



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

**CAUSE NO. 50/2014**

**(BEFORE HON. LADY JUSTICE HELLEN WASILWA ON 26.11.2014)**

**KENYA COUNTY GOVERNMENT**

**WORKERS UNION ..... APPLICANTS**

**VERSUS**

**KISUMU COUNTY ASSEMBLY**

**PUBLIC SERVICE BOARD ..... RESPONDENTS**

**RULING**

The application before court is the one dated 23.6.2014. The application was filed by the applicants herein seeking orders for review of this court's ruling and order issued on 30th April 2014. The application is brought under S. 16 of the Industrial Court Act, Act No. 20 of 2011 and rule 32 of the Industrial Court Rules.

The application is premised on the grounds that there is discovery of new and important matter and evidence which the applicant was not able to adduce and bring to the court before the said orders were issued which is to the effect that:-

- a. **The rationalization exercise referred to by the Transition Authority in the press release dated 24.12.2013 is a national exercise yet to be carried out and the applicant does not have control over the same at all.**
- b. **Applicant had carried out a staff audit and or staff rationalization and deployment among those persons who were seconded to Kisumu County Assembly by the Kisumu County Government long before she, the applicant, was constituted and therefore established on 16th August 2013.**
- c. **It has been determined, following the said staff rationalization that the interested parties, currently deployed by the Kisumu County Government to Kisumu County Assembly, on whose behalf the respondents acts, do not have the professional qualification, papers and competence to fill the advertised positions and vacancies.**
- d. **The applicant advertised only the positions as were necessary to be filled up so as not to discriminate and to accord equal treatment to all those who qualify to be appointed to positions in the office of Kisumu County Assembly Service Board and must not be faulted and that had she acceded to the claimant and the interested parties demands, it would have violated this hallowed governance principle and legal provision.**
- e. **The recruitment exercise which the claimant and the interested parties now faults and which the court has stopped by orders issued in these proceedings is necessary so as to develop**

**human resource capacity at the County Assembly which is prerequisite to service delivery and performance of statutory and constitutional mandate and is thus absolutely necessary and should be allowed to go on so that Kisumu County Assembly can be able to deliver services to the people.**

- f. The applicant had engaged pursuant to a competitive process the services of Human Resource consultants, a firm known as Visionary Leadership and Management Consultants at a considerable expenses and stopping the entire process as has been done courtesy of the orders herein will subject the applicant to unnecessary expenses and penalties and will lead to a waste of public resources.**
- g. Such secondment determines upon release from the County Government to the National Government and it's the applicant's case that it shall follow the prescribed law and release back to the Kisumu County Government such staff on secondment as she shall no longer require upon recruitment of her own staff with relevant capacities.**
- h. The proceedings were commenced and sustained against a wrong entity and the orders issued were directed against the wrong person.**
- i. The staff rationalization exercise at the Kisumu County Assembly had been undertaken and those found competent, qualified and suitable to continue serving and/or working had been shortlisted and are due to be substantively absorbed at the County Assembly.**

The applicants also submitted that sufficient grounds exist to warrant a review of this court's orders in that the orders sought to be reviewed were issued on insufficient grounds without full material disclosure on the part of the claimant and the interested parties of the fact that the claimants membership and the interested parties are employees of Kisumu County Government and by extension, the PSC and were only on deployment to Kisumu County Assembly for the duration of the transition. It is their position that the respondents are employees of the Kisumu County Government created under Article 176 of the Constitution of Kenya 2010 and that the applicant is a body independent and distinct from the County Government and has a duty and a right to hire competent and qualified staff which it is presently lacking as an institution.

The applicants further submitted that there is no proof that the interested parties risked losing their jobs as has been alleged or at all in the application. The applicants also aver that there is an error apparent on the face of the record in that the court ordered for costs and apparently issued final orders without hearing the entire suit.

The applicants therefore seek that this court reviews it's orders by setting aside and/or vacating the orders of injunction issued in this case on 30th April 2014 and allow the applicant to recruit competent staff as is necessary and relevant to do so that it can delve on it's constitutional and statutory mandate.

The respondents opposed this application and filed their submissions in opposition thereof. They submitted that the manner in which the grounds of review are framed is reminiscent to grounds of appeal attacking the court's ruling without demonstrating that new and proper evidence has been discovered and/or that there is an error apparent on the face of the record that would warrant a review. It is their further submission that the applicants while on one hand stating that staff rationalization is a nationwide exercise yet to be carried out and they have no control of it, also state they did their own staff audit and rationalization yet were constituted on 16.8.2013 when the audit was conducted before they were constituted. On issue of the differences between the County Government and County Assembly Service Board, this was discussed by the court in it's ruling at pg 9 to 11 and so the court should not revisit the same.

Having considered submissions of both parties, this court refers to Rule 32 of the Industrial Court (Procedure Rules) 2010 which states as follows:-

**“A person who is aggrieved by a decree or an order of the court may apply for review of the award, judgment or ruling;**

- a. If there is discovery of new and important mater or evidence which after the exercise of due**

- diligence was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made or**
- b. On account of some mistake or error apparent on the face of the record or**
  - c. On account of the award, judgment or ruling being in breach of any written law or**
  - d. If the award, judgment or ruling requires clarification or**
  - e. For any other sufficient reasons.”**

S. 16 of the Industrial Court Act also grants court power to review its own judgment, award or decrees.

From the submission of the applicants, the apparent new evidence is the fact that the rationalization did take place before the applicants were constituted. What then is expected in court is the staff rationalization report. No such staff audit and rationalization report has been placed before court as new evidence.

On issue of the reason that there are sufficient grounds to warrant review being that the court erred by considering the applicants as part and parcel of the County Government, this court discussed this aspect at length in its ruling at pages 9 to 11. To go back and undo it is to sit on appeal at my own ruling which is not the purpose of review.

I notice there is an error on record where the court decided that the applicants will be condemned to pay costs of the suit. I review that bit and now indicate that respondents shall pay costs of the application.

It is the finding of this court that there is no new evidence placed before court to warrant any review. I also find that the ruling of the court on 30.4.2014 does not finalize the main cause as the court ordered that there should be recruitment before staff rationalization. The orders were also clear on what the applicants are expected to do before recruitment of new staff. There is therefore nothing else to review.

**HELLEN S. WASILWA**

**JUDGE**

**26.11.2014**

**Appearances:-**

Omboto h/b Okongo Advocates for applicants

M.M Omondi Advocate for respondents present

CC. Wamache Sammy