



King'ori v Kenya National Library Services; County Government of Nyeri (Third party) (Cause E019 of 2024) [2025] KEELRC 2118 (KLR) (18 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2118 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E019 OF 2024
ON MAKAU, J
JULY 18, 2025

BETWEEN

JOHN WANYEKI KING'ORI CLAIMANT

AND

KENYA NATIONAL LIBRARY SERVICES RESPONDENT

AND

COUNTY GOVERNMENT OF NYERI THIRD PARTY

JUDGMENT

1. By a Memorandum of Claim dated 22nd May 2024, the claimant sought the following reliefs:
 - a. A sum of Kshs.689,381 plus interest at court rates from 1st September, 2021 till payment in full.
 - b. Costs of the suit plus interest.
2. The respondent filed a Response to the claim dated 12th August 2024 denying liability to pay the sums sought. It further averred that the suit was time barred pursuant to section 90 of the *Employment Act* and the court lacks jurisdiction. It further obtained leave to join County Government of Laikipia as a Third Party.
3. The third party filed response denying the claim and averred that claim accrued during the time when the claimant was employed by the respondent.
4. The suit never went for hearing as the parties agreed to use Cause E018 of 2024 as a test suit and the decision to apply hereto.
5. Having considered the pleadings and evidence, and judgment in E018 of 2024 the issues for determination are: -



- a. How much is owing as salary arrears to the claimant.
- b. Who should pay the arrears?
- c. who should pay costs of the suit?

Salary arrears

6. The claimant's case is founded on CBAs signed on 10th July 2019 and 14th September 2021 whose effective date was 1st July 2017.
7. Under the BCA for 2013-2017 which came into effect on 1st July 2013, his salary was as follows: -
 - 1.7.2013 – 30.6.2014 Kshs.24,662
 - 1.7.2014 – 30.6.2015 Kshs.24,414
 - 1.7.2015 – 30.6.2016 Kshs.28,166
 - 1.7.2016 – 30.6.2017 Kshs.29,918
8. He was paid Kshs.17,746 throughout the said CBA period. His arrears under the said CBA was as follows: -
 - 1.7.2013 – 30.6.2014 (Kshs.24, 662 – 17,746) x 12 =Kshs.82,992
 - 1.7.2014 – 30.6.2015 (Kshs.26,414 – 17,746) x 12 =Kshs.104,016
 - 1.7.2015 – 30.6.2016 (Kshs.28,166 – 17,746) x 12 =Kshs.125,040
 - 1.7.2016 – 30.6.2017 (Kshs.29,918 – 17,746) x 12 =Kshs.146,064
 - 1.7.2017 – 1.10.2021 (Kshs.29,918 – 17,746) x 27 =Kshs.328,644
9. The second CBA applied to him until 1st September 2021 when he was promoted to Managerial position. Under the said CBA the claimant's salary as Library Assistant (Job scale 10) was as follows: -
 - 1.7.2017 – 30.6.2018 Kshs.31,314
 - 1.7.2018 – 30.6.2019 Kshs.33,458
 - 1.7.2019 – 30.6.2020 Kshs.35,603
 - 1.7.2020 – 30.6.2021 Kshs.37,747
 - 1.7.2021 – 1.9.2021 Kshs.39,892
10. The claimant was paid Kshs.29.918 from 1st July 2017 till 1st September 2021 when he joined Management. He computed his salary arrears under the CBA as follows:
 - 1.7.2017 – 30.6.2018 (Kshs.31,314 – 29,918) x 12= Kshs.16,752
 - 1.7.2018 – 30.6.2019 (Kshs.33,458 – 29,918) x 12= Kshs.42,480
 - 1.7.2019 – 30.6.2020 (Kshs.35,603 – 29,918) x 12= Kshs.68,220
 - 1.7.2020 – 30.6.2021 (Kshs.37,747 – 29,918) x 12= Kshs.93,948
 - 1.7.2021– 31.8.2021 = Kshs.19,948

Total Kshs.241,348



11. The claimant summed up his salary arrears under the two CBAs as Kshs.1,028,104. He admitted payment of Kshs.85,708 in October 2019, Kshs.164,721 in July 2020 and Kshs.88,414 paid in December 2021 equalling to Kshs.338,843. Considering the amount paid, I find that the outstanding arrears amounts to Kshs.689,261. The amount was not paid by the respondent to the claimant as at 1st July 2023 when the claimant was transferred from the respondent to the Third Party.

Who should pay the salary arrears of Kshs.689,281

12. The third party filed an IPA dated 4th October 2023 which dealt with transfer of Assets from the respondent to the third party. There is no indication of what was to happen with the liabilities that existed before the Library functions were devolved.
13. Article 187 of *the Constitution* provided for transfer of powers and functions from one level of Government to the other. Sub Article (2) provides that: -
- “If a function or power is transferred from a government at one level to a government at the other level-
- a. Arrangement shall be put in place to ensure that resources necessary for the performance of the function or exercise of the power are transferred.”
14. The best way to effect the transfer liabilities was by executing an IPAs but the parties herein avoided the issue of existing liabilities in the IPA dated 4th October 2023. The IPA provided for alternative forum for settling any dispute arising from the matter of transfer of the Library function to the third party. I will therefore not make a determination of who between the respondent and the third party should pay the salary arrears to the claimant. I will hold the two liable jointly and severally. In case of any controversy about who should solely liable, they know where to take that dispute guided by the IPA and the Law.

Conclusion

15. I have further found that the claimant is entitled to his salary arrears of Kshs.689,281 which accrued before his services were transferred to the third party. I have also found that the respondent and the third party liable jointly and severally to pay the claimant the said arrears. The claimant is also awarded costs and interest at court rate from the date of filing the suit till payment in full.

DATED, SIGNED AND DELIVERED AT NYERI THIS 18TH DAY OF JULY, 2025.

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

