

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 154 OF 2013

MILLICENT KIMURI.....1ST PLAINTIFF/APPLICANT

BENSON WANJOHI NJOGU.....2ND PLAINTIFF/APPLICANT

- V E R S U S -

MBISI LINA CATHERINE.....1ST DEFENDANT

MILICON COMPANY LIMITED.....2ND DEFENDANT

RULING

1) The subject matter of this ruling is the motion dated 7th April 2016 taken out by Millicent Kimuri, the 1st plaintiff/applicant herein. In the aforesaid motion, the applicant sought for the following orders:

1. THAT the Hon. Court be pleased to set aside and/or review of its ruling dated 11/12/2015 on whether the decretal sum of kshs.7,484,435/= is subject to taxation of statutory deductions such as P.A.Y.E, N.S.S.F and NHIF and in the ALTERNATIVE substitute it with an order compelling the defendants to pay the balance of decretal sum in full.

2. THAT the respondents does not pay unjustified deduction of kshs.1,169,112/= to the 1st applicant herein and in default execution to issue.

3. That the cost of this application be provided for.

2) The motion is supported by the affidavit of the applicant. The defendants filed the replying affidavit of Orare Jared Nchore to oppose the motion.

3) When the motion came up for interpartes hearing this court gave directions to have the same disposed of by written submissions. I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have further considered the rival written submissions. In response to the motion, the defendants raised a preliminary objection which is to the effect that the motion is resjudicata. I think it is appropriate to first determine the preliminary objection. It is the submission of the defendants that the issues raised in the current motion were earlier raised in the chamber summons dated 30th September 2015 which summons was heard and dismissed vide this court's ruling delivered on 11.12.2015. This court was therefore implored to dismiss the motion. The applicant in her written submissions did not deem it fit to respond to the preliminary objection. I have compared the two applications and I find them identical in many respects except for a few variations.

4) I am also satisfied that this court heard and determined the chamber summons dated 30th September 2015 on its merits. The 1st plaintiff's conduct of filing a fresh application seeking for similar orders and on the basis of similar grounds was in breach of Section 7 of Civil Procedure Act. On this ground alone I find the motion to be resjudicata, hence incompetent.

5) The application is ordered dismissed with costs to the defendants.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

..... for the Defendant