



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 259 OF 2017

(Before Hon. Justice Mathews N. Nduma)

MIRIAM ATIENOCLAIMANT

VERSUS

MUHAMMED SWALEH1ST RESPONDENT

NEMO SWALEH2ND RESPONDENT

RULING

1. Applicant/Claimant seeks to set aside the consent dated 24th August, 2017 filed in court on 25th August, 2017 on the basis that Claimant was, misled, and coerced by the Respondent. That having acted under duress, the consent order be set aside and Applicant /Claimant be allowed to prosecute her claim to its logical conclusion.
2. The applicant/Claimant concede having received Kshs.20,000 from the Respondent even though, according to her she ought to have been paid Kshs.496,143, compensation sought in the Memorandum of Claim.
3. That the Respondent had promised to pay the full amount through the Claimant's advocates which sum has not been paid. That the advocate was not involved in the consent yet he was on record.
4. That it is in the interest of justice that the consent be set aside.
5. The suit was filed by M/s. Chepkwony & co. advocates for the Claimant on 9th June, 2017. On 25th August 2017, the Claimant filed a notice to act in person dated 24th August, 2017 which notice was copied to M/s Chepkwony & Company Advocates. On the same date the Claimant and the 1st and 2nd Respondents filed a consent signed by all the three parties. The consent is drawn by the claimant herself. The consent reads:-

“By consent of the parties herein the claimant be and is hereby paid a sum of Kshs.20,000 being full and final settlement in this matter and that this matter be hereby marked as settled.”
6. The consent was placed before the Deputy Registrar, E & LRC on the same date and was adopted as an order of the court and the matter marked settled.
7. There is no iota of evidence that the Claimant was coerced or misled to draft the consent, sign it and file it, herself before court.
8. A consent may only be set aside if there is evidence of fraud, coercion, duress or misrepresentation on the part of one party, especially if such a party is perceived to be dominant and therefore having undue influence on the other.
9. There is no such evidence disclosed in the application itself or the supporting affidavit. The facts speak for themselves in this matter. The claimant walked freely to court having drafted a consent signed by the parties, filed the consent herself, and appeared before the Deputy Registrar to have the said consent adopted as an order of the court. The Applicant thereafter received the agreed amount in full and final settlement of the case.
10. The Application is vexatious and an abuse of the court process. The same is dismissed with no order as to costs.

Ruling Dated, Signed and delivered this 6th day of June, 2018

Mathews N. Nduma

Judge

Appearances

Claimant in person

Respondents in person

Chrispo – Court Clerk