



REPUBLIC OF KENYA



KENYA LAW
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**Okuro & 7 others v Onudi (Petition 5 of 2018)
[2024] KEELRC 2842 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2842 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 5 OF 2018
NZIOKI WA MAKAU, J
NOVEMBER 11, 2024**

BETWEEN

SAMUEL OKURO & 7 OTHERS & 7 OTHERS & 7 OTHERS PETITIONER

AND

DR OLANGO ONUDI RESPONDENT

RULING

1. The application before the court is the one dated 24th June 2024 by the Applicants/Petitioners. It is premised in Order 45 Rule 1, Order 51 Rule 1, and other enabling provisions of the law, seeking the following orders:
 1. Spent
 2. The Honourable Court be pleased to review the ruling it delivered on 29th May 2024 by setting aside the orders it made vacating the execution and warrants of attachment issued herein.
 3. Costs of the application be provided for.
2. The application is grounded in the assertion that there is an error apparent on the record in the ruling that set aside the warrants of attachment issued on 12th March 2024. The Applicants contend that the court erroneously relied on the execution related to costs taxed on 30th October 2018, which they argue is not applicable in this case. They clarify that the warrants in question pertain to costs awarded by the Court of Appeal in KISUMU CIVIL APPEAL NO. 78 OF 2018, as documented in a certificate of taxation dated 23rd February 2024, amounting to Kshs 424,410/-. The Applicants assert that all the documentation attached to the application of the 1st February 2024 for recovery of costs in KISUMU CIVIL APPEAL NO. 78 OF 2018 clearly indicates that the execution was not related to the costs taxed on 30th October 2018. Therefore, they argue that the court's ruling was based on a non-existent execution process that was not properly before it. Supporting their application is an affidavit sworn by



Mr. N.E. Mogusu, which reiterates the grounds for the application while emphasizing that this court lacks the authority to overturn a decision made by the Court of Appeal.

3. In opposition the Respondent filed grounds of opposition dated 29th July 2024, arguing that no sufficient evidence has been presented to warrant the court's exercise of its discretion to set aside its orders. He claims that the application is unmerited, misconceived, mischievous, an afterthought, and an abuse of court process. Consequently, he calls for dismissal of the application with costs.
4. The issue of costs is before the court with warrants that the Court vacated. If indeed the matter was determined by the Court of Appeal in relation to costs, the issue of costs should be argued before the Court of Appeal. The Applicant asserts that the issue in relation to the dispute is a certificate of taxation dated 23rd February 2024, amounting to Kshs. 424,410/- issued by the Court of Appeal. If that is the case the warrants must be issued by the Court that awarded the costs. That court is not this particular court. No grounds have been presented to warrant the reversal of the orders of this Court. The outcome is that the application by the Petitioner is dismissed with costs to the Respondents.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 11TH DAY OF NOVEMBER 2024

NZIOKI WA MAKAU, MCIARB.

JUDGE

