



**Juma v Kenya Medical Supplies Authority (Employment and Labour Relations
Petition E160 of 2023) [2024] KEELRC 2787 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2787 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E160 OF 2023**

**HS WASILWA, J
NOVEMBER 14, 2024**

BETWEEN

CHARLES EZEKIEL JUMA PETITIONER

AND

KENYA MEDICAL SUPPLIES AUTHORITY RESPONDENT

RULING

1. The respondent herein filed an application under certificate of urgency on the 15th July 2024 seeking certain reliefs. The application was brought through a notice of motion accompanying the certificate of urgency where the applicant sought the following orders.
 1. That this application be certified urgent and that the same be heard ex parte in the first instance.
 2. That this honourable court be pleased to grant an order of stay of execution of the warrants of attachment dated 21st June and the proclamation dated 28th June 2024 pending the inter parties hearing and determination of this application.
 3. That the court be pleased to issue a declaration that the warrants of attachment dated 21st June 2024 and proclamation dated 28th June 2024 are unlawful and an abuse of the court process as the same were obtained fraudulently after the dree had been settled in full.
 4. That the court be pleased to set aside and or a null the warrants of attachment date 21st June, 2024 and the proclamation dated 28th June, 2024.
 5. That the petitioner/respondent be condemned to pay the costs of this application together with the auctioneer's charges.
2. The application was supported on the grounds set herein and supported by the affidavit of Andrew Mulwa:



- i. As per the consent judgment dated 24th April, 2024 the total sum of Kshs 11,968,904/- inclusive of costs was payable to the petitioner/respondent by the applicant.
 - ii. The applicant has paid to the petitioner/respondent the sum, of kshs 11,341,837.39 being the entire sum less the statutory deductions envisaged under section 49(2) of the employment act 2007.
 - iii. The petitioner/respondent has unreasonably persisted on demanding from the applicant the payment to himself of the statutory deductions envisaged under section 49(2) of the Employment Act 2007 and has pursuant to the said unlawful demands extracted the warrants of attachment dated 21st June 2024 and instructed an auctioneer to proclaim the applicant's office equipments which was done through a proclamation dated 28th June 2024.
 - iv. The payment of the statutory deduction effected on the decretal amount by the applicant pursuant to section 49(2) of the Employment Act 2007 to the petitioner/respondent as demanded by the petitioner/respondents would amount to double payment and the unjust enrichment to the petitioner/respondent.
 - v. The applicant is ready and willing to provide such security as the court may order for the performance of the decree or any part thereof found to be due and/or other order as may ultimately be binding upon it.
 - vi. The petitioner/respondent's aforesaid conduct and or actions which have no basis in law are only geared at vexing the applicant.
 - vii. This applicant has been made without unreasonable delay.
3. The respondent petitioner filed a replying affidavit dated 16/8/2024 where they aver that the application by the applicant is to deny them the realization of the fruits of their judgment which was realised after a consent of the parties exh JE2 annexed herein.
 4. The respondents further aver that they exhausted their decree ex JE 3 on 25th March 2024 and further added their costs as per Exh JE4.
 5. The respondents avers that he was finally paid kshs 11,116,304/95 in his personal account leaving a balance of kshs 852,599/80/-.
 6. A demand was made for payment of this balance on 13th May 2024 and the warrants of attachment were also issued. On 22nd July 2024 the respondent again paid kshs 225,532/45 vide a letter of 1st July 2024. The petitioners counsel again made a demand for payment of the outstanding kshs 627,067/35 (exh JE10).
 7. The respondents contend that they are entitled to be paid as per the consent of the parties.
 8. I have examined the averments and Submissions of the parties herein.
 9. The parties indeed agreed to settle this matter out of court and recorded a consent accordingly. A decree was further issued by this court.
 10. The parties having agreed to how to settle this petition this court cannot be invited to vary it. The parties agreed to subject payable in the consent of 13/3/2024 being kshs 11,968,904.74 after deduction of statutory deductions 35% tax plus all withheld salaries.
 11. On issue of pension, it was also agreed that the respondent applicant was to remit the same to the respondent's Medical Insurance Policy. Costs were to be agreed upon.



12. In this Court's view, it has not been demonstrated as to why the consent as filed should be varied in any way. In the circumstances, I find that the application is not merited. I will urge the parties to reconcile their figures and proceed to settle this claim, a substantial portion having already been settled.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 14TH DAY OF NOVEMBER, 2024.

HELLEN WASILWA

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

HELLEN WASILWA

JUDGE

