



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. 504 OF 2018

MICHAEL OUMA ODERO ON HIS OWN BEHALF

AND ON BEHALF OF 506 OTHERS.....CLAIMANTS

VERSUS

PUBLIC SERVICE COMMISSION.....1ST RESPONDENT

THE MINISTRY OF HEALTH.....2ND RESPONDENT

KENYA NUTRITIONISTS AND DIETICIANS INSTITUTE.....3RD RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 11th June, 2021)

RULING

The claimant filed the memorandum of claim on 06.12.2018 through Jackson Muchiri & Associates Advocates. At paragraph 5 of the memorandum of claim and as amended it is pleaded, **“5. The claimant brings this claim on his behalf and on behalf of the other claimants which claim is for payment in arrears of internship stipend for the claimants who have successfully gone through the government sponsored internship programme but have not received their stipend which they are entitled to under the government internship policy for year 2017. The list of members who went through the internship program is attached to this claim.”**

The 1st respondent is sued as the constitutional commission established under Article 233 of the Constitution and brought into operation under the Public Service Commission Act, 2017. The 2nd respondent is sued as the Government Ministry responsible for policy on nutrition and preventive health programmes and it supervises the 3rd respondent. The 3rd respondent is sued as established under section 4 of the Nutritionists and Dieticians Act, 2007 and its functions include, *inter alia*, involvement in the practical training of nutritionists and dieticians and in that regard, placing interns in various health facilities within the country to acquire practical training.

The 3rd respondent filed a notice of preliminary objection on 05.10.2020 through Professor Kiama Wangai & Company Advocates and prayed that the claim against the 3rd respondent and indeed the entire suit ought to be struck out with costs to the 3rd respondent upon the grounds:

a. That the Honourable Court lacks jurisdiction to entertain the claim as no employer – employee relationship exists between the claimant and the parties he purports to represent and the 3rd respondent herein.

b. That the claimant herein lacks *locus standi* to bring this claim on his own behalf and on behalf of 506 others.

It was submitted for the 3rd respondent that as pleaded there is no employer-employee relationship between the claimants and the 3rd respondent. It was further submitted that the preliminary objection was proper per Laws JA in **Mukhisa Biscuit Manufacturing Co. Ltd – Versus- West End Distributors Ltd (1969) EA 696.**

For the claimants it was submitted that section 2 of the Employment Act defines an employee to include an apprentice or indentured learner. Further the same section defines a contract of service to include a contract of apprenticeship and indentured learner-ship. It was submitted that the claimants being interns, their claim is by apprentices and learners from a government sponsored internship programme.

It is further submitted that the respondents herein have elaborate roles with respect to the internship programme in issue and as per provisions of the Public Service Commission Internship Policy and Guidelines for the Public Service, 2016.

The Court has considered the submissions. The **Black's Law Dictionary, 9th Edition at Page 1491** defines “**indentured servant**” as a servant who contracted to work without wages for a fixed period in exchange for some benefit, such as learning a trade or cancellation of a debt or paid passage to another country, and the promise of freedom when the contract period expires. The same **Black's Law Dictionary, 9th Edition at Page 117** defines “**apprentice**” as a person bound by an indenture to work for an employer for a specified period to learn a craft, trade or profession and, “**2. A learner in any field of employment or business especially, one who learns by hands-on experience or technical on-the-job training by one experienced in the field.**”

The Court finds that the claimants as interns as pleaded amounted to employees and, again as pleaded, the relationship amounted to employment, within the meanings assigned under the Employment Act, 2007 and as submitted for the claimants. The Court further observes that the fact of employment when disputed like is done for the 3rd respondent would amount to a matter requiring a hearing and evidence to resolve and therefore not amounting to a proper issue to be raised as a preliminary objection.

In conclusion the preliminary objection is hereby dismissed with costs and parties to take steps towards the expeditious hearing and determination of the main suit.

Signed, dated and delivered by video-link and in court at Mombasa this Friday 11th June, 2021.

BYRAM ONGAYA

JUDGE