



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1488 OF 2010

RAHAB WOTHAYA ESIROMO & 7 OTHERS.....CLAIMANTS

VERSUS

BLUE SHIELD INSURANCE COMPANY LIMITED.....1ST RESPONDENT

SHIELD ASSURANCE COMPANY LIMITED.....2ND RESPONDENT

STATUTORY MANAGER BLUE SHIELD INS. CO. LTD

(UNDER STATUTORY MANAGEMENT).....3RD RESPONDENT

RULING

By a Notice of Motion dated 8th July 2013 and filed in court on the same day under Certificate of Urgency the Applicant who is the 2nd Respondent in the claim seeks the following orders;

1. **THAT** in the first instance the application be certified urgent and be heard *ex parte* in the 1st instance.
2. **THAT** there be stay of execution of the judgement herein pending the hearing and determination of this application or until further orders of the court.
3. **THAT** the Honourable court does review its judgement delivered on 29/4/2013 with respect to the 2nd respondent paying any balance due to the claimants.
4. Such other further orders as the court may deem fit to grant

The application is supported by the following grounds

- a) There are errors apparent on the face of the judgement delivered on 29/4/2013
- b) It is therefore necessary for the court to review and vary the judgement in order to remedy the errors.
- c) Such other further grounds to be adduced during the hearing.

The application was filed together with the supporting affidavit of **JULIUS ORENGE ADVOCATE** sworn on 8th July 2013.

The Claimants and the 3rd Respondent all filed replying affidavits in opposition to the application. When

parties appeared before me for hearing of the application it was agreed that the application be canvassed by way of written submissions.

In their submissions filed in court on 30th January 2014 the Applicant submits that the review is sought on account of an error apparent on the judgement delivered by me on 29th April 2013. That during the trial the Claimants confirmed that their only claim against the 2nd Respondent was in respect of pension, that in the judgement the court find that he claim against the 2nd Respondent had been overtaken by events as the claim for pension benefits had been met by Roberts Insurance Brokers and further that there shall be no orders for costs in respect of the 2nd Respondent. That in the final judgement the court ordered that the balance of decretal sum due to the claimants after set off by the amounts deposited in court be paid by the 1st and 2nd Respondent as part of the debt to be paid by the Statutory Manager, the 3rd Respondent in accordance with the law under which the Receiver Manager was appointed.

The 2nd Respondent argues that the direction by the court for recovery of the balance of decretal sum from the 2nd Respondent is an error apparent on the face of the record taking into account the courts finding that one claim against the 2nd Respondent had been met by Roberts Insurance Brokers. The 2nd Respondent seeks review of the orders binding them to pay the balance of the decretal sum jointly with the 1st Respondent. The 2nd Respondent further states that the claim against them having failed the court ought to award them costs.

The 2nd Respondent urged the court to review and set aside portion of the judgement requiring the 2nd Respondent to pay the balance and that costs be awarded to the 2nd Respondent against the Claimants.

The Claimants in their submissions state that the 2nd Respondent had misinterpreted the judgement; that there was a partial consent judgement on 30th June 2011 which provided in costs. That the issue of pensions was rightfully before the court and it was only after filing of the claims by the Claimants that the Retirement Benefits Authority appointed Roberts Insurance Brokers to deal with the Pensions, that the 2nd Respondent was hived off the 1st Respondent to deal with pensions due to a change in the law and the directors of the 1st and 2nd Respondents are the same. That the Respondent had by an application dated 1st December 2011 applied to be removed from the proceedings but the application was not allowed, and Justice E.K. Mukunya (Rtd) then handling the matter directed that the issue be dealt with in the proceeding. That there are no errors on ambiguity in the judgement, that there is inordinate delay by the applicant in filing the application for review, judgement having been delivered on 29th April 2013 and that the application is intended to resist execution through the back door. The Claimants further submitted that the application is fatally defective in failure to comply with the procedure set out in Rule 32 of the Industrial Court (Procedure) Rules.

The Claimants prayed that the application be dismissed with costs.

The 3rd Respondent also opposed the application by the 2nd Respondent on the grounds that there is a valid binding and enforceable agreement dated 30th June 2011 where the 2nd Respondent agreed to settle part of the claim, the courts order at page 10 of the judgement to the effect that the claim on pensions had been overtaken by events and that there was no order in costs related early to the pension claim, that the 2nd Respondent was properly enjoined to the proceedings, that the 2nd Respondent executed the consent.

The 3rd Respondent however agreed with the 2nd Respondent prayer for correcting the judgement to the effect that the statutory manager is not a receiver manager. I have considered the application and one grounds in support thereof, the supporting affidavit and the replying affidavits. I have also considered the written submissions and the authorities cited in the claimant's submissions.

According to the notice of motion the 2nd Respondent prays in review of the judgement with respect of the 2nd Respondent paying any balance due to the Claimants on the grounds that there are errors apparent on the face of the judgement delivered on 29th April 2013 and that it is necessary for the court to review the judgement to remedy the errors.

As submitted by the Claimants and the 3rd Respondent, there was already a consent judgement signed by

the Claimants and the 1st and 2nd Respondents where it was already agreed that costs would be agreed on taxed.

The issues I was to determine are set out at page 10 of the judgement. I only absolved the 2nd Respondent from payment of costs in respect of pension benefits which responsibility had been met by Roberts Insurance Brokers on intervention of the Respondent Benefits Authority. Having been a party to the Claim and having been properly jointed at the time of commencement of the claim, further having applied and failed to be released from the case the 2nd Respondent to pay Claimant’s costs. The prayer by the 2nd Respondent to be paid costs by the Claimants can therefor bot be valid as the Claimants succeeded in their claim, including the claim in payment of pension, through it was resolved earlier that the rest of the Claims.

In any event, the judgement does not say that the 2nd Respondent will pay the outstanding debt. The judgement states, **“Any balance is to be recovered from the 1st and 2nd Respondents as part of the debt to be paid by the 3rd Respondent in accordance with the law under which the receiver Manager has been appointed.”**

The only part that I note is an error is the reference to the law under which the statutory Manager is appointed which I inadvertently referred to as the law under which the Receiver Manager is appointed.

I therefore reward and amend only the last sentence of the judgement by replacing the word ‘Receiver’ with the word ‘Statutory’.

The sentence is thus amended to read

“Any balance is to be recovered from the 1st and 2nd Respondents as part of the debt to be paid by the Statutory Manager, the 3rd Respondent herein in accordance with the law under which the statutory Manager has been appointed.’

The rest of the 2nd Respondent’s application for review is dismissed.

Orders accordingly

DATED DELIVERED AND SIGNED IN OPEN COURT ON 19TH MARCH 2014.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

.....Claimant

.....Respondent