



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CASE NO. 85 OF 2016**

**ABINJA KINA IRERI.....CLAIMANT/ RESPONDENT**

**VERSUS**

**THE BOARD OF MANAGEMENT S.A. KYENI**

**GIRLS SECONDARY SCHOOL.....RESPONDENT/ APPLICANT**

**RULING**

1. The Respondent/Applicant seeks relief upon proclamation and attachment. The Judgment of the court was given on 9<sup>th</sup> June 2017 and the proclamation was made on 22<sup>nd</sup> March 2019. The Respondent attached a cheque for Kshs. 150,000/- in favour of the Claimant for the settlement of part of the decretal sum. The Respondent seeks the stay as the execution will cause disruption of the learning at the school. It is submitted by learned counsel for the Respondent Mr. Njoroge that the attempt to proclaim office chairs, school bus and the desks will cripple operations of the school. He admits that the sums are not disputed and submits that the sum due would be settled by payment of Kshs. 200,000/- termly till payment in full. The Respondent argues that being a public institution under Section 43 of the Basic Education Act it is in the category of institutions that are operated by Government and as such the provisions of Order 29 Rule 2(2) are applicable. It was submitted that no order against the Government may be made in execution of decree or orders and only a Judicial Review may be sought to enforce the execution.

2. The Claimant/Respondent was opposed and filed grounds of opposition. In the grounds it was asserted that the application had been filed after inordinate delay and the subject goods had been proclaimed. It was stated that the judgment was delivered on 9<sup>th</sup> June 2017 and that the sum was to be settled by 1<sup>st</sup> August 2017 and that there was no appeal against the decision and that any stay order would be granted in vain. The Claimant/Respondent asserts that the Applicant is not the Government and that it cannot rely on the Government Proceedings Act as it is a Board of Management and is a body corporate with perpetual succession and a common seal and has the capacity to sue and be sued as stipulated in the Fourth Schedule of the Basic Education Act No. 14 of 2013. Learned counsel for the Claimant/Respondent argued that the Claimant was entitled to the fruits of the judgment and that the Respondent/Applicant was merely seeking to delay the conclusion of the matter. He thus urged the denial of the orders sought and execution be permitted.

3. In the motion, it is suggested that the Respondent enjoys the immunity that Government institutions enjoy. Under the Basic Education Act, it is true that Section 43 provides as follows:-

43. (1) *Basic educational institutions shall be categorised as—*

(a) *public schools which are schools established, owned or operated by the Government and includes sponsored schools;*

(b) *private schools as those established, owned or operated by private individuals, entrepreneurs and institutions.*

(2) *A public basic education institution shall not be converted to a private basic education institution or to any other private status without consultation with the National Education Board and approval by the Cabinet Secretary.*

The Section categorises the schools in the 2 broad categories as per Section 43(1)(a) and (b). That categorization into public school versus private school does not in my view alter the corporate character of the Respondent/Applicant. Indeed it may be funded by public funds or even rely on the exchequer for part of its operations but it is not a Government institution under which the rubric of the Government Proceedings Act applies. The Government Proceedings Act in its preamble is an Act of Parliament to state the law relating to the civil liabilities and rights of the Government and to civil proceedings by and against the Government; to state the law relating to the civil liabilities of persons other than the Government in certain cases involving the affairs or property of the Government; and for purposes incidental to and connected with those matters. It does not cover the Respondent/Applicant.

4. The Respondent/Applicant sought relief to pay the decretal sum by instalment and for good measure displayed a cheque the Claimant/Respondent was offered but which was rejected at the time of proclamation. The Claimant sought to proclaim assets of the school in excess of the decree she enjoys and this is deprecated. An auctioneer is not granted carte blanche by virtue of the warrants issued. It cannot be that the sum of Kshs. 761,397.50 being the decretal sum plus costs cannot be satisfied by part of the items in the proclamation. In the execution, the Claimant was offered payment of Kshs. 150,000/- but rejected it. In order to conclude the matter, I order the following:-

- i. Cheque No. 001321 of Kshs. 150,000/- dated 22<sup>nd</sup> March 2019 be paid to the Claimant forthwith but no later than Friday 31<sup>st</sup> May 2019.
- ii. Balance of decretal sum be settled by payment of installments of a sum to be agreed on by parties before the Deputy Registrar of this court on 3<sup>rd</sup> June 2019. In default of any one instalment, execution to issue.
- iii. Mention before the Deputy Registrar on 3<sup>rd</sup> June 2019 to confirm payment as ordered and record the payment proposal of parties.
- iv. Auctioneers charges to be strictly to scale for the proclamation.
- v. No order as to costs for the motion.

It is so ordered.

**Dated and delivered at Nyeri this 24<sup>th</sup> day of May 2019**

**Nzioki wa Makau**

**JUDGE**

I certify that this is a

true copy of the Original

**Deputy Registrar**