



**Koluwa & 5 others v County Assembly of Vihiga (Being sued through Its Honourable Speaker) & another (Constitutional Petition E006 of 2021 & Petition E005 & E007 of 2021 (Consolidated)) [2024] KEHC 2214 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2214 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CONSTITUTIONAL PETITION E006 OF 2021 &  
PETITION E005 & E007 OF 2021 (CONSOLIDATED)**

**PJO OTIENO, J**

**MARCH 6, 2024**

**BETWEEN**

**DR AMOS KUTWA KOLUWA ..... 1<sup>ST</sup> PETITIONER  
PAMELA MBAGAYA KIMWELE ..... 2<sup>ND</sup> PETITIONER  
ENG KENNETH ELVUNA KESEKO ..... 3<sup>RD</sup> PETITIONER  
PAUL JISEVE MBUNI ..... 4<sup>TH</sup> PETITIONER  
STEPHEN CHAHASI ..... 5<sup>TH</sup> PETITIONER  
JULIUS OBUGA MASIVA ..... 6<sup>TH</sup> PETITIONER**

**AND**

**COUNTY ASSEMBLY OF VIHIGA (BEING SUED THROUGH ITS  
HONOURABLE SPEAKER) ..... 1<sup>ST</sup> RESPONDENT  
GOVERNOR OF THE COUNTY OF VIHIGA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is a Notice of Motion dated 18/12/2023 founded upon the provisions of Order 45 [Civil Procedure Rules](#) and seeking orders that:
  - i) Spent
  - ii) The Court be pleased to indicate exemplary damages as Kshs. 250,000/=.
  - (ii) The Court be pleased to clarify that exemplary damages are to be paid by the County Assembly of Vihiga.



- iv) The relief for salaries to include allowances, gratuity and interest to be paid by the County Government of Vihiga.
  - v) Costs to be paid for Vihiga Petition E006 of 2021 to be paid by the County Assembly of Vihiga.
2. Essentially the application seeks that the Court corrects the Judgment by clarifying whether the sum awarded as exemplary damages was Kshs. 250,000/= or Kshs. 250/=, to award to the Petitioners in No. 6 the costs of the Petition because their rights have been adjudged to have been violated and lastly that the Court awards to the former employees' gratuity for having been unlawfully impeached. Lastly, the Applicants sought clarification on who pay the general and exemplary damages.
  3. The application was resisted by the two Respondents who filed separate Replying Affidavits sworn by Tony Godia, Legal Counsel in the office of the County Attorney and Peter Odari, the Deputy Clerk to the 1<sup>st</sup> Respondent.
  4. The position taken by the office of the County Attorney is that the orders sought are actually a challenge on the Judgment which ought to be pursued by way of an appeal; that the claim against the 2<sup>nd</sup> Respondent was rightfully dismissed and it would be improper to introduce the County Government this late in the matter; that prayers for gratuity, allowances and interests were not awarded and deemed dismissed adding that such benefits are outside this Court's jurisdiction falling under the Employment and Labour Relations Court and that the application was an attempt at reopening a concluded litigation.
  5. On costs it was maintained that the matter was a public interest litigation and the Court was entitled to make the order it made and that if there was to be a change, the costs should be ordered against the 6<sup>th</sup> Petitioner who claim was dismissed.
  6. For the Assembly, Mr. Odari took the position that the application did not disclose any ground for review as there was not disclosed a self evident error, that what was presented were arguments and not clear grounds for review and lastly that the Court had become functus officio and should not be hoodwinked into rewriting the Judgment.
  7. Parties were in Court to urge the application at which attendance all reiterated the points in the respective papers without more.
  8. To this Court, even though the application is expressed to be brought pursuant to Order 45 of the rules, its essence is one for correction of an error in a Judgment and ought to have been brought under section 99 of the Act. An application for correction of a Judgment under the said provision is always available where there is a clear slip which from the reasoning of the Judgment present itself as an obvious error that calls for not much scrutiny. The slip rule is employed to give effect to the intention of the Court when it gave its judgment. The Slip rule aids the inherent power of the Court to provide a missing link in the body of the Judgment or to clear ambiguity so that interests of justice is served.
  9. The Supreme Court in *Fredrick Orieno Outa v Jared Odoyo Okello* [2017] eKLR laid the boundaries and instances when the Slip Rule would be applied in the following words: -

“...By its nature, the Slip Rule permits a Court of law to correct errors that are apparent on the face of the Judgment, Ruling, or Order of the Court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the Court. By the same token, such errors must be of such nature that their correction would not change the substance of the Judgment or alter the clear intention of the Court. In other words, the Slip Rule does not confer upon a Court, any jurisdiction or powers to sit



on appeal over its own Judgment, or, to extensively review such Judgment as to substantially alter it. Indeed, as our comparative analysis of the approaches by other superior Courts demonstrates, this is the true import of the Slip Rule.”

10. With that firm guide on how to proceed and in line with the prayers in the application in mind, the Court asks of itself:
  - i) What was the sum awarded for exemplary damages?
  - ii) Who was to pay the said exemplary damages?
  - (iii) Whether the relief for salary was to include gratuity, allowances and interest?
  - iv) What order was intended on costs; with particular reference Petition number 6 of 2021?
11. In the structure of the Judgment, the decision and reasons for the award of exemplary damages was framed at paragraph 87. It clearly awards a sum of Kshs. 250,000/= to each of the four Petitioners. It thus follows that the sum of Kshs. 250/= in order numbered (c) at the tail of the Judgment was a typing slip which the Court must correct. It is so corrected and the sum awarded as exemplary damages shall read Kshs. 250,000/=.
12. In the body of the Judgment and in particular at paragraph 79, the Court held that the 1<sup>st</sup> – 4<sup>th</sup> Petitioners were entitled to their salaries withheld courtesy of the invalidated conduct by the 1<sup>st</sup> Respondent. That finding had to be aligned with the prayers in the amended petition in crafting the orders the court was to consider appropriate.
13. The prayer in the Petition was that the Petitioners be compensated for the lost earnings. The Court appreciates that the 1<sup>st</sup> – 4<sup>th</sup> Petitioners were engaged on contractual terms. In crafting order number (c) the Court intended that the Petitioners get what they were entitled had it not been for the invalidated conduct by the 1<sup>st</sup> Respondent. The Court has equally read the letters of appointment of the 1<sup>st</sup> – 4<sup>th</sup> Petitioners and notes that gratuity was indeed a contractual entitlement of the four Petitioners at the effluxion of their contracts. I do confirm that the Court intended to compensate the four for the unlawful denial. That award is thus rectified to read “salary and gratuity for the period of the contract when the salaries were withheld”. In coming to this conclusion and clarification, the Court has consciously excluded allowances for there was no proof on what constitutes the allowance and how the same would be calculated.
14. On such salary and gratuity, the 1<sup>st</sup> – 4<sup>th</sup> Petitioners shall be paid interests at Court rates for the period the same remain unpaid.
15. On the question of who pays the general and exemplary damages, the finding by the Court is that the violations were established against the 1<sup>st</sup> Respondent. It follows that it is the 1<sup>st</sup> Respondent to meet the Judgment for general and exemplary damages.
16. Lastly on costs, the Court was deliberate when it said that each party bears own costs. If it made an error in that holding the remedy is on appeal not a revisit by the same Court.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 6TH DAY OF MARCH, 2024.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of**



**Ms. Karue for Malenya and Sore for the Petitioner/Applicant in E006/2021**

**No appearance for the Petitioner in E007/2021**

**Mr. Godia for the Respondent and Speaker and hold brief for Ms. Noel for 1<sup>st</sup> Respondent**

**Court Assistant: Polycap**

