



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL CASE 87 OF 2005

CHARLES MATHENGE WAHOMEPLAINTIFF

V E R S U S

1. MARK MBOYA LIKANGA

2. KENAFRIC BAKERY LTD

3. FINA BANK LTDDEFENDANTS

R U L I N G

On 16th July, 2007 the parties herein filed a consent letter dated 5th June, 2007. The letter was duly signed by the advocates for the Plaintiff and the Defendants. The letter, addressed to the court, requested that the following consent order be recorded:-

“By consent, the plaintiff’s suit as against

Fina Bank Limited, the 3rd Defendant,

be and is hereby marked as withdrawn

with no order as to costs.”

The court obliged and entered the order on 17th July, 2007

The Plaintiff, who is now acting in person, has come back to court by chamber summons dated 17th July, 2008 seeking, in effect, an order to set aside the said consent order upon the grounds that the consent letter was written without his knowledge, consent or “blessings” and was entered by his then advocates corruptly and in bad faith. There is a supporting affidavit sworn by him.

The 3rd Defendant has opposed the application as set out in the grounds of opposition dated 8th October, 2008. Those grounds are essentially two; one, that the application is bad in law, and two, that the Plaintiff has not laid any grounds upon which the application can be allowed. No replying affidavit was filed.

I have considered the submissions of the Plaintiff and those of the Defendants’ learned counsel, including the cases cited. It is now well-established that a consent order or judgment has a contractual effect and can only be set aside on such grounds as would justify the setting aside of a contract, for example fraud, mistake or misrepresentation. See for instance the case of **Flora N. Wasike –vs –**

Destimo Wamboko (1982-1988) KAR 625. It is also stated in that case that a duly appointed and instructed advocate has ostensible authority to compromise a suit on behalf of his client as far the opposite side is concerned.

In the present case the Plaintiff has not urged that M/s Muu & Associates were not his duly appointed and instructed advocates. As such the said advocates are deemed to have had ostensible authority to compromise his suit against the 3rd Defendant.

The Plaintiff has not placed before the court any evidence of fraud, mistake or misrepresentation on the part of the 3rd Defendant in the entry of the consent order. There is also no evidence that his counsel fraudulently entered the consent. Even if there was such evidence, it would not viciate the consent as far as the 3rd Defendant is concerned. It would only be a basis for the Plaintiff to sue his former advocates.

Having considered all matters placed before the court I find no merit in this application, and I must refuse it. It is hereby dismissed with costs to the 3rd Defendant. It is so ordered.

DATED AT NAIROBI THIS 12TH DAY OF NOVEMBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 14TH DAY OF NOVEMBER, 2008