



REPUBLIC OF KENYA



Wanyonyi & 70 others v Trans-Nzoia Public Service Board & another (Petition E003 of 2023) [2024] KEELRC 13303 (KLR) (28 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13303 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
PETITION E003 OF 2023
MA ONYANGO, J
NOVEMBER 28, 2024**

BETWEEN

DAVID WANJALA WANYONYI & 70 OTHERS & 70 OTHERS & 70 OTHERS & 70 OTHERS & 70 OTHERS PETITIONER

AND

TRANS-NZOIA PUBLIC SERVICE BOARD 1ST RESPONDENT

THE COUNTY OF TRANS-NZOIA 2ND RESPONDENT

RULING

1. The Petitioner herein filed the petition herein dated 5th March, 2022 seeking the following orders:
 - a. A declaration that the petitioner's fundamental rights and freedoms under Article 27(1)(2) and 41(1)(2)(a) of the Constitution of Kenya have been and were grossly violated by the Respondents.
 - b. A declaration that the respondent is bound to consider the Petitioners as Permanent employees having worked for the respondent continuously for over 12 years.
 - c. Order restraining and prohibiting the Respondent from employing replacement labour or additional employees to perform the same or similar work as the Petitioner herein.
 - d. Order to convert the terms and conditions of service of the petitioners herein purported to seasonal employees in the service of the respondent to the Respondents employees on terms and conditions of service consistent with the employment Act 2007.
 - e. A declaration that the action of the Respondents is in violation of Articles 20, 27, 41,43, 47, 201(d) and 232 of the Constitution.



- f. An order prohibiting the 1st and 2nd Respondents from proceeding with the intended recruitment of job vacancies prior to carrying out staffing audit of all the current employees.
 - g. An order of injunction restraining the Respondents, their agents, officers or persons acting under their instructions from carrying on with the short listings advertisements, recruitment and or employment or any new employment without undertaking staff audit, qualification assessment, right job placements, experience and promotion.
 - h. An order directing the 1st and 2nd Respondents to carry out a staff audit of all the current employees to establish an optimal staffing structure in order to ensure a sustainable wage bill.
 - i. An order for costs of the Petition.
 - j. Any other relief the Court shall deem fit to grant
2. The Respondents filed a Memorandum of Appearance dated 11th April, 2022 and Response to Petition dated 28th February, 2023.
 3. On 28th September, 2023 directions were taken that parties dispose of the petition by way of written submissions.
 4. On 30th January, 2024 Mr. Wanyonyi for the Petitioners informed the court that the issues his clients were pursuing in court were settled amicably and requested that the petition be marked as settled with no order as to costs.
 5. Ms. Ruto who appeared holding brief for Mr. Yego for the Respondents informed the court that the Respondents would concede to the withdrawal of the petition but insisted that the Respondents having filed a response to the petition, should be awarded costs.
 6. The court marked the petition as withdrawn but asked parties to discuss and agree on the issue of costs.
 7. On 27th May 2024 parties reported to the court that they were unable to agree on costs and that the matter of costs should be decided by the court.
 8. The court therefore directed the parties to file submissions on the issue of costs. I have not seen any submissions on record by any of the parties.

Analysis and Determination

9. The specific issue for determination herein are whether the Respondents are entitled to costs of the petition.

Law on Costs of the suit

10. Section 12(4) of the *[Employment and Labour Relations Court Act](#)* provides for costs as follows:
 - (4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.
11. Rule 29 of the *[Employment and Labour Relations Court \(Procedure\) Rules 2016](#)* that were applicable at the time relevant to this suit provides for costs as follows:
 29.
 - (1) The Court shall be guided by section 12(4) of the *[Employment and Labour Relations Court Act](#)* and the Advocates (Remuneration) Order in awarding costs.



- (2) The Court may order reasonable reimbursements of money spent by litigants in the course of litigation.
- (3) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, it may, in addition to that order, direct that interest be paid on the liquidated amount awarded at Court rates. Section 27 of the [Civil Procedure Act](#) provides: -

12. Section 27 of the [Civil Procedure Act](#) also provides for costs as follows:

27

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.

13. In *Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant v Ibururu Dairy Farmers Co-operative Society Ltd* Judicial Review Application No. 6 of 2014 court held as follows: -

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

14. [Halsbury's Laws of England](#); 4th Edition (Re-issue), {2010}, Vol.10. para 16 provides as follows on costs:

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice”.

15. Justice (Retired) Kuloba in [Judicial Hints on Civil Procedure](#), 2nd Edition, (Nairobi) Law Africa) 2011, page 94 added his own voice to the issue of costs to the effect that: -

“Costs are {awarded at} the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise...”



16. “Good reasons” that justifies departure from the general rule that “costs follow the event” will vary from case to case. The Supreme Court of Kenya in the case of *Jasbir Singh Rai & Others vs Tarlochan Rai & Others* {2014} eKLR observed that:
- “In the classic common law style, the courts have to proceed on a case by case basis, to identify “good reasons” for such a departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs...”
17. The jurisprudence in this area of law points to the position that the exercise of discretion on costs depends on the facts of each case, and is guided by the principle that costs should follow the event unless the court orders otherwise. Such circumstances as are relevant include (i) the conduct of the parties, (ii) the subject of litigation, (iii) the circumstances which led to the institution of the proceedings, (iv) the events which eventually led to their termination, (v) the stage at which the proceedings were terminated, (vi) the manner in which they were terminated, (vii) the relationship between the parties and (viii) the need to promote reconciliation amongst the disputing parties pursuant to Article 159 (2) (c) of the *Constitution*; (ix) public interest.
18. In the instant case the Petitioners informed the court that the issues in dispute in the petition were amicably settled. The Respondents did not object to the matter being marked as settled. The parties did not disclose to the court what the terms of settlement were.
19. The Petitioners are 71 in number and are individuals who were former employees of the Respondents as revenue collectors on temporary terms of engagement. Their employment contracts were terminated by the Respondent when the Respondents decided to rationalize the recruitment process. They were not at fault. In fact they were the aggrieved parties. They are now jobless. Requiring them to pay costs of the Respondents in the circumstances would deal double jeopardy against them and would be contrary to public interest.
20. It is for the foregoing reasons that I find that the order that would be reasonable in the circumstances is that each party shall bear its costs.
21. Orders accordingly

DATED, DELIVERED AND SIGNED AT KITALE THIS 28TH DAY OF NOVEMBER 2024.

M. ONYANGO

JUDGE

