



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 775 OF 2019

YUSUF ALI KOROW..... CLAIMANT

VERSUS

GARISSA COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT

GARISSA COUNTY GOVERNMENT..... 2ND RESPONDENT

THE PAYROLL MANAGER GARISSA COUNTY.....3RD RESPONDENT

JUDGMENT

1. The suit was filed on 15th November, 2019 by the claimant seeking the following reliefs:-

(a) A declaration that the removal of the claimant from the payroll and failure by the payroll manager to re-instate the claimant to the payroll is a breach of the claimant's right to fair labour practices and the employment contract.

(b) A declaration that the removal of the claimant from payroll without according him a hearing in September, 2017 was illegal and unfair.

(c) An order that the 3rd, 2nd and 1st respondents re-instate the claimant to the payroll within 7 days from the date of the judgment.

(d) An order that the 1st respondent pays the claimant's salary from the 1st September, 2017 up to the date of re-instatement to the payroll within 30 days from the date of the judgment.

(e) Order for compensatory damages for unlawfully removing the claimant from the payroll, breach of the employment contract and withholding the claimant's salary equivalent to 12 months' salary which is Kshs 1,673,124.

(f) General and exemplary damages.

(g) Costs of the suit be paid by the 2nd respondent and interest at 24% per year from the date of filing this suit.

(h) Any other relief or order the Honourable Court may deem expedient to grant.

2. The respondent despite entering appearance did not file a statement of defence to the claim. The claim is therefore undefended.

3. The facts in support of the claim is that the claimant was employed by the 1st respondent to work for the 2nd respondent in November, 2013 in the position of Assistant Deputy Director of Information and Communication. That the claimant worked continuously until September, 2017, when the respondent failed and/or neglected to pay the salary for the claimant.

4. That the claimant immediately raised issue with the 3rd respondent, the payroll manager of the County and with the 1st and 2nd respondent.

5. That the claimant was not given any reason for the salary stoppage. The claimant stated in the witness statement that the 3rd respondent has failed and/or neglected to reinstate his salary despite directive by the 1st respondent to do so.

6. That the claimant has been financially embarrassed by non-payment of his salary despite continuing to work in his respective position.
7. That the claimant issued a notice of intention to sue to the respondent who have failed to heed the same.
8. The claimant prays to be awarded as prayed in the statement of claim and in the witness statement dated 8th November, 2019.
9. The Court finds that the suit having not been defended, the claimant has proved his case on a balance of probabilities in terms of Sections 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya.
10. The Court enters judgment in favour of the claimant against the respondents as follows:-

(a) The removal of the claimant from the payroll is unlawful and unfair.

(b) The 1st, 2nd and 3rd respondents are directed to reinstate the claimant to the payroll with immediate effect and pay arrear salaries due and owing to the claimant from the date of removal from the payroll to-date.

(c) Interest at Court rates from date of filing suit till payment in full.

(d) Costs of the suit.

11. For the avoidance of doubt, the Court does not find it appropriate to award damages to the claimant over and above the full restitution of his salary with interest.

Dated and delivered at Nairobi this 29th day of March, 2022.

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Nzimane Alex for the claimant.

Ekale – Court Assistant.