



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

MISCELENEOUS CIVIL APPLICATIONS NO. 25, 26,27,28,29,31,32,33,34, 35, 37,39 AND 41 OF 2018

(Before Hon. Justice Mathews N. Nduma)

SIGANGA & COMPANY ADVOCATES.....DECREE HOLDER/RESPONDENT

VERSUS

GREAT LAKES UNIVERSITY KISUMU.....JUDGMENT DEBTOR

AND

EQUITY BANK (KENYA) LIMITED.....1ST GARNISHEE

KCB BANK LIMITED.....2ND GARNISHEE/APPLICANT

RULING

1. The decree holder and the Judgment Debtor entered into a consent agreement to *inter alia* compromise the applications dated 30th September, 2019 in the consolidated matter with no order as to costs. The consent was adopted as an order of the court.
2. The 2nd Garnishee/applicant (Kenya Commercial Bank LTD (KCB) filed application dated 25th October 2019 objecting to the consent order on the basis that the consent did not cater for the costs of the 2nd Garnishee.
3. The issue for determination is whether the Decree holder and the Judgment debtor were at liberty to enter into a consent in which the judgment debt was settled and paid without catering for the costs of the 2nd Garnishee, KCB.
4. The application is opposed by the Judgment debtor by a replying affidavit dated 2nd December 2019 on the basis that the applicant had not filed any response to the applications dated 30th September 2019 filed by the Decree holder in the matter as at 8th October 2019 when the Judgment debtor and the decree holder entered into a consent compromising the applications dated 30th September 2019 with no order as to costs and so the consent could not have taken into consideration any costs borne by KCB because no costs had been incurred at the time.
5. That no justifiable reasons have been shown to review and/or set aside the consent order entered into as above.

Determination

6. In the case of ***Board of Trustees of National Social Security Fund –VS- Michael Mwalo (2015) Eklr*** the court stated as follows:

7. “ A court of law will not interfere with a consent Judgment except in circumstances that would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment it must be shown that it was obtained by fraud or collusion or by an agreement contrary to the policy of court.”

8. In the present matter the court is satisfied from the court record that on 8th October 2019 when the matter came for mention before court, Mr. Siganga advocate appeared for the decree holder, M/s Owuor appeared for Mr. Ogeto for the 1st Garnishee, M/s Osewe appeared for Mr. Abira for the 2nd Garnishee (now the applicant) and Mr. Kago appeared for the Judgment debtor.

9. Upon hearing the different counsel, a consent order was dictated to the court by counsel for the decree holder.

10. The impugned consent order was then signed by Mr. Kago for the Judgment debtor, M/s owuor for the 1st Garnishee and by M/s Osewe

for the 2nd Garnishee as the court record clearly shows.

11. The applicant has completely failed to demonstrate any good reason for the court to review and or set aside a consent order entered into and signed for the applicant before court.
12. The application is misconceived and an abuse of the court process.
13. The application is dismissed with costs.
14. The ruling applies to the matters the subject of the consent including ELRC Misc. Application no. 25, 26,27,28,29,31,32,33,34,35,37,39 and 41 of 2018.

Judgment Dated, Signed and delivered at Nairobi this 30th day of July, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances

M/s Osewe for 2nd Garnishee/Applicant

M/s Owour for 1st Garnishee

Mr. Amule for Decree holder

Mr. Kago for Judgment debtor.

Chrispo : court Clerk