

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 211 OF 2017

(As consolidated with ELRC causes No. 221 and 222 of 2017)

DORIS KAIRUTHI KAARIA & 59 OTHERS.....CLAIMANTS

VERSUS

B.O.M KAHITHE SECONDARY SCHOOL....1ST RESPONDENT

TEACHERS SERVICE COMMISSION.....2ND RESPONDENT

RULING

1. There are a number of applications before me by the parties. There is the Claimants' notice of motion application of 26th March 2018 relating to the execution and the 1st Respondent's refusal to permit execution to proceed, the 1st Respondent's application of 28th March 2018 seeking stay of execution, and the one of 20th March 2018 by the Kenya Private Universities Workers Union seeking various relief for its members and joinder of their cause to cause 211 of 2017.

2. The application by the Union should fall for determination distinct from the current motions between the Claimants and the Respondent and will therefore be dealt with last. The Claimants motion on execution, unfortunately for them and their auctioneer, falls to be determined on the issue of jurisdiction raised by the Respondent. It is asserted that the auctioneer does not have a licence to execute the warrants as his territory does not cover the assets of the Respondent that have been attached as they are not within his jurisdiction of coverage which is Nairobi and Kajiado. The issue of jurisdiction is very critical. An auctioneer acts as an agent of parties but essentially is enforcing a court process and therefore the legitimacy of his actions must be above board. The warrants of attachment and sale issued to Samuel Mugendi t/a Clear Real Traders are recalled and cancelled *ex debito justitiae*. The execution that was underway is stopped and the auctioneer is to return any goods in his possession forthwith. The auctioneer will bear his own costs of the execution that was commenced without legal basis. Proper warrants to be drawn on application by the Claimants.

3. Regarding the application sought for joinder of his cause and cause No. 211 of 2017, the joinder will not result in the application of the judgment made in cause No. 211 of 2017 on his case. The ship in that regard sailed. The joinder will therefore not serve any meaningful purpose and is declined. The application by the Union is therefore dismissed but with no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 12th day of July 2018

Nzioki wa Makau

JUDGE