



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 447 OF 2014

AHMED SHEIKH MOHAMED.....CLAIMANT

VERSUS

GARISSA WATER & SEWERAGE COMPANY.....RESPONDENT

RULING

1. Ahmed Sheikh Mohamed (Claimant) commenced legal proceedings against Garissa Water & Sewerage Co. (Respondent) on 21 March 2014 and he stated the Issue in Dispute as Unfair and Unlawful constructive dismissal.
2. The *Memorandum of Claim* was filed together with a motion under certificate of urgency seeking an order interdicting the recruitment of a replacement for the Claimant.
3. The Court granted an interim order restraining the replacement of the Claimant on the same day.
4. The Respondent entered an Appearance on 4 April 2014 through *Onono & Co. Advocates*.
5. On 26 May 2014, the firm of *E Wafula & Associates* came on record for the Respondent.
6. On 3 June 2014, the Court ordered the Respondent to continue paying the Claimant half salary while on suspension until determination of the complaint that had led to the suspension.
7. The Claimant filed his witness statement on 27 January 2016 and on 10 May 2017, the firm of *Kiarie, Kabita, Kihunyu & Associates* filed a Notice to come on record on his behalf.
8. The Claimant once again changed advocates on 19 August 2019 when the firm of *Ali & Co. Advocates* came on record.
9. The Claimant filed further documents on 29 August 2019 together with Proposed Issues for trial.
10. On 30 October 2019, the Deputy Registrar scheduled the Cause for hearing on 27 November 2019.
11. When the Cause was called for hearing on 27 November 2019, the Claimant informed the Court that he was ready to proceed. On record was an Affidavit attesting to service of a hearing notice upon the firm of *Wafula, Washika & Associates Advocates* (for the Respondent).
12. The Court therefore allowed the Claimant to prosecute his case after which Judgment was reserved to 19 December 2019.
13. In the meantime, the Claimant filed his submissions on 6 December 2019.
14. The Court has keenly gone through the record and because of the reasons to follow shortly decided to render a Ruling instead of a Judgment.
15. The firm of *C P Onono & Co Advocates* filed a *Notice of Appointment* to act for the Respondent on 4 April 2014.
16. On 26 May 2014, the firm of *E Wafula & Associates Advocates* replaced the firm of *C P Onono & Co. Advocates*.

17. There is nothing on record to suggest that the firm of *Wafula, Washika & Associates Advocates* filed a *Notice of Change of Advocate* to take over the conduct of the Respondent's case from the firm of *E Wafula & Associates Advocates*. It is also not clear to the Court what is the relationship, if any between the two firms.

18. In the circumstances, it is apparent that the Respondent and/or its advocate on record was not served with a hearing notice.

19. The consequence being that the Court *suo moto* sets aside the proceedings 27 November 2019. The Cause to be heard afresh after the correct advocate on record is served with a hearing notice. No order as to costs.

Delivered, dated and signed in Nairobi on this 19th day of December 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kassim instructed by Ali & Co. Advocates

For Respondent E Wafula & Associates Advocates

Court Assistant Judy Maina