



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.817 OF 2017

AND

CAUSE NO.819 OF 2017

AND

CAUSE NO.939 OF 2017

JOHN WAINAINA KARANJA & 5 OTHERS.....CLAIMANTS

VERSUS

THE DIRECTOR GENERAL

NATIONAL YOUTH SERVICE.....1ST RESPONDENT

THE PRINCIPAL SECRETARY MINISTRY OF

PUBLIC SERVICE, YOUTH AND GENDER AFFAIRS....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. The ruling herein relates to two (2) applications of the claimants, one dated 4th May, 2017 and the other dated 16th May, 2017.

2. The claimants are seeking for orders that;

a) A declaratory order be issued directing the respondents herein to immediately reinstate the claimants back to their duties with full payment of unpaid ½ salary arrears and allowances since 25th October 2016 up to date and their full salary be reinstated with all benefits, allowances and due promotions pending hearing and determination of this application and/or suit.

b) The interdiction letters dated 25th October 2016 addressed to the claimants be declared null and void and any action thereof emanating from the same be quashed and or set aside pending hearing and determination of the suit on damages/compensation.

3. The application is supported by the affidavit of John Wainaina Karanja and on the grounds that by

various agreements the claimants were employed by the 1st respondent to undertake various tasks as set out in the specific employment contracts. On 25th October, 2016 the claimants were indefinitely interdicted based on unsubstantiated allegations of being involved in illegal distribution and sale of dry ration at the Nairobi Holdings Station using servicemen/women. The interdiction was said to be for paving way for investigations but the complaints were not stated.

4. When the claimants were issued with the letters of interdiction, they replied thereto noting that they were not involved in the allegations made against them and some were not in the stated station. There has been no show cause letters issued and the offences allegedly committed were never stated. Since November, 2016 no action has been taken and it is over 6 months since the interdiction while the claimants are confined to the camp on ½ salaries and thus continue to suffer great prejudice to their career, promotion and social standing. Unless the orders sought are issued, there will be great prejudice suffered.

5. In the application dated 16th May, 2017 the claimants are seeking for orders similar to the application set out above and dated 5th May, 2017 save that the supporting affidavit is sworn by David Nthama Muthini and on the grounds that he performed his duties as a Private officer until 25th October, 2016 when he was interdicted on allegations of being involved in illegal distribution and sale of dry ration at the Nairobi Holdings Station using servicemen/women. Since the interdiction no action has been taken despite the claimant giving his reply and denying the allegations made against him. The claimant is suffering as a result of being put on ½ pay and his career, promotion and social standing is suffering as the issues herein have been published in the newspapers.

6. In reply, the respondent filed Replying Affidavit sworn by Samuel Kaloki for the 1st respondent and avers that as the Director Human Resources Management and Development of the National Youth Service he is conversant with the issues herein and therefore competent to reply.

7. In October, 2016 senior officers and the 1st respondent stated receiving a series of reports and complaints from servicemen and women stationed in various barracks in Nairobi within Nairobi Holding Unit, Textile and Garment Technology Institute and Mechanical and Transport Branch that they were being sold dry ration made up of biscuits, canned pineapple, canned baked beans and corned beef. The servicemen and women serving in the National Youth Service are entitled to free rations provided by the government. The sale of these rations to the intended beneficiaries by any individual is therefore unlawful, criminal in nature and against standing orders and is considered a grave case of indiscipline.

8. Based on information received from the servicemen and women, it emerged that the claimants were alleged to be part of the cartel that was actively involved in the illegal and unlawful sale of the rations. Based on this information the 1st respondent deemed it proper to interdict the claimants after investigations. This was communicated to the claimants vide letters dated 25th October, 2016.

9. Subsequent to the interdiction of the claimants the 1st respondent by letter dated 3rd November, 2016 constituted an investigations committee with terms of reference and was to make recommendations. The report was presented with findings that;

a) Senior Superintendent Veronica Wangu Mbute, acting Commanding officer Nairobi Holding station be held accountable for creating a parallel store outside the unit stores and negligence of duty leading to the loss of dry rations worth Kshs.7,714,037.00.

b) Inspector George Baraza Namasaka, Adjutant Nairobi Holding station be held accountable for the loss of dry ration issued to servicemen and women on hospital referral worth Kshs.392,328.00;

c) Inspector Canditarose Athini Musoga, Company commander Nairobi Holding Station be held accountable for negligence of duty in that she failed to carry out regular inspections of the barracks under her responsibility and where 142 pieces of corn beef and 137 pieces of canned pineapple were recovered from servicewoman Swaleh Miriam;

d) Private David Nthama, Company Commander Nairobi Holding Station be held accountable for participating in the illegal issuance and sale of dry ration for financial gain;

10. the committee also recommended that several officer on interdiction be absolved from any blame being officers John W Karanja, peter Kamau, Rashid Musungu mango, Nyawa Shehi Chaka, Kisiangani Soita Muchika and John Sau Mutuku. It was also recommended that Nyawa Shehi Chaka and Kisiangani Soita Michika be warned for laxity in the performance of their security duties. All the absolved officers were to be transferred to other units and put under close supervision.

11. The claim made by the claimants is premature and overtaken by events and meant to intimidate the 1st respondent in the exercise of its legal mandate to regulate the conduct of servicemen and women in the NYS. The claimants who have been found culpable by the investigation committee in its recommendations were asked to respond to the allegations and will be accorded a chance to be heard before any further action is taken.

12. The application and the claim lack merit. The same should be dismissed with costs.

13. The claimants filed Supplementary affidavits sworn by Veronica Wangu Mbute, David Nthama Muthini, George Barasa Namasaka and Canditarose Athini Musonga all filed on 19th June, 2017.

14. The claimants aver that The procedure undertaken by the respondents in purporting to carry out disciplinary proceedings after interdicting the claimants is not proper and is unlawful in the terms that the respondents have kept the claimants in abeyance for over 6 months and no communication had been made on the outcome of the investigation report and any action taken until the suit herein was filed this is contrary to fair administrative action. The respondent did not comply with the provisions of section 41 and 45 of the Employment Act, 2007 by failing to accord justice and equity by granting the claimants the opportunity to be heard.

15. Both parties made oral submissions in court.

Determination

16. The claimants herein are;

- 1) John Wainaina Karanja;
- 2) Veronica Wangu Mbute;
- 3) David Nthama Muthini;
- 4) George Barasa Namasaka;
- 5) Canditarose Athini Musonga

17. The substantive issues set out by the claimants in their applications are that they be reinstated on full pay as they have been on ½ pay since 25th October, 2016 and that The interdiction letters dated 25th October 2016 addressed to the claimants be declared null and void and any action thereof emanating from the same be quashed and or set aside pending hearing and determination of the suit on damages/compensation.

18. The respondent in reply avers that the orders sought have been overtaken by events as they commenced investigations and a report made with recommendations. The report recommended that Veronica Wangu Mbute, David Nthama Muthini, George Barasa Namasaka and Canditarose Athini Musonga answer to various acts of misconduct.

19. The report also absolved various officers including John Wainaina Karanja one of the claimants herein. I take it then his case in terms of the orders sought is resolved by the lifting of the interdiction and his reinstatement and transfer to a different location.

20. The claim and applications herein were filed on 4th May, 2017. At this point the respondent had constituted its investigations committee and a report of November, 2016 made where the claimants save for John Karanja were issued with the recommendations made and the specific allegations made against them. The issue of reinstatement thus does not arise.

21. On the orders sought with regard to lifting the interdiction letters of 25th October, 2016 and quashing of actions taken thereof, I find the respondent has as of November, 2016 taken specific action against each claimant thus addressing the issue of interdiction against them. The action now taken subsequent to the recommendations of the 1st respondent on the claimants found culpable in the recommendation should be allowed to take its course as the employer such as the respondent has the prerogative to address misconduct within its workforce in accordance with the law and fair procedure and rules of natural justice.

As the orders sought relate to matters already addressed by the 1st respondent and at the time of filing suit on 4th May, 2017 the claimants were conversant thereto, I find no merit in the applications and the claim thereto. The purpose and intention of the suit is lost. Thus addressed, the claim and application are hereby dismissed. Each party to bear own costs.

Dated and delivered in open court at Nairobi this 7th day of August. 2017.

M.MBARU JUDGE

In the presence of:

Court Assistants: Lillian Njenga & David Muturi

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