



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER E586 OF 2020

BETWEEN

1. LYDIA SUZY SABAYENI

2. GEORGINA GLADYS SABAYENICLAIMANTS

VERSUS

1. AUSTRALIAN EDUCATION CONSULTANTS LIMITED

2. GURGEET KAUR TARLOCHAN S. CHANA.....RESPONDENTS

RULING

1. The Court made a ruling on 18th February 2021, staying its proceedings herein, and directing that the dispute, which had earlier been reported to the Nairobi County Labour Office, is handled from there by way of conciliation.
2. The orders issued under Section 15 of the E&LRC Act.
3. The Claimants have come back to Court with an application dated 4th June 2021, asking the Court to review and set aside its orders.
4. The application is founded on the affidavit of the Claimants' Advocate Lemmy S.N. Nyaga, sworn on 4th June 2021. It is however, indicated on its face, to be grounded on the affidavit of Lydia Suzy Sobayeni. It is incompetent. It is not based on the affidavit of the party it proclaims to be based, but on an affidavit sworn by that party's Advocate.
5. This notwithstanding, there is a letter dated 25th August 2020, from the Ministry of Labour to the Respondents, exhibited in an earlier affidavit sworn by Lydia Suzy Sobayeni. The letter is some form of certificate issued by the Labour Officer, confirming that the dispute before him was not resolved upon conciliation. The Labour Officer opened the door for litigation in Court.
6. The Respondents oppose the application, relying on the affidavit of the 2nd Respondent, sworn on 5th July 2021. Their position is that the letter from the Labour Officer dated 25th August 2020, is not a statutory certificate issued under the Labour Relations Act, confirming that the dispute has not been resolved through conciliation.
7. It is the view of the Court, that the order [a] issued in the ruling of 18th February 2021 merits review and setting aside, to enable the parties proceed with the Claim in Court. There is a letter from the Labour Officer confirming conciliation has failed. Nothing would come out of conciliation process, even if the Court retains the order staying its proceedings.
8. Having reviewed and set aside that order [a] in the ruling, it is the view of the Court that the orders sought in the Claimants' application dated 25th September 2020 [not 28th September 2020 as stated in the ruling subject matter of review] ought to be joined to the main prayers in the Claim, and pursued as substantive prayers.
9. The Claimants seek arrears of salaries and declaration that they have constructively been dismissed. These are prayers that are to be considered upon hearing the full evidence. No useful purpose is served in hearing the remaining prayers in the application dated 25th September 2020.

IT IS ORDERED: -

a. The order staying proceedings is reviewed and set aside.

b. The application by the Claimants dated 25th September 2020 relating to arrears of salary and constructive dismissal is joined to the main claim.

c. Parties to comply with pre-trial procedures under Rule 15 of the E&LRC [Procedure] Rules and schedule the matter for full hearing.

DATED, SIGNED AND RELEASED TO THE PARTIES AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 25TH DAY OF JANUARY 2022.

JAMES RIKA

JUDGE