



**Mutura v Nairobi City County Assembly & another (Cause E890 of 2022)
[2024] KEELRC 292 (KLR) (19 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 292 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E890 OF 2022
JK GAKERI, J
FEBRUARY 19, 2024**

BETWEEN

BENSON MUTURA CLAIMANT

AND

NAIROBI CITY COUNTY ASSEMBLY 1ST RESPONDENT

CLERK NAIROBI CITY COUNTY ASSEMBLY 2ND RESPONDENT

JUDGMENT

1. The Claimant commenced this suit by a Memorandum of Claim filed on 18th April, 2023 alleging refusal by the Respondent to pay terminal dues.
2. It is the Claimant's case that he was employed as Speaker of the 1st Respondent until September 2022 when he handed over officially.
3. He avers that during the subsistence of his employment, he performed his duties dutifully to the Respondent's satisfaction and was housed by the County and provided with all commensurate home utilities and attendants pursuant to Kenya Gazette Notice Vol. CXIX – No. 6518 dated 7th July, 2017.
4. That the Claimant's monthly house allowance was Kshs.150,000/= paid directly to the landlord's account by the County Government and the same was paid until June 2022 and the Respondent refused or neglected to pay the Claimant's allowance for July, August and September 2022 which contravenes *the Constitution* of Kenya, 2010 and the *Employment Act*, 2007 and the landlord was threatening to distress for rent.
5. The Claimant prays for;
 - a. An order that the Respondent pays him terminal dues and compensatory damages totalling Kshs.450,000/= tabulated as follows;



- i. Three month's house allowance (being Kshs.150,000/= x 3 months ...Kshs.450,000/=
- b. Certificate of service.
- c. Costs of the suit.
- d. Interest on (a) above from date of filing suit till payment in full.

Respondent's case

6. In their amended statement of defense filed on 4th July, 2023, the Respondents admit that the Claimant was its employee, performed his duties well and handed over in September 2022.
7. It is the Respondent's case that the Kenya Gazette No. Vol. CXIX-No. 6518 of 17th July, 2017 provided for payment of rent to the Governor, Deputy Governor and Speaker of the County Assembly until 30th June, 2022 to allow counties that had not started the construction of houses time to allocate funds and prioritize construction.
8. That after 30th June, 2022, the system in place used to generate salary and allowances automatically ceased to include house allowance as a benefit for holders of the Speaker's Office.
9. The Respondent denies that the Claimant's house allowance was Kshs.150,000/= and avers that the Salaries and Remuneration Commission (SRC) capped the allowance at Kshs.80,000/= and he was paid Kshs.160,000/= as rent for July and August on 26th January, 2022 and the allowance for September 2022 was paid together with the Claimant's salary.
10. The Respondents pray for dismissal of the Claimant's case with costs as he was paid for the 3 months claimed and the Respondent would suffer prejudice if the claim was allowed as it would be borne by the tax payer.

Evidence

11. The written statements of the Claimant and the 1st Respondent's Director Human Resource, Mr. Robert Situma rehash the contents of the Memorandum of Claim and the amended statement of defense respectively.
12. To their credit, the parties availed documents which demonstrate the factual background of the suit in its entirety.

Claimant's submission

13. The Claimant's counsel isolated three issues including costs.
14. On the Claimant's entitlement to a monthly house allowance by virtue of his employment as Speaker, counsel submitted that the Claimant remained in office until 29th September, 2022 when he handed over and his monthly rent allowance was Kshs.150,000/= as per the Personal Assistants (PA) memo to the 2nd Respondent and rent invoices.
15. That the SRCs directive dated 19th May, 2019 has never been nullified or varied.
16. Counsel urged that Gazette Notice No. 8792, Volume CXXIV dated 27th May, 2022 was made on the assumption that all Governors, Deputy Governors and Speakers were being housed by the employer and did not vary the SRC circulars on the housing of Governors, Deputy Governors and County Assembly Speakers by the Counties as at 30th June, 2022.



17. That the sum of Kshs.80,000/= paid by the Respondent belatedly was introduced as an addition to the County Speaker being housed by their respective counties.
18. As regards the amount owed to the Claimant, counsel submitted that since the claimant was supposed to be housed by the County Assembly for the period 2022 – 2023, (wrongly stated as 2023 – 2024) and he was in office in July, August and September, the Claimant should not suffer prejudice of the Respondent's failure to provide housing to the Speaker. That the same should be borne by the Respondent.
19. Counsel urged that the Claimant remained in the same condition and his rent was the same amount as the previous months and a demand for payment had been made.
20. Reliance was made on Section 27(1) of the *Civil Procedure Act* and the observations of Hon. Justice Koloba (Rtd) in Judicial Hints of Civil Procedure at page 94 to submit that costs ought to be borne by the Respondent.

Respondent's submissions

21. By 23rd January when the court retired to prepare this judgement, the Respondent's submissions were unavailable in the portal.

Determination

22. The singular issue for determination is whether the Claimant is entitled to the reliefs sought in this suit.
23. It is common ground that the Claimant was the Speaker of the Nairobi City County Assembly until September 2022.
24. None of the parties provided the actual date of commencement of service. It is equally not in contest that the Claimant served diligently and to the Respondent's satisfaction.
25. Equally, the parties are in agreement that the Claimant's housing allowance was Kenya Shillings 150,000.00 as provided by Gazette Notice Vol. CXIX – No. 6518 dated 7th July, 2017 and was paid directly to the Landlord until June 2022.
26. Thereafter, the Respondents did not pay any allowance but after demand, they belatedly paid Kshs.160,000/= for July and August, having paid Kshs.80,000/= together with the September 2022 salary as evidenced by a copy of the Claimant's payslip on record whose contents he did not contest.
27. The Respondents avers that after June 30th 2022, the Salaries and Remuneration Commission (SRC) issued a Gazette Notice Vol. CXXIV No. 8 of 92 dated 27th July, 2022 which provided inter alia that Counties should continue paying house allowance to the holders of the Speaker's Office but the same be capped at Kshs.80,000/=.
28. From the documents on record, it is discernible that by letter dated 1st July, 2022, the Salaries and Remuneration Commission invited all County Speakers to submit views on the proposed remuneration and benefits structures for state officers on or before 15th July, 2022. A copy of the proposal was attached and by Gazette Notice Vol. CXXIV No. 8792, the Commission Gazetted the Remuneration and Benefits for State Officers in the County Assembly, on 27th July, 2022.
29. The Commission fixed the remuneration and benefits for the period 2022/2023 as follows;



Basic Salary	House Allowance	Commuter	Market adjustment	Gross Salary
315,315	80,000	Official	130,210	525,525

30. Note (1) of the Gazette Notice was emphatic that the remuneration therein set “shall be payable upon assumption of office of State Officers in the Third County Assembly”.
31. Similarly, Note (ii) provided that;
- The monthly remuneration is fixed for the term of office for the State Officer in the County Assembly unless reviewed and set by the Salaries and Remuneration Commission.
32. Implicitly, Gazette Notice Vol. CXXIV No. 8792 dated 27th July, 2022 did not apply to State Officers in the County Assembly who were already in office and as submitted by the Claimant’s counsel, the SRC Circular Reference No. SRC/TS/COG/6161/48 VOL II (64) dated 20th May, 2019 was not annulled.
33. As evidence on record shows that the Claimant’s housing was Kshs.150,000/= per month as the Invoice from Supply Zone dated 29th June, 2022 reveals and the Respondents tendered no evidence to show that the Claimant’s tenancy status had changed, it therefore follows that he was entitled to housing at Kshs.150,000/= per month as ordained by Gazette Notice Vol. CXIX – No. 6518 dated 7th July, 2017 as Gazette Notice Vol. CXXIV No. 8792 of 27th July, 2022 did not apply to him.
34. Although the Respondents averred that the non-payment was a systems issue, they belatedly applied Gazette Notice No. 8792 and paid the Claimant Kshs.80,000/=:, which placed him at a disadvantage and was unfair as he was paid an amount payable to those who were yet to assume office.
35. Granted that counsel has admitted that the sum of Kenya Shillings 240,000/= was paid, the Claimant is only entitled to the balance of Kshs.210,000/= which the court awards.
36. Similarly, the Claimant is entitled to a certificate of service by dint of Section 51 of the Employment Act, 2007.
37. In the upshot, judgement is entered in favour of the Claimant against the 1st Respondent in the following terms;
- a. Unpaid house allowance Kshs.210,000/=:.
 - b. Certificate of service.
 - c. Interest at court rates from date of judgement till payment in full.
38. As the Claimant is only partially successful, he is awarded 50% of the costs.
- It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 19TH DAY OF FEBRUARY 2024.

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

