

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
(Coram: Maraga, CJ & P; Ojwang, Wanjala, Njoki & Lenaola, SC.JJ)
CIVIL APPLICATION NO. 18 OF 2016

– BETWEEN –

KENFREIGHT (E.A.) LIMITED..... APPLICANT

– AND –

BENSON K. NGUTI..... RESPONDENT

RULING OF THE COURT

[1] UPON reading the motion for review of the Court of Appeal’s decision of 14 April 2016 dismissing the applicant’s prayer for leave to bring an appeal before the Supreme Court, together with the accompanying affidavit of Mr. B.O. Ogajas;

[2] UPON taking note that the respondent had, on 12 June 2013 filed Cause No. 146 of 2013 in the Employment and Labour Relations Court claiming unfair employment-termination, and seeking a declaration of nullity of the same, asking for reinstatement, and also claiming salary payment for the period of termination;

[3] UPON taking note that the respondent’s claim was upheld, and again sustained by the Appellate Court in Civil Appeal No. 31 of 2015 on 11 March 2016;

[4] UPON noting that the Court of Appeal held the said termination of employment to have been unfair, even though the applicant did comply with s.35 of the Employment Act, 2007 by paying one month’s salary in lieu of notice, and that the

respondent was instead entitled to 12 months' salary, by virtue of Sections 43, 45 and 49 of the said Act; and

[5] UPON taking note that the applicant sought leave and certification to lodge an appeal in the Supreme Court, but the application was declined on the ground that no matter of general public importance warranting further appeal had been shown;

[6] THE COURT has considered the question at the core of the application, namely, that the Appellate Court's decision was not guided by the reasoning and determination in that Court's earlier decision in *CMC Aviation Ltd. v. Mohammed Noor*, Nairobi Civil Appeal No. 199 of 2013.

[7] IT is clear to this Court that the particulars of inconsistency between the Appellate Court's decisions in the two cases would only be fully evinced upon a hearing of the intended appeal.

[8] CONSIDERING that the prospect of inconsistent determinations in relation to the law of employment would affect the process of application of the law, and would have a bearing on the interests of members of the public, we find this matter to fall within the terms of Article 163(5) of the Constitution.

| | ORDERS | REASONS |
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| 1 | The application of 14 July 2016 is allowed. | The prospect of inconsistency in two different judgments justifies a hearing. |
| 2 | The applicant shall file an appeal in this Court within 14 days of the date hereof. | It is proper to allow some time for lodgment of appeal. |

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| 3 | There shall be no order as to costs. | |
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DATED and DELIVERED at NAIROBI this 24th day of September, 2018.

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D.K. MARAGA
CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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J.B. OJWANG
JUSTICE OF THE SUPREME COURT

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
N.S. NJOKI
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR, SUPREME COURT