



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CIVIL APPEAL NO. 468 OF 2013

JOHN ELEGO & 103 OTHERS..... APPLICANTS

VERSUS

PRESSMASTER LIMITEDRESPONDENT

RULING

1. In their application dated 20th February, 2021, the Claimants/Applicants pray for an order in the following terms:-

1. Spent

2. That the matter be placed before the Honourable Justice Nduma Nderi who heard and determined the claim, for hearing and determination of this application for review with regards to the judgment dated 10th August, 2018 to enable execution of the judgment.

3. That the Honourable Court considers the evidence already on record provided by the 19 claimants excluded from the Court's judgment for their case of unfair termination and be pleased to make a determination of their case.

4. That this Honourable Court be pleased to vary and/or review the judgment dated 10th August, 2018 including paragraphs 42, 62, and 67 thereof in so far as it omits 19 claimants from receiving compensation from the Respondent for unlawful termination of employment.

5. Costs.

6. The application is premised on grounds set out on the face of the application and the supporting affidavit of one **John Elego Navade**, the 1st Claimant/applicant the gravamen of which is that the judgment of the Court dated 20/7/2018 omitted to consider the evidence of the 19 named claimants in respect of their alleged unlawful and unfair termination and therefore did not include them in the list of employees who were granted compensation for unfair and unlawful termination of employment.

7. That only employees who were terminated from employment on 3rd October, 2012 were awarded compensation.

8. That in the Court's final analysis of the judgment at paragraph 84, the Court entered judgment in favour of all the claimants against the Respondent with no exclusion to any of them.

9. That the omission created ambiguity regarding the quantum of terminal dues that were due to the claimants hence the filing of two applications which were heard and determined by Maureen Onyango, J. on 20/12/2019 and 25/9/2020 which found that the 19 claimants were not entitled to compensation in terms of the judgment of the Court. That the application be allowed.

10. The application is opposed vide a replying affidavit of **Harjinder Singh Panesar**, a Director of the respondent who deposes that the judgment delivered on 20/7/2019 is clear and unequivocal that all the claimants except the 19 whose employment was terminated on diverse dates before 3rd October, 2012 were terminated unlawfully and unfairly and were each compensated by an equivalent of four (4) month's salary each.

11. That the class suit filed by one John Elego on behalf of the 103 claimants was defended. The Court evaluated evidence adduced and found in favour of all other claimants except the 19 listed under paragraph 6 of the supporting affidavit.

12. That an application for the review of the judgment on this specific matter was heard and determined by Maureen Onyango, J. in a ruling

delivered on 20th December, 2019 giving directions and clarity that computation of compensation is in respect of all other employees except the 19.

13. That the applicants want a second bite on the cherry on a matter that has already been determined by the trial Court and in an application for review by a different judge.

14. The Court is satisfied that it dealt with the class suit in respect of all the 104 claimants and upon consideration of evidence before it found that there was sufficient evidence tendered that all employees whose employment was terminated on 3rd October, 2012 were unlawfully and unfairly terminated.

15. The Court also found that the 19 claimants who were dismissed on various dates prior to the events of 3rd October, 2021 did not adduce sufficient evidence on record for the Court to find that each one of them were individually and severally, unlawfully and unfairly terminated. The Court excluded the 19 employees in respect of the specific award of compensation in clear and unequivocal terms.

16. This position was clearly put to light by Hon. Maureen Onyango, J. in her ruling delivered on 20th December, 2019

17. This Court is *functus officio* in respect of the issues raised herein which ought to have been properly raised in an appeal against the judgment of the Court and or against the ruling of Maureen Onyango, J. dated 20/12/2019.

18. The application lacks merit and it is dismissed with costs.

Dated and delivered at Nairobi (virtually) this 28th day of October, 2021.

Mathews N. Nduma

Judge

Appearances

Mr. Kanjama for Applicants

Mr. Oyatta for Respondent

Ekale – Court Assistant