



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 98 OF 2017**

**(Originally Nakuru Cause No. 438 of 2016)**

**ANDREW ATIKA ANGWENYI.....CLAIMANT**

**v**

**KISII COUNTY ASSEMBLY SERVICE BOARD.....RESPONDENT**

**RULING**

1. Before addressing the Motion under consideration, some very brief background would be in order.
2. Andrew Atika Angwenyi (the applicant) instituted these proceedings against the National Police Service Commission on 26 October 2016 seeking:
  - (i) An order directing the Respondent to release the Claimant's payroll data forthwith to the Kisii County Human Resource Department to enable the Claimant's name be captured in the County Government of Kisii payroll.
  - (ii) A declaratory order holding that the Claimant is a legitimate employee of the Respondent.
  - (iii) A declaratory order holding that the Respondent institution barring the Claimant from accessing his office is unlawful.
  - (iv) A declaratory order holding that suspension of the Claimant services (sic) and employment was in contravention of the law.
  - (v) An order for reinstatement of the Claimant to his capacity (sic) Police Constable forthwith.
  - (vi) An order of permanent injunction barring the Respondent jointly and severally from arbitrarily removing (sic) the employment of the Claimant.
  - (vii) Damages including arrears accrued to date, unpaid dues removing (sic).
  - (viii) Costs and interest of the suit.
  - (ix) Any other relief that the Honourable Court may deem fit to grant.
3. On 7 November 2016, the applicant filed an amended Motion and Amended Memorandum of Claim wherein the County Government of Kisii was introduced as the 2<sup>nd</sup> Respondent. The reliefs sought remained the same.
4. On 14 November 2016, the Court granted the Claimant leave to file and serve an amended Statement of Claim, and the amended Statement of Claim was filed on 16 November 2016.
5. In the Further Amended Memorandum of Claim, the Claimant introduced the Kisii County Assembly Service Board as the 2<sup>nd</sup> Respondent.
6. The claim against the Board as outlined in paragraph 13 as follows:

13. The 2<sup>nd</sup> Respondent has threatened to dismiss the Claimant if he fails to supply them with the pay data before 21 November 2016.

7. The remedies sought in the Further Amended Memorandum of Claim were:

(i) An order directing the Respondent to release the Claimant's payroll data forthwith to the Kisii County Human Resource Department to enable the Claimants name be captured in the County Government of Kisii payroll.

**(ii) An order restraining the 2<sup>nd</sup> Respondent from dismissing the Claimant from employment.**

(iii) A declaratory order holding that the Claimant is a legitimate employee of the Respondent.

(iv) A declaratory order holding that the Respondent institution barring the Claimant from accessing his office is unlawful.

(v) A declaratory order holding that suspension of the Claimant services and employment was in contravention of the law.

(vi) An order for reinstatement of the Claimant to his capacity Police Constable forthwith.

(vii) An order of permanent injunction barring the Respondent jointly and severally from arbitrarily removing the employment of the Claimant.

(viii) Damages including arrears accrued to date, unpaid dues removing (sic).

(ix) Costs and interest of the suit.

(x) Any other relief that the Honourable Court may deem fit to grant.

8. Save for the relief seeking an order restraining the County Assembly Service Board from dismissing the applicant, the remedies remained the same.

9. On the same day, the Court directed the National Police Service Commission to provide the County Assembly Service Board with the applicant's payroll data.

10. On 14 November 2016, the National Police Service Commission informed the Court that the applicant's payroll data had been released as ordered by the Court.

11. The Court directed the parties to agree and confirm the settlement.

12. When the parties appeared in Court on 16 January 2017 to confirm settlement, the applicant made an oral application to further amend the Memorandum of Claim. The Court directed him to file and serve the same on or before 27 January 2017 (despite indicating on 24 February 2017 that the same was filed, the applicant did not comply).

13. On the same day, the Court transferred the Cause to Kisumu as the parties were not serious with the settlement.

14. When the parties appeared before the Court in Kisumu on 24 July 2017, and after hearing oral submissions from the parties, the Court discharged the National Police Service Commission and the County Government of Kisii from the proceedings.

15. Consequently, the remaining Respondent in the Cause is the County Assembly Service Board of Kisii.

16. Thereafter, the parties made several appearances before the Court and on 29 October 2019, the Deputy Registrar fixed the Cause for hearing on 2 July 2020.

17. Mr M Omondi was present for the applicant during the scheduling of the hearing date.

18. Due to the COVID19 public health pandemic, the hearing could not proceed.

19. The Cause next came up for hearing on 7 December 2020. None of the parties were present or represented despite being notified of the hearing, and the Court dismissed the Cause.

20. On 11 December 2020, the applicant, through his new advocates on record, Owiti, Otieno & Ragot Advocates, filed a Motion seeking orders:

(i) ...

(ii) THAT this Honourable Court be pleased to review its orders made on 7. 12. 2020 dismissing the suit herein for non-attendance

and reinstate the suit for hearing on merit.

(iii) THAT the costs of this application be in the cause.

21. The Claimant directed the Claimant to serve the Motion ahead of hearing on 2 February 2021.

22. On 2 February 2021, the National Police Service Commission (the Commission) sought more time to respond to the Motion. The Commission filed a replying affidavit on 10 February 2021.

23. When the Motion came up for hearing on 17 February 2021, the Court directed that it be mentioned on 1 March 2021. On this latter date, the applicant prayed for leave to file a further affidavit.

24. The Court directed that the further affidavit be filed and served on or before 12 March 2021. It was only filed on 18 May 2021 for what the applicant blamed on inadvertence.

25. In the further affidavit, the applicant deposed that what he intended to pursue was prayer (h) in which he had sought:

Damages including arrears accrued to date, unpaid dues removing (sic).

26. In support of the Motion, the applicant contended that he failed to attend the hearing on 7 December 2020 because he was held up in traffic in the Nairobi - Nakuru highway and that he arrived in Court after the Cause had been called out and dismissed.

27. In opposition to the Motion, the Commission's Chief Executive Officer filed a replying affidavit. The affidavit did not respond to the depositions or grounds advanced by the Claimant.

28. Since the National Police Service Commission is no longer a party to the proceedings, the Court finds the replying affidavit of no significance (the County Assembly Service Board did not respond to the Motion).

29. The Court has considered the history of the Cause and the pleadings in an attempt to do justice to the applicant.

30. As it stands now, the gravamen of the applicant's pleaded case against the National Police Service Commission to release his payroll data to the County Assembly Service Board and to reinstate him to the Police Service have been overtaken by events.

31. In respect to the County Assembly Service Board, the applicant was alleging breach of contract (being barred from office and dismissal). The applicant confirms that he has now retired, thus removing the factual basis for these heads of the claim.

32. It would thus appear, and the applicant confirmed as much in the further affidavit that the only probable disputation between him and the County Assembly is in relation to salary arrears and unpaid dues. These were not particularised in the body of the Further Amended Memorandum of Claim nor in the supporting or further affidavit.

33. In the Court's view, there is no triable issue remaining for the exercise of its discretion as the pleadings were at the time the Cause was dismissed. The applicant is merely clutching at straws, and it would serve no purpose to revive the Cause.

34. The Motion is dismissed with no order on costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 2ND DAY OF JUNE 2021.**

**RADIDO STEPHEN,**

**MCIARB**

**Judge**

**Appearances**

For Claimant Ms Onsongo instructed by Owiti, Otieno & Ragot Advocates

For Respondent Department of Legal & Legislative Services, County Assembly of Kisii

Court Assistant Chrispo Aura