



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 120 OF 2007**

**BETWEEN**

**KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE & ALLIED**

**INDUSTRIES EMPLOYEES UNION..... CLAIMANT**

**VERSUS**

**MORRIS AND COMPANY (2004) LIMITED.....RESPONDENT**

**RULING**

1. The Parties filed a consent in Court on 2<sup>nd</sup> April 2014. They agreed:-
  - (a) Decretal Sum payable to the Claimant by the Respondent is Kshs.4,504,067 all inclusive of costs.
  - (b) The said Decretal Sum be paid in two monthly installments of Kshs.2,250,000 being the first installment to be paid within 7 days of the filing of this Consent AND Kshs.2,254,067 being the second installment, to be paid on or before the expiry of 30 days from the date of the first installment.
  - (c) In default of payment of the entire sum, execution to issue.
  - (d) The matter is marked as settled.

This consent was adopted by the Court, and Order given in terms, on 16<sup>th</sup> May 2014.

2. Relying on Rule 31 (2) of the Industrial Court (Procedure) Rules 2010 and Oder 22 Rule (i) (a) of the Civil Procedure Rules 2010, the Respondent opted to pay the Decretal Sum in Court.
3. Cheques totaling Kshs.2,250,000, issued in the name of the Industrial Court, on 10<sup>th</sup> April 2014. They were meant to satisfy the first installment. The Respondent was advised by the Court Registry, that deposit in the name of the Court, could only be made upon an Order of the Court. The Respondent's Advocates wrote to the Claimant's Advocates on 12<sup>th</sup> May 2014, communicating these developments, and exhibiting a total of 6 cheques drawn in favour of the Industrial Court.
4. The Claimant's Advocates wrote to the Respondent's Advocates on 15<sup>th</sup> May 2014, protesting that the Respondent was seeking to vary the consent of 2<sup>nd</sup> April 2014. The Claimant's Advocates invited the

Respondent's Advocates to appear before the Hon. Principal Judge on 16<sup>th</sup> May 2014 for the adoption or variation of the consent. The record shows the Respondent's Advocates did not attend Court on 16<sup>th</sup> May 2014. Mr. Wandago submitted the Court was not sitting. The record shows the Hon Principal Judge sat, and in the presence of Ms. Guserwa for the Claimant, adopted the consent of 2<sup>nd</sup> April 2014. There was no variation of the consent, so as to indicate money would be paid through the Court.

5. On 21<sup>st</sup> May 2014, the Claimant forwarded a copy of the Order, complete with a Penal Notice, advising the Respondent execution "*commences tomorrow without further reference whatsoever.*"

6. The Claimant's Advocates forwarded an e-mail message to the Respondent's Advocates on 30<sup>th</sup> May 2014 stating, "*As you are aware, the execution process is in progress. No more mentions.*" Auctioneers proclaimed the Respondent's goods on 3<sup>rd</sup> June 2014.

7. The Respondent filed the Application subject matter of this Ruling, on 9<sup>th</sup> June 2014. Three main prayers are sought: there be a stay of execution of the decree and warrants issued on 3<sup>rd</sup> June 2014; the Court issues a notice of payment and satisfaction of the entire decretal amount to the Claimant; and the attachment be lifted. The Application is supported by the affidavit of Martin Bett, Legal Officer of the Respondent Company, sworn on 6<sup>th</sup> June 2014.

8. The Claimant filed a Replying Affidavit sworn by its National General Secretary Francis K. Murage on 11<sup>th</sup> June 2014.

9. Mr. Wandago for the Respondent, and Ms. Guserwa for the Claimant, made their submissions before the Court on 26<sup>th</sup> June 2014.

10. The gist of the Respondent's argument is that it had the discretion under Rule 31(2) of the Industrial Court (Procedure) Rules 2010, and Order 22 (i) (a) of the Civil Procedure Rules 2010, to pay the Decretal Sum in Court. Mr. Wandago submitted Order 22 allowed the Award-Debtor to pay all money to the Court whose duty, it is to execute; pay to the Award-Holder; or pay as the Court may direct. The Respondent exercised the first option, and explained in the Affidavit of its Legal Officer, that it made this option, because the Claimant had written to both Advocates, expressing its loss of confidence in its Advocates (J. A. Guserwa & Co. Advocates).

11. The Claimant's General Secretary swore that the Claimant retains full confidence in its Advocates, and the money should pass through its Advocates. There was no variation of the consent. The Respondent's Advocates did not attend Court when invited to do so on 16<sup>th</sup> May 2014. Attachment of the Respondent's goods is Lawful, having been preceded by a Consent Order, and Penal Notice. The Respondent should be ordered to pay the Decretal Sum, Auctioneers' charges and costs of the Application.

12. The Respondent clarified it is ready to pay the Decretal Sum directly to the Claimant's Advocates. This could only be done within 10 days, when the Respondent's Directors will be available.

#### *The Court Finds and Rules:-*

13. This dispute goes back to September 2008, when Justice Paul Kosgei delivered an Award for payment of compensation and terminal benefits, to the former Employees of the Respondent Company. There have been many other proceedings taken out at the Industrial Court and in the High Court after the Award, which have delayed payment to these vulnerable Employees of their rightful dues, for over 5 years.

14. The recent delay is regrettable. There is a consent letter filed by the Parties in Court on 2<sup>nd</sup> April 2014, setting out the mode of satisfaction of the Award. Instead of paying the Awarded Sum to the Claimant's Advocates directly, the Respondent returned to Court, and sought to deposit the money in

Court.

15. This compelled the Claimant to extract the Consent Order, and initiate the process of execution. In the view of the Court, the inability of the Respondent to deposit the money in Court, simply meant the Awarded Sum remained unpaid. There was no payment, without the deposit being accepted in Court. Why was it necessary to pay the money in Court?

16. The Claimant has for the better part of the proceedings been represented by its present Advocates. The Respondent's Advocates have all through dealt with the Claimant's Advocates. There was no change in the Claimant's representation, and the General Secretary is categorical his Members' money, should be paid through the Claimant's Advocates. The assertion by the Respondent that the Claimant Union communicated it had lost confidence in its Advocates, and that consequently the money should be deposited in Court, is not a communication or conclusion that is supported by the record, or justifiable in Law.

17. There was no need at all, for the Respondent to seek to deposit the money in Court. After the Court advised there would have to be made an Order for the deposit to be accepted in Court, the Claimant invited the Respondent to attend Court on 16<sup>th</sup> May 2014, for variation of the consent. The record shows the Principal Judge sat on 16<sup>th</sup> May 2014. The Claimant's Advocate was present while the Respondent's Advocates did not attend Court. This was no variation, and the consent was adopted as filed on 2<sup>nd</sup> April 2014.

18. The Claimant may have, given the long history of the dispute, felt that the Respondent was once again stalling. The decision to proceed with execution would in this case be justifiable. The Court however feels that the Claimant's Advocates, having been shown copies of the cheques drawn in favour of the Industrial Court, ought to have slowed down a little bit and given the Respondent's Advocates some breathing space to consult their Client. The involvement of the Auctioneers, though not wrong, was perhaps too swift, and not entirely in the spirit of good industrial relations. Against this backdrop *IT IS ORDERED:-*

***(a) The Respondent shall, within 10 days of this Ruling, issue a fresh cheque for the amount of Kshs.4,504,067, in the name of the Claimant's Advocates.***

***(b) The Respondent shall meet 75% of the Auctioneers' charges, and the Claimant meet 25% of the Auctioneers' charges.***

***(c) The warrants to remain in place until the Decretal Sum and Auctioneers' charges are paid.***

***(d) No order on the costs of the Application.***

Dated and delivered at Nairobi this 4<sup>th</sup> day of July 2014

**James Rika**

**Judge**