



Wambugu v County Government of Nairobi & another (Miscellaneous Application E162 of 2024) [2025] KEELRC 917 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 917 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E162 OF 2024**

**AK NZEI, J
MARCH 21, 2025**

BETWEEN

JAMES HILLARY WAMBUGU APPLICANT

AND

THE COUNTY GOVERNMENT OF NAIROBI 1ST RESPONDENT

NAIROBI COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

RULING

1. The application before me is the Applicant's Notice of Motion dated 30th April, 2024 and expressed to be brought under Section 89(1) of the Public Service Commission Act, Sections 3 and 12 of the Employment and Labour Relations Court Act and Article 162(2) of the Constitution of Kenya. The Applicant seeks the following Orders:-
 - a. That this Court be pleased to adopt as a Judgment of the Court the decision of the Public Service Commission made on 12th June, 2019 in respect of the Applicant's appeal against Retirement from service in Public Interest.
 - b. That Judgment be entered in favour of the Claimant as against the Respondent for Kenya Shillings Two Million Eight Hundred and Forty Seven Thousand Five Hundred and Twenty (Kshs.2,847,520/=) being the outstanding amount in salary arrears that is due to the Applicant.
 - c. That the Honourable Court be pleased to award interest on the amount from the date of the Public Service Commission (sic).
 - d. That costs of the application be borne by the Respondents.



2. The application sets out on its face the grounds on which it is anchored, and is supported by the Applicant's supporting affidavit sworn on 30th April, 2024. It is deponed in the Applicant's said supporting affidavit:-
- a. that the Applicant was employed by the 1st Respondent in 1976 under P/No. 19760000173, and rose through the ranks to the position of Director of City Inspectorate Job Group "S".
 - b. that on 8th July, 2016, the 1st Respondent, through the County Secretary and Head of County Public Service, interdicted the Applicant and demanded that he shows cause why disciplinary action could not be taken against him for gross misconduct. That the Applicant offered a detailed explanation, but the County Public Service Board ordered that the Applicant be interdicted.
 - c. that the Applicant appealed against the said interdiction to the County CHRMAC, which on 13th October, 2016 directed:
 - i. that the interdiction be lifted with effect from 8th July, 2016, and that the Applicant thereupon utilises all his accumulated 90 leave days and all 200 accumulated administrative leave days.
 - ii. that after completion of the leave days, the Applicant be issued with a retirement notice.
 - d. that the CHRMAC was effectively directing that the Applicant be compelled to retire before his retirement age; and that the decision was communicated to the 2nd Respondent's Secretary vide a letter dated 14th February, 2017.
 - e. that the Applicant appealed to the Public Service Commission which, upon considering the appeal, allowed the same in the following terms:-
 - i. that the decision to retire the Applicant in Public Interest was not procedural, and allegations made against the Applicant were not sufficient to warrant retirement.
 - ii. set aside the County Public Service Board's decision to retire the Applicant in public interest and deemed him to have retired from service on attaining the mandatory retirement age of 60 years, w.e.f 8th April, 2018.
 - iii. Instructed that the Applicant be paid salary arrears with effect from 8th July, 2016, being the date of interdiction, upto retirement.
 - f. that the decision of the Public Service Commission is dated 12th June, 2019, and was communicated to the 2nd Respondent.
 - g. that on 14th October, 2019, the County Secretary and Head of the County Public Service communicated the decision of the Public Service Commission to the Applicant, and directed that the Applicant be issued with a retirement letter, which was subsequently issued by the County Chief Officer on 27th November, 2019.
 - h. that the retirement letter requested the Applicant to clear with the said Chief Officer's station to facilitate processing of his benefits. That the Applicant cleared, and a clearance certificate was issued on 15th January, 2020.



- i. that the Applicant's payable dues amounted to Kshs.6,455,900/=, which the 1st Respondent partly paid, leaving an outstanding sum of Kshs.2,847,520/=, being the Applicant's outstanding salary arrears as directed by the Public Service Commission.
 - j. that the 1st Respondent has refused to pay the said outstanding salary arrears, despite demand.
3. Documents annexed to the Applicant's supporting affidavit include letters dated 8th July 2016, 14th February 2017, the Public Service Commission's decision dated 12th June 2019, letters dated 14th October 2019, 26th July 2021 and 17th August 2021 respectively; the Applicant's certificate of clearance issued on 15th January, 2020 and minutes of staff committee meeting held on 6th August, 2008.
 4. The 1st and the 2nd Respondents responded to the Applicant's application vide a replying affidavit of Victor Juma sworn on 31st October, 2024; vide which they conceded to adoption of the aforesaid decision of the Public Service Commission dated 12th June, 2019 for (purposes) of execution.
 5. The 1st and the 2nd Respondents, however, opposed Prayer Nos. (b), (c) and (d) in the Applicant's application as set out in paragraph 1 of this Ruling, stating that the prayers are pre-mature, as execution can only issue after adoption of the decision of the Public Service Commission by this Court.
 6. It is worthy noting that the 1st and the 2nd Respondents did not dispute the outstanding sum of Kshs.2,847,520/=, either as tabulated in paragraph 13 of the Applicant's said supporting affidavit sworn on 30th April, 2024 or at all.
 7. Section 89 of the *Public Service Commission Act* provides as follows:-
 - “(1) Any person who is affected by the decision of the Commission made under this part may file the decision for enforcement by the Employment and Labour Relations Court provided for under Article 162(2)(a) of the *Constitution*.
 - (2) Any person who refuses, fails or neglects to implement the Commission's decision is liable to disciplinary action in accordance with the applicable laws, including removal from office.”
 8. Where a decision of the Public Service Commission (Commission) has been placed before this Court pursuant to Section 89(1) of the *Public Service Commission Act*, the Court's duty is limited to enforcing that decision. It ought to be appreciated that enforcement of a decision by the Court can only occur where there is a decree or order of the Court; as enforcement is to be undertaken in accordance with the Court's Rules of Procedure. The 1st and the 2nd Respondents conceded, and rightly so, to adoption of the Commission's decision as a Judgment of this Court. Where there is entry of Judgment by the Court, a decree must issue, and that decree must be executed, either as decreed or to the extend ordered by the Court on issuing the decree. In the present case, a decree shall issue, and the same may be executed to the extend of any amount that remains unpaid pursuant to the Commission's decision dated 12th June, 2019.
 9. Further, it ought to be noted that failure by the 1st and the 2nd Respondents to pay the said outstanding sum to the Applicant in implementation of the Public Service Commission's said decision exposes the Respondents' line officer(s) to punishment pursuant to Section 89(2) of the *Public Service Commission Act*. Enough said on that.
 10. There being no dispute over tabulation of the amount ordered by the Commission to be paid to the Applicant by the Respondents, the amount already paid and the amount due, and having considered



written submissions filed on behalf of all the parties herein, the Applicant's Notice of Motion dated 30th April, 2024 is hereby allowed in the following terms:-

- a. The decision of the Public Service Commission made on 12th June, 2019 is hereby adopted as a Judgment of this Court for purposes of enforcement.
- b. A decree shall issue pursuant to the undisputed tabulations set out at paragraphs 12 and 13 of the Applicant's supporting affidavit sworn on 30th April, 2024, and execution may issue regarding the undisputed outstanding sum of Kshs.2,847,520/=, being the Applicant's salary arrears.
- c. The Applicant is awarded interest on the said undisputed sum of Kshs.2,847,520/=, to be calculated at Court rates from the date of this Ruling.
- d. The Applicant is awarded costs of these proceedings, to be agreed upon by parties herein or to be taxed.

11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF MARCH 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Odek for the Applicant

No appearance for the Respondent

