



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.158 OF 2015

Ruling No.1

(Before D. K. N. Marete)

JOHANA KIPLIMO KOSGEI.....CLAIMANT

VERSUS

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

RULING

This application was originated vide a Notice of Motion dated 31st August, 2016. By an order of court issued on 21st September, 2016, the application was ammended to its present statement.

The ammended application, ammended on 22nd September, 2016, 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, that further to prayer (1), (2) & (3) above, pending the receipt of the Taxing Master's reasons as requested vide letter Ref No. SS/IC/15/07/06 dated 29.08.2016, 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.*
- 5. That the warrants of attachment and sale issued to M/s Lifewood Traders Auctioneers be cancelled and or nullified for lack of jurisdiction to execute orders issued by Kericho High Court.*
 - 5a. That the proclamation and attachment of the applicant's movable property namely KCH 511M, KBR 240B, KCD 769K, KBU 446X and KCD 769K by James O' Makori trading as M/s Lifewood Traders Auctioneers be declared as null and void ab initio.*

5b. That James O'Makori trading as M/s Lifewood Traders Auctioneers be ordered to immediately refund to the applicant an amount of money totaling Kenya Shillings One million one hundred and sixty six thousand four hundred and ninety four (Kshs.1,166,694/=) unlawfully obtained from the Applicant.

It is grounded as follows;

- (a) M/s Lifewood Traders Auctioneers' area of jurisdiction does not go beyond Kitale in Transzoia County.*
- (b) Decision made by the Taxing Master is yet to be supplied to the Applicant.*
- (c) The Applicant intends to file a reference in the High Court.*
- (d) There was no notice of judgement and taxation served upon the applicant. The respondent failed to serve the applicant with ruling on taxation, the certificate of costs and decree of the court.*
- (e) If orders sought are not granted, the applicant will be prejudice and will stand to suffer loss and damage that cannot be quantified and compensated in monetary terms.*
- (f) Mr. James O'Makori trading as M/s Lifewood Traders Auctioneers disobeyed the terms of the warrant issued by the court.*
- (g) Proclamation and attachment of the Applicant's property was done by M/s Lifewood Traders Auctioneers without regard to the law and auctioneers rules.*
- (h) Mr. James O'Makori extorted Kshs.1,166,494/= from the Applicant.*

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

The respondent in a Replying Affidavit sworn on 3rd October, 2016 opposes the application and prays that the same be dismissed with costs.

The claimant/respondent opposes the ammended application for being fatally defective, bad in law and an abuse of the process of court. It is his further case that the application is based on falsehoods, lies and half-truths and basically a concealment of the true facts of this matter. Again, the orders sought are untenable in law for being time barred and overtaken by events.

The claimant/respondent again denies service of this application to the auctioneer and that the auctioneer is therefore not in a position to respond due to this anomaly. It is her further averment and submission that the execution process has been appropriately pursued to fruition and therefore the fallacy of this application.

The claimant/respondent in the penultimate avers and submits that this application is brought out in bad faith, is delayed and conjured to deny the decree holder of the fruits of his judgement.

The application is the first in a series of two other applications and an enquiry and investigation of the conduct of the auctioneer during the process of execution of the decree of court. This court takes judicial notice of the fact that execution in this cause has been undertaken and finalised.

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.