

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 450 OF 2014

BETWEEN

OMWOYO MAKIYA HESBON.....CLAIMANT

VERSUS

OJODE UDOTO & ONJORO ADVOCATES.....RESPONDENT

RULING

1. Judgment was entered in favour of the Claimant for a sum of Kshs. 106,400, plus costs and interest, on 19th February 2016.
2. The Party to Party Bill of Costs was subsequently filed and taxed. Certificate of Costs issued on 8th March 2018.
3. The Claimant applied to execute decree on 17th April 2018.
4. The Respondent filed an Application dated 22nd May 2018, asking the Court to stay execution of the decree. The Court is prayed to set aside Certificate of Costs, Notice to Show Cause, and Decree, on the ground that they are invalid.
5. The Application is supported by the Affidavit of Phillip Ojode Advocate, sworn on 22nd May 2018. It is the position of the Respondent that the Claimant has received part-payment of the decreed sum. The Respondent also revives matters that were subject of the main hearing, to the effect that termination of the Claimant's contract was based on valid reason.
6. The Claimant filed his Replying Affidavit on 6th June 2018. His position is that the Application is in abuse of the process of the Court. Execution proceedings were taken out within the confines of the law.
7. It was agreed on 6th June 2018, that the Application is considered and determined based on the respective Affidavits and Submissions. It was confirmed on 6th December 2018 that Submissions are on record.

The Court Finds:-

8. The Respondent has not shown that there is any defect in the execution proceedings taken out by the Claimant. There is nothing irregular with any document filed or extracted by the Claimant, pursuant to execution of decree. If the Respondent has paid part of the judgment debt, this should be deducted from the judgment debt. It does not warrant setting aside of the Certificate of Costs, Notice to Show Cause and Decree.
9. The dispute relating to the circumstances of termination was dealt with by the Court, upon hearing the Parties, in the Judgment on record. It is in abuse of the process of the Court to regurgitate the issue through an Application seeking to set aside a Certificate of Costs. ***The Application dated 22nd May 2018, filed by the Respondent on the same date, has no merit. It is dismissed with costs to the Claimant.***

Dated and delivered at Mombasa this 22nd day of February 2019.

James Rika

Judge