



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 23 OF 2019

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT NO. 17 OF 2011

AND

IN THE MATTER OF THE PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012

AND

IN THE MATTER OF THE EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT

BETWEEN

ANDREW OCHENGO OSUMO **1st PETITIONER**

BOAZ MOMANYI NAUMA **2nd PETITIONER**

HERBERT NYAMWANGE **3rd PETITIONER**

EVERLYNE MANGAA **4th PETITIONER**

v

COUNTY GOVERNMENT OF NYAMIRA **1st RESPONDENT**

GOVERNOR, NYAMIRA COUNTY **2nd RESPONDENT**

AMOS KIMWOMI NYARIBO,

DEPUTY COUNTY GOVERNOR,

COUNTY OF NYAMIRA **3rd RESPONDENT**

COUNTY EXECUTIVE COMMITTEE

MEMBER, PUBLIC SERVICE MANAGEMENT,

NYAMIRA COUNTY

4th RESPONDENT

COUNTY SECRETARY, COUNTY

GOVERNMENT OF NYAMIRA

5th RESPONDENT

CHAIRPERSON, NYAMIRA COUNTY

PUBLIC SERVICE BOARD

6th RESPONDENT

SECRETARY, NYAMIRA COUNTY

PUBLIC SERVICE BOARD

7th RESPONDENT

RULING

1. On 19 June 2020, the Petitioners and Respondents entered into a consent in the following terms:

(1) The Petition herein, together with all pending applications herein, be deemed compromised in the following terms-

(i) The Petitioners be admitted to the payroll with effect from June 2020.

(ii) The Respondents do pay the Claimants' the salary arrears as follows:

(a) April and May together with June salary for the Claimants not admitted in the payroll of March 2020.

(b) Arrears pending prior to April 2020 be paid vide supplementary budget to be presented to the County Assembly in the financial year of 2021 but in any event not later than October 2020.

(c) That Kennedy Atambo, Imbunge Makori, Geoffrey Mokuia Obondi and Andrew Omwenga do present their documents to the Respondents for verification, and thereafter they be admitted to the payroll.

(iii) There be no victimisation of the Claimants save for necessary disciplinary action after due process of the law by the relevant county organs.

(iv) The Petition be marked as settled with costs to the Petitioners.

2. On 25 May 2021, the Petitioners filed a Motion seeking leave to be allowed to prosecute the Respondents for contempt of court of the orders issued on 30 April 2020.

3. The Court allowed the Motion on 26 May 2020, and on 2 December 2020, the Petitioners filed another Motion seeking leave to commence contempt proceedings against the Respondents for failing to comply with the terms of the consent already adverted to hereinabove.

4. The Court directed the Petitioners to serve the Motion ahead of giving of directions on 15 December 2020.

5. When served with the Motion, the Respondents filed their own Motion on 8 December 2020, seeking enlargement of time to comply with the consent.

6. The Court directed the Respondents to serve the Motion and fixed the giving of directions on 15 December 2020.

7. When the parties appeared for directions on 15 December 2020, the Respondents requested to be given up to March 2021 to comply with the terms of the consent. The Court directed that the parties return on 18 February 2021 to give an update on compliance.

8. There was no compliance, and the Respondents sought more time (it was stated the County Assembly had been closed).

9. On 28 April 2021, the Respondent told the Court that a supplementary budget was before the County Assembly, and therefore they were seeking more time.

10. On 3 May 2021, the Petitioners filed yet another Motion seeking leave to commence contempt of court proceedings against the Respondent (subject of this Ruling).

11. The Court gave directions on this Motion on 17 May 2021. The Respondents' response to the Motion should have been filed on or before 17 June 2021.

12. The same was not on record by the agreed timeline.

13. The Petitioners filed their submissions on 19 July 2021 (Respondents submissions were not on record).
14. The Court has examined the record. The parties herein executed a consent dated 10 June 2020 on 19 June 2020. The consent was filed in Court on 23 June 2020.
15. There are no note(s) made by the Court on the file to suggest that the consent was adopted by the Court.
16. In the circumstances, the consent cannot validly be the anchor to a contempt proceeding or finding.
17. Further, there are procedures for execution against a governmental entity where there is failure to comply with a judgment or decree of the Court. The Petitioners did not invoke those procedures rendering the Motion irregular.
18. The Court will therefore find the Motion filed in Court on 3 May 2021 as fatally incompetent, and it is dismissed with no order on costs.
19. The Court regrets that due to other official engagements, it could not deliver the judgment on 3 November 2021.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND DELIVERED ON THIS 23RD DAY OF NOVEMBER 2021.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Petitioners Ochoki & Co. Advocates

For Respondents Nyachiro Nyagaka & Co. Advocates

Court Assistant Chrispo Aura