



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1503 OF 2013**

**ALIVIDZA AKATSA GEORGINA & 3  
OTHERS.....CLAIMANTS/RESPONDENTS**

**VERSUS**

**INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION....RESPONDENT/OBJECTOR**

**RULING**

1. The objection taken is by Mr. Kariuki for the Respondent. He objects to the line of questioning adopted by Mr. Kang'atta for the Claimants. He submits that the issue in question, namely the recruitment of staff without interview, had not arisen in cross-examination and thus it was not open to the counsel for the Claimants to re-examine the 4<sup>th</sup> Claimant on the issue. Mr. Kariuki submitted that raising the question is highly prejudicial to the Respondent and that the counsel for the Claimants should be restrained and be confined to the issues that arose in cross-examination.

2. Mr. Kang'atta for the Claimants opposed the objection and submitted that the question was a legitimate one as the 4<sup>th</sup> Claimant had been taken through a detailed process as to what the Respondent has to go through to recruit staff. He submitted that one of the processes suggested was advertisement of interviews and interview of the applicants as to their suitability. He asserted that if it turns out indeed that the Respondent does not follow that process as suggested in cross-exam, it is fair to show the position put to the 4<sup>th</sup> Claimant is not the position that obtains on the ground. He stated that the next question he was to ask the 4<sup>th</sup> Claimant was going to touch on the advertisement for jobs that did not exist in what the Respondent called the approved establishment. He submitted that he wished to demonstrate that the Respondent does not do what was suggested to him by Respondent's counsel in cross-examination. He stated that the question was not extraneous and thus urged the Court to allow him to examine the 4<sup>th</sup> Claimant on it.

3. In his reply Mr. Kariuki submitted that the Claimants' counsel had not pointed out the issue he wishes to distinguish from that question having arisen from cross-exam. He submitted that the question was never touched in cross-exam and to allow the question would deprive the Respondent of opportunity to cross-examine and would result in injustice. He urged the Court to uphold the objection.

4. In cross-exam, a party advances its case by putting questions, suggestions, theories and the like to the witness for the other side. It is on the basis of that cross-examination that re-examination of a witness may arise. Re-exam therefore would of necessity flow from the questions put to a witness in cross-examination. The art of extracting precise answers or concessions is the hallmark of a well seasoned lawyer. The 4<sup>th</sup> Claimant was going through his re-exam when a question was put to him sparking an objection by counsel for the Respondent. He asserts that the question put does not arise from the questions he put to the witness in cross-exam and therefore it should be excluded. He states that the Respondent will be prejudiced and there will be a miscarriage of justice if the question is answered as the Respondent will not have the opportunity to cross-examine the 4<sup>th</sup> Claimant on the evidence tendered as a result of the question. On the side of the Claimants', their counsel asserts that the question is a legitimate one and that the question flows from the cross-examination that had preceded the re-examination. Counsel for the Claimants was emphatic that the question was one which sought to demonstrate that what the Respondent was advancing as process for recruitment was not what takes place on the ground. Whereas, the remit of questions that could be asked in cross-examination is wide, a re-examination is

narrower in scope as it seeks to repair the damage caused to a position by the party re-examining the witness. It comes after the examination-in-chief and cross-examination. Ideally it should be crisp and tidy to bring out the salient points and remedy the issues that were torn into by the opposing side. In the case before me, the 4<sup>th</sup> Claimant was asked some questions about recruitment. He responded to the questions and the objection taken is that the 4<sup>th</sup> Claimant was now being asked questions that were not tenable given the cross-examination that was led. In my view, the question put was legitimate though the phrasing is improper. Mr. Kariuki was correct in objecting to the question as it was not properly framed and seemed to imply that a rehearing of the issue was open. From the reply by Mr. Kang'atta, he seeks to establish if the Respondent hires staff as was suggested in cross-examination. In the premises I will overrule the objection taken but order that the 4<sup>th</sup> Claimant's counsel rephrases the question so that no opinion is sought but a fact that the 4<sup>th</sup> Claimant can prove. It will not aid the party's case if the question is speculative or a fanciful answer is sought as evidence ought not be contrived to support a falsity.

Orders accordingly.

**Dated and delivered at Nairobi this 22<sup>nd</sup> day of July 2016**

**Nzioki wa Makau**

**JUDGE**