



**Odindo & 13 others v County Government of Kisumu (Judicial Review
E024 of 2024) [2024] KEELRC 13340 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13340 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E024 OF 2024**

**JK GAKERI, J
DECEMBER 5, 2024**

**BETWEEN
JEREMIAH ACHOLA ODINDO & 13 OTHERS APPLICANT
AND
COUNTY GOVERNMENT OF KISUMU RESPONDENT**

RULING

1. Before the Court for determination is the Applicants inter partes Notice of Motion dated 19th July, 2024 file under Certificate of Urgency seeking Orders that
 1. The Honourable Court be pleased to grant an order of Mandamus to the Respondent's CEC Finance and Economic Planning and CFO Finance to compel them to pay the Applicants Kshs.16,000,000.00 (sixteen million) provided for by the County Assembly of Kisumu Budgeting Allocation for the year 2022/2023 and approved in the Kisumu County Appropriation Bill 2023 for payment of retirees of former Defunct Local Authority.
 2. The Honourable Court be pleased to grant the Applicant's Orders of mandamus to issue to the Respondents CEC – Finance & Economic Planning and CFO Finance to compel them to pay the applicants Kshs.18,543,112.00 being amount due as at 12th June, 2007 and interest accruing at 14% per annum till payment in full.
 3. The costs of this application to be provided for.
2. The Inter Partes Notice Motion is expressed under Order 53 Rule 1 (1) of the Civil Procedure Rules and is based on the grounds set out on its face and the Supporting Affidavit sworn by Mr. Jeremiah Achola Odindo on 19th July, 2024 who deposes that he and other co-applicants namely; Rose Oonje Obiero, Josphph Adundo Dianga, John Onyinyo, John Ogony Sirawa, Samuel Oduke Ojwana, Jenifa Osula Mbata, Peter Ongadi Mbom, Samuel Ogola Omino, Mathews Onyando Obondo, Paul Okoo Ochola, Jane Olang Ochola Anete and Joseph Adoyo Agengo are seeking the principal sum



of Kshs.18,543,112 with interest effective August 2007 following their retirement on 12th June, 2007 from the defunct municipal Council of Kisumu.

3. The affiant further deposes that the County Assembly of Kisumu took up their Petition lodged in 2022 and its Committee on Labour and Social Welfare recommended that the CEC Finance & Economic Planning makes budgetary provision for inclusion in the next county Government Supplementary budget for conclusive payment of the applicants claims.
4. It is the affiant's case that in its Report dated June, 2022 the County Assembly Sectional Committee on Labour and Social Welfare confirmed the employment status of the applicants and the report was tabled before the County Assembly of Kisumu as per the Hansard Report dated 29th June, 2022 and as a consequence, by letter dated 18th September, 2023 to the County Secretary – County Government of Kisumu, the committee confirmed that it had provided Kshs.16,000,000.00 for Budgetary Allocation in the FY 2022/2023 for payment of retirees of the Defunct Local Authority and the same was approved in the Kisumu County Appropriation Bill 2023.
5. That the amount is yet to be paid and counsel's demand letter dated 20th May, 2024 demanding payment was not responded to but had private communication from the Respondent's officers that payment was being arranged.
6. The *Public Finance Management Act* (PFM Act) defines CEC Officer Finance as the member of the County Executive Committee responsible for financial affairs of the County and the County Treasury and is the Authorised Officer of the Department of Finance and responsible to the CEC Member – Finance & Planning.
7. That the non-payment of dues is subjecting the applicants to economic hardship and squalor which amounts to inhumane and degrading treatment contrary to Article 25 of *the Constitution* of Kenya.
8. That the Applicants have a legitimate expectation of being paid and a legal right to be paid their terminal dues.
9. The Notice of Motion is unopposed.
10. When the matter came up on 19th July, 2024, for directions on the Chamber Summons of even date, the Court granted the Applicants leave to file for Judicial Review Order of Mandamus within 21 days and the same was filed 19th July, 2024 and a mention notice was served on 24th October, 2024.

Submissions

11. Concerning whether the Order of mandamus can issue in the circumstances, Counsel relied on the sentiments of the Court in *Orange Democratic Movement (ODM) V Cabinet Secretary National Treasury, the National Treasury, the Registrar of Political Parties & The National Assembly, Civil Appeal No. 15 of 2018* to urge that the order can issue as the Respondent's Sectoral Committee on Labour and Social Welfare made budgetary provision for the inclusion of the claim in the budget and the Assembly confirmed that provision was made in the 2022/2023 Budget.
12. On breach of duty to the Applicant's counsel submits that CEC Finance & Planning and the CTO Finance are in blatant breach of their public duty. Counsel submits that failure by the Respondent's to pay the Applicants has subjected them to substantial injustice and had not controverted the Applicant's averments.
13. Reliance was made on the sentiments of the Court in Republic V Kenya National Examination Council Ex Parte Gathenji and & Others, Civil Appeal No. 234 of 1996.



14. As to whether the applicants have demonstrated breach of their legitimate expectation by the Respondent, counsel urges that they had as the Respondents had failed to pay amounts approved by the County Assembly of Kisumu.
15. The sentiments of Odunga J. (as he then was) in Republic V KRS Ex Parte KSC International Ltd (in Receivership) & 3 Others citing Republic V Attorney General & Another Ex Parte Waswa & 2 Others [2015] IKLR 280 were relied upon.
16. That the Applicants are entitled to interest at 14% p.a from August 2007 and costs.
The Respondents did not file submissions.
17. The singular issue for determination is whether the Applicants Inter Partes Notice of Motion herein is merited.
18. The Applicants' case is simply that they were employees of the former Municipal Council of Kisumu, retired in 2007 and their terminal dues have been outstanding since.
19. It is their case that their claims were investigated and confirmed by the Kisumu County Assembly Sectoral Committee on Labour and Social Welfare, provision made in the Budget 2022/2023 and the same included in the County's Appropriation Bill but remain outstanding. Of the 14 applicants, 11 authorised Jeremiah Achola Odindo John Ogony Sirawa, Paul Ooko and Ochola Anete to plead and sign all relevant Court documents on their behalf.
20. Documentary evidence on record shows that the Applicants Petitioned the County Assembly of Kisumu on an unidentified date and the Petition was signed by Mr. John Ogony, Sirawa Joseph Adundo and Paul Okooo Achola. The Petition is neither dated nor is the list of Petitioners attached, other than the three.
21. By its Report dated June, 2022 the Sectoral Committee on Labour and Social Welfare found that Petitioners were indeed retirees of the Municipal Council of Kisumu and retired in 2007 without terminal dues but had submitted their claims for payment through the Kisumu County Assets and Liabilities Committee established under the Inter Government Relations Act 2012, and Gazette Notice No. 4370 and their claims recorded but not verified by the committee owing to the absence of supporting documents.
22. The Committee recommended that:
 - i. The County Secretary to constitute a committee to review and calculate all claims due to the Petitioners
 - ii. In the absence of supporting documents, the Petitioners dues be paid based on standard calculations of pension and retirement benefits based on basic uniform salary components.
 - iii. Employment details be provided to an Ad-hoc Task Force to be constituted in (i) to compute the dues.
 - iv. The County Secretary to submit computed schedule of claims due to all Petitioners to the CEC Member for Finance for payment within 3 months.
 - v. CEC Finance to make budgetary provision for inclusion of the claims in the next Supplementary Budget for payment.
 - vi. County Secretary to report to the County Assembly within 90 days of adoption of the report on its implementation.



23. Significantly, the County Assembly of Kisumu's Hansard Data base dated 29th June, 2022 reveals that Hon. Rashid Miruka tabled the report of the Standing Committee of Labour and Social Welfare on the Appellants' Petition for payment of retirement dues and the report was adopted and communication was to be made to the County Secretary.
24. Regrettably, the contents of a letter from the Office of the Clerk County Assembly of Kisumu dated 18th September, 2023 under Reference:- Disbursement of funds to Retirees of former Local Authority – Municipal Council of Kisumu are undecipherable.
25. However, by magnification of the letter it is clear that the Clerk of the County Assembly was requesting the County Secretary County Government of Kisumu to detail the measures that had been taken to implement the resolution of the County Assembly on providing for the sum of Kshs.16,000,000.00 in the 2022/2023 financial year as approved in the Kisumu County Appropriation Bill 2023.
26. It is clear to the Court whether the County Secretary responded to the letter from the Clerk of the County Assembly bearing in mind that the instant suit was filed in July, 2024 almost one (1) year later.
27. However, the Applicants did not provide a copy of the County Appropriation Bill, 2023.
28. What is, however clear is that the Kisumu County Assembly approved that the sum of Kshs.16million be appropriated for purposes of the 14 retirees of the defunct municipal council of Kisumu in the Appropriation Bill 2023 and the same ought to have been paid as approved by the County Assembly.
29. As adverted to by the Applicant's Counsel, the applicants had an expectation that they would be paid their terminal dues and when the County Assembly of Kisumu adopted the report of the Sectoral Committee of Labour and Social Welfare, it made a representation to the effect that payment would be forthcoming as express directions were given to the County Secretary on how to proceed with the matter.
30. The foregoing is fortified by the sentiments of the Court in Civil Appeal No. 1 of 2016, Justice Kalpana Rawal V JSC, the Secretary JSC & 2 Others where the Court stated;

“As has been observed time and again, legitimate expectation is a doctrine that is well recognized and established in administrative law. In Communication Commission of Kenya & 5 Others v Royal Media Services & 5 Others, SC Petition Nos. 14, 14 A, 14B & 14C of 2014, the Supreme Court stated that legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. For an expectation to be legitimate, therefore, it must be founded upon a promise or practice by a public authority that is expected to fulfil the expectation.
31. By adopting the sectoral committee report as presented to the County Assembly, and thus directing the same be implemented as recommended by the Committee, the Kisumu County Assembly legitimized the expectation of the applicants that they would be paid and nothing to the contrary has been demonstrated.
32. It is therefore not surprising that the Respondents did not contest the inter partes Notice of Motion, service notwithstanding.
33. In the premises it is the finding of the Court the Respondents breached the Applicant's legitimate expectation of payment.
34. In the upshot, the Court is satisfied that the applicants' inter partes Notice of Motion dated 19th July, 2024 is merited, proceeds and the Court directs that;



1. An Order of mandamus do and is hereby issued to compel the CEC Finance & Economic Planning and CFO Finance Kisumu County to pay the Applicants the sum of Kshs.16,000,000.00 (sixteen million) provided for by the County Assembly of Kisumu in its Budgetary Allocation in the Financial Year 2022/2023 and approved in the Kisumu County Appropriation Bill, 2023, for payment of the retirees of the defunct Local Authority.
2. The Respondent shall bear costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 5TH DAY OF DECEMBER, 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.

