



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. 139 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 17th June, 2019)

FRANCIS MWENDWA TITUS.....PETITIONER/RESPONDENT

VERSUS

KENYA PIPELINE COMPANY LIMITED.....RESPONDENT/APPLICANT

RULING

1. Before this Court is the Respondent/Applicant Application dated 15th May 2019 wherein they seek the following Orders:-

a) Spent.

b) THAT this Honourable Court be pleased to grant leave to the firm of Robson Harris & Company Advocates to come on record on behalf of the Respondent after delivery of judgment.

c) THAT this Honourable Court be pleased to issue an order for stay of execution of the decree herein dated 13th March 2019 pending the hearing and determination of this Application.

d) THAT this Honourable Court be pleased to issue an order for stay of execution of the decree herein dated 13th March 2019 pending the hearing and determination of the intended appeal.

e) THAT this Honourable Court be pleased to issue an order for stay of proceedings pending the hearing and determination of the intended appeal.

f) THAT the costs of this Application be provided for.

2. The Application is based on the grounds that the Applicant intends to appeal this Court's entire decision delivered on 28th February 2019, directing them to reinstate the Petitioner with backpay of salary and allowances and that in default he be re-engaged on the same terms without loss of pay or promotions.

3. The Petitioner has extracted a decree and served it upon the Applicant and further instituted contempt of Court proceedings for committal orders against the Applicant's Managing Director, the General Manager Human Resources, the Human Resource Manager and the Legal Officer.

4. That the Applicant has instructed Robson Harris & Company Advocates to represent it in the contempt of court proceedings and the appeal, which appointment has not been opposed by its Advocates on record.

5. When the Advocates initially filed Grounds of Opposition and an Application seeking orders for stay of execution of the decree and proceedings, they were denied audience for not being properly on record. As such, the Petitioner's Contempt of Court Application was heard *ex parte* and the Ruling is scheduled for 2nd July 2019.

6. It is the Applicant's position that if the orders sought are not granted, it will have been condemned unheard and its intended appeal rendered nugatory. The Applicant has undertaken to lodge the appeal timeously once it receives the typed proceedings and is willing to abide by any conditions set by this Honourable Court for the grant of the orders sought.

7. The Application is supported by the Affidavit of Jane Joram and is based on the grounds on the face of the Motion.

8. The firm of Ngatia & Associates opposed the Application vide the Replying Affidavit of Carolyn Nyaga. It is their case that despite rendering professional services to the Respondent since 2016, they were not notified by the Respondent that it had appointed another firm of advocates to take over the conduct of further proceedings in the matter.

9. Further, the firm of Robson Harris & Company Advocates did not notify them of the same, neither did they seek their consent as required by Order 9 rule 9 (a) of the Civil Procedure Rules.

10. They aver that their legal fees are outstanding to date. As such, their firm ought to remain on record as lien for payment of their outstanding fees.

11. The Applicant filed a rejoinder to the reply vide the Further Affidavit of Beryl Nalo wherein they reiterated that they have instructed the firm Robson Harris & Company Advocates to represent them in their intended appeal.

12. They confirmed that their Advocates on record had raised a fee note for the professional services rendered and they had thereafter requested for the ETR receipt. Even though they are willing to settle their legal fees, the ETR receipt issued bears conflicting signatures as against the Fee Note raised hence making it difficult to settle. They urge the Court to protect their right to a fair hearing.

Submissions by the Parties

13. The Application was disposed of by way of written submissions. The Applicant filed their submissions on 23rd May 2019, its Advocates on record filed theirs on 28th May 2019.

14. The Applicant submits that the firm of Robson Harris & Company should be granted leave to come on record since the Applicant has demonstrated its willingness to settle its outstanding fees. That the Application has been made against the backdrop of the contempt of Court proceedings against it as well as the intended Appeal. It is its position that the claim by its Advocates on record cannot override their right to a fair hearing and that it stands to suffer immense and untold prejudice, should the Application be denied.

15. The firm of Ngatia & Associates on record submits that the instant application is based on a falsehood, as they were unaware that the firm of Robson Harris & Company Advocates had been instructed to take over the conduct of the matter therefore unable to consent to their coming on record.

16. They further submit that the Application should be dismissed since their consent was not sought and because Court orders do not issue on based on misrepresentation of facts. It is also their submissions that once the issue of their legal fees is settled, they will release the file so that the firm of Robson & Harris can be properly appointed.

17. I have considered the averments of both Parties. The law is clear that a Party, who wishes to change Counsel, has a right to do so.

18. Article 50(2)(g) of the Constitution provides that:-

2. "Every accused person has the right to a fair trial, which includes the right:

(g) to choose, and be represented by, an advocate, and to be informed of this right promptly".

19. Whereas the article specifically deals with criminal charges, I have read in every litigant because that is the right of every person to choose who should represent him or her in any litigation in Court.

20. At this point the Applicant stands to suffer prejudice as his Counsel insist on being on record when he does not wish them to represent him.

21. The main quarrel with the ongoing Counsel is that they have not been fully paid their fees. This Court cannot hold litigation until issue of fees is settled.

22. In any case there is no indication that the claim on fees will cease or die just because another Counsel has taken over the case.

23. For justice to be done, it is proper for a litigant to decide which Counsel should represent him and in the circumstances, I allow the application before me and allow the firm of Robson Harris & Company Advocates to come on record for the Applicant. The outgoing Counsels are free to file their bill of costs on their fees and their Claim cannot be used to hold the hearing of the application if any pending in Court.

24. Costs in the cause.

Dated and delivered in open Court this 17th day of June, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Olum holding brief Okoth for Claimant – Present

Ngatia – Absent

Michira for Respondent/Applicant – Present