



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 258N of 2009

CLAIMANT

James Kinyua & 17 others

RESPONDENT

Dr. Hasmukh K. Rawal

Dr. Virendra K. Rawal

t/a Universal Group of Colleges

RULING

1. Mr. Masese, holding brief for Mr. Mbabu for the Respondent appeared before me on 24 September 2012 in response to a letter from the Registrar of this Court dated 10 September 2012 asking the parties to appear in Court for directions.
2. Mr. Masese informed me that parties had filed submissions and the Court should proceed to deliver an award.
3. Because the Claimants' representative was not in Court, I directed the Respondent to serve him with a mention notice to appear in Court on 3 October 2012.
4. On 3 October 2012 Mr. Kamau appeared for the Claimant while Mr. Wanga held brief for Mr. Mbabu for the Respondent. Mr. Kamau informed me that the Court could proceed and prepare an award. Mr. Wanga concurred with Mr. Kamau.
5. The proceedings had been taken by Justice Chemmutut who has since ceased being a Judge of the Industrial Court hence the reason why the matter was being mentioned before me for directions on how to proceed-de novo or from where Justice Chemmutut had reached. I informed the parties that I would pronounce an award on 2 November 2012.
6. When I retreated to prepare the award, it dawned on me that the parties had not been forthcoming with information relating to this Cause.
7. I say so because I established from the record that an award was pronounced by Justice Chemmutut on 17 September 2009. And both parties were aware of this position but did not consider it appropriate to inform me.
8. Having established the correct position I endeavoured to establish exactly what award the parties had concurred would be prepared and pronounced by me. It is then that I found out that T. K. Kariba Mbabu & Co. Advocates had on 4 October 2010 filed an application to stay the execution of the award pronounced on 17 September 2009 and further that the award be set aside.

9. After several appearances before court, Justice Chemmutut heard the application for stay of execution and informed the parties on 4 October 2011 that a ruling would be delivered on Notice. That was never to be due to reasons which are in the public domain.

10. Ngata Kamau & Co. Advocates on the other had filed a Notice of Motion application on 9 June 2011 seeking costs for the claimants'. It appears this application has not been heard to date.

11. This file had been assigned to me on the basis that Justice Chemmutut had taken proceedings and ceased to hold office before pronouncing an award. That position appears to have been mistaken because he had pronounced the award way back in 2009.

12. What is pending is a ruling on the Respondents' application dated 4 October 2010 seeking stay of execution and setting aside and the Claimants' application dated 8 June 2011 seeking costs.

13. Bearing in mind that I have been transferred to another station and I should be winding up here in Nairobi, it is appropriate for me to direct that the parties do appear before the Principal Judge on a mutually convenient date for the Principal Judge to assign another Judge who can hear the parties and give directions on how the pending ruling and application can be disposed off.

Dated and delivered in open Court at Nairobi this 2nd day of November 2012.