



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. E31 OF 2020

KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT

v

COUNTY GOVERNMENT OF NYAMIRA.....1st RESPONDENT

COUNTY PUBLIC SERVICE BOARD, NYAMIRA.....2nd RESPONDENT

COUNTY SECRETARY, NYAMIRA COUNTY.....3rd RESPONDENT

RULING

1. The Kenya County Government Workers Union (the Union) sued the County Government of Nyamira, the County Public Service Board, Nyamira and the County Secretary, Nyamira (the Respondents) on 23 December 2020 and the Issues in Dispute were stated as:

- (a) Unfair labour practices.
- (b) Failure to comply with the terms of the collective bargaining agreement.
- (c) Refusal to pay the Claimants members their full salaries and allowances.
- (d) Failure to comply with the report of Intergovernmental Relations Technical Committee.
- (e) Breach of employees' rights under Articles 40 and 41 of the Constitution of Kenya.
- (f) Failure to respond to numerous communication from the Claimant addressed to the Respondent.

2. The gravamen of the action was that the Respondents had failed to pay the Union's members salary arrears amounting to Kshs 179,062,596/- (as verified on 27 March 2013).

3. When the Cause was placed before the Court on 6 October 2021, it directed the Union to address it on a jurisdictional question arising from the appellate mandate of the Public Service Commission as set out in Article 234(2)(i) of the Constitution as read with section 77 of the County Governments Act and sections 85, 86 and 87(2) of the Public Service Commission Act.

4. The Union did not file submissions as directed and on 19 January 2022, the Court directed it to comply and file the submissions on or before 26 January 2022 (the submissions were filed on 26 January 2022).

5. The new directions required the Union to also address the question of limitation.

Limitation

6. Section 90 of the Employment Act, 2007 prescribes a limitation period of 3-years in causes of action arising from contracts of service.

7. According to paragraph 4 of the Statement of Claim, the Union was advancing a cause of action anchored on a collective bargaining agreement entered into in 2012.

8. In the Court's view, the Union had 3-years from the entry into effect of the collective bargaining agreement to institute legal proceedings

against the Respondents alleging breach of contract and/or failure to implement the terms of the collective agreement regarding the increased wages or wage arrears.

9. The Union moved the Court in 2020, nearly 8-years after entering into the collective bargaining agreement, outside the prescribed limitation period.

10. The Union must have been alive to the question of limitation, for in its pleadings, it failed to give particulars as to the relevant dates.

Jurisdiction: Exhaustion of alternative dispute resolution avenues

The Labour Relations Act

11. Part VIII of the Labour Relations Act requires either the union or employer to at the first instance refer a trade dispute to the Cabinet Secretary, Labour who in turn appoints a Conciliator.

12. Where a trade dispute remains unresolved at conciliation, the Conciliator issues a Certificate of Unresolved Dispute which enables any of the parties to move the Court.

13. The Union did not disclose whether the trade dispute herein was reported to the Cabinet Secretary, Labour or whether conciliation was attempted.

14. The Court therefore finds that its jurisdiction was invoked prematurely.

Appellate process: Public Service Commission

15. Article 234(2)(i) of the Constitution as read with section 77(2)(b) of the County Governments Act and sections 85,86 and 87(2) of the Public Service Commission Act have outlined a dispute resolution avenue for disputes concerning remuneration and terms of service emanating from a county public service.

16. The Union did not demonstrate that it attempted to or complied with the appellate dispute resolution process up to the Public Service Commission before it moved the Court on 23 December 2020.

17. The Court's jurisdiction was moved prematurely and the Court therefore declines jurisdiction and strikes out the Cause.

18. In reaching the above conclusions, the Court takes comfort in the holding by the Court of Appeal in *Speaker of the National Assembly v Karume* (2008) 1KLR 425 that:

Irrespective of the practical difficulties enumerated... these should not in our view be used as a justification for circumventing the statutory procedure... in our view, there is considerable merit in the submission that where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

19. The Cause is struck out for lack of jurisdiction. No order on costs as the Respondents did not appear.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 16TH DAY OF FEBRUARY 2022.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Union Benard Odera & Co. Advocates

Court Assistant Chrispo Aura