



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**ELRC CAUSE NO. 107 OF 2014**

**TERESIAH WANJIRU NDEGWA.....CLAIMANT**

**VERSUS**

**BARCLAYS BANK LIMITED.....RESPONDENT**

**RULING**

The application before court is the one dated 13<sup>th</sup> November, 2020 filed under Certificate of Urgency and brought through a Notice of Motion application filed by the respondents herein.

The applicant seeks orders staying execution and setting aside the decree and warrants issued by the Deputy Registrar from a Judgment delivered by this Honourable court.

The applicants have argued that the decree is irregular and that the assessment of costs is erroneous. The applicants argue that there is a pending appeal in place and despite that the claimants have proceeded to carry out execution. They aver that no draft decree was served upon them for approval before proceeding to obtain warrants of execution. The applicants content that the decree is not in tandem with the Judgment. They aver that due to these omissions and errors the warrants and decree upon which execution is proceeding should be stayed.

The applicants have cited;-

*David Makau vs Muau Ndenda CA 72 of 2004* where the court held that;-

**“failure to afford the other party an opportunity to consider and approve a draft decree in accordance with Order 21 Rule 8 of the Civil Procedure is, with respect one of breach of the affected party’s right to fair hearing in accordance with Article 50 (1) of the Constitution and cannot therefore be a undue technicality”.**

The applicant who cited in *BOG Tambach Teachers Training College* where the court held that;

**“for the claimant to purport to automatically calculate the decree plus interest, is a wrong interpretation of the law”.**

The respondent opposed this affidavit through a replying affidavit dated 24<sup>th</sup> November, 2020. The respondent’s aver that the application is misconceived, bad in law and intended to have the respondent applicants evade settling the interest on the decretal sum as a result of their inaction.

They aver that the applicants failed to pay the decretal sum as directed by court prompting them to file an application on 18/6/2020 to release funds deposited in court as security. The court allowed it on 14<sup>th</sup> July, 2020.

They aver that there being no order on interest by court the provision of section 26(2) of the CPA come in place as held in *BOG Trainbach Teachers College VS Mary Kipchumba (2018) eKLR*.

The respondents urge this court to disregard the application and allow execution to proceed.

I have considered the averment of the parties herein. Indeed the court did not in its Judgment pronounce the issue of interest in the decretal sum. That means that the provision of Section 26 (2) of the CPA come into play and this is what the law states;-

26(1)....

**(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.**

That being the position, the averment by the respondent that the respondent cannot execute on interest is not true. The applicant avers that there was no draft decree served upon it before execution could proceed. There is no indication that the respondent actually shared any draft decree for approval before execution.

Given this position, the only recourse to correct this is to allow the respondents correct their mistake and share a draft decree for payment and in default of payment to proceed with execution. Those will be orders of the court in which case I will give the respondents 2 weeks to correct this omission and thereafter proceed to execute if there is no payment.

**DATED and DELIVERED in open court this 17<sup>th</sup> day of December, 2020.**

**Hon Lady Justice Hellen Wasilwa**

**Judge**

**In the presence of:-**

**Kilonzo holding brief Masese for the applicant**

**Kibet for the respondent**