



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

CAUSE NO 1369 OF 2015

MWANGI MURAGE MWANIKI.....CLAIMANT

VERSUS

NAIROBI GLORY PALACE HOTEL LIMITED.....RESPONDENT

RULING

1. By my ruling delivered on 25th August 2017, I granted a conditional stay of execution in favour of the Respondent in the following terms:

- a) That the Respondent would pay to the Claimant 50% of the decretal sum within fifteen (15) days from the date of the ruling;
- b) That the balance of 50% would be deposited in an interest earning account in the joint names of the Advocates for the parties within thirty (30) days from the date of the ruling;
- c) That upon satisfaction of conditions (a) and (b) above motor vehicle registration No KBW 021F, its keys and logbook would be released to the Respondent.

2. Conditions (a) and (b) were duly satisfied. However, a dispute arose as to who should meet the storage charges in respect of motor vehicle registration No KBW 021F. The Respondent therefore moved the Court by way of Notice of Motion under certificate of urgency dated 4th October 2017, seeking orders directing M/S Kiiyuru Merchants Auctioneers to unconditionally release of the motor vehicle, its keys and logbook.

3. The Respondent's application, which is supported by an affidavit sworn by its director, Shaukat Noorany is based on the following grounds:

- a) That on 25th August 2017, the Court delivered its ruling in respect of the Respondent's application dated 19th June 2017;
- b) That by the said ruling, the Court ordered the Respondent to pay to the Claimant 50% of the decretal sum within 15 days from the date of the ruling, which the Respondent had done;
- c) That the balance was to be deposited in an interest earning account in the joint names of the Advocates for the parties within 30 days from the date of the ruling, which had also been done;
- d) That motor vehicle registration No KBW 021F, its keys and logbook were to be released to the Respondent upon satisfaction of the aforesaid conditions;

e) That the Respondent had fully complied with the orders of the Court but the motor vehicle, keys and logbook had not been released to it;

f) That the Claimant's Advocates, Kinyanjui, Kirimi & Company Advocates had attached additional conditions for the release of the motor vehicle, in total disregard of the court order;

g) That the motor vehicle, the subject of this application is used by the Respondent for commercial purposes and the Respondent continues to suffer financial losses.

4. The Claimant's response to the application is contained in his own affidavit sworn on 13th October 2017. He depones by his Advocates' letter dated 2nd October 2017, the Respondent was advised to collect its motor vehicle upon payment of auctioneer's charges or settling account thereof.

5. The Claimant states that in its ruling dated on 25th August 2017, the Court stated that execution is a legal process and in the absence of irregularity, it could not interfere. There was no finding that the Auctioneer was not entitled to his fees or storage charges.

6. The Auctioneer, Stephen Kimani Karuu, swore his own affidavit on 6th November 2017. He depones that on 7th June 2017, he was issued with warrants of attachment and sale to execute against the Respondent. On the same day, he proceeded to the Respondent's premises and proclaimed attachable assets, including motor vehicle registration No KBW 021F.

7. On 15th June 2017, after expiry of the proclamation notice, the Auctioneer proceeded to attach the said motor vehicle registration No KBW 021F, which he stored at an independent storage yard known as Auckland Storage Yard.

8. On 2nd October 2017, the Auctioneer was issued with a letter by the instructing Advocates to release the motor vehicle to the Respondent upon payment of storage charges. By his letter dated 10th October 2017, the Auctioneer advised the Respondent to collect the motor vehicle and to pay the storage charges. The Respondent had not gone to pick the motor vehicle.

9. The Auctioneer states that the storage charges in issue would be paid directly to Auckland Storage Yard.

10. The only issue for determination in this application is whether the Respondent should pay storage charges in respect to its motor vehicle registration No KBW 021F. The Respondent's case is that by asking for storage charges before release of the motor vehicle, the Claimant and the Auctioneer are introducing a condition which was not part of the ruling delivered by the Court on 25th August 2017.

11. In this regard, Mr. Musese, Counsel for the Respondent, submitted that the Claimant and the Auctioneer were in effect interpreting the order of the Court and it was not in their place to do so. Counsel made reference to the decision in ***Stephen Ngaruiya Kanyanja v Coffee Research Foundation [2017] eKLR*** where it was held that it was contrary to an order of the court to ask for payment of storage charges before release of the motor vehicle.

12. The Respondent in the instant case does not dispute the averments by the Auctioneer that storage charges have been incurred and are payable to a third party. In its ruling dated 25th August 2017, the Court did not find any illegality or irregularity in the execution process. The logical conclusion therefore is that all charges properly incurred in the execution are payable by the Respondent. Consequently, the Court finds no fault in the action by the Auctioneer to withhold release of the motor vehicle pending settling of account.

13. In the end, I direct the Respondent to settle account with the Auctioneer upon which motor vehicle registration No KBW 021F will be released to the Respondent.

14. The costs of this application will be costs in the appeal.

15. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24TH DAY OF NOVEMBER 2017

LINNET NDOLO

JUDGE

Appearance:

Miss Oswera for the Claimant

Mr. Musese for the Respondent

Stephen Kimani Karuu (the Auctioneer in person)