



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 130 OF 2013

JOSEPH ALEGO AWENDO

MARY C. MAINA

CHARLES M. MWANGI

WILLIAM ODHIAMBO NDUARA

VERONICA MWENI MASILA

FRANCIS L. BUMBE

PETER BALOZI ODUCHO

STANLEY M. MWANGI

PETER MWANGI NYAGA

NAOMI W. KAMAU

ELIZABETH W. MWANGI

PETER G. NJOROGE

DAVID G. MBUGUA

CHARLES M. KURIA

VINCENT O. WAFULA

JOSPHAT N. CHILI

DAVID N. MITHANGA

DAVID K. BETT

JOSEPHAT LABOSO

DANIEL ODUOR

GEORGE OUTA

JOSEPH NGATIA

MARGARET KIRIKA

VERONICA W. MACHARIA CLAIMANTS

DANIEL OUMA ODUOR	1ST CLAIMANT/APPLICANT
GEORGE OTIENO OUTA	2ND CLAIMANT/APPLICANT
JOSEPHAT LABOSO	3RD CLAIMANT/APPLICANT
PETER ODUCHO BALUTHI	4TH CLAIMANT/APPLICANT
DAVID G. NGUGI	5TH CLAIMANT/APPLICANT

v

EGERTON UNIVERSITY	1ST RESPONDENT
EGERTON UNIVERSITY INVESTMENT CO.	2ND RESPONDENT

RULING

1. Some 24 Claimants sued the Respondents on 16 May 2013 and the issues in dispute were stated as *failure to pay terminal dues to the Claimant and unfair and illegal termination of employment.*
2. The Respondents filed a Statement of Defence on 10 July 2013.
3. According to the record, the parties reached consent and decree was issued on 12 June 2014 as follows
 1. The respondent to pay the claimants kshs 4,433,683.00 as per details in the respondent's final tabulation of the claimants final dues dated 6.6.2014 and signed for the parties and to be filed in court by close of today.
 2. The respondent to pay costs of the suit agreed at 342,388.00
 3. There be stay of execution for 30 days from today.
4. The decree appears to have been prepared in a hurry as it has several errors.
5. On 17 September 2014, the Advocate for the Claimants filed 2 motions under urgency (dated 18 August 2014).
6. One motion was filed on behalf of Veronica W. Macharia and it sought a review of the consent on the ground that her terminal benefits had been computed based on the occupation of a herder and not general labourer (according to her this was the correct designation).
7. The second motion was filed on behalf of Daniel Ouma Oduor and 4 others and sought to include Josephat Laboso and Peter Oducho Baluthi (3rd and 4th applicants-whose names had been omitted from the consent), and that the applicants be paid terminal benefits commensurate with the higher positions they held.
8. The 2 applications were placed before me on 2 October 2014, and the parties informed me that they were negotiating. I directed that the parties report back on 21 October 2014 with a view to recording consent.

9. By 21 October 2014 no settlement had been reached and new mention date of 10 November 2014 was fixed.
10. After a few other false starts, the parties' Advocates on record filed a consent in Court on 18 December 2014 in which they agreed that the names of Josephat Laboso and Peter Oducho Baluthi be included and their respective claims be computed forthwith.
11. In my view, the second motion was compromised and there is nothing more pending for my determination as the parties mutually agreed to include the 2 and compute their benefits.
12. What is pending therefore is the application by Veronica W Macharia.
13. On 22 April 2015, the motion was fixed for *inter partes* hearing on 15 June 2015. The date was fixed in the presence of Mr. Masese for the Respondents and in the absence of the Claimants. The Court directed Mr. Masese to serve a hearing notice.
14. When the application was called up for hearing on 15 June 2015, the Claimants in the compromised application were present but their advocate on record was absent. Mr. Masese successfully sought that the application dated 18 August 2014 be dismissed.
15. One of the Claimants (not Veronica Macharia) addressed the Court and requested that the Court waits for their advocate. The whereabouts of the advocate was not disclosed and the Court dismissed the motion with costs to the Respondents.
16. This prompted the Claimants to file an application on 23 June 2015 seeking the setting aside of the dismissal order. This is the application the subject of this ruling.
17. The Respondent filed grounds of opposition to the motion on 8 July 2015 and submissions were made on the same day.
18. The main reason advanced by the Claimant's advocate for seeking the setting aside of the dismissal was that the advocate (Mrs. Kirui) who had attended Court on 22 April 2015 had indicated that the application had been argued and ruling reserved for 15 June 2015.
19. The supporting affidavit was sworn by one Fatma Ali, an advocate practicing in the firm of Gordon Ogola, Kipkoech & Co. Advocates.
20. The order sought by the Claimants is discretionary. In order to exercise its discretion, the party seeking the exercise of the discretion must satisfy the Court that there are sufficient reasons. Candid and full disclosure must also be made.
21. Mrs. Kirui who attended Court when the Court allegedly directed it would deliver a ruling did not swear and or file any affidavit. She was the proper party to depose as to what happened on 22 April 2015.
22. According to the Court record, Mrs. Kirui did not attend Court on 22 April 2015 when the Cause was called. The record bears that the Claimant was/were absent.
23. It would have been necessary for Mrs. Kirui to explain how and where she got the indication that the Court had reserved ruling for 15 June 2015.
24. Further, in the Memorandum of Claim, the Claimants had annexed a document in which Veronica Macharia was designated as a herder and not general labourer. Her correct designation was information within her knowledge.
25. Without that explanation, the Court is unable to exercise its discretion in favour of the Claimants.
26. The upshot is that the motion dated 23 June 2015 is dismissed with costs to the Respondent.
27. It is so ordered.
28. A few more words before I retire my pen. Pleadings by advocates need to be concise, neat and tidy. The applications which have been filed in this Cause did not follow the pattern in which the Cause was commenced.
29. The names of some of the Claimants were omitted. That is not desirable or advisable. It brings a lot of confusion and embarrassment in orders which might result. There is need for consistency in pleadings.

Delivered, dated and signed in Nakuru on this 23rd day of October 2015.

Radido Stephen

Judge

Appearances

For Claimants Mr. Kipkoech instructed by Gordon Ogola, Kipkoech & Co. Advocates

For Respondents Mr. Masese, Senior Legal Officer, Federation of Kenya Employers

Court Assistant Nixon