



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 982 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 9th July, 2018)

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT/RESPONDENT

VERSUS

TOYOTA KENYA LIMITED.....APPLICANT

RULING

1. The Application before Court is the one dated 14/12/2017. The Applicant in this case seeks orders as follows:-

1. That the Application be certified urgent and to be heard ex parte for purposes of prayer number 2.

2. That a temporary order of stay of execution of the ruling delivered on 8/10/2015 and any decree arising therefrom do issue restraining the Respondent from commencing execution against the Applicant for the sum of Kshs.3,014,256/= or any other sum whatsoever pending the hearing and determination of this application.

3.

4. That the Honourable Court be pleased to adopt the consent order dated 28/6/2017 and filed on 29.6.2017 by the parties as an order of this Court and the matter be marked as fully settled".

2. The Applicant contends that there is a validly executed consent between the parties herein dated 28/6/2017 and filed in Court on 29/6/2017. They aver that the consent has fully been executed with the Respondent receiving payment of Kshs.1,596,000/= from the Applicant as agency fees as a precondition to having the matter marked as fully settled.

3. The Applicants contend that despite the fact that there is a consent on record, the Respondents have suddenly changed tune and have declined to have the filed consent adopted as order of this Court by consent and are now threatening to execute for Kshs.3,014,256/= plus costs.

4. The Applicants also sought stay of execution pending determination of this Application which stay orders were granted.

5. The Application is supported by the Supporting Affidavit of the Applicant's General Manager in charge of Human Resource one Anne Kirumba sworn on 14.12.2017 stating the chronology of events that led to the signing of the impugned consent.

6. The Applicant aver that from the time the case was filed to the time of the consent, the Applicant has always dealt with the Union through its lawfully appointed and authorized representative by the name of Patrick Makale. They refer Court to page 25 of the bundle filed in Court on 20th November 2012 giving authority to Makale to represent the Union in all Court matter which included the instant suit.

7. They aver that the said Patrick Makale has appeared for the Union in all appearances in the matter as confirmed by the Court record.

8. They also aver that authority to Mr. Makale was given by the General Secretary one Justus Maina Otakwa who has deponed to most of the affidavits filed in this matter.

9. They also aver that on 14th December 2016 when the Respondent wrote a letter to the Applicant and expressed its willingness to accept 1,596,000/= as payable agency fees in the matter, the General Secretary of the Union was Mrs. Rose Auma Omamo, the current General Secretary.

10. The Applicants contend that they complied with the Court order and remitted Kshs.1,596,000/= as per the consent depositing it in Respondent's bank account.
11. The Applicants aver that the current General Secretary sanctioned receipt of this letter and even by a letter of 14.9.2017, the Respondents admitted receipt of the same. It is for this reason that the Respondent wants this Court to adopt the consent as an order of this Court.
12. The Respondent/Claimant opposed this Application. They filed preliminary issues for consideration on 19.2.2018. They aver that interim orders granted by Court on 15/12/2017 lapsed automatically on 23.1.2018.
13. On the Application by the Applicants, they contend that Patrick Makale who was a signatory to the consent had no mandate to represent the Claimant/Respondent by signing the Consent.
14. They also aver that Patrick Makale had no mandate to alter a Court ruling delivered on 8/10/2015.
15. They aver that the consent was signed on 28/6/2017 but on 12/5/2017 Mr. Makale had resigned from the Claimant's employment without notice and without handing over.
16. Having resigned from employment of the Claimant, the said Makale had no authority to sign the consent alleged on 28/6/2017. The Respondent avers that this was an abuse of the Court process. The Claimants pray that the application be dismissed accordingly.
17. The Applicant and Respondent filed their respective submissions on 14th December and 9/5/2018 respectively.
18. I have considered the submissions of both parties plus the averments of both parties.
19. The main issue for determination in Court is the Court order dated 28/6/2017 and filed in Court on 29/6/2017. The Applicant contends that this consent is valid and should be adopted as a consent of this Court.
20. I have looked at the consent filed. It was filed on 29/6/2017 and is dated 28/6/2017. However, Appendix 2 in Respondent's documents is a letter by Patrick Makale dated 12/5/2017 indicating that he has terminated his services with the Respondent with immediate effect due to unconducive working environment.
21. By the time the consent was recorded on 28/6/2017 the said Patrick Makale had ceased to be a staff member of the Respondent. By virtue of this cessation, he had no authority to transact on behalf of the Claimant Respondent.
22. The Application before Court to adopt consent obtained through illegality cannot therefore stand and the same is therefore rejected as not being a consent of the parties herein.
23. Costs of this Application to the Respondents.

Dated and delivered in open Court this 9th day of July, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Wandati for Applicant – Present

George Ondiege for Respondent – Present