



**Kariuki v County Government of Mombasa (Cause 696 of 2016)
[2022] KEELRC 1364 (KLR) (8 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1364 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 696 OF 2016**

**B ONGAYA, J
JULY 8, 2022**

BETWEEN

JOSEPH WANJOHI KARIUKI CLAIMANT

AND

COUNTY GOVERNMENT OF MOMBASA RESPONDENT

JUDGMENT

- 1 The claimant filed the memorandum of claim on 21.09.2016 through Kiarie Kariuki & Company Advocates. His case is as follows. He was employed on 04.07.1988 by the Ministry of Health as a Public Health Technician Job Group G. He has since been promoted to the rank of Senior Public Health Officer. He was confirmed in appointment by the letter dated 18.04.2001. After the Constitution of Kenya 2010, health services were devolved to County Governments and he was seconded to the Health Department of the County Government of Mombasa. At the time of filing the suit he is deployed at Shimo La Tewa Prison and he covers assignments in Utange Sub-County and Bamburi at a monthly salary of Kshs. 54, 648.80 and working on daily basis from 8.0aam to 5.00pm.
- 2 Further in July 2015 he did not receive his monthly salary and he was advised it had been stopped and his name removed from the payroll. He continued working and without pay until August 2016. He was not told why his name was removed from the payroll. His claim is for reinstatement to the payroll and payment of withheld salary for 14 months he has worked without receiving remuneration, leave allowance, commuter allowance, health risk allowance and health workers extraneous allowance. Further, the withholding of his salary contravenes section 25 of the *Employment Act, 2007*.
- 3 The claimant prayed for judgment against the respondent for:
 1. A declaration that the withholding of the salary from July 2015 to date is wrongful and unlawful.
 2. Reinstatement of the claimant's name to the payroll with immediate effect.



3. Payment of Kshs. 765, 083.20 withheld salary for July 2015 to August 2016 and any other amounts accrued during pendency of the suit until its conclusion.
 4. Leave allowance December 2015 Kshs. 6, 000.00.
 5. Commuter allowance Kshs. 5, 000.00 x 14 = Kshs. 70, 000.00.
 6. Health risk allowance 2000x 14= Kshs. 28, 000.00.
 7. Rental house allowance 8000 x14= Kshs. 112, 000.00.
 8. Health workers extraneous allowance Kshs. 20, 000 x 14=Kshs.280, 000.00.
 9. Costs of the suit.
 10. Interest at Court rates.
 11. Any other or further relief the Honourable Court deems just to grant.
- 4 It appears the claimant was reinstated to the payroll and he was paid the accrued amounts so that in the amended memorandum of claim filed on 15.02.2020 he claimed the unpaid salary for September, October, and November 2016 which had continued to be withheld being Kshs. 239, 370.00 plus, Kshs. 26, 832.25 being fine surcharges unlawfully deducted from the claimant's salary for December 2016 plus, leave allowance for December 2015 Kshs. 6,000.00, costs and interest.
- 5 The respondent did not enter appearance or file a defence. The case was heard on 22.03.2022. The claimant testified that in December 2016 he was returned to the payroll and paid all withheld salaries except the amounts as claimed in the amended memorandum of claim. In absence of any rebutting evidence the Court returns that the claimant has established his claims and is awarded as claimed on the basis of his oral evidence and the documents on record all of which were admitted as filed.
- 6 In conclusion judgment is hereby entered for the claimant against the respondent for:
1. The declaration that the withholding of the claimant's salary herein was wrongful and unfair.
 2. Payment of Kshs. 26, 832.25 unfairly deducted fine surcharges in December 2016.
 3. Payment of Kshs. 239, 370.00 (less PAYE) withheld remuneration for three months as prayed for.
 4. Payment of Kshs. 6, 000.00 leave allowance for December 2015.
 5. The amount awarded herein be paid by 01.10.2022 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
 6. Costs in the cause.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 8TH JULY, 2022.

BYRAM ONGAYA

JUDGE

