



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

ELRC CAUSE NO. 65 OF 2017

(Before Hon. Justice Mathews N. Nduma)

PROTUS WEKESA MUNIALO.....CLAIMANT/RESPONDENT

-VERSUS -

NZOIA SUGAR COMPANY LTD.....RESPONDENT/APPLICANT

AND

JONI CONSULT AUCTIONEERS.....AUCTIONEER

RULING

1. Application dated 9th October 2019 was filed by the applicant on the even date praying for an order in the following terms: -
2. “ *The Honourable Court be pleased to stay the execution of decree herein dated 13th September 2019 or advertisement for sale and or sale by the auctioneer of any such properties in execution of the Judgment or the proclamation by the auctioneer of 3rd October 2019 and warrants of attachments and sale dated 1st October 2019.*”
3. The application is based on grounds set out on the face of the Notice of Motion and supporting affidavit of one Rita Mukhongo, the acting company secretary of the applicant company.
4. The application is opposed vide a replying affidavit sworn by the claimant/ respondent.
5. That court noted during the hearing of the application that the applicant has not indicated the intended action to be taken by the applicant upon being granted the order of stay of execution that is sought. In deed no application for review of the Judgment of the Court has been filed nor has any appeal been noted against the Judgment delivered on 29th April 2019.
6. That the application is defective on the face of it in that it seeks to obtain a stay of execution of Judgment and subsequent decree and warrant of attachment for no good reason at all and for indefinite period there being no intended action to be taken by the applicant in the interim.
7. Clearly, the application is totally defective and is an abuse of process of Court only intended to delay execution of Judgment lawfully obtained by the claimant/respondent against the applicant.
8. Accordingly, the application for stay of execution lacks merit and is dismissed with costs.

Ruling Dated, Signed and Delivered at Nairobi this 25th day of June 2020.

Mathew N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court 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.

Mathews N. Nduma

Judge

Appearances

M/s Odienyi for Respondent/Applicant

Mr. Odenny for Claimant/Respondent.

Chrispo: Court Clerk