



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 45 OF 2012**

**JONATHAN ZACHARIA & 24 OTHERS.....CLAIMANTS**

**VS**

**BULCKWARE HOUSE MANAGEMENT.....1<sup>ST</sup> RESPONDENT**

**MAGADI SODA COMPANY LIMIT.....2<sup>ND</sup> RESPONDENT**

**KENYA CHEMICAL AND ALLIED WORKDERS UNION COAS...3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction**

1. The application before the court is dated 25.9.2015 and it is brought by the claimant's in person. It seeks for review and setting aside of the consent order dated 1.4.2015 and further prays for any orders that the court may deem fit and convenient to meet the ends of justice. The ground upon which the review is sought is that after the court entered judgment in favour of the claimant's, their advocate and the respondent's counsel executed the impugned consent order apportioning the decretal sum between them and the respondent's counsel. As a result of the said consent order the respondent's counsel got kshs.657,468.00 while the claimant's counsel retained kshs.2,857,468.00 plus the interest on the decretal sum. That the claimants were not aware of such apportionment and they never gave their counsel instructions to execute such consent order and as such the same should be reviewed and set aside.
2. The Motion is opposed by the respondents and also by the claimants counsel on grounds that it lacks merits and it is procedurally incompetent. According to the respondents, the Motion offends provision of Order 9 rule 9 of the Civil Procedure Rules (CPRs) because the applicant never sought leave of the court to act in person after the judgment. Secondly, the respondents contend that the consent was executed for and on behalf of the applicants herein by their duly appointed counsel who in law had authority to do so. Additionally, the respondents contend that the consent order was a binding contract which was not affected by any vitiating factors.

**Analysis and Determination**

3. After considering the material presented before it the court has framed the following issues for determination:
  - a. Whether the application is incompetent

b. Whether the application meets the legal threshold for the review and setting aside a consent order.

**Incompetence**

4. There is no doubt that the Law firm of B.W.Kenzi and Company Advocates were on record for the claimants on 19.7.2013 when this court entered judgment herein. There is also no doubt that upto this moment the claimants have not sought this court's leave to act in person in the matter. It follows therefore that, the Law firm of B.W.Kenzi and Company Advocates are still on record for the claimants as per the provisions of Order 9 of the Civil Procedure Rules. For the foregoing reason, the court makes a finding of fact and law that the claimant's Motion is incompetent and should not even be considered on its merits.

**Disposition**

5. The Notice of Motion dated 25.9.2015 is struck out with no orders as to costs.

**Signed, Dated and Delivered this 6<sup>th</sup> day of May 2016.**

**ONESMUS MAKAU**

**JUDGE**