



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

ELRC CAUSE NO. 2212 OF 2012

(Formerly High Court Civil Case No.548 of 1995)

(Before Hon. Lady Justice Hellen S. Wasilwa on 18th September 2019)

WOI SAMUEL CHEGE GITAU AND 283 OTHERS.....CLAIMANTS

VERSUS

THE HONOURABLE ATTORNEY GENERAL.....RESPONDENT

RULING

1. The Applicants herein, Corporal Peter Nashon Wambulwa and SSGT. Joseph Gaichuru Chege, filed a Notice of Motion on 17th August 2018 seeking the following orders:

1. Spent

2. THAT the Honourable Court do review its orders of the 17th day of February 2015 excluding and removing the Applicants from the claim herein and do include:-

(i) CORPORAL Peter Nashon Wambulwa –service no. 022984-Claimant No. 168.

(ii) SSGT Joseph Gaichuru Chege-service no.201521-Claimant.

and reinstate them as Claimants and therefore beneficiaries of the Judgment delivered at Nairobi on the 22nd day of September 2017 by the Principal Judge M.N. Nduma , J.

3. THAT any other relief this honourable Court may deem fit and just to grant.

4. THAT costs of this application be provided for.

2. The application is based on grounds that:-

1. The Applicants have all along followed up this claim knowing that the Court will sign the Judgment to receive their compensation.

2. During the hearing of the claim , the Claimants supplied their service numbers and their discharge certificates as a basis in which their claim was quantified as per the copy of the judgment on quantum which was unsigned until when it was signed is when the Applicants' names were removed from the claim with remarks 'claim withdrawn'.

3. The Applicants were loyal members of the Respondent's employees of the Kenya Police and entitled to remedy as claimed herein.

4. The inclusion of the Applicants herein will never prejudice the Respondent as this will only facilitate the fair trial and

compensation of the Respondent's employees by including all claims. It will only be fit that the Court does grant the Claimants their prayers as the claim is similar to the 280 claimants and should they not be included as beneficiaries they stand prejudiced greatly as it has been quite a long time since they irregularly lost their employment

5. It is Lt Col Peter Ngari Kagune who misrepresented the Applicants names herein when he was withdrawing his name from the claim herein on the 17th February 2015 and therefore request the Honourable Court to reinstate their claim.

3. The Application is supported by the Joint Affidavit of Peter Nashon Wambulwa and SSGT Joseph Gaichuru Chege sworn on 16th August 2018. They aver that the Lt. Col Peter Ngari Kagume who had filed his notice of withdrawal from the current suit inserted their names without knowing as he never consulted them.

4. Further, that the implication was that they had withdrawn from the suit which is not true. They aver that it is just for the order to be reviewed and their names reinstated as it was not their application to be removed but an error by the Lt. Col. Peter Ngari Kagume.

5. They further aver that the Attorney General, the Respondent herein, has filed an appeal to be determined together with other claims which Notice of Appeal contained their names and the deletion of their names was an afterthought.

6. The Applicant in their written submissions argued that there has been no application served upon them withdrawing them as Claimants and that none of the provisions in the Civil Procedure Rules were followed in withdrawing them from the claim.

Claimants' case

7. In response to the application the other Claimants (23-32, 29-47, 48-66, 70, 75-176, 178-180, 182-269, 271-272, 278-280 &284) represented by Agina & Associates Advocates filed their Grounds of Opposition on 25th October 2018. They aver that the application is res judicata and should be struck out.

8. They further aver that the application is incompetent as it contravenes the Civil Procedure Rules and Orders and that the Supporting Affidavit is made without statutory authority and ought to be struck out. They contend that the applicants voluntarily withdrew from the claim.

9. The Claimants relied on section 7 of the Civil Procedure Act and submitted that the application is res judicata for reason that the applicants were litigants in Nairobi High Court Misc. No. 128 of 2006 which was heard and determined by the Justice Nyamu in his Judgment delivered on 30th January 2009.

Respondent's Case

10. The Respondent filed his Grounds of Opposition on 20th February 2018. He avers that having rendered Judgment on this matter the Court became functus officio and that as at the time of hearing and judgments the applicants had voluntarily withdrawn their claims.

11. He further avers the orders sought are a mere afterthought and in any event cannot be sought or be issued after judgment and that the applications are a total waste of time as similar applications have been dismissed by this Court.

12. The Respondent did not file written submissions and as such he sought to rely on the Grounds of Opposition.

13. I have examined the averments of both Parties. Vide this Court's judgement dated 11/6/2018, I made an order setting aside an earlier order in which I had allowed inclusion of the Applicants in this claim. I have not granted any orders on 17/2/2015 as prayed by the Applicants, which warrants review.

14. In this Court's mind, there is no error on record, no new evidence which was not in the Court's knowledge, nor is there anything that requires clarification by this Court as provided under rule 33(1) of the ELRC (Procedure) Rules 2016 to warrant review of this Court's orders. In my view, what the Applicants are seeking is to have this Court sit on appeal on its own orders, which is a preserve of the Court of appeal.

15. I therefore find that this application for review is not merited and I therefore dismiss it accordingly.

Dated and delivered in open Court this 18th day of September, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimants – Present

Applicants – Present