



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

JUDICIAL REVIEW NO. 3 OF 2015

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT, CAP 40, LAWS OF KENYA

AND

IN THE MATTER OF NAKURU INDUSTRIAL CASE NO. 401 OF 2013

BETWEEN

DAVID WANYONYI.....APPLICANT

VERSUS

HON. ATTORNEY GENERAL.....1st RESPONDENT

CHIEF OF DEFENCE FORCES.....2nd RESPONDENT

ARMY COMMANDER KENYA ARMY.....3rd RESPONDENT

RULING

1. David Wanyonyi (applicant) filed a summons under certificate of urgency on 19 May 2015 seeking leave to apply for an order of mandamus compelling the Respondents to comply with the decree issued in Nakuru Cause No. 401 of 2013.
2. The summons was certified urgent with a direction that it be served for *inter partes* hearing on 15 June 2015.
3. Come 15 June 2015, when the summons was called for hearing, both Mr. Simiyu for the applicant and Mr. Kirui for the Respondents were present.
4. The Court then proceeded with going through the cause list but when the summons was later called, Mr. Simiyu had walked out with no explanation as to where he was going.
5. Mr. Kirui sought the summons to be taken out but the Court dismissed the summons. Immediately thereafter, the applicant filed an application through motion, the subject of this ruling, seeking that the Court do reinstate the dismissed summons.
6. The Respondents filed a replying affidavit opposing the motion and the arguments were taken on 6 November 2015.
7. A brief background is that Ongaya J pronounced a judgment on 17 October 2014 in which the

- Court ordered that the Respondents do re-engage the applicant into the service of the Kenya Defence Forces or in the alternative retire him with full pension/benefits.
8. It appears that the Respondents failed to comply with the terms of the judgment hence the judicial review application.
 9. The Court has duly considered the affidavits in support and in opposition and submissions made and reached the conclusion that in the interest of justice and not to lock the applicant from the seat of justice, the dismissed application be reinstated for hearing *inter partes*.
 10. Costs in the cause.

Delivered, dated and signed in Nakuru on this 22nd day of January 2016.

Radido Stephen

Judge

Appearances

For applicant Mr. Simiyu instructed by Simiyu & Co. Advocates

For Respondents Mr. Kirui, Litigation Counsel, Office of the Attorney General

Court Assistant Nixon