



**Kenya Tea Development Agency Holding Limited v Kimathi & 2 others  
(Cause 1293 of 2018) [2024] KEELRC 930 (KLR) (8 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 930 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1293 OF 2018  
B ONGAYA, J  
APRIL 8, 2024**

**BETWEEN**

**KENYA TEA DEVELOPMENT AGENCY HOLDING LIMITED ..... CLAIMANT**

**AND**

**LEE KIMATHI ..... 1<sup>ST</sup> RESPONDENT**

**IRENE ODHIAMBO T/A ZASHA AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**MERITAS LAW AFRICA LLP ADVOCATES (FORMERLY PROTUS**

**SAENDE GATHENGE AND JOHN ODHIAMBO OCHOLA**

**ADVOCATES ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The claimant sued the 1<sup>st</sup> respondent in ELRC Cause 658 of 2011 (herein after, previous suit). A decree issued in that suit flowing from the judgment delivered on 14.10.2015 and confirmed on 24.02.2016 awarding the claimant and the respondent in terms of specific orders.
2. The respondent alleges that the respondents jointly and severally sought to enforce the decree in so far as it was in favour of the 1<sup>st</sup> respondent herein. The 2<sup>nd</sup> respondent and the 3<sup>rd</sup> respondent were the auctioneer and advocate for the 1<sup>st</sup> respondent in that suit and in particular the impugned execution proceedings. The claimant alleges that during the execution the 2<sup>nd</sup> respondent obtained reinforcement of police officers and hired goons and broke into KTDA premises, seized and carted away KTDA's goods and essential office operations stopped. In the process, the claimant alleges that there was extensive damage to the claimant's property and disruption of operations together with its managed factories for six consecutive days resulting in losses in the sum of millions of shillings, the subject of the instant suit. The claimant alleges that warrants of attachment were unlawfully obtained.



3. The claimant's suit is based on the memorandum of claim dated 06.08.2018 and amended on 15.10.2018. The 3<sup>rd</sup> respondent was struck from the suit by a consent dated 24.06.2022. the claimant prayed for judgment against the 1<sup>st</sup> and 2<sup>nd</sup> respondents for:
  - a. Special damages of Kshs. 7, 566, 966.98.
  - b. General damages.
  - c. Exemplary damages.
  - d. Costs of the suit.
  - e. Compound interest on (a), (b) and (c) above from 01.12.2016 until payment in full.
4. The 1<sup>st</sup> respondent filed the amended response dated 25.10.2023 to oppose the claimant's amended memorandum dated 15.10.2018. The 1<sup>st</sup> respondent denied the claimant's claims and pleaded that the 1<sup>st</sup> and 2<sup>nd</sup> respondents lawfully undertook execution in the previous suit. The 2<sup>nd</sup> respondent's case and testimony was that the 1<sup>st</sup> respondent never directed the 2<sup>nd</sup> respondent on how to undertake the execution proceedings in the previous case.
5. The 2<sup>nd</sup> respondent filed a defence dated 08.12.2020 and filed on 09.12.2020 and prayed that the suit be struck out with costs. The 2<sup>nd</sup> respondent's case was that after the attachment and removal of proclaimed goods in the previous suit, the claimant herein offered to settle the decretal sum of Kshs. 5, 565, 717 and auctioneers charges of Kshs. 820,000.00. after the settlement of the decretal sum on 01.12.2016 and 02.12.2016 respectively, the 1<sup>st</sup> respondent's advocates authorised the 2<sup>nd</sup> respondent to release the attached goods which was done on 05.12.2016. The 2<sup>nd</sup> respondent denied any wrongdoing.
6. The claimant's witness (CW) was Mathew Ouma Odero, the Company secretary. The 1<sup>st</sup> respondent testified to oppose the suit. The 2<sup>nd</sup> respondent's equally testified at the hearing. Final submissions were filed for the parties. The claimant's submissions were filed on 05.03.2024 through G& A Advocates; for the 1<sup>st</sup> respondent they were filed through Saende Law Advocates and dated 15.03.2024; and for 2<sup>nd</sup> respondent dated 06.03.2024 through Kefa Ombati & Company Advocates.
7. The Court has considered the material on record and the parties' respective cases and returns that the suit must fail because of the following findings:
  - a. As testified for the claimant by CW, the suit arises out of the impugned execution in the previous suit. The further evidence is that the execution was undertaken by the 2<sup>nd</sup> respondent and the 1<sup>st</sup> respondent who was an employee in the that previous suit never gave the 2<sup>nd</sup> respondent instructions in the manner of carrying out the execution. In the circumstances, the dispute as originated appears not to revolve or evolve from an employment or work related dispute. The submission for 1<sup>st</sup> respondent is upheld in that regard.
  - b. The dispute arises out of the execution process in the previous suit. Section 34 of the [Civil Procedure Act](#) provides that all disputes arising from execution proceedings shall be determined by the court executing the decree in that suit and not by a separate suit. The section provides as follows:
    1. All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.



2. The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.

3. Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation.—for the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.

The Court therefore returns that the instant suit is incurably incompetent and an abuse of the court process as the alleged dispute ought to have been determined in the previous suit subject of the impugned execution proceedings.

c. The claimant satisfied the decree in the previous suit, paid auctioneers charges, and, the proclaimed goods were released to the claimant. In view of such action and in absence of appropriate application in the previous suit to challenge the warrants or the entire execution process, the Court returns that on a balance of probability the claimant has failed to establish the claim and to justify the prayers made.

8. The claimant has failed in the suit and will pay costs for the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

In conclusion, judgment is hereby entered for the 1<sup>st</sup> and 2<sup>nd</sup> respondents for dismissal of the suit with costs for the two respondents.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 8<sup>TH</sup> APRIL 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

