



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

MISCELLANEOUS APPLICATION NO. 9 OF 2016

JOSIA GITARI NJERU AND 78 OTHERS..... APPLICANTS

-VERSUS-

KENYA TEA DEVELOPMENT AGENCY..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 17th March, 2017)

RULING

Josia Gitari and other 78 applicants listed in the notice of motion filed an application on 09.11.2015 in person. The applicants prayed for orders:

- a) That the applicants be granted leave to file suit against the respondent for claim of terminal benefits out of time.
- b) That the honourable court be pleased to give any other orders as it may deem just and fit to grant.
- c) That costs of the application to abide the outcome of the intended main suit.

The application was based on the supporting affidavit of Josiah G. Njeru and on the following grounds:

- a) That the applicants were employees of the defunct Kenya Tea Development Authority presently Kenya Tea Development Agency.
- b) The Authority was dissolved and the applicants were absorbed in the service of the Agency.
- c) The applicants and others not being applicants in the present matter filed HCCC No. 948 of 2003 and the judgment was appealed against in Civil Appeal No. 18 of 2007 at Nairobi. The judgement was not favourable to the applicants and in the previous litigation the applicants had failed to pray for terminal benefits as they were misguided despite having had legal representation.
- d) The respondent will not be prejudiced in any manner if the application is granted.
- e) The time for filing suit to claim for terminal benefits has lapsed.

The respondent opposed the application by filing on 05.12.2016 the replying affidavit of John Kennedy Omanga through M/s Lucy Mwai & Company Advocates. The grounds of opposition were as follows:

- a) That under section 22 of the Limitations of Actions Act only a person under demonstrated disability can apply to file a suit out of time.

b) In High Court Petition No. 209 of 2011 the court advised the claimants to file their suit in an appropriate court but they failed to do so and the 3 years of limitation under section 90 of the Employment Act, 2007 has since lapsed.

c) The applicants have already been paid their respective terminal dues including salaries earned, 3 months' pay in lieu of termination notice, severance pay of two months' salary for each completed year of service and a golden handshake of Kshs.150, 000.00. The payment was under the retrenchment compensation package so that the intended suit would be invalid.

d) The application is thus, incompetent and an abuse of the court process.

The court finds that the applicants have not rebutted the valid grounds that have been urged for the respondent. The court further finds that the applicants have not established the provisions of law under which the court is enabled to grant leave as was prayed for. Accordingly the court returns that the application will fail.

In conclusion the application by the notice of motion dated 09.11.2016 is hereby dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 17th March, 2017**.

BYRAM ONGAYA

JUDGE