



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI
CAUSE NO.1070 OF 2015

BARNABAS OTWANI BARASA.....CLAIMANT

VERSUS

PRINCIPAL SECRETARY, MINISTRY OF INTERIOR & .

COORDINATION OF NATIONAL GOVERNMENT.....1ST RESPONDENT

DIRECTOR GENERAL OF IMMIGRATION SERVICES.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

The claimant filed application dated 29th January, 2021 and seeking for orders that the court do issue orders of mandamus to compel the 1st and 2nd respondents to abide with court orders issued on 24th February, 2020 and allow the clamant to resume employment, lift the interdiction and release the withheld half salary since 12th May, 2017.

The application is supported by the claimant’s affidavit and on the grounds that the 1st and 2nd respondents have refused to allow him to resume his employment as ordered by the court in a consent of 24th February, 2020 ad or to lift the interdiction and payment of his half salary since 12th May, 2017. The consent order has since been adopted by the court as an order.

In his affidavit, the claimant avers that he is a civil servant at the department of immigration in the Ministry of Interior and Coordination of National Government Officer of the President as a senior clerk. On 24th February, 2020 the court closed this case after parties recorded consent that this matter be marked settled upon the respondent’s informed the court that the prayer sought to reinstate him had been resolved. His office had remained locked since the year 2015 and payment of salary stopped from 1st January, 2015 and until he filed suit on 26th June, 2015.

The respondent refused to abide court orders to reinstate the claimant and pay his due salary forcing the claimant to commence contempt of court proceedings and on 3rd August, 2016 the court issued warrant of arrest against the 2nd respondent but later lifted the same on 4th August, 2016 when the respondent attended court and promised to respect the court order.

On 5th August, 2016 the claimant was allowed back into his office but refused to pay the due salary and was arrested on various allegations and arraigned in Magistrates Court MCCR No.1960 of 2016 later consolidated with CMCR No.393 of 2016 with other immigration officers where he was later released under the provisions of section 210 CPC.

The interdiction was not lifted and no salary was paid. This court had closed this case on account of presentations by the respondent and the consent order.

The 2nd respondent reinstated and redeployed the other immigration officers but has refused to do the same for the claimant which is discriminatory. All efforts to address the matter with the respondent have not borne fruit. This has caused the claimant distress and unable to sustain self and family and unless h orders sought are issued he shall suffer grave loss and damage.

The respondent in reply filed Grounds of Opposition and on the basis that the court is functus officio as the matter was marked as settled and the order of 24th February, 2020 is binding on the claimant. On 19th December, 2019 the claimant submitted to court that the only matter pending was the withheld salary for January, 2015 to August, 2016 when the claimant was reinstated by an order of the court.

Other grounds are that on 24th February, 2020 the court confirmed that all salaries had been paid to the claimant and matter marked settled. The claimant cannot move the court as herein done and is in abuse of court process. Application should be dismissed with costs.

The parties addressed the application by way of written submissions.

The claimant reiterated his application and affidavit.

Determination

The gist of the claimant's application is that the 1st and 2nd respondents should be compelled to *abide with the court directions and Order issued on 24th February 2020 and allows the applicant to resume his employment. Lift the interdiction and release the withheld salary since 12th May 2017.*

At paragraph 3 of the claimants Supporting Affidavit sworn on 29th February, 2021 he avers that;

On 24th February, 2020 the court closed this case after parties recorded consent that this matter be marked as settled because the respondent informed the court that the prier sought was to reinstate me to my employment which they locked me out in 2015.

At paragraph 8 the claimant avers that;

Since the interdiction and the closure of the court case by this court I am still on interdiction and my half salary retained.

Indeed on 24th February, 2020 the court issued the following orders;

IT IS HERBEY ORDERED

1. *THAT matter marked settled in the circumstances.*
2. *THAT in case of any problem parties to apply.*

On the court record, on 24th February, 2020 both parties were present in court.

The claimant's counsel made submissions that the substance of the claim had been spent following reinstatement of the claimant and confirmed that;

... The claimant has secured the payment save for an error in calculation for about Ksh.27, 000/- which we shall follow with the accountants.

On this basis the court *marked the matter settled in the circumstances* and in this regard, *In case of any problem parties to apply.*

Once the matter was marked as settled, what problem has arisen?

The claimant has chronologised several events from the year 2015 to his arrest and arraignment in court on 5th August, 2016 and that since that in May, 2017 other immigration officers charged with him were reinstated back to work but he was discriminated against and his interdiction was not lifted. On 6th January, 2021 he made demand to the respondent and where the claimant noted that following the orders of 24th February, 2020 he was reinstated back to work but upon the acquittal of the claimant on 30th January, 2020 in Criminal case CMCR No.393 of 2016 his co-accused were redeployed but this was not done with the claimant.

These events and matters addressed by the claimant in his demand letter of 6th January, 2021 arose prior to his court attendance on 24th February, 2020 and where his advocates made presentations that the only matter pending was calculation of dues of about ksh.27, 000 and which would be resolved with the accountants.

The matter was marked as settled.

The substance of the claim was addressed.

The alleged *problems* now stated as arising are far and unrelated to the orders of 24th February, 2020. The outlined events were within the knowledge of the claimant as at the time the matter was marked settled by consent. The only issue was to address the error in calculations.

Unless there is claim that such consent order was arrived at through fraud, misrepresentation or other untoward manner, the court cannot interfere with a consent order made in the presence of the parties and adopted as the final order of the court marking the matter settled. The court cannot re-open the claim without cogent reasons. It stand *functus officio* and without jurisdiction to address extraneous matters.

Where the claimant is aggrieved by the consent orders of the court, this is not a *problem* to be resolved as herein done vide application dated

29th January, 2021.

Accordingly, application dated 29th January, 2021 is found to be in abuse of the court process and is hereby dismissed. Costs to the respondents.

Delivered at Nairobi this 29th March, 2021.

M. MBARU

JUDGE

In the presence of: