

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 49 OF 2008

ELISHA CHEBII CHESINYA.....PLAINTIFF/RESPONDENT

VERSUS

DENNIS W. MICHUKI.....DEFENDANT/APPLICANT

RULING

The application dated 27/5/2013, was filed by the defendant/applicant through the firm of Mongeri & Co. Advocates. They came under certificate of urgency on 12/6/2013, and the court gave them today's hearing date in the presence of the respondent's counsel. The respondent filed a replying affidavit opposing the application. Today, neither the applicant nor his counsel have appeared in court. Ms Said, counsel for the respondent, was present and ready to proceed. In view of the fact that the applicant and his counsel did not appear, the court will presume that they are no longer interested in prosecuting their application which was strenuously opposed by the replying affidavit sworn by Elisha Chebii, the respondent herein. The respondent deponed that the consent which the applicant seeks to review was only entered into a month before the applicant sought to have it reviewed on grounds of illness; that the medical reports that were exhibited by the applicant were for the year 2011 and the only current medical report did not disclose that he had any serious ailments. He was referred for further examination. Bearing the above depositions in mind, and the fact that the applicant and counsel failed to attend court to prosecute their application, I find no merit in the application for reducing the instalments payable. In addition, a consent order had been recorded and it can only be set aside by another consent on grounds upon which a contract can be terminated. The application was opposed meaning that there is no consent. In **Brooke Bond Liebig (T) Ltd v Halya (1975)EA 266**, the Court of Appeal held that:-

“...a consent judgment may only be set aside for fraud, collusion or for any reason which would enable the court to set aside an agreement. See also *Flora Wasike v Destimo Wamboko (1982-88)1 KAR 625*. No grounds for interfering with the consent exist in this case.

For all these reasons, the application dated 27/5/2013, lacks merit and is hereby dismissed with costs to the respondent.

DATED and DELIVERED this 8th day of October, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

Ms Said for the plaintiff/respondent

N/A for the defendant/applicant

Kennedy – Court Assistant