



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

JUDICIAL REVIEW NO. 13 OF 2016

REPUBLIC.....CLAIMANT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT

EX PARTE PAUL MAKOKHA OKOITI

Applicant in person

Jannet Lavuna for respondent

RULING

1. Serving before court is a chamber summons application dated 12th January 2017 seeking to set aside the Ruling of Hon. Lady Justice Monica Mbaru dated 24th October, 2016. The application is sought on grounds set out on the face of the application to wit;

(i) The Judge who made the Ruling has disqualified herself from these proceedings and that amounts to an admission of making an erroneous judgment/ruling.

2. The application is further supported by an affidavit of the applicant sworn on 12th January 2017 in which he states that, in his application dated 1st November 2016, he had applied to the Judge to order accounting of the award granted to him or disqualify herself.

3. That the judge chose to disqualify herself from the proceedings and the applicant states that, the action by the Judge, amounts to admission of error.

4. That the application to set aside be allowed.

5. The applicant also seeks that counsel for the respondent Janet Lavuna disqualify herself from the case for failing to provide material information to the Judge in JR 340 of 2013 for alleged dishonest and deliberate professional misconduct.

Response

6. The respondent has filed a replying affidavit to the application sworn to on 27th January 2017, in which counsel for the respondent Janet Lavuna deposes as follows;

7. That, the affidavit is in response to the applicant's demand that counsel disqualify herself from "prosecuting his cases for the respondent(s) or defendant" herein.

8. That the applicant is a malicious and vexatious litigant as demonstrated in the following paragraphs and in the annexed Judgments and Rulings produced herein. The applicant's present application is an abuse of the court process.

9. That the history of this matter is set out in the Ruling by Justice Mbaru dated 24th October 2016 and is as follows;

(a) Mr. Okoiti has filed six (6) suits on the same issue before five (5) different Judges.

10. The suits are as follows;

i. HC Misc. Applc. No. 351 of 2011; Paul Makokha Okoiti vs KRA.

ii. Industrial Cause No. 25 of 2013; Paul Makokha Oloiti vs KRA.

iii. JR No. 340 of 2013; Paul Makokha Oloiti vs KRA, and 5 others.

iv. JR No. 117 of 2015; Paul Makokha Okoiti vs KRA.

v. JR No. 300 of 2016; Paul Makokha Okoiti vs KRA.

vi. JR No. 13 of 2016; Paul Makokha Okoiti vs KRA

(b) This matter is Res-judicata several times over in view of several decisions already having been rendered in the matter by at least five different Judges in the 6 (six) suits listed above;

i. A judgment was delivered on 10th February 2012 by Honourable Justice Majanja. The applicant has already exercised the option to appeal in the Court of Appeal. Being dissatisfied with the Judgment, the applicant also filed two applications to set aside Justice Majanja's decision. One was determined on 9th May 2014 by Majanja J. The second application to set aside in the same file was heard and determined by Justice Lenaola in his ruling dated 20th January 2017, and delivered by Justice E, Mwita on 25th January 2017.

ii. The matter is also res-subjudice as it is also pending before the Industrial Court in Industrial Cause No. 25 of 2013: Paul Makokha Okoiti vs KRA. The applicant has refused to prosecute that matter. It last came up before the Honourable Justice Maureen Onyango, who was then ready to hear the matter.

iii. The matter is further res-judicata as the petitioner filed a Judicial Review in JR No. 340 of 2013 which was heard and on the very same issues as were already canvassed in this suit. Honourable Justice Korir, delivered a Judgment dated 21st May 2014 in the Judicial Review. The applicant then filed an application to set aside that decision, and the application was determined by a Ruling dated 11th December 2014.

iv. A Judgment was delivered by the Honourable Justice Odunga on 1st January 2017 in JR No. 117 of 2015.

11. That the latest Ruling in these matters by Justice Lanaola dated 20th January 2017 is produced and marked "JKL 1".

12. That the affidavit of Lorraini Malinda filed in HC. Misc. Application No. 351 of 2011, has addressed all the issues raised by the applicant previously. It also contains at Exhibit "LM 1" copies of the various

decisions mentioned at paragraph 5 herein marked "JKL2".

13. That the applicant, being dissatisfied with all the court's decisions has made malicious and false allegations against counsel on record, and the Judges who have heard his matters so far. He has written to the Ombudsman in the past complaining against some of the Judges, and has now written to the DPP claiming that the counsel and deponents to affidavits on behalf of the respondents be prosecuted.

14. That as to the allegations made against counsel on record allegedly misleading the court, the applicant already canvassed them before Justice Korir, Odunga and Lenaola. The answer to this is contained in Justice Korir's Ruling dated 11th December 2014 at page 32 of Loraini Malinda's affidavit produced herein and marked "JKL 2". He stated "*I do not see any malice in the respondent's actions. What the respondent simply did before the Industrial Court was to consent to an application for adjournment..... Counsel did not indicate that she was not going to oppose.*"

15. That the present application has no merit. Justice Korir in his Ruling set out the grounds for setting aside a decision, which include, that the decision is erroneous with an error apparent on the face of the record, secondly, that the applicant has discovered new and important evidence that was not available to him, or any other sufficient reason. The applicant has not established any sufficient reason for the setting aside of Justice Mbaru's Ruling in this matter.

16. That the reasons for Justice Mbaru disqualifying herself are not set out in the applicant's application. For the applicant to allege that it now amounts to an admission of error in the making of the Ruling is a malicious assumption. For that reason, counsel is reluctant to disqualify herself in case the applicant proceeds to allege that it is an admission on her part that all that he has falsely accused herself and the respondent of is true. The respondent has not withdrawn instructions from counsel.

17. That the respondent is now suffering great prejudice by the applicant's continued misguided, discourteous and relentless appearances in court on the same issues which have already been determined. Needless to say, both the respondent and counsel for the respondent are tired of the applicant's litigiousness.

18. That the applicant is further in contempt of Justice Mbaru's Ruling in this matter.

19. The respondent prays that the application be dismissed with costs.

Determination

20. Rule 33 (1) of the Employment and Labour Relation Court (procedure) Rules, 2016 provides;

33.(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling –

a. If there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;

b. On account of some mistake or error apparent on the face of the record;

c. If the judgment or ruling requires clarification; or

d. For any other sufficient reason.

21. Ordinarily, an application for review or to set aside, is made to the Judge who made the impugned order. In the present case, the Judge who made the ruling has recused herself.

22. The court has carefully considered the application to set aside the Ruling of Hon. Lady Justice Mbaru J. and has found no material or information deposed to which would qualify this court to review or set aside the Ruling of Mbaru J. in terms of Rule 33 of the Court Rules.

23. With regard to the application for recusal of counsel for the respondent, the application has no factual or legal basis. The same is scandalous, vexatious, and an abuse of the process of the court.

24. The persistent conduct by the applicant demonstrated in the able affidavit by counsel for the respondent depicts a litigant bent to subvert the cause of justice by whatever means and in the court's view this conduct is contemptuous of the court and its officers.

25. The court admonishes the applicant, while recognizing his constitutional right to access justice, to respect the fundamental rights of other persons to dignity and respect.

26. Any further action by the applicant which is contemptuous of this court and its officers will be met by appropriate sanctions upon application by affected parties.

27. Accordingly, the application to set aside the ruling of Hon. Lady Justice Mbaru dated 24th October, 2016 is dismissed with costs to be borne by the applicant.

28. The Registrar of the Court to abide by the Ruling and directive by Hon. Lady Justice Mbaru J. with regard to notifying the Registrar of the High Court, as directed by the Judge.

Dated and delivered at Nairobi this 1st September 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE