



**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.....1<sup>ST</sup> RESPONDENT**

**KENYA INSTITUTE FOR PUBLIC POLICY**

**RESEARCH AND ANALYSIS (KIPPRA).....2<sup>ND</sup> RESPONDENT**

**AND**

**1. IRENE WANGUI KIMENY**

**2. FRANCIS WESLEY KIMENYI.....LEGAL REPRESENTATIVES OF THE**

**CLAIMANT (NOW DECEASED)**

**RULING**

1. There is Objection taken to document filed by the 2<sup>nd</sup> Respondent. The document filed on the 13<sup>th</sup> October 2021. The document comprises of the Report on mismanagement of the affairs of the Kenya Institute of Public Policy Analysis by the Inspector General (State Corporations) October 2004. The bundle also included Minutes of KIPPRA's Special Board Meeting of 3<sup>rd</sup> December 2004. It is to this document that objection is taken by Mr. Kihara for the Claimant. He has no problem with the first document but has objection to the second. He has also raised the issue of the witness being proposed by the Counsel for the 1<sup>st</sup> Respondent Mr. Odukenya. He states that given the old age of the case he will not strenuously oppose the filing of the document that the 2<sup>nd</sup> Respondent's witness would produce and would be cross-examined on. He states that it is unclear what the 1<sup>st</sup> Respondent's witness would testify about, what he could speak to and what he may not speak to. The objection to the witness is thus anchored on the issue that the Ruling of the Court that allowed for the full report to be adduced, which report has been part of litigation from the Judicial Review Application till the Court of Appeal and not objected to. He thus asserts the witness is unnecessary.

2. Miss Nyaga for the 2<sup>nd</sup> Respondent asserts the document filed is for completeness of record and would explain aspects of the claim that have been articulated at great length. She submits in support of her position that the report is brought after the deliberations that reveal the genesis thereof and as such critical to consider as part of the record alongside the Minutes.

3. Mr. Odukenya for the 1<sup>st</sup> Respondent asserts that there is support for production of the report and that he has not heard his learned colleague object to the evidence of his witness Mr. Chrisologus Makokha will give and then produce the report. He urges that it is critical that this witness be heard to table and produce the said Report.

3. In his reply Mr. Kihara says that with tremendous respect he does not agree with his colleagues Miss Nyaga and Mr. Odukenya on the provenance of first the document given as Minutes of 3<sup>rd</sup> December 2004 as well as secondly, the testimony of the witness the 1<sup>st</sup> Respondent proposes to call. He asserts that the Court has been firm in the refusal to admit documents filed irregularly and notes the documents the 2<sup>nd</sup> Respondent has previously objected to are their own documents as the Claimant did not produce any document he authored and it was objected to. He states it is the Respondents who have objected to their own documents. He objects particularly to the Minutes as these Minutes are what is the crux of the dispute between the Parties. He thus urges the disallowance of the production of the document into evidence.

4. The objection taken is focused on 2 things – one the issue of the witness for the 1<sup>st</sup> Respondent and secondly – the Minutes of 3<sup>rd</sup> December 2004 annexed as Item No. 2 on the Respondents Bundle of documents dated 12<sup>th</sup> October, 2021 and filed on 13<sup>th</sup> October, 2021 per the online Court portal. The objection to the witness for 1<sup>st</sup> Respondent coming to testify to produce the Report of the Inspector General State Corporations related to the period the Claimant headed the 2<sup>nd</sup> Respondent is superfluity at its best. The Report was as held in my Ruling of 27<sup>th</sup> September 2021 to be availed in all its glory. A copy of the Report has been filed by both the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent. Like the Claimant’s advocate Mr. Kihara, the Court favours the Report that is paginated and is clearly that by the 2<sup>nd</sup> Respondent. As such the Court will make reference to this copy when referring to the Report of the Inspector General State Corporations. As I have noted, the witness for 1<sup>st</sup> Respondent shall not need to testify.

5. That leaves the final issue for my consideration and determination – what is the provenance of the Minutes of 3<sup>rd</sup> December, 2004 attached to the Report of the Inspector General of State Corporations? The Minutes have been in contention by Parties as to their provenance *et al* and it would be remiss if the Court were to allow their admission and the Ruling of 27<sup>th</sup> September, 2021 was not *carte blanche*. It was specifically to address the issue of the incomplete Report of the Inspector General State Corporations. As the Court has ruled in the past the filing of documents without leave of the Court has unnecessarily delayed the prompt conclusion of this case which is one of the oldest appearing on our cause lists. As the document being the Minutes of 3<sup>rd</sup> December 2004 was filled one without leave and secondly without explanation as to why over the course of this litigation the 1<sup>st</sup> Respondent never deemed it fit to put forth its complete case in respect to the same. The litigation herein has dragged on as Parties have over time had objection to one document or the other. Today a considerable period of time has been taken to articulate the objection and response as well as the rendering of my decision further clouding the hearing. As it is now past time when the case would have been heard it will get kicked down the road and inevitably go into the next term in January 2022. A date for further hearing will be given after this Ruling. In the final analysis the Court expunges the Minutes of 3<sup>rd</sup> December, 2004 and allows only the Report which was subject of the Ruling of 27<sup>th</sup> September 2021. The witness for the 1<sup>st</sup> Respondent is excused.

Orders accordingly

**DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF NOVEMBER 2021**

**NZIOKI WA MAKAU**

**JUDGE**