



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 346 OF 2014

(Before Hon. Justice Mathews N. Nduma)

MONICA A. OTIENO AND 32 OTHERS.....CLAIMANT

VERSUS

JARAMOGI OGINGA ODINGA UNIVERSITY OF SCIENCE AND

TECHNOLOGY.....1ST RESPONDENT

BONDO TEACHERS TRAINING COLLEGE.....2ND RESPONDENT

RULING

1. Application dated 5th December 2018 seeks for orders:

(a) That this Honourable court be pleased to review and or vary its judgment delivered on the 5th July, 2018 in respect of the time of payment of the pension/gratuity to the claimants to read 30 days from the date of judgment.

(b) That this Honourable court be pleased to review and or vary its judgment delivered on 5th July, 2018 to include other employees in diversity, omitted from the list of claimants; who also suffered the same fate.

(c) That court be pleased to adopt and enter a judgment in the sum of Kshs. 5,825,066.30 as the total gratuity/sums payable in favour of the claimants.

(d) Costs be provided for.

2. The application is moved by the present advocate firstly on behalf of further purported claimants who were not party to the suit.

3. The application is on the grounds that the counsel, now deceased Mr. Francis Otieno who hitherto represented the 33 claimants inadvertently failed to include eight (8) applicants in the suit and so they erroneously did not benefit from the judgment.

4. Further the claimants have now quantified the award of pension granted by the court and the court adopt the said quantification to enable implementation of the judgment.

5. The application is opposed vide grounds filed by the respondent on 11th July 2019 in which it is argued that the court is *funtus officio* having rendered its judgment in this matter and the application is misconceived and an abuse of court process.

6. That no new facts exist to warrant review of the judgment of Maureen Onyango-J. delivered on 5th July 2018. That a judgment cannot include persons who were not parties to the suit.

7. That the quantum of Kshs. 5,825,086.30 is speculative and arrived at without any justifiable basis.

Determination

8. The court is unaware of any law that would allow persons who were not parties to the suit to benefit from a judgment of the court unless the case was tried as a test case for other suits already filed and pending hearing and determination. This is not the situation in the present

application. It is trite law as determined in *Nairobi HCC No. 1889 of 1999: Joseph Omwando Owiti vs Magadi Soda Company Limited (2008) eKLR* that the court is bound by the pleadings of the parties in delivery of its judgment. Therefore, the application to enjoin persons who were not parties to the suit as beneficiaries of a judgment already rendered is misconceived and is dismissed accordingly.

9. On the issue of quantum, the court in its judgment of 5th July 2018 referred to the provisions of *subsections 3(3) and 3(4) of the Legal Notice No. 46* as the basis for the order that the respondent pay 'gratuity/pension to the employees who were party to the suit up to the date they were re-employed by the 2nd respondent and that the 2nd respondent was responsible for the gratuity/pension from the date it took up the claimants as its employees.

10. The judgment is very clear and ought to be implemented by the 1st and 2nd respondents in terms thereof.

11. Accordingly, the 1st respondent is directed to within 30 days compute and file the gratuity/pension due and owing to the claimants, and serve the claimants for their input within 14 days from date of service.

12. Thereafter the court shall consider the computation and adopt it as part of the judgment of the court.

13. The 1st respondent to pay the costs of the application.

Ruling Dated, Signed and delivered this 13th day of February, 2020

Mathews N. Nduma

Judge

Appearances

Mr. Ken Omollo for the claimants.

Mr. Olel for 1st respondent.

Mr. Hayanga for the 2nd respondent.

Chrispo – Court Clerk