



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 266 OF 2013

LOREKAI LOKOSIO.....CLAIMANT

VERSUS

SHOMPOLE GROUP RANCH.....RESPONDENT

RULING

1. By this application which is brought by Notice of Motion dated 16th May 2017, the Respondent seeks the following orders:

- a) That the firm of Masika & Koross Advocates be allowed to come on record for the Respondent in place of the firm of Gachanja & Company Advocates;
- b) That there be a stay of execution of judgment and all consequential orders entered against the Respondent;
- c) That the judgment entered by consent dated 21st March 2014 and the consequential decree issued against the Respondent be set aside and/or varied upon just terms;
- d) That the Respondent be granted leave to defend the suit.

2. The application, which is supported by the affidavit of the Respondent's Secretary, Isaac Kesses Kiresian is based on the following grounds:

- a) The Respondent's current Advocates have been informed by the former Advocates that they were unaware of the proceedings herein and did not authorize any of their Advocates to compromise the claim by consent;
- b) The consent order compromising the claim was fraudulently made;
- c) The Respondent was not informed by its former Advocates of the consent order;
- d) Failure by the Respondent's Advocates to file a response and defend the claim was not deliberate on the part of the Respondent but resulted solely from the conduct of the former Advocates;
- e) The mistake and/or inadvertence on the part of the former Advocates should not be visited upon the Respondent;
- f) The Respondent has a good and meritorious defence to the Claimant's claim;

g) The application has been brought timeously, in good faith and is made in the interest of justice.

3. In the supporting affidavit sworn by the Respondent's Secretary, Isaac Kesses Kiresian, he depones that the Respondent never gave instructions to the firm of Gachanja & Company Advocates, to defend it in this claim. Kiresian adds that the Respondent was unaware of the proceedings until 20th March 2017 when it was served with warrants of arrest against its officials.

4. It is further deponed that the firm of Gachanja & Company Advocates had written to the Respondent's current Advocates indicating that they were unaware of the matter and the consent entered into in their name.

5. In a replying affidavit sworn by the Claimant on 30th May 2017, he depones that upon filing his claim on 27th February 2013, summons were issued and served on the Respondent's Director, Joseph Masiaya on 27th March 2013. A Memorandum of Appearance was filed on behalf of the Respondent on 10th March 2014. An Advocate by the name, Victor Kiamba subsequently wrote to the Claimant's Advocates requesting for time to make copies of the Statement of Claim and supporting documents. A Statement of Defence was filed on 12th March 2014.

6. The Claimant further depones that sometime in March 2014, he and his Advocate met with the Respondent's Secretary, Joseph Munge and Treasurer, Sakoi Toringe together with their Advocate, Victor Kiamba. It was at this meeting where the consent was agreed upon. The consent was adopted by the Court on 24th March 2014.

7. The gist of the Respondent's application is that the consent judgment entered by the Court on 24th March 2014, be set aside. The conditions under which the Court may entertain such an application are now well settled. In *Brooke Bond Liebeg (T) Ltd v Mallya [1975] EALR*, it was held that a consent judgment may only be set aside for fraud, collusion or any other reason which may move the court to set aside an agreement. This position was affirmed in *Gerisham Likechi Kitungulu v Patel Prabhakar Isuer [2005] eKLR* where **GBM Kariuki J** (as he then was) held that a consent judgment can only be set aside on the same grounds as would justify the setting aside of a contract.

8. The Respondent denies giving any instructions for compromise of the Claimant's claim and states that it was not aware of any such consent. By a letter dated 12th May 2017, the firm of Gachanja & Company Advocates, on whose authority the consent was allegedly executed, denies ever receiving instructions on the matter, much less on the impugned consent.

9. It appears therefore that the consent dated 21st March 2014, upon which a consent judgment was entered, was executed by an unauthorized person. This in my view, is sufficient ground for setting aside of the consent judgment.

10. The result is that the consent judgment dated 21st March 2014 and the consequential decree issued against the Respondent are set aside. Parties are at liberty to set down the main claim for hearing.

11. The costs of this application will be in the cause.

12. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF NOVEMBER 2017

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JUDGE

Appearance:

Ms. Kitonga for the Claimant

Mr. Were for the Respondent