



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1 OF 2014

PETER MAINA MWANIKI.....CLAIMANT/RESPONDENT

VERSUS

PCEA SILANGA

HIGH SCHOOL.....1ST RESPONDENT/APPLICANT

PCEA KIBERA PARISH.....2ND RESPONDENT/APPLICANT

RULING

1. The Respondents/Applicants through the Notice of Motion Application dated 6th July 2015 seek a review of the orders of the Court made on 4th May 2015. In the application, the Respondents stated that the grounds for the application were that the Court had made an order for conditional costs of Kshs. 15,000/- in favour of the Claimant upon proof of the expenditure by Claimant on travel to Marsabit. The Respondents stated that it sought through its counsel for supporting documentation and was able to ascertain that the Claimant had been separated from his service as a probation officer on 23rd November 2013. The Respondents asserted that the Claimant had misled the Court to grant the orders it now sought to reverse. The Respondents annexed an affidavit in support of the application sworn by George Njoroge and a further affidavit he swore on 15th July 2015 in reply to the Claimant's affidavit. In the affidavits, Mr. Njoroge deposed that the Claimant had misled the Court as the Claimant had been dismissed from service in November 2013 and was no longer serving as a probation officer in Marsabit. The deponent annexed a letter from the Ministry of Interior and Coordination of National Government dated 19th June 2015 confirming the separation of the Claimant from the service with effect from 23rd November 2013.

2. The Claimant was opposed and filed a Replying Affidavit on 9th July 2015. In it he deposed that it was not true that he had been separated from service in November 2013 as on 23rd November 2013 he was on the second day of his 45 day leave as a probation officer. He annexed leave forms dated 7th August 2013. He deposed that the 23rd November 2013 was a Saturday and was not a working day for probation officers. He had sought a transfer from Marsabit due to health issues and that there was correspondence to that effect. He deposed that the Respondent had crafted lies and that there was a Mr. Julius Mbutia Maina who had informed him that cases are won by wits and not facts. He attached receipts for taxi hire which indicated sums higher than what the Court ordered as well as receipts for his mobile phone business in Marsabit. He deposed that he was a law abiding citizen who cannot lie to Court. He thus

sought the Court to uphold the orders granted.

3. The application was urged before me on 15th July 2015 when Mr. Lagat submitted that the Respondents sought to have the orders granting the Claimant costs to be set aside on grounds that when the case was heard, some of the Respondent's witnesses had left the Court precincts in the honest belief that the case would prolong and were thus absent when the Respondent was called to avail its witnesses. An adjournment was sought on this basis and this Court granted it and ordered the Respondent to pay the Claimant expenses quantified at Kshs. 15,000/- subject to proof of travel from Marsabit by Claimant. He submitted that the Claimant no longer worked in Marsabit as evidenced by the letter dated 19th June 2015 by his former employer the Ministry of Interior and Coordination of National Government. He urged the Court to set aside the orders of 4th May 2015. He urged the Court to disregard the documents filed by the Claimant as they were rendered baseless by the letter from the Ministry of Interior.

4. In reply to the submissions of Mr. Langat, the Claimant submitted that the documents used by Mr. Langat were not authentic. He stated that Courts do not work on Saturday and as a probation officer he too did not work on Saturday as his work is related to Court work. He submitted that the letter indicating that he was terminated on 23rd November 2013 was fraudulent. He submitted that he was still a probation officer as he had been involved in an accident on 14th February 2014 in a motorcycle GK A 295N of the Ministry of Interior and Coordination of Government. He attached sick sheets as well as letters from the Probation department. He also attached receipts from Menelik Traders of Marsabit to show that he had business interests in Marsabit which he attended to even when he was not doing probation work. He submitted that his family lives in Kibera, comes from Murang'a and has never removed his family from Kibera. He stated there was no bar for him to work in other parts of the country. He thus urged that the application should not be allowed in any way.

5. In a brief reprise Mr. Langat conceded that the 23rd of November 2013 was a Saturday and submitted that he had no control over the operations of Government and the response he got from Government was the letter from the Ministry of Interior and Coordination of National Government dated 19th June 2015. He insisted that the documents that were given by the Claimant were personal documents and should be disregarded. He submitted that he had called the number on the taxi receipts by the Claimant and the owner had indicated that it was a pick up and the vehicle cannot go all the way to Marsabit. He submitted that the case was on 4th May 2015 and there is a taxi receipt for 6th May for Nairobi to Marsabit and it shows the Claimant went on 6th May and came back on 7th May, the Claimant uses a cab and the owner says it's a pick up. He submitted that the search had shown that it was a Toyota pick up. He thus urged that the application be allowed.

6. The Claimant has been exposed as someone whose credibility is questionable. The Claimant asserts that he works as a probation officer in Marsabit. He glossed over a few issues that are critical in the determination of the application before me. In his submissions he asserts that he does business in Marsabit and even Moyale selling phones and phone accessories. For aid he attaches receipts from Menelik Stores. He asserts that he travels to and from Court to Marsabit. He attaches for support receipts for a vehicle and indicates the amounts used vary between Kshs. 20,000/- to Kshs. 30,000/-. The taxi is based in Thika. Why would this taxi travel all the way to Marsabit to pick or drop the Claimant each and every time? It had been suggested that a special vehicle is used to for locomotion by the Claimant. The dubious provenance of this vehicle is exacerbated by the fact that the Claimant was dismissed from service of the Ministry of Interior and Coordination of National Government.

7. During the pendency of this application the Court became aware that the Claimant has a suit before this Court being Industrial Cause No. 2311 of 2014 Peter Maina Mwaniki v Principal Secretary Ministry of Interior & Coordination of National Government, Director Probation & Aftercare Services. He avers in that claim that his termination in 2013 was illegal. He seeks various reliefs from Court. In his submissions before Court in this cause he held himself out as a probation officer. He has even attached probation reports he has prepared subsequent to his dismissal in 2013. He was taken off the payroll in December 2013 as he avers in his pleadings in Cause 2311 of 2014.

8. The Respondent is no saint either. Mr. Julius Mbutia Maina who has been attending the case before me, has been tampering with witnesses from all accounts and in as much as it is not my province to impute motive, it was clear that he has been attending Court and briefing the witnesses for the Respondent with the ulterior motive of defeating the cause of justice. He was present on the date the application was being made and had attended the hearing when the Claimant testified. It is clear none of the parties is playing by the rules.

9. The Claimant had obtained an order in his favour for the payment of costs occasioned by an adjournment sought by the Respondent. The Respondent's witnesses had gone missing after the Court had set time and after taking the evidence of the Claimant the witnesses were absent precipitating the adjournment. The Respondent's counsel indicated that the witnesses had other pressing personal matters to attend to. It is clear the Respondent is taking matters lightly and the ungodly confluence of lies and underhand dealings being revealed in the conduct of this case on either side suggests that dishonesty is exalted in the Respondents and the Claimant. Why were the witnesses advised to go without permission of the Court? It is clear counsel was out to delay the matter. For what purpose it is not clear but delay he did. In the order for adjournment the Court ordered payment of expenses to the Claimant. That order is recalled and vacated. In its place it is ordered that the Respondent's counsel personally pays Court adjournment fees of 400/- for the adjournment he sought. He is warned against unprofessional conduct as the next occurrence will lead to a direct complaint to the Disciplinary Committee of the Law Society. The Application is allowed to the extent of variation of the orders of 4th March 2015. Each party to bear their own costs.

Orders accordingly.

Dated and delivered at Nairobi this 31st day of **July** 2015

Nzioki wa Makau

JUDGE