



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 141 OF 2013**

**FREDRICK ODHIAMBO MADOTE.....CLAIMANT**

**VERSUS**

**INSTEEL LIMITED.....RESPONDENT**

**RULING**

1. The Court delivered judgment in this Cause on 21 November 2014.

2. In the judgment, the Court found and held:

Under s 12 of the Industrial Court Act, reinstatement is one remedy that this Court can grant. In relation to this prayer, the Respondent did not seem to reply. They do not seem to have a problem with the same I, therefore, order as envisaged under s 49(4) of the Employment Act or in alternative re-engagement.

1. Reinstatement of Claimant to his position in the alternative re-engagement within 30 days from today without interference of any accrued salary rise and/or promotion.

2. Payment of salary due and pending since the illegal redundancy on 28.3.2013 to date being Kshs 19,000 x 20 = 380,000/- less statutory deductions.

3. Respondents to pay costs of this suit.

3. The parties did not appear to agree on the *interpretation* of the judgment, and on 5 February 2021, they filed a consent requesting the Court to *interpret* the judgment.

4. The consent itself was not clear, and on 15 March 2021, the Court directed the parties to file affidavits setting out what required *interpretation* and their interpretations.

5. The Claimant filed an affidavit on 16 April 2021 whose gist was that the Respondent had refused or declined to reinstate him as ordered by the Court.

6. The Respondent's Legal Officer filed an affidavit on 17 May 2021 in which it was deposed that the Claimant had failed to report to work within 30 days upon reinstatement by the Court (and up to the date of the affidavit); that the parties consented to a stay of execution pending appeal on 11 February 2015; that the Respondent had satisfied the terms of the judgment and the Claimant was guilty of laches and had come to Court with unclean hands;

7. In a further affidavit filed on 31 May 2021, the Claimant swore that the Respondent had failed to formally communicate to him or his advocate on the reinstatement despite his advocate writing to it on 19 February 2015.

8. The Court has looked at the affidavits filed and exchanged between the parties.

9. At the core of what the parties refer to as interpretation is the question of whether the Respondent complied with the terms of the judgment and if there was non-compliance, was the same deliberate and wilful.

10. What the Claimant is alleging rotates around compliance with the decree and orders of the Court, and this is within the province of

contempt of Court.

11. The Court is, therefore, of the view and holds that the allegations of non-compliance with the judgment delivered in 2014 can only be adjudicated upon after a formal application has been filed.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 8<sup>th</sup> day of October 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Claimant Owiti, Otieno, Ragot & Co. Advocates

For Respondent Siganga & Co. Advocates

Court Assistant Chrispo Aura