



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 146 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 3rd December, 2014)

JORAM SIRE MALIT & 199 OTHERS CLAIMANTS

-VERSUS-

1. MUNICIPAL COUNCIL OF KISUMU
2. KISUMU WATER & SEWERAGE CO. LTD..... RESPONDENTS

R U L I N G

The matter is for directions. The claimants filed their claim on 13.3.2009 at the High Court in Kisumu as High Court Civil Case No. 23/2009. The matter was heard by several judges but on 12.6.2014, **Hon. Chemitei J** directed the matter be transferred to the Industrial Court Kisumu.

When the case was mentioned before me for directions on 30.7.2014 I noted the matter involves 200 plaintiffs and it would be practically taxing and time consuming to expect each of the 200 claimants to appear and testify before court. I therefore directed the parties to file submissions and bring out contentious issues that they would like the court to determine. It appears however counsel proceeded to submit on the whole suit without narrowing down issues to be determined which would lead to the expeditious determination of this suit.

As submitted by the claimants, several issues need to be determined including payment of termination benefits, refunds of NSSF contributions deducted but not remitted to the Fund, uniform, protective clothing and detergents allowance that was to be paid to the employees, NHIF deductions deducted but not remitted, leave days not utilized, leave allowance not paid, promotions adjustment and salary arrears and CBA house allowance, long service awards, overtime worked which was unpaid, medical claims refunds, proficiency driving bonus, superannuation fund, laptrust pension calculations formula, duty and heavy work bonuses, life expectancy, wrongful conversion of CBA and issuance of certificates of service.

From the respondents submission, several of the plaintiffs are now deceased – now amounting to 24. The respondents submitted that the issue of the 24 deceased plaintiffs needs to be ironed out. The respondents also want a determination made on whether plaintiffs were retired and if so whether the retirement was discriminatory, unlawful, null and void. They also bring out the fact that part of the claim is statutory time barred. Another pertinent issue is whether the claim is tenable as against both defendants jointly and severally.

The issue of capacity of 1st defendant in light of the establishment of the County Government of Kisumu is also key. Other issues the defendants want resolved are whether there is sufficient evidence to support each of the claimant's claims, who is entitled to what and for when, and who should pay costs of

the suit.

From the issues listed the court would list the following as key issues to be determined at the onset:-

1. **Whether the claim is time barred.**
2. **The respondents capacities in this claim in view of the establishment of the County Government or whether there is need to amend the claim.**
3. **Whether the suit should proceed without amendment of pleadings in view of the 24 deceased plaintiffs.**
4. **Whether the plaintiffs retired or were dismissed.**

The claim as it stands can proceed after determining the above 4 issues. After this then the parties would have to submit before a conciliation process if need be.

It is therefore the direction of this court that the parties would on an appropriate date make submissions before court on the 4 issues listed for determination before court. The court will make an appropriate ruling and give further directions in relation to the other issues particularized by the claimants in the submissions filed before court.

HELLEN S. WASILWA

JUDGE

3/12/2014

Appearances:-

Omondi h/b Ngala for claimant

Mrs. Asunah for respondents

CC. Wamache