



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 28 OF 2018

KENYA NATIONAL UNION OF NURSESCLAIMANT

VERSUS

MINISTRY OF HEALTH.....1ST RESPONDENT

BUSIA COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

JUDGMENT

1. The suit was filed by the claimant against the Respondent on 29/1/2018 praying for the following reliefs:-

(a) That his honourable Court be please to compel the 1st and 2nd Respondents to pay forthwith to the claimant the salary and allowances in arrears amounting to Kshs.1,103,993.00.

(b) Damages for wrongful interdiction.

(c) Costs and interest.

2. The respondent filed a reply to the statement of claim on 8/3/2018 in which the particulars of claim and reliefs sought are denied and the claimant put to strict proof thereof.

3. The matter proceeded to formal proof in the absence of the respondent who failed to attend the hearing of the suit on 7/10/2019 without any explanation despite prove of service vide an affidavit of service by John Karakacha, the Industrial Relations officer of the claimant dated 19/6/2019 and filed on 28/6/2019 to which is attached a Hearing notice dated 2/6/2019 notifying the 1st and 2nd respondents of the hearing date set for 7/10/2019.

4. The hearing notice indicates receipt of the same by both respondents on 4th June, 2019 and 17/6/2019 respectively.

5. C.W.1 Isaiah Washington Omondi testified under Oath that he is a nursing officer working for Busia County Government at a hospital called Khunyanga – Sub-County Hospital.

6. C.W.1 stated that he was interdicted on 6/7/2009 and was reinstated back to work in July, 2012. That despite reinstatement, C.W.1 testified that he has not been paid salary arrears withheld by the respondents. C.W.1 produced exhibit “SP2” the letter of interdiction and exhibit “SP1” a letter lifting the interdiction.

7. C.W.1 also produced exhibit “SP3” a letter by C.W.1 requesting for payment of arrears and “SP3” a letter by the respondents requesting for further information to allow payment of Arrears. C.W.1 also produced “SP4” a letter providing the requested information including computation by Mr. Laban Omwando from the County Government.

8. C.W.1 stated that he was owed Kshs.1,102,993.00. That the computation is signed by the Chief Officer Public Service of the County Government.

9. C.W.1 also produced exhibits 5, 6, and 7 in support of his case, that he was not paid arrear salaries. C.W.1 prays for payment of the arrear salaries including damages for interdiction, costs and interest.

Determination

10. The testimony by C.W.1 is not controverted by the respondents. The claimant has discharged the burden of proof placed on the claimant in terms of Sections 107 and 108 of the Evidence Act on a balance of probability in respect of the arrear salary owed to him by the respondents.

11. The claimant did not however adduced sufficient evidence to poof that he is entitled to an award of damages in respect of the interdiction which was in the Court's view dealt with by the respondents and lifted.

12. The loss suffered by C.W.1 in respect of delayed salary shall be fully mitigated by an award of interest on the judgment sum and costs of the suit.

13. **In the final analysis, judgment is entered in favour of the claimant on behalf of C.W.1, Isaiah Washington Omondi against the respondents in the sum of Kshs.1,102,993.00 .**

(b) **Interest at Court rates from date the interdiction was lifted until payment in full.**

(c) **Costs of the suit.**

Dated and and delivered at Nairobi this 14th day of April, 2021

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. 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 has 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Seth Panyako for claimant – Union.

Chrispo: Court clerk