



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 310 OF 2017

GEORGE OLOO ONGARE.....CLAIMANT

VERSUS

KISUMU COUNTY GOVERNMENT.....1st RESPONDENT

KISUMU COUNTY PUBLIC SERVICE BOARD.....2nd RESPONDENT

RULING

1. George Oloo Ongare (the Claimant) sued the County Government of Kisumu and the County Public Service Board, Kisumu (the Respondents) in 2017 alleging unlawful termination of employment.
2. On 2 March 2021, the Deputy Registrar directed that the parties attempt settlement through Court annexed mediation.
3. The parties attended mediation and agreed a settlement which was signed on or around 1 March 2021.
4. Under the agreement, the Respondents agreed to reinstate the Claimant back to work effective 1 November 2021.
5. The Court Mediation Deputy Registrar adopted the Mediation Agreement on 23 March 2021.
6. The Claimant moved the Court on 8 April 2021 alleging contempt on the part of the Respondents. It was alleged that the Respondents had failed to implement the Mediation Agreement.
7. The Respondents caused a replying affidavit deposed by the Director, Human Resources Management to be filed on 30 April 2021.
8. In the affidavit, the Respondents admitted having entered into the Mediation Agreement and that they were committed to implementing the Agreement but that the Agreement had not been implemented because they were still carrying out due diligence.
9. On 16 June 2021, the Court requested the parties to make brief oral submissions.
10. The Respondents stated that they had not completed the due diligence because of the COVID19 situation in the county. It was explained that operations had been downscaled and therefore more time was needed.
11. It is not lost to the Court that the County of Kisumu has borne the brunt of the COVID19 nationally and that the Respondents have publicly announced the downscaling of operations.
12. However, the Court needs to balance the rights and interests of the Claimant against the public health protocols and requirements and in that respect, it would not be injudicious to allow the Respondents more time.
13. In allowing the Respondents more time, the Court is conscious that the parties agreed that the Claimant would be reinstated but backdated to 1 November 2020.
14. The effect of the backdating of reinstatement is that the Claimant would be entitled to remuneration from 1 November 2020. Such a remuneration is therefore a recoverable debt.
15. In light of the above, the Court orders:

- i. The Respondents to implement the Mediation Agreement within 45 days from today or risk contempt.
- ii. The parties be at liberty to apply considering the evolving and fluid nature of COVID19 in the county.
- iii. These orders to apply in the following Causes which were cause-listed today:
 - a. Kisumu Cause No. 307 of 2017, Elizabeth Awino v Kisumu County Government & Ar;
 - b. Kisumu Cause No. 309 of 2017, Elias Otieno v Kisumu County Government & Ar;
 - c. Kisumu Cause No. 311 of 2017, Tom Weda v Kisumu County Government & Ar;
 - d. Kisumu Cause No. 312 of 2017, Simon Otieno v Kisumu County Government & Ar;
 - e. Kisumu Cause No. 313 of 2017, Moses Menga v Kisumu County Government & Ar;
 - f. Kisumu Cause No. 316 of 2017, Alice Cheto v Kisumu County Governemt & Ar;
 - g. Kisumu Cause No. 317 of 2017, Benter Adhiambo v Kisumu County Government & Ar and
 - h. Kisumu Cause No. 318 of 2017, Ali Ramadhan v Kisumu County Government & Ar.

Delivered through Microsoft, dated and signed in Kisumu on this 16th day of June 2021.

Radido Stephen, MCI Arb

Judge

Appearances

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|-----------------|------------------------------------|
| Claimant | in person |
| For Respondents | Ms Awuor, County Attorney's Office |
| Court Assistant | Chrispo Aura |