



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
PETITION NUMBER 16 OF 2020

BETWEEN

- 1. KELVIN GATEMBO KARIUKI**
- 2. ELIZABETH W. MUTUA**
- 3. BRENDA ANINDO**
- 4. CATHERINE N. MURIITHI**
- 5. SCOLASTICA WAWIRA NJERU.....PETITIONERS**

VERSUS

- 1. OFFICE OF THE AUDITOR-GENERAL**
- 2. THE HON. ATTORNEY- GENERAL**
- 3. THE NATIONAL EMPLOYMENT AUTHORITY.....RESPONDENTS**

RULING

1. On 11th June 2021, the Court delivered Judgment in favour of the Petitioners, finding that they were lawfully employed by the 1st Respondent, and that their respective contracts of employment were unlawfully terminated by the 1st Respondent.
2. The Court ordered that the 1st Respondent pays the Petitioners 7 days' salaries as notice pay, with costs, while the Petition against the 2nd and 3rd Respondents was rejected.
3. The 1st Respondent has returned to Court with an Application for review, dated 1st September 2021, which is founded on the Affidavit of the 1st Respondent's Advocate, Mr. Timothy Isaac Oduol Rakwar, sworn on 1st September 2021.
4. Primarily, review is sought based on paragraph 10 of the Judgment, which is that there were no Submissions placed in the physical file by the 1st Respondent, at the time of preparing the Judgment.
5. The Application is opposed through the Replying Affidavit of the 1st Petitioner, sworn on 25th October 2021. The Petitioners submit that there is no ground presented by the 1st Respondent, to warrant review. The Submissions by the 1st Respondent were filed late, without the leave of the Court, and were ripe for striking out.
6. Ruling was scheduled for 6th April 2022, which regrettably coincided with the Judges' annual conference.

The Court Finds: -

7. There is no error apparent on the face of the record, or discovery of fresh matter of evidence, to justify review of Judgment, under Rule 33 of the Employment and Labour Relations Court [Procedure] Rules, 2016.

8. It is correct that at the time of writing the Judgment, no Submissions by the 1st Respondent had been placed in the physical record.
9. The 1st Respondent has explained in the Affidavit of its Advocate why this was so.
10. However, it is also correct as pointed out in the Affidavit of the 1st Petitioner that those Submissions were filed late, and without the leave of the Court.
11. The position of the 1st Respondent was in any event considered in the Judgment, particularly under paragraph 7 and 8. The Affidavit of the 1st Respondent's Deputy Director of Human Resources, sworn on 17th July 2020, answered the Petition, and was taken into account wholly.
12. Nothing in the Application for review, raises any new matter of evidence, as would affect the Court's finding, that the Petitioners were lawfully employed and their contracts unlawfully terminated, warranting the orders made in the Judgment. Nothing would alter the Court's finding on Sections 9 and 10 of the Employment Act.
13. Failure to place the Submissions of the 1st Respondent on the physical file was occasioned by a misunderstanding of the e-filing platform by the staff of the Court, and the 1st Respondent. Those Submissions ought to have been available to the Judge at the time of preparing the Judgment, if only for purposes of expunging them from the record, for late and unauthorized filing.
14. Their being unavailable however, did not have any material effect on the Judgment. The factual position of the 1st Respondent was well articulated in the Affidavit of its Deputy Director of Human Resources, and was considered by the Court in its Judgment.

IT IS ORDERED: -

- a. The Application by the 1st Respondent dated 1st September 2021, is declined.*
- b. Costs to the Petitioners.*

Dated, signed and released to the Parties electronically, under Ministry of Health and Judiciary Covid-19 Guidelines, at Chaka, this 28th day of April, 2022.

JAMES RIKA

JUDGE