



Kenya County Government Workers Union v County Government of Wajir & another (Petition 46 of 2022) [2022] KEELRC 29 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEELRC 29 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 46 OF 2022**

**SC RUTTO, J
APRIL 28, 2022**

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION APPLICANT

AND

COUNTY GOVERNMENT OF WAJIR 1ST RESPONDENT

WAJIR COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

RULING

1. The Petitioner/Applicant which is a trade union suing on behalf of its members, who are employees of the Respondents, has moved this Court vide a Notice of Motion Application dated 8th March, 2022. The motion Application is supported by the Affidavit of Ahmed Maalim Abdullahi, who describes himself as a member of the Petitioner/ Applicant.
2. The Application seeks the following main orders;
 1. Spent.
 2. That pending the hearing and determination of this Application and Petition the Honourable Court be pleased to issue an interim, temporary order compelling the respondent to place into its payroll all members of the Petitioner/Applicant who have not been absorbed into the county's payroll despite having gone through a competitive recruitment process and issued with appointment letters.
 3. That pending the hearing and determination of this Application and Petition an order do issue compelling the respondent to commence the payment of the salary arrears of the members of the Applicant who have not been placed into the county payroll from the time they were issued with employment and or appointment letters to the date of filing this suit.
 4. That costs of this application to be borne by the respondent.



3. The Application is premised on grounds that:
 - a. the 2nd Respondent advertised for positions in various departments;
 - b. the members of the Applicant applied for the advertised jobs, were shortlisted and interviewed by the 2nd respondent and offered appointment letters on diverse dates between April, 2021 and October, 2021;
 - c. the 2nd Respondent only absorbed some employees and left out others discriminatorily mainly along tribal, clan ties and political machinations; and
 - d. the said employees have not been paid salary from the date the 2nd respondent issued them with appointment letters appointment as town administrators, Wajir County.
4. The Respondents did not file any response to the Application despite being duly served. As such, the Application was therefore not opposed.
5. The Applicant filed skeleton submissions in support of the Application and relied on various constitutional provisions to wit Articles 10, 23(3), (e), 28, 41(1) & (2) as well section 12 of the *Employment and Labour Relations Court Act*, and sections 2 and 18 of the *Employment Act*.
6. The Applicant argues that the following persons who are their members, were issued with appointment letters by the 2nd Respondent but have never been placed on the payroll nor received their salary:-
 - i. Ahmed Idle Ahmed
 - ii. Abdihakim Bare Hassan
 - iii. Deka Diriye Adan
 - iv. Sahara Bishar Mohamed
 - v. Daud Bulle Salat
 - vi. Yussuf Abdi Mohamud
 - vii. Ahmed Maalim Abdullahi
 - viii. Mohamed Ibrahim Ahmed
 - ix. Amina Hani Rashid
 - x. Ibrahim Yusuf Hussein
 - xi. Mohamed Abdi Hassan
 - xii. Abdille Suleiman Abdi
 - xiii. Mohamed Abubakari Ojale
 - xiv. Daud Adow Ibrahim
 - xv. Mohamed Ali Mohamed
 - xvi. Osman Mohamed Sheikh
 - xvii. Mohamednur Abdow Kano



- xviii. Shimo Mohamed Saman
- xix. Qassim Mohamed Omar
- xx. Adan Sambui Abdi
7. The appointment letters of the said members which are uniform, read in part:-
- “Appointment as a Town Administrator
- I am pleased to inform you that the Board has decided to offer you the above post with effect from the date of this letter on the following terms...”
8. The letter of appointment which appears to constitute an employment contract, goes ahead to set out the terms of appointment, salary scale, allowances, termination, contributory pension scheme, medical scheme and leave.”
9. The letters of appointment have been accepted by members of the Applicant as they contain signatures which signify acceptance of the terms of employment.
10. There is no evidence that the letters of appointment were withdrawn, hence there is irrefutable evidence that the employment contracts are alive and valid.
11. As stated herein, the Respondents did not tender any response hence the Applicant’s assertion that its members have never been paid, was not controverted.
12. The prayers sought by the Applicant in the Application are in the form of a mandatory injunction as it seeks to compel the Respondents to place in its payroll all its members who have not been absorbed into the county’s payroll and to release the salary arrears of the said members.
13. In the case of *Kenya Breweries Ltd & Another vs Washington O. Okeya* [2002] eKLR, the Court of Appeal stated as follows on mandatory injunctions.
- “A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”
14. Further, in the case of *Nation Media Group & 2 Others vs John Harun Mwan* [2014] eKLR, the Court of Appeal said:
- “It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances...A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrated as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.”
15. I do find in the instant case that the Applicant has demonstrated that there exist special and exceptional circumstances that warrant the granting of the orders of mandatory injunction.



16. The Applicant has, through the Affidavits filed in support of the Application and the documentary evidence annexed thereto, proved that its members were employed as Town Administrators at Wajir County, reported to work but have never been placed on the county payroll and have never received salary to date. This action and commission on the part of the Respondents potentially exposed the members of the Applicant to unfair labour practices contrary to the provisions of Article 41 of *the Constitution*.
17. On their part, the Respondents did not file any Response to the Application either to dispute the assertions of the Applicant or to render an explanation as to why the members of the Applicant have not been placed on the payroll nor paid salary. The net effect thereof is that the allegations made by the Applicant have neither been controverted nor denied by the Respondents.
18. The upshot of the foregoing is that I find that the Application is merited and has disclosed special circumstances that warrant grant of orders in the nature of a mandatory injunction.
19. The Application dated 8th March, 2022, is hereby allowed in the following terms:
 - a) An interim order compelling the Respondents to place into its payroll the following members of the Applicant; Ahmed Idle Ahmed; Abdihakim Bare Hassan; Deka Diriye Adan; Sahara Bishar Mohamed; Daud Bulle Salat; Yussuf Abdi Mohamud; Ahmed Maalim Abdullahi; Mohamed Ibrahim Ahmed; Amina Hani Rashid; Ibrahim Yusuf Hussein; Mohamed Abdi Hassan; Abdille Suleiman Abdi; Mohamed Abubakari Ojale; Daud Adow Ibrahim; Mohamed Ali Mohamed; Osman Mohamed Sheikh; Mohamednur Abdow Kano; Shimo Mohamed Saman; Qassim Mohamed Omar; and Adan Sambui Abdi, who have not been absorbed into the county's payroll.
 - b) An order is hereby issued compelling the Respondents to commence the payment of the salary arrears of the following members of the Applicant; Ahmed Idle Ahmed; Abdihakim Bare Hassan; Deka Diriye Adan; Sahara Bishar Mohamed; Daud Bulle Salat; Yussuf Abdi Mohamud; Ahmed Maalim Abdullahi; Mohamed Ibrahim Ahmed; Amina Hani Rashid; Ibrahim Yusuf Hussein; Mohamed Abdi Hassan; Abdille Suleiman Abdi; Mohamed Abubakari Ojale; Daud Adow Ibrahim; Mohamed Ali Mohamed; Osman Mohamed Sheikh; Mohamednur Abdow Kano; Shimo Mohamed Saman; Qassim Mohamed Omar; and Adan Sambui Abdi, who have not been placed into the county payroll from the time they were appointed.
 - c) Costs shall be in the Cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL, 2022.

STELLA RUTTO

JUDGE

Appearance:

Mr. Oginga for the Petitioner/Applicant

No appearance by the Respondents

Court Assistant Barille Sora

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st



April 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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 had 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 1B** 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.

STELLA RUTTO

JUDGE

