



**Mwangi v County Government of Kisii & 2 others (Petition
E030 of 2023) [2025] KEELRC 531 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 531 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E030 OF 2023**

JK GAKERI, J

FEBRUARY 26, 2025

**IN THE MATTER OF ARTICLES 2(1), (5), (6), 3(1), 10(1) (2), 19, 20, 21, 22(1),
23, 24, 25,27, 28, 41(1)(2), 47 AND 258 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL
FREEDOM UNDER ARTICLES 27, 28, 41 AND 47 OF THE CONSTITUTION**

AND

IN THE MATTER OF SECTIONS 5 AND 18 OF THE EMPLOYMENT ACT NO. 11 OF 2007

AND

**IN THE MATTER OF SECTIONS 3 AND 7 OF THE NATIONAL
COHESION AND INTEGRATION ACT NO. 12 OF 2008**

AND

**IN THE MATTER OF SECTIONS 3, 4, 6, 7, 8 AND 11
OF THE FAIR ADMINISTRATIVE ACTIONS ACT**

AND

**IN THE MATTER OF ARTICLES 1 AND 3 OF CONVENTION CONCERNING
DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION, 1958**

BETWEEN

CHARLES MURIU MWANGI PETITIONER

AND

COUNTY GOVERNMENT OF KISII 1ST RESPONDENT

KISII COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT



**COUNTY SECRETARY COUNTY GOVERNMENT OF KISII 3RD
RESPONDENT**

RULING

1. Before the Court for determination is the Petitioner/Applicant's Notice of Motion dated 25th September, 2024 seeking Orders that:-
 1. The Honourable Court be pleased to issue an Order adopting the computation of withheld salaries of Kshs.6,010,524.00 together with interest at 12% p.a from 29th August, 2022 until payment in full for purposes of granting the applicant the liberty to execute for the payments.
 2. The Honourable Court be pleased to issue any other or further orders geared towards protecting the dignity and authority of the court.
 3. The costs of this application be borne by the respondent.
2. The Notice of Motion is expressed under Section 3A of the *Civil Procedure Act* (Cap 21) and is based on the grounds set out on its face and the Supporting Affidavit sworn by the Petitioners/Applicant on 25th September, 2024.
3. The affiant depones that pursuant to the judgment delivered on 25th April, 2024, the computed figure of withheld salary is Kshs.6,010,524.00 together with interest of 12% from 29th August, 2022 until payment in full.
4. That the respondents were served on 24th July, 2024 but no response had been received by 29th September, 2024 when the instant application was filed.
5. The affiant further deposes that he stands to suffer great prejudice and irreparable harm if the Orders sought are not granted.
6. The applicant is claiming Kshs.7,453,049.76 inclusive of interest at 12% p.a.

Response

7. By a Replying Affidavit sworn by Caren Orori on 29th October, 2024, the affiant deposes that the court's Order placed the onus of computation of the salary and allowances on the respondents as opposed to the applicant and the court did not impose any timeline.
8. That the computation on record is not in tandem with the applicant's appointment letter or payslip and was based on guidelines from the Ministry of Health and no copy of the applicant's pay slip was attached and he has not denied having a payslip.
9. That the applicant's computation was inaccurate as it does not factor in statutory deductions and could lead to unjust enrichment by the applicant.
10. The affiant calls for dismissal of the computation for the error.
11. The affiant avers that since the judgment placed the duty of computation on the respondents, the applicant was indirectly amending the judgment.
12. In his Supplementary Affidavit sworn on 5th November, 2024, the Applicant avers that the computation on record had not been controverted by a Counter-Computation of his dues and he had



not received any salary since appointment and the computation is based on the appointment letter of a medical officer of similar cadre.

13. That statutory deductions are made from gross earnings.
14. The applicant attached copies of payslips for one Dr. Stanford Nyaboga Mogua for July 2022 and July 2024.
15. During the hearing of the Notice of Motion on 12th November, 2024, counsels on record agreed to submit viva voce.
16. Mr. Okello, for the applicant submitted the total claim for adoption was Kshs.7,453,049.76 inclusive of interest.
17. Counsel submitted that the applicant attached copies of payslips of a medical officer of the same cadre as the respondents have not paid him any salary since appointment in 2022.
18. Mr. Odhiambo for the respondents submitted that the respondents did not participate in the main suit and the decree was served on 24th July, 2024, and the instant application filed on 25th September 2024.
19. Counsel urged that the decree stated that it was the respondent's obligation to compute the salary and allowance and the court prescribed no timelines.
20. Counsel submitted that the applicant's computation was erroneous on account of that the copies of payslips produced by the applicant were intended to convince the court that the applicant was serving in the same job group and the total earnings are indicated as Kshs.231,174,000.00, thus questionable.
21. That the sum of Kshs231,174.00 excludes statutory deductions at source and its adoption as such would enable the applicant carry the sum without statutory deductions, a kin to unjust enrichment.
22. That since the computation is based on new terms of service approved on 7th March, 2017, it was outside the scope of the applicants offer as salaries are personal between employers and employees.
23. Counsel prayed for dismissal of the application.
24. In a brief rejoinder, Mr. Okello submitted that the respondents were crying foul yet they had had not provided a controverting computation to prove their case.
25. Counsel submitted that statutory deductions are made on gross pay and the amount computed is subject to such deductions.
26. That on the question of the applicant's employment, the court settled the matter in its judgment.
27. Counsel urged the court to allow the computation.

Analysis and determination

28. The singular issue for determination is whether the applicant's Notice of Motion dated 25th September, 2024 is merited.
29. It is common ground that by a judgment delivered on 25th April, 2024, the court directed as follows:

An Order be and is hereby issued compelling the respondents to compute and release the Petitioner's salary and allowances from 29th July, 2022 to date together with interest at 12% p.a from 29th August, 2022 until payment in full".



30. On the question as to who was mandated to compute the salary and allowances, the court is in agreement with respondents contention that the onus was placed squarely on the respondents as opposed to the applicant.
31. The applicant's argument is that he served the Decree on 24th July, 2024, a fact the respondent's counsel admitted and the respondent's had not responded by 25th September, 2024, when the instant applicant was filed.
32. The respondent's counsel thought that the duration was short.
33. By simple arithmetic, the applicant accorded the respondents 2 months before he sought the court's intervention.
34. It is unclear to the court whether the computation on record was forwarded to the respondents prior to the institution of the instant application or any other form of follow up to remind the respondents that a court order required them to act, failing which the applicant would proceed accordingly.
35. Was the two months duration too short? The Court not persuaded that it was short. The respondent's ought to have acknowledged receipt of the Decree and informed the applicant that action was being taken.
36. Puzzlingly, the respondents maintained silence for unexplained reasons but subsequently filed an application seeking the setting aside of the judgment dated 25th April, 2024 and leave to defend the suit.
37. The application was dismissed on 4th December, 2024 for want of merit.
38. Did the applicant usurp the mandate of the respondents as per the judgment of the court? The answer to this question in the court's view is in the negative in light of the respondents deafening silence for two (2) months.
39. Any response would have manifested the respondent's good will and faith in resolving the matter.
40. However, the court is also persuaded that the applicant ought to have sent a reminder to the respondents to demonstrate his commitment to have the matter resolved without further litigation.
41. Intriguingly, the respondents are assailing the applicants action of computing the amount due to him, insisting that the onus was placed on them by the court yet they have not provided any counter figure or indicated they were in process of computing the same or would do so or provide convincing reason as to why they have not done so.
42. The argument that the applicant's computation is erroneous without availing the correct computation is to say the least hollow.
43. As regards statutory deductions, it is trite that the same are deductible by the employer at source and are deducted from the gross salary due to the employee.
44. The foregoing is fortified by the provisions of Section 17 of the *Employment Act* that:
 - (1) Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly, in the currency of Kenya——
 - (a) in cash;
 - (b) into an account at a bank, or building society, designated by the employee;



(c) by cheque, postal order or money order in favour of the employee.

45. In this case, since the applicant has been rendering services, the total amount due as directed by the court is earned and payable to him less the statutory deductions applicable over the duration of this employment.
46. This position is further fortified by the provisions of Section 20 of the *Employment Act*, 2007.
47. The court is in agreement with the submissions of the applicant's advocate.
48. Finally, the applicant's computation is also faulted on the premise that it is based on new terms of service and not his letter of appointment and the pay slips availed belonged to another employee.
49. The two copies of payslips belong to an employee of the respondents serving as a Medical Officer and the payslip for July, 2022 shows that the employee's Basic Salary was Kshs.49,000.00 and had risen to Kshs.55,510.00 by July 2024.
50. The respondents neither disowned the pay slips nor the alleged employee other than contending that the applicant may not have been in the same grade yet the applicants offer of appointment dated 14th April, 2022 reveals that the salary scale of a Medical Officer was Kshs.49,000.00 – 65,120 per month at Job Group M and his entry point was Ksh.49,000.00 which corresponds with the pay slip of the employee in the respondent's employment.
51. Perplexingly, the respondents accuse the applicant for not availing a copy of his pay slip in support of his computations yet they are well aware that they have not paid the claimant any salary since he was employed and even if they had, it behoves them as an employer to issue a pay slip and ought to have a copy to controvert, the applicant's claims, assuming they had given the claimant any payslip.
52. Section 20 of the *Employment Act* provides:
 - (1) An employer shall give, a written statement to an employee at or before the time at which any payment of wages or salary is made to the employee.
 - (2) The statement specified in subsection (1) shall contain particulars of—
 - (a) the gross amount of the wages or salary of the employee;
 - (b) the amounts of any variable and subject to section 22, any statutory deductions from that gross amount and the purposes for which they are made; and
 - (c) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.
 - (3) This section shall not apply to a casual employee or an employee engaged on piece rate or task rate terms or for any period not exceeding six months.
52. The provisions of the foregoing section are couched in mandatory tone and the duty to provide a copy of a pay slip fell on the respondents as the employer.
53. Although the letter of employment is the primary contractual document in an employment relationship, it is not conclusive evidence of the salary payable to an employee if there is evidence to show that the terms of employment have changed and the employer has not bothered to communicate the same to employees in writing in conformity with the provisions of section 10(5) of the *Employment Act*, as such a change modifies the contract of employment.



54. Arguably, the applicant relied on the payslip of another Medical Officer because he had none under his name and if the respondent had a copy, as the employer, nothing would have been easier to controvert the applicant's assertions that that was not his Job Group 'M'.
55. Although the respondents have not requested for time to compute the applicant's salary, allowances and interest as directed by the court and have not expressed any desire to do so, the court shall accord them time to comply with the Orders of the court made on 25th April, 2024 in the following terms:
- a. The respondents shall compute, file and serve the applicant's salary, allowances and interest for adoption within 30 days, failing which;
 - b. The Applicant's computation of Kshs.6,010,524.00 and interest of Kshs.1,442,525.76 shall be deemed to have been adopted as an order of the Court for purposes of the judgment delivered on 25th April, 2024.
 - c. The respondent shall bear the costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 26TH DAY OF FEBRUARY, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

