



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

AT NAIROBI

CAUSE NO. 1103 OF 2013

MATATA MONYL.....CLAIMANT/RESPONDENT

VERSUS

JIM CAB SERVICES.....RESPONDENT/APPLICANT

MBUSERA AUCTIONEERS.....INTERESTED PARTY

RULING

1. By a notice of motion dated 14th June 2017, the respondent sought orders that the court stays execution or proceedings in respect of the judgment and decree herein pending the hearing and determination of the application. The respondent further sought that the court do order the matter settled.
2. The application was on the grounds that the claimant initiated the process of execution against the respondent who only became aware of the proceedings upon service of the proclamation on 6th June 2017.
3. Further that the respondent's advocates were served it a copy of the decree and certificate of costs on 7th June 2017 a day after the respondent's goods were proclaimed contrary to the requirements of the law.
4. The respondent further stated in the application that it nonetheless settled the decrial sum through a banker's cheque issued on 8th June 2017, hence the matter should be marked settled.
5. The Auctioneer (who is the Interested Party) opposed the application and filed a replying affidavit through one, Rosemary Mbuthia who deponed on the main that she received instructions and warrants from the court to attach and sell the respondent's goods to recover the decrial sum.
6. On 6th June 2017, she served a proclamation notice upon the respondent and on 7th June 2017, she was informed by the claimant's advocates that the respondent had agreed to settle the judgment amount less the Auctioneer's charges. When she insisted on her fees, the respondent refused to pay the same stating that they had already settled the decrial sum and were not bound to pay Auctioneer's fees.
7. The respondent in their submissions in support of the application stated that the process of execution of the decree against the respondent was contrary to provisions of Order 22, Rule 7(2) in that the respondent's advocates were served with a copy of the decree and certificate of costs on 7th June 2017, a day after their goods were proclaimed. Counsel for the respondent submitted that this was not only fatal but also incurable under Civil Procedure Act.
8. The Interested Party's counsel on the other hand submitted that the applicant sought stay orders for a judgment that they have already settled albeit after proclamation. Counsel further submitted that the respondent participated throughout the case and their advocates were present. When the judgment was read out and also the ruling on taxation as delivered. On both occasions, no prayer for stay was sought by the respondent.
9. It is true that the judgment of the court was delivered in the presence of both parties' counsel. Further, the ruling on taxation was delivered in the presence of both parties' counsel.
10. By a letter dated 8th May 2017, the claimant's counsel forwarded to the respondent a draft decree for perusal, amendment and or approval to be returned in three days to enable the same be forwarded to court for execution. This letter was received by the respondent's counsel and indeed attached as annexure "WN3" to the present application.

11. There is no record that the respondent approved or amended and returned the draft decree to the claimant as requested.
12. Under Order 21, Rule 8 (2), any party in a suit may prepare a draft decree and submit it for approval of the other parties to the suit, who shall approve the same with or without amendment or reject it, without undue delay.
13. Under sub rule (3), if no approval or disagreement with the draft decree is received within seven days after delivery, the Registrar on receipt of notice in writing to that effect, if satisfied that the draft decree is drawn up in accordance with the judgment, shall sign and seal the decree.
14. The Court has carefully read Order 21, Rule 7, Sub Rules 1 and 2 and has noted that the order provides for the contents of the decree and who or what property should meet the costs of the suit. The court did not find anywhere in the Order relied on by the respondent where it was made mandatory that a decree and a certificate of costs must be served before proclamation.
15. The respondent's counsel never approved or amended the draft decree forwarded to them by the claimant's advocate. The claimant's advocate was therefore within their right to forward the draft to the Registrar for approval and sealing.
16. The application before me seem to be a thinly veiled attempt by the respondent to avoid paying Auctioneer's charges otherwise what would one make of paying the decretal sum and asking the court to declare the matter settled? The court cannot allow that to happen. The Auctioneers did what they are required by law to do hence their fees became payable.
17. The application is therefore found without merit and is hereby dismissed with costs.
18. It is so ordered.

Dated at Nairobi this 29th day of June, 2018

Abuodha J. N.

Judge

Delivered this 29th day of June, 2018

Abuodha J. N.

Judge

In the presence of:-

.....for the claimant

.....for the Respondent