



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 85 OF 2014 CONSOLIDATED WITH CAUSE NO. 86 OF 2014

MOSES MUIGAI NJOROGE.....1ST CLAIMANT

AND

JUSTO MUNGONI AKWAMBIVA.....2ND CLAIMANT

-VERSUS-

NORMAN NJUGUNA.....1ST RESPONDENT

JOHN WANYANGE MWANGI.....2ND RESPONDENT

LUCY WANGUI CHEGE.....3RD RESPONDENT

GRACE WANJIRU WAWERU.....4TH RESPONDENT

(ALL RESPONDENTS SUED AS THE ADMINISTRATORS OF THE ESTATE OF KARIU NYANGE –DECEASED)

(Before Hon. Justice Byram Ongaya on Friday 25th July, 2014)

RULING

The claimants separately filed their respective memoranda of claims on 2.04.2014 through Waiganjo & Company Advocates. The claimants sued the respondents in their capacity as the legal administrators of the estate of Kariu Nyange (deceased). It was the claimants' case that at all material time they were respondents' employees at the estate employed as a watchman cum caretaker and as a night watchman respectively. The claimants prayed for judgment against the respondents for:

- a. Terminal dues.
- b. Damages for unlawful and unfair termination.
- c. Costs of the suit.
- d. Interest on (a) and (b).

The 1st claimant claimed a sum of Kshs. 353,317.00 and the 2nd claimant Kshs. 719,535.00.

On 28.05.2014 the case came up for mention and the 2nd respondent appearing in person addressed the court that he had signed the consents filed in court on 21.05.2014. He prayed that judgment be entered against him as per the consents as filed in court. Thus the court made the consent judgment in favour of the claimants for Kshs. 353,317.00 and Kshs. 719,535.00 respectively with a further consent for no orders as to costs against the 2nd respondent herein.

The relevant decrees were extracted and on 04.07.2014 the claimants filed their respective applications brought under order 23 of the Civil Procedure Rules and all enabling provisions of law. The applications named Family Bank Limited as the garnishee. The claimants prayed for orders that their respective judgment sums including the costs of the applications are attached from the estate of Kariu Nyange (Deceased) held by the Garnishee in account No. {*particulars withheld*} at Family Bank Limited, Njoro House Branch and the Garnishee herein be directed or ordered to release the said judgment sum to the claimants herein through the claimants' advocates.

The garnishee confirmed that the account existed and was run by the estate; the amount held therein had not been disclosed; and did not oppose the application subject to availability of the necessary funds on the account to satisfy the decrees and payment of the garnishee's costs of the application out of the estate's funds preferably out of monies held in the account. The garnishee relied on the affidavit of Karen Wanjohi, the garnishee's legal officer, filed on 18.07.2014.

The 1st, 3rd, and 4th respondents opposed the application by filing on 18.07.2014 the replying affidavits of Grace Wanjiru Waweru. The three respondents have filed their respective statements of response to oppose the claims. It was their case that the claimants were at all material time not employees of Kairu Nyange (Deceased) and had never been paid salaries from the estate. The respondents further urged that the consent judgment was between the claimants and the 2nd respondent individually and not in his capacity as an administrator of the estate. The three respondents further urged that the estate's resources should not be applied to pay for the 2nd respondent's private liabilities as the employer of the claimants.

The court has considered the parties' respective cases and submissions and makes the following findings:

1. Whereas judgment has been entered against the 2nd respondent, the 1st, 3rd and 4th respondents have opposed the claimants' respective suits by raising serious triable issues including whether the claimants were employees of Kariu Nyange (Deceased) or employees of the 2nd respondent. In the circumstances and in the opinion of the court, it would be premature and not justified to pay the claimants out of the estate's resources before making the hearing and determination of the issues in dispute as urged by the three respondents who are not party to the judgment by consent between the claimants and the 2nd respondent.
2. The court has carefully examined the consents filed in the court and throughout the proceedings, the 2nd respondent does not say that he was signing as an administrator or signing to bind the other administrators. Accordingly, the court finds that there is no sufficient material to show that by reason of the consent judgment, the estate was thereby bound because the will of the administrators as the aggregate mind of the estate cannot be said to have been expressed to the effect that the estate is bound by the 2nd respondent's unilateral decision to enter into the consent judgment.
3. The court finds that in absence of a judgment against all the administrators severally or jointly, it does not begin to happen that the monies held by the cited garnishee on the account of Kariu Nyange (Deceased) can be applied to settle the consent judgment between the claimants and the 2nd respondent in his own right or even as one of the 4 administrators of the estate acting unilaterally and in direct opposition by the other 3 of the administrators.
4. Under order 23 of the Civil Procedure Rules, garnishee proceedings relate to attachment of a 3rd party's debt as owed to the judgment- debtor. The court has carefully considered the circumstances of this case. The 2nd respondent is not said to be owed monies by the estate of Kariu Nyange (Deceased) so that the monies in the account, in the opinion of the court, would not be applied to settle the judgment sum in favour of the decree-holders, the claimants. In the opinion

of the court, the deposits in the bank account opened with the garnishee in this case cannot be said to be a credit in the deposit account with the bank as cited and as envisaged in Order 23 Rule 2 of the Civil Procedure Rules capable of garnishee proceedings because the account was not in the name of the judgment-debtor, the 2nd respondent.

5. In the circumstances, the court finds that the garnishee application was misconceived or was premature in view of the pending trial between the claimants and the 1st, 3rd and 4th respondents.

In conclusion, the applications as filed for the claimants are dismissed with orders that the claimants shall pay the application's costs for the garnishee and the 1st, 3rd and 4th respondents.

Signed, dated and delivered in court at Nakuru this Friday, 25th July, 2014.

BYRAM ONGAYA

JUDGE