



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 134 OF 2014

(Before Hon. Justice Mathews N. Nduma)

JEANE HELLEN ONYANGO.....CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF KISUMU...RESPONDENT

R U L I N G

1. Application dated 10th May, 2018 seeks to set aside consent order entered into on 20th February, 2018 on the basis that it erroneously, and contrary to agreement by the parties, awards costs to the Claimant.
2. That the consent was recorded contrary to instructions given to counsel by the Respondent/Applicant.
3. That, the Respondent via a letter dated 25th May, 2017 by counsel for the Respondent instructed the advocate on record that the proposed consent be amended to indicate amongst others that each party to bear its own costs.
4. That counsel for the Respondent was astonished when he received letter from the advocate on record dated 21st February, 2018 and 21st March, 2018 indicating that the Respondent is to pay costs of the suit.
5. The Applicant therefore further seeks to have the taxation proceedings and Claimant's bill of costs dated 23rd February, 2018 be set aside.

Reply

6. The application is opposed vide a replying affidavit of the Claimant who deposes that at a meeting held by the counsel for the parties on 19th February, 2018, it was agreed to record a consent in terms filed in court. The County Attorney, Mr. Kilinda Kilei, personally attended that meeting. The consent was recorded as an order of the court on 20th February, 2018 in the presence of counsel for the Claimant and M/s. Rodi, for the Respondent/Applicant.
7. That the Applicant is not being candid. That no valid grounds have been advanced to set aside the consent order. That consent order may only be set aside on grounds that may vitiate a contract, such as false misrepresentation, fraudulent conduct or material non-disclosure of facts at the time the consent was entered into. That no such grounds have been advanced by the Applicant and the application be dismissed with costs.

Determination

8. The consent order dated 20th February 2018 was recorded before me by Mr. Maua advocate for the Claimant/Respondent and Mr. Rodi, advocate for the Respondent/Applicant. The advocates, read the consent order as recorded, and upon satisfying themselves that it was recorded in terms of agreement reached by the parties both advocates appended their signatures below the said consent order in the presence of the Judge.
9. The consent order clearly provides in clause 3 thereof that –

“The Respondent to pay costs of the suit to the Claimant.”

10. The said clause is clear and unambiguous. No valid grounds have been presented to court by the Respondent/Applicant that may allow the setting aside of the consent order recorded freely and voluntarily by advocates for the parties before me in court on 20th February, 2018.

11. This application is misconceived and is dismissed with costs.

Dated, Delivered and Signed in Kisumu this 20th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Mr. lugano for Respondent/Applicant

Mauwa for Claimant /Respondent

Chrispo – Court Clerk