



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 300 OF 2012

(Before Hon. Lady Justice Hellen S. Wasilwa on 6th February, 2018)

FLORENCE MUGURE GITAU.....1ST CLAIMANT/DECREE HOLDER

STEPHEN KIMANI

T/A KIRIIYU MERCHANTS 2nd CLAIMANT/AUCTIONEERS

VERSUS

MUSA ABDUL

T/A TRENDY TOUCH.....1ST RESPONDENT/JUDGEMENT

TRENDY TOUCH LIMITED 2ND RESPONDENT/JUDGEMENT

RULING

1. The application before Court is one dated 25th September 2017. The application was filed by the Respondent Applicants herein under Certificate of Urgency. The application is for stay and review of judgment and decree pending payment in full and proper costs of auctioneer. The application is brought through a Notice of Motion filed under Section 12(3 and 4) of the Industrial Court Act 2011 and Section 16 of the Industrial Court Act No.20 of 2011 and other enabling provisions of the law.

2. The application is supported by the annexed affidavit of the 1st Respondent herein who depones that they have complied with the Court orders and have paid to satisfy the decretal sum being 830,000/=. That through a Court order dated 14th November 2012, they deposited Kshs.245,000/= with the Ministry of Labour Nyayo House which was paid to the claimant and which is not accounted for in the judgment or deducted.

3. The Applicants aver that this amount of 245,000/= was reflected in this Court's judgment of 18th October 2016 and so ought to have been deducted from the decretal sum of 826,000/= leaving a balance of 581,000/=. The Respondent Applicants further argue that they have so far paid the Claimants Kshs.1,075,000/= including 280,000/= Auctioneers' fees.

4. That the Auctioneers are still issuing threats wishing to collect 1,121,193.70/= plus costs unless the Court intervenes hence this application.

5. The Claimant Respondent opposed this application for review. They filed their replying affidavit on 6th October 2017. The Claimant in her affidavit admits that the Respondent deposited 245,000/= with the Ministry of Labour which amount was paid to her on 14th December 2012 but that the rest of the claim was to proceed for hearing.

6. The Claimant avers that in her judgment in Court she was awarded 826,000/= and the Court never made any reference to a credit of the amount deposited with Ministry of Labour. That the Claimant proceeded to execute for this judgment plus costs.

7. The Claimant avers that the Auctioneers proclaimed for this amount and deposited with her Advocate 400,000/= cheque. As to the 830,000/= paid to Auctioneers, she says they only became aware of this upon being served with the application.

8. They therefore argue that the application is frivolous. They argue that the Auctioneer has only remitted 550,000/= to the Claimant's Advocates yet the warrant of attachment and proclamation was for 1,121,193.70/=.

9. I have considered the averments of the parties plus submissions filed. I note that in my judgement it is true I awarded the Claimant 826,000/= as follows:-

1. months salary in lieu of notice = 14,000/=.

2. Service pay = 140,000/=.

3. House allowance = 504,000/=.

4. 12 months' salary as compensation for unlawful termination = 168,000/=

10. It is not clear in what respect the 245,000/= was given for the Claimant through the Labour office but this money was ordered released to Claimant on 14th November 2012 which means that there is part payment of the claim.

11. That being the case, it was apt that credit for this amount be given in my judgement. It was an error to omit to cater for this credit which I now do. That leaves the amount awarded to be 826,000-245,000=581,000/=.

12. This amount should now be plus cost and interest. Given that only part of this amount has been paid, the claim that the decretal sum has fully been satisfied is not true. I direct that the awarded decree be drawn and execution should proceed for the unpaid amounts.

Read in open Court this 6th day of February 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Wamboi holding Wamwayi for Claimant Respondent – Present

No appearance for Respondent Applicant