



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.158 OF 2015

Ruling No.2

(Before D. K. N. Marete)

JOHANA KIPLIMO KOSGEI.....CLAIMANT

VERSUS

MINI BAKERIES (NAIROBI) LIMITED.....RESPONDENT

RULING

This is an application by way of Notice of Motion dated 5th September, 2016 and seeks the following orders of court;

- 1. That this application be certified as urgent and that the same be heard and orders issued ex-parte in the first instance.*
- 2. That pending inter-partes hearing of this application, there be a stay of proclamation or as the case may be, the attachment of the Applicant's property. That if the Applicant's property has been seized an order of restitution of the Applicant's property do issue.*
- 3. That pending the hearing and determination of the application herein, there be a stay of proclamation or as the case may be, the attachment of the applicant's property. That if the applicant's property has been seized an order of restitution of the applicant's property do issue.*
- 4. That the decree issued by the deputy registrar on 23rd August, 2016 be declared a nullity ex debito justitiae.*
- 5. That costs of this application be borne by the claimant/respondent.*

It is grounded as follows;

(a) The decree issued on 23rd August, 2016 is at variance with the judgement and the prayers contained in the claim.

(b) Decree does not conform with the Certificate of Costs even though both were issued on the date.

For the purposes of this application, this cause is consolidated with cause nos. 185 of 2015 and 186 of 2015.

The claimant/respondent in a Replying Affidavit sworn on 18th September, 2016 opposes the applications and prays that the same be dismissed with costs.

The claimant/respondent opposes the application vide a Replying Affidavit sworn on 18th September, 2016. It is his submission that the application is bad in law, fatally defective and an abuse of the process of court. It is also brought out in bad faith and geared towards a denial of the decree holder fruits of judgement. The claimant/respondent submits a pleasant and perfect pursuit of the process of execution through the processes of taxation and execution and therefore the fallacy of this application.

It is the claimant/respondent further submission that the respondent has not satiated the legal requirements for stay of execution as hereunder;

- a) That substantial loss may result to the applicant unless orders of stay of execution are made;*
- b) That the applicant has an arguable case on appeal to warrant stay of execution;*
- c) That the application has been made by the applicant without unreasonable delay and*
- d) That the application has furnished court with sufficient security as ordered by court for due performance of the decree and judgment of the court as may ultimately be binding on the applicant has been given by the applicant.*

He submits that by reason of the foregoing this application cannot stand the test of legality and should be dismissed with costs.

The recourse available to court is to establish, through the pleadings and submissions of the parties, whether there is a justifiable cause for interfering with the execution process as undertaken. This court pursues and agrees with the case of the claimant/respondent. From the evidence and submissions of the parties on record, the probability tilts in his favour. She sequentially narrates the events leading to the finalisation of the execution process and submits that the respondent/applicant was indolent, slept and sat on her rights and cannot come to claim relief so late in the day. I agree. In any event, this application is overtaken by events in all senses of the word.

Further, the evidence and submissions of the respondent/applicant did not make an imprint of a case of a distorted execution process. It would appear, like is submitted by the claimant/respondent that there could be other underlying factors for bringing this application on board.

I am therefore inclined to dismiss this application with an order that each party bears its own costs of the application.

Delivered, dated and signed this 8th day of December 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Siele-Sigira instructed by Siele-Sigira & Company Advocates for the Respondent/Applicant.

2. Ms Soita instructed by Mwakio Kirwa & Company Advocates for the Claimant/Respondent.