



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL DIVISION
HIGH COURT CIVIL APPEAL NO. 317 OF 2013

WELCO SERVICES INTERNATIONAL.....APPELLANT/RESPONDENT

VERSUS

DR. RAJPAL SINGH JABAL.....RESPONDENT/APPLICANT

RULING

1. The application dated 14th November, 2017 principally seeks orders that the funds deposited in court pursuant to the court orders dated 26th July, 2013 be released to Regent Management Ltd.
2. The application is predicated on the grounds stated therein and is supported by the affidavit of the Applicant, Dr. Rajpal Singh Jabal. It is stated that this court vide a judgment herein delivered on 22nd July, 2015 directed that the sum of Ksh.250,000/= deposited in the Lower Court be held in court until the matter was heard and determined or upon application. It is further stated that on 4th March, 2016 the parties recorded a consent order for the release of the Ksh.250,000/= to the landlord whose account details were to be supplied by the Applicant's counsel.
3. The application is opposed. It is stated in the replying affidavit that the landlord is the Government of the Republic of Uganda, not Regent Management Ltd. It is further stated that the consent order was for the release of the sum of Ksh.250,000/= deposited in court to the Landlord. The Respondent company expressed its reservations concerning the release of the money to the agent. The Respondent's position is that the release of the money to the agent may give rise to issues of accountability. It is further contended that the particulars of the landlord's account have never been supplied to the court but that the court has instead been supplied with the particulars of a party who is not the landlord.
4. During the hearing of the application the Respondent was not in court although served. I have considered the submissions made by the counsel for the Applicant.
5. The consent order the subject of the application has been exhibited by the Applicant. The said order states as follows:

“1. That Kshs.70,000/= to be paid the landlord within 10 days from today's date.

2. That Ksh. 250,000/= deposited in the High Court to be released to the landlord.

3. That the defence counsel to supply the particulars of the Landlord's Account.

4. That the Defendant to equally pay his part of the rent to the landlord.

5. That subsequently payments of Ksh.10,000/= to be deposited direct to landlord's Account by 10th of every month."

6. It is abundantly clear from the said consent order that payment of the Ksh. 250,000/= deposited in court was to be released to the landlord. The particulars of the Landlord's account were to be supplied.

7. The law on consent orders as stated by the Court of Appeal in the case of **Flora Wasike v Destimo Wamboko [1988] IKAR 625** is as follows:

"It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out."

8. A court cannot write a contract between parties (See for example **National Bank of Kenya Ltd v PipePlastic Samkolit (K) Ltd & another (2002) EA 503**).

9. If parties herein wished to have the money released to the agents as prayed herein, they could have recorded the consent accordingly or entered into a further consent to indicate that payment be made through the agent.

10. With the foregoing, I find no merits in the application and dismiss the same with costs.

Date, signed and delivered at Nairobi this 1st day of March, 2018

B. THURANIRA JADEN

JUDGE