



**Okuro & 7 others v Onudi (Petition 5 of 2018)
[2024] KEELRC 1342 (KLR) (29 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1342 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 5 OF 2018**

**S RADIDO, J
MAY 29, 2024**

BETWEEN

- SAMWEL OKURO 1ST PETITIONER**
- SAMUEL ONDOLA 2ND PETITIONER**
- JACON MUGA 3RD PETITIONER**
- GEORGE AKONGO 4TH PETITIONER**
- CEPHAS KASERA 5TH PETITIONER**
- DEREK OBURA 6TH PETITIONER**
- GEORGE KOYIER 7TH PETITIONER**
- SELINE ODHIAMBO BONYO 8TH PETITIONER**

AND

**DR OLANGO ONUDI AG COUNTY SECRETARY, COUNTY GOVERNMENT
OF KISUMU RESPONDENT**

RULING

1. The Respondent filed a Motion dated 19 March 2024 seeking orders:
 - (a) ...
 - (b) That this Honourable Court be pleased to grant to the Respondent interim stay of execution of the decree herein.
 - (c) That this Honourable Court do grant interim stay of execution of the warrant of attachment and sale issued on the 12th March 2024.



- (d) That this Honourable Court be pleased to grant the Respondent/applicant an opportunity to settle the decretal sum of Kshs 451,361/- before the proclaimed goods are sold.
 - (e) That he is willing to settle the same in instalments should the County Government fail to do so.
 - (f) That the costs of this application be provided for.
2. When the Motion was placed before the Court on 21 March 2024, it granted an ex parte interim stay of execution on condition that the decretal sum of Kshs 451,361/- be deposited in the Court. The Respondent did not comply with the condition.
 3. The Petitioners filed Grounds of Opposition to the Motion on 14 April 2024.
 4. The Motion came up for an inter partes hearing on 15 April 2024 the Respondent sought 10 more days to comply with the condition.
 5. The Court urged the parties to attempt an out-of-court settlement and at the same time directed the Petitioners to respond to the Motion before 19 April 2024.
 6. The next time the Motion came up on 6 May 2024, the Court was told that the parties were still in talks and the Court scheduled the application for 9 May 2024.
 7. However, there was no agreement and the Court directed the parties to file and exchange submissions ahead of Ruling today.
 8. The direction was not complied with.
 9. The Court has considered the Motion, affidavits and Grounds of Opposition.
 10. The primary grounds advanced by the Respondent in support of the Motion were that he was acting in an official capacity when he suspended the Petitioners through letters dated 29 November 2017 and that since he was no longer in gainful employment, he should be allowed to settle the decretal amount in instalments.
 11. In opposing the Motion, the Petitioners asserted that the application was an attempt to have this Court to amend the judgment, the County Government could not settle the costs granted against the Respondent as this would be contrary to the Public Finance Management Act and that the Respondent had sufficient time to settle the taxed costs.
 12. The issue of whether the Respondent should bear personal liability was dealt with by the Court of Appeal in Kisumu Civil Appeal No. 79 of 2018, Dr Olango Onudi v Samuel Okuro & Ors on 17 March 2023, where the Court held:

In the end, I come to the conclusion that the Appellant acted without power and that as he failed to demonstrate that the action was that of the County Executive and not his personal one, then liability attached to him in person and the Respondents were entitled to bring proceedings against him in his name.
 13. The Court of Appeal proceeded to dismiss the Respondent's Appeal with costs on 17 March 2023.
 14. The execution herein relate to costs taxed on 30 October 2018.
 15. The Court has gone through the Court file several times and confirms that the Court did not award any costs to the Petitioners. The record also indicates that at some point the Court noted that there was no application to review the judgment. The only costs awarded were those of the appeal and these were awarded by the Court of Appeal on 17 March 2023.



16. It is apparent to this Court that the Deputy Registrar sitting as a Taxing Officer proceeded to tax the Petitioners Bill of Costs without jurisdiction. The Court simply did not allow or award costs.
17. Without an order granting the Petitioners costs, the taxation of the party to party costs was without legal foundation. The ensuing execution, therefore, cannot stand.
18. The Court further notes that the attempt at execution was made more than one year after judgment and/or taxation of costs without securing leave of the Court.

Orders

19. Flowing from the above, the Court sets aside/vacates the execution/warrants of attachment *ex debito justitiae*.
20. The Respondent's properties which were attached, if any, should be released by the auctioneer immediately and at the cost of the Petitioners.
21. The Respondent to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 29TH DAY OF MAY 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Petitioners N.E. Mogusu & Associates Advocates

For Respondent Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chemwolo

