

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NYERI**

**MISCELLANEOUS APPLICATION NO E018 OF 2023**

**ONGERE KABA BENARD.....APPLICANT**

**VS**

**SHREE HARI PLAZA LIMITED  
(HARI KRISHNA IMPEX).....1<sup>ST</sup> RESPONDENT**

**DIRECTORATE OF OCCUPATIONAL SAFETY  
AND HEALTH SERVICES.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling determines the Notice of Motion dated 29<sup>th</sup> May 2025, by which the 1<sup>st</sup> Respondent seeks orders to quash the Warrants of Attachment issued to Mamalo Auctioneers on 20<sup>th</sup> May 2025 and the proclamation effected on 27<sup>th</sup> May 2025.
2. The 1<sup>st</sup> Respondent further seeks a declaration that the claim herein is fully settled and asks the Court to reassess the interest and additional costs payable.
3. The application is supported by an affidavit sworn by Cheryl Odipo and is based on the following grounds:
  - a) That the Applicant obtained a ruling in his favour on 26<sup>th</sup> July 2024 in the sum of Kshs. 268,000;

- b) That the sum awarded by the Director of Occupational Safety and Health Services, the Applicant's costs and accrued interest were paid to the Applicant through his Advocates;
- c) That on 9<sup>th</sup> November 2023, the sum of Kshs. 86,400 was paid to the Applicant;
- d) That on 16<sup>th</sup> August 2024, the 1<sup>st</sup> Respondent paid the sum of Kshs. 272,275 to the Applicant, through the firm of Mwakio Kirwa and Company Advocates;
- e) That the 1<sup>st</sup> Respondent has since paid the entire decretal sum amounting to Kshs. 358,675 broken down as follows:

Assessment by the Director	Kshs. 268,000
Less sum already paid	(86,400)
Add costs as assessed	60,675
Add accrued interest	<u>30,000</u>
Total	272,275

- f) That despite full and final settlement, the Applicant has proceeded to take out Warrants of Attachment and through Mamalo Auctioneers, proclaimed the 1<sup>st</sup> Respondent's goods;
- g) That in the Warrants of Attachment, the Applicant has misrepresented that only a sum of Kshs. 114,840 has been paid whereas the sum of Kshs. 358,675 has been paid;

- h) That the Applicant, through his Advocates on record, was duly advised of payment of the entire decretal sum, on 21<sup>st</sup> August 2024;
  - i) That the Applicant erroneously seeks to reap interest over sums that had already been paid;
  - j) That the decretal sum having been paid in full, there is no decree to execute and the Warrants of Attachment and the proclamation are illegal and irregular;
  - k) That the attachment and proclamation is therefore an attempt by the Applicant to unjustly enrich himself and is an abuse of the court process;
  - l) That it would amount to double jeopardy and breach of the 1<sup>st</sup> Respondent's rights to be required to settle the decretal sum twice.
4. The Applicant opposes the application by his replying affidavit sworn on 13<sup>th</sup> June 2025. He terms the application as incompetent and an abuse of the court process.
5. The Applicant depones that, while working for the 1<sup>st</sup> Respondent, he sustained injuries on 18<sup>th</sup> April 2022.
6. The 1<sup>st</sup> Respondent issued notification of the accident to the 2<sup>nd</sup> Respondent vide DOSH Form 1 and the 2<sup>nd</sup> Respondent made an award of Kshs. 268,000 in the Applicant's favour.
7. The Applicant states that the 2<sup>nd</sup> Respondent issued a demand notice to the 1<sup>st</sup> Respondent on 23<sup>rd</sup> September 2023 to settle the award.

8. The 1<sup>st</sup> Respondent is said to have failed to comply, prompting the Applicant to file an application for enforcement of the award, and on 3<sup>rd</sup> October 2023, the Court entered judgment in favour of the Applicant in the sum of Kshs. 268,000 plus costs and interest from the assessment date until payment in full.
9. The Applicant depones that costs were assessed at Kshs. 60,675. According to him, the total outstanding amount was as follows:

Decretal sum	Kshs. 268,000
Costs	60,765
Interest from 23/9/2022	<u>68,786</u>
Total	397,461

10. The Applicant concedes having received Kshs. 86,400 on 9<sup>th</sup> November 2023, as part payment. A further payment of Kshs. 272,275 was made on 16<sup>th</sup> August 2024.
11. The Applicant points out that the 1<sup>st</sup> Respondent subsequently filed an application dated 14<sup>th</sup> November 2023, seeking to set aside the judgment of 3<sup>rd</sup> October 2023.
12. The application dated 14<sup>th</sup> November 2023, was dismissed with costs on 26<sup>th</sup> July 2024, giving rise to a second Party and Party Bill of Costs dated 4<sup>th</sup> September 2024, which was taxed at Kshs. 93,920.
13. The Applicant asserts that the 1<sup>st</sup> Respondent is indebted to him to the tune of Kshs. 132,676 which he claims together with Auctioneers costs.

14. A reading of the pleadings and submissions filed by the 1<sup>st</sup> Respondent in this application reveals two things; first, that there was an underpayment of the decretal sum, which the 1<sup>st</sup> Respondent refers to as an arithmetical error; and second, that there was a subsequent Party and Party Bill of Costs arising from a post judgment application, which was taxed at Kshs. 93,920.

15. The 1<sup>st</sup> Respondent's complaint is that the award of costs in the second Bill of Costs is too high but there is no evidence of any reference filed to challenge the decision of the Taxing Master.

16. That being the case, I have no basis to reopen the Bill of Costs at this stage and with the admission by the 1<sup>st</sup> Respondent that there is an unpaid portion of the decretal sum, the present application is without merit and is dismissed with costs to the Applicant.

17. The interim orders granted on 26<sup>th</sup> June 2025 are vacated.

18. Orders accordingly.

**DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY DECEMBER 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ng'ang'a for the Applicant

Mr. Kirwa for the Respondent