



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 694 OF 2016

BETWEEN

- 1. TIME ABDALLAH**
- 2. HASSAN SAID**
- 3. ATHMAN WACHU**
- 4. MOHAMMED SHUGA**
- 5. SWABIR MOHAMMED**
- 6. MUNGA NDUNE**
- 7. BAKARI FUMO**
- 8. MIKDADI YUSUF**
- 9. ORIPA JAVAN**
- 10. SOFIA KASSIM**
- 11. NURU ALI**
- 12. AMINA CHIZI**
- 13. MERCY SHADRACK**
- 14. ISSA TUNU**
- 15. KONDE KADZENGA**
- 16. MONICA ATHIENO**
- 17. EVERLIN JAKA**
- 18. STEPHEN BAYA**
- 19. JOSEPH OGETO**

20. BARACK OWINO

21. JOSEPH KINUTHIA

22. GEORGE ODIEDO.....CLAIMANTS

VERSUS

1. MOMBASA MAIZE MILLERS LIMITED

2. READY CONSULTANCY LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Tolo & Company Associates, Advocates for the Claimants

V.N. Okata Advocates for the 1st Respondent

Marende Birir Shimaka & Company Advocates for the 2nd Respondent

RULING

1. The 1st Respondent filed an Application on 2nd May 2017, seeking to be allowed to file an Amended Statement of Response. The Application is based on the Affidavit of 1st Respondent's Human Resources Officer, Stanslous Baya, sworn on 2nd May 2017.

2. The 1st Respondent had earlier raised a point of Preliminary Objection, arguing that the Claim is time-barred. The Court gave a Ruling, dismissing the objection.

3. Amendment of the Statement of Response, as shown under paragraph 14, seeks to reinforce 1st Respondent's position that 1st Respondent did not employ the Claimants.

4. The Claimants oppose the Application. Time Abdallah swore the Replying Affidavit on 23rd May 2017. Claimants' position is that the proposed amendments are made in bad faith, and contain issues which the Court has already ruled on.

The Court Finds:-

5. The proposed amendments do not, in the respectful view of the Court, prejudice the Claimants.

6. The 1st Respondent merely restates it did not employ the Claimants, and does not know them. It alleges to destroy its employment records after 6 years. It pleads about certain provisions of the Evidence Act, Cap 80 of the Laws of Kenya.

7. In the Ruling of 20th February 2017, the Court stated it could not dismiss the Claim preliminarily, and there was need to give Parties an opportunity to bring evidence, and other material, to assist the Court in resolving the contested facts.

8. Amendment does not prejudice the Claimants. They will have the opportunity if need be, to amend their own pleadings.

9. If the Court has ruled on issues raised by the 1st Respondent in its Application, the Court will restate its position on hearing the Parties.

IT IS ORDERED:-

- a) The 1st Respondent is granted 14 days to file and serve Amended Statement of Response.***
- b) Other Parties have 14 days to file and serve Amended Pleadings if need be, from the date of service.***
- c) Parties will thereafter comply with pre-trial procedure and schedule the main dispute for hearing.***

Dated and delivered at Mombasa this 11th day of December 2017.

James Rika

Judge