



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 15 OF 2017

GODFREY K. LUKORITO.....PETITIONER

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. In a judgment delivered on 16 July 2019, the Court ordered:

- (a) THAT a declaration is hereby issued that the interdiction of the Petitioner herein was irregular and unlawful to the extent that the Petitioner was never given a hearing as anticipated under Regulation 146 and was thus condemned and interdicted without a valid hearing.
- (b) THAT the interdiction is hereby lifted and any consequential action by the Respondent arising out of the interdiction.
- (c) THAT the Petitioner be reinstated.
- (d) THAT the Respondent do release the Petitioner's salary and allowances withheld from 17 November (sic).
- (e) THAT the Respondent shall pay the Petitioner's costs of this suit.

2. On 18 June 2021, the Petitioner filed a Motion seeking orders:

- (a) ...
- (b) THAT the Chief Executive Officer of the Respondent namely Nancy Macharia be committed to jail for a period of six (6) months or for such term as this Honourable Court may deem fit or order that the contemnor pay a fine of such sum as this Honourable Court may deem fit for disobedience of the Court orders dated 16th July 2019.
- (c) THAT this Honourable Court be pleased to grant any other or such further orders as may be deemed just and expedient in order to protect the dignity and authority of this Court.
- (d) THAT costs of this application be granted to the applicant.

3. In support of the Motion, the Petitioner deposed that the Respondent had not reinstated him nor released his salary and allowances from 7 November 2016, and that there was no justifiable reason for the failure to comply with the Court orders.

4. In an affidavit sworn by the Deputy Director, Human Resources and Development, the Respondent asserted that the COVID19 public health pandemic had affected its operations hence the delay in complying with the judgment of the Court but that the Petitioner had subsequently been posted to a school through a letter dated 23 June 2021, and further that he had been returned to the payroll on or around 3 December 2021.

5. On the issue of salary and allowances arrears, the Respondent indicated that the same were under processing.

6. When the parties appeared in Court on 16 December 2021 for the giving of further directions, the Court directed the filing and exchange of further affidavit(s) and submissions and reserved Ruling to today.

7. The Respondent filed a further replying affidavit sworn by its Director, Human Resource and Development on 5 January 2022, in which it was deposed that the failure to pay the Petitioner's salary and allowances arrears had been occasioned by the failure of the IPPD payroll system and that the same had been paid into the Petitioner's bank account with the December 2021 salary.

8. With the evidence of payment of the arrears, the Court finds that the contempt application filed in Court on 18 June 2021 has been overtaken by events and the same is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 2ND DAY OF FEBRUARY 2022.

RADIDO STEPHEN, MCIARB

JUDGE

APPEARANCES

FOR PETITIONER

KIARIE & CO. ADVOCATES

FOR RESPONDENT

ALLAN SITIMA, ADVOCATE

COURT ASSISTANT

CHRISPO AURA