



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.158 OF 2015

Ruling No.4

(Before D. K. N. Marete)

JOHANA KIPLIMO KOSGEI.....CLAIMANT

VERSUS

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

RULING

This is an interrogation prompted by the need to examine the conduct of James O'Makori, trading as Lifewood Auctioneers in relation to orders of court and a warrant of arrest issued by this court on 26th September, 2016, 24th October, 2016 and 3rd November, 2016. These are as follows;

26th September, 2016

i.

ii.

iii.

iv.

v. *That the monies paid by the respondent to the auctioneers amounting to Kshs.1,166,494.00 be paid in and deposited to court by the auctioneers pending hearing and determination of this application or other orders and directions of court.*

24th October, 2016

i. *That Lifewood Traders, the auctioneers in this cause and particularly one, James Makori be and is/are hereby ordered/ summoned to come to court on 31st October, 2016 to appraise the court on compliance with the orders of court of 26th September, 2016.*

ii. *Mention on 31st October, 2016.*

iii. *The respondent/applicant be and is hereby ordered to serve the mention notice and orders of*

court to the claimant/respondent and auctioneers.

3rd November, 2016

- i. A warrant of arrest due hereby issue against one James Makori trading as Lifewood Auctioneers.*
- ii. That the said James Makori be brought to court immediately on such arrest.*
- iii. That there be a mention on 9th November, 2016 at 900 hours for the directions of court.*
- iv.*

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

The auctioneer brought himself to court on 18th November, 2016 through the auspices of the instructing authority, counsel for the claimant.

Ms Soita, counsel for the claimant opened with a submission that the auctioneer would not have been able to pursue the orders of court on deposit of the decretal amount of Kshs.1,066 as these monies have been released to the principal. Indeed, this release had been had before service of the order of court which was done after the process of execution was due and completed. She prayed that the warrant of arrest be lifted and that the execution process be deemed proper in law.

Counsel for the respondent submitted that the business of the auctioneer starts and ends with a deposit of the monies paid out to herself by the respondent in the course of execution. This is the courts order of 26th September, 2016. He sought that the auctioneer takes the dock and testifies on the issues in dispute.

Mr. O'Makori duly affirmed testified that he was aware of the court order of 24th October, 2016. This was served to him vide a letter received on 29th September, 2016. On such receipt, he wrote to his principle explaining the situation. This letter was copied to court and received here on 6th October, 2016.

The auctioneer further testified that the execution process was completed on 6th September, 2016 and the proceeds paid to the claimant's counsel. This was in total an amount of Kshs.1,166,490 whereby Kshs. 866,000.00 was forwarded to the law firm and the balance retained as auctioneers fees. This payment was made on 10th September, 2016.

He further testified that he did not receive a court order restraining execution until the service of the orders by the respondent's counsel.

On cross-examination, the auctioneer narrated the series of events leading to execution. He was however not clear on the signing or not signing of the proclamation. The other issue arising at cross-examination is that the proclamation was exercised and carried out twice on the same day: 24th August, 2016. This was without leave of court.

The auctioneer in the penultimate testified that he had not defied the orders of court as he had not been served with the same. At the time of his service, the execution process had been through and therefore his innocence.

The evidence of the auctioneer is not thorough or clear on the execution of the proclamation process. He cannot be wholly faultless on this. His evidence on his conduct throughout the period of compliance of the court order seems evasive but no one is able to pin him on this. The best we can is carry home what we discern from his demeanor, evasiveness. What is again clear and evident is that, like he testifies, the orders of court were served onto him long after the execution process had been undertaken. And this frees him from any blame on non compliance with the orders of court for deposit of the decretal amount in court. Overall, the benefit of doubt tilts in his favour. This investigation must therefore come to a

close.

This court also takes cognizance that there is a pending application dated 7th November, 2016 on this subject by the auctioneer. He is at liberty to pursue this to its logical conclusion. No one would have the competency to deny him this liberty.

I therefore conclude this interrogation and investigation with a finding of no fault on the part of the auctioneer or his firm.

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.