



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KARANJA, J.A (IN CHAMBERS)

NAKURU CIVIL APPEAL (APPLICATION) NO. 147 OF 2018

BETWEEN

GILGIL TELCOMS INDUSTRIES LIMITED.....APPELLANT

AND

DUNCAN NDERITU & 55 OTHERS.....1-56TH RESPONDENTS

TELCOM KENYA LIMITED.....57TH RESPONDENT

(An application for Settlement of Terms from the Judgment of the Court of Appeal sitting

at Nairobi (Alnashir Visram, W. Karanja, & J. Mohammed, JJ.A)

dated 4th November, 2016 in Civil appeal No. 147 of 2013

Consolidated with Civil Appeal No. 137 of 2013)

RULING

Vide a notice of motion dated 29th November 2018, the applicant has moved this Court under **Rules 33 and 34** of the Court of appeal Rules for settlement of terms of the draft order emanating from this Court's judgment dated 4th November, 2016. In the said judgment, this Court (A. Visram, W. Karanja and J. Mohammed, JJ.A) partially allowed the appeal in favour of the appellant in the following terms:-

“The upshot of the foregoing is that the appeal herein succeeds in part to the extent that the order issued and award made in favour of the respondents in respect of the accrued salaries and house allowance arrears is hereby set aside. Each party bears its own costs in this appeal.”

I have considered the grounds on the face of the application and the contents of the rival affidavits sworn by Prof. Tom Ojienda SC and Mr. Robert Kamau Irungu, the in-house legal advisor for Telkom Kenya Limited.

First, I note that learned counsel for the respondent has raised the issue of the timelines within which the order should have been drafted and served. Under **Rule 34(2)**, the duty to draft the order falls on the party who has been “substantially successful”. In this case, as the appeal only partially succeeded, it can be argued that both parties partially succeeded and either of them could have initiated the draft order. I do not think the discourse on the timelines in this case will add any substance to this application and I will therefore not consider the same for purposes of this Ruling. I will only render myself on the correctness or otherwise of the contested draft order.

I do not see the difficulty in understanding this order. It plainly means that the award by the High Court in respect of accrued salaries and house allowance arrears was set aside. This would therefore, mean that all the other orders granted by the High Court, including the order on costs remained the same. The declaratory order (b) is drawn from paragraph 29 of the judgment where the Court stated:-

“We find that the trial Judge did not err in granting the declaratory order to the effect that the respondents were entitled to the benefits under the revised terms of service.”

The above reflects the draft order dated 4th November, 2016 as drafted by the Registrar of this Court. The terms of the order in this appeal are accordingly settled as per the draft by the Registrar.

Dated and delivered at Nairobi this 6th day of November, 2020.

W. KARANJA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR