



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 759 OF 2012**

**(Before Hon. Justice Hellen S. Wasilwa on 22<sup>nd</sup> May, 2018)**

**KENYA UNION OF ENTERTAINMENT AND**

**MUSIC INDUSTRY EMPLOYEES.....CLAIMANT/APPLICANT**

**VERSUS**

**BOMAS OF KENYA LIMITED.....RESPONDENT**

**RULING**

1. The Application before Court is the one dated 19.12.2017. This Application was filed by the Respondent under Certificate of Urgency seeking orders of stay of execution of warrants of attachment issued on 6/12/2017.
2. The Respondent/Applicant aver that the ruling in the above case was delivered on 14.12.2012 and mentioned in Court on 15.7.2014 to confirm compliance wherein the same was confirmed as complied and marked as settled.
3. That in 2016, the Claimants started a process of execution and the Application was heard inter-partes. That on 16/6/2016 the parties met and agreed on how the Respondent was to deduct and remit union dues. That the issue of agency fees for some 26 employees was left for determination by Court and the Court made a finding that agency fees was payable by the said employees.
4. The Respondents aver that they had paid agency fees upto November 2017 and were surprised when the Claimants without justification commenced execution for amounts to the tune of 2,612,450/=.
5. The Respondent opposed this Application. They filed their replying affidavit on 9.1.2018 where they depone that vide a ruling on 30.6.2015, this Court directed payments of agency fees in respect of 26 employees as per the ruling marked Appendix JM1.
6. They also aver that the ruling of the Court marked JO2 is only in respect of employees who have left the Respondent/Applicants herein and joined another union.
7. The Respondent aver that the Ministry of Labour as per Appendix JM3 made a finding that the 26 employees should pay agency fees to the Claimant/Respondent herein.
8. The Respondent/Claimant avers that the Respondent/Applicant did admit the deductions of agency fees from the said employees via his letter dated 25.7.2016 Appendix JM 4.
9. The Claimants therefore urge this Court to dismiss this Application.
10. I have considered the Application before Court and submissions filed herein. I note that I did make findings on this issue vide my ruling dated 30/6/2015 where I directed that agency fees be deducted as ordered. The amount owing was even a finding by Chief Industrial Relations Officer in his report to Court on 7/5/2017.
11. Vide their own letter Appendix JM4 the Respondents Advocates on 25/7/2016 still admitted that the 26 employees were being deducted agency fees.
12. The Respondent/Applicants have submitted that they have paid the claimants all the outstanding agency fees which they say stood at

1,639,460 in 2016 and that the balance is 143,186/=. The Respondents did not demonstrate how they have paid the said sums.

13. I do not find the Application by the Respondent/Applicants merited. They have not demonstrated payments of the agency fees as claimed. I therefore find this Application not proved and I dismiss it accordingly. I order execution to proceed.

14. Costs in the cause.

**Dated and delivered in open Court this 22<sup>nd</sup> day of May, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Parties