



**IN THE REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE 267 OF 2014**

(Before Hon. Justice Hellen S. Wasilwa 27<sup>th</sup> February, 2020)

**PETER KIMEU MOSE & 13 OTHERS....CLAIMANT**

**VERSUS**

**HOTEL MANG.....RESPONDENT**

**RULING**

1. The Respondent/Applicant filed a Notice of Motion on 7<sup>th</sup> October, 2019 seeking the following Orders:-

**1. Spent**

**2. THAT this Honourable Court does grant a stay of execution of the warrants issued by this Court and dated 1<sup>st</sup> October, 2019, pending the hearing and determination of the instant application.**

**3. THAT the warrants issued by the Deputy Registrar herein dated 1<sup>st</sup> October, 2019 be set aside.**

**4. THAT the Consent Judgment dated 27<sup>th</sup> January, 2016 and filed on 28<sup>th</sup> January, 2016 be deemed as adopted by this Court.**

**5. THAT the costs of this application be provided for.**

**6. THAT this Honourable Court be pleased to make such further or other orders as it may deem fit and just to grant.**

2. The application is based on grounds that:-

**1. Subsequent to the delivery of Judgment on 19<sup>th</sup> June, 2015, the parties through their advocates negotiated a lesser settlement amount compared to that awarded by the Court. Consequently, the parties recorded a consent on 27<sup>th</sup> January, 2016 to compromise the entire suit by payment of Kshs. 2,352,000/=.**

**2. The payment of agreed judgment sum was made to the firm of M/s Wangari Ndirangu and the matter was marked as settled. The Claimants/ Respondents then appointed a new advocate to have the consent set aside and sought to come on record but the Court on 2<sup>nd</sup> May, 2019 struck out their application as the advocate was not properly on record.**

**3. The Respondents' advocate has not made any effort to comply with the directive of the Court not re-filed her application. However, she has illegally obtained fresh warrants of attachment of the Applicant's assets on the assumption that the judgment sum was not fully settled and that the consent by the parties was invalid.**

**4. It is necessary for the parties to return to Court and obtain the necessary orders to have the Consent adopted by the Court and the Respondents' actions stopped.**

3. The Application is supported by the affidavit of Monica W. Kinuthia, the Applicant's Director, sworn on 7<sup>th</sup> October, 2019 in which she reiterates the grounds set out in the application.

### **Claimants/Respondents' case**

4. In response to the application, the Respondents filed a Replying Affidavit sworn on their behalf by Peter Kimeu Mose, the 1<sup>st</sup> Claimant/Respondent herein, on 11<sup>th</sup> October, 2019.
5. He avers that their advocate is properly on record as the consent for change of advocates was filed in Court on 14<sup>th</sup> March, 2017 and adopted by the Court on 20<sup>th</sup> June, 2019. He avers that the consent dated 27<sup>th</sup> January, 2016 and filed on 28<sup>th</sup> January, 2016 was never adopted. He admits that their application dated 14<sup>th</sup> September, 2018 was dismissed because their current advocate was not on record.
6. He avers that the warrants of proclamation issued on 1<sup>st</sup> October, 2019 were properly issued by the Court and that they oppose the adoption of the consent dated 27<sup>th</sup> January, 2016 and filed on 28<sup>th</sup> January, 2016. He contends that the Applicant should pay the amounts provided in the warrants together with Auctioneers fees.
7. The application was canvassed by way of written submissions with each party filing its respective submissions.

### **Applicant's submissions**

8. The Applicant submits that pursuant to the provisions of Order 9 Rule 9 of the Civil Procedure Rules it was neither served with an application by the Respondent's counsel to come on record nor the consent between the Respondents' previous and current counsel. It is its submission that there is no evidence that the Respondents' advocates have properly come on record.
9. It submits that until and unless the Consent Judgment dated 27<sup>th</sup> January, 2016 is set aside the same remains a valid consent. It submits that the Respondents acted illegally by procuring warrants of attachment where no valid decree or judgment debt was in existence.
10. It submits that the Respondents have not proven a case for procuring warrants and that the application ought to be allowed as the Consent was executed by both parties' counsel. It further submits that since the Respondents appointed a new Counsel the adoption of the consent cannot be done by agreement of parties but by an order of this Court.

### **Respondents' submissions**

11. The Respondents submit that their advocate is properly on record as the consent seeking to come on record was adopted by the Court on 20<sup>th</sup> June, 2019. They submit that this Court in its Judgment dated 22<sup>nd</sup> January, 2016 held that there is no indication that there was a Consent Judgment.
12. They further submit that an appeal does not lie since the purported consent Judgment was never adopted by the Court and the warrants of proclamation have been properly issued.
13. I have considered the averments of both Parties. That on issue of representation of Counsel by the Claimant, there is a consent filed in Court dated 9.3.3017 and filed on 14/3/3017 by Wangari Ndirangu and Company Advocates and Lucy Njiru and Company Advocates allowing Lucy Njiru of Lucy Njiru & Company Advocate to take over the matter on behalf of the Claimant.
14. This consent was not brought to this Court's attention as at the time of reading its ruling read on 2/5/2019. I made the said ruling in error then assuming that Miss Njiru was not properly on record when in fact she was.
15. That issue then having been resolved, the next issue is to consider whether the consent judgement dated 27/1/2016 and filed in Court on 28/1/2016 is deemed adopted by this Court.
16. There is no indication that the Consent between the Counsels on record filed in Court on 28/1/2016 was adopted by this Court. It remains just a consent of the 2 Parties but this Court has not been moved to adopt it. There being questions about the same consent, the circumstances under which it was done after the Court's judgment must be explained to this Court for it to be adopted as a Court order.
17. As to the issue of stay pending execution, there are serious issues to be resolved before execution should proceed. I will therefore confirm stay pending filing of fresh application in relation to the consent herein after enjoining of the firm of Wangari Ndirangu and Company Advocates as per my ruling of 2/5/2019
18. Costs in the cause.

**Dated and delivered in open Court this 27<sup>th</sup> day of February, 2020.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Miss Nagaba holding brief Miss Lucy Njiru for Claimant

Respondent – Absent