



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 40 OF 2016

(FORMALLY NAKURU E & LRC PETITION NO. 36 OF 2016)

FORMALLY ELDORET HC PETITION NO. 16 OF 2013)

(Before Hon. Justice Mathews N. Nduma)

BARNABAS KIPRONO.....1ST PETITIONER

DAVID TANUI.....2ND PETITIONER

SAMMY MWITIKI.....3RD PETITIONER

WILLIAM METTO.....4TH PETITIONER

DANIEL KOSGEL.....5TH PETITIONER

PETER BIRIR.....6TH PETITIONER

VERSUS

KERIO VALLEY DEVELOPMENT AUTHORITY.....RESPONDENT

J U D G M E N T

1. A Preliminary Objection was raised by the Respondent against the Amended Petition by the six Petitioners Barnabas Kiprono; David Tanui; Sammy Mwitiki; William Metto; Daniel Kosgei and Peter Birir.

2. The objection is to the effect that this Petition is resjudicata in that the above said Petitioners had earlier individually and separately filed suits against the Respondent, their previous employer arising from the same cause of action as pertains in this petition being transfer of the Petitioners by the Respondent from their work station; their resistance to move to the new stations and summary dismissal of the Petitioners following those events.

3. This court is satisfied that the 1st Petitioner Barnabas Kiprono filed E & LRC no. 368 of 2013 at Nakuru against the Respondent. The same was heard and determined by Justice Stephen Radido. That the 2nd Petitioner David Tanui filed E & LRC Case No. 374 of 2013 at Nakuru against the Respondent and same was heard and determined by Justice Stephen Radido.

4. Furthermore, the 3rd Petitioner Sammy Mwitiki filed E & LRC No. 370 of 2013 against the Respondent and the same was heard and determined at Nakuru. The 4th Petitioner William Metto filed Nakuru E & LRC No. 37 of 2013 against the Respondent and the same was heard and determined by Justice Stephen Radido.

5. The 5th Petitioner, Daniel Kosgei filed E & LRC No.369 of 2013 at Nakuru against the Respondent and the same was heard and determined by Justice Stephen Radido and the 6th petitioner Peter Birir filed Nakuru E & LRC No. 372 of 2013 against the Respondent and the same was heard and determined by Justice Byram Ongaya.

6. All the above suits filed by the present Petitioners against the Respondent were dismissed by E & LRC Nakuru.

7. The issues raised in this Petition were all heard and determined. This Petition is an attempt by the Petitioners to get a second bite on the

cherry instead of filing Appeals against the Judgments that were not in their favour.

8. The Petition amounts to an abuse of the process of court and the court will not devolve into a futile analysis of facts and issues that are res judicata.

9. To discourage this tendency which robs the court of precious time to consider deserving matters, the Petition is dismissed with costs to be shared equally by the Petitioners.

10. In the final analysis, the Petition is dismissed with costs to be shared equally by the Petitioners.

Judgment Dated, Signed and delivered this 6th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Angu Kitigin & Company for Petitioners

Chebii & Company for Respondent Chrispo – Court Clerk