



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 21 OF 2014

(Before Hon. Justice Mathews N. Nduma)

SAMUEL OGORJI.....1ST CLAIMANT
OSCAR JUMA OJUOK.....2ND CLAIMANT
YAHYA OMAR.....3RD CLAIMANT
WYCLIFE CHITUL.....4TH CLAIMANT
HUMPHREY OKOMMBO.....5TH CLAIMANT
MARK OUMA.....6TH CLAIMANT
CHRISTOPHER AYIEKO.....7TH CLAIMANT
HERINE OKETCH.....8TH CLAIMANT
JANE ANYANGO.....9TH CLAIMANT
LUCAS OBULA.....10TH CLAIMANT
JARED ODHIAMBO.....11TH CLAIMANT
PIUS ODHIAMBO.....12TH CLAIMANT
NICHOLAS OTUOMA.....13TH CLAIMANT
ALOYCE CHIENG.....14TH CLAIMANT
IRENE AKINYI.....15TH CLAIMANT
KENEDY OKONGO.....16TH CLAIMANT
ZACHARIA ZOMBO.....17TH CLAIMANT
AMBROSE ODHIAMBO.....18TH CLAIMANT
CAROLINE ODONGO.....19TH CLAIMANT
COLLINS OORO.....20TH CLAIMANT
CAROLINE SANGANY.....21ST CLAIMANT

GEORGE Ooyo.....22ND CLAIMANT
ANN OGINGYO.....23RD CLAIMANT
MESHACK OGWEDO.....24TH CLAIMANT
CHARLES OKEYO NYANANDI.....25TH CLAIMANT
FREDRICK ODHIAMBO.....26TH CLAIMANT
OUKO GEORGE OYOO.....27TH CLAIMANT
BENSON ODHIAMBO.....28TH CLAIMANT
ABSALOM OMONDI OTIENO.....29TH CLAIMANT
JACKTON KUNGU ONDIEK.....30TH CLAIMANT
DAVID OTIENO OGOLLA.....31ST CLAIMANT
JACOB NYAMITA AWINO.....32ND CLAIMANT

VERSUS

KISUMU COUNTY GOVERNMENT.....1ST RESPONDENT
KISUMU COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

RULING

1. The Notice of Motion dated 23rd July 2018 seeks for orders:

That the County Secretary Dr. Olango Onudi show cause why he cannot satisfy the decree by:

(i) Issuing the claimants with letters of appointment absorbing them into required terms of employment with effect from 1st November 2017.

(ii) Paying the claimants costs awarded at a global figure of Kshs. 500,000.

2. That the officer be committed to jail in default until such time that he satisfies the decree and that the Kisumu County Labour Office be ordered to submit the tabulated wages not paid from September 2011 to October 2017 and statutory rates applicable and the County Secretary be ordered to show cause why he cannot satisfy the same.

3. The application is based on grounds set out in the Notice of Motion to wit that judgment was delivered on 19th October 2017 ordering the above payments within 30 days and that letters of absorption be issued immediately.

4. That global costs of Kshs 500,000 were ordered. That 30 days stay has lapsed and orders have not been implemented. That the application be allowed.

5. Respondents filed a replying affidavit dated 16th September 2018 opposing the application on grounds that same lacks merit and the court became *funtus officio* when the court granted the Respondents leave to file a Notice of Appeal out of time on 5th July 2018.

6. That subsequent to the court order, the Respondents filed an appeal before the Court of Appeal being Kisumu Court of Appeal Civil Appeal NO. 14 of 2018.

7. That the court cannot entertain an application in a matter that is currently pending before the court of Appeal.

8. That the application has been filed in bad faith and it be dismissed with costs.

Determination

9. It is not in dispute that judgment was delivered on 19th October 2017 directing the respondents to comply with the orders set out in the

application. It is not in dispute that respondents have not complied with the orders of the court.

10. It is also common cause that the respondents were granted leave to file Appeal out of time which they proceeded to do.

11. The respondents have not sought stay of execution of the orders of court contained in the judgment delivered on 19th October 2017 before this court or before the court of Appeal.

12. The submission by the respondents that it has obtained automatic stay of execution upon filing the Appeal before the Court of Appeal is fallacious and without basis in law.

13. The respondents have not advanced any reason in the replying affidavit why they have not complied with the court order despite not having sought stay of execution of the judgment of the court.

14. Accordingly, the application before court remains largely unopposed and the court allows the application and grants the following orders:

(a) The County Secretary Dr. Olango Onudi is hereby directed to issue letters of appointment to the claimants absorbing them into regular terms of employment with effect from 1st November 2017.

(b) The County Secretary Dr. Olango Onudi to pay the claimants costs awarded at a global figure of Kshs 500,000.

(c) The Kisumu County Labour Officer is directed to submit the tabulated wages for September 2016 to October 2017 on statutory rates of pay applicable and satisfy the decree.

15. Orders (a), (b) and (c) above are to be implemented within the next 30 days failing which the County Secretary Dr. Olango Onudi be committed to jail for a period not exceeding three (3) months until such time he satisfies the decree.

16. The respondent to pay costs of the application

Ruling Dated, Signed and delivered this 2nd day of May, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Mwamu for claimants/Applicants

Mr. Simiyu for the Respondents

Chrispo – Court Clerk