



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR COURT OF KENYA**

**AT NAKURU**

**ELRC CAUSE NUMBER E056 OF 2021**

JOSEPH WANUMA HETHINJA.....1<sup>ST</sup> CLAIMANT

JOSHUA OGAMBA BOSIRE.....2<sup>ND</sup> CLAIMANT

VERONICA WANGUI MWAURA.....3<sup>RD</sup> CLAIMANT

IRENE KIRIGO WAMBUGU.....4<sup>TH</sup> CLAIMANT

ANDREW KARUIRU NDATHO.....5<sup>TH</sup> CLAIMANT

**-VERSUS-**

**THE COUNTY SECRETARY,**

**COUNTY GOVERNMENT OF**

**NYANDARUA.....1<sup>ST</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE**

**MEMBER, AGRICULTURE, LIVESTOCK**

**AND FISHERIES, NYANDARUA**

**COUNTY.....2<sup>ND</sup> RESPONDENT**

**PUBLIC SERVICE BOARD,**

**COUNTY GOVERNMENT**

**OF NYANDARUA.....3<sup>RD</sup> RESPONDENT**

**(BEFORE HON. JUSTICE DAVID NDERITU)**

**RULING**

1. In a Notice of Motion dated 12<sup>th</sup> October, 2021 the Claimants/Applicants pray for the following:

**1. THAT this application be certified as urgent to be heard exparte in the first instance.**

**2. THAT the honourable Court be pleased to order the Respondents to pay the Claimants September 2021 salary arrears.**

**3. THAT this honourable Court be pleased to grant an injunction against the Respondents, its agents, servants and employees from harassing, intimidating and or negatively interfering with the activities and lawful duties of the Claimants pending hearing**

*and determination of the Application.*

4. ***THAT*** this honourable Court be pleased to grant an injunction against the Respondents, its agents, servants and employees from harassing, intimidating and or negatively interfering with the activities and lawful duties of the Claimants pending hearing and determination of this suit.

5. ***THAT*** this honourable Court be pleased to stay any disciplinary action against the Claimants pending hearing and determination of the Application.

6. ***THAT*** this honourable Court be pleased to stay disciplinary action against the Claimants pending hearing and determination of this suit.

7. ***THAT*** pending hearing and determination of this suit, this honourable Court do order the Respondents to reinstate the Claimants salaries.

8. ***THAT*** the Honourable Court be pleased to order the Respondents to pay the costs of this application.

2. The said application was filed under Certificate of Urgency and the same was certified as such on 14<sup>th</sup> October, 2021 and fixed for hearing on 2<sup>nd</sup> November 2021.

3. On 2<sup>nd</sup> November, 2021 Mr. Kirimi, learned Counsel for the Respondents, sought an adjournment to enable him file responses to the application. He stated that he had just been instructed Miss Wachira, learned Counsel for the Claimants/Applicants, opposed the application for adjournment and the court upheld the objection and ordered that the application proceeds to hearing, albeit for interim prayers pending inter-partes hearing.

4. In view of paragraph 3 above, while Counsel for the Claimants/Applicants was free to argue the entire application on matters of law and facts, Counsel for the Respondents was lawfully restricted to respond on matters of law only.

5. This court is apprehensive that this is an interim application wherein the Claimants are seeking certain orders pending the hearing of the main suit. Had the application been heard ex- parte exclusively the court would have been more careful in granting orders that might prejudice the Respondents who at this juncture are still seeking time to file substantive responses.

6. But even then, at this juncture, the court has to exercise its discretion in this matter with due care, caution, and diligence to avoid prejudicing the Respondents who are pleading for time to file substantive responses. It is clear that most of the prayers sought in this application demand that all parties be heard on merit such that any interim orders granted pending the hearing and determination of the suit are not prejudicial to either party.

7. Counsel for the Respondents has pleaded for seven (7) days to file detailed responses and the court has already granted that request.

8. In the circumstances this court has at this juncture to balance the interests of justice as between the parties based on the law applicable.

9. The said application is expressed as brought under the provisions of **Section 12 of the Employment and Labour Relations Court Act, 2011 and rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2016**. The same is supported by Affidavits sworn by the Claimants/Applicants.

10. The gist of the Claimants' application is that they have been denied their monthly salaries by the Respondents notwithstanding that they are working and reporting to work as required. They are also taking issue with some pending disciplinary action which they argue is based on actions by an officer holding an "illegal" office or position. It would appear that there is a protracted legal battle between one **JOSEPH MAINA MACHANGI** and the Respondents, concerning termination of the said Mr. Maina and issues therein are boiling over and confusing the Claimants/Applicants as to whose orders or directions they should obey between the said Mr. Maina and one Dr. Rose Oyolo.

11. In the circumstances, it would only be fair and just that both sides be given an opportunity to argue the application on merit with all materials placed before this court for a proper determination on what orders may be granted pending the hearing and determination of the main cause.

12. In the interim, pending the hearing of the application inter-partes it is important to ensure that neither party is prejudiced and that there is fairness both to the Claimants and the Respondents.

13. It has been held by this court in a plethora of decisions that a court of law should not interfere with the powers and rights of an employer to internally discipline any employee(s). Counsel for the Respondents cited **ROSEMARY WAITHERERO MBURU V KENYA AIRWAYS LTD [2020] e KLR**. Counsel for the Claimants/Applicants however added that where the disciplinary process is flawed in substance or procedure the court should intervene and right the wrong in accordance with the law. This and many of the other issues can only be determined once both sides are heard based on all materials filed by both sides.

14. In the circumstances, this court is of the view that there is need to have all materials placed before the court by all the parties before the court can properly pronounce itself on the issues raised. However, in the interim, pending the hearing and determination of this application inter-partes, the Claimants/Applicants are in distress and seeking some reliefs as argued by their counsel on 2<sup>nd</sup> November, 2021.

15. The court has gone through the Notice of Motion, the supporting affidavits, and the annexures thereto. This court takes the view that pending the hearing and determination this application inter-partes there is need to preserve the *status quo* ante, that is status before any action was taken by either party, more so the Respondents, that gave rise to the filing of this cause. That way the parties shall be restored to their original positions as the court considers the application upon canvassing of the same inter-partes with all materials placed before the Court.

16. **Article 159(2) of the Constitution** binds this court to ensure that justice is done to all and without delay. Further, under **Section 3(1) of the Employment and the Labour Relations Court Act No.20 of 2011**, this court is bound to facilitate first, expeditious, efficient, and proportionate resolution of disputes. Therefore, as this court issues the interim orders, pending the inter-partes hearing, the inter-partes hearing must be expedited.

17. At this juncture, this court shall not dwell on the merits and or demerits of the application or the main cause. However, to achieve the noble intentions stated in Paragraph 16 above, the court shall issue interim orders that shall preserve the *status quo* ante pending the hearing and determination of this application inter-partes.

18. In the circumstances, pending the inter-partes hearing of the Notice of Motion dated 12<sup>th</sup> October, 2021 this court issues the following orders:-

(1) That pending the inter-partes hearing and determination of the Notice of Motion dated 12<sup>th</sup> October, 2021 the Respondents be and are hereby ordered to pay the Claimants/Applicants salary arrears for the months of September and October, 2021 and to continue so paying such monthly salaries as they fall due pending the hearing and determination of the application inter-partes or until further orders of this court.

(2) That the Respondents by themselves, their agents, servants, or others howsoever be and are hereby enjoined from taking any disciplinary action against the Claimants/Applicants pending the hearing and determination of this application inter-partes.

(3) That the Respondents are directed to file and serve their responses to the Notice of Motion within seven (7) days from 2<sup>nd</sup> November, 2021 and the Claimants/Applicants shall file and serve their responses thereto within seven (7) days of service.

(4) That the application be disposed of on priority basis and that the same be canvassed by way of written submissions to be filed by the Claimants/applicants within seven (7) days of (3) above and the Respondents to respond thereto within seven (7) days of service.

(5) Costs so far be in the cause.

**DATED AND DELIVERED VIRTUALLY AT NAKURU THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2021.**

.....

**DAVID NDERITU**

**JUDGE**