

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE 78 OF 2016

1. JOSEPHINE WAMBURA GAKUO

2. JUSTIN MWAI MURAGURI

3. JAMES MAINA MURIITHI

4. PATRICK MUGO ZACHARY.....CLAIMANTS/APPLICANTS

VERSUS

KIRINYAGA WATER & SANITATION

COMPANY LIMITED.....RESPONDENT

RULING

1. The Motion before me is the one dated 12th November 2018 in which the Claimants/Applicants seek to halt the staff placement exercise of the Respondent which was commenced in October 2018. The Claimants argue that the exercise is a sinister move to have them dismissed from the positions they hold. The Respondent argues that the staff placement exercise is a culmination of consultative meetings in terms of the CBA in place.

2. The parties filed submissions in which the Claimants/Applicants submit that the Respondent has not adhered to the Collective Bargaining Agreement and the memorandum of agreement dated 23rd November 2014. The Claimants assert that the Respondent has acted contrary to the CBA by not adhering to the consultative process as required under article 56 of the parties CBA. The Claimants assert that the meeting which was held was irregular as the members of the union were not invited.

3. In its submissions, the Respondent argues that the notice of 30th October 2018 does not violate the letter and spirit of the memorandum of agreement dated 23rd November 2014 and the CBA between the Respondent and the National Union of Water and Sewerage Services (NUWASE). The Respondent asserts that the Claimants have been consulted and were present at meetings called to deliberate the issues in the staff placement exercise. It argues that the staff placement exercise has been carried out in a fair and transparent manner.

4. The 1st Claimant disowned the suit before the court and therefore is excluded from this Ruling. The application before me was without merit given the plethora of documentation showing the consultative process was not only inclusive but thorough. The Claimants have been mischievous by bringing the suit and the motion while well aware that the suit is not based on facts. The Respondent has held numerous meetings minutes of which are exhibited in the responses to the Claimants' suit and motion and in the minutes it is clear there are attendances by the Claimants and other staff and union officials who incidentally did not move the court. The application is wholly devoid of merit and is an abuse of the court process. It is dismissed with costs to the Respondent with only the 2nd, 3rd and 4th Claimants liable for the costs. As a consequence of the dismissal the suit equally stands dismissed. I make no order as to further costs.

It is so ordered.

Dated and delivered at Nyeri this 9th day of April 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar