



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 665 OF 2014

PHILIP THUKU RUKWARO.....CLAIMANT

v

COUNTY GOVERNMENT OF NYANDARUA.....1ST RESPONDENT

NYANDARUA COUNTY PUBLIC SERVICE BOARD...2ND RESPONDENT

(Consolidated with Causes Nos 643 of 2014 to 734 of 2014)

RULING

1. Philip Thuku Rukwaro and several others (Claimants) commenced legal proceedings against the Respondents around 18 December 2014 and the Causes all listed 3 issues as in dispute. These were

- i. payment of arrears
- ii. allowances
- iii. confirmation of employment.

2. The substance of the claims as set out in the respective Memoranda of Claims were rather straightforward, and it is that the Claimants had served as casual employees with the Town Council of Ndaragua over many years before they were absorbed by the Respondents, and that by virtue of the Employment Act, 2007 they were entitled to be absorbed into permanent terms.

3. On 5 May 2015, the Court ordered that the 95 Causes be consolidated, and the findings and holdings in this Cause apply in all the other Causes. At the same time, the Court directed the Respondents to file and serve Responses.

4. The Respondents did not comply, and on 26 May 2015, the Court directed them to file their documents before 12 June 2015.

5. On 17 June 2015, the Court was informed that its orders had been complied with and hearing was fixed for 26 November 2015. The Court gave the parties liberty to file any further documents.

6. In the intervening period, a purported consent Court order was extracted and issued on 8 June 2015, and the firm of P.K. Kamau also sought to withdraw from acting for the 1st Respondent, and consequently the hearing could not take off as scheduled the Court therefore had to examine and issue instructions regarding the question of representation of the 1st Respondent, and the disowned consent order issued on 8 June 2015.

7. The firm of P.K. Kamau eventually ceased acting for the 1st Respondent and the firm of Kanyi Nguni & Co. came on record.
8. An application was also filed on 24 November 2015 seeking to have the consent order set aside (it is still pending).
9. On 14 January 2016, the Claimants filed the motion the subject of this ruling seeking
 1.
 2.
 3. THAT pending the hearing and final determination of this matter and all related matters in this series as consolidated, the 2nd Respondent be restrained from calling for, interviewing, offering for recruitment, recruiting any person for the positions now held by the Claimant/Applicants or as advertised.
 4. THAT this honourable court be pleased to make orders to fast tracking this matter for hearing and final determination. 5. THAT costs of this motion be borne by the 2nd Respondent.
10. The Respondents filed a replying affidavit on 27 January 2016 sworn by its Acting County Attorney and the motion was argued on 28 January 2016.
11. The Court has considered the motion and supporting affidavit, the Respondents replying affidavit and the oral submissions made by the parties and come to the conclusion that order 3 of the motion being the substantive prayer sought cannot be granted.
12. The reasons for rejecting the same are firstly, the Court ought not to micromanage an employer as to who and how many employees to take on board. An employer has managerial prerogative as to how to run its business and the optimum number of employees it requires.
13. It is equally not clear to the Court, and the Claimants did not place any material before Court to demonstrate that the intended recruitments were not in tandem with the Respondents' establishment.
14. Secondly, the Respondents being public entities are subject to several statutory controls and it was not suggested, nay demonstrated, that the intended recruitments were in violation of the applicable statutory framework.
15. Third and lastly, the Claimants failed to demonstrate that their own positions were at peril because of the proposed recruitments by the Respondents.
16. The Claimants are already before Court and the gravamen of their cases is clear and straightforward. They should expeditiously pursue the determination and or preservation of their legal rights head on, on merit.
17. The Court will look into their respective claims on the merits and apply the law firmly should they show merit based on the legal principles applicable to such cases.
18. Before concluding, the Court wishes to address the consent court order issued on 8 June 2015. The Court record of proceedings for 26 May 2015 does not support the purported order, and the Court *ex debito justitiae* expunges it from the record.
19. In the circumstances, the Court orders

(a) The motion dated 6 January 2016 lacks merit and is dismissed

(b) The Cause be fixed for hearing on a priority basis and on a date to be agreed hereinafter

(c) Costs in the cause.

Delivered, dated and signed in Nakuru on this 1st day of April 2016.

Radido Stephen

Judge

Appearances

For Claimants Mr. Musembi instructed by Wambua Musembi & Co. Advocates

For Respondents Mr. Kanyi instructed by Kanyi Ngure & Co. Advocates

Court Assistant Nixon