



**Kenya County Government Workers Union v County Government of Kisii & 2 others  
(Cause E007 of 2021) [2022] KEELRC 13291 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13291 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E007 OF 2021  
CN BAARI, J  
NOVEMBER 24, 2022**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF KISII ..... 1<sup>ST</sup> RESPONDENT**

**KISII COUNTY PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY SECRETARY, KISII COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The claimant lodged this claim *vide* a statement of claim dated January 18, 2021, and filed on January 26, 2021. The claimant seeks payment of salary arrears owed to its members who are/were employees of the respondents amounting to Ksh 220,430,159.30
2. The office of the County Attorney entered appearance for the respondents on March 18, 2021, and later with the leave of the court, filed a response to the claim dated January 18, 2022 and filed in court on March 4, 2022.
3. The claimant's case was heard on March 23, 2022, when the claimant presented one George Ombasa to testify in support of their case. Mr Ombasa adopted his witness statement and produced documents filled in support of the claimant's case.
4. The respondents' failed to defend their suit even after being given various opportunities to do so. The court deemed the respondents' case as closed on July 19, 2022, and directed parties to file submissions.
5. Submissions were filed for all the parties, and which have been duly considered.



## The Claimant's Case

6. The claimant's case is that she entered into a Collective Bargaining Agreement (CBA) with the defunct local authorities, that were the predecessors of the 1<sup>st</sup> respondent, to wit; town council of Nyamache, town council of Tabaka, Nyamarambe town council, Ogembo town council, Masimba town council, county council of Gucha and Gusii county council, setting out improved terms of service and remuneration for her members.
7. The claimant states that the CBA was registered in court as required under section 60(1) of the [Labour Relations Act](#), hence the CBA was legally binding as between parties thereto. The claimant further states that while the 1<sup>st</sup> respondent voluntarily negotiated and signed the terms of the CBA, they inexplicably failed to fully comply with the terms thereof.
8. The claimant states that due to the failure by the defunct county councils to make good the terms of the collective bargaining agreements, the various county councils, which now make up the 1<sup>st</sup> respondent, accrued huge amounts of debts in salary arrears and allowances to her membership.
9. It is the claimant's case that shortly after the promulgation of the new constitution and the setting up of devolved units, the transition authority was established pursuant to an act of Parliament to handle the transition from the local authorities to the county governments.
10. The claimant further states that the transitional authority in execution of its functions, identified and verified that there were salaries arrears owing to the claimant's members arising from the underpayment by the defunct local authorities.
11. The claimant states that the transition authority after undertaking its mandate as provided in law, wound up its operation and its residual functions were taken over by the Intergovernmental Relations Committee (IGTRC), established pursuant to section 11 of the [Intergovernmental Relations Act, 2012](#), to take over the residual functions of the transitional authority among other functions.
12. It is the claimant's case that the IGTRC established institutional structures in the counties, including Kisii county for the verification of the liabilities of the defunct local authorities; to wit, County Assets and Liabilities Committee. (CALC)
13. The claimant states that the county assets and liabilities committees were established pursuant to Kenya gazette notice Vol cxix No 13 of 2013, to enable counties verify and transfer the liabilities that belonged to the local authorities. The claimant further states that the 1<sup>st</sup> respondent established its own committee *vide* a letter dated May 30, 2017, setting up the necessary structures for verification of its assets and liabilities.
14. The claimant states that the County Assets and Liabilities Committee (CALC) established and verified that salary arrears are owed to employees under the defunct county council of Gucha, town council of Gusii, Suneka town council, town council of Nyamarambe, town council of Tabaka, town council of Nyamache, town council of Masimba, town council of Ogembo, Municipal council of Kisii and town council of Keroka, in the sum of Kshs 220,430,159.30
15. The claimant states that the report by the committee was forwarded to the IGTRC, which upon verification and authentication of the arrears, adopted the figures and informed the county to pay the outstanding amount to the employees.



16. The claimant states that 1<sup>st</sup> respondent has blatantly failed/refused to pay the claimant's members the salaries and allowances in arrears owing to them, despite the same having been validated by their committee and affirmed by the IGTRC.
17. The claimant states that the continued refusal to pay the claimant's members their salary arrears and allowances, has caused them immense financial anguish and torment. The claimant further avers that the respondents have not advanced any reason for their failure to pay the outstanding debt to their employees or failure to pay any amount towards reducing the debt.
18. The claimant states that the respondent is clearly acting with impunity and contrary to the constitutional dictates of fair labour practices.
19. The claimant prays for an order compelling the respondents to pay her members salary arrears as per the report of the transitional authority, and the Intergovernmental Relations Technical Committee (IRTC) in the sum of Ksh 220,430,159.30.

### **The Respondents' Case**

20. The respondents' deny owing the claimant's membership and further aver that if there were any salary arrears between the claimants and the defunct county councils, then the same ought to have been paid by the transitional authority which was solely established for that purpose and
21. The respondents state that since the establishment of the county governments, no monies have ever been received from the national treasury for payment of salary arrears as alleged by the claimant.
22. The respondents further aver that if the county assets and liabilities committee was ever established as alleged, then counties to date including the respondents, have never verified the liabilities belonging to former local authorities for transfer to the respective County Governments.
23. The respondents states that to date, the Intergovernmental Relations Agency has not approved payment of salary arrears as alleged, hence the present claim is made prematurely.
24. The respondents further states that the alleged salary arrears have not been established and/or verified, and the claimant is well aware of that as per the letter dated March 22, 2019, but has deliberately chosen to supply the court with only pages 1 and 3 of the letter and left out page 2 thereof,
25. The respondents state that the allegations contained at paragraph 16 are the claimant's generated figures, and not from the County Assets and Liabilities Committee as alleged. The respondents expressly state that no figures have been verified as the salary arrears owed to the employees as alleged.
26. It is the respondents' case that the Kisii county assets and liabilities committee is yet to establish and verify the salary arrears as per the letter dated March 22, 2019, hence this claim has been made prematurely.

### **Analysis and Determination**

27. I have considered the pleadings herein, the testimony by the claimant's witness and the submissions by both parties. The issue that fall for determination is whether the claimant is entitled to the remedies sought.

### **Whether the claimant is entitled to the remedies sought.**

28. I have no doubt in my mind that the 1<sup>st</sup> respondent (County Government) is the successor of the defunct local authorities that fell within its jurisdiction. In *Gateway Insurance Company Limited v*



*Jimmy Kiamba, Treasurer Nairobi County Government & 2 others* (2015) eKLR, Odunga J held opined thus: -

“The legal rights and liabilities of the defunct local authorities are to accrue in favour of and be sustained against their successors which in this case are the respective County Governments.....”

29. The claimant has produced in evidence a long list of names of persons said to have been employed by the respondents, and for whom the respondents owe colossal sums in salaries and allowances. The amounts are said to date between September 1, 2012 to March 31, 2013.
30. A report by the IGRTC titled summary of analysis, observations and recommendations on the County Assets and Liabilities Committee Report of October, 2018, produced in evidence show that the liabilities in respect of unpaid staff emolument for Kisii county stood at Kshs 217,317, 562.00
31. It is thus not disputed that the employees/former employees of the 1<sup>st</sup> respondent are owed in respect of unpaid emoluments. It is also confirmed to this court by the IGRTC letter dated July 15, 2019, that the 1<sup>st</sup> respondent’s assets and liabilities committee identified, verified validated and recorded the debts in their final report owed to various groups and companies, and for which the IGRTC advised the county government to proceed to look at the options for liquidation.
32. The only issue outstanding herein, is the identity of the persons owed and the amount owed to each one of them. The amount given in the report is a global figure, which is then subject to prove as to who is owed how much.
33. CW1 told the court on cross-examination that he does not have pay slips or appointment letters, either his own or for the over five hundred other grievants, alleged to be employees or former employees of the respondents herein.
34. Providing a list and stating amounts is not enough in such a case where the persons for whom the claimant claims did not present themselves before court nor write statements or in any other way show that they worked or were employed by the respondents.
35. Further, and as correctly submitted by the counsel for the respondents, employees of the defunct local authorities were absorbed by County Government, and hence information on their employment status should be readily available to the respondents.
36. The name of CW1 who told the court that he works for the 1<sup>st</sup> respondent, does not appear in the lists provided, which in my view, casts doubts on the authenticity of the list placed before court by the claimant.
37. I conclude by finding that the claim herein is merited, and further order as follows:
  - i. That the 1<sup>st</sup> respondent provides the court with accurate information in respect of the outstanding employee emoluments accrued from the defunct local authorities (an accurate list of persons owed and the amount owed) within 45 days from the date of this judgment.
  - ii. Further orders will follow upon compliance with order (i) above.
  - iii. Considering the nature of the suit, each party shall bear their own costs.
38. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**



**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

Mr. Odero acting alongside Ms. Awinda for the Claimant

Mr. Kaburi present for the Respondents

Christine Omollo- C/A

