



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 2 OF 2020

IN THE MATTER OF: ARTICLES 10, 19, 20, 21, 22, 23, 27, 30, 258 AND 259 OF THE CONSTITUTION

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

AND

IN THE MATTER OF: THE LAKE BASIN DEVELOPMENT AUTHORITY

BETWEEN

SAMUEL OKETCH OPONDO

(suing on his own behalf and on behalf of 107 others)

PETITIONERS

v

LAKE BASIN DEVELOPMENT AUTHORITY

RESPONDENT

RULING

1. The 108 Petitioners herein instituted legal proceedings against the Lake Basin Development Authority on 14 January 2020 through the law firm of Eliakim Owala & Co. Advocates.
2. On 10 January 2020, pursuant to a consent by the parties, the Court adopted a consent in the following terms
 1. **THAT** the Petitioner/Applicant be compensated for retrenchment in compliance with Circular dated 23rd June 2000 which was allowed in Civil Case (HCC) No. 156 of 2004 and ELRC Misc Application No. 7 of 2018.
 2. **THAT** the Respondent shall file a full computation of the payment due to each and every Petitioner/Applicant within 7 days.
 3. **THAT** each Petitioner/Applicant shall be entitled to cost and interest at court rate from 23rd June 2000.
 4. **THAT** mention to confirm compliance on 18 February 2020.
3. On 21 September 2020, the firm of Lugano and Lugano Co Advocates filed a Motion seeking leave to come on record for some 8 named Petitioners.
4. The Court directed that the application be served ahead of *inter-partes* hearing on 21 October 2020.
5. However, the said application was withdrawn when it came up for hearing. The Court directed that the file be mentioned on 2 December 2020.
6. On 4 November 2020, the firm of Lugano & Lugano Advocates filed another Motion seeking leave to come on record for some named 6

Petitioners instead of Eliakim Owala & Co. Advocates.

7. The Court gave directions on the Motion on 12 November 2020 as a result of which the following were filed

- (i) Replying affidavit by Eliakim Owala on 11 November 2020.
- (ii) A further affidavit by Maurice Odera Calary on 27 November 2020.
- (iii) A supplementary affidavit by Maurice Odera Calary on 8 December 2020.
- (iv) Applicant's submissions on 10 December 2020.

8. Despite service of the Motion (see affidavit of service of Benson Ambuti Atega filed on 11 November 2020), the Respondent did file any responses or submissions.

9. The Court has now closely examined the record and has noted that although it is alleged that the Respondent had made payments to the firm of Eliakim Owala & Co. Advocates, there is nothing on record to show that the Respondent filed computations of the monies due to each Petitioner as agreed in the consent order.

10. The Court further notes the proceedings herein are the subject of investigations by the Directorate of Criminal Investigations as evidenced by a copy of letter from that office exhibited in the further affidavit of Maurice Odera Calary filed on 27 November 2020.

11. It is strange that apart from the annexure, the original and/or copy of the letter which was addressed to the Deputy Registrar is not in the file.

12. There is clearly something amiss in the file.

13. Nevertheless, because the application relates to the right of a party to be represented by an advocate of own choosing, and further considering that a party can change advocates at any time in the course of litigation, the Court will allow the firm of Lugano & Lugano Advocates to come on record for Odera Maurice Calary, Fred Obware Oduki, Mary Atieno Osore, Mary Jemimah Ouko, Festus Kimkemboi Koech and Johnson Odoyo Nyajong.

14. Since the firm of Lugano & Lugano is coming on record for only 6 of the Petitioners, the Court will allow the prayer for surrender of documents in relation to only the 6 Petitioners.

15. Costs in the cause.

Delivered through Microsoft teams, dated and signed in Kisumu on this 3rd day of February 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For applicants Lugano & Lugano Advocates

For Petitioners Eliakim Owala & Co. Advocates

For Respondent Olel, Onyango, Ingutiah & Co. Advocates

Court Assistant Chrispo Aura