



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 39 OF 2013

(Originally Nairobi Cause No. 751 of 2011)

JARED OMONDI OBER.....1st CLAIMANT

JOHN OLUOCH ORINDA.....2nd CLAIMANT

V

COUNTY GOVERNMENT OF HOMA BAY.....RESPONDENT

RULING NO. 2

1. This is the second formal Ruling by this Court (there are uncountable other Rulings in the file by other Judges who have handled the file).
2. There are 2 Motions before the Court which were addressed together.
3. The first Motion was filed by the Claimants, and they sought orders:

(1) ...

(2) THAT this Honourable Court be pleased to find that the Respondents representatives herein are in contempt of the court orders issued on 3rd June 2021.

(3) THAT this Honourable Court do issue the warrants of arrest against the following for disobeying the Court order:

(i) Mr Isaya Ochieng Ogwe (County Secretary, Homa Bay).

(ii) Mr Noah Otieno (Chief Officer Finance, Homa Bay County Government).

(iii) Mrs Auma Modi (Head of Human Resource, Homa Bay County Government).

(4) THAT an order to commit to civil jail be made against:

(i) Mr Isaya Ochieng Ogwe (County Secretary, Homa Bay).

(ii) Mr Noah Otieno (Chief Officer Finance, Homa Bay County Government).

(iii) Mrs Auma Modi (Head of Human Resource, Homa Bay County Government)

for such period that this Honourable Court deem fit and just in that they have blatantly disobeyed and frustrated the express orders made and issued herein by this Honourable Court on 4th May 2020.

(5) THAT this Honourable Court do direct the Officer in charge of Kisumu Central Police Station to execute the warrants.

(6) THAT the Honourable Court do deny the Respondents audience before this Court for disobeying several court orders unless they

comply with the orders.

(7) THAT any other order this Court deem fit and just.

4. The second Motion was filed by the Respondents on 20 September 2021, seeking orders:

(1) ...

(2) THAT this Honourable Court be pleased to review and set aside the report by the County Labour Officer filed in Court on 27.7.21 on computation as per judgment.

(3) THAT this Honourable Court do order proper computation that is in line with the judgment issued on 4.10.2018 and the Court's directions on 3.6.21.

(4) THAT the costs of this application be provided for.

5. Since both Motions are anchored primarily in the orders of the Court made on 3 June 2021, it would be imperative to determine the parameters of the orders and in this context, the Court will first address the Respondent's application.

6. Apart from the affidavit in support of the application, the Respondent caused a further affidavit to be filed on 21 October 2021.

7. The ground advanced in support of the application was error apparent on the face of the record and particulars were that in making the computations as ordered by the Court, the County Labour Officer factored in periods outside those directed by the Court.

8. The Respondent also contended that the County Labour Officer did not allow or afford its representatives a chance to participate in the process of the computations.

9. The Respondent further asserted that it had settled all the decretal sums.

10. The Claimants filed an affidavit on 15 November 2021 and submissions on 23 December 2021.

11. According to the Claimants, the Respondent's representatives were heard by the County Labour Officer before and during the computation process and the computations were jointly agreed to, the judgment had not been fully settled and that the Respondent had continued to undermine the authority of the Court by failing to settle the judgment.

12. The Court has considered the Motion, affidavits, and submissions.

13. The Claimants have admitted having received the payments indicated or set out under paragraph 1 of the County Labour Officer report (Kshs 1,637,861/- and Kshs 1,076,573) respectively).

14. The bone of contention is therefore on the computations by the County Labour officer under the subtitle *salary arrears CBA January 2010 to June 2021*.

15. When the Court directed the County Labour Officer on 3 June 2021 to assist the parties in the computations, it set out very clear parameters including the applicable collective bargaining agreements.

16. In paragraph 43 of the Ruling, the Court made an explicit finding that the applicable collective bargaining agreement was the one for 2005, and which agreement commenced on 1 September 2005.

17. For reasons which are unknown to the Court, the County Labour Officer went ahead to compute what he termed salary arrears from January 2010 to June 2021 amounting to Kshs 8,726,300/- for the 1st Claimant and Kshs 6,478,270/- for the 2nd Claimant.

18. The County Labour Officer went outside those parameters.

19. The Court has also keenly looked at the judgment delivered on 4 October 2018.

20. The remedies which were granted by the Court were:

(i) The Respondent is directed to re-engage the Claimants to positions equivalent to those held and not inferior as at the time of dismissal from the date of judgment.

(ii) The Respondent to pay each Claimants the equivalent of twelve (12) months' salary earned at the time of dismissal for unlawful dismissal.

(iii) The Respondent to pay the Claimant salary not paid for the entire period of suspension after expiry of three (3) months to date of dismissal.

(iv) The compensation and arrears salary to attract interest at court rates from the date of filing suit till payment in full.

(v) Respondent to pay costs of the suit.

(vi) Parties to compute the award and file the same for confirmation within 30 days of this judgment.

21. In the judgment, the Court did not award the Claimants any salary arrears based on any collective bargaining agreement from January 2010 to June 2021.

22. The salary arrears awarded were for the periods the Claimants were under suspension less 3 months to date of dismissal.

23. It is clear to the Court that the County Labour Officer went beyond the parameters set by the Court in computing the salary arrears by using the 2010 collective bargaining agreement when the judgment did not go that far.

24. It is therefore apparent that the contempt application may have been based on an erroneous computation by the County Labour Officer.

25. The parties to address the utility of the contempt application hereinafter.

Conclusion/Orders

26. From the foregoing, the Court will expunge from the record and decline to adopt as part of the judgment the County Labour Officer's computations at paragraphs 5 of his report filed in Court on 29 June 2021.

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

Radido Stephen, MCI Arb

Judge

Appearances

Claimants in person

For Respondent Otieno, Yogo Ojuro & Co. Advocates

Court Assistant Chrispo Aura