

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

MISC.APPLICATION NO. 7 OF 2011

BETWEEN

CENTRE FOR PEACE AND DEMOCRACY APPLICANT

AND

NON-GOVERNMENTAL ORGANISATION

COORDINATION BOARD RESPONDENT

RULING

1. The application for consideration is dated 24th November 2016. It is brought under the provisions of sections 1A, 1B, 3A and 80 of the *Civil Procedure Rules (Chapter 21 of the Laws of Kenya)* and Order 45 Rule 1 of the *Civil Procedure Rules*. The applicant seeks to review, vary or set aside the Deputy Registrar's order made on 22nd November 2016 authorizing the attachment of one-third of the judgment debtor's salary to settle the Kshs. 209,527/- being costs ordered against the applicant.

2. Before I deal with the substantive issues, it is necessary to give a brief history of the matter. The applicant moved the court for an order of mandamus compelling the respondent to register a list of its officials elected at a special general meeting held on 29th October 2010. Nambuye J., struck out the application with costs on 28th September 2011. The applicant lodged an appeal to the Court of Appeal; *Kisumu Civil Appeal No. 261 of 2011* which appeal was dismissed. The respondent returned to the High Court to recover its costs. Its bills of costs were taxed and costs certified by the Deputy Registrar on 18th June 2012. Thereafter, the respondent moved to the court by way of notice to show cause to attach one-third of the judgment debtor's salary. It is the order attaching the applicant's salary that had precipitated this application.

3. The thrust of the applicant's application is that the procurement of the firm of *Otieno, Yogo and Ojuro Advocates* by the respondent was improper and illegal that this constitutes new and important evidence which entitles this court to review and set aside the order made by the Deputy Registrar. The application is opposed mainly on the ground that it is incompetent, it does not meet the threshold for the grant of review and the issues raised are *res-judicata*.

4. Without going into the merits or findings on the respective arguments, it is my view that this application must fail. The order sought to be reviewed is the one attaching one-third of the judgment debtor's salary and not the order imposing costs on the applicant. By making an order as to the mode of execution, the Deputy Registrar was merely enforcing an order of costs already issued by the Court. The order for costs will remain untouched even if I am persuaded that the applicant is right hence this application will not serve any purpose. The issue before the Deputy Registrar was the result judgment debtor being called upon to show cost why execution should not issue. The jurisdiction of the Deputy Registrar at that stage is limited to determining whether the judgment debt has been settled rather than attacking the order of costs.

5. From the grounds and arguments raised, the application is directed at the order for costs. The application must therefore target the order issued by Nambuye J., dismissing the Notice of Motion on 28th September 2011. It is for this reason that I find the application for review incompetent and I dismiss the same.

6. The order of stay in force is hereby discharged and the sum of Kshs. 50,000/- deposited in court by the judgment debtor on 13th December 2016 shall be released to the respondent forthwith.

7. The applicant shall bear the costs of this application assessed at Kshs. 5,000/-.

DATED and DELIVERED at KISUMU this 20th day of February 2017.

D. S. MAJANJA

JUDGE

Mr Achura instructed by Amondi and Company Advocates for the applicant

Mr Ojuro instructed by Otieno, Yogo and Ojuro Advocates for the respondent