



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 595 OF 2014

MARTIN ODHIAMBO OSULA

CLAIMANT

v

LOAD RUNNERS LIMITED

RESPONDENT

consolidated with

CAUSE NO. 596 OF 2014

MARTIN MUSUBI OLIERO

CLAIMANT

v

LOAD RUNNERS LIMITED

RESPONDENT

RULING NO. 2

1. Judgment was entered for the Claimants on 18 January 2016 in the sums of Kshs 345,309/- and Kshs 443,870/- respectively, together with costs and interest.
2. On 30 September 2016, the Respondent moved the Court seeking orders staying execution of the judgment pending appeal.
3. The Court granted an interim stay pending *inter partes* hearing but the application was eventually dismissed for want of prosecution.
4. On 24 March 2017, the Respondent again moved the Court seeking stay of execution, and the Court allowed the plea on condition that the decretal sum would be deposited into Court.
5. The Respondent did not comply with the condition and the Court allowed the Claimants to proceed with the execution.
6. Undeterred, the Respondent moved the Court on 22 June 2018 seeking a stay of attachment and leave to defend. The Court dismissed the application on 19 July 2018.
7. Yet again, on 17 October 2019, the Respondent filed a motion under a certificate of urgency seeking orders

1. ...

2. THAT leave be granted to the firm of Masara & Co. Advocates to formally come on record as Advocates for the Respondent/Applicant herein place of Nganga & Mugwe Advocates after judgment in this matter.

3. THAT there be a temporary stay of execution of this Court's judgment entered herein on 18/01/2016 and all consequential orders pending the hearing and determination of this application inter-partes.

4. THAT this Honourable Court be pleased to lift warrants of arrest against HARVET SINGH, SANDEEP SINGH BENAWARE & SHIV BENAWARE.

5. THAT the judgment entered herein on 18/01/2016 and all consequential orders be and are hereby set aside.

6. THAT costs of this application be provided for.

8. Martin Odhiambo Osula, one of the Claimants filed a replying affidavit in opposition to the application on 29 October 2019, and the Court took arguments on 13 November 2019.

9. The Court has carefully considered the record, the application and affidavits in support and opposition thereto and the submissions.

10. This Court has on more than one occasion dealt with applications by the Respondent seeking stay of execution orders and allowed the same on conditions.

11. The Respondent has flagrantly and without any explanation declined to comply with the conditions.

12. Further, it is apparent that the Respondent is intent on using all tactics available in the statutes/law books to frustrate the Claimants from realising the judgment delivered 3 years ago, without any sufficient explanation.

13. The Respondent has not been coming to Court with clean hands. It has severally changed advocates who disown being privy to the previous record of the litigation and proceedings.

14. Justice, equity and fairness should not countenance the conduct of the Respondent and its Directors against whom warrants of arrests have been issued (the warrants were issued after the auctioneer failed to trace any assets owned by the Respondent).

15. The Court finds the instant application a gross abuse of the court process and lacking in merit. It is dismissed with costs to the Claimants.

16. In order to forestall any further abuse of the court process, the Court orders that the Respondent will not file any further application without obtaining prior leave.

17. The Court Bailiff (as directed by Wasilwa J on 15 July 2019) with the assistance of the Inspector General of Police and/or the County Police Commander, Nairobi should swiftly execute the warrants of arrest in place and bring those named therein before Wasilwa J for further directions.

Delivered, dated and signed in Nairobi on this 11th day of December 2019.

Radido Stephen

Judge

Appearances

For Claimants Mr. Were instructed by Kulecho & Co. Advocates

For Respondent Mr. Omino instructed by Masara & Co. Advocates

Court Assistant Judy Maina