



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1149 OF 2011

PETERSON NDUNGU.....1ST CLAIMANT

STEPHEN GICHAGA GITURO.....2ND CLAIMANT

N OJWANG.....3RD CLAIMANT

PETER KARIUKI.....4TH CLAIMANT

JOSEPH M. KYAVI.....5TH CLAIMANT

JAMES KIMANI.....6TH CLAIMANT

VERSUS

THE KENYA POWER AND

LIGHTING COMPANY LIMITED.....RESPONDENT

RULING

1. By a Notice of Motion dated 17th September, 2014 the Respondent sought orders among others that there be a stay of execution of the award of 22nd July, 2014 pending the hearing and determination of this application and further that the statement of claim together with all proceedings in this cause and the award of 23rd July, 2014 be struck out.
2. The application was brought on the grounds that the statement of claim was filed and signed by an advocate who did not have a valid practicing certificate under the Advocates Act and that the proceedings were conducted on behalf of the claimants by an advocate who did not have a valid practicing certificate under Advocates Act.
3. The application was supported by the affidavit of Janet Boit who deponed on the main that the respondent's counsel on record conducted a search at the Registrar of Business names and ascertained that the sole proprietor of Orowe & Company advocates was one Lawrence Agayi Orowe. Counsel subsequently wrote to Law Society of Kenya to ascertain if the said Mr. Orowe held a valid practicing Certificate at the time he filed and prosecuted the suit. She deponed that LSK responded that the said Mr. Orowe did not hold a valid practicing certificate at the time he signed and filed the statement of claim.

4. Ms. Boit further deponed that Federation of Kenya Employers who represented the respondent in the matter informed her that from September, 2012 the proceedings were conducted on behalf of the claimants by Mrs. Omenta of Omenta & Co. Advocates and that upon inquiry by the respondents Counsel from Law Society of Kenya, it turned out that Mrs. Omenta too did not hold a valid practicing certificate.
5. The claimant did not file any grounds of opposition or Replying Affidavit to the application.
6. When the application came before me on 9th December, 2014, I became of the view that the issue in the application turned around the legal capacity of the initial counsel namely Mr. Orowe to file the claim herein. I was further of the view that this was a matter which could be verified and confirmed by both Counsel in the matter from Law Society of Kenya and the Registrar, High Court. The Court observed then that if it be indeed true that Mr. Orowe did not have valid practicing certificate the matter would end there.
7. As stated earlier in this ruling, the affidavits of Janet Boit in support of this application stated that both Mr. Orowe and Mrs. Omenta who had the conduct of this matter at some point did not hold valid practicing certificate when they did so. This was vouched for by correspondence from Law Society of Kenya attached to her affidavit. This affidavit was not responded to.
8. Section 2 of the Advocates Act defines an advocate as a person whose name is duly entered upon the Roll of Advocates. Section 9 of the same Act provides that no person shall be qualified to act as an advocate unless he has been admitted as an advocate, his name is for the time being on the Roll of Advocates, and has in force a practicing certificate.
9. Further section 22 of the Industrial Court Act provides that in any proceedings before the Court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade Union or employers' organization and, if the party is a juristic person, by a director or an employee specially authorized for that purpose. The definition of an advocate is given in the Advocates Act as already considered earlier in this ruling.
10. The requirement that if a party cannot represent themselves before the Court, they be represented by persons provided under Section 22 of the Industrial Court Act is intended to regulate and bring order over who should have audience before the Court. Unions (both employers' and employees') invest a lot of time and resources in fighting for their members rights for which they are entitled to earn fees. The same applies to Advocates who have invested a considerable amount of their time and resources in sustaining the Bar as a regulator of those who intend to practice law.
11. It would therefore be wrong to permit persons not authorized by law to have audience before this Court and indeed any other Court in our judicial hierarchy. This would not only be unfair to those who regularly renew their practice licenses but also a recipe for quacks to appear before the Court and fleece innocent litigants of money in form of fees while offering substandard services. The Bar, the Unions and juristic persons are bodies that have power to regulate and discipline errant members hence can hold their members to account for any misconduct or negligence in the course of representing a party before this Court or generally. Apart from our criminal justice system there is no official regulation for quacks.
12. The Court is however alive to the fact that on occasion like this when representation is done by a person not qualified to do so, a party affected may be prejudiced through no fault of their own. This is however a systemic problem which may require formulation of a more robust regulatory framework to detect early in time case where parties are purportedly represented by unauthorized persons.
13. Counsel for the claimants submitted that this Court once renders a judgment or award becomes *functus officio*. This to some extent may be true but only in so far as the judgment or decision of the Court was made in accordance with the law and procedure and the Court is not being called upon to sit on appeal on its own judgment or of a Court of concurrent jurisdiction. But the rules of this Court permit review of its judgments or decisions where the same may have been made contrary to law in existence at the time they were made. The commencement and prosecution of a suit before this Court by an

unauthorized person is matter of law for which this Court can recall and review its judgment or decision.

14. To this extent the application by the respondent succeeds with the consequence that the statement of claim together with all the proceedings in this cause and the award of 23rd July, 2014 is hereby struck out.

15. There will be no order as to costs.

16. It is so ordered.

Dated at Nairobi this 26th day of June 2015

Abuodha J. N.

Judge

Delivered this 26th day of June 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge