



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 323 OF 2017

EVERLYNE ATIENO AWUOR.....1st CLAIMANT
CHRISTINE ACHIENG.....2nd CLAIMANT
BENTER ATIENO.....3rd CLAIMANT
DORINE ATIENO ODIRA.....4th CLAIMANT
ROSELYNE ACHIENG ONGERA.....5th CLAIMANT
BENTER AKINYI OLUOCH.....6th CLAIMANT
DANIEL OCHIENG OPEE.....7th CLAIMANT
MESHACK KARANJA LICHOGO.....8th CLAIMANT
SAMUEL OKOTH OUKO.....9th CLAIMANT
PETER OUMA OMOLLO.....10th CLAIMANT
CYPRIAN OYIER OKODE.....11th CLAIMANT
ABICH FRED.....12th CLAIMANT
FIDEL OMONDI.....13th CLAIMANT
WYCLIFFE OMONDI OTIENO.....14th CLAIMANT
MICHAEL OLALA AWUOR.....15th CLAIMANT
RUTH AUMA OTIENO.....16th CLAIMANT
DOROTHY ADHIAMBO.....17th CLAIMANT
LORNA AKOTH OLOO.....18th CLAIMANT
JULIUS OUMA OMBELE.....19th CLAIMANT
NELLIUCE W OWUOR.....20th CLAIMANT
EUNICE A OMOLLO.....21st CLAIMANT
MILLICENT AKOTH GOR.....22nd CLAIMANT

EUNICE AWUOR OSUNDUKA.....23rd CLAIMANT
DICKENS OKOTH ODHIAMBO.....24th CLAIMANT
EDEKIA AKELLO GOR.....25th CLAIMANT
MAUREEN AMIMO ANYANGO.....26th CLAIMANT
JACKSON NDUTH M.....27th CLAIMANT
ELIUD CHAMBE.....28th CLAIMANT
ABRAHAM OTIENO ALUODO.....29th CLAIMANT
FRANCIS OKOTH AWITL.....30th CLAIMANT
MERCY OGUTU.....31st CLAIMANT
PHILIP OMONDI.....32nd CLAIMANT
DOROTHY AKOTH OWAKA.....33rd CLAIMANT
BONFACE OCHIENG MIGEDA.....34th CLAIMANT
TIMOTHY AJOWI OKECH.....35th CLAIMANT
BEBARD OKELLO NYANENGO.....36th CLAIMANT
ASHA ADHIAMBO ODHIAMBO.....37th CLAIMANT
BOSS VINCENT ATENDO.....38th CLAIMANT

v

MIGORI COUNTY GOVERNMENT.....1st RESPONDENT
MIGORI COUNTY PUBLIC SERVICE
BOARD.....2nd RESPONDENT

RULING NO. 2

1. Before the Court is a Motion dated 30 March 2021 by the Respondents seeking orders:

- (1) ...
- (2) THAT the firm of Prof Tom Ojienda & Associates do formally come on record as Advocates for the 1st and 2nd Respondents.
- (3) THAT there be a stay of execution of the judgment and orders dated 7th July 2019 pending the hearing and determination of this application.
- (4) THAT the Honourable Court be pleased to review and/or vary and/or set aside its judgment and orders dated 7th July 2019.
- (5) THAT the costs of this application be granted to the 1st and 2nd Respondents.

2. When the Motion was placed before the Court on 12 April 2021, it directed that it be served and that the parties file and exchange affidavits and submissions within set timelines.

3. Mr Marvin Onyango Odero, an advocate with the firm of Okongo, Wandago & Co. Advocates (which was then on record for the Respondents) filed an affidavit to respond to some depositions which had been made in the affidavit of one Naomi Matiko, filed on behalf of the Respondents.

4. Save for the 2 affidavits, no other affidavits or submissions were filed.
5. In support of the review application, the Respondents asserted that a conciliation agreement upon which the Court relied to enter judgment for the Claimants on 9 July 2019 was procured through misrepresentation because the person who signed it on behalf of the Respondents had no legal capacity and that he had misrepresented himself as a Legal Officer with the Respondents.
6. According to the Respondents, at the material time, they were represented by the firm of Okongo, Wandango & Co. Advocates.
7. The Respondents also contended that the judgment should be reviewed because it was incapable of being implemented due to legal, human resource and budgetary constraints.
8. In an affidavit filed by Marvin Onyango Odera, an advocate from the firm of Okongo, Wandango & Co Advocates in response to the supporting affidavit, it was deposed that the conciliation agreement was signed by a person who had severally given instructions to the law firm on behalf of the County Government of Migori.
9. The Court has considered the Motion and affidavits and come to the view that the Motion should be declined for the following reasons (save for the grant of leave to the firm of Prof Tom Ojienda & Associates to come on record for the Respondents).
10. First, the judgment sought to be reviewed or set aside was delivered on 9 July 2019. The review Motion was filed in Court on 30 March 2021, over 20 months after judgment.
11. There was no attempt to explain the delay in seeking the review orders, and the Court finds the delay inordinate.
12. Second, the Court expressly directed the Respondents to serve the Motion upon Marvin Omondi, the person alleged to have signed the conciliation agreement without authority. There was no evidence that the Respondents served him as directed.
13. Last, despite being ordered to file affidavits of service to show that the Claimants were served with the Motion in order to exercise their fundamental right to be heard, the Respondents did not file the affidavits.

Conclusion and Orders

14. From the foregoing, save for an order granting the firm of Prof Tom Ojienda & Associates leave to come on record for the Respondents, the Motion dated 30 March 2021 is dismissed. Costs in the cause.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 9TH DAY OF FEBRUARY 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimants Gordon Ogola, Kipkoech & Co. Advocates

For Respondents Prof Tom Ojienda & Associates

Court Assistant Chrispo Aura