



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CORAM: F. MUGAMBI, J**  
**CIVIL SUIT NO. E137 OF 2021**

**BETWEEN**

**JASPAL SINGH SAGOO** .....

**PLAINTIFF/APPLICANT**

**AND**

**NAVRAJ SINGH SAGOO** ..... **DEFENDANT/**  
**RESPONDENT**

**RULING**

**Introduction and Background**

1. By an application dated 14<sup>th</sup> February 2025, the plaintiff seeks, in the first instance, the adoption of a consent dated 16<sup>th</sup> March 2022 as an order of this Court for purposes of execution. In the alternative, the plaintiff prays for judgment to be entered in terms of prayer 2 of an earlier application dated 30<sup>th</sup> June 2021, or, failing that, for judgment on admission against the respondent in the sum of USD 970,867.46, together with

interest and costs. The application is opposed through a replying affidavit sworn by the respondent on 1<sup>st</sup> April 2025.

### **Analysis and Determination**

- 2.** The primary issue for determination is whether the consent dated 16<sup>th</sup> March 2022 should now be adopted as an order of this Court. It is not in dispute that the plaintiff had previously filed an application dated 30<sup>th</sup> June 2021 seeking judgment on admission for the sum of USD 703,040.60. That application was compromised by the consent now in question meaning that the application dated 30<sup>th</sup> June 2021 is now res judicata and cannot be revisited. The prayer seeking orders under that application cannot therefore be entertained.
  
- 3.** Although no explanation has been offered for the delay of nearly three years in seeking the adoption of the consent as a court order, the respondent contends that the applicant should not be permitted to benefit from his own inaction. While I am inclined to agree that the delay constitutes a procedural lapse on the part of the applicant, such infraction must be weighed against the legal

significance and binding nature of consents that are duly executed between parties.

4. Parties who enter into a consent do so with the legitimate expectation that their mutual agreement, freely negotiated and voluntarily executed, will be respected and enforced. If such agreements could be unilaterally disregarded or indefinitely postponed, the very foundation of consensual dispute resolution would be eroded. Consents are not mere procedural conveniences; they are solemn undertakings that carry the full weight of contractual obligation and judicial endorsement.
5. The consent dated 16<sup>th</sup> March 2022 was duly executed by both parties and filed in court. The applicant has not alleged, let alone demonstrated, any of the recognized grounds being fraud, misrepresentation, collusion, or mistake, that would justify setting aside the consent (See **Board of Trustees, National Social Security Fund V Michael Mwalo, [2015] eKLR**). The only issue raised is the delay in seeking its formal adoption. However, delay alone, absent prejudice or

impropriety, does not render a valid consent unenforceable. The amounts stipulated in the consent are not in dispute and are in fact acknowledged by the respondent in his statement of defense.

- 6.** Accordingly, the consent remains valid and binding upon the parties. The act of adoption by the Court does not alter its substance, nor does it create new obligations or impose fresh liabilities. Rather, the adoption serves to formally incorporate the consent into the record of the Court, so as to enable the enforcement of its terms through judicial processes. In other words, such adoption transforms a private agreement into a court-sanctioned directive, and allows the prevailing party to invoke the Court's enforcement powers such as execution proceedings should there be non-compliance.
- 7.** As such, I do not think that the validity of a consent is diminished by a delay in seeking its adoption. To hold otherwise would be to elevate form over substance and undermine the very purpose of consensual dispute resolution.

## **Disposition**

8. Accordingly, the application dated 14<sup>th</sup> February 2025 is allowed in the terms that the duly executed consent dated 16<sup>th</sup> March 2022 is hereby adopted as an order of this Court to pave way for execution. The remaining aspects of the claim will proceed to a full trial. The costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI  
THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUGAMBI  
JUDGE**