



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 398 OF 2015**

**GEOFFREY**  
**ASANYO .....CLAIMANT**

**v**

**COUNTY GOVERNMENT OF NAKURU.....1<sup>ST</sup>**  
**RESPONDENT**

**NAKURU WATER & SANITATION COMPANY LTD..... 2<sup>ND</sup>**  
**RESPONDENT**

**RIFT VALLEY WATER SERVICES BOARD.....3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

1. Geoffrey Asanyo (Claimant) commenced legal proceedings against the Respondents on 16 December 2015. The issue in dispute was stated as *the renewal of the terms of the directors of the Nakuru Water Services and Sanitation Company lapsing on 17.12.2015.*
2. At the same time, the Claimant lodged a motion seeking 2 interim injunctive reliefs.
3. The motion was heard and the Court dismissed it in a ruling rendered on 11 March 2016.
4. The Claimant preferred an appeal against the ruling, but it is not clear whether the Court of Appeal has disposed of the appeal.
5. While the Claimant's motion was pending, and more specifically on 25 January 2016, the 2<sup>nd</sup> Respondent filed a motion under certificate of urgency seeking
  1. *THAT this application be certified urgent, heard on priority basis and service of the same be dispensed with in the first instance.*
  2. *THAT the suit be struck out with costs to the 2<sup>nd</sup> Respondent.*
  3. *THAT the costs of this Application be provided for.*
6. When the motion was placed before Court on 25 January 2016, Mr. Ogolla, counsel for the 2<sup>nd</sup>

Respondent informed the Court that he had served the motion and Mr. Mbuvi for the Claimant confirmed service of the motion in Court.

7. The Court directed the Claimant and other parties to file responses to the 2<sup>nd</sup> Respondent's application within 7 days and at the same time directed that the Claimant's motion would proceed first (dismissed motion).

8. The Claimant did not comply with the directions as to filing a response to the 2<sup>nd</sup> Respondent's motion within the set timelines.

9. On 8 April 2016, the Court again directed the Claimant to file a response to the 2<sup>nd</sup> Respondent's motion of 25 January 2016 before 15 April 2016 and fixed the motion for hearing on 6 July 2016.

10. When the motion was called out for hearing on 6 July 2016, the parties were absent, and the Court stood over the motion. But for the record, the Claimant had not complied with the directions on filing a response to the motion within the new timelines.

11. The 2<sup>nd</sup> Respondent consequently took a date (15 September 2016) for the motion in the registry and it served a hearing notice.

12. When the motion came up, Ms. Wangari holding brief for Mr. Njoroge for the Claimant sought an adjournment on the ground that Mr. Njoroge was before the High Court in Meru High Court Civil Case No. 23 of 2015, *Zam Zam Ali Ngere v Hon. Joseph Lekuton*.

13. The 2<sup>nd</sup> Respondent opposed the application for adjournment on the grounds that the Claimant had not filed any replies to the motion and was thus seeking to delay the determination of the application.

14. The Court declined the Claimant's request for adjournment primarily because he had not filed any replying affidavit or grounds of opposition to the motion which had been served on him nearly 8 months earlier, despite the Court giving directives twice.

15. With the rejection of the request for adjournment, Ms. Wangari sought to be discharged but the Court refused her application.

### **Law on striking out a suit**

16. A suit can be struck out on among other grounds that is frivolous or vexatious.

17. What is frivolous and vexatious was outlined by Ringera J in the case of *Trust Bank Limited v Amin Company Ltd & Another* (2000) KLR 164 as

*A pleading or an action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expenses. A pleading which tends to embarrass or delay fair trial is a pleading which is ambiguous or unintelligible or which states immaterial matters and raises irrelevant issues which may involve expenses which will prejudice the fair trial of the action*

### **The facts**

18. Among the documents exhibited by the Claimant was the Memorandum and Articles of Association of the 2<sup>nd</sup> Respondent.

19. Article 87 provides thus

87(a) The term of directorship shall be three (3) years. (b) Other than the directors from the county Government and the Managing Director one-third of all other directors shall retire by rotation at the Annual General meeting after serving for a term of three (3) years. The Directors to retire shall be those who have been longest in office since their election but between persons who become Directors on the same day those to retire shall unless they otherwise agree among themselves be determined by ballot. A stakeholder participation procedure shall be held to elect the new directors to replace those who have retired.

c) A retiring Director shall be eligible for re-election for one other term and shall serve for a maximum of 6 years (two terms).

20. According to the affidavit in support of the motion and sworn by the 2<sup>nd</sup> Respondent's Managing Director, the Claimant had been a director since 2006 and he served until 2012 when his directorship was extended by a further 3 years which term expired on 16 December 2015.

### **Evaluation**

21. The Claimant's case as pleaded was that he was appointed a director on 18 December 2012 and the first term expired on 17 December 2015 and thus that he was eligible for re-appointment.

22. However, the appointment letter dated 18 December 2012 and exhibited by the Claimant is clear that his term as director was being *extended* as a representative of the business community.

23. That exhibit is inconsistent with the Claimant's contention in the Statement of Claim that his first appointment was in 2012.

24. The Claimant did not place any affidavit or other evidence to suggest that the facts as asserted in the 2<sup>nd</sup> Respondent's Managing Director's supporting affidavit were not correct, and therefore a simple arithmetic would show that he had served the maximum term for directors.

25. The 2<sup>nd</sup> Respondent even exhibited extracts of board meetings for 2006 indicating that the Claimant attended the meetings as a director as of that year.

26. In my considered view, the pleas by the Claimant as outlined in the Statement of Claim have no substance or grounding in facts to found a cause of action. The Statement of Claim shows no more than a hopeless cause of action which cannot be cured even by amendment. The cause presented is both frivolous and vexatious.

### **Determination**

27. For the foregoing reasons, the Court comes to the conclusion that the 2<sup>nd</sup> Respondent's motion has merit with the consequence that the Statement of Claim filed in Court on 16 December 2015 is struck out with costs to the 2<sup>nd</sup> Respondent.

28. It is so ordered.

**Delivered, dated and signed in Nakuru on this 28<sup>th</sup> day of October 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant

Ms. Wangari instructed by Katunga Mbuvi & Co. Advocates

For 1<sup>st</sup> Respondent

Hari Gakinya & Co. Advocates

For 2<sup>nd</sup> Respondent

Mr. Ogola instructed by Gordon Ogola, Kipkoech & Co. Advocates

For 3<sup>rd</sup> Respondent

did not file any papers

Court Assistant

Nixon