

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 2417 OF 2012

JOHN OTIENO MUKABI.....CLAIMANT

VS

KENYA BUILDERS & CONCRETE COMPANY LTD.....RESPONDENT

RULING

1. This ruling flows from a dispute between the Claimant and the Respondent as to which party shall bear the Auctioneer's charges with respect to an execution warrant issued on 5th March 2015.
2. Following execution of a warrant of attachment for the sum of Kshs.188,006.00 the Respondent filed an application under certificate of urgency on 19th March 2015. In its application, the Respondent states that the decretal sum in the warrant of attachment was erroneous as the amount awarded by the Court was Kshs.94,003.00 plus interest amounting to Kshs.4,700.00 as at March 2015. Taking into account agreed costs of Kshs.87,116.00 the total sum due to the Claimant net of statutory tax was Kshs.161,113.70. The Respondent further states that the full amount due to the Claimant, being Kshs.161,113.70 had been settled.
3. In a replying affidavit sworn by the Claimant's Counsel, Namada Simoni on 15th April 2015, it is deponed that the error in the decretal sum as reflected in the warrant of attachment was made by registry staff. At any rate, payment by the Respondent came after proclamation and auctioneers charges had therefore already been incurred.
4. Looking at the pleadings and submissions filed by the parties in this application it is apparent that the decretal sum stated in the warrant of attachment was erroneous. It is however also true that by the time proclamation was done on 11th March 2015, the Respondent had not settled the award given by the Court.
5. It follows therefore that by the time payment was made on 16th March 2015, the Auctioneer had earned his fee which is due from the Respondent. The fee is to be calculated on the basis of the correct decretal sum of Kshs.94,003.00 plus costs and interest.
5. I make no order for costs in this application.
6. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF JULY 2015

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JUDGE

Appearance:

Mr. Namada for the Claimant

Mr. Molenje for the Respondent