



Wekesa v Sakam Enterprises Limited (Employment and Labour Relations Cause E027 of 2022) [2024] KEELRC 2532 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2532 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE E027 OF 2022
MA ONYANGO, J
OCTOBER 17, 2024**

BETWEEN

AGGREY WEKESA CLAIMANT

AND

SAKAM ENTERPRISES LIMITED RESPONDENT

RULING

1. Vide a Memorandum of Claim dated 9th September, 2022 the Claimant sought the following orders against the Respondent:
 1. An order that the Respondent pays the claimant the following
 - i. Salary arrears
 - ii. Payment in lieu of leave
 - iii. House allowance
 - iv. Overtime Service pay; s particularized under paragraph 9 above.
 2. Costs of the suit and interest
 3. Any other or further relief that this Honourable court deems fit and just to grant.
2. The Respondent filed a Statement of Response dated 19th April, 2023.
3. On 24th January 2024 the parties recorded a settlement in open court in the following terms:

By Consent

 1. Judgment be entered for the Claimant in the sum of Kshs. 10,0000 all inclusive.



2. That there be a stay of execution for 30 days.
4. By an application dated 11th April 2024, the Respondent sought the following orders against the Claimant: -
 - i. Spent
 - ii. That pending the hearing inter parties of this application, the Court do issue a temporary injunction restraining the Claimant by himself, or his agents or servants from attaching, taking possession, auctioning or in any way interfering with the Respondent/Applicant's enjoyment of its property as per the proclamation of attachment of movable property dated 9th April 2024 and all the other property
 - iii. That pending the hearing inter parties of this application, the Court do issue a temporary injunction restraining Remma Auctioneers Company Limited by itself or its agents or servants from attaching, taking possession, auctioning or in any way interfering with the Respondent/Applicant's enjoyment of its property as per the proclamation of attachment of movable property dated 9th April 2024 and all the other property.
 - iv. An order declaring the execution unlawful and cancelling the purported notice of proclamation of attachment of movable property dated 9th April 2024 served upon the Respondent/Applicant and an order that the auctioneers' costs be borne by the Claimant/Respondent
 - v. Costs of this application be provided for
 5. The grounds upon which the application is made are contained at the foot of the application and in the supporting affidavit sworn on 11th April 2024 by the Respondent's director. In brief they are as follows: that the Respondent and the Claimant entered into Deed of settlement dated 20th July 2023 for the final settlement of the Claimant's claim against the Respondent; that by consent of the parties, the Deed of settlement was adopted as an order of the Court on 24th January 2024 and the matter was marked as settled; that it was a term of the Deed of settlement that the Respondent do pay the Claimant an all-inclusive sum of Kshs. 10,000,000 in kind by giving the Claimant a Toyota Vanguard Reg. No. KCM 992L valued at Kshs 10,000,000, Toyota Hilux Reg. No. KAY 981Q valued at Kshs.1,000,000 and Land parcel No. Nyenyilel Scheme Turbo measuring 4 acres valued at Kshs 2,000,000 per acre; that later, parties substituted motor vehicle Reg. No. KAY 981Q Toyota Pick Up with FAW Lorry Reg. No. KCH 397P as the Respondent did not have the original log book for Motor Vehicle Reg. No. KAY 981P in their name; that it was a further term of the Deed of settlement/consent order that the Claimant discharges the Respondent from any claims and obligations arising from this suit; that the Applicant has now been served with a notice of proclamation of attachment of movable property by the Claimant through Remma Auctioneers Limited in which the Claimant has purported to attached 16 motor vehicles owned by the Respondent which vehicles were not part of the deed of settlement or consent order; that the execution is unlawful and improper as the Claimant already took possession of the two vehicles in the agreement and the delay in taking possession of the land parcel measuring 4 acres was occasioned by the surveyor being unwell for some time and also that the surveyor was also missing two maps required and this was communicated to the Claimant on 15th March 2024 by the Respondent; that the Respondent intends to auction all these vehicles through Reema Auctioneers despite the fact that only two vehicles listed in the proclamation of attachment of movable property had been agreed to be delivered to the Claimant in settlement of the Claimant and has already been delivered to him. It is also averred that the Applicant stands to be greatly prejudiced if the notice of



- proclamation of attachment of movable property dated 9th April 2024 is not lifted or cancelled by the court. It is also averred that the plaintiff's acts are likely to result in violence and a breach of the peace.
6. The Claimant opposed the application vide a Replying Affidavit sworn on 26th April 2024. In that affidavit, the Claimant averred that the Respondent has not been candid with pertinent information choosing to disclose to the court only that which favour a pleasant outcome to itself. According to the Claimant, judgment entered by this court by consent of the parties was in the following terms; "Judgment be entered for the Claimant in the sum of Kshs 10,000,000 all inclusive and there be stay of execution of 30 days."
 7. The Claimant stated despite the confident declaration by the Respondent to honor the alleged deed of settlement, the Respondent does not have the capacity to transfer the properties he as:
 - a. The Respondent does not own motor vehicle registration Nos. KCM 992L, KAY 981Q and KCH 397P and/or lacks capacity to effect transfer to the respondent of the said motor vehicles.
 - b. The Applicant has no capacity to transfer title Nos. Uasin Gishu/Ngenyile/2108 and 770 which properties are charged to investment and mortgages Bank to secure advances amounting to Kshs. 100,000,000/= as evidenced by the copies of search certificates marked AW 3 (a) and (b).
 8. It is further averred that the Respondent having failed to honor the terms of the consent recorded in court on 24th January 2024, the Claimant had no option but to execute for the decree; and this cannot by any stretch of imagination be interpreted to be breach of any deed of settlement, or an abridgement of any known person's constitutional rights.
 9. The Claimant contends that the warrants issued to the auctioneers are lawful for all people are equal before the law and lawful orders of the court must be respected. He further states that the Respondent has come to equity with tainted hands and its pleas should not be entertained.
 10. The Claimant urged the court to dismiss the instant application.
 11. The application was canvassed by way of written submissions. Both parties submissions dated 20th May 2024 are on record.
 12. I have considered the rival arguments and the documents filed. Though the Respondent maintains that it has met its end of bargain as per the terms of the consent order dated 24th January 2024 save for transfer of Land Parcel No. Nyenyile Scheme Turbo measuring 4 acres which according to the Respondent is awaiting transfer, the Claimant has denied that the vehicles have been transferred to him and maintained that the Respondent does not have ownership or the capacity to transfer motor vehicle Reg. No. KCM 992L, KAY 981Q and KCH 397P and also, that he has no capacity to transfer titles No. Uasin Gishu /Nyenyile/2108 and 770 as these properties are charged to investments and bank mortgages.
 13. As stated by the parties, this suit was concluded when judgment was entered for the Claimant against the Respondent by consent of parties on 24th January 2024. The court thereafter became fuctus officio.
 14. A Judgment debtor is under obligation to settle the decretal sum and has no further audience of the court unless the court's jurisdiction is properly invoked which can be done by either an application for review or an appeal.
 15. In the instant case the Applicant does not state why court's intervention is sought by the Applicant who from the face of the record is in default and has not obtained a stay of execution since the consent judgment was recorded in court.



16. In the case of Jersey Evening Post Limited v Al Thani (2002) JLR, which case was cited by the Supreme Court in the case of Raila Odinga & 2 Others Vs Independent Electoral and Boundaries Commission & 3 Others 2013 eKLR the Court held as follows: -

“...A court is functus officio when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available...”

17. Again in the Court of Appeal decision of Telkom Kenya Limited Vs John Ochanda (suing on his own behalf and on behalf of 996 Former Employees of Telkom Kenya Limited) 2014 eKLR, cited by L A Achode J. in the case of Re Estate of Kinuthia Mahuti (Deceased) Miscellaneous Application P&A No. 158 of 2017, 2018 eKLR, the Court of Appeal (Githinji, Karanja and Kiage JJA) observed as follows: -

“...Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon. It is a doctrine that has been recognized in the common law tradition from as long as the latter part of the 19th Century...”

18. Based on the above authorities, this Court finds that it cannot re-open this matter for an application to restrain the decree holder from realizing the fruits of his decree which the Applicant has not demonstrated to the court that he has settled in a matter which the court has finally determined by entering a consent judgment. The court is functus officio. The only exception would be if the Applicant was seeking review or extension of time, none of which is the case in the instant application.
19. I accordingly find no merit in the application and dismiss it with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 17TH DAY OF OCTOBER 2024

MAUREEN ONYANGO

JUDGE

