



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

CAUSE NO. NO. 1447 OF 2014

JOPHINUS MUSUNDI

SAMMY B. CHESERET

LAWRENCE KINYUA

ARPHAXAD KEMBOI.....CLAIMANTS/APPLICANTS

LILIAN O. OSUGA

LYDIA N. NGARI

JOSEPH WADEREVA

VERSUS

KENYA NATIONAL UNION OF NURSES.....1ST RESPONDENT

SETH PANYAKO.....2ND RESPONDENT

(GENERAL SECRETARY)

RULING

1. The claimants/applicants filed a notice of motion application dated 29th July 2016 on the even date on a certificate of urgency seeking for orders;

- ***That this honourable court be pleased to stay the Judgment delivered in the consolidated suit on 15th July 2016 pending review.***
- ***That this honourable court be pleased to grant a fair hearing to the parties in the consolidated suit.***

2. The application is supported by the grounds set out on the face of the application:

a) That the applicant is the claimant in cause 1447 of 2014 as consolidated with cause 1454 of 2014 and cause 1545 of 2014.

b) That on 15th July 2015 the Honourable Judge Nderi Nduma delivered a judgment in the consolidated suit.

- c) That the claimants are aggrieved by the Judgment.
- d) That there are errors on the face of the Judgment as regards parties in the consolidated suit.
- e) That the gravamen of issues in the Judgment is not the issues in Cause 1447 of 2014. The notice of motion cited by the learned Judge in paragraph 4 of the Judgment is indeed not the notice of motion in cause 1447 thus this paragraph is erroneous.
- f) That the court has not made any reference to the conciliation report in a conciliation process it ordered on 15th October 2010.
- g) That the parties came to court because they were not able to agree on their own thus the court ought to have done more in assisting the parties for the sake of order.
- h) That the parties in the appeal number 6 of 2016 and petition 82 of 2016 which the learned Judge alluded to in paragraph 35 of the Judgment have all admitted the union constitution is indeed unworkable and unconstitutional.
- i) That the learned Judge had on 31st May 2016 alluded to the fact of receiving anonymous short text messages on phone touching on matters in the consolidated suit which matters required investigation and determination in view of their influence on the decision of the court.
- j) That the delay in the matter was largely due to factors beyond the control of the claimants thus punishing them with costs for the suit being overtaken by events is exposing them to double jeopardy.
- k) That the Judgment requires clarification among others on matters of contempt of court, the validity of the purported national governing council meeting of 29th August 2014 and the status of union officials and accounts.

3. The application is responded to by a replying affidavit of Seth Panyako, the General Secretary of the 1st respondent opposing the application for review.

4. From the papers filed on record, the issue for determination is whether the application discloses genuine grounds for review in terms of rule 32 of the Employment and Labour Relations Court (procedure) Rules, 2010.

5. Rule 32 of the court rules reads as follows:

“(1) A person who is aggrieved by a decree or an order of the court may apply for a review of the award, judgment or ruling-

- a) if there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or
- b) on account of some mistake or error apparent on the face of the record; or
- c) on account of the award, judgment or ruling being in breach of any written law; or
- d) if the award, the judgment or ruling requires clarification; or
- e) for any other sufficient reasons.”

6. It is the court’s considered view that the application does not disclose any genuine ground to cause the

court to review its Judgment delivered on 15th July 2016.

7. The application dated 29th July 2016 and filed on the even date does not contain any prayer capable of implementation by way of review.

8. For these reasons, the application for review lacks merit and same is dismissed.

9. The 1st respondent, union which is the claimant in Cause No. 1454 of 2014 also filed another application for review on 17th August 2016 by way of a notice of motion application which seeks the following orders:

That the Honourable court be pleased to stay the judgment of the consolidated suits delivered by Honourable Mathews N. Nduma on 15th July 2016 pending the hearing and determination of the review application.

10. No substantive prayer for review capable of grant is sought in the application. The grounds made in support of the application amount to nothing in view of the aforesaid fact, that no substantive prayers pointing out what parts of the Judgment ought to be reviewed and for what reason have been made in the application.

11. In any event, this court lacks jurisdiction to award damages based on alleged negligent conduct by Barclays bank. The relationship between the applicant union and the bank is a commercial one and not one arising from an employer and employee relationship.

12. The application is fatally defective to this extent and the same is also dismissed.

13. All parties to meet their costs in both applications.

Dated and delivered at Nairobi this 2nd day of December 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE