



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NO. 117 OF 2013

BETWEEN

THOMAS SILA NZIVO CLAIMANT

VERSUS

BAMBURI CEMENT LIMITED RESPONDENT

Rika J

Court Assistant – Benjamin Kombe

Mr. Oddiaga advocate instructed by Stephen Oddiaga & Company Advocates for the Claimant

Mr. Njeru advocate instructed by Njeru & Company Advocates for the Respondent

RULING

The Court delivered an Award dated 28th November 2014. The Respondent was ordered to pay to the Claimant the sum of Kshs.354,923.

The Claimant sought to execute the decree. On 9th January 2015, the Respondent filed an application for stay of execution, arguing that if all the deductions are factored in, the sum awarded would be in the negative.

The application is supported by the affidavit of Betty Kanyagia, General Counsel of the Respondent, sworn on 9th January 2015.

The Claimant opposes the application through his affidavit sworn on 19th January 2015.

Upon hearing the submissions made by Mr. Njeru for the Respondent, and Mr. Oddiaga for the Claimant, the Court finds:-

1. The loan amount claimed to be owed to Citibank by the Claimant, was not part of the pleading and evidence of the Respondent.
2. It was not counterclaimed.
3. All respective claims should have been channelled through the Court proceedings.
4. The application by the Respondent seeks to introduce new claims, without giving the Claimant the benefit of challenging claims in a proper Court hearing.
5. The only deductions that can be made, outside the Parties' pleadings and evidence, are statutory deductions.

In view of this, the Court orders:-

(a) The application dated 9th January 2015, filed by the Respondent is rejected.

(b) Costs of the application to the Claimant.

Dated and delivered at Mombasa this 13th day of February 2015.

James Rika

Judge