



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

MISC. APPL. NO. 6 OF 2018

(Before Hon. Justice Mathews N. Nduma)

1. KENNEDY OKIKI

2. NASHON OGADA OSENYA

3. ALEX OTIENO OGWE

4. EZEKIEL E. GOWI

5. MAKORI NEKO MATINO.....CLAIMANTS

VERSUS

LAKE BASIN DEVELOPMENT AUTHORITY.....RESPONDENT

RULING

1. The Applicant seeks the following Magistrate court files transferred and the court to invoke its supervisory jurisdiction under Article 165(6) & (7) of the Constitution of Kenya 2010 and enter judgment in the matters cited herein in accordance with the Decision in Kisumu **CMCC No. 122 of 2007; Paul Owino Ramoli Vs. Lake Basin Development Authority** delivered on 17th June, 2011:-

(i) Winam SRMCC No. 412 of 2008

(ii) Winam SRMCC No.405 of 2008

(iii) Winam SRMCC No. 392 of 2010

(iv) Winam SRMCC No. 388 of 2010

(v) Winam SRMCC No. 386 of 2010

2. The suits are by retrenched employees of the Lake Basin Development Authority seeking to have the correct formulae for calculating the terminal benefits be determined by the court.

3. The application is based on grounds that two conflicting judgments proclaiming different formulae for the payment of terminal benefits have been issued by the Magistrates courts, and this is embarrassing the judiciary, it is against public policy and hindrance to the fair administration of justice.

4. That the chief Magistrates' court is the highest court among all the subordinates courts in Kenya and its decision therefore ought to apply authoritatively upon all subordinate courts lower to it.

5. That the application has been brought expeditiously and without delay as the circumstance of the case could permit.

6. That the overriding objective of our judicial system is to deliver justice expeditiously.

7. That there is a test judgment on the circumstances of the cases cited above and there is no cause for maintaining litigation on these matters and it is only fair that the application be allowed.

Grounds of Opposition

8. The Respondent filed grounds of opposition dated 12th May, 2018 to the effect that the application lacks merit and the court lacks jurisdiction to transfer matters filed in the lower court to the High Court. That the application is self defeating.

Determination

9. Section 165(6) provides:-

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction if considers appropriate to ensure the fair administration of justice.”

10. Article 165(6) and (7) are to be construed to include courts of equal status in the definition of “The High Court” for the purposes of supervising subordinate courts dealing with specialized cases of employment and labour and land and environment.

11. In this regard, the Employment and Labour Relations Court has supervisory jurisdiction over all subordinate courts handling employment and labour matters.

12. To this extent, the Employment & Labour Relations court, may call the record of any proceedings before any subordinate court to make any order or give direction it considers appropriate to ensure the fair administration of justice.

13. This is not to mean however that a judge of E & LRC should interfere with the decision making independence of the Magistrates. The court is well positioned to provide guidance to the subordinate courts in its judgments on appeals filed against the decisions of the Magistrate courts by aggrieved parties.

14. The E & LRC may also deal with matters of concern raised by any party without in any manner directing the magistrates how to determine a particular case before them.

15. Accordingly, the court will in this ruling only draw attention of the Magistrate courts seized with the retrenchment of public servants “In accordance with the set instructions and guidelines for implementing staff retrenchment in civil service as required specifically in the letter dated 23rd June, 2000.”

16. In this regard, Hon. Justice M. Warsame as he then was in the **High court of Kenya at Kisumu Civil Suit No. 156 of 2004, Titus Korir Komen Vs. Lake Basin Development Authority** stated;

“The defendant was as a matter of procedure required to undertake an implementation in accordance with the circular of the permanent secretary office of the president.”

17. Hon. Justice H. K. Chemitei in the High court of Kenya at Kisumu Civil Case 113 of 2011 upheld the decision of Hon. Warsame J in **Titus Korir Komen (Supra)** and stated;

“The proper formula and procedure that ought to have been applied is Dr. Leakey’s letter. Kosgey’s letter was an addendum to that of Dr. Leakey and in any event they never contradicted each other in any way.”

18. The subordinate courts are bound by the two decisions of the high court and are not at liberty to deviate from the same unless they can on sound grounds distinguish them.

19. Accordingly, the retrenchment package payable to all public servants pursuant to the circular by Dr. Leakey as expounded by Dr, Kosgey is as follows:-

(i) Golden handshake of Kshs.40,000 per retrenchee.

(ii) Payment of 2 months salary in lieu of notice.

(iii) Severance pay calculated at 2 ½ months for every year worked based on monthly basis salary as at 30th June, 1995.

20. All the subordinate courts are bound by the decisions of the High Court cited above in this respect. The court so orders.

Dated and Signed in Kisumu this 5th day of July, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Musomba for Claimant

M/s. Onyango for Respondent

Chrispo – Court Clerk