



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION

HCC NO. 286 OF 2015

BYRON TRUSTKETT

INVESTMENTS LIMITED..... DECREE HOLDER/RESPONDENT

VERSUS

SPORT STADIA

MANAGEMENT BOARD.....JUDGMENT DEBTOR /APPLICANT

AND

STANDARD CHARTERED BANK

(RUARAKA BRANCH).....GARNISHEE/RESPONDENT

RULING

1. The Judgment Debtor seeks to set aside the consent entered on 15th November 2018. This is prayed in the Notice of Motion dated 16th May 2019.
2. In an affidavit in support of the Motion, Pius Metto avers that the Defendant has fully paid the decretal sum and that the consent was entered through fraud. In addition, that the amount sought by the Plaintiff is contrary to the *in duplum* Rule.
3. This Court has considered the arguments made by the parties and the material before it.
4. This Court would first have to make short thrift of the *in duplum* rule argument. *In duplum* means double and is sometimes used in the context of double damages (see Tenth Edition of Black's Law Dictionary).As a statutory phenomenon it is found in section 44A of the Banking Act which limits the amount of interest that can be recovered by a financial institution from a defaulting debtor. That rule is not applicable here because the debt does not arise from a financial institution/customer relationship. It is from a contract for cleaning services.
5. As to whether there has been overpayment, that is an accounting issue. It would be prudent for accounts to be taken before this Court can consider the application further.
6. I direct that parties do within 14 days hereof jointly appoint an accountant to audit the debt herein and report to Court on what has been paid and what amount, if any, is due. Should the parties fail to agree on an accountant then the chairperson of the Institute of Certified Public Accountants of Kenya (ICPAK) do appoint such accountant. Although parties will initially share the costs of the accountant and audit exercise, this Court will make a final order in respect thereof upon receiving the accountant's report.

Dated, Signed and Delivered in Court at Nairobi this 22nd Day of November, 2019

F. TUIYOTT

JUDGE

PRESENT;

Hassan for Defendant

Jaoko for Ochieng for Decree Holder

Court Assistant: Nixon