



**Mwangi v County Government of Kisii & 2 others (Petition
E030 of 2023) [2023] KEELRC 3426 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3426 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E030 OF 2023
CN BAARI, J
DECEMBER 19, 2023**

BETWEEN

CHARLES MURIU MWANGI PETITIONER

AND

COUNTY GOVERNMENT OF KISII 1ST RESPONDENT

KISII COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

**COUNTY SECRETARY, COUNTY GOVERNMENT OF KISII 3RD
RESPONDENT**

RULING

1. This ruling relates to the Petitioner's motion dated 6th November, 2023, brought pursuant to Article 41 of the Constitution, Section 4 of the Fair Administrative Actions Act, Sections 17 and 18 of the Employment Act and Section 12 (3) of the Employment and Labour Relations Court Act. The Petitioner seek the following orders:
 - i. Spent
 - ii. Spent
 - iii. That pending hearing and determination of this petition interparties, the Honourable Court be pleased to issue an order compelling the Respondents to compute and release the Petitioner's accrued salary and allowances from 29th July, 2022, which is the date he first reported to Nduru Sub-County Hospital to date.
 - iv. That the costs of this application be borne by the Respondents.



2. The motion is supported by grounds on the face of the motion and the affidavit of the Petitioner. The Petitioner avers that he is an employee of the Respondents appointed vide a letter dated 14th April, 2022, on a basic salary of Kshs. 49,000/- together with a housing and commuter allowance.
3. The Petitioner states that he was on 3rd May, 2022, deployed to the department of health sciences and was expected to report at Nduru Sub-County Hospital pursuant to the letter of deployment. It is his contention that he reported at the facility on 29th July, 2022, and was expected to receive his salary and allowances from end of August, 2022 and every subsequent month thereafter, but the Respondents declined to release the salaries and allowances to date.
4. The Petitioner avers that he has made several verbal complaints on the non-payment of his salary and allowances to his supervisor and the 2nd Respondent, but no action has been taken.
5. The Petitioner prays that the court allows his application.
6. No reply was received from the Respondents.
7. The motion was listed for interparties hearing on 20th November, 2023. Counsel for the Petitioner submitted that the application is unopposed, and prayed that the same be allowed as prayed.

Determination

8. I have considered the motion and the grounds and affidavit in support. The singular issue for determination is whether the Petitioner is entitled to the reliefs sought.
9. The Petitioner seeks that this court orders the Respondents to compute and release his salaries and allowances which have been withheld since his employment by the Respondents on 29th July, 2022.
10. In the Petitioner's Motion, the prayer for computation and release of the Petitioner's salary and allowance, is sought pending interparties hearing, which then leaves nothing for this Court to determine since the interparties hearing already took place. This appears to me like an error on the part of the drafter and which I will consider as such, and proceed in the interest of substantive justice, and assume that the prayer is sought pending the determination of the petition.
11. Having said this, I also note that the final prayer in the Petitioner's petition is similar to that sought in the interim through this motion. This therefore means that by allowing the prayer at this juncture, the petition would be spent.
12. Further, the facts of this case the kind that need to be proved before the relief sought can be granted, as the Petitioner's pleadings have only left the court with more questions than answers. It is not clear for example how the Petitioner has been working for the Respondents for more than a year without a salary and without complaining. His only complaints in this regard and as he has stated, have been verbal.
13. These questions leave the court wondering whether the Petitioner is at all an employee of the Respondents. Without answers to these questions, the Petitioner's motion is unsustainable.
14. I find the Petitioner's motion devoid of merit and is for dismissal.
15. The motion is dismissed with no orders on costs.
16. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 19TH DAY OF DECEMBER, 2023.



CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Okelloh Present for the Applicant/Petitioner

N/A for the Respondents

Laura- C/A

