



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 264 OF 2018

(Before Hon. Justice Mathews N. Nduma)

BENARD ONGIR AOKO.....CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF NYAMIRA.....RESPONDENT

JUDGMENT

1. The suit was filed on 17th July 2018. The claimant prays for payment of extraneous allowances in the sum of Kshs. 1,080,000 due and owing to him from the respondent.
2. The claimant testified that he was employed by the defunct local Authorities prior to 2013 General Elections. That he is now an employee of the County government of Nyamira in terms of *Section 138 of the County government's Act, 2012*.
3. That on 9th October 2013, the County Government of Nyamira, appointed him the Interim Head of Internal Audit on temporary terms until the position was substantively filled.
4. That the appointment entitled the claimant to payment of extraneous allowances of Kshs. 45,000 per month as per the letter of the Transition Authority dated 27th February 2013 and 20th January 2014 respectively. The two letters were produced as exhibits '4' and '5' respectively. The allowances payable with respect to deployment are set out in exhibit '5' produced by the claimant.
5. The claimant testified that he discharged his duties in that capacity effectively for a period of two (2) years and was relieved from those duties in October 2015, when the County Government made substantive appointment of the Interim Head of Internal Audit. The claimant testified that he was not paid extraneous allowances due and payable to him for the two years he served in that capacity.
6. The respondent County government engaged accountants in 2014 from the National Government to fill in staff gaps. These officers were paid their allowances until the County Government recruited its staff and released them back to the National Government.
7. The claimant has made numerous demands for payment in vain. The claimant prays to be awarded as prayed.
8. The respondent was served with statement of claim and summons to enter appearance. The respondent entered appearance by a notice dated 12th October 2018 filed on the even date through M/S E. Asati Advocate.
9. The respondent did not file a defence to the claim and the matter proceeded to formal proof on 17th September 2019.

Determination

10. The suit remains undefended and the claimant has proved on a balance of probabilities that he is owed by the respondent Kshs. 1,080,000 being unpaid extraneous allowance due and owing to him for services rendered to the respondent.
11. Judgment is entered in favour of the claimant against the respondent for the sum of Kshs. 1,080,000 plus interest at court rates from date of filing suit till payment in full.

12. The respondent to pay the costs of the suit.

Judgment Dated, Signed and delivered at Nairobi this 16th day of April, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances

Mr. Nakitare for Claimant

E. Asati, Advocate for the Respondent.

Chrispo – Court Clerk