



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 1957 OF 2015

LUCY WAMBUI WANJIRU1ST CLAIMANT
RAPHAEL MOKURA UMARI 2ND CLAIMANT
ROBIN OBINO3RD CLAIMANT
WILSON R. NDUNGU4TH CLAIMANT
LEAZE AWUDA ASHERI5TH CLAIMANT
LILIAN MWENDE KYUMWA6TH CLAIMANT
BRIAN IRUNGU MUREITHI7TH CLAIMANT
JAMES KIARIE MUNGAI8TH CLAIMANT
FLORA WAIRIMU KAMAU9TH CLAIMANT
EDGAR NYANGONG10TH CLAIMANT
CHARLES LIBUSI KIMAKWA11TH CLAIMANT
CHRISTINE WAMBUI GIICHUKI12TH CLAIMANT
BERYL A. ONUNDA13TH CLAIMANT

VERSUS

GLOBAL VILLAGE PUBLISHERS (E.A) LIMITED....RESPONDENT

Mr. George Mwangi for claimant/applicant

Mr. Paul Mwangi for respondent

RULING

1. Applicants seek an order directing the respondent to release withheld salary arrears to the 13 claimants, which amount is stated on the face of the Notice of Motion.
2. The application is based on Section 1A, 1B, 3A & 63(e) of the Civil Procedure Act.
3. The respondent, filed grounds of objection to wit:
 1. That the application does not lie in law and is incompetent.
 2. That the application is legally vague and impossible to defend.
 3. That the application is based on inadmissible: without prejudice” communication.
 4. That the claimants have constructively terminated their employment without notice and owe the employer one month’s salary in lieu of notice.
 5. That the respondent has not admitted any part of the claim and has a good defence.
 6. That the amount claimed of Kshs.1,298,075.00 forms part of the main suit, and is disputed on sound legal grounds.
 7. That there is no power to grant the order sought on the basis of the application.
 8. That the entire application is an abuse of the court process and replying affidavit sworn on 12th April 2016.
4. Both parties filed written submissions

Determination

5. I have looked at the provisions of Sections 1A, 1B, 3A & 63(e) of the Civil Procedure Act.
6. Section 1A is on the overriding objective of the Act, 1B is on duty of the court, 3A is on saving of inherent power of the court to take such orders as may be necessary for the ends of justice whereas 63(e) provides for making of interlocutory orders.
7. These provisions are wrongly relied upon in an application seeking summary judgment on admission. Triable issues are disclosed in this matter including the determination of the nature of employment of the claimants, whether or not the claimants’ employment was terminated by the respondent and whether the claimants are owed terminal benefits and if so the quantum thereof.
8. Granted that respondent pleaded as follows; *“further and contrary to what has been averred by the claimants, the respondent through one of its directors, Mr. Wellington Kwendo Opanga asked employees to proceed on paid annual leave pending the payment of money in salary arrears owed and commissions unpaid since June 2015”*, it would appear that there is an admission that the respondent had not paid the claimants monthly salary and commissions but the specific amounts due are unknown.
9. However this is not an application under Order 13 Rule 2 of the Civil Procedure Act, under which the court may consider entering judgment on admissions upon application.
10. The court agrees with the respondent that this application does not lie in law, it is legally vague and embarrassing and the same is therefore incompetent. For the avoidance of doubt, the Civil Procedure Act is applicable in all civil proceedings including the matter before this court where the Employment and Labour Relations Court Act and the Rules of this court are silent.
11. The application is dismissed and the main suit be heard on the merits.

Dated and delivered at Nairobi this 3rd day of February 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE