



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
MISC. APPLICATION JR 21 OF 2014

JONATHAN KIPKURUI KOSKEI

PETER ELAINI EREGAE..... CLAIMANTS

VERSUS

NATIONAL POLICE SERVICE COMMISSION.....1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Applicants herein, Jonathan Kipkurui Koskei and Peter Elani Eregae filed application dated 13th August 2015 by way of Chamber Summons seeking for restraining orders stopping the respondents from dismissing them from employment or interfering with their employment in any other manner other than the court order on 1st December 2014 and that the court should interpret the order of 30th July 2015.

2. The application is supported by the annexed affidavit of Peter Elaini Eregae and on the grounds that on 1st December 2014 the court affirmed the ruling in petition No.6 of 2014 and JR 11 and 12 of 2014 and issued interim orders making the applicants officers of the 1st respondent available for vetting. On 30th July 2015 the court reaffirmed the orders of 1st December 2014 but the respondents without following due process posted in their website that they had dismissed the applicants. In this regard the respondents had misinterpreted the orders of the court. The applicants having been reinstated by the court could only be dismissed by the respondent on following due process that was to commence after 1st December 2014. That the applicants have never refused to go for vetting and are always available for the same and it is wrong for the respondent to remove them from service without following due process and the court should intervene to ensure the respondents respect court orders and rule of law.

3. In the affidavit of Peter Elaini Eregae he depones that his affidavit is made for the applicants herein and that on 1st December 2014 the court made orders directing the respondents to vet the applicants as directed in Petition No.6 of 2014 and JR 11 and 12 of 2014. On 30th July 2015 the court herein made a ruling and the respondents without due process posted on their website that they had dismissed the applicant. That there is need for the court to interpret its orders to avoid the respondents disobeying the same.

4. The applicant also avers that he was reinstated by the order of the court and can only be dismissed after due process after the order of 1st December 2014. They have never refused to go for vetting and are always available for vetting and it would be wrong for the respondent to remove them from service despite the court order of reinstatement. The termination has not been explained and the interpretation by

the respondents that the court ruling on 30th July 2015 was a termination is erroneous as this was not the case. that there are serious violations of fundamental rights of the applicants in view of their legitimate expectations and rights as enshrined in the Bill of Rights and will suffer great injustice and prejudice if the application herein is not allowed and he court orders herein interpreted.

5. In reply, the 1st respondent filed Grounds of Opposition on 2nd September 2015. Such grounds are that the application is frivolous and an abuse of the court process. The 2nd applicant has no locus standi to act for the 1st applicant and the court herein is functus officio and the orders sought have been overtaken by event as the 1st respondent has already written a letter of removal from service to the claimant on the basis of the judgement delivered by the court.

Submissions

6. In the oral submissions, the applicants state that in the court ruling on 30th July 2015, their employment was preserved following orders of 1st December 2014 where the applicants had been reinstated to be available for vetting. The respondent dismissed the applicant on 30th July 2015 but the effect of the judgement was not a dismissal but to allow vetting afresh. The applicants have locus standi and application has not been overtaken by events. The court is not functus officio and has the discretion to grant the application.

7. In response, the 1st respondent submitted that upon the high Court determination of the matter in Petition 6 of 2014 and JR 11 and 12 of 2014, the applicants herein were to make themselves available for vetting. There is no need to interpretation and if the applicants are not happy with the court judgement, they should proceed on appeal but not as herein. The 1st applicant has since retired from service and hence this application has been overtaken by events. If there are any issues that the applicant finds after judgement herein, he can only file a new suit.

Determination

8. The application herein relate to the interpretation of two decisions of the court, one delivered on 1st December 2014 and 30th July 2015. The applicants have approached the court through Chamber Summons and on the affidavit of the 2nd applicant for and on behalf of the two applicants.

9. In the ruling of 1st December 2014, the orders of the court were that;

- a. *The preliminary objections must therefore fail to the extent that the Claimants are to remain in the employ of the 1st respondents pending the hearing and determination of the matters herein unless otherwise lawfully terminated for a cause separate as herein;*
- b. *The Claimants as officers of the 1st respondents, where there are court orders directing the 1st Respondent to act with regard to their vetting, this must be complied with as by remaining in the employ of the 1st respondent, the Claimants are bound to obey lawful orders of such an employer;*
- c. *the Claimants are subject to orders made on 20th May 2014 vide ruling in Petition No. 6 of 2014 and the JR No. 11 and 12 of 2014 as consolidated; parties are to comply noting there are substantive issues for the court determination in this cause;*
- d. *Interim orders herein are extended to make the Claimants , officers of the 1st Respondent available for the vetting process; and*
- e. *Noting the interim orders herein, a hearing date will be allocated in 14 days.*

11. The essence of the above orders and direction of the court on 1st December 2014 was that the applicants were to remain in the employment of the 1st respondent so as to be available for vetting by the 1st respondent as had been directed earlier by the High Court in Petition No. 6 of 2014 and JR No. 11 and 12 of 2014 that that been consolidated. While in the employment of the 1st respondent, the applicants were to follow any lawful orders issued to them in particular so as to allow their vetting.

12. The orders and directions of the High Court in Petition No. 6 of 2014 and JR No. 11 and 12 of 2014 were made on 20th May 2014 and the suit herein was filed on 10th September 2014. Where there were changes to the employment status of the applicants so as to affect their reinstatement and or vetting, this should have been addressed during the submission that were made and before judgement that the court delivered on 30th July 2015.

13. What is crucial to note and based on the application for interpretation of the court orders herein is that from 1st December 2014 up to and until the judgement was delivered on 30th July 2015, the interim orders made had been extended effectively making it possible for the applicants to enjoy the orders made on 1st December 2014.

14. The reinstatement of the applicants was thus conditional. As of 1st December 2014, the applicants were to make themselves available for fresh vetting by the 1st respondent. The duty was then placed upon the applicants to *make themselves available for fresh vetting* and the 1st respondent was thus to ensure that this fresh vetting took place. In the current application through Chamber summons and the affidavit in support, I find no evidence of actions taken by the applicants in making themselves available for vetting for the period of 1st December 2014 to the date of judgement herein on 30th July 2015.

15. With regard to the orders made on 30th July 2015, the court after making an assessment of all the matters before the court held;

In conclusion, where the Applicants are aggrieved by the second vetting process, the vetting process as directed on 20th May 2014 by the High Court vide Judgement in Petition No. 6 of 2014 and the JR No. 11 and 12 of 2014 as consolidated and reaffirmed by this Court on 1st December 2014, a fresh suit may be filed in that regard. In this case, I find no case to grant the orders sought. The same is dismissed. Each party shall bear their own costs.

16. The effect of the final orders of the court on 30th July 2015 is that the reinstatement ordered and directed on 1st December 2014 and orders of 20th May 2014 by the High Court were sufficient to address the claims made by the applicants. Nothing was left for the court to address. Where the applicants had been directed to attend fresh vetting on 20th May 2014 and this court directed the reinstatement to ensure the applicants were available for vetting, nothing remained for arbitration by this court unless in the new and or fresh vetting process new issues arose.

17. The orders herein are clear and unambiguous to the extent that, the ultimate order in this matter is the dismissal of the suit by the applicants. Where the orders of 1st December 2014 were not complied with, which orders were frequently extended to the benefit of the applicants until 30th July 2015, the process that follows for non-compliance is clear but not as per the current Chamber Summons and orders made for interpretation of the court orders as herein?

The current application must fail in its prayers. Application dated 13th August 2015 is hereby dismissed. Each party shall bear their own costs.

Delivered, dated and signed in open Court at Nairobi this 21st Day of September 2015.

M. Mbaru

JUDGE

In the presence of:

Court Assistant.....

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