



**Kiplagat v County Sec. Head of County Public Service Of Uasin Gishu & 3 others
(Cause 145 of 2017) [2022] KEELRC 4162 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4162 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 145 OF 2017
NJ ABUODHA, J
SEPTEMBER 23, 2022**

BETWEEN

DORCAS JEPKORIR KIPLAGAT CLAIMANT

AND

**COUNTY SEC. HEAD OF COUNTY PUBLIC SERVICE OF UASIN
GISHU 1ST RESPONDENT
COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT
CHIEF OFFICER PUBLIC SERVICE MANAGEMENT 3RD RESPONDENT
COUNTY GOVERNMENT OF UASIN GISHU 4TH RESPONDENT**

RULING

1. The claimant by a Motion dated September 4, 2021 sought orders among others that:
 - a. There be a stay of execution of the ruling delivered on the August 24, 2020 to the extent it directed the payment of costs of ksh 77,500 (seventy-seven thousand five hundred only) to the respondents and in default, the same be deducted from the claimant's salary pending the hearing and determination of this application.
 - b. That the court be pleased to review its ruling delivered on the August 24, 2020 and orders the respondent to pay the claimant interest at commercial rates on the sum of ksh 854,700 being withheld salary between 1st September 2015 to July 1, 2016 from the respective dates of withholding being 11 months' x 13% p.a. thus ksh 101,851.75.
 - c. The court be pleased to review its ruling/vary the same to extent it directed the claimant to pay costs of ksh 77,500 to the respondents and sets aside the same or in the alternative orders that the same be set off from the party and party costs awarded to the claimant by the judgment and as taxed on the May 24, 2019.



- d. That should the court order a set off of the sum of ksh 77,500 from the taxed party and party costs, the respondents do forthwith pay the claimant the balance thereof together with accrued interests from the date of judgment at court rates and also pay the interest at commercial rates on the withheld salary between the period of September 1, 2015 to July 1, 2016.
 - e. That a notice to show cause do issue to the county secretary of Uasin Gishu county government to show cause why execution should not be issue.
2. This court (Mbaru J) delivered its judgment on November 12, 2018 directing the respondent to pay the claimant all her dues and salaries owed for the entire duration of employment and without stoppage with interest at commercial rates. Costs were taxed at ksh 318,772/- against the respondent. The claimant subsequently tabulated and filed the sums due as per the judgment of the court. The court (Mbaru J) in her ruling delivered on May 24, 2019 dismissed the tabulation and ordered the claimant to pay the respondent costs in the sum of ksh77,500/= within thirty days in default such costs be deducted from the claimant's monthly salary.
 3. The learned judge in her ruling above observed that order (c) of the judgment dated November 12, 2018 was spent since the claimant could not seek to be paid again what was already paid to her as that would be tantamount to unjust enrichment. According to the learned Judge, tabulation of salaries due with interest at commercial rates did not arise since the unpaid salaries were remitted before the subject judgment. The court further observed that the alleged tabulations made by the claimant were misplaced and causing unnecessary expenses to the respondent in attendance to defend the same. It is for this reason that the learned Judge deemed it fit to condemn the claimant with an order of costs to be paid within 30 days in default the same be recovered from her salary.
 4. The respondent informed the court that the claimant did not pay the costs as directed by the court hence the same had been recovered from her salary. The respondent therefore contended that the present application before the court had been overtaken by events. The foregoing was not disputed by the claimants.
 5. An order for review can only be granted upon discovery of new and material facts which the applicant could not after exercise of due diligence find. Further, an order for stay can only be made where execution has not taken place.
 6. The claimant did not dispute that the respondent had already deducted the costs ordered by Lady Justice Mbaru against her.
 7. In foregoing circumstances, the orders sought in the application have already been overtaken by events and the same is hereby dismissed with costs.
 8. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF SEPTEMBER, 2022

ABUODHA NELSON JORUM

JUDGE ELRC

