

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1716 OF 2014

PROFESSOR MWANGI S. KIMENYI.....CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

KENYA INSTITUTE FOR PUBLIC POLICY

RESEARCH AND ANALYSIS (KIPPRA).....2ND RESPONDENT

AND

1. IRENE WANGUI KIMENYI

2. FRANCIS WESLEY KIMENYI.....APPLICANTS

RULING

1. There is Objection taken as to the propriety of evidence adduced by way of an annexure in the 2nd Respondent's Bundle. Mr. C.N Kihara objects strenuously to the document asserting it is incomplete and that it makes reference to documents not attached to the said report. He asserts the report is in respect of an investigation which he had sought to get without success. He says his objection is that the document is not properly laid before Court and proceedings at the High Court in the Judicial Review as well as the Court of Appeal hovered around the issues said to be in the report and that the report ought to be complete. He asserts the Court should disallow the production of pages 52-119 of the Respondent's Bundle for want of completeness.

3. Miss Nyaga for the 2nd Respondent is opposed. She asserts that the report is authored in response to the request by the Ministry's Permanent Secretary who sits on the Board of the 2nd Respondent and that he sought the investigation by the Inspector General of State Corporations due to the irregularities and suspicion of fraud at the 2nd Respondent. She asserts the reason the report was sought is one the Court will be able to on retiring to write the judgement be able to weigh and determine the probative value of the document adduced. The 2nd Respondent thus urges the objection to be disallowed and the matter proceeds.

4. Mr. Kihara in a brief response asserts the 2nd Respondent has nit-picked and pruned the report and given the Court an incomplete report. He asserts the report so incomplete is not one the Claimant had sight of until it was filed despite asking for it repeatedly. He asserts the report was subject of litigation before the High Court and the Court of Appeal in the Judicial Review proceedings. He submits the Court should disallow production of the document.

5. Court having considered the objection raised and having perused annexures at pages 52-119 of the 2nd Respondent's bundle is of the view that a set which would include the annexures referenced in the report would suffice as to allow the Court to be seized of all the facts pertinent since the report is the basis of the actions by the 2nd Respondent and to an extent the 1st Respondent and the Claimant. As it is a critical document, I will grant the 2nd Respondent 14 days to file a Supplementary Bundle to attach pages 52-119 plus the annexures referenced in the report. The hearing will proceed thereafter and the 2nd Respondent's witness is therefore stood down to allow the filing as stated above. The Court will give a hearing date convenient to the Parties immediately after reading this Ruling

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF SEPTEMBER 2021

NZIOKI WA MAKAU

JUDGE