



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 327 OF 2013

ALFRED ABII OGOMBO.....CLAIMANT

-VERSUS-

POLYCAP OCHOLLA.....1ST RESPONDENT

WITEROSE GROUP OF COMPANIES.....2ND RESPONDENT

GUARD FORCE SECUTIRY (K) LT.....3RD RESPONDENT

RULING

Introduction

1. The application before the Court is the Notice of Motion by the objectors dated 9.3.2016. It seeks basically for setting aside of this Court's Ruling dated 26.2.2016 and further for leave to file the appropriate application and or pleadings to defend "this instant application on its merits". The ground upon which the motion stands is that the applicants former Counsel made a mistake in filing objection proceedings which led to the dismissal vide the impugned ruling dated 26.2.2016.

2. The claimant has opposed the motion through his Replying affidavit sworn on 24.6.2016. The gist of the Replying affidavit is that the respondents are related to the objectors and that the 1st Respondent also is the executive chairman of the 3rd Respondent and 2nd objectors.

3. The motion was to be disposed of by written submissions but only the claimant filed his.

Analysis and Determination

4. The issues for determination herein are whether the motion herein is properly before the Court and whether it has merits.

Procedure

5. After careful perusal of the motion before the Court, it is clear that the applicants seek to set aside a decision made in proceedings in which they were not parties. The applicants (objectors) are Guard Force Group Ltd and Victor Ochieng Ochola while the earlier objectors were Guard Force Group of Companies

and Douglas Ochola. After hearing the dispute between the latter and the claimant in a notice of motion dated 25.8.2015, I allowed the said motion whose effect was to strike out the objection proceedings filed by the objectors then. No appeal or review was preferred and as such the only reasonable inference to draw from the said situation is that the parties involved were satisfied.

6. Surprisingly, the Application in the present motion substituted the earlier objectors and applied for stay and setting aside of the impugned ruling and sought leave to file their appropriate application and defence to the said application on merits. The main ground cited for the new motion is the mistake by the advocate.

7. The question that arises is, what was the effect of the impugned ruling on the right of the applicants herein to object to the decree of this Court made herein against the respondents?

8. All what the ruling dated 26.2.2016 did was to strike out, on procedural grounds, the notice of objection filed by Douglas Ochola and Guard Force of Companies Ltd. The said ruling never barred them or even the applicants herein from raising any further objections to the execution of their defence herein against them. It is therefore abuse of the Court process and an embarrassment to Court for the applicants herein to move the Court in the manner they have done. Consequently, I find that the motion dated 9.3.2016 is improperly before the Court and is struck out. In that case I will not consider its merits.

Disposition

9. For the reasons stated above the Notice of Motion dated 9.3.2016 is struck out with costs to the claimant.

Ruling dated, delivered and signed this 9th day of September 2016

O. MAKAU

JUDGE