



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

CAUSE NO. 824 OF 2018

Formerly HCCC No. 1170 of 2003

(Before Hon. Lady Justice Maureen Onyango)

BEATRICE NTHENYA KYALO & 29 OTHERS.....CLAIMANTS

-VERSUS-

THE COOPERATIVE BANK OF KENYA LIMITED.....RESPONDENT

RULING

The suit herein was instituted vide plaint dated 6th November 2003 and filed on 13th November 2003. The 30 claimants were all employees of the respondent working at the respondent's Co-operative House Branch along Haile Selassie Avenue in Nairobi.

They allege that they were injured during the bomb blast at the American Embassy adjacent to Co-operative House on 7th August 1998 which affected them. They were thereafter treated at various hospitals within and outside Nairobi for which they claimed reimbursement of medical expenses from the respondent. The plaintiffs were subsequently dismissed from service on grounds that they made false medical claims.

The case was heard by Ougo J. at the Civil Division of the High Court at Milimani Law Courts, Nairobi. The parties thereafter filed and exchanged written submissions.

On 22nd May 2018 the Judge transferred the file to this court for directions on writing of judgment in light of the Supreme Court's judgment in Petition No. 5 of 2015.

Upon receiving the file I allocated it to Justice Radido for further action. The Judge however declined to write the judgment on grounds that he did not have the benefit of seeing or hearing the witnesses and was unable to do justice in the judgment. He returned the file to me for directions.

I have considered the observations of Radido J. I have also considered the sentiments of counsel for claimants and the respondent when they appeared before me on 3rd July 2018 to the effect that *de novo* hearing would occasion hardship to the parties and would be costly in judicial time.

I have further taken into account the provisions of Section 22 of the Transitional and Consequential Provision in the Sixth Schedule of the Constitution which provides as follows –

Section 22 – Judicial proceedings and pending matters

All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.

I have also considered the decision of the Supreme Court in Petition No. 5 of 2015 and it is my considered opinion that the decision does not affect Section 22 of the Sixth Schedule of the Constitution.

For these reasons the file is hereby returned to the High Court for the Trial Court to write the judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4TH DAY OF JULY 2018

MAUREEN ONYANGO

JUDGE