



Njuguna & 66 others v Attorney General & 2 others (Judicial Review Application E001 of 2021) [2022] KEELRC 1682 (KLR) (22 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1682 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E001 OF 2021**

MA ONYANGO, J

JULY 22, 2022

BETWEEN

RUFUS NJUGUNA & 66 OTHERS APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

KENYA CIVIL AVIATION AUTHORITY 2ND RESPONDENT

C.A KUTO 3RD RESPONDENT

(Originating from Judicial Review Application No. 3 of 2015 (formerly High Court of Kenya at Nairobi Miscellaneous Application No. 1278A 2004))

RULING

1. This matter was coming up for judgment in the judicial review application filed by the ex parte applicants wherein they seek the following orders:
 - i. An order of mandamus to compel the 2nd respondent to remit a sum of Kshs 180,300,964.00 (read Kenya Shillings One Hundred and Eighty Million, Three Hundred Thousand and Nine Hundred and Ninety Four) together with interest at court rates from October 27, 2017 and 28 September, 2018 respectively in satisfaction of the preliminary and the final decree in Employment and labour relations court judicial review application number 3 of 2015.
 - ii. That this honorable court be pleased to grant leave to the applicants to commence execution proceedings against the 2nd respondent to recover the decretal amounts plus interest pending the taxation and certification of the bill of costs.
 - iii. The costs of the application and incidentals be provided for.



2. The claim arises out of Judicial Review Application No 3 of 2015 (formerly High Court of Kenya at Nairobi Miscellaneous Application No 1278A 2004). The said file is still active this court as has been pleaded by both the *ex parte* applicants and the respondents.
3. In the replying affidavit of the 2nd respondent sworn by Emily M Kyalo, the respondent's manager legal services, she states at paragraph 4 to 7 that:
 1. At the outset, the applicants' application is most premature, replete with material misrepresentations and highly misplaced and only fit for dismissal for the reasons now following:
 - a. The applicants have omitted to disclose to this honourable court that they are actively prosecuting applications for review of the decrees they seek to execute by way of the orders they seek before this Court in ELRC JR No. 3 of 2015 (Rufus Njuguna & 66 Others-vs-The Attorney General and 2 Others).
 - b. The application is premised on decrees from this court hr ELRC JR No 3 of 2015 (Rufus Njuguna & 66 Others-vs-The Attorney General and 2 Others) which are not final.
 - c. To the extent that the decree subject of these proceedings is likely to be amended upon final determination of the applications currently pending in ELRC JR No 3 of 2015 (Rufus Njuguna & 66 Others-vs-The Attorney General and 2 Others), the orders sought cannot issue.
 - d. By dint of section 43(1) of the *Civil Aviation Act*, execution against the assets of the 2nd respondent is expressly prohibited. The court cannot countenance air illegality.
 2. On the premise of the foregoing, the 2nd respondent reserves the right to apply for stay of these proceedings pending the hearing and final determination of the applications in ELRC JR No 3 of 2015 (Rufus Njuguna & 66 Others vs The Attorney General and 2 Others).
 3. Without prejudice to the foregoing, it is denied that the amounts hr the decrees alluded to hr the Applicants' Notice of Motion is Kshs 180,300,964 as alleged. The position is that the sums awarded to the said Applicants is the sum of Kshs 178,935,540.
 4. In respect of the said sum of Kshs 178,935,540 awarded to the applicants in in ELRC JR No 3 of 2015 (Rufus Njuguna & 66 Others vs The Attorney General and 2 Others), the 2nd respondent submits that the said sum comprises compensation erroneously awarded to the applicants in excess of Kshs 105,928,908 which the 2nd respondent is seeking review of in the aforesaid case.
4. From the said paragraphs, it is evident that there is another suit which is still alive in this court and which is being handled by another judge that relates to the issues in this suit. There is therefore likelihood of this court making a determination that would be in conflict with orders in the other pending file, and/or the embarrass itself.
5. I further note that at paragraph 9 of the replying affidavit, the applicant has offered to deposit Kshs 73,015,632 in court. This sum is not the same as what is claimed in this suit. The *ex parte* applicants unfortunately did not respond to the replying affidavit leaving this court in a position where it is not possible to tell who between the parties is telling the court the factual position.



6. It is further unfortunate that neither the respondent nor the applicants attached to their pleadings the application dated July 22, 2021 even though the parties appeared before this court severally after that date.
7. Out of abundance of caution, this court called for and perused file number Judicial Review Application 3 of 2015. The record therein reveals that there is a ruling delivered on May 31, 2022 that touches on the subject matter herein.
8. It is for the foregoing reasons that I have found it prudent to prepare a ruling rather than a judgment and to order that this file be placed before my sister Ndolo J who is handling the other file, to ensure that the two matters are handled by the same judge to avoid both duplicity and the likelihood of conflicting orders being made on the two files. The file is to be placed before the judge together with file No Misc Judicial Review Application 3 of 2015 on September 20, 2022.
9. The costs of this application shall be considered by the judge when making the final determination herein.
10. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22ND DAY OF JULY 2022

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE

