

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1284 OF 2013

JAMES MBARAWA DUDAH.....1ST CLAIMANT

PETERSON MUTUNGA MUSILI.....2ND CLAIMANT

ELIZABETH NYABOKE.....3RD CLAIMANT

DORCAS WANGUI KIMEU.....4TH CLAIMANT

VERSUS

HON. ATTORNEY GENERAL.....1ST RESPONDENT

PS MINISTRY OF HEALTH.....2ND RESPONDENT

NASCOP.....3RD RESPONDENT

RULING

1. The Application before me is one dated 3rd October 2013 and seeks the reinstatement of the Application that was dismissed for non-attendance of Counsel for the Claimants on 1st October 2013. The Notice of Motion Application is supported by the Affidavit of Mr. Ben Munyasia.
2. The Application was opposed by the Respondents. When it came up for inter-partes hearing on 7th November 2013, Mr. Mose urged the Application for the Claimant/Applicants. He submitted that the Claimant's counsel with outmost diligence tried his level best to be in Court for the hearing of the previous Application dated 13th August 2013 and unfortunately was held up in traffic and never made it to Court in time and only arrived after the said Application had been dismissed. He stated that the advocate had been present at all times to prosecute the Application but that unfortunately due to the hectic traffic occasioned by the National Prayers held at KICC he arrived in Court late. He submitted that the matter involves the livelihoods of a huge number of Claimants and thus it was unfair to let the Applicants to suffer for the mistakes of their counsel. He stated that in the interests of justice the Respondent be estopped from terminating the employment of the over 200 data Clerks. He thus sought the Application dated 13th August 2013 be reinstated.
3. Miss Kungu for the Respondents was opposed and relied on the Grounds of Opposition dated 18th October 2013 and filed on 25th October 2013. She submitted that after the dismissal of the Application, the statutory dues of the Claimants were paid. She stated that the orders being sought in Application of 3rd October 2013 have been overtaken by events. Regarding the submission that counsel was delayed by traffic, she submitted that the law firm is based on Koinange Street while the AG's representative is based at Harambee Avenue closer to the venue of the prayers and yet the representative of the Respondent's made it to Court on time. She submitted that parties are guided by the Cause list posted online the day before. On that note, she stated that Counsel should be in Court on time and that the reason of being held up in traffic does not hold water. She thus sought dismissal of the present Application and that since the suit is still pending the Claimants would not suffer any prejudice.

4. In reprise Mr. Mose agreed that the Claimants would not be opposed with proceeding with the main suit as indicated by the Respondents.

5. The Claimant's present Application seeks to reinstate the Application dated 13th August 2013 which I dismissed for non-attendance. The Application of 13th August sought various orders among them order seeking the restraint of the Respondents from terminating the Claimant's employment. The 2nd Claimant swore the Affidavit in support of the Application. In the Affidavit, the deponent attached letters dated 23rd April 2013. The letters terminated the employment of the Claimants effective 14th September 2013. When the Application dated 13th August 2013 was dismissed on 1st October 2013, the result was that the terminations took effect. The failure to attend Court was fatal to the Claimant's Application. Diligence of counsel is not something to be taken lightly. As correctly pointed out, the offices of the Advocates for the Claimants were nearer to the Court yet the State Counsel who was situated further from the Court made it on time. I am not persuaded that grounds exist for the exercise of discretion in favour of the Claimants. I therefore dismiss the Application with costs.

Orders accordingly.

Dated and delivered at Nairobi this 3rd day of December 2013

Nzioki wa Makau

JUDGE