



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT AT NAIROBI

CAUSE NO. 1921 OF 2014

(Formerly HCC 1117 of 2000)

(Before Hon. Lady Justice Hellen S. Wasilwa on 26th July, 2017)

SOLOMON KIIGE NGECHA.....CLAIMANT

VERSUS

CONSOLIDATED BANK OF KENYA LIMITED.....RESPONDENT

RULING

1. The Application before Court is the Notice of Motion dated 23/4/2018 filed by the Applicant/Respondents under Certificate of Urgency where the Applicants have moved this Court under Section 3A Civil Procedure Act Cap 21 Laws of Kenya and Order 10 rule 11, Order 22, Order 51 rules 1 and 15 of the Civil Procedure Rules seeking the following orders:-

- 1) *That this application be certified as extremely urgent and be heard ex-parte in the first instance and a date be given for the hearing of this application inter-partes on a priority basis.*
- 2) *That service of this application be dispensed with in the first instance due to its urgency and this Honourable Court be pleased to grant, ex-parte, a stay of execution of the Decree herein pending the hearing of this application inter-partes.*
- 3) *That this Honourable Court do order that there be a stay of execution of the Decree herein pending the hearing and determination of this application.*
- 4) *That this Honourable Court do lift the warrants of attachment issued by Moran Auctioneers on the 20th day of April 2018 and the execution proceedings against the Defendant/Applicant in this matter be set aside.*
- 5) *That Auctioneer's costs of the purported execution of the Decree and of this application be borne by the Plaintiff/Respondent.*

2. The Application is founded on the following grounds:-

- a) *The Respondent/Applicant was on 20.04.2018, served with a proclamation dated the 19.04.2018 by M/s Moran Auctioneers purportedly in execution of the Decree in this case. The Auctioneers purportedly proclaimed prior to the actual service of the proclamation, the Defendant's furniture, computers, photocopying machine and any other attachable assets to be found in other offices in the Plaintiff's head office. The Actioners are poised to seize and take away the proclaimed goods for sale at any time after Friday, the 27.04.2018 as stated in the proclamation.*
- b) *The purported execution is a gross abuse of the Court process and is wrongful, irregular and illegal as the Defendant was issued with a false Ruling notice on and a ruling delivered on the Bill of costs on a date unknown to the Respondent resulting in the said percolation.*
- c) *The Auctioneer on 20.04.2018 went to the bank's head office threatening the bank's staff that he would seize and carry away the proclaimed assets within the seven days of the proclamation despite the fact that the warrants issued by the Court require that the Notice ought to be a 15 day notice.*
- d) *If the illegal execution is allowed to continue, the Plaintiff, which is a banking institution with millions of customers will*

suffer irreparable loss and damage to its reputation as its business is dependent on its good will and members' confidence.

3. The Application was supported by the Supporting Affidavit of Anne Nyongesa Mwangi, the Respondent's Legal Manager who deponed that she has authority to swear the affidavit on behalf of the Respondents.
4. She reiterates the averments made in the above grounds and attaches evidence in form of Annexes ANM 1 and ANM 2 in support of the Application. They deponed that though the ruling in this case was scheduled for delivery on 23.3.2018, the same was delivered on 19.4.2018 and without notice to them, which is an injustice against them. They therefore sought stay orders and costs.
5. When the Respondent/Applicants appeared in Court on 23.4.2018 *ex parte*, they were granted interim stay orders and matter scheduled for hearing on 7/5/2018.
6. The Respondents filed submissions on this Application. They aver that the ruling on taxation of Party and Party costs was delivered by the Deputy Registrar (DR) on 23.3.2018. They aver that the Respondent/Applicants were aware of the scheduled ruling.
7. The Applicants aver that since they were not aware of the scheduled ruling of the taxation, they were taken unawares and were therefore prejudiced.
8. In determining whether or not to grant stay orders sought, I refer to Order 42 rule 6(2) which states as follows:-

 “(2) No order for stay of execution shall be made under subrule (1) unless:

 (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

 (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
9. The judgement in this case was delivered on 29.6.2107 in the presence of both Counsels on record. The Respondent never sought any stay orders. They also never filed any Notice of Appeal. Todate, there is no appeal filed. They now seek stay of execution through their application dated 23.4.2018 and also the setting aside of the warrants of attachment. They do not indicate the grounds upon which the warrants should be stayed save for the fact that they were not aware of when the ruling on taxation by the DR was delivered.
10. That application will pass as valid if their man contention is on costs alone. However, they also seek to scuttle the entire judgement of this Court delivered in July 2017 for which no appeal has been preferred todate.
11. In my view, they have come to Court very late in the day. They are demonstrating that they stand to suffer irreparably if the stay is not allowed. They have offered no security whatsoever.
12. In my view, the application does not meet the requirements in Order 42 rule 6(2).
13. It is my finding that the application is not merited and the same is dismissed accordingly. I order execution to proceed.
14. Costs to the Respondents/Claimants.

Dated and delivered in open Court this 26th day of July, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Kamau for Applicant/Respondents – Present

Wamboi holding brief for Mwangi for Claimant/Respondents- Present