



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 561 OF 2012

PETER KARANJA KURIA.....CLAIMANT

VERSUS

CARLILE COLLEGE.....RESPONDENT

Mr. Kamande for Respondent/Applicant

Claimant/Respondent in Person

RULING

1. The Notice of Motion – Application dated 22nd March 2016 seeks to stay warrant of attachment and sale of movable property issued by the Hon. Deputy Registrar of the Employment and Labour Relations Court on 14th March 2016.

The Application is based on the grounds set out on the face of the Application and the Supporting Affidavit of Cosmas Chahenza, the advocate for the Respondent to the effect that the warrant of attachment issued on the 14th March 2016 is erroneous because the same is based on a bogus decree purportedly drawn by the Respondent's Advocates.

2. That the firm of Soita and Saende Advocates, which is on record for the Respondent did not consent to and or draw the Claimant's purported decree titled 'I consent on judgment, interest and costs'.

That the Claimant's prayer for interest in the sum of Ksh. 961,920 is illegal, unconstitutional and tantamount to unjust enrichment.

Response

3. The Application is opposed vide Replying Affidavit of the Claimant in which he states that the Claimant's bill of costs was taxed at Ksh. 66,000 in September 2015.

On 29th September 2015, the Claimant did a draft order seeking Ksh. 961,920 interest and Ksh. 66,000 costs.

On 29th September 2015, the draft was received by the Court and he proceeded to draw and serve a consent on M/S Soita and Saende Advocates for signing.

4. On 5th November 2015, the Claimant went in person to pick the consent from the office of M/S Soita and Saende Advocates but was informed that the firm of Advocates was no longer in conduct of the suit.

The Claimant took the consent to the Respondent and the same was signed by the Principal of the College Rev. Captain Richard W. Mayabi who also wrote to U.A.P. Insurance a letter dated 4th January 2016 requesting them to pay the outstanding balance of Ksh.1,027,920 to the Claimant. The signed consent and the letter are attached to the Replying Affidavit and Rev. Richard W. Mayabi has not denounced the same to date.

Determination

5. It is apparent that the parties in this suit signed a consent which was filed and adopted by the Court.

The Applicant has not attached any affidavit or any documentary evidence from the Respondent denouncing the consent entered into directly between the Claimant and the Principal of the Respondent.

No evidence has been tendered at all to denounce the consent by the parties, either on the basis that it was fraudulently obtained from the Respondent, or it is a forgery or was obtained by duress from the Principal of the Respondent.

6. It is the Court's considered view that the Applicant has failed to prove on a balance of probabilities that the consent by this parties on the issue of interest payable was not lawfully entered into.

The Court finds that the consent, which was adopted by the Court is binding on the parties and no reasonable grounds have been advanced to set it aside.

The Application has no merit and is dismissed with no order as to costs.

Dated and Delivered at Nairobi this 6th day of May, 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE