



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 892 OF 2017**

**RASHID MUSUNGU MANGO & 42 OTHERS.....CLAIMANT**

**-VERSUS-**

**DIRECTOR GENERAL, NATIONAL YOUTH SERVICE....1ST RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF**

**PUBLIC SERVICE, YOUTH & GENDER AFFAIRS.....2ND RESPONDENT**

**ATTORNEY GENERAL.....3RD RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

**JUDGMENT**

The claimant filed a memorandum of claim on 12.05.2017 through Mandala & Company Advocates. The claimants prayed for judgment against the respondents, jointly and severally for:

- a) A declaration that the respondents to jointly and severally to immediately adjust and pay the 42 claimants their salaries and emoluments in compliance with their new ranks of Senior Sergeant, Pay Group 4 as provided by the Scheme of Service and the same be effected from 19.08.2010 to date.
- b) A declaration stopping any further promotions or indiscriminate adjustment of emoluments by the respondents to other officers to be stayed or suspended until prayer (a) herein is complied with in order to harmonise all the promotions effected since 2010.
- c) Any other consequential order or relief the Court may deem fit to grant.
- d) Costs of the claim.

The reply to the memorandum of claim was filed on 21.07.2017 through the learned Litigation Counsel Christine Oyugi, for Attorney General. The respondents prayed that the suit be dismissed with costs.

There is no dispute that the claimants are currently in the service of the 1st respondent. By the letter dated 23.08.2010, the claimants were promoted to the rank of Senior Sergeant (effective 19.08.2010) and upon successful completion of Senior Sergeant Promotion Course and issuance of the certificate thereof by the 1st respondent confirming the new ranks.

Prior to the said training and promotion, the claimants' case is that they were formally nominated, interviewed and approved for training due to their exceptional professional qualifications and as per the terms of service. Further despite the promotion letter recommending immediate adjustment of the claimants' salaries and personal emoluments, the respondents are yet to effect the same since 19.08.2000 and they have failed to convey to the claimants the reason for the inaction. The inaction was alleged to be unlawful and prejudicial to the claimant's career progression and legitimate expectation to the rank and pay per Scheme of Service for the National Youth Service. The claimants say they issued a demand notice under the Government Proceedings Act.

The respondents' case is that the promotions were irregular and un-procedural under the Scheme of Service which stipulated service under one rank for 3 years prior to promotion and the claimants were not eligible for promotion. Further the Public Service Commission had not given a waiver so that the claimants would be so promoted without the 3 years' service at the lower rank. Thus the officers cannot be promoted as prayed for as it will amount to by-passing of two ranks in the Scheme of Service.

As at the hearing of the suit the number of claimants had dropped from 43 to only 10. Further the evidence was that the claimants were

serving in the rank of Corporal PG 2. The rank of Senior Sergeant is PG 4 in the Scheme of Service and to be promoted to that rank one must have served for 3 years in the rank of Sergeant PG 3. The claimants by their own testimony confirmed they had not served such three years in PG 3. The Court returns that by the prevailing Scheme of Service, the claimants are not entitled to the prayers as made.

The respondents admitted that they made a mistake to convey to the claimants the promotions without having obtained a waiver of the 3 years prescribed in the Scheme of Service and from the Public Service Commission in exercise of its constitutional mandate in that regard. The waiver was requested for but the Commission in the exercise of its legitimate discretion declined to grant the same. In view of that mistake by the respondents, each party shall bear own costs of the suit.

In conclusion judgment is hereby entered for the respondents against the claimants for dismissal of the suit with orders each party to bear own costs.

**Signed, dated and delivered** in court at **Nairobi** this **Friday, 1st November, 2019**.

**BYRAM ONGAYA**

**JUDGE**