

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**ELRC APPEAL NO. E023 OF 2024**

*(Before D. K. N. Marete)*

**FURNCON SALES LTD.....APPELLANT**

**VERSUS**

**CHARLES OWUOR OWITI.....RESPONDENT**

**RULING**

The issue in dispute in this appeal is a undated consent purportedly signed by one, Solomon Kiore for the Appellant and the Respondent. It is also signed by Kounah and Company Advocates below the parties' signatures but the signature clause for the Respondent's Advocate, Thiongó Law Advocate remains

and unattended.

When the matter came for mention on 28th April, 2025, Miss Kyevea, counsel for the Respondent submitted that she had information that the matter had been settled with the Respondent. It was her further submission that she had not been informed and neither had she had instructions on the subject from her instructing client. She sought fourteen (14) days to establish the position and report back to court.

Kado, counsel for the Appellant submitted that a settlement and consent had been had *inter partes*. It was her further submission that their client did not involve them in the process of negotiation and consent and had only informed them on same morning. She sought a weeks time to report on this. This was awarded by court as of course.

The matter was later plagued with various submissions and counter submissions on the validity of the consent, forcing the court to, on 18th June, 2025 order the parties to file and serve their respective supporting documents on their positions. These were ultimately submitted albeit delay on part of the Appellant.

The Respondent in opposition to the consent filed an affidavit sworn on 28th May, 2025 in which he acknowledged the flow of the proceeding in the appeal so far. It was their further evidence that he had been offered and received a sum of Ksh.6000.00 which he utilized in meeting the medical treatment on his critically ill step-mother who was in dire need of medical attention.

It was at the stage of receiving these monies that he was issued with documents of which he was required to sign. Bearing in mind the urgency of the situation, the Respondent rushedly agreed to sign the document before he could pass them to his advocates on record for interpretation. This speaks to the fact that the respondent is illiterate and not able to read and or understand the English language. It was far much later that the Respondent came to learn that the documents he had signed were actually a consent confirming full settlement of both the Appeal and the trial court's proceeding. This was not only surprising but shocking.

The Respondent in the penultimate avers that his understanding on the Kshs.6000.00 advanced to himself was that this was a partial payment on the decretal sum. There was no mutual agreement for the settlement of this appeal, or at all. This being their statement on the matter, they left it open to court to make a determination on the issue.

The Appellant in an affidavit sworn on 15th October, 2025 avers that the Respondent's averments in their affidavit sworn on 28th May, 2025, particularly on issues of coercion, misrepresentation and illiteracy are not only false but intended to frustrate a valid and voluntary consent signed by the Respondent. Besides narrating a sequence of events and discussion leading to the signing of the

purported consent, they deem the Respondent's recantation of the purported consent dishonest and a contradiction of his prior conduct and statement and on the matter.

In civil law practice, a consent is a mutually agreed document signifying matters which have been voluntarily agreed on by the parties. Ordinarily, this would be filed in court for adoption as a judgment and order of the court. The baseline issue in the process of a consent is the agreement of the parties. They must all, on their own accord agree to sign the agreement without duress, undue influence or misrepresentation. The document then becomes the free will of the parties.

In ordinary parlance and practise, the ultimate consent of the parties is drawn by the counsel(s) of the parties in due consultation with their clients. It is rare that parties would on their own account draw a consent, more so when they are represented by advocates like we have here. The consent ultimately receives the blessings of counsel on opposite sides even without endorsement by the parties. In any event, counsels for the parties are in law and practice recognised as legal agents for pursuing and protecting the interest of their clientele.

The circumstances of this case are as different as they are weird. These embrace a situation where parties signed a consent that is disproportionately out of favour for the Respondent. It is tantamount to disowning his win and the decretal sum derived from the judgment of the trial court. This is on some of the wildest claims of having been misled by one's legal counsel. This is unbelievable, to say the least. It is not sounding and amount to an inexplicable about turn.

That this consent is not known to counsel for the Respondent makes it worse. It becomes suspicious and therefore unacceptable. Again, it breeds confusion, mistrust and contradiction of civil law practice as is known today. This is worsened by a recantation of the document by the Respondent who is a protagonist in the entire scheme.

It is very easy to find this consent obsolete, baseless and invalid. It is out of tune with conventional practice on the subject. This would be handy in closing such a sad chapter of legal practice as is known to all.

I therefore find that the undated consent presented to court by the Appellant is invalid and unsustainable.

Delivered, dated and signed this 11<sup>th</sup> day of November 2025.

**D. K. Njagi Marete**  
**JUDGE**

Appearances:

1. Miss Kounah instructed by Kounah & Company Advocates for the Appellant.
2. Miss Kyeva instructed by Thiongó Law Advocates for the Respondent.