



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 218 OF 2015

[FORMERLY HIGH COURT CIVIL SUIT NO 201 OF 2008]

KINUTHIA ESTONE MAINA.....CLAIMANT/APPLICANT

EDWARD MBITHICLAIMANT/APPLICANT

**EDWARD KASAKHALA (suing on behalf of themselves and 163 others being
ex-employees of Coffee Board of Kenya).....CLAIMANTS/APPLICANTS**

VERSUS

COFFEE BOARD OF KENYA.....RESPONDENT

RULING

1. This ruling relates to the Claimants' application brought by Notice of Motion dated 12th November 2015, seeking the following orders:
 - a) That the Court be pleased to set aside the order made by **Nduma J** on 10th July 2015, dismissing the application dated 9th January 2015;
 - b) That the application dated 9th January 2015 be reinstated and heard on merit;
 - c) That the suit be reinstated and heard on merit.
2. The application, which is supported by an affidavit sworn by **Dr. John Khaminwa, SC** is based on the following grounds:
 - a) That an order was made by the Court on 10th July 2015, dismissing the application dated 9th January 2015;
 - b) That dismissing the application without hearing Counsel for the Applicants amounts to condemning the Applicants unheard;
 - c) That the subject matter relates to unpaid terminal benefits due to the Applicants arising out of redundancy, which benefits are constitutional rights of the Applicants and are not subject to limitation of time or the principle of *res judicata*;
 - d) That the Court has jurisdiction to grant the orders sought.
3. In response to the current application, the Respondent filed a Notice of Preliminary Objection on 7th April 2016, raising the following points:
 - a) That this Court is *functus officio* and therefore lacks jurisdiction to hear and determine the application;
 - b) That the application as filed is an abuse of the court process.

4. I have looked at the ruling delivered by my brother, **Nduma J** on 10th July 2015 and find that the learned Judge dismissed the Applicant's application dated 9th January 2015 after hearing the parties on merit. It cannot therefore be said that the Applicants were sent away unheard.

5. The grounds upon which the current application is grounded together with the averments in the supporting affidavit do not reflect the actual situation regarding this matter. The Court therefore finds the application unmeritorious and proceeds to dismiss it.

6. Each party will bear their own costs.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF JANUARY 2018

LINNET NDOLO

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 2ND DAY OF FEBRUARY 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Dr. Khaminwa, SC for the Applicants

Ms. Nduta for the Respondent