



Kenya County Government Workers Union v County Government of Kisii & 2 others (Cause E007 of 2021) [2024] KEELRC 1027 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 1027 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E007 OF 2021
CN BAARI, J
APRIL 18, 2024**

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION CLAIMANT

AND

THE COUNTY GOVERNMENT OF KISII 1ST RESPONDENT

KISII COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

COUNTY SECRETARY, KISII COUNTY 3RD RESPONDENT

RULING

1. This ruling follows the Judgment of this court rendered on 24th November, 2022, where the Court directed the 1st Respondent to provide accurate records of outstanding employee emoluments that accrued from the defunct Local Authorities within Kisii County government.
2. This directive was necessitated by the Claimant's inability to specifically show the employees owed, as well as the amount in respect of each of these employees. The court deemed the Respondents being the employer, to be in a better position to make these clarification to enable the making of final orders in relation thereto.
3. The Respondents pursuant to that order of the court, filed an affidavit sworn by one George Matiro, the Principal Human Resources Officer of the 1st Respondent 28th February, 2023. The deponent states that between September and April, 2013, the total salary arrears owed to employees of the then Local Authorities now defunct, was a sum of Kshs. 35,645,062/-
4. It is his position that the Claimant exaggerated the number of its members subject of the suit, as the list included employees of the defunct Keroka Town council which falls under Nyamira county. He states further, that 61 of the employees have since died, 7 have resigned and were paid all their dues,



- 16 transferred their services to other entities, and that 240 have since retired and have been paid their retirement dues.
5. The Respondents aver that out of the 750 employees it inherited from former local authorities, 411 are still in their employment.
 6. In a reply sworn by George Onyinkwa on 17th November, 2023, the Claimant denies that there was only a sum of Kshs.35,645,062 in arrears as at April 2013. It avers that the Respondent ignored the verified sums by both the Transition Authority and the County Government itself earlier done which confirmed that a sum of Kshs. 217,317,562 was due and owing.
 7. The Claimant states that in October 2018, the IGRTC produced a report being a summary of analysis, observations and recommendations to the Kisii County Assets and Liabilities Committee (CALC), wherein at page 12 of the said report, the IGTRC captured the unpaid staff emoluments at Kshs.217,317,562 which formed the basis of the claim herein.
 8. It states further that a summary of the said report capturing the actual arrears and emolument due from each defunct County Council was prepared which specifically captured all dues of Kshs.217,317,562.
 9. It states that the sum due is not the sum of Kshs.35,645,062 as suggested by the Respondents, but a sum of Kshs.217,317,562 as found and verified by the IGRTC and further as confirmed by the Kisii County Assets and Liabilities Committee (CALC).
 10. On the averments by the Respondents that some members of the Claimant have since died, resigned, retired or transferred their services to other establishments, the Claimant avers that there is no proof of payment of their dues. It is her case that arrears and dues remain outstanding as they were rightfully accrued and cannot be wished away on account of death, retirement, resignation or transfer of service to another entity.
 11. The submissions filed by both parties have been duly considered.

Determination

12. This court in her judgment of 24th November, 2022, found the Claimant's claim merited and the only pending issue, was who is to be paid what amount and not the total sum payable, which sum had already been determined by the IGRTC in its October, 2018 report produced before court.
13. The court directed the Respondents to provide it with a list of names of the subject employees and the amount payable for each, but the Respondent digressed from the issue in an attempt to reopen the case and dispute issues that the court already determined.
14. For starters, the Respondents have not shown how dues owed to deceased employees were dealt with. Further, the court has not been shown that arrears owed to employees who transferred service to other organization have been settled or that retirement benefits have been paid to those that have since retired, not to mention that persons who resign are entitled to their dues.
15. In the circumstances, and considering that the Respondents who are the custodians of the employee records at the Kisii County government have failed to be of help, I will proceed to make my final orders guided by the documents earlier produced in evidence.
16. Considering the judgment rendered herein on 24th November, 2022, and further guided by the report on Summary of Analysis, Observation and Recommendations on the County Assets and Liabilities for Kisii County, made by the Intergovernmental Relations Technical Committee in October, 2018, and the letter of 22nd March, 2019 advising on liquidation of liabilities, I make the following orders:



- i. That the Respondents pay the Claimant's members a sum of Kshs. 217,317,562/- being unpaid staff emoluments owed by the defunct Local Authorities.
- ii. That in the interest of social partnership, each party shall bear their own costs.

17. It is so ordered.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 18TH DAY OF APRIL, 2024.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Mutua present for the Claimant

Mr. Kaburi Present for the Respondents

Erwin Ongor - C/A

