



STANLEY MAINA MUTUOTA

JULIUS MURIUKI

JUSTUS WANGOMBE

MICHAEL MWATHA

KIEMA MWANDIA

DAVID MUHORO

CHARLES MWATHI

MARTIN OMUNGALA

BENJAMIN MATEMO

STEPHEN MBURU

KIGURU MWAURA

CHARLES GICHUKI PETITIONERS

AND

THE LABOUR COMMISSIONER 1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT NAIROBI 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION 4TH RESPONDENT

JUDGMENT

1. The subject of this dispute is whether the petitioners can be charged for certain offences at the Nairobi Chief Magistrate Court after similar charges against them were withdrawn at the Industrial Court. The facts leading to the petition filed in court on 24th July 2012 are not in dispute.

2. The petitioners, directors of Akili Moja Company Limited, were charged with offences of failing to comply with the provisions of the *Employment Act, 2009* before the Industrial Court in *Industrial Court Cause No. L98 of 2011*. They pleaded not guilty and were released on cash bail. On 28th June 2012, the prosecutor applied to withdraw the charges and upon there being no objection by counsel for the accused, the court marked the charges as withdrawn and the accused were discharged and the cash bail refunded.

3. The petitioners' were thereafter charged for the same offences in **Nairobi Criminal Case No. 972 of 2012**. It is the second charge that the petitioners claim infringes their rights in that they will suffer double jeopardy and inconvenience if they are taken through the motions of another criminal case hearing.

4. The petitioner's therefore seek the following reliefs in their petition dated 24th July 2012;

(a) A declaration that the criminal proceedings against the petitioners in Nairobi Criminal Case No. 972 of 2012 is a nullity, illegal and a gross violation of the petitioners fundamental rights and freedoms and thus a violation of the constitution.

(b) An order of permanent injunction restraining the respondents jointly and severally from continuing and or proceeding with Nairobi Criminal Case No 972 of 2012.

(c) General damages

(d) Such other orders as this Honourable Court may deem fit to grant

(e) Costs of this suit.

5. The right against double jeopardy is clearly articulated at **Article 50(2)(o)** which provides that, **“Every accused person has the right to a fair trial which includes the right – (o) not to be tried for an offence in respect of an act of omission for which the accused person has previously been acquitted or convicted.”** [Emphasis mine.]

6. For the petitioners to obtain the benefit of this provision, they must demonstrate that the proceedings in the Industrial Court led to either a conviction or acquittal. Both parties agree that the proceedings in that court were terminated by withdrawal. It therefore follows that **Article 50(2) (o)** is of no avail to the petitioner.

7. As regards the complaint that the accused were not supplied with the charge sheet and statements, I would point out that the petitioners are entitled to the charge sheet and statements by virtue of **Article 50(2)(b) and (j)** and no doubt the subordinate courts will be alive to these provisions.

8. In the circumstances, the petition lacks merit and it is dismissed. The conservatory orders in force are discharged. There shall be no order as to costs.

DATED and DELIVERED at NAIROBI this 21st day of September 2012.

D.S. MAJANJA

JUDGE

Mr Kirimi instructed by Kinyanjui, kirimi and Company Advocates for the petitioners.

Mr Njeru, State Counsel, instructed by the Directorate of Public Prosecutions.