



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2463 OF 2012

PAULINE WANGARE NGANGA	1st CLAIMANT
MOSES NDOHO NJENGA	2nd CLAIMANT
SIMON KIOKO MULE	3rd CLAIMANT
JONATHAN MWALUKO	4th CLAIMANT
JAMES MUNGAI KUNGU	5th CLAIMANT

v

COUNTY GOVERNMENT OF KAJIADO	1st RESPONDENT
MINISTRY OF DEVOLUTION & PLANNING THROUGH THE	
HON. ATTORNEY GENERAL	2nd RESPONDENT

RULING NO. 2

1. Before Court is an application dated 25 September 2018 by the Claimants/Applicant's seeking orders

1. ...

2. This suit ELRC C/2463/2012 be re-instated.

3. The Order given 27th July 2018 herein to dismiss the above said suit be set aside and the Claimants be given leave to prosecute this suit.

4. Costs hereof be in the cause.

2. The grounds advanced in support of the application are that the applicants have a good case; there was an error in listing the Cause in the registry; that the applicants' advocate was unable to attend Court on 27 July 2018 due to ill health, and that the Court declined to hear the advocate who was holding brief.

3. The 1st Respondent filed grounds in opposition to the application and it was contended that the application was fatally defective and or lacked merit while the 2nd Respondent made brief oral submissions that the applicants had not been diligent as the Cause had been dismissed twice.

4. The Court has considered all the material placed before it including the record.

5. When the Cause first came up for hearing on 19 November 2014, it was adjourned at the request of the applicants with an order that adjournment fees be paid.

6. There is nothing on record to show the applicants paid the adjournment fees.

7. On the question of errors on cause listing, the record shows that the applicants advocate was in Court on 2 May 2018 when the hearing was scheduled for 26 July 2018.

8. On 26 July 2018, the applicants did not attend Court but the Respondents advocate who appeared informed the Court that a notice for mention scheduled for 27 July 2018 had been served upon the parties. The Court directed that the Cause be mentioned on 27 July 2018.

9. On 27 July 2018, the applicants informed the Court that their advocate was ill while the Respondents applied for the Cause to be dismissed.

10. It has since emerged that it was widely known that the applicants' advocate was ill and subsequently passed on.

11. Further, the Court has not been able to find any note on the file to suggest that the Cause herein had been previously dismissed as contended by the 2nd Respondent.

12. On account of the two reasons, the Court will allow the application dated 20 August 2018.

13. In order to prepare for a hearing on the merit, the Court directs that

(i) The Claimants to file/serve any witness statements/documents on or before 7 December 2018.

(ii) Respondents to file/serve any witness statements/documents on or before 14 December 2018.

(iii) Agreed Issues to be filed before 25 January 2019.

(iv) Convenient hearing date to be given hereinafter.

Delivered, dated and signed in Nairobi on this 30th day of November 2018.

Radido Stephen

Judge

Appearances

For applicants Mr. Asige instructed by Anthony Huka Khamati, Advocate

For 1st Respondent Katunga Mbuvi & Co. Advocates

For 2nd Respondent Mr. Motende, State Counsel, Office of the Attorney General

Court Assistant Lindsey