



**Tharaka Nithi County Government v Waweru (Cause E019 of 2023)
[2024] KEELRC 1096 (KLR) (15 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1096 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E019 OF 2023
ON MAKAU, J
MAY 15, 2024**

**BETWEEN
THARAKA NITHI COUNTY GOVERNMENT CLAIMANT
AND
WINNIE WARAU WAWERU RESPONDENT**

JUDGMENT

1. The claimant is a County Government established under Article 176 of *the Constitution* while the respondent is a former employee of the claimant. By a Training Bond signed on 16th August 2018, the respondent agreed to work for the claimant for four years after completing her course in Master of Medicine in Anaesthesia from the University of Nairobi. According to the claimant, the Bond had a default clause to the effect that should the respondent default to serve the Bond period of four years, she would pay to the claimant on demand, the sum of Kshs.8,572,000.00.
2. The respondent completed her course and served for nine months and resigned on 9th October 2023. The claimant rejected the resignation but the respondent left employment. As a result the claimant filed this suit seeking the following reliefs: -
 - a. Determination that the respondent action was/is breach of the training bond for public servants duly executed by the claimant and the respondent;
 - b. Order compelling the respondent to pay the claimant the bonded amount of Kenya shillings eight million, five hundred and seventy -two thousand only (Kshs.8,572,000/=);
 - c. Interest on b above from the date of resignation until payment in full; and
 - d. Cost of the suit.
3. The respondent admitted that employment relationship and also the said resignation. She also admitted signing the Bond of Kshs.857,200.00 and wondered how the said sum morphed to



Kshs.8,572,000. She denied that her masters course costed Kshs.8,572,000.00 and contended that she paid her tuition fees. She further averred that the suit was premature since the procedure for recovery of the bond money was not exhausted. She also averred that the Bond was illegal and it amounted to a Champerty Agreement. Hence the suit is frivolous and ought to be dismissed with costs.

Evidence

4. The claimant called its Chief Officer for Medical Services and ICT, Mr. Aggrey Karani Riungu who testified as CW1. He adopted his written statement dated 6th October 2023 and produced a bundle of documents in the list dated 5th October 2023 as his evidence. In brief, he stated that the respondent was given a scholarship by the claimant and signed a bond that she would work for the claimant for a period of 4 years after completing her course in Master of Medicine. In default she was to refund the bond money totalling to Kshs.10,382,880.
5. CW1 went on to say that the respondent worked for only 8 months and resigned rendering herself liable to pay Kshs.8,752,000. He contended that after the respondent's Bond in 2018, the County Secretary issued Revised Bond Terms to deter doctors from leaving the County hospitals after training. He contended that training doctors is very expensive using tax payers' money. He contended that respondent's services were required in the County Referral hospital and that is why the resignation was rejected.
6. On cross examination, he contended that the sum claimed was based on the respondent's gross salary as at the time she left for studies being Kshs.216,320 per month. However, he admitted that the respondent signed a bond for Kshs.857,200. He further admitted that the circular by the County Secretary was issued after the respondent had gone for her studies. He contended that the circular was released and displayed in all Level 4 hospitals but he was not able to confirm whether the respondent signed the new bond.
7. He further admitted that the initial bond provided for sureties to pay the bond in case of breach. He denied that the suit is premature. Finally, he admitted that it is not illegal for an employee to resign.
8. The respondent testified as RW1 and confirmed that she was employed by the claimant in April 2016 until September 2023 when she resigned. She admitted that she signed a bond on 16th August 2018 whereby the claimant was to fund her four (4) years course in Master of Medicine at Kshs.857,200 and repay the same by service for equal time. In default, her sureties were to pay the said sum.
9. She contended that, she was forced to resign by sickness of her parent where her undivided attention was required. She maintained that her resignation was justified. She maintained that the suit was not necessary before the sureties were contacted.
10. On cross examination she admitted that she signed bond on 16th August 2018 to further her capacity. She admitted that, she was to bear responsibility for breach of the bond. Under the bond, she committed herself to further her studies and return to work for 4 years. She contended that she graduated in December 2022 and reported back to work in January 2023. She admitted the obligation to pay the bond money but averred that she would negotiate how to repay the same to the claimant.
11. She admitted that she always made aware of circulars whenever they were issued by the Government but denied that she was issued with the alleged circular of new revised bonding terms. She contended that she had a prospective employer near her parents in Kiambu.



Submissions

12. The claimant submitted that the respondent had contractual obligation to pay the Bond money. For emphasis, it relied in the case of *Bluebird Aviation Limited v Mathew Njoe Kearie & another* (2018) eKLR, *Martha Wangari Kariuki v Muli Musyoka & another* (2021) eKLR and *Hydro Water Well (K) Limited v Sechere & 2 others* (2021) KEHC 22 (KLR).
13. The respondent on the other hand maintained that she signed a bond of Kshs.857,200 and since she worked for approximately one year after studies, the amount owing is Kshs.642,900. Consequently, she submitted that the claim for Kshs.8,572,000 was without merits since it is not founded on the contract (Bond) signed on 16th August 2018. She contended that the claimant is bound by the said contract and therefore what is owing to it thereunder is the said Kshs.642,900.
14. She reiterated that the suit is not ripe because the claimant ought to have contacted the sureties after she failed to pay the bond money. In her view, the suit is an abuse of court process. She maintained that she is willing to pay the bond money, Kshs,642,900 by instalments if the claimant has exhausted the avenue of pursuing her sureties.

Issues for determination

15. It is a fact that the parties herein signed a Training Bond for the sum of Kshs.857,200 in which the claimant paid the said sum for respondent's course in Master of Medicine for a period of 4 years. It is also a fact that the respondent was to repay the bond money by working for the claimant for 4 years after the course and in default pay back the bond money. The respondent also provided two sureties who guaranteed the performance by the respondent. Finally, it is a fact that the respondent served for 9 months and resigned on 9th October 2023.
16. The issues for determination are: -
 - a. Whether the suit is premature.
 - b. Whether the respondent owes the claimant Kshs.8,572,000 under the training bond.

Premature suit

17. I have considered the Training Bond the last paragraph on page 2 of the Bond states that: -

“We (bondee, 1st surety and 2nd surety) jointly and severally bind ourselves, our heirs... to pay into Government of Tharaka Nithi... on demand sum of Kenya shillings Eight Hundred and Fifty-Seven Thousand Two Hundred only (Kshs.857,200) on account of bondee defaulting to serve the bonded period of 4 years.”
18. The above paragraph indicates that the bondee and the two sureties were liable jointly and severally. That gave the claimant an option to pursue either the respondent or the sureties or both. Consequently, I find and hold that the suit is neither premature nor an abuse of court process.

Claim of Kshs.8,572,000

19. The claimant prayed for Kshs.8,572,000 being the salary for the respondent for the unserved bonded period based on gross monthly salary of Kshs.216,320. However, going by paragraph 2 of the training bond, the amount stated was Kshs.857,200.00 and it was to be repaid by working for the claimant



for four years after studies. The claimant served for nine months. Hence the sum payable is equal to

$$\frac{39}{48} \text{ months} \times 857,200 = \text{Kshs.}696,475.00.$$

20. I decided the same in the case of *Martha Wangari Kariuki v Muli Musyoka & another* (2021) eKLR and I see no reason to depart from that decision. Consequently, I now enter judgment for the claimant against the respondent in the sum of Kshs.696,475.00 plus costs and interest at court rates from the date of filing suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF MAY, 2024.

ONESMUS N MAKAU

JUDGE

ORDER

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

