



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 168 OF 2017

SWALAH DIN ABU MOHAMED.....CLAIMANT

VS

TAHMEED COACH LIMITED.....RESPONDENT

RULING

1. On 28th February 2019, I delivered judgment in favour of the Claimant in the following terms:

- a. 12 months' salary in compensation.....Kshs. 260,400
- b. 1 month's salary in lieu of notice.....21,700
- c. Salary for January 2017.....21,700
- d. Leave pay for 10 years.....151,900

Total.....455,700

2. I also awarded costs and interest to the Claimant.

3. The Claimant subsequently brought an application by way of Notice of Motion dated 14th January 2019 and filed in court on 21st January 2020.

4. The application seeks the following orders:

- a. An order to compel the following Directors of the Respondent Company to attend court for oral examination on oath regarding the Respondent's means and assets:

Ali Hamud Nasoro

P.O. Box 80925

MOMBASA

Hamud Ahmad Shamis

P.O. Box 80925

MOMBASA

- b. An order directing the said Directors to produce the Respondent's books, papers, documents and/or evidence showing the financial affairs of the Company from January 2019 to date;

c. In default of such attendance and/or provision of suitable means and assets for the satisfaction of the Decree of this Court, an order declaring the said Directors jointly and/or severally liable for satisfaction of the Decree;

d. Leave for the Claimant to execute the Decree against the said Directors of the Respondent personally, in default of payment of the decretal amount.

5. The application is supported by the Claimant's affidavit and is based on the following grounds:

a. The Respondent has failed to satisfy the Decree against it and has made no commitment to settle the said amount;

b. The Respondent's administrators have refused to allow auctioneers into the Respondent's premises to attach goods in order to satisfy the Decree despite several attempts to do so;

c. The Directors are elusive.

6. In his affidavit in support of the application, the Claimant depones that commencement of execution proceedings by way of attachment and sale of the Respondent's moveable properties did not yield anything as the Respondent refused entry to the instructed auctioneer, Jagani Auctioneers, into the Respondent's offices and motor vehicle yard.

7. The Claimant further depones that the only motor vehicle attached by the Auctioneer was later established to belong to a separate company, Tahmeed Express Limited.

8. The Claimant states that the Warrants of Attachment and Sale were withdrawn and fresh ones issued to Auto Land Auctioneers. The Respondent again refused to allow the Auctioneers entry into its offices and motor vehicle yard.

9. The Directors were duly served with this application but chose not to respond.

10. Upon reading the Claimant's affidavit in support of the application and upon perusal of the documents attached thereto, I am satisfied that the Respondent has deliberately frustrated execution of the Decree of this Court. I am therefore further satisfied that a case for summons directed at the Respondent's known Directors for the purpose of examination on oath is necessary.

11. Consequently, I direct that the following Directors of the Respondent shall appear before this Court on a date to be set by the Court, upon resumption of normal court operations, for purposes of examination under Order 22 Rule 35 of the Civil Procedure Rules:

a) Ali Hamud Nasoro

P.O. Box 80925

MOMBASA

b) Hamud Ahmad Shamis

P.O. Box 80925 MOMBASA

12. The costs of this application will be borne by the Respondent.

13. It is so ordered.

DATED SIGNED AND DELIVERED AT MACHAKOS THIS 9TH DAY OF APRIL 2020

LINNET NDOLO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the

COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties electronically, with their consent. The parties have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules which requires that all judgments and rulings be pronounced in open court. In permitting this course, the Court is guided by Article 159(2)(d) of the Constitution of Kenya which commands the Court to render substantive justice without undue regard to technicalities, Article 40

of the Constitution which guarantees access to justice, and Section 18 of the Civil Procedure Act which imposes a duty to employ suitable technology to facilitate just, expeditious, proportionate and affordable resolution of civil disputes. Further, in view of the ensuing disruption of the court diary, this ruling has been delivered during the court recess.

LINNET NDOLO

JUDGE

Appearance:

Mr. Salim for the Claimant

No appearance for the Respondent