



REPUBLIC OF KENYA



KENYA LAW
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**Wekesa v Blink Studio Limited & 3 others (Commercial Case E953 of 2021)
[2024] KEHC 867 (KLR) (Commercial and Tax) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 867 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E953 OF 2021
A MABEYA, J
JANUARY 30, 2024**

BETWEEN

DOUGLAS SASITA WEKESA PLAINTIFF

AND

BLINK STUDIO LIMITED 1ST DEFENDANT

NATIONAL MUSEUMS OF KENYA 2ND DEFENDANT

MINISTRY OF DEFENCE 3RD DEFENDANT

BASELINE AUCTIONEERS 4TH DEFENDANT

RULING

1. The application before Court is dated 25/5/2023. It is brought under Article 159 of the *Constitution*, sections 1A, 1B, 3A of the *Civil Procedure Act*, Order 21 rule 7, Order 22 rule 22 and Order 51 rule 1 of the *Civil Procedure Rules*.
2. The application seeks orders for setting aside of the warrants of attachment and proclamation notice served upon the applicant on 21/5/2022. That the costs be borne by the decree holder.
3. The application is premised on the grounds on the face of it and the supporting affidavit of Asif Charfare sworn on 25/5/2022. It was the applicant's case that the applicant and the decree holder recorded a consent which was adopted by the Court on 30/3/2022.
4. That the terms of the consent were that the applicant would pay the decree holder Kshs. 29,571,428/-. That the applicant had fully complied with the judgment of the Court by settling the decretal sum in its entirety. That despite that, the respondent served warrants of attachment for the whole decretal sum



- of Kshs 29,571,428/-. The applicant contended that the decree holder had abused the court process by attaining the warrants of attachment.
5. The application was opposed by the respondent vide a replying affidavit sworn by Douglas Sasita Wekesa on 8/6/2022. It was his position that after signing the General Release and Settlement Agreement dated 15/1/2022, the applicant made a payment of Kshs. 4,750,000/-. That on 20/5/2022, he received a letter together with 7 cheques enclosed therein for a total sum of Kshs 6,552,856/-.
 6. That his advocates requested the applicant to settle outstanding sums but it ignored the request. Consequently, he instructed his advocates to proceed with the execution process. He admitted having received a total sum of Kshs. 11,302,856/- leaving a balance of Kshs. 18,268,572/-. He denied receiving cheque nos. 000209, 000201, 000312, 000787, 000788 for Kshs. 1,710,000/-, Kshs. 855,000/-, Kshs.1,425,000, respectively.
 7. The parties filed their respective submissions which I have carefully considered. The applicant submitted that the warrants of attachment were issued before involving the judgment debtor's advocates. Counsel submitted that the remaining balance of the decretal amount was to be paid according to the terms of the General Release Agreement which required the 1st defendant to transfer some apartments. It was submitted that the respondent ought to abide by the terms of the general agreement.
 8. It was submitted for the respondent that he had received a total of Kshs 11,302,856/- from the applicant. That he had not received the cheques outlined in the applicant's supporting affidavit. Further, that the applicant was in breach of the decree and General Release and Settlement Agreement for providing collateral for the due performance of its obligations.
 9. With regard to the process of attachment, counsel submitted that there was no need for a notice to show cause since the application for execution was made within 1 year.
 10. I have carefully considered the application, the averments in the replying affidavit as well as the written submissions by all the parties. The applicant seeks the setting aside of the warrants of attachment and proclamation notices served upon it on 21/5/2022.
 11. The background is that the parties entered into a General Release and Settlement Agreement and by consent it was adopted by the Court on 30/3/2022. The terms of the agreement were that the applicant would pay the decree holder Kshs. 29,571,428/-
 12. The applicant faulted the respondent for issuing warrants of attachment for the whole decretal amount without notice and despite it making partial payments towards settling the same. On his part, the respondent confirmed that he had received a total of Kshs. 11,302,856/- from the applicant towards settlement of the decree.
 13. Order 22 Rule 22 of the [Civil Procedure Rules](#) under which this application has been brought stipulates as follows: -
 - “(1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.



- (2) Where the property or person of the judgment-debtor has been seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the results of the application.
- (3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor the court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.”

14. In the present case, it is not in dispute that the applicant has paid cumulatively a sum of Kshs. 11,302,856/- leaving an outstanding balance of Kshs. 18,268,572/-. According to the consent judgment, the payment of the said sum was to be made in four equal installments within a duration of 4 months. The agreement further provided for a collateral to perfect the amount due in the event of default.
15. The Court notes that the applicant is in default and continues to be in default. It is the respondent’s right to realize the fruits of his judgment. However, on perusal of the proclamation notice, I notice that the respondent seeks to execute against the whole decretal sum of Kshs. 29,571,428/-. That is wrong. He should have given credit on the amount already paid and execute for the balance. It is at that point that the issue of whether the alleged cheques were paid could be addressed.
16. The Court finds that the respondent is at liberty to execute against the balance of the decretal amount. However, since he sought to execute for the entire sum, I allow the application partially and recall the warrants of attachment and proclamation dated 20/5/2022.
17. The respondent is at liberty to issue fresh warrants on the correct amount, of course after the issuance of the requisite Notice To Show Cause. I make no order as to costs as both parties are not blameless.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY, 2024.

A. MABEYA, FCI Arb

JUDGE

