



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 365 OF 2018

PHILIP OWASI.....1st CLAIMANT

NAMUEL ONDERI.....2nd CLAIMANT

VERSUS

REV PATRICK LIHANDA.....1st RESPONDENT

REV ZEDEKIA ORERA.....2nd RESPONDENT

REV ELISHA KIMAIYO

(sued on behalf of Pentecostal Bible College- PBC being a Department of

PAG (K) Church3rd RESPONDENT

PENTECOSTAL ASSEMBLIES OF GOD.....INTERESTED PARTY

RULING

1. On 18 February 2019, the Court referred the dispute herein to mediation and a mediation settlement agreement was reached on 20 September 2019.
2. The Court adopted the Agreement, and it provided:
 - (a) The Pentecostal Bible College to reinstate the Plaintiffs Philip Owasi (ID No.xxxx) and Nemuel Onderi (ID No. xxxx) back into office.
 - (b) The Pentecostal Bible College will pay the Plaintiffs Philip Owasi (ID No. xxxx) and Nemuel Onderi (ID No. xxxx) their salary arrears, including house allowance and statutory dues from the date of redeployment or stoppage of salary as appropriate.
 - (c) A sum of Kenya shillings thirty thousand (Kshs 30,000/-) only shall be payable to Nemuel Onderi (ID No. xxxx) for direct medical expenses incurred by the said Nemuel Onderi (ID No. xxxx) due to non-remittance of NHIF payments by the employer, Pentecostal Bible College.
 - (d) General damages shall be paid to the Plaintiff Philip Owasi (ID No. xxxx) and Nemuel Onderi (ID No. xxxx) as follows:
 - (i) Philip Owasi (ID No. xxxx): A sum of Kenya shillings two hundred thousand (Kshs 200,000/-) only and
 - (ii) Nemuel Onderi (ID No. xxxx): A sum of Kenya shillings one hundred and fifty thousand (Kshs 150,000/-) only.
 - (e) A consolidated sum of Kenya shillings sixty-one thousand (Kshs 61,000/-) being legal expenses incurred by the Plaintiffs Philip Owasi (ID No. xxxx) and Nemuel Onderi in the matter.
3. The Respondents did not comply with the terms of the Agreement, and the Claimants moved to execute.
4. The execution prompted the Respondents to move the Court under a certificate of urgency on 9 June 2021, seeking orders:

(1) ...

(2) ...

(3) There be a stay of execution and stay of sale of properties of the applicant attached by Pavement Auctioneers, namely.

(4) The motor vehicle registration no KCA 139R Toyota Probox, which have been attached, be released on running attachment until the final determination of this application.

(5) The interim orders of stay of attachment and stay of sale to remain in force and or be extended after the inter partes hearing until the final determination of this application.

(6) The decree issued in this matter giving rise to the subject execution be recalled and set aside, and the attachment be wholly lifted.

(7) The Honourable Court do direct further mediation to include all parties to this suit to resolve the dispute finally.

(8) Costs of this application and of the auctioneer's be paid by the Claimants/Respondents.

5. When the Motion was placed before the Court on 10 June 2021, it granted an interim stay on condition the Respondents deposited Kshs 2,000,000/- in Court on or before 11 June 2021.

6. The Respondent did not comply with the condition, and on 15 June 2021, they sought more time to comply, and the Court gave them until 30 June 2021.

7. On the same day, the Court directed the parties to file and exchange affidavits and submissions within set timelines. The directives were not complied with.

8. The main grounds advanced by the Respondents in support of the Motion seeking stay of execution and vacation of the attachment were that the decretal sum did not reflect the decree; that notice of execution as required by Order 22 Rule 18 of the Civil Procedure Rules had not been served; there was no proclamation before attachment; that the 1st Respondent was not aware of the mediation and some of the heads of reliefs were not pleaded.

9. The Court has considered the Motion and affidavit in support and finds no merit therein.

10. One, the 2nd and 3rd Respondents (General Secretary and member of Executive Committee) signed the Mediation Agreement.

11. Although alleging that they were strangers to the relationship with the Claimants, the 1st Respondent who deposed he was the Principal of the College did not file or disclose the names of the registered officials of the Church.

12. Two, the Respondents have not established that the Mediation Agreement was fraudulently procured to warrant being set aside.

13. Lastly, the Court granted an interim stay of execution on a condition which the Respondents did not fulfil up to the time of this Ruling.

14. The Motion is dismissed with costs to the Claimants.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF DECEMBER 2021.

RADIDO STEPHEN, MCIARB

JUDGE

APPEARANCES

FOR CLAIMANTS ERIC GARO & CO. ADVOCATES

FOR RESPONDENTS A B L MUSIEGA & CO. ADVOCATES

COURT ASSISTANT CHRISPO AURA