



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

ELC SUIT NO.698 OF 2011

NELLIE GACHUKI KAROBIA.....1ST PLAINTIFF

GODFREY KINUTHIA KAROBIA.....2ND PLAINTIFF

=VERSUS=

TOWN COUNCIL OF KIKUYU.....DEFENDANT

RULING

1. This is the notice of motion dated 3rd May 2021.
2. It is brought under Article 165 of the Constitution, Sections 1A, 1B and 3A of the Civil Procedure Act, Order 22, Rule 22, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules.
3. It seeks orders;-
 - a) *Spent.*
 - b) *Spent.*
 - c) *This Honourable court be pleased to issue orders of stay of execution of the ruling delivered by the Honourable court on 4th April 2019 in Nairobi ELC No.698 of 2011; Nellie Gachiku Karobia & Godfrey Kinuthia Karobia v. Town Council of Kikuyu as against the Applicant pending the hearing and final determination of the intended reference;*
 - d) *This Honourable court be pleased to issue orders directing the Deputy Registrar Hon. Isabella Barasa, to supply the Applicants herein with a copy of the ruling delivered on 4th May 2021.*
 - e) *Costs of the application be provided for.*
4. The application is premised on the grounds stated in paragraphs 1 to10 on the face of the application and the annexed affidavit sworn on 3rd May 2021 by George Kithi; counsel from the firm representing the Applicant.
5. He deponed that a ruling was delivered in this matter on 4th May 2021 by the Hon. Deputy Registrar, Isabella Barasa, who taxed the Plaintiff's bill of costs at kshs.357,750/= and both parties agreed on a thirty (30) days stay of execution.
6. He further deponed that the Applicant was dissatisfied by the said decision and intends to file a reference but it has, since

delivery of the ruling tried to obtain a copy of the reasons /ruling in the matter in a bid to file the reference to no avail.

7. He also deponed that the Applicant stands to suffer irreparable harm/loss if the stay of execution orders sought are not granted and if it is not allowed to obtain the ruling and file its reference.

8. The application was opposed by way of a replying affidavit sworn on 16th August 2021 by Christine Githii, counsel from the firm on record for the Plaintiffs/Respondents.

9. She deponed that paragraph 11 of the Advocates Remuneration Order provides that a party aggrieved by a decision of a taxing officer ought to within 14 days of the decision ,give notice to the taxing officer of the items it objects to but the Applicant has not given such notice.

10. She added that that the application does not meet the threshold required for grant of stay of execution orders since the Applicant has not filed a notice of Appeal , it did not provide evidence to show that it will suffer substantial loss unless the stay is granted and it did not offer security for due performance of the decree. She prayed for dismissal of the application.

11. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit, sworn by Christine Githii Advocate for the Plaintiffs/Respondents. The issues for determination are:-

(i) Whether the delay in filing a reference is excusable.

(ii) Whether the Applicant has made out a good case for grant of stay of execution.

12. It is not in dispute that the ruling by the Deputy Registrar was delivered on 4th May 2021. A stay of execution for thirty (30) days was granted by consent of both parties.

13. Under paragraph 11 (2) of the Advocates (Remuneration) Order a reference ought to be filed within 14 days. It is not in dispute that the applicant herein did not file its reference within the stipulated period.

14. The Applicant's advocate in paragraph 7 of his supporting affidavit depones:-

“That the applicant has since delivery of the ruling tried to obtain a copy of the reasons/ruling in the matter in a bid to file a reference in court to no avail. (Annexed herein as GK1 are copies of various letters and emails in the matter).”

15. I have gone through the file. There is a letter by the Applicant's counsel requesting for a copy of the ruling/reasons on the taxation of the Plaintiffs bill of costs rendered on 4th May 2021. The same was through email on 8th May 2021. The Deputy Registrar in response wrote a letter dated 19th May 2021 informing counsel that the reasons for the taxation were contained in the ruling. The court records shows that the ruling was delivered in the presence of counsel for the Applicant.

16. I find that the delay in filing the reference has not been explained. No sufficient cause has been demonstrated to warrant this court to exercise discretion in favour of the Applicant.

17. It is clear from the court file that counsel for the Applicant paid for a copy of the ruling on 2nd June 2021, shortly before the expiry of the thirty days stay of execution. I find that the delay has not been explained.

18. I find that the application does not meet the threshold for grant of orders of stay of execution.

19. I also find that prayer (3) of the Notice of Motion has been overtaken by events as the Applicant was supplied with a copy of the ruling.

20. In conclusion, I find no merit in this application and the same is dismissed with costs to the plaintiffs/Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 10TH FEBRUARY 2022.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Ms Githii for the Plaintiffs

Ms Katana for Mr. Kithi for the Defendant

Steve - Court Assistant



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