



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO. 31 OF 2017**

**MARY WAIRIMU GITINDI.....CLAIMANT/RESPONDENT**

**VERSUS**

**KENYA NATIONAL UNION OF NURSES.....RESPONDENT/APPLICANT**

**UPSTATE KENYA AUCTIONEERS.....INTERESTED PARTY**

**RULING**

1. The Respondent/Applicant seeks through the notice of motion application dated 30<sup>th</sup> January 2019 and filed on 1<sup>st</sup> February 2019 for orders staying the certificate of costs issued on 10<sup>th</sup> January 2019 and that pending *inter partes* hearing of the application an order do issue restraining the Interested Party from selling by auction the Applicant's property as contained in the proclamation of attachment/repossession of removable property dated 25<sup>th</sup> January 2019. The Applicant sought that upon grant of the order a date be set for *inter partes* taxation of costs and a declaratory order do issue declaring that the Applicant had fully complied with the court order in the judgment of 9<sup>th</sup> October 2018. The motion was supported by the affidavit of Seth Panyako and upon the grounds set out on the face of the motion.

2. The Claimant/Respondent was opposed and filed a replying affidavit in which she deponed that the application was merely an attempt to delay payment of the decretal amount. She asserts that the Applicant was served with the bill of costs and even participated in the taxation by filing submissions to the bill of costs. The Respondent asserts that since the entry of judgment, the Applicant has only paid a sum of Kshs. 115,200/- against a decretal sum of Kshs. 614,365/-. The Respondent deponed that there was no appeal or review sought and there is therefore no basis for stay of execution. She asserts that the sum of Kshs. 96,390/- was paid before the filing of the claim and cannot therefore form part of the decretal amount. She argues that the bill of costs was properly taxed and the Applicant was given an opportunity to be heard thus disentitling it to grant of the orders sought.

3. The application before court seeks orders in the nature of a reference to taxation coupled with a stay application. Whereas the Applicant could challenge the taxation, the process for challenging a taxation is by way of a reference. None was made to court and I will make reference to this later on in my Ruling. In regard to the stay aspect in the application, a stay may be granted on meeting the threshold for such grant. The factors to consider are:-

- i. That the Application has been made without unreasonable delay.
- ii. That substantial loss will result to the Applicant unless such order is made.
- iii. Security for due performance of the decree has been given by the Applicant.

4. The court was moved on 1<sup>st</sup> February 2019 whereas the decree issued in 10<sup>th</sup> January 2019. The execution of the decree seems to be what triggered the motion before me. In my view, the application was made without unreasonable delay. The matter of substantial loss or security for the performance of the decree have not been addressed by the Applicant. In my view, the failure to address the issues hobbles the motion before me. It is incapable of obtaining the stay sought. Regarding the matter of the reference, the Applicant did not move the court appropriately to trigger the review of the taxation. As this was not done, I cannot refer the matter back to the Taxing Master since there is no challenge to the taxation. The upshot of the foregoing is that the motion fails and is dismissed with costs to the Claimant/Respondent. Execution may proceed.

It is so ordered.

**Dated and delivered at Nyeri this 4<sup>th</sup> day of March 2019**

**Nzioki wa Makau**

**JUDGE**

I certify that this is a

true copy of the Original

Deputy Registrar