



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT OF KENYA AT KISII**  
**CAUSE NO. E001 OF 2024**

JAMES ANAM MOTURI.....  
.....**CLAIMANT**

**VERSUS**

THE COUNTY GOVERNMENT OF NYAMIRA.....**1<sup>ST</sup>**

**RESPONDENT**

THE COUNTY PUBLIC SERVICE BOARD  
NYAMIRA COUNTY.....**2<sup>ND</sup>**

**RESPONDENT**

**RULING**

1. The application before court is the Notice of Motion dated 23<sup>rd</sup> February 2026 by the 2<sup>nd</sup> Respondent seeking the following orders:

*a. Spent*

*b. Spent*

c. That the honourable Court be pleased to decline adoption and/or set aside, the mediation agreement dated 13<sup>th</sup> January 2026.

d. That the matter be referred back for hearing on merits, particularly the hearing and determination of the Preliminary Objection dated 22<sup>nd</sup> July 2024.

e. That leave be granted to the 2<sup>nd</sup> Respondent to apply for setting aside of the mediation agreement.

f. That upon grant of leave, this court be pleased to set aside the purported mediation agreement on grounds of lack of authority and legal capacity.

g. That the matter be fixed for hearing of the Preliminary Objection dated 22<sup>nd</sup> July 2024 on its merits.

h. That costs of the application be provided for.

2. By way of background, the application arises against the backdrop of a mediation agreement dated 13<sup>th</sup> January 2026. By that agreement, the suit herein was settled in favour of the Claimant in the sum of Kshs. 1,372,500/- being unpaid

dues for the period between January 2018 and October of the same year. The application is supported by the affidavit of Mr. Abincha Mogambi, the Acting Chief Executive Officer of the 2<sup>nd</sup> Respondent. He deposes that the said settlement is invalid as it was entered into without the authority of the 2<sup>nd</sup> Respondent. According to the deponent, the 2<sup>nd</sup> Respondent is a statutory body established under section 57 of the County Governments Act and is only capable of making binding decisions through resolutions passed at board meetings. He avers that the tenure of the previous board expired on 5<sup>th</sup> July 2025 and that no new board has since been constituted. In support of this assertion, he refers to advertisements dated 26<sup>th</sup> March 2025 and 15<sup>th</sup> January 2026 relating to the process of constituting the board. In the circumstances, he contends that the individuals who purportedly signed the mediation agreement on behalf of the 2<sup>nd</sup> Respondent lacked both legal capacity and authority to do so. On that basis, the court is urged to intervene and set aside the agreement so as to avert irreparable prejudice to the 2<sup>nd</sup> Respondent.

3. The record does not indicate that any replying affidavits were filed in response to the application. Nonetheless, the parties made oral submissions before the Court on 26<sup>th</sup> February 2026.

#### 2<sup>nd</sup> Respondent's Submissions

4. Counsel for the 2<sup>nd</sup> Respondent submitted that the 2<sup>nd</sup> Respondent is a statutory body whose governance structure includes, a Chairperson, Vice-Chairperson, board members and a secretary. Counsel emphasized that any decision binding the 2<sup>nd</sup> Respondent must be made through a resolution of its board. Counsel further argued that the Board has not been in place since 5<sup>th</sup> July 2025, a circumstance which, according to counsel, was one of the factors that contributed to the impeachment of the former governor. It was therefore submitted that it would be untenable for a non-existent board to pass a resolution authorizing settlement of the suit. In this regard, Counsel referred the court to the advertisements dated 26<sup>th</sup> March 2025 and 15<sup>th</sup> January 2026 annexed to the application, which show that the process of constituting the Board was still ongoing.

### Claimant's Submissions

5. Counsel for the Claimant opposed the application. She submitted that the matter had been referred to mediation by consent of all parties. According to Counsel, parties were required, as a prerequisite to the mediation process, to provide letters of authorization. She pointed out that by a letter dated 4<sup>th</sup> February 2025, the 2<sup>nd</sup> Respondent authorized one Mr. Lameck Omasire to participate in the mediation process. Counsel submitted that Mr. Omasire duly participated in the mediation and ultimately signed the agreement on behalf of the 2<sup>nd</sup> Respondent. In the circumstances, Counsel urged the Court to adopt the mediation agreement as presented and to dismiss the application with costs.

6. In a brief rejoinder, Counsel for the 2<sup>nd</sup> Respondent submitted that the mediation agreement carries financial implications. He argued that permitting the expenditure of public funds in settlement of the suit without proper authorization would likely occasion administrative complications. On that basis,

Counsel urged the Court to invalidate the agreement on account of lack of authority.

### Disposition

7. The issue revolves around the adoption of a mediation agreement which was reached at some point in early 2026. The Court notes the assertions of the 2<sup>nd</sup> Respondent that there is no Board in place and that it therefore could not be part of the Consent which seeks to bind it to pay a hefty sum. It was argued *in extenso* that the Board has not been constituted as a result of political inaction. The 2<sup>nd</sup> Respondent's Counsel asserts the Board is in the process of being constituted.
8. The Court is reluctant to dispense with the mediation agreement. This is because there was consensus at the time the agreement was reached. However, as the Board in question ceased to exist prior to the conclusion of the settlement, it would only be appropriate to have the mediation agreement to be placed before the Board of the 2<sup>nd</sup> Respondent once reconstituted, for input and possible

adoption. Should the parties report to Court on 12<sup>th</sup> May 2026 that there is no consensus, further directions will be given on the disposal of the suit herein. At that point the Court will decide whether to jettison the mediation agreement or give appropriate directions to have a final determination in the case. The costs of the motion will abide the outcome on 12<sup>th</sup> May 2026.

It is so ordered.

**Dated and delivered at Kisumu this 12<sup>th</sup> day of March**

**2026**

**Nzioki wa Makau, MCI Arb.  
JUDGE**