



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 1327 OF 2012

GILBERT ATEI ONSOMU.....CLAIMANT

VERSUS

PARLIAMENTARY SERVICE COMMISSION.....1ST RESPONDENT

HON. JAMES ONDICHO GESAMI.....2ND RESPONDENT

RULING

The 1st Respondent herein, the Parliamentary Service Commission filed a Notice of Motion dated 14th September 2012 and filed in Court on 18th September 2012 seeking the following orders:-

1. That the name of the **PARLIAMENTARY SERVICE COMMISSION**, the 1st Respondent be struck out from this Claim for having been improperly joined.
2. That in the alternative, the entire claim herein dated 30th July, 2012 together with all the subsequent pleadings by the Claimant be struck out for having no reasonable cause of action.
3. That the Claimant pays the 1st Respondent costs of this application and of the Claim.

The application is supported by the grounds on the face of the application and the supporting affidavit of Agnes Kamoni sworn on 14th September 2012.

The application is brought under Rules 16 and 27 of the Industrial Court (Procedure) Rules 2011 and Section 3 and 12 of the Labour Institutions Act 2007 and all other enabling provisions of the law.

There is no copy of the Replying affidavits of either the 2nd Respondent or the Claimant on record.

The parties were on 10th February allowed to dispense with the application by way of written submissions upon their request. The 2nd Respondent filed written submissions on 12th March 2014, the Claimant on 13th March 2014 and the 1st Respondent on 24th March 2014. The 1st Respondent's written submissions were in two sets, the first being the written submissions dated 7th October 2013 and the second dated 21st March 2014 being further submissions in response to the Claimant's and 2nd Respondent's submissions .

I have read the Claimant's Memorandum of Claim and the replies by both Respondents. According to the claim, the Claimant was employed as a Constituency manager for West Mugirango Constituency. In the employment contract, the Constituency is specified as the employer and the 2nd Claimant as the witness of the employer. The terms of employment are in a standard form contract drawn pursuant to the provisions of the **Parliamentary Service (Constituency Officers) Regulations 2005**. The Regulations set out the terms of Service of Constituency Staff and the process of their recruitment through the Member of Parliament. The funds for the salaries and other benefits as well as for running the constituency office are provided by the Clerk of the National Assembly.

The prayers in the Claim are for orders against the Respondent, not the 1st Respondent or the Second Respondent alone. Should the claim succeed, it is the 1st Respondent who will be liable to satisfy the decree as the employer in the contract of employment.

From the foregoing I find no merit in the application and dismiss the same with costs.

Orders accordingly.

Dated and delivered at Nairobi this 16th day of June 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Ms. Mogire for Claimant

No appearance for Respondents