



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 28 OF 2012
JOHN MWANGI KURIA & 165 OTHERS.....CLAIMANTS
VS
ATTORNEY GENERAL.....1ST RESPONDENT
NATIONAL IRRIGATION BOARD.....2ND RESPONDENT

RULING

Introduction

1. On 30th July 2014, I delivered an award in favour of the Claimants in the following terms:
 - a) One month's salary payable to all the Claimants as compensation for an irregular retrenchment exercise to be based on each Claimant's last salary;
 - b) Severance pay at 15 days' salary for each completed year of service payable to all the non unionisable Claimants.
 - c) The amounts payable under (a) and (b) above shall be tabulated jointly by Counsels for the parties and paid to the Claimants within the next 60 days from the date of this award;
 - d) The Respondent shall pay the costs of this case;
 - e) The award amounts shall attract interest at court rates from the date of the award until payment in full.

2nd Respondent's Application

2. Subsequent to the award, the 2nd Respondent brought an application by way of Notice of Motion dated 3rd December and filed in Court on 4th December 2014 seeking the following orders:
 1. That the Court be pleased to order that the amount calculated by the Respondent as due under the award be deposited in Court;
 2. That the Court be pleased to review the order that the award amount will attract interest from the date of the award until payment in full and to order that no interest will accrue on the award amount for the reason that the Claimants

had failed and/or refused and/or neglected to participate in calculating the amount due to them.

3. The application which is supported by the affidavit of Eng. Daniel Barasa is based on the following grounds:

- a) That the Court on 30th July 2014 made an award in favour of the Claimants herein;
- b) That as per the award order (c) the amount payable was to be calculated by Counsels for the parties and paid to the Claimants within 60 days from the date of the award;
- c) That the 2nd Respondent made its tabulation and by a letter dated 12th September 2014 forwarded the same to the Advocates for the Claimants for their input, approval and/or comment;
- d) That by a letter dated 22nd September 2014, Counsel for the Claimants indicated that she had instructions to appeal the award of the Court;
- e) That the Claimant's Counsel did not comment and/or mention the tabulation ordered by the Court and by the date of the application had not communicated concerning the same;
- f) That it would be highly prejudicial to the 2nd Respondent if the decretal sum continued to accrue interest whereas it was not at fault.

Preliminary Objection

4. The Claimants raised a preliminary objection to the 2nd Respondent's application on the following grounds:

- a) That the application as filed under Rule 32 of the Industrial Court (Procedure) Rules, 2010 is defective as it fails to comply with the provisions of sub rule 3 and 4;
- b) That the application is an abuse of the court process as prayer 1 had been overtaken by events;
- c) That the application is bad in law.

Ruling by the Court

5. By the time the Preliminary Objection was argued in Court, the decretal sum had been released to the Claimants making the first prayer redundant. This ruling therefore relates to the second prayer only.

6. The gist of the Preliminary Objection taken by the Claimants is that the 2nd Respondent's application dated 3rd December 2014 is defective as it is not accompanied by a memorandum of review as required under Rule 32(4) of the Industrial Court (Procedure) Rules, 2010.

7. Mrs. Ligunya for the Claimants submitted that Rule 32(4) of the Industrial Court (Procedure) Rules provides that an application for review must be accompanied by a memorandum and since no such memorandum had been filed, then the 2nd Respondent's application was defective.

8. In response, Mrs. Kimani for the 2nd Respondent submitted that the review sought was restricted to the issue of interest accruing on the decretal sum. Citing Article 159(2)(d) of the

Constitution, which enjoins the Court to render justice without undue regard to procedural technicalities, Counsel pointed out that the objection taken by the Claimants was on a matter of form rather than substance.

9. Further, under Section 3 of the Industrial Court Act, the principal objective of this Court is to facilitate the just, expeditious and proportionate resolution of disputes and parties appearing before the Court have a duty to assist in the realisation of this objective. The Claimants' objection was an impediment to the achievement of this objective.

10. While rules of procedure are important in the running of courts and adjudication of disputes, they are not to be used to defeat substantive justice. In my view, the requirement under Rule 32(4) of the Industrial Court (Procedure) Rules is meant to ensure that a party coming before the Court for review has set out clearly the substance and grounds for review to enable the opposing party to respond and the Court to make a fair determination.

11. We live in the constitutional age where the Court is required to breath life into disputes brought before it rather than snuff them out by employing technicalities. Towards this end, Article 159(2)(d) of the Constitution as well as Section 20(1) of the Industrial Court Act require this Court to administer justice without undue regard to technicalities.

12. I have looked at the 2nd Respondent's application and find that both the substance and the grounds for review are well set out in the Notice of Motion supported by the affidavit of Eng. Daniel Barasa to enable the Claimants to respond. I cannot therefore justify striking out of the application merely because of the absence of a memorandum of review.

13. The Court therefore finds the Claimant's Preliminary Objection not well taken and hereby overrules it. The Claimants are directed to file their reply to the 2nd Respondent's application within the next fourteen (14) days from the date of this ruling.

14. The costs of the Objection will abide with the outcome of the 2nd Respondent's application.

15. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 5TH DAY OF JUNE 2015

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JUDGE

Appearance:

Mrs. Ligunya for the Claimants

Mrs. Kimani for the 2nd Respondent