



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 69 OF 2012

BETWEEN

1. PETER KIMILU

2. KENNEDY OGENDI ONYANGORE.....CLAIMANTS

VERSUS

KENYA PETROLEUM OIL WORKERS UNION.....RESPONDENT

RULING

The Award in this dispute was delivered on 17th May 2013. Paragraph (b) of the executory part reads:-

“The 1st Claimant Peter Kimilu shall be paid 6 months’ gross salary at Kshs.260,400; and the 2nd Claimant Kennedy Ogendi 6 months’ gross salary at Kshs.246,000 in compensation.”

The sum of Kshs.246,000 – less statutory deduction of Kshs.3,120 – total Kshs.242,880, was remitted by the Respondent to the 2nd Claimant’s Equity Bank Limited Account No. **[Particulars withheld]** on 14th June 2013.

The Respondent therefore discharged its obligation to the 2nd Claimant, and did so in full and within the period of 30 days given in the Award.

The 2nd Claimant went on to withdraw the amount of Kshs.20,000 of the deposit, on 14th June 2013, and kshs.158,000 3 days, later on 17th June 2013.

Intriguingly, Mr. Kennedy Ogendi Onyangore returned to Court and obtained the Decree on 21st June 2013. On 24th July 2013 he applied for and was issued warrant of attachment in execution of decree for money. The warrant was to be executed through Front Bench Auctioneers.

The Auctioneers issued the Respondent a proclamation of Attachable Property. The Movable Property intended to be auctioned to recover the alleged ‘Decretal sum’ and Auctioneers Charges, included an assortment of the Respondent Trade Union’s Office Equipment.

Against this backdrop, the Respondent filed an Application dated 16th August 2013, seeking Stay of Execution and Setting Aside of the Warrant of Attachment and Notice of Proclamation. The 2nd Claimant filed a Replying Affidavit sworn on 5th September 2013. The 1st Claimant is deceased, and his Widow informed the Court, his Estate is not seeking any further payment from the Respondent. The

Application was heard on 18th March 2014.

The Court Finds and Orders:-

1. The actions of Mr. Ogendi after he was paid the full amount granted by the Court, is very unsettling. He is a Trade Unionist, and has in the past, been appearing before the Industrial Court on behalf of the Respondent. He is a former Officer of the Respondent Trade Union. He merits the tag of an Officer of the Industrial Court.
2. He was paid the full sum of Kshs.242,000. He withdrew the sum from his Bank Account. He then misled the Court to issue a Warrant of Attachment against the Respondent's property, for a debt that was satisfied within the stipulated time. He instructed Auctioneers to proclaim, attach and sell the Respondent's Movable Property.
3. The actions taken by Mr. Ogendi are not acceptable. They scintillate utter revulsion. They are in subversion of the fair administration of justice; against good industrial relations; and contrary to the law. What is the role of the Court if Parties go beyond the rights and obligations demarcated by the Court, and confer on themselves rights they feel they ought to have, and go on to execute against their adversaries to enforce illegal decrees? The actions by Mr. Ogendi if allowed to stand, would encourage Parties to resort to self-help, and destabilize constitutional order. Why would an Officer of this Court make a false declaration, and mislead the Court?
4. The Court is satisfied the application by the Respondent dated 16th August 2013 has merit. IT IS ORDERED:-

(a) *The Application is allowed.*

(b) *Costs to the Respondent Trade Union.*

(c) *The Claimant shall also meet the Auctioneers' Costs indicated in the Proclamation dated 13th August 2013.*

Dated and delivered at Nairobi this 31st day of March 2014

James Rika

Judge