



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.283 OF 2013

PATRICK KARIITHI WAHOME & 114 OTHERSCLAIMANTS

VERSUS

COUNTY GOVERNMENT OF LAIKIPIA.....1ST RESPONDENT

LAIKIPIA COUNTY PUBLIC SERVICE BOARD2ND RESPONDENT

AND

THE TRANSITIONAL AUTHORITYINTERESTED PARTY

THE PUBLIC SERVICE COMMISSION OF KENYAINTERESTED PARTY

RULING

The respondent filed application dated 6th December, 2019 seeking for orders that the court to review its orders of 20th November, 2019 closing the respondent's case and directing that judgement be delivered on 17th December, 2019.

The application is supported by the affidavit of Dennis Joseck Mare, Advocate for the respondents and is based on the grounds that hearing of the matter was scheduled for the 20th November, 2019 following hearing directions on 8th July, 2019 following adjournment requested by the respondents which was allowed on condition of payment of due costs to the claimants at Ksh185, 000 before the hearing date otherwise there would be no audience.

Prior to the scheduled hearing on 8th July, 2019 the respondents had filed Notice of Preliminary Objections dated 25th June, 2019 with regard to the claim as filed and seeking for its dismissal with costs. The respondents were willing to have the objections heard on 20th November, 2019 but on which date there was no audience for failure to pay costs.

The failure to pay the due costs was not intentional as the same was occasioned by the delay in the passage of Division of Revenue Allocation Act by the national assembly and hence the lack of funds in the respondents' vote head to settle costs.

Such costs have now been paid.

Other grounds to the application are that the respondent seeks to be heard on the preliminary objections notice as filed. The respondents are willing to abide any conditions granted by the court.

In reply the claimants filed Replying Affidavit of Kibet Cheboswony, Advocate for the claimants and who avers that he is in the conduct of the matter and thus competent to reply herein on the grounds that the application by the respondents is misconceived and in abuse of the court process.

On 13th December, 2018 the respondents sought adjournment on the grounds that they were not ready for hearing despite the claimants being in court for the hearing.

There is application dated 25th January, 2019 by the respondents which have never been prosecuted due to non-attendance.

Mr Kibet also avers that the respondents have been given ample and sufficient time to file their documents and organise their defence which has not been addressed and have come to court with unclean hands. Continued indulgence will encourage indolence as the prejudice of the claimants who are out of employment and continue to suffer irreparable loss and unable to meet further costs.

The respondents are statutory bodies and their operations are on-going without a hitch unlike the claimants who have no means and the continued delays in the determination of this matter are to visit further injustice upon them.

Judgement was due for delivery way back on 7th March, 2019 and which was arrested by the respondent following non-attendance to prosecute the defence. This should not be encouraged for a second time and the application should be dismissed with costs.

Both parties made oral submissions in court.

Should the court vary, vacate or review its orders of 20th November, 2019 closing the hearing and delivered judgement?

Should the respondents be allowed time to urge Notice of Preliminary Objections filed on 25th June, 2019?

Who should pay costs?

A background to this matter is hereby necessary to address.

The matter herein was initially handled by Ongaya, J and could not proceed for hearing noting the respondent had not filed a defence and on 18th December, 2013 parties by consent allowed the respondent to file defence. The Claimants also filed amended Claim and there followed several adjournments for the respondent's advocates to take instructions from the client.

Radido, J. took over the matter and issued hearing directions and on several occasions but could not proceed at the instance of the respondents who sought adjournments to organise the defence. Hearing commenced on 30th April, 2015 with adjournment for further hearing on 30th July, 2015 when the respondent asked for adjournment to organise the defence.

I took over the matter and allocated several hearing dates' one being for 13th December, 2018. The respondents were served and returns filed and the advocate holding brief opted not to attend the hearing when the claimants were heard and case closed. Parties were directed to file submissions and mention on 31st January, 2019 to confirm and get a date for judgement.

Judgement was due on 7th March, 2019.

On 28th January, 2019 the respondents filed application seeking to reopen the proceedings and hearing and which was compromised by the parties upon payment of costs and hearing allocated for 24th April, 2019 when the respondent sought adjournment to engage the client to settle. Several mention dates were allocated for this purpose and hearing allocated for 20th November, 2019 upon the respondent confirmation that the due costs are paid.

On the due date the respondent had not complied.

This then returned parties to position as at 13th December, 2018 when submissions were due and judgement date. The claimants have since filed written submissions. The judgement put in abeyance to accommodate the respondents is due.

On the above background, the respondents constant applications for adjournments, non-attendance as and when hearing date are allocated in apparent. This has resulted in the stalling of the due judgement on two occasions;

On 7th March 2019; and 17th December, 2019.

On both dates, the respondents moved the court and arrested the delivery of the judgement. These adjournments have taken the matter over seven (7) years to complete as the Memorandum of Claim was filed way back.

There is indolence on the part of the respondents and continued delay in the delivery of judgement is not justified.

With regard to the prosecution of the Notice of Preliminary Objections filed on 25th June, 2019 and as noted above, the defence was filed way back in the year 2013 and therein various matters addressed with regard to the claimants case. There has been no prosecution of any noted objections until the Notice now filed on 25th June, 2019 after the claimants have closed their case and following various adjournments to hear the defence.

The general rule is outlined in the case of **Republic versus Chief Registrar of the Judiciary & 2 other ex parte Riley Services Limited [2015] eKLR** that where there is a valid objection to a matter proceeding before a court either for want of jurisdiction or other sufficient cause such should be raised at the earliest to avoid a waste of time. Even where a party has a valid objection, for the respondents to hold onto the same from the year 2013 to date and until their efforts to arrest judgement on various dates have hit a snag, this is not in aid of justice.

This put into account, for good cause Preliminary objections can be raised at any time before judgement and it must deal with points of law. See **Panfield Investment Ltd (New Eldoret Total Service Station Ltd) versus Sisibo Luxury Shuttle Ltd [2018] eKLR**.

Objections filed relates to the application of section 77 of the County Government Act and for this reason and application of the law, the court shall pause and allow the respondents to urge this single issue putting the above into account.

For the obvious indolence, the respondent shall meet the costs of this application.

Accordingly, on application dated 6th December 2019 the court shall vary its orders of 20th November, 2019 and allow the respondents to urge the Notice of Preliminary Objections dated 25th June, 2019 first before further directions on the due judgement. Costs awarded to the claimants.

Delivered at Nakuru this 23rd day of January, 2020.

M. MBARU

JUDGE

In the presence of: