



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 273 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 8th October, 2015)

LEONARD GETHOI KAMWETI CLAIMANT APPLICANT

VERSUS

NATIONAL BANK OF KENYA LIMITED1ST RESPONDENT

MUNIR SHEIKH AHMED2ND RESPONDENT

MOHAMED ABDIRAHMAN MOHAMED3RD RESPONDENT

RULING

1. The application before court is the one dated 19/6/2015. It is for review of this court's order of 7/5/2015. The Applicant avers that in the court's ruling of 7/5/2015, the court ordered that certain evidence be excluded from the amended plaint to be introduced as per the Injunction granted in HCCC No. 370/2014 now 1965/2014 on 20th January 2013.
2. The Applicant avers that the orders excluding certain evidence should be reviewed as there is indeed no Injunction given in HCCC No. 370/2014.
3. They aver that the said Injunction is non-existent on page 5 of a ruling of the High Court dated 24th October 2014.
4. The Applicant argue that the matter before the High Court was not fully resolved because the High Court appreciated that it had no jurisdiction to grant orders sought but transferred the matter to the Employment and Labour Relations Court, arguing that this court can grant presevatory orders and prohibitory orders as well as an award of compensation. The High Court did not strike out the main cause but directed the same to be handled by this court.
5. It is further the Applicant's position that the High Court advised the Applicant to seek presevatory orders from the Employment and Labour Relations Court having declined to give the said orders for lack of jurisdiction. That the Applicant in the High Court case has never since applied the advise given to seek the said prohibitory order before the Employment and Labour Relations Court
6. The Applicant now seeks this court's indulgence in reviewing the orders given in May 2015 to exclude the portion that excluded the Applicant herein from including certain evidence as per the purported

Injunction of the HCCC 370/14 which they submit is non-existent.

7. The Respondents opposed this application for review arguing that the Application before Judge Ougo was to set aside the Injunction and the ruling didn't do so. That Judge Ougo only transferred the matter to the Employment and Labour Relations Court. They argue that if the Applicant is dissatisfied with the ruling of Judge Ougo, the best option would be to review it before the same Judge.

8. In determining this application, I notice that the application before the High Court in case No. 370/13 as per the ruling of Hon. Justice Ougo, was that following an application by the Applicants who are the Respondents in the current application, the court granted a temporary Injunction restraining the Defendants from disseminating or revealing to unauthorized persons other than the Respondents Board of Directors certain information.

9. The orders were given on 16/3/2014. On 18/3/2014, the Defendant filed a Notice of Motion seeking to set aside the exparte proceedings of 27th November 2013 and the order was granted on 16/1/2014. At the hearing of the said Notice of Motion, Mr. Ojiambo argued the issue of jurisdiction. In delivering her verdict, Judge Ougo ordered that the application be handled by the Employment and Labour Relations Court and transferred the case to this court.

10. The question thus is whether the High Court gave an Injunction confirming the exparte orders of 16/3/2014 or left the matter to be handled by this court.

11. I have looked at ruling of my sister Judge Ougo again and she stated as follows:

“It is evident that the terms of contract will be an issue to be considered at the hearing of the main suit. The damages the Respondent seeks as a result of the alleged breach of confidence the Defendant was expected to kept at the time of his employment. It is therefore in order that this mater be heard by the Industrial Court. Under Section 12(3) of the Industrial Court Act, the said court can grant preservatory orders and prohibitory orders as well as an award of compensation. Though this court has been asked to strike out the suit is the interest of justice, I order that the suit be transferred to the Industrial Court for hearing and determination...”

12. My reading of this ruling shows that Judge Ougo distanced herself from delving into the merits or otherwise of the application and decided that the Industrial Court would be the best forum to do so. No orders were given or extended. It is therefore in my view an error for me to have assumed that Judge Ougo gave some Injunctive orders precluding the Applicant from revealing certain information. The assumption is an error which I have authority to correct.

13. I therefore review orders given in my ruling of 7/5/2015 and correct the ruling to strike a portion of paragraph 9 of my ruling stating ***“As there is opposition to inclusion of certain evidence as granted in High Court case No. 1655/2014, the same will not be introduced in the amendment”***.

Costs of the application will be in the course.

It is so ordered

Read in open Court this 8th day of October, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Applicant in person

Nduta for the Respondent