



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 237B OF 2014**

**BETWEEN**

**ANDREW M. MWONGELA..... CLAIMANT**

**VERSUS**

**MBUKONI LOGISTICS LTD .....RESPONDENT**

**RULING**

1. The Court delivered an Award in favour of the Claimant, way back on 27<sup>th</sup> February 2015. The Respondent was ordered to pay to the Claimant the sum of kshs. 376,679, within 30 days of the delivery of the Award.
2. The Respondent filed an Application dated 2<sup>nd</sup> September 2015, seeking stay of execution, pending Appeal. This Application was never prosecuted.
3. The Claimant applied for execution of the decree. The Respondent filed a second Application dated 5<sup>th</sup> May 2016, seeking to have execution stayed and to have the Award of 27<sup>th</sup> February 2015 reviewed, vacated and the Respondent allowed to defend the Claim.
4. This Application for review was rejected by the Court, in a ruling dated 18<sup>th</sup> July 2016.
5. The Respondent filed a further Application for stay of execution pending Appeal, dated 19<sup>th</sup> July 2016.
6. The Claimant had in the meantime instructed Ndutumi Auctioneers to execute warrants in recovering the decretal sum. The Auctioneers attached Respondent's Motor Vehicle registration number KBM 159P. The Respondent deposited in Court the amount of Kshs. 516,529, and managed to convince the Deputy Registrar of this Court, to recall the warrants issued in execution.
7. This prompted the Claimant to file the Application dated 11<sup>th</sup> August 2016, disputing in very strong language, the jurisdiction of the Deputy Registrar in recalling the warrants. The recall issued on the strength of a letter from the Respondent informing the Court about the deposit.
8. The 2 Applications – that of the Respondent dated 19<sup>th</sup> July 2016, and that of the Claimant dated 11<sup>th</sup> August 2016 – are both opposed. Parties filed their respective Replying Affidavits and/or Grounds of

Opposition. The Claimant similarly filed a Notice of Preliminary Objection with regard to the Respondent's Application.

9. The Court directed both Application and the Objection be merged and heard together. The Parties agreed to dispose of the Application through written submissions, with an opportunity to underline the submissions through brief oral presentations. They made their presentations on 22<sup>nd</sup> September 2016.

**The Court Finds:-**

10. The Preliminary Objection by the Claimant is needless, as it could be, and was merged with the Claimant's Replying affidavit and/or Grounds of Opposition. Although characterized as point of Preliminary Objection, it carries similar arguments as contained in Claimant's response to the Respondent's Application. It is therefore not necessary for the Court to consider the Objection as a separate piece of disputation.

11. The Respondent exercised its right to have the Award reviewed. The Court rejected the Application. The Respondent seeks stay based on a Notice of Appeal filed after Award was delivered. Having opted for the review option, the Notice of Appeal is purposeless. This is clear on the Judicial Authority availed to the Court by the Claimant in ***Nairobi Court of Appeal Civil Appeal No. 277 of 2005 between the Chairman Board of Governors of Highway Secondary School v. William Mmosi Moi***, where the Court ruled:

*“--- The record here shows the Board filed an application for review dated 24<sup>th</sup> February 2004. The application was determined by the Superior Court, on 7<sup>th</sup> December 2004 when it was dismissed for whatever reason. In our view, that was the end of the matter, and Notice of Appeal was rendered purposeless. Both options cannot be pursued concurrently, or one after the other.”*

12. This is a similar situation here. The Respondent exercised its review option, and in the respectful view of this Court, the Notice of Appeal on record is purposeless. The Application for stay of execution pending Appeal is rudderless. The filing of different Applications for stay seems to the Court, to be in abuse of the process.

13. The Application by the Respondent dated 19<sup>th</sup> July 2016 is rejected for these reasons.

14. With regard to the Claimant's Application dated 11<sup>th</sup> August 2016, the Court notes the Claimant obtained warrants and attached Respondents Motor vehicle on 30<sup>th</sup> April 2016.

15. There was no order for stay of execution in place. The successive prayers for stay on the part of the Respondent had not been granted, except on 5<sup>th</sup> May 2016, when the Respondent was granted interim stay, on the condition that the Respondent deposited the decretal amount in Court within 7 days. The Motor Vehicle was to remain attached until deposit was made. Stay was granted pending hearing and determination of Application dated 4<sup>th</sup> May 2016.

16. It is not clear from the deposit receipt exhibited by the Respondent, when the money was received in Court. The Claimant did not release Respondent's vehicle.

17. The Respondent did however, manage to convince the Deputy Registrar that deposit had been made. The Court finds no fault in the decision by the Deputy Registrar recalling warrants he had issued earlier, in view of the interim order of stay granted by Hon. Judge Onesmus Makau on 5<sup>th</sup> May 2016. The procedure in seeking recall may have been rather informal, but the Deputy Registrar acted within his mandate, and on the strength of orders issues by the Hon. Judge.

18. In the end however, the Application dated 4<sup>th</sup> May 2016, under which interim stay issued was heard *inter partes* and dismissed.

19. The Court has given reason why further stay of execution cannot issue. It is unfortunate the Respondent had its Motor Vehicle attached. The Respondent led the Court to grant orders allowing it to deposit the decretal sum when its Motor Vehicle was already attached. The Respondent can only blame itself, having initially failed to respond to the substantive Claim, and thereafter filing a multiplicity of confusing Applications, all aimed at avoiding execution. There is nothing in the view of the Court, remaining to be done in the dispute herein, save for the Respondent to meet its full obligation to the Claimant as ordered way back on 27<sup>th</sup> February 2015.

IT IS ORDERED:-

- a) Respondent's Application dated 19<sup>th</sup> July 2016 is rejected.*
- b) The money deposited by the Respondent in Court, shall be released to the Claimant forthwith.*
- c) The Claimant shall release to the Respondent the attached Motor Vehicle, if this has not already been done, once the Claimant receives the decretal sum from the Court.*
- d) The Claimant shall be at liberty to apply for fresh warrants of execution if need be.*
- e) No order on the costs.*

Dated and delivered at Mombasa this 2<sup>nd</sup> day of December 2016

**James Rika**

**Judge**