



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

JUDICIAL REVIEW APPLICATION NO 3 OF 2015

[FORMERLY MISC CIVIL CASE NO 1278 OF 2004]

RUFUS NJUGUNA.....1ST PLAINTIFF

RURIANI MICHENI.....2ND PLAINTIFF

DANSON KIMANI.....3RD PLAINTIFF

ALLAN MIKINDIA.....4TH PLAINTIFF

(Suing on behalf of themselves and 63 other former employees
of the Directorate of Civil Aviation, a department within the Ministry
of Transport and Communications)

VERSUS

THE ATTORNEY GENERAL.....1ST DEFENDANT

KENYA CIVIL AVIATION AUTHORITY.....2ND DEFENDANT

C.A. KUTO.....3RD DEFENDANT

RULING

Introduction

1. The Plaintiffs in this case were employees of the Directorate of Civil Aviation which was later replaced by the Kenya Civil Aviation Authority. They were dismissed from employment following a nationwide industrial action in the nature of a go slow.
2. They therefore moved to the High Court by way of Originating Summons and were heard by **Emukule J** who in a ruling delivered on 7th November 2005, made the following order (inter alia):

“I order that the Plaintiffs be paid their arrears of salary and other benefits for the period dating back to 18-04-2002. The exact amounts to be assessed by the Registrar or Deputy Registrar taking into account the applicable terms of service.”

3. Being dissatisfied with the decision of the High Court, the Defendants filed an appeal in the Court of Appeal. In its ruling in Civil Appeal (Application) No 67 of 2010 delivered on 4th April 2014, the Court of Appeal upheld the substance of the ruling by the High Court but reversed the direction that the salary arrears be assessed by the Registrar or the Deputy Registrar.

4. Instead the Court of Appeal directed that the Plaintiffs file a schedule of arrears due to each and every one of them to form the basis for assessment of the arrears of salary and other benefits before any other High Court Judge.

5. In seeking crystallization of the award by the High Court as affirmed by the Court of Appeal, the Plaintiffs filed affidavits to which they attached tabulations of what they considered to be due to them in salary and benefits arrears. The High Court did not make a determination on these tabulations but instead transferred the file to this Court in March 2015. It now falls on me to bring this longstanding matter to closure.

6. So what did the Court of Appeal instruct us to do? In the 2nd paragraph at page 18 of its ruling, the Court stated as follows:

“Order 48 of the repealed Civil Procedure Rules donated certain administrative powers to the Registrar or Deputy Registrar. We have revisited these and we find none of these appears to be mandating the Registrar to do what the learned trial Judge ordered him to do.

*This lack of mandate in itself does not invalidate the relief granted. All it calls for is a finding that what the learned Judge should have done after finding for the respondents should have been to grant an interim decree and then **call for tabulations on the entitlements of each respondent, receive representations on the proof on quantification of each plaintiff’s claim** for purposes of indicating these in the final decree.” [Emphasis added]*

7. From the foregoing I understand the instructions from the Court of Appeal to be that this Court will receive tabulations from the Plaintiffs accompanied by supporting documentary evidence. I have looked at the tabulations filed by the Plaintiffs in this light and find them lacking in supporting evidence.

8. The claims for salary and benefits arrears being in the nature of special damages must be based on known and verifiable figures. At the very least, the Plaintiffs should have filed documentary evidence of their salaries as at the time of leaving employment.

9. I therefore withhold final determination of this matter pending filing of this evidence which may be in the form of pay slips, income tax forms (P9), bank statements or such other similar form of evidence.

10. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF AUGUST 2016

LINNET NDOLO

JUDGE

Appearance:

Dr. Khaminwa for the Plaintiffs

Mr. Moimbo for the 1st Defendant

Mr. Ogunde for the 2nd and 3rd Defendants