



**Aoko v County Government of Nyamira (Cause E009 of 2023)
[2024] KEELRC 260 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 260 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E009 OF 2023
CN BAARI, J
FEBRUARY 15, 2024**

BETWEEN

BENARD ONGIRI AOKO CLAIMANT

AND

COUNTY GOVERNMENT OF NYAMIRA RESPONDENT

JUDGMENT

1. The Claimant's claim was commenced vide a Memorandum of Claim dated 16th January, 2023, and filed on 31st January, 2023. The Claimant claims an aggregate sum of Kshs.2,308,275.60/=being outstanding extraneous terminal pay, pay for service rendered for 9 days in the month of February,2022, pay in lieu of leave, fees paid to the Kenya School of Government-Baringo campus, costs of the suit and interest thereon.
2. The Respondent entered appearance on 28th March, 2023, through the County Attorney, but did not proceed to file a response to the claim; hence the matter proceeded undefended.
3. The Claimant's case was heard on 20th September, 2023, when he testified in support of his case. He adopted his witness statement and produced documents filled as exhibits in the matter
4. Submissions were filed for the Claimant, and which have been duly considered.

The Claimant's Case

5. The Claimant states that he was an employee of the Respondent working as an accountant until 9th February 2022, when he proceeded on early retirement to venture into elective politics as per the guidelines provided by the IEBC.
6. It is his case that his accumulated leave days stood at 70 days in accordance with the terms of service for officers of the defunct Local Authority, which amounts to Kshs. 293,529.60/=



7. The Claimant avers that the Respondent had an outstanding debt of Kshs.152,000/=owed to the Kenya School of Government-Baringo campus, on account of fees for a training the Claimant undertook on Strategic Leadership Development Program in 2018, and which training was sponsored by the Respondent.
8. The Claimant further states that on 24th October, 2022, he was forced to personally pay the sum of Kshs.152,000/2,000/= to the Kenya School of Government to secure the release of his certificate.
9. It is the Claimant's case that he worked for nine (9) days in the month of February 2022, and for which he was not paid.
10. The Claimant further states that upon exiting the service of the Respondent, he was, and remains entitled to payment of liabilities the Respondent took over from the defunct local authority, whose particulars are as follows:
 - a) Eco Bank Unremitted Bank Loan Kshs.124,992.00/=
 - b) HELB Unremitted Helb Loan Kshs.125,000.00/=
 - c) NSSF Unremitted Deductions Kshs.7,600.00/=
 - d) Benard O. Aoko Arrears/Tuition Refund Kshs.1,525,842.00/=Sub-total Kshs.1,783,434.00/=
11. The Claimant avers that he duly requested the Respondent to facilitate his transition and clearance from the service, and process his certificate of last pay, certificate of service, and any other facilitative documents as of the last day in office, for his collection and pay him terminal and outstanding dues.
12. It is his case that despite making numerous requests and demands, he has not received any feedback from the County Treasury over payment of terminal dues amounting to Kshs.2,148,675.60
13. It is the Claimant's prayer that he be awarded the reliefs as contained in his memorandum of claim.

Analysis and Determination

14. The singular issue that falls for my determination, is whether the Claimant is entitled to the reliefs sought.

Whether the Claimant is entitled to the Reliefs Sought

15. The Claimant seeks an aggregate sum of Kshs.2,308,275.60/=being outstanding extraneous terminal pay, pay for service rendered for 9 days in the month of February,2022, pay in lieu of leave, fees paid to the Kenya School of Government-Baringo campus, costs of the suit and interest thereon.

Pay for service rendered for 9 days in the month of February,2022

16. The Respondent despite being served with the summons and the memorandum of claim, entered an appearance, but did not file its defence to the claim. The matter thus proceeded undefended.
17. Though the suit herein is undefended, the Claimant was under duty to prove that he is entitled to the reliefs he seeks from the court. The Claimant issued the Respondent with a retirement notice dated 17th January, 2022, which notice indicated that he would exit the service of the Respondent on 31st January, 2022.



18. In a further letter by the Claimant dated 4th February, 2022, the Claimant yet again reminded the Respondent that he was exiting their service on 31st January, 2022, in pursuit of elective leadership. The Respondent issued the Claimant a clearance letter dated 7th February, 2022.
19. Nothing shows that the Claimant continued in the service of the Respondent after 31st January, 2022, and hence the claim for pay for 9 days worked in February, 2022, is devoid of merit. The claim fails and is dismissed.

Pay in lieu of leave

20. The Claimant claims payment on account of 70 days of leave not taken. A leave approval letter produced by him in the matter and dated 25th November, 2021, indicates that he requested to utilize his 20 days and for which an approval was granted. This approval therefore, left him a balance of only 10 (ten) days that he carried forward, and which is clearly indicated as his leave balance in the letter.
21. I find and hold that the Claimant is entitled to payment equivalent to 10 days pay on account of leave not taken and is hereby awarded.

Money paid to the Kenya School of Government-Baringo campus

22. The Claimant's case is that he paid Kenya School of Government Kshs. 152,000 for a training he attended and which was approved by the Respondent. Evidence before court shows that indeed, this training was approved for the amount in issue, and the Respondent had made an undertaking to pay the full cost of the training for the Claimant which it did not do.
23. I hold that the Claimant having made the payment to the Kenya School of Government, is entitled to a reimbursement for the amount paid. The claim is merited and is hereby awarded.

Outstanding extraneous terminal pay

24. The Claimant further seeks payment of Kshs. 1,783,434.00/= which he terms as outstanding extraneous terminal pay accrued from the defunct local authorities. This claim was neither substantiated nor proved. No evidence was led to show that the Claimant is owed in this account.
25. It is dismissed.
26. In whole, I hold that the Claimant is entitled to the following reliefs and which are hereby awarded: -
 - i. Kshs. 41,933/= being pay in lieu of leave.
 - ii. Kshs.152,000/=fees paid to the Kenya School of Government-Baringo
 - iii. The suit was undefended; hence parties shall bear their own costs of the suit.
27. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 15TH DAY OF FEBRUARY, 2024.

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Majune holding brief for Mr. Kraido for the Claimant



No appearance for the Respondent

Erwin Ongor – C/A

