



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU

JUDICIAL REVIEW APPLICATION NO. 1 OF 2019

JEANNE HELLEN ONYANGO

APPLICANT

v

COUNTY SECRETARY KISUMU

1st RESPONDENT

CEC-FINANCE KISUMU

2nd RESPONDENT

CHIEF FINANCE OFFICER, KISUMU

3rd RESPONDENT

RULING

1. For determination is a Motion dated 8 July 2020 by the Respondents seeking orders:

1. ...

2. ...

3. ...

4. **THAT** this Court be pleased to lift the warrants of arrest issued on 1/07/2020 against DR CHARLES OLANGO ONUDI, NERRY ACHAR, HARRIET AMULEN HONGO and ERICK ONGWEY being the former holders of the four Respondents dockets within the COUNTY GOVERNMENT OF KISUMU.

5. **THAT** this Court be pleased to temporarily stay the order issued on the 25/02/2020, more particularly the limb on payment of outstanding salaries pending computation by the parties.

6. **THAT** the Respondent bears the costs of this application.

2. When the Motion was placed before the Court on 9 July 2020, it directed that it be served and further that affidavits and submissions be filed and exchanged.

3. As a consequence of the directions, the Respondents filed their submissions on 13 July 2020.

4. The applicant (hereinafter called the Claimant) filed her submissions on 21 September 2020.

5. When the parties appeared before the Court on 21 September 2020 to highlight the submissions, the parties informed the Court that they were negotiating a settlement. The Court ordered that the Motion be mentioned on 21 October 2020 to record consent.

6. The parties did not agree, and on 21 November 2020, the Court reserved Ruling to today.

7. Some brief background would be in order.

8. The Claimant had sued the County Government of Kisumu in Kisumu Cause No. 134 of 2014, *Jeanne Hellen Anyango v the County Government of Kisumu*, alleging certain contractual violations. On 20 February 2018, the parties entered a consent. The consent included an order that the applicant be paid all outstanding salaries and further be reinstated to employment. The parties also agreed that the Claimant be

paid costs to be assessed.

9. The County Government attempted to set aside the consent, but in Ruling delivered on 20 December 2018, the Court declined the invitation.

10. On 4 March 2019, the Court granted the Claimant leave to commence judicial review order of mandamus to compel the Respondents to settle the costs which had been taxed at Kshs 1,572,175/- (there were other orders).

11. The Motion was filed on 5 March 2019, and after hearing the parties, the Court allowed the Motion on 10 July 2019.

12. The Respondents did not comply, and on 15 July 2019, the Claimant filed a contempt application against some 4 named persons who were then holding the positions of County Secretary, County Executive Committee Member, Finance, Director, Human Resource, County of Kisumu and Chief Officer, Finance, County Government of Kisumu.

13. On 25 February 2020, the Court found the 4 named persons in contempt of court and ordered their committal to civil jail. However, the orders were stayed for 30-days.

14. On 1 July 2020, the Deputy Registrar issued warrants of arrest.

15. The warrants made the Respondents to file a Motion under a certificate of urgency on 8 July 2020 seeking orders lifting the warrants. The Court ordered that the Motion be served and that affidavits and submissions be exchanged. The warrants were lifted ahead of the determination of the Motion.

Respondents' arguments

16. In seeking the lifting of the warrants, the Respondents asserted that the Claimant had retired having reached retirement age, and therefore, it was not practicable to comply with the reinstatement order.

17. The Respondents also contended that the Claimant's salary arrears had been computed and would be paid to her once the Court gave directions, allegedly because she had refused to report to work.

18. The Respondents further stated that costs of about Kshs 1,560,000/- had been paid.

19. Lastly, the Respondents urged that since the named County Secretary, County Executive Committee Member, Finance, Chief Officer, Finance and Director of Human Resources had left the employment of the County Government or been redeployed, they were not in a position to implement the orders of the Court.

20. On her part, the Claimant asserted that the named contemnors held public offices and that by virtue of section 6 of the County Governments Act, which provided for succession and perpetuity in the offices, the Accounting Officer currently in office was still liable for contempt. The Claimant found umbrage in *Associated Automobile Distributors v Town Clerk, Municipal Council of Mombasa* (2017) eKLR.

21. The Claimant also made submissions on the payment of salary arrears.

22. The Claimant did not deny that the costs she had been awarded were paid. Equally not denied was that the Claimant had subsequently reached retirement age and left the county government's employment.

23. The Claimant did also not deny that the named persons she had applied to be committed to civil jail had left those respective offices.

24. Having applied for named persons to be committed to civil jail and not the office holder(s), the Court is of the view that events have overtaken the warrants issued by the Court. The same warrants cannot be converted and used against new officeholders without further leave of the Court.

25. Further, the Claimant cannot be reinstated having retired. Costs have also been paid. The substratum of the orders which were disobeyed has dissipated.

26. The only issue remaining is the computation of the salaries arrears owing to the Claimant. The parties should, in good faith, discuss the modalities of the payments.

27. For the above reasons, the Court allows the Motion dated 8 July 2020 in terms of order 4.

28. Costs in the cause.

Delivered through Microsoft teams, dated and signed in Kisumu on this 24th day of February 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For applicant Maua & Co. Advocates

For Respondents Amondi & Co. Advocates

Court Assistant Chrispo Aura