



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 14 OF 2019

HILLARY CHONGWONY

CLAIMANT

v

COUNTY GOVERNMENT OF BUNGOMA

RESPONDENT

RULING

1. Hillary Chongwony (the Claimant) served as the Deputy Governor, County of Bungoma from 2013 to 2017.
2. On 19 December 2019, the Claimant sued the County Government of Bungoma (the County Government) alleging breach of contract (unpaid housing benefit) during the term he served as Deputy Governor.
3. The County Government filed a Response on 12 February 2020, in which it was contended that the Claimant was not entitled to the housing benefit because he had been provided with *housing facility* at Webuye Guest House at the expense of the County Government.
4. The Claimant filed a Reply to the Memorandum of Defence on 27 February 2020, wherein it was asserted that the County Government had not provided a housing facility, and further that the High Court had in Petition No. 328 of 2016, *Council of Governors v Salaries and Remuneration Commission* decreed that Deputy Governors were entitled to *housing benefit*.
5. On 15 January 2021, the Claimant filed a Motion seeking orders:
 - (1) THAT the Memorandum of Defence filed herein on 12th February 2020 be struck out for
 - (a) Disclosing no reasonable defence.
 - (b) Being merely orchestrated and actuated by a malicious intent to delay the fair trial of the action.
 - (c) It otherwise constitutes an outright abuse of the court process.
 - (2) THAT judgment be entered for the Plaintiff against the Defendant in the sum of Kshs 5,400,000/- costs and interest as prayed in the Statement of Claim.
 - (3) THAT the Defendant to pay costs of this application.
6. When the Motion was placed before the Court on 10 June 2021, the Court directed the County Government to file and serve a response thereto on or before 18 June 2021.
7. The Court also directed the parties to file and exchange submissions on the Motion within set timelines.
8. During the same session, the Court indicated that it would deliver a Ruling on notice (notices were issued through the parties email addresses on 6 October 2021).
9. The County Government only filed Grounds of Opposition on 9 July 2021.
10. The main grounds advanced by the Claimant in support of the Motion were, that despite contending that it had facilitated his housing at Webuye Guest House, the County Government did not exhibit any evidence of such facilitation, and that the Salaries and Remuneration Commission had through Gazette Notice No. 6518 of 2017 prescribed that a Deputy Governor was entitled to be housed by the County Government.

11. The County Government mainly opposed the application on the grounds that the Rules of this Court did not provide for summary procedures and that the Gazette Notice and judgment relied on by the Claimant were not retrospective in application.

12. As already alluded to, the County Government had contended in its Defence that it facilitated the housing of the Claimant at Webuye Guest House.

13. The question whether the County Government facilitated the Claimant with such housing is one which requires the production and proof of facts such as leases and payment receipts with the Guest House.

14. Consequently, in the view of the Court, that would be a triable issue.

15. The Cause herein had not yet gone through pre-trial and the Court gives the following directions:

(i) The Respondent to file and serve witness statements and documents on or before 29 October 2021.

(ii) The parties to file Agreed Issues on or before 30 November 2021.

(iii) In default of agreement, Claimant's Proposed Issues will be adopted as the trial Issues.

16. The Cause herein is transferred to the Court in Bungoma (the Deputy Registrar to transmit the file forthwith).

17. Costs in the cause.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 7TH DAY OF OCTOBER 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant BMS Advocates LLP

For Respondent Makhoha Wattanga & Luyali Associates Advocates

Court Assistant Musanga