



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 16 OF 2013

(Originally Nairobi Cause No. 72 of 2011)

FREDRICK NGARI MUCHIRA

HOWARD KIPKOECH KORIR & 98 OTHERS.....CLAIMANTS

v

PYRETHRUM BOARD OF KENYA..... RESPONDENT

RULING

1. On 19 July 2013 Ongaya J delivered judgment in which he found in favour of the Claimants and ordered the Respondent to pay the Claimants the sums awarded before 1 November 2013. The Claimants were to compute the terminal benefits and file and serve the computations before 25 July 2013. The Respondent was given liberty to object to the computations. The computations were agreed by the parties on 30 November 2013 at Kshs 61,919,493/-.
2. The Respondent filed an application seeking review of the judgment and in a ruling delivered on 4 October 2013, Ongaya J dismissed the application
3. On 21 November 2013, the Claimants filed a Bill of Costs.
4. On 17 December 2013, the Claimants filed a garnishee application to attach the Respondent's monies held at Co-operative Bank of Kenya Ltd. On 19 December 2013, Ongaya J ordered the maintenance of the *status quo* in the Respondent's accounts with Cooperative Bank of Kenya Ltd. The garnishee application was later compromised through a consent order filed in Court on 8 January 2014. The parties also agreed party and party costs.
5. On 17 December 2013 a decree was issued.
6. On 22 September 2014, the Claimant filed a motion under section 13 of the Industrial Court Act, Order 22 of the Civil Procedure Rules seeking

THAT the Honourable Court be pleased to order seizure, attachment and sale by public auction of the respondents movable and immovable assets namely;.....

7. This motion is the subject of this ruling.

Claimants' case on the 22 September 2014 motion

8. According to the Claimants, the Respondent had not made any effort to settle the decretal sum despite having substantial assets.
9. In written submissions, it was contended that there was a balance of Kshs 48,226,883/27 out of the decretal sum and that the Court had wide powers to order attachment. The Respondent had been evasive and was avoiding settling the decretal balance.

Respondent's case on the motion

10. The Respondent filed a replying affidavit by Solomon Odera, Interim Head to Pyrethrum and other Industrial Crops Directorate.
11. It was deposed that the application was an attempt to execute through the back door and that no assets had been proclaimed or attached. No warrants of attachment had been issued. Further, it was deposed that no nexus was laid between the assets listed in the application and the Respondent and that the Claimants had failed to disclose that the Respondent had paid KShs 18,000,000/- out of the decretal sum.
12. It was submitted the application was misconceived, incompetent and bad in law. It was further submitted that order 22 rule 7 of the Civil Procedure Rules provided for mandatory procedures in respect to execution.

Evaluation

13. Order 22 of the Civil Procedure Rules is applicable to execution of decrees arising from the decisions of the Industrial Court. The order has set out elaborate procedures to be followed by a decree holder.
14. The Claimants herein are attempting to short circuit the procedures. No convincing reasons have been given.
15. The Claimants also failed to mention in the application that there had been part settlement of the decretal sum. This amounted to material non disclosure of relevant facts.
16. And as the Claimants attempt to short circuit the procedures, they are well advised to note that time is running and also to take cognizance of Order 22 rule 18 on execution more than a year after decree.
17. The application by the Claimants, in the view of the Court, has sidetracked the primary procedure for executing a decree of Court and is thus misconceived and an abuse of the Court process.

Conclusion and Orders

18. The upshot is that the Court finds and holds the application dated 22 September 2014 is misconceived and is an abuse of Court process and orders it dismissed with costs to the Respondent.

Delivered, dated and signed in open Court in Nakuru on this 7th day of November 2014.

Radido Stephen

Judge