



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 759 OF 2012

**KENYA UNION OF ENTERTAINMENT AND MUSIC INDUSTRY
EMPLOYERS...CLAIMANT/RESPONDENT**

VERSUS

BOMAS OF KENYA

LIMITED.....RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa on 30th June, 2015)

RULING

1. The application before court is the one dated 23/2/2015 brought to court by the Respondents herein under Articles 159, 162(2), 164(3) of the Constitution, Sections 12(3) (i) and (viii), 17(1) and (2) of the Industrial Court Act 2011, Section 3A of the Civil Procedure Act and Order 22 rule 22, Order 42 Rule (6) of the Civil Procedure Rules, Rule 3(1) and (2) of the High Court (Practice and Procedure Rules) of the Judicature Act Cap 8 Laws of Kenya, and all the enabling provisions of the Law and the inherent powers of the Court.

2. The Applicants seeks orders that:

1. ***THAT this Honourable Court certify this application as urgent and the same be heard ex-parte in the first instance.***
2. ***THAT this Honourable Court be pleased to stay the proclamation and attachment of the Respondent's property by the Claimant whether by herself, representatives, employees, agents, servants or other person acting on her behalf or claiming through her, and any other proceedings and execution pending hearing and determination of this application.***
3. ***THAT this Honourable Court may be pleased to grant a temporary injunction restraining the Claimant from executing, attaching, carrying away or in any way dealing with the goods proclaimed on 20th February 2015 pending the hearing and determination of this application.***
4. ***THAT this Honourable Court may be pleased to grant a temporary injunction restraining the Claimant from executing, attaching, carrying away or in any way dealing with the goods proclaimed on 20th February 2015 pending the hearing and determination of this application.***
5. ***THAT the Proclamation dated 20th February 2015 and/or any attachment issued herein be lifted and that the Claimant/Respondent do bear the costs of such attachment.***
6. ***THAT the honourable court declares the proclamation dated 20th February 2015 for the sum of Kshs.1,705,000 a nullity, since the agency fee being demanded has been fully settled.***
7. ***THAT the costs of this application be on the Claimant/Respondent.***

3. The application is based on the following grounds:

8. *That the ruling in the above case was delivered on 14th December 2012 and thereafter the same was mentioned before court on the 15th July 2014 to confirm compliance wherein the same was confirmed and marked as settled.*
9. *That on the 22nd July 2014 the Respondent/Applicant received a mention notice from the Claimant/Respondent on the same matter.*
10. *That on the said mentioned date the Claimant/Respondent alluded to the court that the matter had not yet been settled and that the Respondent/Applicant owed the union agency fees arrears.*
11. *That the court then advised the Claimant to approach court in the proper manner as is required by law if they felt that there were any pending issues.*
12. *That the Respondent/Applicant herein had already paid the union agency fees up to January 2015.*
13. *That to the Respondent/Applicant surprise, on 18th February 2015 the Claimant's without any justification and or order of court instructed auctioneers(Keysian Auctioneers) to proclaim, attach and sell the Respondent's Movable Property worth Kshs.1,705,000 knowing very well there were no any agency fees owed to them.*
14. *That the said auctioneers proceeded to proclaim the Respondent/Applicants goods on the 20th February 2015.*
15. *That the action of the Claimant amount to sharp practice, when if allowed will cause the Respondent/Applicant irreparable harm and loss. The Claimant union is using auctioneers to exercise undue pressure on the Respondent/Applicant knowing very well that there are no dues pending and/or owing to it.*
16. *That the Respondent/Applicant is not liable to pay any auctioneers fees in the above case since the said execution was unwarranted and illegal. The Claimant union agency fees had already been settled.*
17. *That it is in the best interest of justice that the proclamation and/or intended execution herein be stayed since the Respondent herein will suffer irreparable harm once its proclaimed goods are sold by auction over a non existing debt.*
18. *That the only reason auctioneers proclaimed the Respondent's goods on 20th February 2015 was due to sharp practice by the Claimant union. It is unreasonable to commence execution to recover a debt without any decree being issued, and more so over a none existing debt.*
19. *That it is in the best interest of justice that the stay of execution sought herein be granted pending the hearing and determination of this application.*

4. The application is also supported by the affidavit of Opolo Beatrice an Advocate of the High Court having conduct of this case on behalf of the Respondent herein.

5. The Claimant Respondents filed their replying affidavit to this application on 5/3/2015. The affidavit was sworn by one Mucuha Job Wainaina, the General Secretary of the Claimants herein.

6. The gist of the affidavit is that the Respondents have failed to disclose that by complying with Gazette Notice No. 16483 & 4336, they were ordered to pay the same in arrears from the date of the Ministers Order.

7. Then this application came to court, this court directed the parties to try ADR mechanism. The court also directed the Chief Industrial Relations Officer of the Ministry of Labour to aid the parties in reaching a reasonable resolution of the matter.

The Chief Industrial Relations Officer filed his report in court on 7/5/2015. The court then directed the parties to make submissions based on the report.

8. The fine lines in the Chief Relations Officer report are that the Respondent indeed owe Union dues to the Claimants made up of the following:

1. ***Agency fees in arrears as ordered by court amounting to Kshs.1,123,788/=***
2. ***Agency arrears owing from salary increments amounting to 397,292/=.***
3. ***Agency fees arrears in respect of the 26 employees as follows:***
 - a. ***15 employees Kshs 787,500/=***
 - b. ***11 employees (resigned) – Kshs.231,000/=.***

TOTAL AMOUNT = 2,539,580/=

9. The report also states that the Respondents should immediately start deducting agency fee in respect to 26 employees who have been promoted to managerial positions.

The parties made submissions on this report. The gist of Respondents submissions is conceding that the Respondents owe the Claimants the amounts stated but they seek the court to vary the orders given on 10th June 2013 directing the Respondents to pay the amounts in 7 days.

10. Given this admission by the Respondents and given that this court can use the direction to vary the said orders, the Respondents should be willing to demonstrate compliance with the orders of court and even give proposals on how they wish to pay up the outstanding amounts.

The Respondents have not given any proposals to court. I would therefore direct that the Claimants should proceed with execution of the court's order as directed by court subject to any other reasonable proposal by the Respondents acceptable by court.

Read in open Court this 30th day of June, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mucuha for Claimant – Present

No appearance for Respondent Applicants