



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. E6512 OF 2020

RAPHAEL NJUGUNA KURIACLAIMANT

VERSUS

SEVEN SEAS TECHNOLOGIES LIMITEDRESPONDENT

AND

METRO CREDIT LIMITED FORMERLY

BOBJANE CREDIT CO. LIMITED OBJECTOR

RULING

The ruling herein relates to two applications by the respondent dated 15th June, 2021 ad 23rd August, 2021.

Application dated 15th June, 2021 the respondent is seeking for orders that there be stay of execution of the judgement and be granted leave to liquidate the judgment sum Kshs. 1,192,544.95 plus interests in monthly instalments of Ksh. 50,000 and to be paid from the date of the order until settlement in full. the respondent is also seeking for a restraining order against the claimant from levying execution for as long as the respondent pays the proposed monthly instalment and costs of the application be provided for.

The application is supported by the affidavit of Michael King'ori Macharia who avers that there is judgement on admissions at Ksh. 1,192,544.95 and propose to settle the same by way of instalments of Ksh. 50,000 monthly from the date of the order and until paid in full. that pending such payments there be stay of execution.

The claimant filed his Replying Affidavit and avers that since 19th March, 2019 a period of 27 months ago the respondent has failed to make any payments towards his terminal dues following its promise to pay. No payment has been received as a show of good faith.

The respondent filed application dated 23rd August, 2021 and seeking for orders that they be granted an order of stay of execution of the judgement entered on 29th March, 2021 and the respondent be ordered to instruct Chador Auctioneers to return the motor vehicle registration number KBW 553G.

The objector has also filed Chamber Summons seeking leave to be heard on the Notice of Motion dated 27th August, 2021; which application is not on file.

The application by the respondent is supported by the Supporting Affidavit of Michael King'ori Macharia and on the grounds that judgment on admission was herein entered in favour of the claimant for the sum of KS., 192,544.95 and by application dated 15th June, 2021 in good faith sought to settle the decretal sum in equal instalments and which application is still pending hearing.

The claimant well aware of the pending application engaged Chador Auctioneers who on 19th August, 2021 proclaimed and took the respondent's property. They produced Warrants of Attachment and Proclamation dated 6th August, 2021. They forcefully seized motor vehicle Registration number KBW 553G despite the matter pending in court. the warrants of attachment and proclamation had not been served upon the respondent and hence not given an opportunity to comply with the court decree.

Mr Macharia also filed his Further Affidavit and avers that they have paid the claimant in instalments to demonstrate good faith and the amount due is Ksh. 1,013,528.03 in addition to costs of Ksh. 141,823.25 and not Ksh. 1,192,544.95 since the court awarded the total sum without taking into account the amounts already paid to the claimant.

The respondent is willing to pay Ksh.400, 000 in October, 2021 and thereafter an amount of Ksh.50, 000 until payment in full.

Motor vehicle number KCC 940P, KBK 657C and KAT 816G were disposed years ago to thirties. Vehicle KCG 641Z is held as security by Metro Credit under a chattels mortgage.

In reply, the claimant filed his Replying affidavit and avers that the court in its ruling on 29th March, 2021 entered judgement on admission that the claimant be paid Ksh. 1,192,544.95 together with interests at court rates and costs taxed at Ksh. 41,823.25 plus Ksh. 1,500 as court collection fees.

The claimant also avers that he applied for execution and instructed Chador Auctioneers to attach the respondent's property and the auctioneers being officers of the court proceeded to attach property belonging to the respondent and where the attached property belongs to a third party the respondent bears the responsibility in terms of costs. The execution process is lawful and with the authority of the court.

There are no orders stopping execution of the decree issued on 28th July, 2021. The auctioneers who proclaimed were appointed by the court and section 23 of the Auctioneers Act only licenced auctioneers can be allowed by the court to execute a decree.

Parties filed written submissions which have been put into account and the twin issues for determination are whether the respondent should be allowed to pay the judgement sum in instalments and for this reason stay of execution be allowed and whether the court should order Chador Auctioneers to return the motor vehicle registration number KBW 553G, the property of the respondent.

On 15th June, 2021 the respondent filed application seeking to pay the judgement sum of Ksh. 1,192,544.85 by instalments of ksh. 50,000 from the date of the order and until payment in full. the respondent also requested for an order stopping the claimant from levying execution based on the proposal to pay in instalment.

On 24th June, 2021 the Duty Judge heard the application filed under Certificate of Urgency and directed that;

1. *Application certified urgent*
2. *The application is fixed for mention on 29th June, 2021 before the Deputy Registrar for fixing of a hearing date before Court 2.*
3. *The application be served forthwith.*

The judgement on admission delivered on 29th March, 2021 was not stayed.

The respondent did not seem to purpose the application until execution proceedings commenced.

The claimant was therefore left to proceed with execution of the decree upon taxation and the decree being issued and dated 28th July, 2021.

The respondent has not presented any matter that the attached property and motor vehicle registration number KBW 553G does not belong to them or that they do not have a legal or equitable interest therefrom. Execution herein is proper and lawful.

With regard to the application seeking payment of the decretal sum in instalments of kh.50,000 from the date of this order and until payment in full, vide application dated 29th August, 2020 the claimant sought for judgement on admission by the respondent as owing the sum of Ksh.1,192,544.85 and in reply, the respondent filed the Replying Affidavit of Michael King'ori Macharia dated 18th February, 2021 and who at paragraph 8 and 9 admits that the respondent owes the claimant the sum of Ksh.,192,544.85 and further proposes to pay the same in instalments of ksh.20,000 per month starting February, 2021.

In its ruling of 29th March, 2021 the court at page 6 examined such matter and offer to pay in instalments and made a finding that from February, 2021 the respondent had done nothing to pay the proposed instalment.

The court effectively addressed itself with regard to offer to pay in instalment. On such matter(s) the court stands *functus officio*.

Where the judgement entered on admission was in error, the respondent has had an opportunity from 29th March, 2021 to apply under the provisions of section 16 of the Employment and Labour Relations Court Act, 201 read together with Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016. The judgement on record is hence valid and legitimate for execution.

Execution herein is valid and the respondent shall pay the costs due and the costs of these applications to the claimant.

applications dated 15th June, 2021 ad 23rd August, 2021 are hereby dismissed.

costs to the claimant.

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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