



**Nandwa v National Communication Secretariat (Petition E085 of 2022)
[2023] KEELRC 2506 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2506 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E085 OF 2022
JK GAKERI, J
OCTOBER 18, 2023**

BETWEEN

NELLY AWINJA NANDWA PETITIONER

AND

NATIONAL COMMUNICATION SECRETARIAT RESPONDENT

RULING

1. By its judgement dated and delivered on February 1, 2023, the court found that the Petitioner had been discharging duties and responsibilities of the Head of Finance and Accounts, a fact the Respondent admitted and having been queried by the Auditor General, the court was satisfied that the Petitioner ought to have been designated as Head of Finance and Accounts and remunerated accordingly.
2. The court directed the Respondent to pay the Petitioner total underpayment from the date the last contract was executed by the parties together with interest at court rates till payment in full.
3. The court directed the parties to compute and reconcile the amount payable to the Petitioner for adoption by the court but counsels could not agree and filed separate computations.
4. While the Respondent's computation are dated June 16, 2023, the Petitioner's computations are dated June 20, 2023.
5. According to the judgement dated February 1, 2023, the underpayments were to be computed from the date the last contract between the Petitioner and the Respondent was entered into and as evidenced by the letter from Daniel O Obam, the Communications Secretary to the Petitioner dated November 23, 2020, the effective date of the computations of underpayment is November 23, 2020.
6. Puzzlingly, a communication from the Acting Communication's Secretary, Engineer Vincent O Adul to the Principal Secretary, State Department for Broadcasting and Telecommunications, Ministry of Information, Communication and the Digital Economy dated June 2, 2023, which counsel for the



Respondent filed as the Respondent's computations has January 2023 as the effective date, contrary to the clear directions of this court.

7. Intriguingly, the Respondent did not contest the Petitioner's computations which in the court's view represent a succinct interpretation of the directions given on February 1, 2023.
8. Needless to gainsay, the computation's effective date is the date of the contract the Petitioner and the Respondent had.
9. More significantly, the amounts claimed by the Petitioner were clearly articulated for rebuttal or contestation on any ground.
10. Flowing from the foregoing, it is clear that the Petitioner's computation represent the correct construction of the judgement delivered on February 1, 2023 and it is accordingly adopted as the amount awarded by this court, Kshs 1,627,672/=.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 18TH DAY OF OCTOBER 2023

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

