



**REPUBLIC OF KENYA**

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

**PETITION NO.63 OF 2014**

**PERIS NYAMBURA KIMANI .....PETITIONER**

**VERSUS**

**DALBIT PETROLIUM LIMITED ..... RESPONDENT**

**RULING**

1.The Ruling herein is with regard to application dated 16<sup>th</sup> May 2016 by the respondent, Dalbit Petroleum Limited seeking for orders that;

1. *[spent];*

2. *[spent];*

3. *Pending the hearing and determination of this application, a stay of execution do issue against the warrants of attachment and proclamation of attachment both dated 11<sup>th</sup> May 2016;*

4. *That warrants of attachment and proclamation of attachment both dated 11<sup>th</sup> May 2016 be and is hereby set aside and or vacated for being unclear, unlawful and consequently a nullity; and*

5. *Costs of the application be provided for.*

2.The application is based on the grounds that a proclamation and warrant of attachment and sale have been served to the respondent which are malicious and go against the procedures of the law as such threatens the sale of the respondent's property but the warrants of attachment does not conform with the judgement of the court and certificates of costs and meant to an unjust enrichment of the Petitioner at kshs.3, 600,000.00. To proceed with the warrants of attachment and sale would lead to irreparable loss and damage and should be set aside.

3.The application is supported by the annexed affidavit of Omwanza Ombati who avers that despite the application for stay herein, the Petitioner has moved and obtained warrants of attachment and sale of respondent property which is irregular and amounts grossly exaggerated and should be set aside. From the judgement of the court the decretal amount is;

kshs.3, 600,000.00 in damages;

Kshs.195, 000.00 as pension;

Kshs.3000, 000.00 as general damages; and

**Kshs.4, 095,000.00 as total.**

4.The taxed costs per the Certificate of Taxation issued on 10<sup>th</sup> May 2016 is Kshs.449,208.00 but the warrants indicate the taxed costs as Kshs.3,600,000.00 which is way above and exaggerated. The Petitioner did not ask the respondents to settle the decretal amount before the warrants were issued which actions would lead to loss and damage if not stayed.

5.In reply the Petitioner filed a Replying Affidavit on 23<sup>rd</sup> May 2016 and avers that the respondents have filed a similar application such as this one before the Court of Appeal and pending hearing. No stay has been granted herein or before the Court of Appeal. The Petitioner has a valid judgement of the court and the respondent has failed to pay the undisputed amounts as they challenge the disputed amounts. The respondent has communicated that the sum of Kshs.5,209,021.90 is certain and the variances in amounts now noted by the Petitioner arises from the various documents from the court and the warrants issued are not malicious. Judgement was delivered on 9<sup>th</sup> July 2015 but the respondents have not paid anything to the Petitioner. Such judgement should be certified.

### **Determination**

6.At the hearing, parties agreed and consented as follows:

*By Consent*

1. *Decretal amount agreed at kshs.5,240,940.40;*
2. *Respondent do pay Kshs.1,640,940.40 within 7 days on or before 9<sup>th</sup> June 2016 failure to which execution to issue;*
3. *Payment of kshs.3,600,000.00 abide by determination of Notice of Motion dated 16<sup>th</sup> May 2016;*
4. *Auctioneers costs be determined as not agreed.*

7.Judgement herein was delivered on 9<sup>th</sup> July 2015. Such judgement made various orders and directions. Such remain valid. No stay of judgement subsists. However, on good order and rule of law, on the application dated 16<sup>th</sup> May 2016 and submissions by the parties, it is apparent the computations by the Petitioner of the decretal amount and amounts comprising in the proclamation and warrants of attachment are erroneous and now addressed in the consent agreed upon by the parties. The decree issued by the court should have factored statutory provisions with regard to amounts awarded to the Petitioner. Such error should have been rectified by the court and verifications made by the Petitioner before moving the process of execution forward. Such errors should therefore not be visited upon any of the parties herein.

8.The correct computations of the decretal amounts has since been addressed by the Deputy Registrar of the court on 3<sup>rd</sup> June 2016. Such decretal amount was agreed at kshs.5, 240,940.00. The auctioneer's fees for the warrants issued was not resolved. This amount arose out of the erroneous figures of Kshs.8, 720,625.00 as set out in the proclamation of attachments on 11<sup>th</sup> May 2016. On the basis of this erroneous figures, the auctioneers estimated costs are kshs.965, 500.00.

9.Noting the above, the decretal amount now agreed upon, the same being kshs.5, 240,940.00 and not otherwise, for the auctioneer to received instructions on erroneous figures and computation, to move with attachment or estimate their costs on an error makes the process a nullity. It is however not lost to the court that the Petitioner has made all effort necessary and possible within lawful means to execute her judgement. The respondent has not made any tangible effort to settle the decretal sum uncontested and are not entitled to cost.

**In the interests of justice, and noting the consent now made between the parties, Application dated**

**16<sup>th</sup> May 2016 allowed in the following terms;**

**(a) warrants of attachment and proclamation of attachment both dated 11<sup>th</sup> May 2016 are hereby lifted;**

**(b) Where the terms of the consent drawn herein on 3<sup>rd</sup> June 2016 are not adhered to, the decretal amount shall attract interests at court rates until payment in full;**

**(c) Each party shall bear their own costs.**

**Orders accordingly.**

Dated and delivered in open court at Nairobi this 19<sup>th</sup> day of July 2016.

**M. MBARU**

**JUDGE**

In the presence of:

Court Assistant: Lilian Njenga

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