



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 598 OF 2017

BETWEEN

OSIELO OKOTH O'KING

STEPHEN M. MULINGE

HARRY RANDU BANKS

JUMA WAZIRI KINGI.....CLAIMANTS

VERSUS

A CLAIM IN REM AGAINST THE OWNERS

OF MOTOR VESSEL NASIBU, NASIBU

FISHING COMPANY LTD.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Wachira Kingangi & Company Advocates for the Claimant

Ahmednasir, Abdikadir & Company Advocates for the Respondent

RULING

1. Judgement was delivered in favour of the 4 Claimants, against the Respondent, for a total sum of USD 12,400, costs and interest, on 15th March 2019.
2. The Respondent filed an Application on 30th April 2019, seeking *inter alia*:

“That this Honourable Court be pleased to review and/or set aside, or vacate the Judgment dated 15th March 2019 by virtue of the same being delivered without a fair and/or impartial hearing”.
3. The Application is supported by the Affidavit of Mumin Ali Munin, Owner of the Motor Vessel Nasibu, sworn on 30th April 2019.
4. Ali depones that Judgment entered on 15th March 2019, “*is unfair and unprecedented, and at the same time was secured through unrepresentation of the Respondent.*”
5. Further, he states, “*this casual and lazy practice on the part of the Advocates (former) for the Respondent, has caused the Respondent to be deprived of its right to be heard*”.

6. The 4th claimant, Juma Waziri Kingi swore an Affidavit in reply, on 9th May 2019. In a capsule, the Claimants position is that the Respondent might have a remedy against its former Advocates but is not entitled to have Judgment set aside on the grounds advanced by Ali.

7. The Application was heard on 10th May 2019.

The Court Finds:-

8. The Affidavit sworn by Mumin Ali Mumin does not support the ground that Judgment was delivered without a “fair and/or impartial hearing.”

9. The Claimants presented their Claim, served all Court Processes, took procedural directions, and notified the Respondent at every turn of Court attendance. The Respondent and its previous Advocates kept away from the Court.

10. The affidavit sworn by Mumin Ali Mumin, does not place any blame on the Claimants or on the Court, but blames its own Advocates for “lazy and casual practice.”

11. How does the Respondent’s Advocates’ laziness and casual practice, amount to lack of fairness and impartiality on the part of the Court?

12. The Application by the Respondent on 30th April 2019 is meritless. ***It is hereby dismissed with costs to the Claimants.***

Dated and delivered at Mombasa this 13th day of June 2019.

James Rika

Judge