



Kenya Union of Entertainment Industry Employees v Bomas of Kenya (Employment and Labour Relations Cause 758 of 2012) [2024] KEELRC 1045 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 1045 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 758 OF 2012**

**MN NDUMA, J
APRIL 25, 2024**

**BETWEEN
KENYA UNION OF ENTERTAINMENT INDUSTRY EMPLOYEES CLAIMANT
AND
BOMAS OF KENYA RESPONDENT**

RULING

- 1 The application by a notice of motion dated 6th September 2023 prays for an order in the following terms:-
 1. THAT the Honourable Court be pleased to issue an order directing the OCS Langata Police Station to arrest the respondent's General Manager (Peter Gitaa Koria) and produce him in court for sentencing to civil jail.
 2. THAT the respondent to pay the claimant/applicant Kshs.5,475,600/= with immediate effect after service of the Honourable Court order.
 3. THAT costs of this application be provided for by the respondent.
 4. THAT the court grants any other relief the Honourable Court may deem fit.
- 2 The application is premised on grounds (a) to (f) set out on the notice of motion and buttressed in the supporting affidavit of Job Mucuha the nub of which is that the court made a ruling on 10/6/2013 directing the respondent to pay all union dues and agency fees arrears within (7) days and in default the General Manager to be arrested and brought before court.
- 3 That upon service of the order, the respondent commenced payment in instalments and later the court on 22/5/2018 per Wasilwa J. directed execution to recover arrears to take place.



- 4 That on 19/5/2012, the Deputy Registrar Lady D.C. Mutai confirmed the union dues and agency fee arrears to be Kshs.5,475,600/=.
- 5 That the applicant commenced execution vide various auctioneer companies but were unable to execute.
- 6 The respondent moved to court to stop the execution and the court in a ruling dated 5/12/2022 found the matter to be res judicata.
- 7 The applicant states that the earlier orders for the arrest of the General Manager were not directed to a particular police officer to carry out the arrest and the registry declined to sign warrants of attachment since the law does not permit attachment against a public office such as the respondent.
- 8 The application is opposed in that this mode of execution is not known in law since there is no evidence before court that the General Manager was summoned or served with an order to appear in court and failed to honour the summons.
- 9 That no notice to show cause as provided in the law was taken out and served on the General Manager for the court to issue orders of arrest and or committal to civil jail should the General Manager fail to appear before court.
- 10 That execution of a valid judgment cannot be commenced by way of a notice of motion application as the present one. That various mode of execution are well established and the application is misconceived and bad in law.
- 11 Furthermore, the monies claimed by the claimant against the respondent were paid out and there is material evidence before court to prove that. That the claimant is seeking double payment which amounts to unjust enrichment.
- 12 That the respondent should not be punished for the claimant's ignorance of the law. In any event, the respondent being a government institution is not amenable to attachment vide a firm of auctioneers as the applicant purported to do as was stated in the replying affidavit of Mr. Jimmy Okidiang dated 22/10/2023.
- 13 The application be dismissed with costs therefore.

Determination

- 14 The mode of execution adopted by the applicant by a notice of motion application has no basis in law. If indeed the claimant is still owed any balance of the decretal sum by the respondent which is a government parastatal, execution may only be done vide a judicial review application seeking an order of mandamus to compel the institution to pay the balance of any monies still owed to the applicant.
- 15 In the ruling by Walilwa J. dated 22/5/2018 the Judge found that the respondents had demonstrated that they had paid the claimant all outstanding agency fees which stood at Kshs.1,638,460/= in the year 2016 and the balance was Kshs.143,186/=
- 16 The question as to whether the balance of Kshs.143,186/= was fully paid by the respondent has not been directly canvassed by either party in this application. The applicant ought not to continue engaging the court on matters that have been fully determined in the previous rulings of this court.
- 17 This application is defective and an abuse of the court process. The same is dismissed with costs.

DATED AT NAIROBI THIS 25TH DAY OF APRIL, 2024



MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Muchuha for claimant/applicant

Mr. Njiru for respondent

Mr. Kemboi, Court Assistant

