



REPUBLIC OF KENYA



KENYA LAW
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**Mutanda v Jaramogi Oginga Odinga University of Science and Technology
(Cause 131 of 2017) [2023] KEELRC 2222 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2222 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 131 OF 2017
S RADIDO, J
SEPTEMBER 27, 2023**

BETWEEN

EDWIN EO MUTANDA CLAIMANT

AND

**JARAMOGI OGINGA ODINGA UNIVERSITY OF SCIENCE AND
TECHNOLOGY RESPONDENT**

RULING

1. Through a Motion dated 6 June 2023, the Respondent seeks orders:
 - i. ...
 - ii.
 - iii. That the execution process commenced by the Claimant herein vide warrant of attachment of moveable property in execution of a decree for money dated the 30th day of May 2023 be declared as irregular and hence null and void.
 - iv. That the auctioneer's costs, if any, payable as a result of the impugned execution process be ordered payable by the Claimant herein.
 - v. That a declaration be made that the Respondent has fully satisfied the decree issued on the 28th day of April 2021 and is therefore not indebted to the Claimant on account of the said decree.
 - vi. That at the ex-parte hearing hereof, interim orders be granted in terms of prayer 2 above pending the inter-partes hearing of this application.
 - vii. That the costs of this application be granted to the Respondent
2. The grounds in support of the Motion were that the Claimant had commenced execution more than 2 years after decree contrary to Order 22 Rule 18(1) of the Civil Procedure Rules that require a notice



to show cause; that the decree had been fully settled directly with the Claimant less income tax and outstanding imposts and that the execution was unlawful.

3. The Claimant filed a replying affidavit in opposition to the Motion on 14 June 2023, wherein he deponed that the decree was particular and the awards had not been satisfied as only Kshs 213,161/- out of Kshs 342,316/- had been paid; the outstanding impost had been surrendered on 30 May 2016 and 8 August 2016; income tax should not have been visited upon him due Respondent's inappropriate inaction; due process was followed in the execution and that there were pending proceedings before the Court of Appeal.
4. The Court took oral submissions from the parties on 21 June 2023. The submissions were in the same lines like the assertions in the affidavits.
5. The Court has considered the Motion, affidavits, submissions and the record and can make the following determinations.
6. One, the Court entered judgment in favour of the Claimant on 28 April 2021, and awarded him Kshs 342,316/- comprising overtime, uniform refund, soap allowance and accrued leave.
7. Two, the Respondent had paid the Claimant Kshs 213,161/- on or around 5 August 2021 purportedly in full settlement of the award after deducting Kshs 91,354/- on account of income tax.
8. Three, by dint of section 49(1) and (2) of the Employment Act, 2007, it is the compensation and wages found due to an employee which are subject to statutory deductions.
9. Four, by dint of the Income Tax Act, benefits due to an employee are also susceptible to income tax.
10. Five, the question of unsurrendered imposts in 2019 was not before the Court for determination, and it is not open to the Court to entertain such a head of claim through the instant application.
11. Six, under Order 22 Rule 18(1) of the Civil Procedure Rules, where an application for execution is made more than 1 year after the decree, the Court should first issue a notice to show cause to the decree debtor (there is a proviso where an application for execution had been made from date of last order on execution, which is not the case herein).
12. In the instant case, the notice to show cause was not issued, rendering the execution irregular.

Conclusion and Orders

13. The Court finds the execution commenced by the Claimant was irregular and the same is set aside with all attendant costs including auctioneer's fees if any to be met by the Claimant

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 27TH DAY OF SEPTEMBER 2023.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

Claimant in person

For Respondent Olel, Onyango, Ingutiah Advocates LLP

Court Assistant Chrispo Aura

