



**REPUBLIC OF KENYA**

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

**CASE NO. 357 OF 2014**

*(Before Hon. Justice Mathews N. Nduma)*

CAROLLY ONYANGO.....1<sup>ST</sup> CLAIMANT  
ALBERT ISAGI.....2<sup>ND</sup> CLAIMANT  
ELIUD MOKWERI.....3<sup>RD</sup> CLAIMANT  
DENIS KINUA MWANGI.....4<sup>TH</sup> CLAIMANT  
CAREEN N. SIMIYU.....5<sup>TH</sup> CLAIMANT  
OLIVER IYAYA SIMWELO.....6<sup>TH</sup> CLAIMANT  
DAIS OMUSOLO.....7<sup>TH</sup> CLAIMANT  
KENNETH BOLO.....8<sup>TH</sup> CLAIMANT  
WYCLIFFE M. MORARI.....9<sup>TH</sup> CLAIMANT  
CHRISTINE CHEMUK.....10<sup>TH</sup> CLAIMANT  
ALPHOSE OSSORETH.....11<sup>TH</sup> CLAIMANT  
AMBROSE KOSGEY.....12<sup>TH</sup> CLAIMANT  
BEN ODONDI OMONDI.....13<sup>TH</sup> CLAIMANT  
RAY ODUOR.....14<sup>TH</sup> CLAIMANT  
RISPER JEPKOECH MASSAI.....15<sup>TH</sup> CLAIMANT  
OPAR BENARD ODHIAMBO.....16<sup>TH</sup> CLAIMANT  
ERICK ODHIAMBO OMUNDI.....17<sup>TH</sup> CLAIMANT  
ERICK OCHIENG OMOLO.....18<sup>TH</sup> CLAIMANT  
FRED OMBUI.....19<sup>TH</sup> CLAIMANT  
STEPHEN OMUGU.....20<sup>TH</sup> CLAIMANT  
EDWARD NYAKINYA.....21<sup>ST</sup> CLAIMANT

PHILIP JAMES MWANGALE.....22<sup>ND</sup> CLAIMANT  
EZEKIAH OMUONO.....23<sup>RD</sup> CLAIMANT  
GEORGE OSANO.....24<sup>TH</sup> CLAIMANT  
JOSELINE MUYANGU.....25<sup>TH</sup> CLAIMANT  
FRED ASHIBONDO.....26<sup>TH</sup> CLAIMANT  
GEORGE WANJALA.....27<sup>TH</sup> CLAIMANT  
PAUL WAKOLI.....28<sup>TH</sup> CLAIMANT  
EVERLINE OMOLO.....29<sup>TH</sup> CLAIMANT  
IMELLIA ACHIENG.....30<sup>TH</sup> CLAIMANT

VERSUS

JIANGXI ZHONGMEI ENGINEERING CONSTRUCTION  
COMPANY LIMITED.....RESPONDENT

**RULING**

1. The court delivered a judgment on 5<sup>th</sup> July 2018 in which an order was made.

*“The Respondent is directed to compute and pay the claimants all leave due from date of recruitment to the date of either leaving employment or to date of filing suit being December 2014.”*

2. It is the Applicant’s case that execution has commenced before the applicant has complied with the said order in working out the computation. Instead the claimants/respondents did their own computation without involving the applicant, went ahead to extract a decree without causing the same to be extracted in line with the law and have purported to execute the same by way of attachment and Sale of the Applicant’s movable property.

3. The decree was not drawn and extracted in line with *Order 21 Rule 8 of Civil Procedure Rules* and did not originate from the dictates of the judgment. That the same be set aside and claimant/respondent be directed to comply with the law.

4. The claimants/respondents filed a replying affidavit sworn by Robert Kundu an advocate of High Court of Kenya in conduct of this matter.

5. The Advocate deposes that the judgment was delivered on 10<sup>th</sup> May 2018. That the entire claim in this matter was dismissed by the court with each party to bear their own costs.

6. That the claimants/respondents having not instructed Dominion Auctioneers to execute anything in respect of this file and judgment there being nothing to execute.

7. That interim orders were obtained by the Applicants without full disclosure to the court since no decree or certificate of costs in the court file was issued for execution.

8. That prayer No. 7 of the Application was not granted hence no bar for the Dominion Auctioneers to execute the decree in other related files.

9. That in those files, the Applicant wrote to the Respondents to compute the judgement but they failed and used the computation by the Applicant.

10. Therefore there is nothing to be stayed in this file, the suit having been dismissed with each party to bear their own costs.

**Determination**

11. In the suit Civil Suit No. 375 of 2014, judgment of court dismissed the entire claim with each party to bear their own costs of the suit. There was nothing to compute in respect of the matter.

12. The court finds no decree was drawn nor attachment done in respect of the case.

13. There is no compelling reason why orders sought in this matter ought to apply to other causes being Kisumu ELRC Cause Numbers 2, 3, 15, 112, 113 and 144 of 2015 between other claimants and the applicant.

14. This application lacks merit and is dismissed with costs to the Respondents.

**Ruling Dated, Signed and delivered this 2<sup>nd</sup> day of May, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Kundu for the claimants

Mr. Onsongo for the Respondent

Chrispo – Court Clerk