



Daddah v Chairman [B.O.G.] Tarasaa Youth Polytechnic & 2 others (Cause 154 of 2015) [2023] KEELRC 2394 (KLR) (29 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2394 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 154 OF 2015
AK NZEI, J
SEPTEMBER 29, 2023**

BETWEEN

YEZIEL MATHUFALI DADDAH CLAIMANT

AND

CHAIRMAN [B.O.G.] TARASAA YOUTH POLYTECHNIC .. 1ST RESPONDENT

COUNTY ATTORNEY TANARIVER COUNTY GOVERNMENT 2ND RESPONDENT

ATTONEY GENERAL 3RD RESPONDENT

RULING

1. The suit herein was determined on July 27, 2017 when this Court (Rika, J) delivered a judgment in favour of the Claimant herein against the Respondent named in the suit (the Chairman BOG Tarasaa Youth Polytechnic). The Claimant was awarded ksh 1,025,762, and the Respondent was ordered to issue the Claimant with a certificate of service. Parties were ordered to meet their costs of the litigation.
2. On December 13, 2022, over six years from the date of this Court’s said judgment and after attempts to execute the Court’s decree, the Claimant wrote a letter to this Court’s Deputy Registrar asking that the Court corrects an error in its aforesaid judgment. The Deputy Registrar subsequently listed the matter for mention before me. When the Claimant and Counsel for the Respondent appeared before me on December 19, 2022, they were in agreement that indeed, there was an arithmetical error in the Court’s Judgment, and proceed to record a consent correcting the Judgment sum to read ksh 1,038,770.
3. After the consent was recorded by the Court, the Claimant told the Court that the Respondent had, for 77 months, refused to issue the Claimant with a certificate of service, upon which the Court’s ordered the parties to move the Court appropriately.



4. On February 16, 2023, the Claimant filed a Notice of Motion dated February 15, 2023 seeking the following orders:-
 - a. that the judgment July 27, 2017 by Hon James Rika be upheld together with the orders issued thereon on December 20, 2022.
 - b. that the county Government of Tana River as a whole is not a stranger but a full partaker of all proceedings of this case No 154 of 2015 and wholly responsible to pay the decretal amounts.
 - c. that the application made and filed in this Court as E006 of 2023 is bad in law, and stands dismissed and henceforth stands consolidated into the original cause No 154 of 2015.
 - d. that the county Government of Tana River do pay the principal sum of ksh 1,038,770, interest of ksh 986,831.50, costs of the suit at ksh 276,135 (a total of ksh 2,302,287.35) into the Claimant's KCB Account No 1309947XXXX within 7 days of the Court's Order.
 - e. that the above orders a,b,c and d be directed to the County Government of Tana River, owner/ receiver of Tarasaa Youth Polytechnic.
5. The application sets out on its face a raft of what appears to be the grounds upon which the application is founded, and is supported by the Claimant's supporting affidavit sworn on February 15, 2023.
6. The application names the County Government of Tana River and the Attorney General, who were not parties to the suit herein, and against whom no decree was passed, as the 2nd and the 3rd Respondents.
7. For record purposes, it is to be noted that the Respondent in the suit Chairman [BOG] Tarasaa Youth Polytechnic, has all along been represented in the proceedings herein by the State Law Office, at least from what I can gather from the Court's record.
8. The County Government of Tana River's County Attorney, Isaiah Ndisi Munje, opposed the Claimant's application vide a replying affidavit sworn on March 24, 2023. It is deponed in the said affidavit:-
 - a. that the County Government of Tana River is not responsible for the 1st Respondent's debt.
 - b. that the procedure for joining the County Government is outlined in the [Civil Procedure Act](#) and the [Government Proceedings Act](#).
 - c. that the entity is defended by the Attorney General, and not the County Attorney, and that the Applicant should pursue the Attorney General or the Attorney General of the National Government if the 1st Respondent is unable to pay its debt, and should desist from sending letters of threats to the County Attorney.
 - d. that the application should be dismissed.
9. The Attorney General opposed the application vide a statement of grounds of opposition dated March 29, 2023; and stated:-
 - a. that the Claimant was an employee of the Board of Management of Tarasaa Youth Polytechnic, appointed vide a letter dated July 25, 2011.
 - b. that functions of Management include, but (are) not limited to employment of non-teaching staff as per Section 59(p) of the [Basic Education Act](#) No 14 of 2013; and that powers and



functions of the national government and County government are as set out in the Fourth Schedule of the Constitution as stated in Article 186(1).

- c. that under the Fourth Schedule of the Constitution, powers and functions of the County Governments include pre-primary education, village polytechnics, home craft centre and child care facilities.
 - d. that under Section 18(a)(1) of the Basic Education Act, functions of a county Education Board is to oversee, in consultation with the County Government, the operation and management of youth polytechnics, pre-primary education, including early childhood case and education programmes in the county.
 - e. that from the ruling of this Court dated March 26, 2020, it is clear that the Court found that the 1st Respondent institution belonged to the 2nd Respondent when the Claimant attempted to execute the order.
10. It is clear from the documents filed by the Claimant/Applicant and the Respondents named in the application that the suit herein is long concluded, and that all what remains is execution of the Court's decree. The Court's record shows that there have been attempts by the Claimant to execute the same. A concluded and determined suit cannot, for whatever reason and purpose, be consolidated with another suit. suits are ordinarily consolidated for purposes of trial and determination.
 11. Further, the correction of an error in a Court's judgment by the Court, arithmetical or otherwise, becomes part of that judgment, and the Claimant/applicant's prayer that the order made on December 19, 2022 (not December 20, 2022) be upheld is not capable of being granted, and is declined.
 12. On the prayer that the 2nd Respondent (the County Government of Tana River) be ordered to pay the judgment sum herein, it is to be appreciated that the said County Government was not sued in the Claimant's suit herein, and was not a party to the suit as at the time the decree was passed. There is no decree against the 2nd Respondent herein, and there cannot be any legal basis of any order being made in the suit herein directing the 2nd Respondent (the County Government of Tana River) to settle the decretal sum herein.
 13. If the Claimant/Applicant believes that he has some legal basis to pursue the 2nd Respondent as apparently stated in the 3rd Respondents' grounds of opposition which are reproduced in this Ruling, he unfortunately cannot do so in the suit herein, which is long heard and determined.
 14. The Notice of Motion dated February 15, 2023 is incompetent, and is hereby struck off with no orders as to costs.
 15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH SEPTEMBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE



Appearance:

.....for Claimant

.....Respondent

