



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 696 of 2000**

**JASHO ONE INVESTMENT LTD.....APPELLANT**

**VERSUS**

**PETER OTIENO OLUNGA.....RESPONDENT**

**R U L I N G**

The appellant seeks to have the order which was made on the 28<sup>th</sup> June, 2008 reviewed and set aside. The order which was recorded on the 25<sup>th</sup> June, 2008 by the Deputy Registrar read as follows:

*“Upon reading consent dated 23<sup>rd</sup> May, 2008, received in court on 23<sup>rd</sup> May, 2008 it is hereby ordered by consent;*

*(i) That the award in CMCC No.967 of 1997 Peter Otieno Olunga vs Jasho One Investments Ltd be reduced by 40%.*

*(ii) That there be no orders as to costs in this appeal.”*

The appellant contends that the instructions to the advocates were that the matter be settled by paying the respondent 60% of the sum of Kshs.367,000/= which had been deposited by the appellant in court and released to the respondent’s advocate. The appellant contends that the consent arrived at by the parties was fraudulently altered and should therefore be set aside and substituted with the proper consent order reducing the award in CMCC No.967 of 1997 Peter Otieno Olunga vs Jasho One Investment Ltd being Kshs.357,400/= all inclusive by 40% with no orders as to costs.

The application is opposed by the respondent through an affidavit sworn by its advocate Ezekiel Oduk. Counsel depones that the consent letter dated 23<sup>rd</sup> May, 2008 subject of the consent order was duly executed by both counsels and filed in court. Counsel denies all allegations of fraud, manipulation or impropriety attributed to him.

I have carefully considered the application, the affidavit in support and in reply, together with the annexures thereto, and the submissions of both counsels. It is clear that a consent order was recorded on 25<sup>th</sup> June, 2008 pursuant to a consent letter dated 23<sup>rd</sup> May, 2008 which was duly signed by both parties’ advocates. Although the appellant contends that his counsel had different instructions and that the consent letter was a fraud having been tampered with, the appellant’s counsel has not sworn any affidavit to support the appellant’s contention or to explain the circumstances in which the appellant’s counsel

signed the consent order. In the circumstances, the appellant has not shown that the consent order was entered into through any mistake or fraud. The appellant is therefore bound by the consent which was entered into by its advocate on its behalf. An issue was raised with regard to the circumstances in which the decretal sum which was deposited in court by the appellant was released to the respondent's counsel. However, no application having been brought to the court with regard to the release of that money, the release of the money has no bearing on the consent order which was properly recorded. I find no just cause to interfere with the consent order which was recorded on 25<sup>th</sup> June, 2008. Accordingly, I find no merit in the application and do therefore dismiss it with costs.

Dated and delivered this 3<sup>rd</sup> day of December, 2008

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Advocate for the appellant absent

Miss Kubai H/B for Oduk for the respondent