



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 3 OF 2020

CHRISPINUS LIKUYUNI LUMITI.....1ST PETITIONER

STEPHEN ANJECHU..... 2ND PETITIONER

VERSUS

COUNTY CHIEF OFFICER PUBLIC SERVICE, KAKAMEGA COUNTY.....1ST RESPONDENT

COUNTY SECRETARY COUNTY GOVERNMENT OF KAKAMEGA.....2ND RESPONDENT

COUNTY PUBLIC SERVICE BOARD,COUNTY GOVERNMENT OF KAKAMEGA...3RD RESPONDENT

COUNTY GOVERNMENT OF KAKAMEGA.....4TH RESPONDENT

RULING

1. The respondent/Applicant filed a Notice of Motion Application dated 24th June, 2020 praying for orders:-

a. That this Honourable Court be pleased to review and/or set aside and/or vacate its order dated 9th June, 2020, and all consequential orders following therefrom.

2. The application is premised on grounds set out on the face of the Notice of Motion and in the supporting affidavit of Dr. Dominic Muteshi which may be summarized: -

3. That the applicant was on 12/6/2020 served with the order dated 9th

June, 2020 for compliance, however the applicant nor its advocates had not been served with the application seeking the orders or a hearing notice and so did not participate in the hearing of the said application.

5. That at the time the orders were issued the petitioners had on 3rd June, 2020, already been dismissed from employment and therefore the orders were obtained ex parte without material disclosure by the respondents.

6. That in any event the respondents ought to have commenced an appeal against the decision by the applicants to dismiss them in terms of Section 77 of the County Governments Act and Section 81 of the Public Service Commission Act.

7. That the application be granted with costs.

8. The 1st petitioner deposed to a replying affidavit sworn to on 3/7/2020 in which he states that up to March, 2020, the petitioners /respondents had been placed on half salary and in April 1, 2020, they did not receive any pay slip.

9. That the petition had not been responded to until 24/6/2020 when this was done contemplanously with this application.

10. That the provisions of the County Governments Act cited by the applicant are not applicable to this case.

11. That the applicants comply with the orders of the Court and this application be dismissed with costs.

Determination

12. The Court is satisfied that the petitioners were dismissed from employment at a meeting of the Kakamega County Public Service Board on 3rd June, 2020, and the decision to dismiss the petitioners was conveyed to the petitioners by a letter dated 9th June, 2020 attached to the application.

13. The petitioners/respondents in the replying affidavit did not deny this fact.

14. It follows that as at the 8th June, 2020, the Petitioners were aware but did not disclose to the Court that they had been dismissed from employment by the 3rd respondent on 3rd June, 2020.

15. The Court notes however that the decision of the Public Service Board was conveyed to the petitioners/Applicants by a letter dated 9th June, 2020, a few days after they had filed the application dated 5th June, 2020

16. Notwithstanding whether or not the applicants were aware of the new developments the directive by the Court on 8th June, 2020 was granted in ignorance of the dismissal of the petitioners that had taken place on 3rd June, 2020 and the petitioners /applicants were not on suspension as at 8th June, 2020 when the order was made.

17. Therefore, there is an error apparent on the face of the Court order granted on 8th June, 2020 and the Court has power to review the error in terms of Rule 33(1) which provides that:-

Á person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed may within reasonable time apply for a review of the judgment or ruling:

b. On account of some mistake or error apparent on the face of the record.

18. In the said Order of 9th June, 2020, the Court had found and ordered:-

“due to the inordinate passage of time from date the petitioner was placed on suspension the respondent is directed to return the petitioner on the payroll and pay all arrear salaries to date pending the hearing and determination of the petition.”

19. Clearly this directive was based on material ignorance by the Court of the status quo as at 8th June, 2020 which the petitioner/applicant was obliged to disclose to the Court but did not.

20. Accordingly, the Court sets aside the order dated 8th June, 2020 and directs the parties to proceed with the hearing and determination of the petition on the merits.

21. Costs in the Cause.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH, 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 judgment 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

Appearances

Mr. Ashitava for the 4th respondent/applicant.

Mr. Malkali for petitioners/Applicants

Cjrispo: Court clerk