



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 195 OF 2016

resolved by the said consent order and is therefore nonexistent.

12. In selton on judgments and orders 7th edition volume 1 page 24 is provided as follows:-

“Prima facie any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action and on those claiming under them cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court, or if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement.”

13. The Applicant has not made any of the above allegations nor is any order sought to set aside the consent order.

14. This position is confirmed by the court of appeal at Nairobi in Civil Appeal No.293 of 2014, in which the court confirmed the Ruling by Lady Justice Ndolo refusing to set aside a consent order.

15. The C. A relied on the decision in **Kenya Commercial Bank Limited vs Specialized engineering Co. Limited [1982] KLR 485**, where Hannis J held that –

1. A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.

2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.

16. Accordingly, the application lacks any grounds upon which the court may set aside or vary the consent order entered into by the parties on 10th April, 2017. The Application is dismissed with costs and file closed in terms of the settlement made vide the consent order.

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

Mathews N. Nduma

Judge

Appearances

Mr. Bonface Namayi Mulomi for Respondent

Mr. Ogejo for Claimant

Chrispo – Court Clerk