

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 94 OF 2018

GLADYS WAMBUI MWAI.....CLAIMANT/ RESPONDENT

VERSUS

HIGHLAND PLANTS LIMITED.....RESPONDENT/APPLICANT

RULING

1. The Respondent/Applicant herein seeks through the Notice of Motion Application dated 3rd February 2020 for stay of execution. In the motion it was asserted that after the Respondent/Applicant's application for stay pending appeal was dismissed, the Respondent/Applicant's m/v Reg. Nos. KAQ 169P and KBG 565F were attached without service of a decree and proclamation notice as required by law. The Respondent/Applicant thus sought the attachment which it asserts was embarked upon in an irregular manner there was need to stay the execution. The Respondent/Applicant sought the immediate release and return of the vehicles aforesaid to the Applicant unconditionally. The motion was supported by the affidavit of Andrew Kiongera Mungai the Finance and Administration Officer of the Respondent.

2. The motion was opposed by the Claimant who filed an affidavit in which she deposed that the Respondent/Applicant's motion was an abuse of the court process as a similar motion was dismissed in December. She deposed that the Respondent/Applicant was seeking to stop her from enjoying the fruits of judgment. She deposed that execution is a process and there was to be an end to litigation. She urged the dismissal of the motion.

3. The application was canvassed orally before me and a Ruling reserved for today. The motion seeking to stay execution is misplaced. The issue has been subject of previous litigation and determination by this court and attracts censure as it is *res judicata*. *Res Judicata* is Latin for a thing adjudged. In this context, *res judicata* refers to the legal doctrine that seeks to bar or preclude continued litigation of a case on same issues between the same parties. The matter of stay has been litigated and definitive determination given. Dispute now lies elsewhere as there is stated to be an appeal that has been preferred. The motion is fit only for dismissal with costs to the Claimant.

It is so ordered.

Dated and delivered at Nyeri this 13th day of February 2020

Nzioki wa Makau

JUDGE