



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1666 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 25th September, 2018)

MAURICE NDIKU KILONZO CLAIMANT

VERSUS

DAWA LIMITED RESPONDENT

RULING

1. There are 2 applications before me. The 1st Application is the Respondent's Notice of Motion dated 28/3/2018 and the second the Claimant's Preliminary Objection dated 21.4.2018.
2. On the 22.3.2018 the Respondent filed their Notice of Motion dated 22.3.2017 filed under Section 12 of Employment and Labour Relations Court Act 2011, Rules 17 and 33(1) (c) of the Employment and Labour Relations Rules 2016 and all the enabling provisions of the law and the inherent powers of the Court.
3. The Applicant seeks stay orders against the Claimant and the 2nd Respondent Auctioneers from executing the warrants of attachment dated 19.3.2018 issued to the Auctioneer herein. The Applicants position is that there is no claim against them and that this matter should be marked as settled.
4. The application is based on the grounds that the Respondent had paid the Claimant 146,405/= before the consent of the parties and before the Claimant's determination on 1.7.2014 and so though claimed in pleadings, this was not payable. They aver that this fact was not captured in the consent of the parties recorded in Court.
5. They contend that the decree to be extracted by the Respondent should only reflect the decretal sum of Kshs.258,000/= awarded by the Court with regard to the contested amount and as per the judgement of 17.6.2015.
6. The Respondents further contend that parties agreed at costs to be taxed at 115,885/=. They aver that they paid all the balance of Kshs.253,258.93 through their advocate and discharged their liabilities.
7. They aver that despite paying all that was due, the Claimant instructed an Auctioneer to proclaim their goods and this made them seek direction of the Court.
8. The Court made its ruling on 13/12/2017 where it only declared the decretal amount payable as per both the judgment of 17.6.2015 and the consent recorded in Court.
9. They aver that they seek Court to review both its ruling of 21.2.2017 and December 13th 2017 on the grounds that the same requires clarification. The Respondent wants to clarify whether the Claimant was paid the amounts embodied in the consent. When the Respondent/Applicants appeared before Court on 22.3.2018, the Court granted temporary injunction against the Claimant and 2nd Respondent together with their representatives, servants or agents from executing the warrants of attachment dated 19.3.2018 and issued to 2nd Respondent pending the hearing and determination of this application.
10. The Claimant/Respondents on the other hand filed a Preliminary Objection before this Court dated 17.4.2018.
11. The Respondent's Preliminary Objection is to the effect that this Court having rendered a final judgement and a decree having been

subsequently drawn, the Court is functus officio and hence lacks jurisdiction to grant the orders sought.

12. They also contend that the application dated 22.3.2018 is res judicata as issues raised herein were directly and substantially an issue in a Notice of Motion Application dated 25th July 2016 which was heard and finally determined on merit by Court. They therefore pray that the Court should strike out the application dated 22.3.2018 with costs to the Claimant/Respondent.

13. The parties agreed to dispose of the two applications by way of written submissions.

14. The Applicant/Respondent aver that the payment of Kshs.153,528/= to the Claimant even before dismissal is clear and uncontested but the Court did not address these issues hence the need for review.

15. The Respondent submitted the bank transfer EFT dated 28.7.2014 showing transfer of the stated amount.

16. The Claimant on their part submitted that this Court determined this issue before and made a ruling accordingly on 13.12.2017 reaffirming its judgement and decree and dismissing the Respondent's application dated 25th July 2016.

17. I note that prior to the current applications before me, I heard and determined another application for review dated 25/7/2016. I rendered a ruling on 13.12.2017 clarifying that the decretal sum payable is 404,405/= plus costs. In the ruling I awarded the Claimant 6 months' salary which was 258,000/= plus a further 146,505/= which was per the consent of the parties.

18. I recorded the figure of 404,405/= as per the parties consent. The parties having agreed on this figure, it would not be this Court's duty to try and undo what the parties consented to. If the parties wished to change the consent to read any payment less what had previously been paid, they would have done so. This Court is not in a position to decide whether the consented 146,505/= had been previously paid or was a fresh consent amount.

19. In my view, I have already determined the issues before me and I am functus officio and therefore there is nothing else to review or clarify. I just restate the judgement as being 404,045/= plus costs.

Dated and delivered in open Court this 25th day of September, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mwanthi for Claimant/Respondent – Present

No appearance for the Respondent/Applicants