



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NUMBER 152 OF 2014

FRIDAH ATEPE NAMALE (Suing as the legal representative of the
JANE NAMALE AKHATOLWA (DECEASED)..... **APPELLANT**

VERSUS

ANWARALIS BROTHERS LTD.....**RESPONDENT**

(An appeal against the ruling and order of the Honourable R. Amwayi Resident Magistrate delivered on the 8th October, 2014 in Nakuru CMCC No. 492 of 2012)

JUDGMENT

1. By a consent judgment entered into between the appellant and the Respondent and dated 14th October 2013, a compromise settlement was reached not only in the above case but also in two other related cases being **Nakuru CMCC No. 491 of 2012** and **CMCC No. 493 of 2012**.

For the three cases, the entire decretal sums were compromised at Kshs.3,372,557/= all inclusive and was to be paid within ten(10) days from the date of the consent judgment with a default clause that if not complied within the stipulated ten(10) days period execution would issue as per the original judgment of the court, in the various cases.

The said original judgments of the court in the cases have not been availed to this court by either party to this appeal.

2. The parties to this appeal agree that the entire decretal sums have been paid. The only complaint and the gist of this appeal is that the payments were not made within the ten days period as stated in the consent Judgment.

3. In its submissions the Respondent confirms that the decretal sums were paid. There is no dispute on this.

On the effective date of the consent judgment, I have no reason to depart from the trial courts finding that it took effect on the day the consent order was filed on the 6th December 2013. That gave the consent order legal effect.

I fail to understand how the trial court is alleged to have changed the terms of the consent order. I have in mind that the duty of a court is to enforce an agreement or contract entered into by parties, and has no authority to rewrite the same.

4. In the case **Board of Trustees National Social Security Fund -vs- Michael Mwalo (2015) e KLR**, the court was of the opinion that a Review of a consent order may only be granted whenever the court considers it necessary to correct an apparent error or commission on the part of the court that is self evident, and that should require no elaborate argument to be established.

The appellant has not told the court what prejudice the appellants have suffered by the decretal sum being paid in November 2013 one month after filing of the consent letter and balance in January 2014 a period of about two months.

5. I have seen the proclamation taken by the appellants agents the Auctioneers. The sums paid were not discounted or taken into account. I agree the appellants may have suffered by payments of further court fees to facilitate drawing of the decrees. This sum has not been demonstrated. The appellant however failed to obtain decree for the balance out of the consent sum of Kshs.3,372,557 and opted to obtain separate decrees for the separate suits. From my calculations the unpaid balance as at the date of proclamation on the 27th January 2014 and by the appellants Advocates letter dated 29th January 2014 was Kshs.163,350/= and in any event was fully paid as well as captured in the order dated the 8th October 2014 by the Learned trial Magistrate. The consent order filed on the 13th December 2013 being the final judgment necessitated the appellant to discount all sums paid and only seek execution for the balance of Kshs.163,350/=.

6. I am not persuaded that the appeal is merited. **Article 159 of the Constitution** enjoins all courts to administer justice without undue regard to procedural technicalities. The full decretal sum having been fully settled, I find no good reasons to find otherwise than the trial Magistrate found in the ruling and order appealed from.

7. For those reasons I proceed to dismiss the appeal with no orders as to costs.

Dated, signed and delivered in court this 12th Day of January 2017.

JANET MULWA

JUDGE