



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT NAIROBI**

**PETITION NUMBER 117 OF 2020**

**[ELRC PET/E015/2020]**

**BETWEEN**

**1. KAMAU MWAURA JOAB**

**2. JOAB APOPO**

**3. KAREN KARIMI KNAUST**

**4. KEN BOSIRE**

**5. ALBERT AMONYOLE MUKOYA**

**6. JOEL OLIVER OMOTTO**

**7. JANE NJUGUNA**

**8. MARTIN MSAFIRI**

**9. VICTOR OLOO**

**10. SHUKRI GUCHU**

**11. NANCY ONYANCHA.....PETITIONERS**

**[Suing on their behalf and on behalf of other **Petitioners**]**

**VERSUS**

**MEDIAMAX NETWORK LIMITED.....RESPONDENT**

**RULING**

1. In its ruling of 25<sup>th</sup> June 2021, the Court marked this Petition as settled, relying on orders issued by Hon. Justice Ongaya on 10<sup>th</sup> June 2020, in another related Petition No. 59 of 2020.
2. The Petitioners above filed an application dated 5<sup>th</sup> July 2021, asking the Court to review and set aside its orders of 25<sup>th</sup> June 2021.
3. They submit that there were 3 different Petitions, which had not been consolidated, and therefore the orders marking the Petitions as settled, should not have applied across the board.
4. The application is founded on the affidavit of the 1<sup>st</sup> Petitioner Kamau Mwaura Joab, sworn on 5<sup>th</sup> July 2021.

5. It is opposed through the affidavit of Ken Ngaruiya, Respondent's Chief Executive Officer, sworn on 4<sup>th</sup> November 2021. He explains that the dispute between the Respondent and a section of its staff, who challenged termination of their contracts on redundancy, was settled consensually in Petition 59 of 2020.

6. Parties agreed to have the application considered on the strength of their affidavits and submissions.

**The Court Finds: -**

7. When the present application was placed before the Court under certificate of urgency on 9<sup>th</sup> July 2021, the Court gave certain directions which appear not to have been met by the Petitioners.

8. It was directed that the Petitioners named above, give details of the other Petitioners on whose behalf the Petition is brought. They were to file clear authority of those other Petitioners.

9. It was to be clarified why the Petition is registered as Petition 117 of 2020 [ELRC Petition E015/2020]

10. There is nothing in the application to show that clear authority was given to the above Petitioners, by other Petitioners to pursue the Petition.

11. The Court still does not understand why the Petition bears two registration numbers.

12. The Petitioners, as acknowledged in their pleadings, were also Petitioners in Petition Number 59 of 2020, where the consent of 10<sup>th</sup> June 2020 issued.

13. The facts in all the three Petitions were the same.

14. At paragraphs 5, 6, 7 and 8 of his affidavit, the 1<sup>st</sup> Petitioner disputes that the Respondent implemented the consent orders of 10<sup>th</sup> June 2020. He makes it clear that the Petitioners' grievances, relate to implementation of the consent orders.

15. The Petitioners should have gone back to Petition Number 59 of 2020, and asked for review or interpretation of the consent orders, instead of filing a fresh Petition on a dispute which was recorded as settled.

16. There is no truth in the 1<sup>st</sup> Petitioner's averment at paragraph 4 of his affidavit, that " *once Petition Number 59 of 2020 was marked as withdrawn, it meant no party could continue moving the Court.* " On 18<sup>th</sup> June 2020, the Petitioners indeed moved the Court to find the Respondent in contempt of the consent orders issued on 10<sup>th</sup> June 2020. It is in abuse of the process of the Court, to file a fresh Petition, in pursuit of the orders made on 10<sup>th</sup> June 2020.

17. The ruling of this Court which the Petitioners seek to have reviewed and set aside, highlighted other instances of abuse of the process.

18. On authority issued to the Petitioners by other Petitioners, the 1<sup>st</sup> Petitioner in his affidavit submits wrongly, that the requirement to file proper authority, amounts to legal formality, which in constitutional litigation should be discouraged.

19. The Court does not think this is correct. Parties to any litigation must clearly be identified, and shown to be in court voluntarily. There are rights and liabilities which attach to Parties, in court actions. At the heart of the dispute, are individual contracts of employment. These individuals must therefore be known from the beginning. The Court would be hampered in demarcating the rights and obligations of the Parties, without a clear identification of the individual Employees. There is evidence of some Petitioners having withdrawn from the proceedings. The 1<sup>st</sup> Petitioner concedes this in his founding affidavit, expressing shock and dismay that such Petitioners withdrew from the Petition, after they were offered re-employment by the Respondent. There was another Petition presented by Kenya Union of Journalists in the same dispute. Even if the Petitioners named above were not members of this Union, have they ascertained that those they claim to represent were not members of the Union? It must be made clear from the outset, who the Petitioners named above, represent, and clear authority from those they are representing, placed on the record.

20. The Respondent had applied on 4<sup>th</sup> June 2021 to have the Petition struck out. The Court instead ordered it is marked as settled, on terms recorded by consent, under Petition No. 59 of 2020. There is no weight in the argument that the Petitions are different; the current Petitioners, were Petitioners in Petition No.59 of 2020. They should not bring multiple Petitions before the Court, against the same Employer, with regard to the same employment dispute. There is nothing new brought to the attention of the Court, to warrant disturbing the orders on record.

**IT IS ORDERED: -**

***a. The application for review, filed by the Petitioners, dated 5<sup>th</sup> July 2021 is declined.***

***b. Costs to the Respondent.***

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 22<sup>ND</sup> DAY OF APRIL 2022.**

**James Rika**

**Judge**