the claimants had added an extra month with an additional sum of Ksh.4, 722,314 which is unjust enrichment.

That the respondent has filed a Notice of Appeal against the judgement of the court and thus seek stay of execution of the judgement to allow the hearing of the appeal. An application filed before the Court of Appeal has been certified urgent but the claimants have sine extracted a decree and commenced execution through Warrants of Attachment. The auctioneers/interested party moved to the premises of the respondent on 27th September, 2021 and prepared a schedule of its properties and a fee note. There was no access to the premises to undertake such process as can be confirmed from the CCTV footages that shall be produced in evidence.

In his affidavit Mr Jilani avers that the execution process undertaken by the claimants and the interested parties is unlawful and contrary to section 47(a) of the Kenya Broadcasting Corporation Act which provides that a judgement or order obtained against the respondent corporation, no execution or attachment, or process in the nature thereof shall be obtained. The execution has been obtained outside the law and which should be stopped.

Mr Jilani also avers that where the decretal sum is to be paid by the respondent, the same should be a correct reflection of the judgement and execution should abide the law. There shall be irreparable loss and damage where the orders sought are not allowed with costs.

In reply, the claimants filed the Replying Affidavit of Charles Kasisi the 1st claimant and who avers that upon delivery of judgement herein on 11th November, 2020 in the presence of the respondent, the court directed parties to submit a schedule of payments due to the 257 employees indicating the salary and payment due to each claimant and which the claimants submitted and served the respondent on 17th December, 2020. No action was taken since.

The claimants moved the court seeking for the adoption of the schedule of payments on 26th January, 2021. The schedule of payments and calculations thereof was not challenged by the respondent.

A decree has since been issued and dated 17th September, 2021. Such allowed the claimants to proceed with execution and the auctioneers proclaimed the respondents goods on 27th September, 2021.

Whereas the respondent has lodged an appeal there is no stay of execution to stop execution herein.

Mr Kasisi also avers that section 47(a) of the Kenya Broadcasting Corporation Act does not exempt the respondent from complying with the court decree and the Managing Director is directed to without delay, cause to be paid out of the revenue such moneys as may, by the judgement or order be awarded against the corporation. There has been delay in satisfying the decree and judgement herein and the orders sought should not issue and the application be dismissed with costs to the claimants.

The parties attended and made oral submissions and the issues which emerge for determination are whether the claimants should be restrained from executing the judgement herein; whether the Proclamation Notice dated 27th September, 2021 is lawful; and whether proclamation Notice dated 27th September, 2021 is in breach of section 47(a) of the Kenya Broadcasting Corporation Act.

From the last issue with regard to application of section 47(a) of the Kenya Broadcasting Corporation Act, the section thereof should be read in whole and not in part. Whereas there is a general restriction on execution against the property of the Corporation, the same is qualified. The managing Director of the Corporation is directed *to without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgement or order, be awarded against the Corporation;*

47. Restriction on execution against property of Corporation Notwithstanding anything to the contrary in any law—

(a) where any judgment or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any property of the Corporation; but the Managing Director shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgement or order, be awarded against the Corporation;

(b) no property of the Corporation shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the managing director. [underline added]

The Warrants of Attachment dated 27th September, 2021 are hence not proper save the respondent on the other hand has not caused to be paid the decretal sum due to the claimants and which has been outstanding since judgement issued on 11th November, 2020 and the tabulation of dues owing to the claimants confirmed on 26th January, 2021. The respondent has not complied pursuant to the provisions of section 47(a) of the Kenya Broadcasting Corporation Act.

The claimants have a valid judgement herein, execution is lawful save with regard to the execution against the respondent Corporation, and such is exempted on condition that the judgement sum be paid without delay from the revenue of the corporation. The matter that there is an appeal and application seeking stay of execution, there is no order stopping execution herein.

The above put into account, the orders to pay the claimants upon judgement delivered on 11th November 2020; the respondent has had sufficient notice and shall within 14 days pay the decretal sum herein all at ksh.39, 807,518 to the claimants. The Managing Director of the Corporation shall ensure compliance pursuant to section 47(a) of the Kenya Broadcasting Corporation Act.

Before conclusion, the respondent has challenged the tabulation of amounts due to the claimants and the confirmation by the court. where such is so, which is not the case here, no orders are sought or framed to address such matter. On this, such shall suffice.

The Warrants of Attachment and Proclamation dated 27th September, 2021 are placed in abeyance to allow the respondent 14 days to pay the sum of Ksh.39, 809, 518. Where there is no payment, the claimants shall be at liberty to move the court as appropriate and the amounts owing shall continue to attract interests at court rates from the date due and until payment in full.

The execution process is valid and the respondent shall pay the claimants costs.

DELIVERED IN COURT AT NAIROBI THIS 25TH DAY OF NOVEMBER, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

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