



**Ndutu & others v Kenya Breweries Limited (Civil Case 279 of 2003)
[2023] KEHC 18099 (KLR) (Civ) (26 May 2023) (Directions)**

Neutral citation: [2023] KEHC 18099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 279 OF 2003

AN ONGERI, J

MAY 26, 2023

BETWEEN

LAWRENCE NDUTU & OTHERS PLAINTIFF

AND

KENYA BREWERIES LIMITED DEFENDANT

DIRECTIONS

1. The suit was filed in the High Court of Kenya in the year 2003 before the promulgation of *the Constitution* of Kenya 2010 which created special courts under article 162(2)(a) to handle Employment and Labour Relations cases.
2. The case was properly filed under the repealed Constitution and in accordance with the laws which were in force at that time.
3. Following the promulgation of the current Constitution in the year 2010, Judges were appointed in 2012 to handle Employment and Labour Relations cases in conformity with the 2010 Constitution.
4. The sixth schedule (article 262) which deals with transitional and consequential provisions states as follows regarding existing obligations, law and rights in force immediately before the effective date

“(i)All law in force immediately before the effective date continues in force and shall be construed with alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution” (Emphasis mine)
5. This case which has over 1000 plaintiffs was at an advanced stage and numerous Judges who previously handled this case decided to have it finalized in the Civil Division of the High Court.



6. The case was finally concluded on 24/1/2018 when the presiding Judge of the Civil Division of the High Court Hon. Justice Dr. Serگون delivered a final judgment.
7. On 29/6/2022 Hon. Justice Dr. Serگون recused himself from hearing the case and on 7/3/2023 the matter was allocated to me by the current Presiding Judge of the Civil Division of the High Court.
8. When a Judge takes over a matter from a previous Judge the practice is that directions are given whether the case will proceed from where the previous Judge had reached or the case should start denovo.
9. In the current case, I find that the case has already been finalized and what is coming for hearing is an application dated 21/7/2022 which is seeking to review orders of the court dated 30/6/2021 which struck out two post judgment applications dated 21/8/2019 and 12/3/2020.
10. The two post judgment applications were seeking among other orders review of the final judgment dated 24/1/2018 and transfer of this case to the employment and Labour Relations court.
11. I find that at this stage, this case cannot start denovo in view of the final judgment delivered on 24/1/2018 and since it is not possible to transfer a case which is already finalized.
12. The parties have informed the court the some of the plaintiff have already been settled and an appeal which was filed by Mr. Namada for some of the plaintiffs was struck out in the Court of Appeal since the defendant was willing to settle the matter.
13. I find that the plaintiffs represented by Mr. Manwa are desirous to have this matter finalized and I totally agree with them.
14. The defendant's advocate Mr. Kahora has told the court has always been ready and willing to settle this claim.
15. I find that the applications seeking to vary the judgment delivered on 24/1/2018 amount to an abuse of the court process since this matter already proceeded to the Court of Appeal and the appeal was struck out.
16. I also find that part of the judgment has been executed and it is not possible to transfer this matter to the ELRC court.
17. I accordingly direct that the defendant settles the remaining claims within 30 days of this date and this file to be marked as closed.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26TH DAY OF MAY, 2023.

.....

A. ONGERI

JUDGE

In the presence of:

..... for the Plaintiffs

..... for the Defendant

