



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 151 OF 2010**

**BERNARD KURIA MWANGI.....1ST CLAIMANT**

**PETER GICHANGI WACHIRA.....2ND CLAIMANT**

**MICHAEL KAHARU WACHIRA.....3RD CLAIMANT**

**VS**

**KASTURI LIMITED.....RESPONDENT**

**RULING**

1. The Respondent's application brought under certificate of urgency dated 27th June 2016 seeks the following orders:

- a) An order for stay of sale of Motor Vehicle Registration Number KBU 244Z;
- b) An order for stay of further execution of the Warrants of Attachment dated 24th May 2016;
- c) An order directing Fantasy Auctioneers to release the said Motor Vehicle Registration Number KBU 244Z;
- d) An order recalling and cancelling the Warrants of Attachment dated 24th May 2016.

2. The application, which is supported by the affidavit of **Bipichandra P. Shah** is based on the following grounds:

- a) That on 9th November 2012, the Court entered an ex parte judgment against the Respondent;
- b) That on 5th March 2015, the Respondent brought an application asking to be allowed to liquidate the decretal sum in monthly instalments of Kshs.50,000 each;
- c) That by its ruling dated 26th June 2015, the Court directed the Respondent to pay a lump sum of Kshs.200,000 by 30th July 2015 and the balance in monthly instalments of Kshs.50,000 each effective August 2015;
- d) That between January and June 2016, the Respondent defaulted in paying the monthly instalments thus accumulating arrears of Kshs.300,000;

- e) That the said arrears have since been settled but the Auctioneers have refused to release the seized Motor Vehicle;
- f) That by the time the Warrants of Attachment were issued, the Respondent had paid a total sum of Kshs.1,400,000 towards settlement of the decretal amount;
- g) That the ruling of the Court did not have a default clause and Warrants of Attachment could therefore only be issued to recover the arrears of Kshs.300,00 and not the entire balance of the decretal sum;
- h) That no proclamation was served upon the Respondent prior to seizure of the said Motor Vehicle;
- i) That the Warrants of Attachment were issued one year of the decree and the Respondent should therefore have been heard upon issuance of a notice to show cause;
- j) That the Warrants of Attachment issued by the Court were therefore irregular;
- k) That in addition to settling the outstanding arrears, the Respondent has continued to pay the monthly instalments as directed by the Court;
- l) That the application has been brought without unreasonable delay.

3. The Respondent appeared before **Nderi Nduma J** on 28th June 2016 and obtained interim orders staying the sale of the Motor Vehicle and execution of the Warrants of Attachment dated 24th May 2016. The Clamant did not respond to the Respondent's application.

4. The Respondent challenges the legality of the Warrants of Attachment issued by the Court on 24th May 2016. Order 22 Rule 18(a) of the Civil Procedure Rules, 2010 requires the Court to issue a notice to show cause to a person against whom execution is sought more than one year after the date of the decree.

5. From the record, it would appear that no such notice was issued to the Respondent. More importantly, the Court is satisfied that the Respondent has regularised the liquidation plan ordered by the Court in its ruling dated 26th June 2015 rendering execution unnecessary.

6. This Court therefore makes the following orders:

- a) The Warrants of Attachment issued on 24th May 2016 are hereby recalled and cancelled;
- b) Fantasy Auctioneers are hereby directed to release the Respondent's Motor Vehicle Registration Number KBU 244Z upon payment of reasonable attachment and demurrage charges;
- c) The Respondent shall continue to liquidate the decretal sum in terms of the ruling of the Court delivered on 26th June 2015; in default execution to issue;
- d) Each party will bear its own costs in this application.
- e) Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF JULY 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

**Mr. Thuku for the Claimant**

**Mr. Mugisha for the Respondent**