



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER E 6544 OF 2020

BETWEEN

- 1. DANIEL MATHENGE**
- 2. CLEOPHAS OMANYO**
- 3. EDWIN NJUGA**
- 4. ESTHER MWATHA**
- 5. FELISTUS MORAA**
- 6. HUSSEIN ADAN**
- 7. ISABELLA KATHAMBI**
- 8. JEMIMAH MURIUKI**
- 9. JORAM MURIMI**
- 10. JOSPHAT MAENDE**
- 11. JULIUS IRERI**
- 12. KENNEDY WAWIRE**
- 13. LEONARD OCHIENG**
- 14. MORRIS ONDIEK**
- 15. PETER MULWA**
- 16. SAMWEL NJUE**
- 17. WILSON KAHORA.....CLAIMANTS**

VERSUS

YOUTH ENTERPRISE DEVELOPMENT FUNDRESPONDENT

RULING

1. The Court granted the Claimants *ex parte* orders on 11th December 2020. The main order was that pending hearing *inter partes* and determination of the Application dated 8th December 2020, implementation of resolution by the Respondent's 76th Full Board meeting held

on, or, around 19th October 2020, is suspended.

2. In summary, the said meeting resolved to reverse continuation of payment of basic salary increments, which the Claimants had been awarded by the Respondent, and had been enjoying, over the past 15 months before the 76th Full Board meeting.

3. The increments, the Claimants argue, were made following the 67th Full Board meeting of the Respondent, and on advice of the Salaries and Remuneration Commission [SRC] contained in a letter dated 1st August 2019.

4. The 76th Full Board meeting sought to reverse increments, arguing that the process was fraudulent, implicating some of the Claimants and Respondent's former Chief Executive Officer. The Respondent argues that salary increments do not have the requisite endorsement of the Treasury; the Respondent is funded by the Treasury; it is presently operating on deficit; and that although the Claimants enjoyed enhanced salaries over the past 15 months, this did not negate the fact that the Respondent was operating on deficit.

5. The result is that the Respondent ignored the order of the Court, and slashed the basic salaries of the Claimant, with effect end of December 2020.

6. The Claimants' pay slips establish that the Respondent's 76th Full Board meeting resolution, reversing salary increments, was implemented. Jemimah Muriuki for example, earned a basic monthly salary of Kshs. 89, 748 in September 2020. In December 2020, after the order issued, her basic monthly salary was Kshs. 81,404.

7. This trend applied to Co-Claimants.

8. Service of the order is not disputed.

9. Against this background, the Claimants have applied through an Application filed on 14th January 2021, to have Benson Muthendi [Acting CEO], Truphena Omung'ala [HRM] and Benjamin Munguti [Payroll Officer] summoned before the Court, to show cause why they should not be punished for contempt.

10. The Respondent filed its own Application seeking to set aside the *ex parte* orders of 11th December 2020. It also filed Replying Affidavits sworn by Board Chairman, Dr. Victor Mwongera. He explains at length why the Respondent is not in position to obey the orders of the Court.

11. The Court directed, in line with established principles on contempt proceedings, that the Claimants' Application precedes all other Applications.

12. Parties were directed to file and exchange Submissions with respect to the Application on contempt.

13. They confirmed compliance at the last virtual mention before the Court on 10th June 2021. The Court scheduled the matter for Ruling on 24th September 2021. The Ruling has been prepared earlier than the given date, and the Court has no reason to wait until 24th September 2021 for delivery. It has been directed that registry notifies Parties of delivery on the date indicated below.

The Court Finds: -

14. It is beyond doubt that the Court issued interim orders on 11th December 2020, barring the Respondent from acting on its 76th Full Board Resolution, reversing the Claimants' salary increments.

15. The Court has not seen on record, advice from SRC, on slashing of the Claimants' salaries, such as would anchor the resolution of the Board in its 76th meeting.

16. Service of the order is uncontested. The order is unambiguous. It is in clear and legible language, understood by all the Parties. It is clear that the order was not obeyed. The Respondent went ahead at the end of the month, December 2020, and slashed the basic salaries of the Claimants, in fulfilment of the resolution of its Board. The salaries had been enjoyed by the Claimants, over the past 15 months.

17. The orders gave timelines for filing and service by the Respondent, of its reply. This was to be done within 7 days, with mention date set for 21st January 2021, in order to confirm filing and service of the reply, and set an accelerated date for hearing of the Application *inter partes*. There was room for the Respondent to come to Court, while observing the *status quo ante*, and justify salary reduction. Parties must allow the Court to resolve their disputes, and avoid embracing an approach of ill-informed self-help.

18. Instead of complying and bringing its case for consideration of the Court through an *inter parte* hearing, the Respondent opted to create its own path- disregard the orders, implement suspended Board resolution, and reduce the basic salaries earned by the Claimants for over 1 year.

19. Such a perilous path, leads to lawlessness, constitutional disorder and total anarchy in workplaces.

20. There is evidence shown by the Claimants that the cited Officers of the Respondent should appear before this Court, to show cause why they should not be punished for Contempt of Court.

IT IS ORDERED: -

- a. Acting CEO Benson Muthendi, Human Resource Manager Truphena Omung'ala and Payroll Officer Benjamin Munguti, are summoned to appear before the Court, on a suitable date to be assigned by the Deputy Registrar, to show cause why, they should not be punished for contempt of Court.
- b. Pending their appearance, the Respondent is directed to immediately revert to payment of salaries applicable prior to the resolution of the 76th Full Board Meeting.
- c. Arrears of salaries, occasioned through implementation of the said resolution, shall forthwith, be paid in full to the Claimants, before the cited Officers appear before this Court.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, NYERI COUNTY, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 20TH AUGUST 2021.

JAMES RIKA

JUDGE