



Wamalwa v Ministry of Agriculture, Livestock & Fisheries & 2 others (Cause E003 of 2021) [2023] KEELRC 41 (KLR) (20 January 2023) (Judgment)

Neutral citation: [2023] KEELRC 41 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E003 OF 2021
NJ ABUODHA, J
JANUARY 20, 2023**

BETWEEN

PETER WANJALA WAMALWA CLAIMANT

AND

MINISTRY OF AGRICULTURE, LIVESTOCK & FISHERIES 1ST RESPONDENT

**PRINCIPAL SECRETARY, STATE DEPARTMENT OF AGRICULTURE 2ND
RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. By a memorandum of claim filed on October 1, 2021 the claimant alleged among others that:
 - a. The claimant avers that on May 15, 2014, he was employed by the 1st respondent as a Climate Change Adaptation Expert in Kapenguria, within West Pokot County.
 - b. The claimant avers that his employment by the national government to work for the 1st respondent came as a result of vacancy advertisement that was published by the 1st respondent which the climate applied for and was invited for interview.
 - c. The claimant avers that the 1st respondent through Mary Maingi, National Climate Change Expert, made verbal communication to the claimant on his successful recruitment and was consequently deployed to Kenya Agricultural Productivity and Agribusiness Project (KAPAP) as the Climate Change Adaptation Expert in West Pokot with no letter of appointment from the 1st respondent.
 - d. The claimant further avers that he accepted the deployment and assumed the above position and/or office as an employee of the 1st respondent employed by the National Government.



- e. The claimant avers that he worked in the said position from 15th day of May, 2014 to date.
 - f. The claimant further avers that from the date of engagement on the 15th day of May, 2014 to date he has not been paid salary but only allowances.
 - g. The claimant therefore claims against the 1st respondent for the unpaid salary from May 15, 2014 to date.
2. The respondent though served neither entered appearance nor filed a response to the claim.
 3. On July 26, 2022 the matter proceeded *ex parte* after the court was satisfied that the respondent though served had shown no interest in the matter.
 4. The claimant in his oral evidence in court stated that he was working for the Ministry of Agriculture and that he had worked for thirty years. He adopted as his evidence in chief, the witness statement he recorded on August 27, 2021. He further relied on the documents he filed in support of the claim.
 5. According to the claimant there was an advertisement for the post of County Climate Change Adaptations Expert. He applied for the position. The advertisement was placed on the notice board. The claimant produced in evidence, his application letter. The claimant further stated that he was invited for the interview and later informed that he was successful and asked to report to duty.
 6. It was the claimants' evidence that he asked for directions and place of work but was told his boss was in Mombasa and was asked to go and meet him there. He was facilitated to travel to Mombasa. While in Mombasa he signed schedule to show he had reported. His boss allocated him duties which he performed and signed for the work and got paid. When he asked for the supporting documents he was told they were not ready. He further asked for appointment letter and invitation to Mombasa but was not given. The claimant further informed the court that although he had been in Mombasa for three days he was paid for seven days and was informed that his payment accrued from the day he was called and told he was successful.
 7. The claimant informed the court that he asked about his job group but was not told. He however learnt that the allowance of Ksh 14,000/= he was paid what was for job group R. It was further his evidence that his role was to coordinate the activities of the project and that he was still performing those duties. The claimant therefore sought to be issued with a letter of appointment to the position and be assigned the appropriate job group.
 8. This claim presents a unique scenario where the claimant alleges that he was appointed to a position yet not issued with any appointment letter. The claimant further informed the court that after what he claimed was a successful interview he was called to Mombasa and participated in a workshop and paid allowances for seven days although he had been in Mombasa for only three days. The claimant further informed the court that he had not been assigned any job group yet he was still working for the respondent. The whole scenario sounds to the court more like a fairy tale.
 9. The court takes judicial notice of how appointments to public service are done and further that salaries and emoluments for public servants are drawn from public funds. The respondent is a public body hence bound by laws and regulations governing public bodies. In the circumstances, even though the respondent never responded to the claim, the court does not find any credibility in the claimant's claim. The same is therefore found without merit and is hereby dismissed with no order as to costs.
 10. It is so ordered

DATED AND DELIVERED AT ELDORET THIS 20TH DAY OF JANUARY, 2023



ABUODHA NELSON JORUM
JUDGE ELRC

