



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

T KISUMU

CAUSE NO. 262 OF 2015

[Consolidated with ELRC Causes Nos. 260, 261, 263, 264, 265, 266, 267, 268, 269, 270, all of 2016]

WILSON MUKUHA.....1ST CLAIMANT
SAMUEL OTIENO MBECHHE.....2ND CLAIMANT
ROBERT OTIENO OMER.....3RD CLAIMANT
FREDRICK OWINO OYWER.....4TH CLAIMANT
PHILIP KIDULA EVELIA.....5TH CLAIMANT
MOSES OBWAO BOGE.....6TH CLAIMANT
TIMOTHY VIJEDI VOGEFU.....7TH CLAIMANT
SETH JOTHAM ANAMANDA.....8TH CLAIMANT
CHARLES OCHIENG OTIENO.....9TH CLAIMANT
LUKAS ODONGO OLIYO.....10TH CLAIMANT
WYCLIFFE NDENDA BOGE.....11TH CLAIMANT
WALTER ODONGO SHIKOYO.....12TH CLAIMANT

VERSUS

PABARI ENTERPRISES LIMITED..... RESPONDENT

RULING

1. Application dated 20/5/2020 sought extension of time within which to lodge objection to the decision of the taxing officer delivered on 3/3/2020 in which the officer ruled, *inter alia* that the ruling on taxation applied to all the suits determined in ELRC 260, 261, 263 – 271 all of 2015. That the taxation had proceeded *ex parte* in the absence of the respondent due to inadvertence on the part of Counsel for the respondent who failed to attend the hearing on 3/3/2020.
2. That a draft objection has already been filed on 19/5/2020 and it be deemed to be properly filed.
3. The advocate for the applicant filed a replying affidavit sworn to on 9/6/2020 stating that the application is not brought in good faith and indeed both counsel had on 11/2/2019 obtained the taxation date by consent. That indeed on 3/3/2020 the Applicant's firm of Advocates had two representatives before the Deputy Registrar and the deponent informed them to await hearing of this bill but they both ignored and left.
4. That the decision by the Deputy Registrar was duly communicated to Counsel for the applicant on 5/5/2020 but they did not move Court until 20/5/2020. That the application lacks merit and it be dismissed.

Determination

5. The Court has considered the deposition by both parties and is not satisfied that the application has been brought without inordinate delay and in good faith.
6. Furthermore, having perused the judgment of the Court delivered on 7/20/2019 in which the Court interalia found
- “[43] in the final analysis judgment is entered in favour of all the named twelve claimants as set out above. In addition, the claimants are entitled to interest at Court rates from date of judgment till payment in full. The claimants are also entitled to costs of the suit and awarded accordingly.
- [43] for clarity and avoidance of doubt all the twelve (12) suits filed by the 12 claimants have been heard and determined by this judgment. All the files are to be placed together and all claimants summoned to attend the delivery of judgment. In any event all of them attended the hearing of the suit.”
7. It is patently clear the judgment and therefore the decree and any subsequent orders in respect of taxation and execution applied to all the twelve suits filed and named in this application.
8. There is no good reason given in this application to warrant the Court to either condone late filing of the reference and or grant any of the orders sought in this application.
9. Accordingly, the application is dismissed with costs.

Dated and delivered at Nairobi this 11th day of February, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 18 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.

MATHEWS N. NDUMA

JUDGE

Apearances

Milliam K. Onsongo Advocates for the Applicant

Kimaiyo Advocate for the claimants/respondent

Chrispo: Court clerk