



**REPUBLIC OF KENYA**

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

**(Before: Hon. Justice Paul K. Kosgei)**

**CAUSE NO. 752 OF 2010**

**JOSEPH KAHUKO MWANGI & 183 OTHERS.....CLAIMANT**

**Vs**

**KENYA SHELL LTD.....RESPONDENT**

**Dr. Kenneth Kiplagat of M/s Okoth & Kiplagat Advocates for the claimants**

**Mr. Kiragu Kinai of M/s Hamilton Harrison & Mathews Advocates for the respondents**

**AWARD**

On 30<sup>th</sup> June 2010 the claimant filed the memorandum of claim herein seeking the following prayers:

- a. A declaration that the intended sale of the respondent's business in Kenya amounts to a material change in relationship between the claimants and respondent and the intended sale is in effect a transfer of business from the respondent to a third party requiring the consent and/or acquiescence of the claimants.
- b. A declaration that the purported and/or intended sale amounts in law to a wrongful dismissal and unfair termination and illegal dismissal of the claimants by the respondent.
- c. A declaration that the claimants are entitled to make an election as to whether to transition to the new buyer of the respondent's business or to opt out of their employment contracts.
- d. A declaration that the intended sale of the respondent's business in Kenya has the effect of declaring the claimants redundant entitling the claimants to the full rights and privileges of statutory, common law and equitable compensation and damages.
- e. An injunction restraining the respondent by itself, its servants, employees, agents, assigns and/or any other person howsoever:
  1. from selling, transferring, disposing or otherwise its assets, shares or control in Kenya Shell Limited to any third party before the respondent has first:
    - i. sought and received the express written consent, on terms, of all the claimants agreeing to transition, on terms, to the respondent's business under new owners; or

- ii. formerly declared all the claimants herein redundant and paid to the claimants all their redundancy benefits and claims.
  
2. from applying for any change of ownership in its shares in Kenya Shell Limited or in any manner altering its ownership status with the Registrar of Companies pending the full and faithful satisfaction of the conditions in (d)(1)(i) and (ii) above.
3. from applying or seeking the consent of any statutory authority required to sanction any change of shares or ownership in the respondent company pending the full and faithful satisfaction of the conditions in (d)(1)(i) and (ii) above.
4. from continuing to conduct business in Kenya under any other name, form or arrangement other than the name, form or arrangement under the Royal Dutch Shell PLC headquartered at The Hague.
  
- f. Damages for wrongful dismissal and unfair termination.
- g. Interest on (f) above at court rates from the time of filing suit until payment in full.
- h. Cost of this suit.
- i. Any other or further relief that this court may deem fit to grant.

The respondent filed a memorandum of reply on 12<sup>th</sup> July 2010.

The court thereafter dealt with various interlocutory applications which were determined by this court and the High Court. Ultimately on

10<sup>th</sup> July 2012 the parties filed a consent letter providing for the settlement of this matter as follows:

*“We would be grateful if you recorded the following order by consent of the parties:*

1. *The matter be and is hereby marked as settled.*
2. *Each party bears its own costs.*
3. *The claimants confirm they have no claims whatsoever against the respondent, its officers*

*or shareholders.*

4. *The orders of 30<sup>th</sup> June 2010 and 10<sup>th</sup> October 2011 be and are hereby set aside.”*

I find the foregoing terms of settlement reasonable and I accordingly

AWARD and ORDER as follows:

1. **THAT** the matter be and is hereby marked as settled.
2. **THAT** each party bears its own costs.
3. **THAT** the claimants have no claims whatsoever against the respondent, its officers or shareholders.
4. **THAT** the orders of 30<sup>th</sup> June 2010 and 10<sup>th</sup> October 2011 are hereby set aside.

**Dated and Delivered** at Nairobi this 6<sup>th</sup> day of July 2012

**Paul K. Kosgei**

## **JUDGE**



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