



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1551 OF 2014

KELVIN KARUNGU KARANJA.....CLAIMANT

-VERSUS-

TUSKER MATTRESSES LIMITED.....RESPONDENT

RULING

1. On 4th November 2016, I delivered judgment in favour of the Claimant in the following terms:--

- a) 3 months' salary in compensation.....-Kshs. 850,965
- b) Severance pay for 2 completed years.....--283,655
- Total.....-1,134,620

2. The Respondent subsequently came to court by way of Notice of Motion under certificate of urgency dated 22nd June 2017, seeking orders for stay of execution and nullification of warrant of attachment dated 19th June 2017.

3. The application which is supported by the affidavit of the Respondent's Chief Finance Officer, Daniel Githumbi sworn on 22nd June 2017 is based on the following grounds:

- a) The Claimant commenced execution proceedings before serving the Respondent with the requisite decree;
- b) The Respondent was ready and willing to pay the decretal sum and was awaiting service of the final decree. The execution was therefore premature and needless;
- c) The Auctioneers gave the Respondent 7 days' notice while the warrant of attachment dated 19th June 2017 required them to give 15 days' notice. The proclamation was therefore unlawful for want of adequate notice;
- d) By an email dated 23rd May 2017, the Respondent's Advocates requested the Claimant's Advocates to forward a copy of the decree for onward transmission to the Respondent to enable them settle the decretal sum;
- e) On 30th May 2017, via letter dated 26th May 2017, the Claimant's Advocates forwarded a draft decree for approval by the Respondent's Advocates;

- f) The Respondent's Advocates responded by email on the same day and via a hard copy received on 16th June 2017, approving the draft decree and further requesting to be furnished with the final decree for onward transmission to the Respondent;
- g) Much to the shock of the Respondent and their Advocates, the Claimant sent Auctioneers to the Respondent on 21st June 2017, with a proclamation notice dated the same day;
- h) Had the Claimant served the Respondent with the decree as is procedural, the Respondent would have promptly settled it without any need for execution;
- i) In addition to the decretal sum of Kshs. 1,358,752 the Auctioneers have served the Respondent with a bill of Kshs. 425,557 as auctioneer's charges;
- j) It is in the best interest of equity and justice that the application be allowed.

4. The Claimant's response is contained in his replying affidavit sworn on 5th July 2017. He depones that upon delivery of the judgment herein on 3rd March 2017, the Court granted the Respondent a thirty (30) days' stay of execution, which lapsed on 3rd April 2017.

5. On 19th April 2017, the Claimant's Advocates wrote to the Respondent's Advocates, forwarding the Claimant's bank details to facilitate settlement of the decretal sum. There was no response to this letter. On 10th May 2017, the Claimant's Advocates sent a reminder asking for settlement within 14 days. This letter did not elicit a response either.

6. On 5th April 2017 the Claimant's Advocates filed a bill of costs and on 23rd May 2017, the parties' Advocates agreed on costs at Kshs. 209,000.

7. The Claimant states that despite numerous letters and consent on costs, the Respondent did not show any commitment towards settling the decretal sum. His Advocates therefore proceeded to prepare a draft decree which was sent to the Respondent's Advocates by letter dated 26th May 2017. The letter which was received by the Respondent's Advocates on 30th May 2017 gave them 7 days to revert. By 7th June 2017, no response had been received from the Respondent's Advocates. A response was subsequently received on 16th June 2017.

8. The Claimant further states that instructions to the Auctioneers were issued on 15th June 2017, approximately three(3) weeks after recording of a consent on costs. On 19th June 2017, the Auctioneers obtained a warrant of attachment which they served on the Respondent, together with a proclamation notice on 21st June 2017.

9. When Counsel for the parties appeared before me on 27th July 2017, they agreed that the decretal sum plus costs and interest would be paid on or before 4th August 2017. The only issue pending determination in this application is therefore on auctioneer's charges.

10. From the record, the Claimant's Advocates forwarded a draft decree to the Respondent's Advocates by letter dated 26th May 2017. The Claimant's Advocates responded by an email and physical letter dated 31st May 2017, first approving the draft decree and second, asking for a final copy for consideration. It would appear that the Respondent's Advocates were not furnished with the final decree. Instead, the Claimant's Advocates proceeded to execute against the Respondent.

11. Failure to serve the final decree on the Respondent's Advocates was a costly omission, as it led to an unnecessary proclamation on the Respondent. In the circumstances I direct that the Claimant's Advocates will meet the auctioneer's charges to be taxed by the Deputy Registrar in accordance with the Auctioneers Act and Rules.

12. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 1ST DAY OF
SEPTEMBER 2017**

LINNET NDOLO

JUDGE

Appearance:

Miss Muchiri for the Claimant

Miss Kirenge for the Respondent