



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 429 OF 2015

BETWEEN

MUNIR ABUBAKAR MASOUD..... CLAIMANT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT

RULING

Mr. Munir Abubakar Masoud filed Civil Case Number 196 of 2000 at the High Court in Nairobi, on 7th February 2000.

The Claim was against his former Employer, tax collector Kenya Revenue Authority. He sought orders against his former Employer in the form of declaration that, his retirement in public interest was unlawful and unjustifiable; benefits and accrued salaries be paid dating back to 28th September 1999; damages; costs; and interest.

The Claim was dismissed on 24th February 2015 for non-prosecution.

Mr. Masoud disengaged his Advocates, and acting in person, filed an Application for reinstatement of his Claim.

When that Application went before the High Court which had dismissed the Claim, it was ordered the matter be transferred to the Employment and Labour Relations Court.

The Labour Court in Nairobi then ordered the matter is transferred to Mombasa, where Mr. Masoud resides.

The Application was scheduled for hearing on 7th September 2015 when Ms. Mburugu for the KRA, sought the directions of the Court, based on the following grounds:-

- That the order for transfer from the High Court to the Employment and Labour Relations Court issued *per incuriam*.
- There was nothing to transfer, as the substantive Claim had been dismissed for want for prosecution.
- The current Court would not have the basis to consider reinstatement.

The Court Finds and Directs:

1. There was no subsisting Claim capable of being transferred by the High Court to this Court, at the time the order for transfer was made.
2. The procedure adopted in filing the Claim, in dismissing the Claim, in transferring the dismissed Claim, and in seeking reinstatement is the Civil Procedure.
3. This Procedure is not entirely in agreement with the Industrial Court (Procedure) Rules, and it is difficult for the Court to revisit the decision of the High Court on transfer, which was based on the Civil Procedure Act. There is no law allowing this Court to revisit orders issued by the High Court.
4. Mr. Masoud nonetheless should have access to justice. In the view of the Court, the most reasonable way the Court can facilitate him in achieving this access, is as proposed by Ms. Mburugu: vide a fresh Claim filed at the Employment and Labour Relations Court.

IT IS THEREFORE ORDERED:-

1. ***High Court Civil Case No. 196 of 2000 shall remain dismissed as ordered by that Court.***
2. ***The file be returned to the High Court at Nairobi for preservation.***
3. ***Mr. Masoud is granted the leave of this Court to file a fresh Claim within 40 days of this Order.***

Dated and delivered at Mombasa this 28th day of September, 2015

James Rika

Judge