



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 86 OF 2005

KENYA UNION OF COMMERCIAL FOOD

& ALLIED WORKERS UNION.....1ST CLAIMANT

GEORGE RUHARA WANJOHI.....2ND CLAIMANT

V

MUGAMA FARMERS DISTRICT

CO-OPERATIVE UNION LTD.....RESPONDENT

RULING

1. In an award entered on 4 September 2006, Kosgei J (as he was then) found that George Ruhara (Grievant) was entitled to Kshs 452,545/65 on account of unlawful termination of contract.
2. On 16 October 2017, the Claimant moved Court seeking orders
 1. ...
 2. **THAT** the Honourable Court be pleased to review, vary and/or provide for an order of costs in the judgment of the Court dated 4th September, 2006 by Honourable Judge Paul K. Kosgei (as then was) to provide for an issue of costs and interests on the award and costs from the day of the award until payment in full.
 3. **THAT** the costs of the application be provided for.
3. On 6 November 2017, Wasilwa J before whom the application was placed directed that it be urged through written submissions, and the Claimant filed its submissions on 9 April 2018.
4. The Respondent did not file any response to the application, but opted to make oral submissions.
5. The grounds upon which the application were predicated were that the Court failed to provide for costs despite the same having been asked for, and that the advocates costs therefore were not catered for.
6. In submissions, it was contended that under the Civil Procedure Act, costs though at the discretion of the Court followed the event.
7. On why there had been delay of 11 years in filing the application, the Claimant explained the same by

asserting that the Court file had been untraceable.

8. In opposing the application, the Respondent submitted that the Claimant was not represented by an advocate during the hearing before the then Industrial Court but the advocate only came on board at the execution stage, and that costs are discretionary.

9. It was also urged that the Claimant had not met the threshold for review and that in any case there had been inordinate delay/indolence.

10. According to the Respondent, the Court was *functus officio*, and therefore it should not allow the reopening of the dispute.

11. The Court has looked at the record.

12. By the time the Industrial Court was making the award on 4 September 2006, there was no advocate on record for the Claimant/Grievants.

13. The Grievant, who has now been erroneously labelled as 2nd Claimant, was according to the practices and procedures of the then Industrial Court, represented by the Claimant Union.

14. The Industrial Court did not as a practice then make costs orders except in the very circumstances. It did not make a costs order in the instant case.

15. The practice of not making costs orders had a rationale in the philosophy that good faith was an imperative in on-going industrial relations between the social partners (unions and employers).

16. That relationship would continue/subsist despite disputes on specific cases and burdening of one party with costs would undermine the good faith expected of the partners.

17. It is correct as submitted by the Respondent that the advocate now on record and who is seeking costs, entered the litigation after the award was made, and therefore the proposition that the Court ought to have considered awarding costs due to involvement of an advocate is misplaced and not supported by the principles which guided the Court then.

18. The Court finds no merit in the application filed in Court on 16 October 2017 and orders that it be dismissed with costs.

Delivered, dated and signed in open Court in Nairobi on this 18th day of May 2018.

RADIDO STEPHEN

JUDGE

Appearances

For applicant Ms. Njuguna instructed by C.N. Kihara & Co. Advocates

For Respondent Mr. Muriuki instructed by Gitonga Muriuki Advocates

Court Assistant Lindsey