



**Kenya Union of Entertainment and Music Industry Employees v Bomas of Kenya
(Cause 759 of 2012) [2022] KEELRC 13552 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13552 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 759 OF 2012
MN NDUMA, J
DECEMBER 15, 2022**

BETWEEN

**KENYA UNION OF ENTERTAINMENT AND MUSIC INDUSTRY
EMPLOYEES CLAIMANT**

AND

BOMAS OF KENYA RESPONDENT

*(Being an application to set aside and quash the ruling
and order of the Deputy Registrar dated May 19, 2022.)*

RULING

1. The respondent/applicant filed a notice of motion application dated June 2, 2022 in which an order is sought in the following terms:-
 1. Spent
 2. Spent
 3. That the court be pleased to set aside and quash the ruling and order of the Deputy Registrar dated May 19, 2022 which amounts to sitting as an appellate court as orders contradict the ruling of the learned Judge Wasilwa, J dated May 31, 2017 rejecting the claim for agency fees by the union.
 4. Costs of the application.
2. The application is premised on grounds set out on the face of the notice of motion numbered 1 to 7 and buttressed in the supporting affidavit of Jimmy Okidiang, the Human Resource Officer of the respondent.



3. The grounds are that the suit was heard and determined by Wasilwa, J and a consent was recorded to the effect that agency fees arrears was by then Kshs 1,639,460.00 and the issue that remained for determination by the court was whether the respondent could proceed to deduct agency fees from employees who had resigned.
4. That on May 31, 2017, the court made a ruling on the issue of deduction of agency fee for the members who had resigned and joined another union and the court held that the respondent could not effect such deductions.
5. That the Honourable Deputy Registrar issued an order dated May 19, 2022 allowing the claimant to proceed with execution against the Respondent on an issue of agency fees arrears which the court had found was not tenable vide the ruling dated May 31, 2017.
6. That the orders by the Registrar are misconceived, an abuse of court process by revising orders of Wasilwa, J as if sitting on appeal.
7. That it is in the interest of justice and fair play that the orders of the Deputy Registrar be set aside having been granted without jurisdiction.
8. The claimant filed a replying affidavit sworn to on June 17, 2022 in which it opposes the application stating that the issues raised in the application are *res-judicata* having been determined by Wasilwa, J in application dated December 19, 2017. The ruling of the court on the same issue was on May 22, 2018.
9. That the claimants are not demanding agency fees from any member who had withdrawn and joined another union. That the annexures to the present application are similar to those annexed to the application dated December 17, 2017 which was dismissed by Wasilaw, J. That following the ruling of Wasilwa, J the claimant appointed Cash Crop Auctioneers to execute the orders and decree of the court pursuant to the ruling of Wasilwa, J on payment of arrear agency fees to non- members but not those who had resigned from it and joined other unions.
10. That the court has no jurisdiction to revisit this matter since it is *res-judicata*.
11. That the Deputy Registrar Daisy C Mutai delivered a ruling on December 5, 2019, directing parties to submit on how much had been paid and what the arrear fees were.
12. That on May 19, 2022, the Deputy Registrar issued orders directing execution to proceed if the respondent did not pay the arrear fees as per the ruling of Wasilwa, J.
13. That the application is an abuse of the court process and it be dismissed with costs.
14. The respondent filed further affidavit in which it joined issue with the claimant and stated that the Deputy Registrar was misguided by representations by the claimant in which it purported to claim arrear agency fees effective the year 2012 instead of July 11, 2018 when the matter was settled by consent.
15. That the Deputy Registrar wrongly ordered for execution of agency fees effective 2012 which contradicted the court orders issued by Wasilwa, J. That the only decree available is to the effect that agency fee had been paid as at July 11, 2019 and the purported decree on record which had never been served nor drawn is contrary to the orders of Wasilwa, J.
16. That this endless litigation need to be brought to an end on issues that are *res-judicata*. That the application be granted as prayed.



17. The parties filed submissions which the court has duly considered. The only matter for determination is whether the orders by the Deputy Registrar dated May 19, 2022 are in terms of the ruling of Wasilwa, J dated May 31, 2017 and the further ruling by the court dated July 9, 2019.
18. The court has carefully considered the depositions by the parties and the ruling by Wasilwa, J dated May 31, 2017 in which the court held at paragraph 16 of the ruling

“That being the position, it is my finding in this case that the claim by the applicants against the respondents for payment of agency fees from their non-members who have moved onto another union is not tenable and the same is therefore rejected.”
19. I have also considered the ruling by Wasilwa, J. dated May 22, 2018, in which Wasilwa, J held at paragraph 12, 13 and 14 of the ruling as follows:-
 11. “The respondent/applicants have submitted that they have paid the claimants all the outstanding agency fees which they say stood at 1,639,460 in 2016 and that the balance is 143,186. The respondents did not demonstrate how they have paid the said sums.
 13. I do not find the application by the respondent/applicants merited. They have not demonstrated payment of the agency fees as claimed. I therefore find this application not proved and I dismiss it accordingly. I order execution to proceed. (Emphasis added)
 14. Costs in the cause.”
20. Upon a careful consideration of the matter, I do find that the ruling and the orders by the Deputy Registrar dated May 19, 2022 is consistent with the ruling by Wasilwa, J on May 31, 2017 and May 22, 2018 and the application by the respondent raises no valid grounds for setting aside that ruling by the Hon Daisy Mutai, Deputy Registrar.
21. Accordingly, the court finds the application has no merit and is dismissed. The matters raised in this application are *res-judicata* by dint of the two rulings by Wasilwa, J.
22. Costs to follow the event.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 15TH DAY OF DECEMBER, 2022.

MATHEWS N NDUMA

JUDGE

Appearances

Mr Masese for respondent/applicant.

Mr Muchuha for claimant union.

Ekale – court clerk

