



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1908 OF 2011

PAUL GICHUHI.....GRIEVANT 2/APPLICANT

VS

NAIROBI PENTECOSTAL CHURCH

CHRIST IS THE ANSWER MINISTRIES (NPC-CITAM).....RESPONDENT

KENYA UNION OF EMPLOYEES OF VOLUNTARY AND

CHARITABLE ORGANISATIONS.....CLAIMANT/INTERESTED PARTY

RULING

Introduction

1. By a Statement of Claim dated 11th November 2011 and amended on 20th August 2013, the Claimant Union lodged a claim for breach of employment contract and defamation against the Respondent on behalf of Beatrice Wanjiru Karuu alias Beatrice Kamau and Paul Gichuhi, the 1st and 2nd Grievants herein.
2. By notice dated 15th June and filed in Court on 19th June 2012, the 2nd Grievant elected to act in person. Pursuant to this notice, the 2nd Grievant and B.M. Mutie & Co Advocates for the Respondent executed a consent order in the following terms:
 - a. That this suit is hereby marked as fully settled BETWEEN Grievant 2 (Paul Gichuhi), the Kenya Union of Employees of Voluntary and Charitable Organizations (KUEVACO) AND the Respondent (NAIROBI PENTECOSTAL CHURCH, CHRIST IS THE ANSWER MINISTRIES) (NPC-CITAM).
 - b. That Grievant 2 (Paul Gichuhi) AND Kenya Union of Employees of Voluntary and Charitable Organizations (KUEVACO) shall have no other or further claims against the Respondent herein either now or in the future arising from the same subject matters herein.
 - c. That the Respondent shall pay the Grievant 2 (Paul Gichuhi) the sum of Kshs. 715,913.19 being full and final settlement of his claim for terminal dues.
 - d. That Grievant 2 (Paul Gichuhi) hereby fully and unconditionally discharges CITAM and its agents from his defamation claim and all other claims set out in this suit.

e. That each party shall bear its own costs.

2nd Grievant's Notice of Motion

3. On 13th January 2014, the 2nd Grievant filed a Notice of Motion seeking nullification of both the notice to act in person dated 15th June 2012 and the consent order of even date on the ground that in executing the said documents, the 2nd Grievant had been misled.

4. In a supporting affidavit sworn on 27th December 2013, the 2nd Grievant, Paul Gichuhi deponed that on 8th May 2012, he attended a meeting with the Presiding Bishop of the Respondent, David Oginde for the purpose of what he referred to as '*spiritual restoration and healing*.' Gichuhi further deponed that as he came out of the office of the Presiding Bishop on 8th May 2012, he was dejected and felt he was being held at ransom over his claims.

5. Gichuhi reproduced a series of e-mail communication on the issues giving rise to the dispute between him and the Respondent. According to the 2nd Grievant, for the consent order to be valid it needed to be signed by an authorised representative of the Claimant Union.

Respondent's Reply

6. In a replying affidavit sworn on 30th January 2014, the Presiding Bishop of the Respondent, David Oginde deponed that on 8th May 2012, at the initiative of the 2nd Grievant he met the said 2nd Grievant whose main desire was to amicably settle his case against the Respondent besides seeking clearance and payment of his final dues.

7. Bishop Oginde further deponed that it was the Respondent's position that the issues of the amicable settlement of the 2nd Grievant's court case and payment of his final dues had to be resolved at the same time, a fact that was made known to the 2nd Grievant from the onset and during the negotiations between him and the Respondent.

8. Bishop Oginde went on to depone that the 2nd Grievant had deliberately omitted part of the e-mail communication on the matter at hand with the sole intention of misleading the Court. In this regard reference was made to an e-mail dated 13th June 2012 from the 2nd Grievant confirming a meeting with the Respondent's Elder Tanki and the 2nd Grievant's unequivocal intention to withdraw his case against the Respondent.

Determination

9. There are two closely related issues for determination before the Court. First, there is the question whether the 2nd Grievant, having come to Court under the Claimant's cover, could legally apply to act in person. The second has to do with the legality of the consent order executed by the 2nd Grievant and the Respondent's Advocates on 15th June 2012.

10. The law confers a special role on Trade Unions in industrial litigation, to sue in their own name on behalf of its members who are aggrieved by the action of their employer. A grievant may however, apply to act in person much like a client would withdraw instructions from an Advocate. In such cases, the grievant is expected to notify the Union of his intention to act in person.

11. In this case, it would appear that the 2nd Grievant made a decision to act in person without reference to his Union and on the same day, he executed a consent order upon which he was paid the sum of Kshs. 715,913.19 in final dues. Thereafter, the 2nd Grievant seems to have changed his mind and now wants this Court to nullify both the notice to act in person and the consent order.

12. The law on setting aside of consent orders and judgments is well settled. In the case of **Brooke Bond Liebig (T) Ltd Vs Mallya [1975] EA 266** it was held that a consent order or judgment may only be set aside on grounds of fraud, collusion or any other reason which would enable the court to set aside an agreement.

13. This has remained good law over the years and in the case of **Gerishon Likechi Kitungulu Vs Patel Prabhakar Isuer Bhai [2005] eKLR GBM Kariuki J** (as he then was) held that a consent order can only be set aside on the same grounds as would justify the setting aside of a contract.

14. This principle was reiterated by **Koome J** (as she then was) in the case of **Fredrick Njora Mwangi Vs New Kiona Ltd and Another [2010] eKLR** in which she held that a consent order has contractual effect and can only be set aside on similar grounds for setting aside of a contract.

15. In the case before me, the 2nd Grievant acting in person, which he was entitled to do, entered into a consent order and even reaped the benefits of that order by receiving the sum of Kshs. 715,913.19 from the Respondent. He now tells the Court that he was misled into signing both the notice to act in person and the consent order whose effect he did not know.

16. The 2nd Grievant is a person of reasonably high education who served as a pastor in a cosmopolitan setting and the Court finds it difficult to believe that he had no knowledge of the repercussions of his actions. Moreover, from the e-mail communication on record, the 2nd Grievant had clearly expressed the wish to have his case settled out of court. The Court therefore finds it strange that he would turn around more than a year later claiming that he was misled.

17. Overall the Court finds no reason to interfere with the consent order entered into by the parties on 15th June 2012 and filed in Court on 19th June 2012. The 2nd Grievant's application is therefore dismissed with no order for costs.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF MARCH 2014

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JUDGE

In the Presence of:

.....***Applicant***

.....***Respondent***