



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 262 OF 2013

SAMSON ARAP BII	1ST CLAIMANT
CHARLES K. CHEPKWONY	2ND CLAIMANT
SIMON MALEI	3RD CLAIMANT
PAUL BII	4TH CLAIMANT
DAVID KETER	5TH CLAIMANT
GRACE CHEPKEMOI	6TH CLAIMANT
ANN CHEPKOECH	7TH CLAIMANT
HELLEN CHEPKORIR	8TH CLAIMANT
ALICE CHELANGAT	9TH CLAIMANT
JANE CHEPCHIRCHIR	10TH CLAIMANT

v

BENARD KIPLANGAT KILELE

t/a NORTH NJORO FARM	1ST RESPONDENT
RONALD KIPNGETICH KILELE	2ND RESPONDENT
ANNE MAANYU KILELE	3RD RESPONDENT

RULING NO. 2

1. The Claimants moved Court on 16 August 2013 against the 1st Respondent alleging breach of employment contract. The 1st Respondent filed a Response on 26 September 2013.
2. On the same day, the Court fixed the Cause for hearing on 17 December 2013 on which date the oral testimony of one of the Claimants was taken, after which the Court gave the parties' time to attempt out of court settlement.

3. On 21 February 2014, the Claimants filed an application seeking to file a Third Party Notice against the present 2nd and 3rd Respondents.
4. On 24 February 2014, the Court directed the Claimants to file an Amended Memorandum of Claim to include new Respondents (legal representatives of the estate of late Walter Kiprono Kilele).
5. On 10 March 2014, the Claimants filed an Amended Memorandum of Claim including the 2nd and 3rd Respondents.
6. Come 3 April 2014, the Claimants filed a motion seeking several interlocutory orders against the Respondents (including restraining Respondents from interfering with Claimants peaceful occupation of the property they were residing in).
7. The Court granted *ex parte* interim relief on 4 April 2014 pending *inter partes* hearing on 14 April 2014.
8. On 11 April 2014, the 2nd Respondent filed a Response.
9. The 3rd Respondent on her part filed a Response and Preliminary Objection on 16 May 2014, asserting that the Court lacked jurisdiction to hear and determine the Cause.
10. In an appearance before Court on 20 May 2014, the parties agreed to certain consent orders and the Court obliged them and hearing of the Cause was fixed for 3 December 2014.
11. However, on 3 December 2014, the Claimants sought and got leave to amend the pleadings again.
12. Come 19 January 2015, the Claimants indicated the pleadings had been amended and therefore sought a hearing date which the Court fixed for 7 December 2015.
13. On 19 February 2015, the Claimants filed a *Further Amended Memorandum of Claim* in which one Major Lazarus Sumbeiyu was added as a 4th Respondent (the *Further Amended Memorandum of Claim* was struck out by the Court in a ruling delivered on 8 May 2015).
14. The flood of applications did not stop and on 24 February 2015, the Claimants filed another application seeking several interlocutory reliefs against the Respondents.
15. Not to be outdone, the 1st and 2nd Respondents filed a Notice of Preliminary Objection against the Claimants application filed in Court on 24 February 2015.
16. The Court dismissed the motion in the ruling of 8 May 2015.
17. On 21 October 2015, **Lawrence Karani Silas** filed a motion seeking to be enjoined as a third party in the present Cause, and the setting aside of a consent order made on 20 May 2014.
18. The Court directed that the motion be served for *inter partes* hearing on 9 November 2015.
19. However, the application could not proceed because the Proposed Interested Party had not served the Respondent for what was called as *oversight*.
20. In the event, the Court directed that the motion be served for *inter partes* hearing on 30 November 2015.
21. But come 30 November 2015, the Proposed Interested Party was not in Court when the file was called out and the Court *suo moto* dismissed the application with costs to the Claimants and Respondents.

22. The 1st and 2nd Respondents on their part again filed a Notice of Preliminary Objection on 18 November 2015 on the ground that the Cause was statute barred.
23. The plethora of applications did not come to an end and on 6 May 2016, the Proposed Interested Party moved Court seeking the reinstatement of the application filed in Court on 21 October 2015.
24. The Claimants and Respondents were served with the application and it is only the Claimants who filed grounds of opposition, on 13 September 2016.
25. The application seeking reinstatement is the subject of this ruling.
26. The legal principles applicable to applications such as the present one are many and need no reinvention of the wheel.
27. It is not in dispute that the motion sought to be reinstated onto the Court's docket was dismissed on 30 November 2015 and the instant application was only filed on 6 May 2016, which is a period of about 6 months.
28. The reason advanced by the proposed Interested Party for failing to attend Court on 30 November 2015 was that the advocate with instructions failed to diarise the date and that the failure was not deliberate.
29. As to the delay of nearly 6 months, it was explained that the advocate only realised or discovered the dismissal when the Proposed Interested Party made inquiries about the status of the application.
30. Inordinate delay is a matter of context. Even a delay of a day could be construed as inordinate.
31. In the case at hand, the Proposed Interested party took no action for 6 months and the explanation given was that the mistake was only realised when the Proposed Interested Party made inquiries.
32. What has struck the Court is that the exact date that the inquiries were made was not disclosed.
33. In the view of the Court, that disclosure was material and necessary in order for the Court to consider whether to exercise its discretion in favour of the applicant.
34. And on that singular ground, the instant application ought to fail and the Court so finds and dismisses the application.
35. The Court is of course aware that the Proposed Interested Party has other legal options including asserting his proprietorship interest in the proper forum.
36. Before penning off, it appears to the Court that some of the parties are not interested in having the Cause heard and determined on the merits considering the plethora of applications which can only go to obfuscate the real issues in dispute.
37. . And to ensure that the Cause is heard and determined expeditiously in view of the objective for which this Court was established, the Court directs that
- (i) Agreed Issues to filed in Court within 30 days from today
 - (ii) All issues raised through the pending applications be included in the Agreed Issues and be canvassed during the hearing on the merits of the Cause.
 - (iii) Cause be mentioned to give further directions/hearing date on 25 November 2016.
38. Costs of the application to Claimants and Respondents.

Delivered, dated and signed in Nakuru on this 14th day of October 2016.

Radido Stephen

Judge

Appearances

For Claimants Ms. Kerubo instructed by Nyagaka S.M. & Co. Advocates

For 1st /2nd Respondents Ogeto & Ogeto Advocates

For 3rd Respondent W.G. Wambugu & Co. Advocates

For Proposed Interested Party Mr. Karanja instructed by Mirugi Kariuki & Co. Advocates

Court Assistant Nixon