



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 46 OF 2019

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| CHARLES NYAMOHANGA NYANGI | 1st PETITIONER |
| MARY MOTONGORI GIKUURI | 2nd PETITIONER |
| RONALD KINAP ASIGA | 3rd PETITIONER |
| ROSELINE ADHIAMBO OYUGI | 4th PETITIONER |
| ANNA OTAIGO BUNYINGE | 5th PETITIONER |
| ZAINABU NECHESA MASAYIE | 6th PETITIONER |
| JOSEPH HOYO MOGOSI | 7th PETITIONER |
| RAHAB ROBI | 8th PETITIONER |

v

| | |
|------------------------------------|----------------------------------|
| MIGORI COUNTY ASSEMBLY | 1st RESPONDENT |
| COUNTY GOVERNMENT OF MIGORI | 2nd RESPONDENT |

JUDGMENT

1. The 8 Petitioners sued the County Assembly of Migori (the County Assembly) and the County Government of Migori (the County Government) on 6 December 2019, alleging breach of contract in that the County Assembly and the County Government had failed to pay them gratuity after serving terms as members of the County Assembly.
2. The County Assembly filed a Memorandum of Appearance through the firm of Odhiambo Kanyangi & Co Advocates but did not file a Response to the Petition.
3. The County Government did not file a Memorandum of Appearance or Response.
4. On 18 November 2021, the Court directed the parties to file and exchange submissions and the Petitioners filed joint submissions on 29 December 2021 (the Respondents did not file any submissions).
5. The Court has considered the record, Petition, affidavit in support and the submissions.
6. In alleging breach of contract in the failure to pay gratuity, the Petitioners asserted that the County Assembly had through a letter dated 7 May 2013 indicated that they would be entitled to gratuity at the rate of 31% of annual basic salary for every year served.
7. The Court has looked at clause 3 of the letter.
8. It was addressed to Equity Bank Ltd and assured it that the 3rd Petitioner was entitled to the payment of gratuity at the end of his term. In the view of the Court, the letter was one of comfort and did not serve to alter or add to the Petitioners terms and conditions of service.

9. The Petitioners also filed with their submissions an extract of a Circular dated 8 December 2017 from the Salary and Remuneration Commission wherein they highlighted paragraph (f) which provided that:

Retirement benefit: To be paid a service gratuity at the rate of 31% of annual retainer remunerative package for part time members of CPSB or 31% of the annual basic remunerative package for full part members for the term served.

10. For whatever it is worth (evidence should not be sneaked in with submissions), the Circular appears to apply to members of a County Public Service Board.

11. The Petitioners were not and did not provide any evidence that they were members of the County Public Service Board (they were members of the legislative wing under the County Assembly Service Board), and the Circular cannot aid their legal enterprise.

12. The Court also notes that the terms in the Circular were to be implemented from 2018, whilst the Petitioners terms ended in 2017.

13. The Petitioners also sneaked into the record with the submissions an extract of a document which was not disclosed. The extract states that its terms were to become effective 8 August 2017 and that it would apply to state officers in the Executive of the National Government.

14. From the material on record, the Petitioners were not state officers within the Executive.

15. To all intents and purposes, the Petition herein was a mischievous attempt to claim what the Petitioners were not entitled to using the Court system. The Court declines to approve of such an attempt.

16. Lastly, although camouflaged as a constitutional Petition, the pleadings did not raise any constitutional dispute. It is also doubtful, in the view of the Court, whether the Petitioners sued the correct parties.

Conclusion and Orders

17. From the foregoing, the Court finds the Petition without merit and it is dismissed with costs to the County Assembly.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 23RD DAY OF FEBRUARY 2022.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For Petitioners Nyabena Alfred & Co. Advocates

For 1st Respondent Odhiambo Kanyangi & Co. Advocates

2nd Respondent did not participate

Court Assistant Chrispo Aura