



**REPUBLIC OF KENYA**

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

**CAUSE 1783 OF 2013**

**(Before Hon. Justice Hellen S. Wasilwa on 3<sup>rd</sup> July, 2019)**

**MARTIN MULESHE SHIROKO.....CLAIMANT/APPLICANT**

**VERSUS**

**WANJOHI CONSULTING ENGINEERS.....RESPONDENT**

**RULING**

1. Before this Court is the Claimant's Application dated 3<sup>rd</sup> April 2019. He seeks the following orders:

***1. That the Honourable Court be pleased to grant leave to the firm of Tess Kimotho & Company Advocates to come on record for the Claimant/Applicant.***

***2. That the Honourable Court be pleased to order the amount of money deposited in the standard bank joint account number 0152548294900 of KShs. 719,764.50 plus interest herein be released to the firm of Tess Kimotho & Company Advocates so as to be able to hand over to the Claimant.***

***3. That the costs of this Application be provided for.***

2. The Application is premised on the ground that the Respondent is yet to appeal this Court's judgment, 4 years since its delivery on 6<sup>th</sup> April 2016. Therefore, it is fair that the decretal amount be released to the Applicant.

3. The Application is supported by the Claimant's Affidavit and is based on the grounds on the face of the motion. Additionally, the Claimant depones that he wishes to change his advocate since his previous advocate frustrated him.

4. The Respondent opposed the Application vide its Grounds of Opposition dated 7<sup>th</sup> May 2019 on the ground that since the Court had already delivered its judgment, it lacked jurisdiction and was now *functus officio*. Further, that the Claimant did not follow the laid down procedure.

5. The firm of M'Njau & Mageto Advocates opposed the motion vide the Replying Affidavit of Elijah Bitange Mageto. They aver that the Application is frivolous, vexatious, scandalous and an abuse of Court process. It is their position that they successfully represented the Claimant and thus it is untrue that they have frustrated the client.

6. They depone that part of the decretal amount was paid to the Claimant and the remaining deposited in a joint interest earning account of the Advocates on record. It is their position that the decretal sum is acting as a lien until their fees is paid.

7. They further aver that the Claimant should first pay their costs of Kshs. 198,570.00 or it be deducted from the deposited amount before the new advocates take over the matter.

8. There are no submissions filed by the parties.

9. I have examined evidence on record. I rendered my judgment in this case on 17/4/2015 which is over 4 years ago. Indeed in terms of the decision, this Court is *functus officio*.

10. However, the execution process is till pending and I cannot fold my hands and refuse to hear Parties who come before me. This will be in breach of my duty as Judge and in the same vain deny the Applicants their right to access justice.

11. The Applicants seek to hire services of another Counsel in order to proceed with the issues pending before Court. The Applicant has a right indeed to seek services of Counsel of their choice at any time.

12. The Applicant's previous Counsel cannot insist on representing the Claimant who does not wish them to do so. The only recourse for a previous Counsel is to tax their bill and leave the matter to another Counsel.

13. The Application then for the firm of Tess Kimotho and Company Advocates to come on record is allowed. The said firm having now come on record can proceed to make other applications. The previous Applications made by Tess Kimotho were made by Counsel not properly on record and I therefore struck them out accordingly.

14. Costs to abide the outcome of the Appeal.

**Dated and delivered in open Court this 3<sup>rd</sup> day of July, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Abubakar holding brief Mangore for Respondent – Present

Kimotho for Applicant – Present

Nadida holding brief Mageto for Claimant – Present