



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2263 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 20th December, 2016)

TABITHA NJAMBI CHIGUA & 12 OTHERS CLAIMANT/APPLICANT

VERSUS

COUNTY GOVERNMENT OF KIAMBU..... RESPONDENT

RULING

1. The Notice of Preliminary Objection before Court is dated 18th January, 2016, wherein the Respondent raised the following:

- 1. That the Respondent is established under Article 176 (1) of the Constitution of Kenya 2010.***
- 2. That this cause seeks for a declaration that the Claimants employment with the Respondent is of permanent nature by virtue of section 37 of the Employment act, 2007.***
- 3. That the declaration having been made, the Claimants are seeking payment of leave allowances and other emoluments.***
- 4. That the Respondent does not have legal mandate and or capacity to employ the Claimants or any other employees on a permanent basis, with leave allowances and other benefits.***
- 5. That under the provisions of part vii of the County Governments Act, 2012, the mandate of appointment of persons to hold office or confirming appointments is vested to the County Public Service Board which is a body corporate with perpetual succession and a seal and with the power to sue and be sued in its own corporate name.***
- 6. That the Claimants have sued the wrong party in this cause as the remedies they are seeking cannot lie against the Respondent.***
- 7. The Claimants' cause is to that extent incompetent, bad in law, fatally defective and otherwise an abuse of the Court.***

2. The Claimants in response to the Preliminary Objection have filed submissions wherein they state that

the same is misconceived as it is not based on any particular law and cannot be sustained in the first instance as it has no force of law and therefore null and void.

3. They state that the suit is a dispute between the Claimants as former employees against the Respondent in its capacity as the employer. They rely on the interpretation of employer as contained in the Employment Act 2007, which provides:

“employer” means any person public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manger or factor of such person, public body, firm, corporation or company”.

4. It is their submission that the objectives under Section 55 and 56 of the County Governments Act do not override Article 235 of the Constitution which is to the effect that it is the mandate of the County Governments to appoint persons to hold or act in those offices and confirm appointments.

5. They further state that upon transition of City County Councils to County Governments, the County Governments assumed all obligations of the city council which included the Claimants who had been employees of the Respondent. That the manner in which they were to remain at work in the Claimants' view was entirely in the control of the County Government since all benefits and liabilities of the defunct local authorities were vested therein. Moreover, they hold the view that the evaluation exercise initiated by the Respondent formed conclusions that excess workers would be laid off, others would be retained, reposted and if need be rehire new staff for the additional duties.

6. The Claimants submit that County Governments are autonomous and as a result they could engage staff on mutually agreed terms such as on temporary and short term basis. The Claimants submit that they were employees of the Ruiru Municipal Council having worked for more than six months as casuals and as such were automatically absorbed by the Respondent in the advent of the new constitution.

7. The Claimants state that the Preliminary objection should fail and urge the Court to issue a date for the hearing of the main suit.

8. The Respondent in response to the submissions by the Claimants state that Article 235 of the Constitution is to the effect that staffing of County Government shall be conducted by a body to be established by an Act of Parliament which in this case is section 56 of the County Government Act. Under the said Section the County Public Service Board of Kiambu is the body mandated to employ staff.

9. The Respondent prays for their preliminary objection to be upheld.

10. The Claimants herein have averred that they were employed on casual basis by the Municipal Council of Ruiru and this was sometimes in 2012 to 2014 as per the muster rolls filed in Court. They however aver that when Respondents took over the running of the counties, they failed to absorb them in the County Government hence the claim they have now filed.

11. The Respondents Preliminary Objection is to the effect that the Respondents do not have power to employ the Claimants as the body responsible is the County Public Service Board (CPSB).

12. Under Section 56 of the County Government Act 2012, the County Public Service is established under Section 57:-

“There is established a County Public Service Board in each County which shall be:-

a) A body corporate with perpetual succession and a seal and

b) Capable of suing and being sued in its corporate name”.

13. Under Section 59 functions of the County Public Service Board (CPSB) are enumerated and there include:-

a) “Establish and abolish offices in the County Public Service.

b) Appoint person to hold or act in offices of the County Public Service including in the Boards of cities and urban areas within the County and to confirm appointments-----“.

14. From my reading of the above provision of the law, it is indeed the County Public Service Board (CPSB) which has the mandate to hire the Claimants or act as prayed by the Claimants.

15. The Claimants have obviously sued the wrong party and I therefore find that the Preliminary Objection has merit and I allow it and dismiss the Claimants case against the Respondents with costs.

Read in open Court this 20th day of December, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Nyabena for Claimant – Present

Respondent – Absent



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