



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 80 OF 2017

BETWEEN

BENSON AMWOGA JUMA.....CLAIMANT

VERSUS

KENYA PIPELINE COMPANY LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Cootow & Associates, Advocates for the Claimant

Robson Harris & Company, Advocates for the Respondent

RULING

1. On 1st December 2017, the Court made a Ruling staying its proceedings, and referring the dispute to conciliation under the Labour Office, on the ground that the dispute had initially been reported to that Office by the Claimant’s Trade Union, and conciliation process had not been exhausted. The Conciliator filed a Report, recommending reinstatement of the Claimant, by his former Employer, the Respondent herein.
2. The Court found that the Conciliator excluded the Respondent from the process without sound reasons, and rejected the initial Report dated 20th September 2018. In a second Ruling made on 26th July 2019, the Court referred the Parties back to the Conciliator, with specific orders, that among others, the Conciliator: files a Report, accompanied by the record or evidence of the minutes of the conciliation meeting[s]; an analyses of issues in dispute; the facts; recommendations; and reasons for recommendations.
3. There are 5 other Grievants, who were dismissed by the Respondent in similar circumstances as the Claimant herein, and whose Claims were to be settled based on the outcome of the Claim herein.
4. The Court therefore needed the assistance of the Conciliator, in terms laid out at paragraph 2 of this Ruling, in order to determine all the related Claims.
5. The Conciliator filed a second Report on 9th December 2019. It does not comply with the Ruling made on 26th July 2019, in particular order [c] of the Ruling. Rule 5[1] [b] of the Employment & Labour Relations Court [Procedure] Rules 2016, requires the Conciliator to attach minutes of the conciliation proceedings, to his Report. There is a reason for this. It enables the Court to have an overview of the conciliation proceedings, and follow the Conciliator’s reasoning leading to recommendations. A bare Report is akin to a Judgment of a Subordinate Court without the proceedings, in a Record of Appeal filed before a Superior Court. In the Ruling of 26th July 2019, the Court made specific orders which the Conciliator disregarded. This prompted the Respondent to file an Application dated 5th March 2020, asking the Court to disregard Conciliator’s Report, and proceed with the trial.
6. Recommendations in the Report are: maximum compensation for unfair termination; terminal benefits that accrues in the Parties’ CBA; pain and loss incurred in pursuit of this matter; and any other relief the Court may find fit to grant.

7. The recommendations are not supported by evidence, and some of them, like pain and loss incurred in pursuit of this matter, appear unconventional and without support in fact and law.

8. The Report cannot form the basis of a judicial determination, having failed to comply with specific terms of reference. The Conciliator was not helpful to the Court. It would not be in the interest of justice, to send the Parties back to the Conciliator for a third time.

9. Lastly, the Court must record that it has been compelled to release this Ruling from the confines of the Trial Judge's home at Chaka, Nyeri County, owing to the prevailing covid-19 pandemic. It is not possible to deliver the Ruling in Open Court without risking lives. Other possible modes of delivery are neither failsafe, nor safe to the participants, particularly at the place of trial Mombasa, which is a hotbed of the pandemic. The much touted online platforms are a fertile seedbed for hackers and communication constantly breaks down. Lives must be protected, but the wheels of justice must keep rolling too. Whereas Rule 28 of the Court Procedure Rules demands decisions of the Court are delivered in Open Court, the presumption in the Rule is that this happens in normal times. These are not normal times. The Court must invoke Rule 38 of its Rules and release the Ruling to the Parties in this unconventional way. It is noted also that the Hon. the Chief Justice has directed that pending decisions are released to the Parties by 30th of May 2020. Parties shall access the Ruling from the Court Registry and Kenya Law Reports web portal, as soon as practicable.

IT IS ORDERED:-

a. Orders staying proceedings of the Court are set aside.

b. The conciliation process has failed.

c. The Claim to proceed to full trial before the Court.

d. Parties to take pretrial directions.

e. The relevant files, Cause Nos. 80 to 85 of 2017, are consolidated, to be heard and determined under Cause No. 80 of 2017.

f. Costs in the Cause.

Dated, signed and released at Chaka, Nyeri County, for dispersal to the Parties, this 29th day of May 2020.

James Rika

Judge