



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 78 OF 2016

(Before D. K. N. Marete)

DR. ARTHUR KIPRONO KORIR.....CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF KERICHO.....RESPONDENT

RULING

This is an application by way of Notice of Motion dated 31st January, 2017. It seeks the following orders of court;

- 1. The Honourable Court be pleased to review, rescind, vary and/or set aside the judgment and decree of the Honourable Court made on the 19th day of July 2016, whereby the Honourable Court (sic) dismissed the claimant's/applicant's claim and thereby leaving the claimant with no redress and/or compensation.*
- 2. Consequent to prayer (1) herein above being granted, the Honourable Court be pleased to grant judgment in terms of the claim herein.*
- 3. Costs of the instant application and the main suit be borne by the respondent.*
- 4. Such further and/or other orders be made as the court may deem fit and expedient.*

It is grounded as follows;

- a) The claimant/applicant herein was employed a Medical Doctor by the National Government of the Republic of Kenya.*
- b) Pursuant to and following the employment of the claimant/applicant same was deployed to various stations resting with the deployment to Bureti District Hospital as the District Medical Officer of Health vide letter dated 4th May 2011.*
- c) Pursuant to the deployment, the claimant/applicant indeed reported and took up his engagement as such.*
- d) During devolution of Medical/Health services, the Claimant/Applicant herein was stationed*

and/or working within Kericho County.

e) Besides, for the period between January 2014 onwards, the claimant/applicant herein, was paid salary by the respondent herein.

f) On the other hand, the claimant's/applicant's employment records were released and collected by the respondent herein.

g) Following the release and collection of the employment records by the respondent, the claimant/applicant was duly constituted and/or devolved to the respondent.

h) Consequently, the claimant/applicant was and has been an employee of the respondent.

i) Nevertheless, the Honourable Court rendered a decision and/or judgment stating that the claimant/applicant was not an employee of the respondent.

j) However, in coming to and rendering the decision, (details in terms of paragraph (I) hereof), the Honourable Court ignored critical and crucial documents, read the pay-slips.

k) Besides, the Honourable Court also failed to take note and/or cognizance of the written submissions filed by the claimant/applicant.

l) In this regard, there is an error and/or mistake apparent on the face of record.

m) On the other hand, the claimant/applicant has since discovered and/or obtained new and important evidence, which was withheld by the respondent.

n) Owing to the foregoing, there exists sufficient cause and/or basis to warrant the review and/or variation sought.

o) Consequently, unless the orders sought are granted, the claimant/applicant herein shall suffer extreme prejudice.

p) Conversely, the respondent herein shall not be prejudiced if the orders sought herein are granted.

q) In the circumstances, it is in the interest of justice that the instant application be granted.

This application is not opposed, or at all. This is despite service to the respondent.

The Claimant/Applicant at the hearing of the application on 28th February, 2017 sought to rely on the provisions of the law on its face. Besides, she also chose to further rely on Section 16 and 20 of the Employment & Labour Relations Court Act, 2014 and Rule 33 of the Employment & Labour Relations Court (Procedure) Rules, 2016.

The Claimant/Applicant's further case is that the judgement sought to be reviewed was made on 19th July, 2016 and in so doing the court noted that the

applicant had not filed his written submissions. This was in error as this had been filed earlier on. Other indicators of filing of written submissions is the court's record of 8th June, 2016. These should now be considered in a review of this matter as vouched for in this application.

The second issue is that subsequent to the delivery of judgement and when the claimant made a following with the Ministry of Medical Services with a view of ascertaining his future and state of employment, he was furnished with documents confirming that his employment file had been released to the respondent herein. The claimant's PF No. is 200819163 and at pages 27-28 of the record of motion is a letter from

the Permanent Secretary – Health to the County Secretary – Kericho. This is on the transfer records of 717 personnel devolved to the respondent. The claimant is captured at item No.22 and the name of the collector of this data is Priscilla C. Korir of the respondent.

The Claimant/Applicant submits that these records were not within his knowledge but were always in the knowledge and custody of the respondent. This is the discovery of new evidence that was not within the custody of the claimant at the time of judgement. The Claimant/Applicant further submits that the respondent had at no time contested his devolution as is evident at pages 39-40 of the claimant's bundles-handwritten notes and instructions.

Lastly, on interrogation, the Ministry of Health revealed and released copies of the claimant's payslips transmitted by the County Government to the Ministry confirming that the claimant/applicant was indeed devolved to the respondent.

This is an application for review of the Judgement of court delivered on 19th July 2016. The application is not defended, or at all. This is understandable bearing in mind that the data and new evidence now adduced and submitted by the Claimant/Applicant was always in the knowledge and custody of the respondent. I read mischief in the non disclosure of the same at trial.

The Claimant/Applicant has established all the grounding for review and

complies with rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 on the subject. I am therefore inclined to allow this application and order relief to the Claimant/Applicant as follows;

i. That the Judgement of this court issued on 19th July, 2016 be and is hereby reviewed, rescinded, varied and set aside.

ii. Full salary for the month of February to October 2014 - Kshs.1,351,710.00

iii. Half salary for November 2014 to March 2016 - Kshs.1,985,615.00

TOTAL

Kshs.3,337,325.00

iv. The Commissioner for Labour be and is hereby ordered to, with the involvement of the parties, compute the claimant's salary for the period April, 2016 to April, 2017 within one hundred and twenty (120) days.

v. Interest at court rates till payment in full.

vi. That the Claimant be and is hereby reinstated to employment with effect from 27th April, 2017 at 800 hours.

vii. The cost of this application and the claim shall be borne by the respondent.

viii. Mention on 28th September, 2017 for a report on computation.

Delivered, dated and signed this 26th day of April 2017.

D. K. Njagi Marete

JUDGE

Appearances

1. Mr. Oguttu instructed by Oguttu Mboya & Company Advocates for the Claimant/Applicant.

2. No appearance for the Respondent.