



Nyakeriga v Kisii County, Chief Officer Finance & 4 others (Judicial Review E031 of 2024) [2024] KEELRC 2782 (KLR) (13 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 2782 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E031 OF 2024
JK GAKERI, J
NOVEMBER 13, 2024**

BETWEEN

ISAAC SIKO NYAKERIGA APPLICANT

AND

KISII COUNTY, CHIEF OFFICER FINANCE 1ST RESPONDENT

KISII COUNTY CHIEF SECRETARY 2ND RESPONDENT

CHAIRMAN KISII PUBLIC SERVICE BOARD 3RD RESPONDENT

KISII PUBLIC SERVICE BOARD 4TH RESPONDENT

KISII COUNTY GOVERNMENT 5TH RESPONDENT

RULING

1. Before the Court for determination is the ex parte applicants notice of motion dated 12th August, 2024 filed under certificate of urgency seeking orders that:
 1. Spent.
 2. Spent.
 3. Spent.
 4. The Kisii County Chief Officer Finance and County Secretary to pay Mr. Isaac Siko Nyakeriga outstanding arrears on his account at the NSSF and NHIF for the years worked.
 5. The Kisii County Chief Officer Finance and Kisii County Secretary to pay the sum of Kshs.150,000.00 together with costs of Kshs.61,000.00.



6. Failure to honour the above the Court do issue warrant of arrest against Kisii County Chief Finance Officer, Kisii County Secretary and chairman of the Kisii County Public Service Board.
 7. The OCS Kisii Central Police station to effect the order by arresting the Kisii County Chief Officer Finance, Kisii County Secretary and the Chairman Kisii County Public Service Board forthwith without any condition and avail them in Court.
 8. Costs of this application be provided for.
2. The Notice of Motion is based on the grounds set out on its face and the Supporting Affidavit sworn by Isaac Siko Nyakeriga on 12th August, 2024 who deposes that he was the Claimant in Kisii Magistrate's Court ELRC No. E033 of 2021 and judgment was delivered on 25th September, 2023 and decreed issued on 18th October, 2023 and the judgment served on the County Attorney on 26th September, 2022.
 3. The affiant deposes that office of the County Attorney has on several occasion been informed in writing to advice the County to comply with the judgment but to no avail.
 4. That Counsel has tried all ways to have the judgment honoured including applying for warrants against the County Secretary but all has been in vain.
 5. That calls, though responded to have not yielded results.

Response

6. The Respondents responded by a Replying Affidavit sworn by Henry Kaburi on 15th September, 2024 who deposes that he works at the County Attorney's Office and the ex parte applicant had already resumed duty after reinstatement in the Kisii County payroll in compliance with the Court order.
7. That the outstanding arrears are subject of computation and payable when funds are available due to reliance upon the Exchequer which is often delayed.
8. The affiant further deposes that the general damages of Kshs.150,000.00 is scheduled for payment at the Finance Department.
9. The affiant further deposes that the Respondent has neither neglected, failed nor refused to honour the decree but processes claims in line with budgetary provisions and the ex parte has earned salaries for the month of July and August 2024 having resumed duty on 11th June, 2024 and these proceedings have been overtaken by events and ought to be struck out.
10. The only issue for determination is whether the ex parte applicant's Notice of Motion dated 12th August, 2024 is merited.
11. Records show that a judgment was delivered on 25th September, 2023 in Kisii MCELRC No. 33 of 2021 in Isaac Siko Nyakeriga V Kisii County Public Service Board & Another and a decree issued on 18th October, 2023.
12. A certificate of costs dated 18th December, 2023 is also attached in support of the application. Although the ex parte applicant deposes that attempts to have the judgment honoured have fallen through, and cites a letter and phone calls, the alleged letter marked as ISN4 was not attached to the Supporting Affidavit. It also unclear as to when the letter was sent to the Respondent and the response if any.



13. Equally, the alleged warrants marked as ISN5 were not attached to the Affidavit nor did the affiant depose why the warrant was not executed in enforcement of the judgment of the trial Magistrate.
14. Noting that the judgment was delivered on 25th September, 2023 and the Decree issued on 18th October, 2023 it is unclear to the Court why no demonstrable steps have been shown to have been taken to have the judgment honoured.
15. Copies of the alleged letter, any response or other communication would have demonstrated that indeed sufficient effort has been expended but not yielded any tangible results.
16. The current scenario is different as there is no supportive evidence.
17. In a similar vein, the Respondent deposes that the ex parte applicant resumed work on 1st June, 2024 and a copy of a letter from the Sub-County Administrator Nyaribari Masaba to the Chief Officer, Public Service and County Administration confirms as much.
18. For unexplained reasons the ex parte applicant swore the Supporting Affidavit after he had resumed duty a fact he did not confirm.
19. The Supporting Affidavit does not allege that he was not on the Respondent's payroll or that his salary was not being paid. He seeks an order to compel officers of the 5th Respondent to pay arrears and allowances as directed by the Court.
20. Strangely, the ex parte applicant did not compute his entitlements or what he was owed and as Mr. Henry Kaburi advocate deposes, the arrears have to be computed by the Respondent.
21. To demonstrate the fact that the ex parte applicant had resumed duty, the Respondents provided copies of the ex parte applicant's payslips for July and August 2024, facts the ex parte applicant did not contest.
22. In the end, the ex parte applicant's Notice of Motion dated 12th August, 2024 fails in terms of prayer number 2 on payroll, number 3 on arrears of salary and allowances and number 4 on NSSF and NHIF dues as the deductions are made from the salary and remitted to the relevant statutory bodies which have enforcement mechanism against defaulting employers.
23. Having admitted that it has neither failed or refused nor neglected to pay general damages in the sum of Kshs.150,000.00, the same is payable as per the trial Court's judgment.
24. Prayer Numbers 6 and 7 of the Notice of Motion are conditional upon the Respondents failure to honour other orders and do not in the Court's view commend themselves for issuance at this stage and are declined.
25. The ex parte applicants Notice of Motion succeeds in relation to prayer No.5., that the Kisii County Chief Officer Finance and the County Secretary shall pay the sum of Kshs.210,000.00 award in Kisii MCELRC No. 033 of 2021 as per the Decree dated 18th October, 2023 within 45 days.
26. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 13TH DAY OF NOVEMBER, 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

