



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO. 1314 OF 2011**

**PETER MBUGUA KANOI**

**PETER MUGAMBI LINTARI**

**PETER KIEMA KALUTU ..... CLAIMANTS**

**FLORENCE N. MALLA**

**JULIUS KIAUTHA KINOTI**

**WILLIAM OKALIO EPAYE**

VERSUS

**COFFEE BOARD OF KENYA ..... RESPONDENT**

M/S Mumbi for Respondent / Applicant

Mr. Koceo Titus for the Claimant / respondent

**RULING**

1. The Application serving before Court is a Chamber Summons which is undated and supported by an Affidavit of Frankie Welikhe a legal officer of the Respondent Corporation.

The Applicant seeks orders:-

1. that this Court issue an order of stay of execution as recorded in a consent between the Advocates of the parties on record, pending the hearing and determination of this application.
2. the Court orders for the unconditional release of motor vehicles Registration Number KBN 196E and KBU 893T held by the auctioneers instructed by the Claimants herein, pending the hearing and determination of this application and that the auctioneers be banned from claiming any fees in relation to the attachment of the said vehicles.
3. the Court be pleased to issue an order of stay of advertisement and any subsequent auction of the attached vehicles.

2. The Application is founded on grounds set out as (b – i) on the face of the Application.

The nub of the matter is that the Applicant alleges that a recorded consent for stay of execution by the parties dated 12<sup>th</sup> May 2014, is in place and therefore the purported execution of part of the decree of the Court parried on 12<sup>th</sup> July 2012 for the balance of Ksh.6,797,889/= is unlawful.

3. That the disputed sum is held in a joint account opened by **M/S Waweru Gatonye Advocates** and **Koceyo Advocates** in particular account number 010863800003, Bank of Africa, the advocates for the parties herein.

4. That it is in the interest of justice that the attachment and proclamation of the two named vehicles belonging to the Respondent be set aside by the Court.

5. The Application is opposed and the Claimants/Respondents have filed a Replying Affidavit deponed to on 26<sup>th</sup> August 2014 by the 1<sup>st</sup> Claimant Peter Mbugua Kanoi.

The crux of the opposition is that;

- i. there is a valid Court Decree which has not been satisfied.
- ii. at the time of Proclamation and Attachment there was no Court order for stay of execution in force and therefore the Proclamation and Attachment at are lawful.
- iii. that the Respondents have already paid the first sum of the decretal sum of Kshs.11,084,206.48 and there is no valid reason why the remaining sum is not being settled in full or why the same be held in a joint account.
- iv. that since the Decree was passed, the Respondent has not filed an Appeal nor have they shown any effort in pursuing an Appeal since a Notice of Appeal was filed in July 2013.
- v. that this Application is *resjudicata*, the Applicant having filed a similar Application on 23<sup>rd</sup> July 2013, which was heard by the trial Judge, Maureen Onyango J. and dismissed on 4<sup>th</sup> April 2014.

6. The Court has considered the merits and demerits of the competing arguments by the parties and has come to the following conclusions;

- a. at the time the Attachment and Proclamation was done there was no consent order endorsed by the Court as purported by the Applicant or at all.
- b. there was not in place an order of the Court staying execution of the judgment and the decree of the Court.

7. In **HCC of Kenya at Nairobi Civil Suit 74 of 2007, A Craft Management Service Limited Vs. Agricultural Finance Corporation and 5 others**, J. M. Mutava J. held;

*“A consent order becomes an order of the Court upon being endorsed by the Court. In this case, the consent of the parties set out in a letter dated 23<sup>rd</sup> February 2011 was never endorsed by the Court. In my view therefore, there being no order on record dated 23<sup>rd</sup> February 2011 capable of being set aside, the 1<sup>st</sup> Defendant’s Application as made fails.”*

8. This Court agrees wholly with the reasoning by Mutava J. and finds that the purported consent dated 9<sup>th</sup> May 2014 and filed with the Court on 9<sup>th</sup> May 2011 was not adopted as an order of the Court and thus does not suffice to pre-empt the execution of the decree of the Court.

9. The Court further finds that an application for stay of execution, having been dismissed prior by the trial Judge Maureen Onyango J., the matter is *rejudicata* and cannot be revisited by another Court of equal jurisdiction.

The Application is dismissed with costs to the Claimant / Respondent.

**Dated and Delivered at Nairobi this 15<sup>th</sup> day of October, 2014.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**