



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU**

**COURT NAME: ELDORET LAW COURT**

**CASE NUMBER: ELRCJR/4/2019**

**CITATION: THE COUNTY GOVERNMENT WORKERS UNION**

**VS**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF TRANS-NZOIA**

**AND**

**THE CHIEF OFFICER FINANCE/COUNTY TREASURER, COUNTY**

**GOVERNMENT OF TRANS-NZOIA AND OTHERS**

**RULING**

1. By a notice of Motion dated 10th October, 2019 the ex parte applicants sought an order of mandamus to issue compelling the County Secretary of the County Government of Trans Nzoia and the County Executive Committee County Government of Trans-Nzoia to pay the ex parte applicants the judgement debt in the sum of Kshs. 56,984,866/= arising from the decree made on 1st December, 2005 in Local Government Workers Union. Vs. Kitale Municipal Council, Nairobi Industrial Cause No 23 of 2005. The applicants further sought costs of the application.

2. The application was based on the grounds set out in the Statutory Statement and Verifying Affidavit of Alphonse Odhiambo Okiri sworn on 10th September, 2019 in which he deponed among others that: (i) THAT the Applicant instituted Local Government Workers Union -V- Kitale Municipal Council Nairobi Industrial Cause No 23 of 2005 against the defunct Kitale Municipal Council, the predecessor of the County Government of Trans-Nzoia seeking various reliefs for unfair termination of my services and 144 other employees whose authority. I have to swear this affidavit and hence I am competent to swear this affidavit.

(ii) THAT it is within my knowledge that by an award made on 1st December, 2005 the Court found our favour but it did not determine the amounts payable to each of us.

(iii) THAT it is within my knowledge that the Provincial local Government Officer, Nakuru, computed the amount payable to us in the sum of Kshs. 56, 984,866/= .

(iv) THAT it is within my knowledge that on 3rd June, 2004 the County Assembly of Trans-Nzoia approved payment of the sum of kshs. 95,145.995/= to us.

(v) THAT it is within my knowledge that by an order made on 24th November 2007 the Court certified the sum of Kshs. 56,984,866/= as the amount due to us.

(vi) THAT I have been informed by the Applicant's advocates which information I verily believe to be true and correct that they caused the Decree and Order to be served upon the County Government of Trans=Nzoia and its advocates, who both acknowledged receipt.

(vii) THAT I have been informed by the Applicant's advocates which information I verily believe to be true and correct that they have made numerous subsequent follow-ups for settlement of the judgement debt but they have been met with resolute muteness by the Respondents yet to date no appeal has been lodged against the decree and there are no orders of stay of execution.

(viii) THAT I have been informed by the Applicant's advocates, which information I verily believe to be true and correct, that on 26th and 27th August, 2019 they caused to be served upon the County Government of Trans-Nzoia and is advocates a Certificate of

Order against the Government and to date the Respondents have failed, refused and or neglected to satisfy the decree.

(ix) THAT I verily believe that in the absence of an appeal and or orders staying execution of the decree there is no reason whatsoever why the named Respondents cannot satisfy the decree herein forthwith.

(x) THAT it is within my knowledge that since the award was made in 2005 some of my colleagues have died while some, who are now older members of the society within the meaning of Article 57 as read together with Article 260 of the Constitution 2010 have retired and are now living under deplorable conditions.

(xi) THAT, I have been advised by the Applicant's advocates, which advice I verily believe to be legally sound that under Section 21(3) of the Government Proceedings Act Cap 40(1) it is the statutory duty of the named Respondents to pay the judgement debt the subject of this application.

3. The 1st respondent filed a replying affidavit on 25th November, 2020 and deponed among others that: -

(i) THAT without prejudice to my deposition in paragraph three above, the 3rd Respondent receives most of its revenue through budgetary allocation from the national treasury and the 3rd Respondent does not have control of the monies allocated to it.

(ii) THAT the 3rd Respondent has financial obligations to the people of Trans-Nzoia to deliver services in accordance with Schedule 4 of the Constitution including health services, county transport, pre-primary education, county public works and services firefighting and disaster management among other critical functions for the people of Trans-Nzoia County.

(iii) THAT the monies received by the 3rd Respondent are scarce as it is owing to the cash crunch experienced by the county as the economy is not doing well.

(iv) THAT the 3rd Respondent does not therefore have enough budgetary allocation to settle the wage bill and pending bills as it is owing to the meager nature of the money trickling in from the treasury.

(v) THAT at the moment the county government owes several suppliers millions of money in pending bills and a payment plan is being worked out.

(vi) THAT the amount due to the Applicant arises from a decree against the former Kitale Municipal Council arising from a judgement issued on 1st December, 2005. As such the debt constitutes a liability transferred from the defunct Kitale Municipal Council. Such liabilities run into millions and if the Applicant is paid without a budget line it will present an audit query and paralyse service delivery as core services will be hampered by a cash crunch.

(vii) THAT the failure of the 3rd Respondent to comply with the award issued against the County of Kitale the predecessor of the 3rd Respondent is not due to blatant disregard of court orders but rather because of lack of funds.

(viii) THAT if the 3rd Respondent complies and pays out the award with interests as from the year 2005 the entire County of Trans-Nzoia will grind to a halt as there will be no money left to provide the services that the 3rd Respondent is constitutionally mandated to provide to the people of Trans-Nzoia County.

(ix) THAT in the circumstances public interest of all the people within Trans-Nzoia County outweighs the interests of the Applicants herein.

4. Ms. Nyamwega for the applicants in support of the application submitted that the respondent had not denied owing the applicants the sums decreed in the award in Cause number 23 of 2005. Further that the assertion by the respondents that if they pay the outstanding debt, the operations of the County Government may grind to a halt was a clear indication that the respondent was not committed to obeying the Court order hence the only way was for the Court to issue an order of mandamus.

Mr. Yego for the respondent on his part submitted that on the County Government of Trans-Nzoia taking office in 2013 it engaged with the Transition Authority and it was proposed that all debts and liabilities inherited from the defunct Municipal Council be settled by the national government through conditional grants to the incoming County Government.

6. According Counsel, although the debt has to date been acknowledged by the respondent, the national government was yet to release any conditional grants to the County Government hence the respondent was yet to release the funds to pay out the decretal amount.

7. Mr. Yego further submitted that the application was premature as the County Government was still awaiting the conditional grants from the National Government. The respondent could not pay out the decretal amount without a budget line as the same would present an audit query.

8. There appears to be no dispute as to the liability on the part of the respondent to pay the petitioners the sums decreed by the former Industrial Court in cause No 23 of 2005. The respondent only contends that payment was subject to receipt of conditional grants from the National Government which has to date not been received.

9. The respondent further contends that if the payment was made from funds allocated to it by the Treasury, its operations would grind to a halt.

10. Whereas the respondent contends that it had not received any funding from the National Government, no material was laid before me to show any effort has been made by the respondent to pursue the matter with the national government. The Court decreed in 2005 that the petitioners be paid. It is therefore their right to enjoy no fruits of the judgment. To argue that the respondent has more important and pressing matters to which it should prioritize its budget, is tantamount to discrimination against the petitioners whose rights accrued by the passing of the judgement and decree in 2005.

11. Whereas the Court is alive to perennial budget constraints in the Government, to halt any effort to pursue the payment of the decretal sum to the petitioners on this ground is dereliction of duty on the part of the respondent.

12. From the foregoing observations the court is persuaded that the petitioners deserve the orders sought in the Motion dated 10th October, 2019 that is to say an order of mandamus hereby issues compelling the County Secretary the County Government of Trans-Nzoia , Chief Officer Finance/County Treasurer County Government of Trans=Nzoia and the County Executive Committee Member of Finance the County Government of Trans-Nzoia to pay the ex parte applicants the judgement debt of Kshs. 56,984,866/= arising from the decree made on 1st December, 2005 in Local Government Workers Union. Vs. Kitale Municipal Council, Nairobi Industrial Cause No 23 of 2005.

13. The ex parte applicants shall further have costs of the application.

14. It is so ordered.

**DATED AT ELDORET THIS 12<sup>TH</sup> DAY OF MAY, 2021**

**DELIVERED AT ELDORET THIS 12<sup>TH</sup> DAY OF MAY, 2021**

**SIGNED BY: HON. JUSTICE J. N. ABUODHA**

**THE JUDICIARY OF KENYA.**

**ELDORET ELRC**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**DATE: 2021-05-12 12:05:35+03**