



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.E373 OF 2021

FADHOSA ABDIKADIR HUSSEIN.....1ST CLAIMANT

ABDIRIZAK SAID ADAN.....2ND CLAIMANT

ABDISALAM SHEIKH MOHAMED.....3RD CLAIMANT

MOHAMED IBRAHIM ABDI.....4TH CLAIMANT

VERSUS

GARISA COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT

HIS EXCELLENCY THE GOVERNOR, GARISSA COUNTY.....2ND RESPONDENT

RULING

The claimants filed application dated 17th September, 2021 under the provisions of Order 10 Rule 4(2), Order 10 rule 10, Order 13 Rule 2 of the Civil Procedure Rules and seeking for judgement to be entered against the respondents for the sum of Ksh.5,017,350 for each claimant and such be paid with interests for the reasons that there is a liquidated claim and despite the respondents being served with summons they have failed to acknowledge or enter appearance and no defence and therefore judgement ought to be entered in favour of the claimants as prayed.

The application is supported by the Supporting Affidavit of Fardosa Abdikadir Hussein the 1st claimant and who avers that the claimants were employed by the respondents from 23rd July, 2013 as members of the board of the 1st respondent for a term of 6 years and at the end of the contract were each entitled to the sum of Ksh.5, 017,350 I gratuity.

Due to the non-payment of gratuity, the claimants filed claim on 4th May, 2021 and served the respondents with summons but have failed to enter appearance or defence and judgement should be entered for the claimants as prayed.

Summon upon the respondents were effected through the email address musyokamogakaadv@gmail.com to the emails of akorane@gmail.com; abdisheikhm@gmail.com; mohammed.abdi73@gmail.com.

I have taken the liberty to navigate through the website of the respondents, the Garissa County Public Service Board and the Governor, Garissa County and the contact email addresses therefrom are under the portal @garissa.go.ke which is an address different and separate from the addresses noted in the Affidavit of Service being as akorane@gmail.com; abdisheikhm@gmail.com; and mohammed.abdi73@gmail.com.

Rule 11 of the Employment and Labour Relations Court (Procedure) Rules directs for service upon a respondent as follows;

11. (1) The Court shall issue summons in Form 2 set out in the First Schedule.

(2) A claimant shall serve the summons issued under paragraph (1) to the respondent together with the statement of claim.

(3) Summons shall be valid in the first instance for a period of six months beginning on the date of its issue and the Court may extend the validity from time to time if satisfied that it is just to do so.

(4) A respondent who files any pleading in response to any suit filed in Court shall have the pleadings served on the claimant or the appellant by a qualified process server within fourteen days of filing.

(5) A party shall, upon effecting service of pleadings on any other party, prepare and file in Court an affidavit of service in Form 3 set out in the First Schedule.

(6) An affidavit of service shall be accompanied by evidence of acknowledgement of receipt of the served document signed by the recipient, respondent, claimant or appellant as the case may be or the persons accepting service on their behalf.

(7) If for any reason the signature of the recipient cannot be secured, the process server shall state so in the affidavit of service.

(8) Where service of pleadings under these Rules is effected through registered carrier, the affidavit of service shall be accompanied by the certificate of mailing.

(9) The Court may effect service on behalf of any party upon request in writing made by the party in Form 4 as set out in the First Schedule and upon payment of the prescribed fee.

On the Memorandum of Claim giving rise to the instant application, the claimants have attached their Verifying Affidavits and Witness statements some with particulars of appointment and others without. The Witness Statements of some of the claimants are made against *The County Public Service Boards* and *The Governor*.

These parties, *The County Public Service Boards* and *The Governor* are not the respondents herein.

For completeness and before the court can proceed with the application dated 17th September, 2021 the claimants shall directly serve the respondents pursuant to the provisions of Rule 11 cited above. Where physical service under Rule 11(1) is not possible, the claimants shall apply under Rule 11(8) and (9) thereof.

With easement in communication with regard to the COVID-19 pandemic, the respondents shall be directly served pursuant to the Court Rules and within the next 14 days and mention for directions on 2nd December, 2021.

The claimants shall serve the respondent as directed above together with a Mention Notice for 2nd December, 2021.

DELIVERED IN COURT AT NAIROBI THIS 11TH DAY OF NOVEMBER, 2021.

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi

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