



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 365 OF 2013

JOSPHAT MUNKE OLE MPOE

CLAIMANT

v

DAVID WAIGANJO KOINANGE

RESPONDENT

RULING NO. 2

1. This Court delivered judgment on 6 February 2015, in which it found and held that the suspension of Josphat Munke Ole Mpoie (Claimant) by David Waiganjo Koinange (Respondent) was unlawful, and the Court ordered the Respondent to pay the Claimant salary arrears and accrued pay in lieu of leave amounting in total to Kshs 5,400,000/- less any sums owing.

2. The Respondent filed a motion on 10 February 2015 seeking stay of execution but due to technicalities, he withdrew it on 20 February 2015.

3. After the withdrawal, the Respondent filed another motion on 23 February 2015, where he sought

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2. The firm of M/s Mongeri & Co. Advocates be allowed to come on record in place of M/s Mirugi Kariuki & Co. Advocates.

3. That pending the hearing of the application inter-partes herein there be a stay of execution of the Judgment and/or order of the High Court dated 6th February, 2015 in Nakuru Industrial Cause No. 365 of 2013.

4. That the judgment herein be set aside and the case be reopened and the defendant be granted leave to call witnesses and file submission before judgment is delivered.

5. ...

4. The Court heard this motion and it rendered a ruling on 20 March 2015, dismissing the motion.

5. With a demonstration of an indefatigable spirit, the Respondent filed yet another motion on 24 March 2015 seeking

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2. THAT pending the hearing of the application inter-partes herein there be a stay of execution of the Judgment and/or order of the High Court dated 6th February, 2015 in Nakuru Industrial Cause No. 365 of 2013.

3. THAT this Honourable Court may be pleased to review its ruling dated 20th March, 2015 and set aside all the consequential orders and grant unconditional leave to the Applicant to defend the suit.

4. THAT the judgment herein be set aside and the case be reopened and the defendant be granted leave to call witnesses and file submission before judgment is delivered.

5. THAT the Respondent's Draft Response be deemed as duly file.

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6. This motion was heard *inter partes* on 14 April 2015.

7. Mr. Mongeri urged the Respondent's case while Mr. Kanyi appeared for the Claimant.

8. The Court has considered the submissions made by the parties and the several authorities tendered to support each sides submissions even though reference has not been made to them in the ruling.

9. Prayer 2 of the instant motion is exactly in the same words as prayer 3 of the motion filed on 23 February 2015. In the same respect, prayer 4 of the motion under discussion is the same prayer which was sought as prayer 4 of the dismissed motion.

10. Prayer 5 of the motion seeking leave to file a Response was also dealt with, though now the Respondent has couched it in different language. The effect of setting aside the judgment would have essentially meant reopening the Cause.

11. In so far as these prayers were dealt with and a decision made thereon on the merits, seeking these prayers is an abuse of the Court's process and the Court will dismiss them.

12. In any case, the Respondent has regurgitated the same grounds it urged during the submissions of the dismissed application filed on 23 February 2015.

13. Consequently, there is only one substantive prayer meriting the Court's consideration. These are prayer 3 to the effect that the Court review its ruling delivered on 20 March 2015.

14. The ground relevant to the review urged by the Respondent is that of discovery of an important matter. The matter the Respondent contends he has discovered is that the Claimant's salaries/dues had been paid.

15. Among the documents exhibited with the Draft Response was the Claimant's appointment letter dated 3 January 2011 setting the wage at Kshs 20,000/- per month.

16. This letter cannot by the stretch of the imagination qualify to be a new important matter. The letter on the face of it was signed by the Respondent and he must have been privy to its purported contents.

17. The Respondent was aware right from 2013 when the Cause was filed that the Claimant was alleging that the remuneration had been agreed at Kshs 100,000/-.

18. On 5 November 2013, Ongaya J directed the parties to file further affidavits. The Respondent never bothered to introduce this particular document to controvert the position advanced by the Claimant

