

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISC. APPLICATION NO. 165 OF 2017

(Before Hon. Lady Justice Maureen Onyango)

JOB OMONDI OUMA.....APPLICANT

-Versus-

KENYA REVENUE AUTHORITY.....RESPONDENT

RULING

What is before me for determination is the claimant's application dated 22nd November 2017. While perusing the file for purposes of writing the ruling it came to my attention that the claimant filed only a miscellaneous application filed by way of notice of motion.

I have also considered the replying affidavit filed by the respondent in which it is alleged that the claimant did not withdraw Cause No. 1099 of 2017 and that this suit is *res judicata*.

The copies of the notice to Act in person and notice of withdrawal of claim both of which are dated 6th November 2017 annexed to the supplementary affidavit of the claimant filed on 15th February 2018 have court stamps of the same date as well as the respondent's stamp acknowledging receipt also dated 6th November 2017. I am therefor satisfied that the applicant's Claim No. 1099 of 2017 was properly withdrawn.

The issue of *res judicata* does not therefore arise as it would only have been applicable if Cause 1099 of 2017 was determined on the merits by the court.

I am however of the view that the applicant's suit is not properly before the court as a claim cannot be founded on a miscellaneous application. I believe that the withdrawal of Cause 1099 of 2017 and the filing of the miscellaneous application herein was informed by the ruling in **REPUBLIC -V- CABINET SECRETARY, MINISTRY OF HEALTH & 2 OTHERS Ex-Parte Elizabeth Awino Onyango** which was a judicial review application.

Taking into account that the claimant is not an advocate and is acting in person and applying the principles in Article 159(2) of the Constitution and Section 20(1) of the Employment and Labour Relations Court Act, I direct that this application be deemed to be a claim and direct the claimant to file a memorandum of claim within 14 days.

The respondent will file a defence to the claim within 14 days of service. The suit will be mentioned on a date to be fixed at the time of delivery of this ruling for further directions.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF AUGUST 2018

MAUREEN ONYANGO

JUDGE