



**Ndutu & others v Kenya Breweries Limited (Civil Case 279 of 2003)
[2023] KEHC 20976 (KLR) (Civ) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20976 (KLR)

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

**CIVIL
CIVIL CASE 279 OF 2003**

AN ONGERI, J

JULY 25, 2023

BETWEEN

LAWRENCE NDUTU & OTHERS PLAINTIFF

AND

KENYA BREWERIES LIMITED DEFENDANT

RULING

1. This court gave directions in this case on May 26, 2023 as follows;

“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.

The case was properly filed under the repealed Constitution and in accordance with the laws which were in force at that time.

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.

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)



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.

The case was finally concluded on January 24, 2018 when the presiding Judge of the Civil Division of the High Court Hon Justice Dr Serگون delivered a final judgment.

On June 29, 2022 Hon Justice Dr Serگون recused himself from hearing the case and on March 7, 2023 the matter was allocated to me by the current Presiding Judge of the Civil Division of the High Court.

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.

In the current case, I find that the case has already been finalized and what is coming for hearing is an application dated July 21, 2022 which is seeking to review orders of the court dated June 30, 2021 which struck out two post judgment applications dated August 21, 2019 and March 12, 2020.

The two post judgment applications were seeking among other orders review of the final judgment dated January 24, 2018 and transfer of this case to the employment and Labour Relations court.

I find that at this stage, this case cannot start denovo in view of the final judgment delivered on January 24, 2018 and I also find that it is not possible to transfer a case which is already finalized.

The parties have informed the court the some of the plaintiffs 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 for reasons that the defendant was willing to settle the matter.

I find that the plaintiffs represented by Mr Manwa are desirous to have this matter finalized and I totally agree with them.

The defendant's advocate Mr. Kahora has told the court he has always been ready and willing to settle this claim.

I find that the applications seeking to vary the judgment delivered on January 24, 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.

I also find that the judgment has been partially executed and, in the circumstances, it is not possible to transfer this matter to the ELRC court.

I accordingly direct that the defendant settles the remaining claims within 30 days of this date and this file to be marked as closed".

2. Mr Manwa for 292 plaintiffs subsequently filed an application dated June 9, 2023 seeking the following orders;
 - i. That the Application herein be certified urgent and heard ex-parte and service be dispensed with in the first instance.



- ii. That this Honourable Court be pleased to set aside the directions issued on the May 26, 2023 by Justice Asenath Ongeru J of refusing to set down the Plaintiffs/Applicants' pending applications for hearing and subsequently marking the matter as closed.
 - iii. That the Applications dated August 21, 2019 and March 12, 2020 be set down for hearing.
 - iv. That the Honourable Court grants any other order it deems fit and just in the circumstances.
 - v. That The cost of this application be in the cause.
3. This courts stands by its earlier order dated May 26, 2023 which is reproduced above.
 4. The right thing for Mr Manwa to do is to file an appeal against the order of this court if he is aggrieved.
 5. It is wrong for Mr Manwa to gather all his clients and bring them to court and start shouting at the court to hear his application after the court had already rendered itself in the order dated May 26, 2023.
 6. With tremendous respect to Mr Manwa, it is not fair for him to keep bringing all the plaintiffs he is representing to court when this court already had a discussion with his clients on May 26, 2023 and they told the court all they wanted was to be paid.
 7. This court already directed the defendant to pay the plaintiffs within 30 days from the May 26, 2023 and that order has not been appealed against.
 8. I find that the application dated June 9, 2023 is also an abuse of the court process.
 9. This court is *functus officio* and the only recourse for Mr Manwa is to appeal against the orders issued by this court on May 26, 2023 to the Court of Appeal.
 10. I strike out the application dated June 9, 2023 with no orders as to costs.
 11. Leave is granted for Mr Manwa to appeal against the order dated May 26, 2023 and today's order to the Court of Appeal if he so wishes.
 12. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF JULY, 2023.

.....
A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiffs

..... for the Defendant

