



**REPUBLIC OF KENYA**

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

**CAUSE NUMBER 2235 OF 2012**

**THE KAREN HOSPITAL..... CLAIMANT**

**VERSUS**

**CHARLES MAINA GITONGA.....RESPONDENT**

**RULING**

1. The applicant in its motion dated 12<sup>th</sup> November, 2014 seeks an order that the Court stays the execution of the decree pending the full hearing and determination of the application.
2. The applicant in its submission filed by counsel on 9<sup>th</sup> December, 2014 contends that the decree holder proceeded to execute the decree against it despite the fact that negotiations on without prejudice basis were going on.
3. According to Counsel, the judgment debtor did not refuse to pay the decretal sum ordered by the Court save for auctioneers fee demanded which the applicant deemed unnecessary.
4. Counsel submitted that the execution carried out by Kirriyu Auctioneers was malicious and contrary to the spirit of negotiations hence the decree holder ought to bear the cost of auctioneers.
5. The Respondent on its part submitted that the application has spent and the only issue left for determination by the Court was costs.
6. According to counsel judgment was entered in favour of the Respondent on 3<sup>rd</sup> June, 2014 six months before the application was filed and no appeal, review of stay of execution was sought by the applicant. A decree was therefore issued and the process of execution followed thereafter.
7. According to Counsel, a perusal of Order 22 of the Civil Procedure Rule 2010 reveal that there is no requirement for a decree holder to negotiate with the judgment debtor before execution of a valid decree. Counsel submitted further that sufficient notice had been given by the Respondent before the execution of the decree and that section 22 of the Auctioneers' Act is clear that costs of an auctioneer in execution of a valid decree should be borne by the judgment debtor.
8. I have perused the file herein and gone through submissions by both counsel concerning this application and it would appear that no application for stay was sought before the issuance of warrants in this matter. Further there is no application on record by the judgment debtor seeking to settle the decretal sum by instalments nor is there any consent recorded in that regard.
9. The Court further observes that the decretal sum herein has been substantially settled

including part of the auctioneers charges save for a paltry sum of Kshs.22,470 which the applicants contends should be borne by the decree holder.

10. There being no order of stay or consent on settlement of the decretal sum by instalments, the decree holder was within his right to have the warrants of attachment issued with consequence that the auctioneers; charges became payable.

11. The instant application therefore lacks merit and the same is hereby dismissed with costs.

12. It is so ordered.

Dated at Nairobi this 6<sup>th</sup> day of March 2015

Abuodha J. N.

Judge

Delivered this 6<sup>th</sup> day of March 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge