



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 10 OF 2012

BETWEEN

JOSEPH ASHIOYA & 165 OTHERS.....
.....CLAIMANTS

VERSUS

1. KENYA UNITED STEEL CO. LTD.....1ST
RESPONDENT

2. PRICE WATER HOUSE COOPERS.....2ND
RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ms. Mbogo Advocate instructed by Kituo Cha Sheria Advocates for the Claimants

Mr. Makokha Advocate, instructed by the Federation of Kenya Employers for the 1st Respondent

Mr. Njeru Advocate instructed by Kaplan & Stratton Advocates for the 2nd Respondent

RULING

1. On 5th November 2014, Ms. Mbogo for the Claimants, and Mr. Makokha for the 1st Respondent appeared before the Court. The 2nd Respondent was absent. They recorded a Consent Order. The Claimant’s Application dated 3rd July 2014 was allowed by Consent.

2. The effect was to bring back the 2nd Respondent into the proceedings. In its Ruling dated 26th July 2013, the Court had discharged the 2nd Respondent from the proceedings on the basis of improper joinder.

3. Aggrieved, the 2nd Respondent filed the Application dated 5th March 2015. It seeks to have the Consent Order recorded by the Claimants and the 1st Respondent set aside; the Claimants' Application dated 3rd July 2014 be re-heard with the participation of the 3 Parties; and the 2nd Respondent granted unconditional leave to reply to that Application.

4. Parties agreed to have the 2nd Respondent's Application considered and determined by the Court, on the strength of their Affidavits, Judicial Authorities and Submissions, on record.

The Court Finds:-

5. It is crystal clear the Consent Order between the Claimants and the 1st Respondent did not involve the 2nd Respondent. The result was to reinstate the Claim against the 2nd Respondent, without the participation of the 2nd Respondent, a Claim which had validly been dismissed by the Court.

6. The Claimants and the 1st Respondent had an obligation to bring all the facts before the Court, in registering their Consent of 5th November 2015. Instead, the impression created was that the FKE spoke for both Respondents.

7. The upshot is that the Court finds merit in the 2nd Respondent's Notice of Motion dated 5th March 2015. **IT IS ORDERED:-**

- a) The Consent Order recorded on 5th November 2015 is set aside.***
- b) The Claimant's Application dated 3rd July 2015 be heard afresh.***
- c) The 2nd Respondent is granted unconditional leave to respond to that Application.***
- d) Parties to fix a hearing date once they are ready.***
- e) Costs of the Application be paid to the 2nd Respondent by the Claimants and the 1st Respondent.***

Dated and delivered at Mombasa this 11th day of September, 2015

James Rika

Judge