



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 69 OF 2015**

**WYCLIFFE MANG'OLI WEKULO .....CLAIMANT**

**v**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**RULING**

1. A brief background would be in order.
2. The Court had in a judgment delivered on 8 October 2019 entered judgment for the Claimant. The award was to attract interest at court rates from the date of filing the Cause.
3. On 22 January 2020, the Deputy Registrar issued a Certificate of Order against the Government in terms of Order 29 Rule 3 of the Civil Procedure Rules.
4. The Claimant filed his bill of costs on 4 February 2020, but before taxation, the parties entered into consent on the costs. The Deputy Registrar issued a Certificate of Costs on 19 February 2020.
5. Seeing no payment, the Claimant applied to execute the decree on 10 July 2020 and on the same day, the Deputy Registrar issued a Notice to Show-Cause why execution should not issue under Order 22 Rule 18 of the Civil Procedure Rules.
6. When the Notice came upon 11 August 2020 before the Deputy Registrar, she directed that it be placed before the Judge on 24 September 2020 for further directions.
7. However, the Notice was placed again before the Deputy Registrar on 24 September 2020, and she directed that it be placed before the Judge on 4 November 2020.
8. The Claimant did not attend the Court on 4 November 2020, and the Court dismissed the Notice for non-attendance.
9. The Claimant was aggrieved, and he filed a Motion dated 9 November 2020 seeking orders:
  1. THAT this Honourable Court be pleased to reinstate the notice to show-cause dated 10/8/2020, which was dismissed during the virtual mention on 4/11/2020 for non-attendance on the part of the counsel for the Claimant.
  2. THAT costs of this application be provided for.
10. The primary grounds advanced in support of the Motion were that the Cause had already been heard and determined and there was a decree on record; the Notice to Show-Cause was coming up for directions on whether the Respondent should pay interest and not hearing, and that there was an interruption with the virtual link on the day in question.
11. Without even considering the case of the Respondent on the merits, the Court finds the instant Motion a non-starter for three principal reasons.
12. A non-starter because in the first instance, the Notice to Show-Cause was issued irregularly. Order 22 Rule 18 of the Civil Procedure Rules applies under certain conditions that had not materialised. A year had not passed after the issuing of the decree, nor was the decree against a legal representative of the Respondent.
13. Consequently, the mode of execution by the Claimant was more of an attempt to short-circuit the normal and first instance mode of

