



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO 2034 OF 2014**

**MARY SYEVUTHA MUVEVA.....CLAIMANT**

**VERSUS**

**KITUI COUNTY GOVERNMENT.....RESPONDENT**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. In this claim, Mary Syevutha Muveva proceeds against Kitui County Government seeking several reliefs. The claim is documented in a Statement of Claim dated 13<sup>th</sup> November 2014 and amended on 27<sup>th</sup> April 2020. The Respondent filed a Replying Memorandum on 13<sup>th</sup> March 2015.

2. At the trial, the Claimant testified on her own behalf and the Respondent called its Deputy Director, Human Resource Management, Hellen Nzula Mutuku. Both parties also filed written submissions.

**The Claimant's Case**

3. The Claimant pleads that she was employed by the now defunct Municipal Council of Kitui on 6<sup>th</sup> May 2001, as an Assistant Market Master, Single Business Section Department.

4. By letter dated 12<sup>th</sup> March 2009, addressed to the Claimant and copied to the Permanent Secretary, Ministry of Local Government, the Internal Auditor-Municipal Council of Kitui and the District Criminal Investigation Officer-Kitui, the Respondent implicated the Claimant in a massive accounting fraud.

5. By the same letter, the Claimant was suspended from duty and required to hand over all the Respondent's documents and property in her possession and further, to report to her Head of Department every Tuesday and Thursday.

6. On 21<sup>st</sup> May 2009, the Respondent wrote to the Claimant, requiring her to show cause why her services should not be terminated, on grounds of gross misconduct, and to appear before the Respondent's Special Finance and Staff Committee, to exonerate herself from the accusations.

7. The Claimant states that in spite of this invitation, she was not afforded a chance to appear before the Special Finance and Staff Committee.

8. By letter dated 26<sup>th</sup> June 2009, the Respondent summarily dismissed the Claimant. The Claimant avers that the dismissal was in blatant disregard of the provisions of the subsisting Collective Bargaining Agreement (CBA) between the Respondent and the Kenya County Government Workers Union, the Interested Party herein. She adds that the dismissal was also in violation of the Employment Act.

9. The Claimant appealed against the dismissal to the Public Service Commission, vide her letter dated 20<sup>th</sup> July 2009.

10. On 21<sup>st</sup> January 2010, the Public Service Commission wrote to the Respondent, asking the latter to submit the criminal investigation report pertaining to the Claimant's dismissal.

11. By letter dated 6<sup>th</sup> January 2011, the Divisional CID Headquarters confirmed that no case against the Claimant had been reported to them.

12. The Claimant goes on to state that the Interested Party attempted to engage the Respondent with the intention to resolve the dispute but the Respondent was not keen on participating in the proposed negotiations.

13. The Interested Party therefore reported a dispute to the Ministry of Labour, Social Security and Services pursuant to Section 62(1) of the Labour Relations Act, 2007.

14. A conciliator was appointed on 23<sup>rd</sup> April 2014 but conciliation process did not yield any fruit hence this matter.

15. The Claimant now seeks the following remedies:

- a) Leave days earned but not taken (42 days).....Kshs. 16,402
- b) Salary arrears.....3,395,327
- c) National Social Security Fund (NSSF) deductions.....13,400
- d) National Hospital Insurance Fund (NHIF) deductions.....21,440
- e) Kenya County Government Workers Union deductions.....19,500
- f) LAPFUND deductions.....193,113
- g) Kenya Revenue Authority (KRA) deductions.....36,688
- h) Costs plus interest

### **The Respondent's Case**

16. In its Replying Memorandum dated 3<sup>rd</sup> March 2015 and filed in court on 13<sup>th</sup> March 2015, the Respondent states that Claimant was given an opportunity to show cause why disciplinary action should not be taken against her for engaging in massive fraud and stealing the employer's funds, which opportunity the Claimant exercised.

17. The Respondent further states that the Claimant was dismissed after she failed to satisfy the employer with a reasonable explanation over the allegations.

18. The Respondent adds that the Claimant, before being dismissed, was given sufficient notice and was subjected to all laid down disciplinary procedures under the Employment Act. The Respondent therefore maintains that the dismissal of the Claimant was both lawful and procedural.

19. The Respondent avers that the Claimant had, during her employment by the defunct Municipal Council of Kitui, engaged in massive fraud, which the Claimant admitted and then bargained for dismissal instead of prosecution, a bargain that was granted by the defunct Municipal Council. The Respondent further avers that it was on the basis of her admission that the Claimant opted out of certain disciplinary procedures.

20. The Respondent terms the Claimant's claim as an afterthought, which is preferred in bad faith.

### **Findings and Determination**

21. The parties devoted a large part of their written submissions, on the question whether the Claimant's dismissal was lawful and fair. However, in her Statement of Claim as amended on 27<sup>th</sup> April 2020, the Claimant made no prayer for either reinstatement or compensation. In fact, the only prayers made by the Claimant are for leave pay, salary arrears and statutory deductions.

22. Regarding the claim for leave pay, the Claimant did not bother to provide details of the period for which the claim was made. The claim was therefore not proved and is dismissed.

23. The claim for salary arrears falls within the ambit of special damages, and as held by the Court of Appeal in *Hahn v Singh [1985] KLR*, special damages must not only be specifically pleaded but strictly proved. The Claimant did not achieve this standard of proof under this head.

24. Regarding the claim for statutory deductions, the only thing to say is that any such dues are payable to the statutory body and not

individual employees.

25. In the end, the Claimant's entire claim fails and is dismissed.

26. Each party will bear their own costs.

27. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF FEBRUARY 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Mango h/b Mr. Otieno for the Claimant

Miss Warao h/b Mr. Mwalimu for the Respondent