



Simotwo v County Government of Narok & 2 others (Employment and Labour Relations Cause E104 of 2024) [2025] KEELRC 1580 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1580 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E104 OF 2024**

**AN MWAURE, J
MAY 30, 2025**

BETWEEN

SHEDD DENNIES SIMOTWO CLAIMANT

AND

COUNTY GOVERNMENT OF NAROK 1ST RESPONDENT

NAROK COUNTY ASSEMBLY SERVICE BOARD 2ND RESPONDENT

NAROK COUNTY ASSEMBLY 3RD RESPONDENT

RULING

1. The Claimant/Applicant herein filed a Notice of Motion dated 18th December 2024 under Certificate of Urgency on the following orders that:
 1. Spent
 2. Spent
 3. Pending the hearing and determination of this claim, this Honourable Court be pleased to order the Respondents and in particular the payroll manager to immediately include the Claimant in its payroll and to pay him all the salary arrears from the month of August, 2024 to date.
 4. All necessary and consequential orders or directions be given in order to meet the ends of justice and to uphold the authority, dignity and honour of this Honourable Court.
 5. Costs of this application be provided for.
2. The application is expressed to be brought under sections 3 and 12(3)(i) of the Employment and Labour Relations Court, Rule 45 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and all other enabling laws.



DIVISION - Claimant/Applicant's supporting affidavit

3. The application is supported by the affidavit of the Claimant/Applicant sworn on even date with annexures attached thereto.
4. The Claimant/Applicant avers that he was employed by the 2nd Respondent on 25th February 2013, as the Clerk of the County Assembly of Narok.
5. The Claimant/Applicant avers that prior to this job, the Claimant held various positions in public service, starting in 1995, including appointments as a municipal treasurer and town clerk in multiple councils such as Eldoret, Kapsabet, and Nairobi.
6. The Claimant/Applicant avers that on 25th February 2013, through the Transition Authority, he was deployed as the interim Clerk of the County Assembly of Narok and was later officially appointed to the position on 13th August 2015.
7. Throughout this tenure, the Claimant/Applicant avers that he was included in the County Assembly payroll and served diligently in the role.
8. The Claimant/Applicant avers that he was seconded from the County Assembly of Narok to the County Executive on 14th June 2018, initially for three years, later extended for another three years until June 2024.
9. During this period, the Claimant/Applicant avers that he continued holding the position of Clerk of the County Assembly and was entitled to salary increments per the Salaries and Remuneration Commission's circular.
10. The Claimant/Applicant avers that despite approval from the 3rd Respondent and directives from the County Secretary, the payroll manager failed to implement the salary adjustments, leading to unpaid arrears totalling Kshs. 1,951,200/=.
11. The Claimant/Applicant avers that upon the expiry of the 2nd term of his secondment, he sought to return to his substantive position but was removed from the payroll, with both Respondents failing to reinstate them.
12. The Claimant/Applicant avers that this action is unlawful, malicious, and an attempt to terminate his employment despite being a permanent and pensionable employee.
13. The Claimant/Applicant avers that he has suffered financially due to being excluded from the payroll following the lapse of their secondment, leaving them unable to pay bills and loans.
14. The Claimant/Applicant avers that despite notifying the 2nd Respondent, no action has been taken.
15. The Claimant/Applicant avers that his secondment should not be used as a basis for illegal termination and requests the court to intervene and reinstate him in the payroll.
16. The Claimant/Applicant avers that the Respondents' refusal to reinstate them is malicious, violating his right to dignity under Article 28 of [the Constitution](#).
17. The Claimant/Applicant avers that he is willing to comply with any court conditions and insists that granting the application is in the interest of justice, fairness, and does not prejudice the Respondents.
18. The Claimant/Applicant urged this Honourable court to allow the application as prayed to safeguard his rights and employment status.



1st Respondent's grounds of opposition

19. In opposition to the application, the 1st Respondent, through the firm of Makallah Law Advocates LLP, filed grounds of opposition which are summarised as follows:
 1. The Claimant's case against the 1st Respondent is legally flawed, as there was no employer-employee relationship between them during the period of secondment.
 2. Any claims regarding employment benefits or salary adjustments should be directed to the Claimant's primary employer, the 2nd Respondent.
 3. The 1st Respondent had no obligation to provide permanent employment, salary increments, or benefits beyond the agreed secondment terms. Furthermore, the Claimant's removal from the payroll followed due process upon the lawful conclusion of the secondment.
 4. The Claimant improperly seeks remedies from a party that was never his employer. His suit is misguided, legally untenable, and a misuse of judicial resources.
 5. The Claimant's claim against the 1st Respondent is frivolous, vexatious, and lacks merit. It should be dismissed with costs.

3rd Respondent's replying affidavit

20. The 3rd Respondent also opposed the application vide a replying affidavit dated 30th December 2024, sworn by Joseph Leng'eny, the Respondent County Clerk.
21. The 3rd Respondent avers that it admits the contents of paragraphs 1 to 12 of the Supporting affidavit.
22. The 3rd Respondent avers that the Claimant/Applicant was appointed as Clerk to the Narok County Assembly on 13th August 2015, with clearly defined duties under Section 13 of the County Government Act.
23. The 3rd Respondent avers that on 14th June 2018, the Claimant/Applicant was seconded to the County Executive to serve as a ward administrator, effectively relinquishing his role as a Clerk.
24. The 3rd Respondent avers that upon the lapse of the secondment, the Claimant/Applicant should have awaited reassignment by the Narok County Public Service Board, which has the mandate to oversee such transitions.
25. The 3rd Respondent contends that the Claimant's claim of wrongful exclusion from the payroll is misguided, as the Executive had no role in their reassignment post-secondment. Additionally, the [County Assembly Services Act](#) ensures continuity by appointing a Deputy Clerk or another officer when the Clerk's position is vacant.
26. The 3rd Respondent avers that since 2018, a new Clerk has been appointed, and the Claimant/Applicant's expectation to resume their prior role is deemed legally untenable, as tenure lapses with each new administration.
27. The 3rd Respondent avers that the Claimant/Applicant ceased acting as Clerk under the previous County Government and cannot reclaim the position.
28. The 3rd Respondent avers that the Claimant/Applicant's salary arrears claim is misplaced, as he no longer holds the position of Clerk to Narok County, and the salary is now under the payroll of the current Clerk.



29. The 3rd Respondent avers that the Clerk's office has not been vacant since 2018, making the Claimant/Applicant's request to resume the role misguided. Additionally, the Claimant/Applicant has failed to properly link the *Public Service Commission Act* to his claim and has not provided sufficient evidence to justify the reliefs sought.
30. The 3rd Respondent avers that the application is baseless, frivolous, and an abuse of court process, requesting its dismissal with costs awarded to it.
31. Neither the 2nd Respondent entered an appearance nor responded to the said application.
32. Parties were directed to file their respective submissions relating to this application.

Claimant/Applicant's written submissions

33. The Claimant/Applicant submitted that he was unlawfully removed from the 1st Respondent's payroll despite serving as a Clerk to the 3rd Respondent since 2nd February 2013. The Claimant/Applicant submitted that he was seconded to the County Executive in June 2018 and later redeployed to different departments, with his secondment extended until June 2024.
34. The Claimant/Applicant submitted that during that period, the Salaries and Remuneration Commission issued a directive in December 2023 to increase salaries for the Clerk position, but the 1st Respondent failed to implement the adjustment. Despite approval from the 2nd Respondent, and instructions from the County Secretary, the payroll manager refused to pay his salary arrears amounting to Kshs.1,951,200/=, despite being a permanent and pensionable employment status. The Claimant/Applicant seeks redress for the unpaid dues.
35. The Claimant/Applicant defined secondment under the Oxford Dictionary of English, 2017 edition, as follows:

“Secondment is the temporary transfer of an official or worker to another position or employment.”
36. The Black's Law Dictionary, Tenth Edition defines secondment as:

“A period of time that a worker spends away from his or her usual job, usually either doing another job or studying.”
37. The Claimant/Applicant relied on the case of *Mary Nyangasi Ratemo & 9 others v Kenya Police Staff Sacco Limited & Another* [2013] KEELRC 791 (KLR), the court cited the article *Employment Law: Transfer and Secondment of an employee*, Shearn Delamore & Co. vol 7 No. 2.0 June 2008 and noted that:

“In situations where an employee has been transferred, the original employer who transfers the employee is, in law, no longer regarded as his employer. Instead, the company which, the employee has been transferred to it now regarded as his employer. The opposite is, however, the case where an employee has been seconded. In such a situation, the company which seconds the employee remains the employer at all material times and not the company to which the employee is seconded. ... The ordinary meaning of secondment as a temporary transfer is, on the face of it, the connotation that the employee is subject to recall by his employer. So he is not a permanent employee of the other. Therefore, so long as the contract



is not terminated, a new contract is not made, and the employee continues to be in the employment of the original employer.”

38. The Claimant/Applicant submitted that he informed the Respondents that his 2nd term of his secondment was nearing its end and requested to return to his substantive position in the County Assembly of Narok. However, instead of facilitating the transition, the Respondents allegedly used the lapse of the secondment as an opportunity to unlawfully terminate the Claimant’s employment. In *Kirui v Principal, Bomet University College & another* [2022] KEELRC 1208 (KLR), the court cited the case of *Rev. John Mugania v Kenya Methodist University & Prof Mutuma Mugambi*, Cause No. 133 of 2013 the court held that secondment is a temporary leave of absence from a principal employer to serve another employer, as agreed by the parties. During this period, the seconded employee must establish a valid employment contract with the new employer, who is responsible for salary and benefits. The employee is required to work for and remain loyal to the secondment employer under the contract terms. Unless explicitly stated before secondment, pension liabilities do not transfer to the new employer.
39. The Claimant/Applicant submitted that since secondment is temporary, his employment should have reverted to the 3rd Respondent upon its end. The Claimant/Applicant also submitted that his 2nd term of his secondment expired on 7th June 2024, and his approved salary increment was not implemented, causing financial hardship. The Claimant/Applicant argued that the withholding of his salary violated his constitutional right under Article 28 of *the Constitution*, leading to undue distress.
40. The Claimant/Applicant claims that the Respondents did not formally terminate his employment, and therefore, they remain entitled to their salary and reinstatement. The Claimant/Applicant relied on the case of *Fredrick Odhiambo Ndede v Makueni County Public Service Board & another* [2015] KEELRC 236 (KLR), the court held that the Claimant was deployed as interim County Secretary of Makueni County in 2013 while retaining their status as a public officer. Under Article 236 of *the Constitution* and the *Employment Act*, they were entitled to protection from dismissal or disciplinary action without due process. Despite this, the Respondents failed to conclude investigations regarding the Claimant, leaving them without a salary for over two years. This prolonged suspension without pay amounts to degrading treatment, and the Claimant should receive their due salary while awaiting the resolution of the case.
41. The Claimant/Applicant avers that despite the lapse of his 2nd term of his secondment, his employment with the 1st Respondent remains intact. The Claimant/Applicant also avers that he should have been reinstated to his original position and is therefore entitled to the accumulated salary of Kshs.1,951,200/=, along with his monthly salary, until the claim is heard and determined.
42. On the issue of costs, the Claimant/Applicant placed reliance on the Judicial Hints on Civil Procedure, 2nd Edition, (Nairobi) Law Africa at page 101 of the book where Retired Justice Kuloba authoritatively stated that in Kenya, courts generally uphold a plaintiff’s right to costs when enforcing a legal right, provided there is no misconduct, omission, or vexatious conduct on their part. The court has no discretion to deny costs unless justified by such misconduct. If a defendant, even unintentionally, infringes on the plaintiff’s legal right, the plaintiff is entitled to costs as a matter of course.
43. In conclusion, the Claimant/Applicant urged this Honourable Court to allow the application as prayed.



1st Respondent's written submissions

44. The 1st Respondent submitted that the Claimant/Applicant has sought multiple reliefs, including payroll reinstatement, salary arrears payment, and injunctive orders to ensure continued salary remittance. However, the 1st Respondent contends that the Claimant has not provided a sufficient legal basis to justify these claims.
45. The 1st Respondent cited the classicus case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, where injunctive reliefs are only granted if the applicant meets the following conditions:
- i. Existence of a prima facie case with a probability of success
 - ii. Likelihood of suffering irreparable harm that cannot be adequately compensated by damages
 - iii. Balance of convenience in favour of the applicant
46. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR where a prima facie is defined as follows:
- “A case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party, calling for an explanation or rebuttal from the latter.”
47. The 1st Respondent submitted that it does not dispute that the Claimant/Applicant was employed by the 2nd Respondent and seconded to the 3rd Respondent, and any related employment dispute should be directed to the 2nd Respondent and not the 1st Respondent. Since there is no legal or contractual violation on the part of the 1st Respondent, the Claimant/Applicant has failed to establish a prima facie case with probability of success, and the suit against it is untenable.
48. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, the Court of Appeal stated that irreparable harm must be “injury which cannot be adequately remedied by an award of damages. The mere inconvenience or monetary loss alone does not amount to irreparable injury.” The 1st Respondent argued that salary disputes should not cause irreparable harm, as any withheld wages can be compensated through back pay if the Claimant/Applicant succeeds in the main suit. Since the issue is financial and can be remedied with damages, the Claimant/Applicant has not met the legal threshold.
49. In *Kenya Commercial Bank Limited v Nicholas Ombija* [2009] eKLR, the court held that the balance of convenience principle ensures that the party facing the greater harm if an injunctive order is granted or denied is given priority in legal decisions. Courts weigh the potential impact on both sides to determine the most just outcome. The 1st Respondent submitted that reinstating the Claimant/Applicant without a valid employment contract would result in financial loss and unjustified expenditure of public funds, violating the *Public Finance Management Act* and Article 201 of *the Constitution*. The 1st Respondent also submitted that the Claimant/Applicant has no valid claim for continued payment, and the balance of convenience favours the Respondents.
50. The 1st Respondent submitted that the Claimant/Applicant is not entitled to reinstatement or salary arrears, as he was employed by the 2nd Respondent and seconded for a fixed term that expired on 7th June, 2024. Since secondment does not equate to termination, the Claimant/Applicant should address any employment disputes with their original employer. In *Kenya Airways Limited v Aviation & Allied Workers Union, Kenya & 3 others* [2014] eKLR, the Court of Appeal stated that reinstatement is an exceptional remedy granted only in cases of unlawful termination, which has not been demonstrated. In *Joseph Mwangi Kamau v Attorney General & another* [2018] eKLR, the principle of “no work,



no pay" applies, and the Claimant has not provided evidence of entitlement to salary beyond the secondment period.

51. The 1st Respondent submitted that paying the Claimant/Applicant would result in unjustified public expenditure and urged this Honourable court to dismiss the application with costs.

3rd Respondent's written submissions

52. The 3rd Respondent submitted that the Claimant/Applicant seeks reinstatement to the payroll pending trial, arguing that his salary arrears should be paid from August 2024 onward. In *Anthony Omari Ongare v Teachers Service Commission* [2017] eKLR, the court held that reinstatement is a final remedy granted only in exceptional cases requiring specific performance. In *Ahmed Aden Hire v Nathif Jama & Garissa County Government* [2016] eKLR, the court emphasized that interim reinstatement should only be issued if termination is patently unfair and compensation alone would not redress the harm suffered. In *Alfred Nyungu Kimungui v Bomas of Kenya* [2013] eKLR, the court held that the burden of proving unfair termination lies with the employer, and reinstatement should not be granted prematurely unless special circumstances justify it.
53. The 3rd Respondent submitted that the Claimant/Applicant has not provided sufficient evidence to justify reinstatement to the payroll at the interim stage. The 3rd Respondent also submitted that reinstatement should only be granted in exceptional circumstances, which the Claimant/Applicant has failed to demonstrate. Granting such an order prematurely could finalize the case before a full hearing, making it irreversible if termination is later found valid.
54. The 3rd Respondent submitted that the legality of the termination is still contested, and the interim relief sought is unwarranted. Regarding costs, the 3rd Respondent submitted that under section 27(1) of the *Civil Procedure Act*, costs should be awarded at the judge's discretion in its favour.
55. The 3rd Respondent urged this Honourable court to dismiss the Claimant/Applicant's application as it lacked merit.

Analysis and determination

56. The court has meticulously gone through the application, supporting affidavit, grounds of opposition, replying affidavit and submissions by the counsels; the issue for determination is whether the application is merited.
57. Rule 45 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides that an interlocutory application is made by notice of motion and may be heard in open court or as directed by the Court. The Court can hear applications ex-parte and issue orders subject to costs and other conditions, though affected parties may seek to set them aside. Ex-parte injunctions are only granted once for up to fourteen days and can be extended only once with consent or by Court order for another fourteen days. Applicants can seek interim or temporary injunctions anytime during a suit to prevent contractual breaches or injuries. The Court may grant such injunctions under terms it considers appropriate.
58. The principles for granting injunctions were settled in the case of *Giella v Cassmass Brown & Co. Ltd* (supra), which has been precluded in the earlier part of this ruling.



59. In *Kenya Methodist University v Kaungania & another* [2022] KECA 90 (KLR), the Court of Appeal held as follows:

“In addition, while employment involves doing work for which one has been hired and is being paid by an employer, secondment is defined in Oxford Dictionary as the act of transferring a worker temporarily to another employment or position, and therefore under another employer. In effect, the employee does not undertake any work for the original employer during the period of secondment. Therefore, in a situation where a person is employed on secondment, the substantive and principal employer, in our view, is the person or entity that has assigned the employee specific duties which are remunerated by a salary or wages during that period of employment. The person or entity that seconds such a person is the nominal employer whose powers and duties are reinstated once the secondment ends and are residual during the period of secondment.”

60. In this instant case, the Claimant/Applicant was seconded to work in the county executive arm of the County Government of Narok vide a letter dated 14th June 2018 and deployed to the Department of Lands and Physical planning to perform the duties of an administrator and later to the Department of Agriculture, Livestock and fisheries to perform the same duties. The Claimant was enrolled on the 1st Respondent’s payroll. The Claimant/Applicant contract for his secondment ran for three (3) years from 2017 to 2021, and his contract was further extended from 8th June 2021 to 7th June, 2024. In *Kenya Methodist University v Kaungania & Another* (Supra), it clearly explains that during secondment, the organization that sends the employee is still their official employer but has limited responsibilities. Once the secondment ends, the organization takes back full control over the employee.

61. The Claimant/Applicant had already informed the 3rd Respondent that the term of his secondment was coming to an end and that he should be absorbed back. That he was not taken back by his substantive employer was wrong on the employer’s part.

62. According to the Guidelines on Secondment in Public Service 2016, clause 5.0 (xi), it clearly states that when a seconded officer completes his or her secondment, he or she typically returns to his or her original position in the service. However, if that position is no longer available, he or she will be placed in the next suitable vacancy within their former grade. This means that the officer is not assured of resuming their previous job or location and may be reassigned to a different post within the appropriate areas of the service. Essentially, while the officer retains his or her grade, his or her specific role and location may change based on available positions.

63. The Claimant was initially employed as a clerk to County Assembly of Narok. He was then seconded to the County Executive arm as a County Secretary. He was to serve in the Department of Lands and Physical Planning. This was an administrative role. When his second secondment expired on 7th June 2024 he wrote to the 2nd Respondent about the expiration of his secondment.

Clearly the 2nd Respondent was duty bound to facilitate his return to his employer. There cannot be a lacuna as to the process of referring a seconded employee to his original employer once his secondment contract expired.

64. The 2nd Respondent did not take the regular steps to absorb Claimant to his original position but simply stopped paying he Claimant his salary.

That was in violation of fair labour practice, as well provided in Article 41 of the 2010 Kenya Constitution.



65. In the case of Mary Nyangasi Ratemo & 9 Others -vs Kenya Police Staff Sacco (Supra) where the relevant citation is already provided hereinbefore a seconded employee remains the employee of the company that seconded him at all times. The employee who is seconded to another organisation continues to be in the employment of the original employer.
66. This is also as well stated in the guidelines of Public Service on secondment cited hereinbefore. In that case the Claimant remained an employee of the 2nd Respondent after his secondment terminated on 7th June 2024. The role of Service Board was to absorb the Claimant back to the organisation either in the same position or in any other position of the same cadre.
67. The Claimant was not terminated by the Assembly and neither did he resign. His term did not end by affixion of time.
68. On 14th December 2023 Salaries and Remuneration Commission (SRC) revised the terms of termination of clerks of the County Assembly Ref No. SRC/TS/24/6 vol. 1(56). Pertaining thereto the Narok County Government wrote to the Claimant by their letter signed by Narok County Public Service Board CEO/Secretary and informed him that his request that his salary to be in tandem with SRC Circular of 14th December 2023 had been approved. The board therefore approved his raised salary.
69. In Section 5.0(ii) of the Public Service guidelines on secondment it is provided that enhanced salary payments will only be paid if applicable in accordance with current terms and conditions.
In this case the enhanced salary was applicable as the board did approve the same.
70. The 1st Respondent however in their submissions dated 18th March 2025 submit that as held in the case of Joseph Mwangi Kamau v Attorney General & Another [2018] eKLR the principle of “no work no pay” dictates that an employee is only entitled to remuneration for work actually performed.
71. That is so but then the Claimant did to abscond work or refuse to work. He was simply not given the opportunity to go back o his employment after the expiry of his secondment contract.
72. The court is satisfied that the Claimant/Applicant has proved he is deserving of the orders prayed in the Notice of motion application dated 18th December 2024. However, since there is a pending suit which should be heard and determined expeditiously the court will grant the following orders pending the determination of the main suit:-
1. That the 2nd Respondent to pay the Claimant his pending salary as per the revised terms for the month of August 2024 to date of the ruling.
 2. That the costs be in the cause and the main suit be heard on 1st July 2025.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF MAY, 2025.

ANNA NGIBUINI MWAURE

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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

