



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

CAUSE NO. 740 OF 2011

ELYNAH WANYIKA SIFUNA..... CLAIMANT

VERSUS

KENYA BROADCASTING CORPORATIONS..... RESPONDENT

RULING

There are two applications before me. The first is the Respondents application for review of the court award dated 4th November 2011. The second is the Claimants application dated 31st January 2012 seeking orders of leave to commence contempt proceedings against the Managing Director and Acting Human Resource Manager of the Respondent for failing to comply with the court award.

The case was heard and award delivered on 19th October 2011 by Justice Paul K. Kosgei(now retired). The award was as follows;

1. That the Claimant's suspension is hereby declared to be unlawful, illegal and hence null and void.
2. That the suspension of the Claimant from her position of Head of sports at the Respondent's establishment is hereby set aside.
3. That the Claimant be reinstated to her position as Head of Sports without loss of any benefits including continuity of service within ten (10) days from the date of this award.
4. That the Claimant be paid full salary and allowances which accrued during the period of suspension.
5. That we make no orders as to costs.

It is this award that the Respondent has applied to be reviewed.

The applications were placed before Justice Abuodha who after reviewing the file was of opinion that the substratum of the two applications had been significantly compromised, the Claimant having been reinstated to her employment and that the only issue which the parties needed disposal of is monies deposited in court by the Respondent.

The parties had earlier by consent agreed to canvas the two applications by way of written submissions which were duly filed and are on record.

After the transfer of Justice Abuodha to the Industrial Court at Nyeri the file was placed before me for directions. When the parties appeared before me on 30th July 2013 Mr. Mureithi informed me that the Respondent wished to pursue the application for review dated 4th November 2011. Mr. Nyabena on the other hand submitted that the application had been overtaken by events and urged the court to release the money deposited in court to the Claimant. He further submitted that if the court adopts the position

expressed by Justice Abuodah he would withdraw his application.

I have considered the applications by the parties and their oral and written submission. I note that Mr. Nyabena has indicated to the court that he is willing to withdraw his application for contempt if the court adopts the position of Justice Abuodha. I have however looked at the pleadings in respect of the application and find that the Respondent substantially complied with the court order and that whatever shortcoming there was in the compliance can be remedied by further orders on the application of the Claimant. I find that the Claimant has not satisfied the court that she warrants the orders in her application and dismiss the same with no orders for costs.

On the application filed by the Respondent for review of the award, I have considered the grounds of the application and the orders sought. I note that the review application does not contain any prayers. It only sets out the grounds for review. A party seeking to review a decision of the court must ask the court what orders it is seeking to be granted by the court. Review is not an end in itself but the process of arriving at a particular end. It is a vehicle and the applicant must inform the court what destination it seeks the court to take him. Without prayers the application is a nonstarter.

The foregoing notwithstanding, I also find that the application does not meet the conditions for review as set out in rule 32 (1) of the Industrial Court (Procedure) Rules. The error alleged to be on the face of the record is not in the award but in the procedure. The grounds set out in the application would support an application for setting aside or appeal but not a review.

I further note that the orders of the court were of a mandatory nature requiring the Claimant to be reinstated back to work. Having been re-instated it is not possible to return the parties to their positions before the order was granted as the court cannot order the Respondent back on suspension 2 years after being reinstated back to work.

For the foregoing reasons I dismiss the application with no orders for costs.

Read in open Court this 31st day of October 2013

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Nyabena _____ for Claimant

Kinyua Mureithi _____ for Respondent