



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT**

**AT NAIROBI**

**CAUSE NUMBER 361 [N] OF 2009**

**BETWEEN**

**FRANCIS OYATSI.....CLAIMANT**

**VERSUS**

**NZOIA SUGAR COMPANY LIMITED.....RESPONDENT**

**RULING**

1. Judgment was delivered in favour of the Claimant, by the Industrial Court on 16<sup>th</sup> November 2011.
2. The decretal sum was Kshs. 13,646,271.
3. The Respondent paid the sum, less statutory deductions, at Kshs.10,080,026 through the Claimant's Advocates, on 8<sup>th</sup> February 2013.
4. The Respondent also successfully appealed the decision of the Industrial Court, in **Nairobi Civil Appeal No. 47 of 2012, Nzoia Sugar Company Limited v. Francis Oyatsi.**
5. Award of the Industrial Court was reduced to the sum of Kshs. 2,875, 189. Decree of the Court of Appeal was approved on 22<sup>nd</sup> April 2021 by Hon. Asike-Makhandia J.A.
6. The Respondent has applied, through the Notice of Motion dated 23<sup>rd</sup> July 2020, for refund of the sum of Kshs. 8,061,000 by the Claimant. The Application is based on the Affidavit of Ritah Mukhongo, Acting Corporation Secretary, sworn on 23<sup>rd</sup> July 2020.
7. Parties agreed that the Application is considered on the basis of their Affidavits and Submissions on record.
8. The Claimant submits rather startlingly, that the Judgment of the Court of Appeal was not delivered in accordance with the law, and is a nullity in law. It was not delivered in Open Court on 8<sup>th</sup> March 2019, or any other date. The Respondent's Advocates admitted to the Claimant that they picked the Judgment from Kenya Law Reports. Notice from the Court of Appeal indicates Judgment would be delivered on 7<sup>th</sup> June 2019. The Court of Appeal approved its Decree on 22<sup>nd</sup> April 2021, based on an error, that Judgment had been delivered on 8<sup>th</sup> March 2019.
9. The Claimant had on 20<sup>th</sup> April 2021 applied to the Court of Appeal to recall and cancel its Judgment. The Application is pending hearing before the Court of Appeal.
10. The Respondent in its Submissions dated 28<sup>th</sup> April 2021 submits that in light of the Judgment of the Court of Appeal, the Claimant is bound to refund the sum paid in excess, of the sum awarded by the Court of Appeal. Under Section 34 of the Civil Procedure Act, questions arising on execution of decree, including on refund of money paid under decree, are determined by the Court which passed the decree.

**The Court Finds: -**

11. It is not contested that the Claimant succeeded in his Claim, and was awarded a total sum of Kshs. 13,646,271 by Hon. Stewart Madzayo J. on 16<sup>th</sup> November 2011.
12. It is not contested that the Respondent lodged an Appeal at the **Court of Appeal of Kenya, in Nairobi Civil Appeal No. 47 of 2012,**

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13. There is an Order approving Decree of the Court of Appeal, made at Nairobi on 22<sup>nd</sup> April 2021. The Order is signed by Hon. Asike-Makhandia J.A. It specifically states, there is a Judgment of the Court of Appeal, dated 8<sup>th</sup> March 2019. The Claimant's Award of Kshs. 13,646,271 was reduced to the sum of Kshs. 2,875,189.

14. He does not dispute that he was paid the sum awarded at the Industrial Court. He is only disputing that there was a valid Judgment, delivered by the Court of Appeal.

15. The Court cannot decline the prayer for refund, based on the Claimant's suspicion that the Court of Appeal did not deliver a valid Judgment. This Court cannot in discharging its role under Section 34 of the Civil Procedure Act, ignore the Order made at the Court of Appeal, on 22<sup>nd</sup> April 2021.

16. The filing of an Application by the Claimant, seeking to have the Judgment of the Court of Appeal, "*recalled and cancelled*," for whatever reason, does not allow this Court, to ignore the existing Judgment and Order settling the terms of Decree, of the Court of Appeal.

**IT IS ORDERED:** -

*a. The Application filed by the Respondent dated 23<sup>rd</sup> January 2020 is allowed.*

*b. The Claimant shall refund the sum of Kshs. 8,061,000 to the Respondent, in default the Respondent to execute.*

*c. No order on the costs.*

*d. Interest granted to the Respondent at court rates, from the date of the ruling.*

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 25<sup>TH</sup> DAY OF FEBRUARY 2022.**

**James Rika**

**Judge**