



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1765 OF 2014

MATIN ADONGO SANGANY.....CLAIMANT

VERSUS

VILLA CARE MANAGEMENT LIMITED.....RESPONDENT

RULING

The respondent, Villa Care Management Limited by application dated 15th March, 2017 is seeking for orders that;

There be a stay of execution of the judgement entered herein and all consequential orders pending the hearing of this application inter parties

The proclamation levied by the claimant on 10th March, 2017 be set aside

Costs of that execution and this application be borne by the claimant

The application is supported by the annexed affidavit of Stephen Gitonga, advocate for the respondent and on the grounds that the respondent has already paid the entire decretal amount to the claimant paid vide cheques dated 10th March, 2017. Such cheques were received on the same date. On equal date the claimant sent auctioneers to proclaim the respondent goods. There will be irreparable loss and damage if such proclamation is not stopped.

The claimant filed a Replying Affidavit through Richard Kamotho, Advocate and avers that by ruling of 31st January, 2017 the court ordered the respondent to settle the decree within 21 days or not later than 21st February, 2017. A lapse of such date the respondent had only paid Kshs.200, 000.00. Out of professional courtesy, counsel for the claimant wrote to the respondent on 21st February, 2017 on the same. On 23rd February, 2017 there was no payment. The balance due then was kshs.370, 381.00.

The respondent had earlier in the proceedings herein issued post-dated cheques. On 2nd March, 2017 the respondents advocate issued cheque for Kshs.300, 000.00 and claimant declined the same as this was not in full payment as required.

On 7th March, 2017 the claimant instructed auctioneers to execute decree. On 10th March, 2017 at 10.30am the auctioneers proclaimed. Thereafter the respondent issued a cheque for Kshs.300, 000.00 at 12.00 noon. On 24th March, 2017 the respondent issued cheque for kshs.24, 450.00 making total amounts paid Kshs.524, 450.00 as opposed to Kshs.570, 381.00. Costs due had been agreed at kshs.20, 700.00 which had been agreed but are now contested.

The respondent has not settled the decree to the full. Proclamation was not in bad faith and was lawful. On 10th March, 2017 the proclamation had been done before the respondent could pay. The respondent has since paid Kshs.342, 450.00 and should also meet auctioneer charges and application be dismissed with costs.

Both parties made oral submissions in court.

Execution is a lawful process. Where a party has a valid judgement and the judgement debtor fails to abide, execution follows as a matter of course.

In this case, the respondent apparently moved the court on 16th March, 2017 and failed to disclose material facts that proclamation had been done before paying the claimant the full judgement sum. Such conduct cannot receive sanction by the court.

Upon the confirmation by the claimant that the judgement sum is now settled, what remains is for the respondent to pay the auctioneers charges and costs of this application to the claimant. Had the respondent honoured the directions of the court to pay the judgement sum on or before 21st February, 2017 this application and proclamation would have been avoided.

Application dated 15th March, 2017 is hereby dismissed with costs to the claimant. The respondent shall meet the auctioneer's costs/charges.

Delivered in open court at Nairobi this 29th day of June, 2017.

M. MBARU

JUDGE

In the presence of:

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