



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 527 OF 2016

TOYOTA KENYA LIMITED.....APPELLANT

V E R S U S

JEREMIAH MUEMA NZUKIE.....RESPONDENT

RULING

1) The subject matter of this ruling is the motion dated 21.5.2018, taken out by Toyota Kenya Ltd, the appellant herein, in which it sought for following orders;

1. THAT this honourable court be pleased to adopt the consent dated 7th October 2016 and filed on 12th October 2016 by the parties as an order of this court and the matter be marked as fully settled.

2. THAT the applicant be at liberty to apply for further orders and/or direction as the honourable court may deem just to grant.

3. THAT the costs of this application be born by the respondent.

2) The motion is supported by the affidavit and the supplementary affidavit of Petronilla Rop. When served with the motion Jeremiah Muema Naukie, the respondent herein, filed grounds of opposition and a replying affidavit to resist the motion. When the motion came up for interpartes hearing this court gave directions to have the motion determined by written submissions.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have further considered the rival written submissions. It is the submission of the appellant/applicant that there exists a validly executed consent between the parties dated 7th October 2016 and filed in court on 12.10.2016 setting out in detail the express terms upon which the matter has been fully and finally settled.

4) The appellant further pointed out that it has fully performed its obligations there under which made it possible for the respondent to receive payment of ksh.6,500,447/36 from the appellant as a pre-condition to have the matter marked as settled.

5) The appellant further stated that the respondent has been paid by the appellant an additional sum of ksh.8,272,890/25 subsequently to the sum of ksh.6,500,447/36 pursuant to the consent filed herein.

6) The appellant has also stated that for unjustifiable reasons, the respondent has suddenly changed tune and has now declined to have the filed consent adopted as an order of the court by mutual consent of the parties despite receiving and retaining all the monies paid in pursuant to the consent.

7) The respondent in response to the appellant's argument stated that the consent of 7.10.2016 was filed in court by undue influence and coercion applied to the respondent whereas he was entitled to the monies as a matter of right from the decree of the court.

8) The respondent claimed that he reluctantly authorised his lawyers to execute the consent because his medical supplies had run out and his nurse aides had all downed their tools due to accumulated arrears in salaries.

9) The respondent further argued that part of the payments alluded in paragraphs 18 and 19 of the appellant's supporting affidavit were his statutory benefits on retirement and had no relation with the subject of this appeal.

10) The respondent also had applied for the consent to be expunged from record before Lady Justice Thurania which order was granted therefore there is no valid consent to be adopted.

11) Having considered the rival submissions and having considered the material placed before this court, it is not in dispute that the respondent instructed his advocates to make a proposal to have the matter settled on terms agreed upon.

12) I have carefully perused the respondent's advocates letter dated 4.10.2016 which sets out the terms of the respondent's proposal and it is clear that there is no suggestion that the appellant demanded for the appeal and the cross-appeal to be withdrawn as a pre-condition.

13) In my humble view, there is no evidence that the appellant applied undue-influence or coercion to secure the consent. What is apparent is that the respondent was prompted to have the consent executed by his deteriorating health condition and not any influence or coercion on the part of the appellant.

14) In the end, I find the appellant's motion dated 21.5.2018 to be meritorious. It is allowed in terms or prayer (i) with each party bearing its own costs of the motion.

Dated, Signed and Delivered in open court this 19th day of October, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondents