



Ntiyeine v Kenya Pipeline Company Limited & another (Employment and Labour Relations Cause E782 of 2022) [2024] KEELRC 1857 (KLR) (16 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1857 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E782 OF 2022**

**AN MWAURE, J
JULY 16, 2024**

BETWEEN

JOSEPH SENTEU NTIYEINE CLAIMANT

AND

KENYA PIPELINE COMPANY LIMITED 1ST RESPONDENT

**KENYA PIPELINE COMPANY LIMITED BOARD OF DIRECTORS 2ND
RESPONDENT**

RULING

1. The Respondents filed a Notice of Motion dated 27th March 2023 seeking the following orders that: -
 1. The Claimant before this Honourable Court is not of sound mind having been diagnosed as suffering from paranoid schizophrenia and therefore lacks the capacity to institute this instant suit.
 2. This Honourable Court orders the Claimant to undergo a mental assessment to determine his suitability to institute this instant suit.
 3. The Claimant's entire suit is hopelessly misconceived, vexatious, totally devoid of merit and mala fides.
 4. The Respondent be awarded cost of this Application.

Respondents/Applicants' Case

2. The Respondents aver that the Claimant was a former employee of the 1st Respondent who worked as a technician III at the Nairobi terminal.



3. On 20/06/2014, the Claimant was diagnosed with paranoid schizophrenia; a mental illness that causes him to experience hallucinations and paranoid belief systems that people intend to harm or kill him.
4. The Respondents aver that the Claimant was retired on medical grounds on 18/03/2021 following a comprehensive medical examination carried out by a consultant psychiatrist and occupational health and safety specialist.
5. The Respondents aver that Claimant alleges that they are conspiring to kill him; these allegations are criminal in nature and this court lacks jurisdiction.
6. The Respondents aver that the Claimant has alleged that they killed him on more than one occasion; this clearly indicates that he is not of sound mind.

Claimant/ Respondent's Case

7. The Claimant vide his further affidavit dated 4th December 2023 opposed the Respondents' application.
8. The Claimant avers that the issues raised by the Respondent have been addressed by Mathari National Teaching and Referral Hospital and a certificate dated 08/02/2022; subsequently Hon. Ochoi gave a ruling dated 11/05/2021.
9. The Claimant avers that *vide* a memo by the 1st Respondent's MD dated 29/03/2017 states they involved the general public defined as Wanjiku who were neighbours in Utawala represented by Benjamin Seroney.
10. It is the Claimant's case that the memo speaks of Shengli Engineering and Consulting Co. Ltd. The 1st Respondent's managers undertaking the staff separation interviews in readiness for hijacking on 14/05/2013 by Esther Nkurani and Josephine Bett after discussions between James Kimayos and Stephen Bore. Killers are referred to as Chinese among KPC idle talk.
11. The Claimant avers that in early 2023, Benjamin Seroney threw stones to his house at night in Rongai. Mr Seroney has been visiting Rongai from Utawala to issue him threats.
12. The Claimant avers another goon appeared on April 2021 in Kayole estate as soon as he was dismissed from employment on 18/03/2021. The man followed the Claimant to Rongai and confronted him in his compound and he had to go the Mbagathi Hospital for check-up and reported to Rongai police.

Respondent/Applicants' Submissions

13. The Applicants submitted that the Claimant filed the instant suit alluding to allegations of a criminal nature that the 1st Respondent's employees want to kill him. The Claimant does not understand his actions thus lacks mental capacity to institute the suit.
14. The Applicant submitted that the Claimant lacks mental capacity to institute the suit as he was diagnosed by Dr. M.M Okonji (consultant psychiatrist) with paranoid schizophrenia on 24/06/2014, a condition he continues to suffer. No medical report has been produced to show that he no longer suffers from the disease.
15. The Applicant submitted that the Claimant was examined at Mathari National Teaching and Referral Hospital on 08/02/2022. However, the report was inconclusive and the consultant psychiatrist was to follow up with medical reports from Chiromo Hospital but the same has never been done.



16. It is the Applicant's submission that unless a report indicating the Claimant has mental capacity to institute the suit is filed in court, the Claimant cannot prosecute the instant suit.
17. The Applicant submitted that the Claimant's condition falls under the provisions of order 32 rule 15 of the Civil Procedure Rules which provides: -

“The provisions contained in rules 1 to 14, SO far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.”
18. It is the Applicant's submission that there is medical evidence adduced before this court that the Claimant is not of sound mind having been diagnosed as suffering from paranoid schizophrenia and therefore lacks mental capacity to institute the instant suit.

Claimant/Respondent's Submissions

19. The Claimant submitted that Mr Benjamin Seroney is a key figure in the KPC Staff separation and he was unable to complete his building in utawala on July 2023 because of Mr. Seroney's violence.
20. The Claimant submitted that all executions and hijacking of the 1st Respondent from June 2013 to October 2018 are directed to Chiromo Lane Medical Centre.
21. The 2nd Respondent allowed Staff Separations in 1st Respondent's premises by appointing Mr. Charles Tanui as the Managing Director when Mr. James Kimayos was performing Staff separations. Mr. Charles Tanui being an insider knew the criminal activities undertaken by Mr. James Kimayos as Depot Manager in Nairobi Terminal Ps10.

Analysis and Determination

22. The main issue for this court's determination is whether the Claimant lacks the mental capacity to institute this instant suit.
23. In MMM v AMK (Miscellaneous Civil Application 51 of 2015) [2016] KEHC 4741 (KLR) (13 June 2016) (Ruling) the court held as follows: -

“However, even if both parties had submitted medical evidence confirming their opposing positions or identical positions, would such a position have satisfied the requirements of order 32 rule 15 cited above. I do not think so. The answer to the said question can be found in the procedure provided under order 32 rule 15 of the Civil Procedure Rules, 2010 reproduced above which provides as follows: -

“The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued”

Interpreting a similar provision under the Indian Civil Procedure Rules, the court in Balakrishnan v Balachandran held that the said rule 22 is intended to ensure that no man is adjudged a lunatic without proper enquiry, and that the court should hold a judicial inquiry and it may seek the assistance of medical experts. It was pointed out that the only



safe course to adopt is to follow strictly the procedure prescribed in order XXXII, rule 15, Civil Procedure Code, and that if the precaution of a judicial inquiry is not observed, a man cannot be declared to be a lunatic (or unfit to protect his interests), and a guardian appointed for him on that basis. A decree passed or orders issued against a defendant in such a case must be considered to be an ex parte decree, and must be set aside. At page 461, the discussing the procedure to be followed by the court in an application such as the one before me the learned Judge observed as follows: -

Order XXXII, Rule 15 CPC of the Indian Civil Procedure Code

That procedure involves a judicial inquiry which consists normally of two parts:

- (1) questioning the lunatic (or the person in question) by the Judge himself in open court, or in chambers, in order to see whether he is really a lunatic and of unsound mind (or unfit to protect his interests), and
- (2) as the court is generally presided over only by a layman, to send the alleged lunatic to a doctor for report about his mental condition after keeping him under observation for some days..... When this elementary precaution of a judicial inquiry prescribed by law is not observed, I am afraid that the laws of this country will not allow a man to be declared a lunatic and a guardian appointed for him, on such basis."

To me, the authoritative position stated by the Indian High Court in the above cited case represents the correct interpretation of order 32 rule 15 of the Civil Procedure Rules. The above rule contemplates a judicial inquiry. The words uses in the rule are

“to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued”

24. Justice Mativo J continued to state in *MMM v AMK (supra)* that: -

“Thus, guided by the above authorities and the express provisions of order 32 rule 15, I find that it is necessary for this court to conduct a judicial inquiry and form an opinion that the person in question is incapable of protecting his/her own interests. This position was reiterated in the case of *Duvvuri Rami Reddi v Duvvudu Papi Reddi and ors* where the court authoritatively stated that after evaluating the authorities, the following principles emerge which I entirely agree with:-

- a. Order 32, rule 15 places persons of unsound mind or persons so adjudged in the same position as minors for purposes of Rules 1 to 14.
- b. Order 32 rule 15 applies not only to a person adjudged to be of unsound mind, but also to a person of weak mind.
- c. Where it is alleged that a party to a suit is of unsound mind, and the other party denies it, the court must hold a Judicial inquiry, and come to a definite conclusion, as to whether by reason of the unsoundness of mind or mental infirmity, he is incapable of protecting his interests in the suit.



- d. Mental infirmity may even be due to physical defects, if it renders him incapable of receiving any communication, or of communicating his wishes or thoughts to others.
- e. Whether a person is of unsound mind or mentally infirm for the purpose of the rule and the extent of the infirmity has to be found by the court on inquiry.
- f. Where the question of unsoundness of mind arises not only under order XXXII, rule 15 of the Civil Procedure Code but is also one of the issues in the suit, the court has ample jurisdiction to enquire into that question, and for that purpose seek medical opinion.
- g. The enquiry should consist not only of the examination of the witnesses produced by either party, but also of the examination of the alleged lunatic by the judge, either in open court or chambers, and as courts are generally presided over by lay-men, as a matter of precaution, the evidence of medical expert should be taken.
- h. Of course, the opinion, of a doctor, as is the opinion of any other expert, under the Evidence Act, is only a relevant piece of evidence.
- i. The court may also compel the attendance of the alleged person before it, and to submit himself for medical examination. If the alleged person is in custody, the court may direct the next friend or any other person having custody to produce him before the medical expert for examination.
- j. Where the precaution of judicial enquiry is not observed, the person cannot be declared lunatic, and a guardian cannot be appointed for him.
- k. When a person is adjudged as being of a lunatic or unsound mind irregularly and improperly, and notice was not served on him, and a guardian alone was allowed to appear and defend the suit and decree was passed owing to the guardian not putting up a proper defence, the alleged lunatic can treat the decree against him as an ex parte decree, and have it set aside under the provisions of the Civil Procedure Rules.

Applying these principles to the facts of the present case, I find that for the court to find that prima facie, the said AMK is incapable of protecting his interests, this court is required to hold an inquiry as provided under order 32 rule 15 of the Civil Procedure Rules, 2010 and strictly follow the procedure stipulated in the above authorities, that is, examine the said person in court and consider the medial evidence. The said two-fold procedure has not been done, yet it is prescribed under the law. It is necessary to have a full-fledged enquiry, and after the inquiry the court will then decide whether the said AMK suffers from infirmity of mind, and whether it is of such a character that prevents him from safeguarding his interests.”

- 25. The instant case the court has no power to or what it takes medically to declare the claimant a person of unsound mind. That can only be assessed by a medical team.
- 26. Furthermore there is no more suits in this case that refer to employment related issues and the employment relationship between the claimant and respondent has since terminated and so if any other cases are to be entertained they should be in other courts not the employment and labour relations court.



27. The court finds there is no grounds to order the claimant to undergo mental assessment and since there is no suit that would any longer be entertained in this court this file is closed.
28. If claimant has any other matters he would wish to litigate he would proceed to be in the High court. But for purposes of this application the same is not granted and the file is closed. No orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16TH DAY OF JULY, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

