



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT  
AT NAIROBI  
CAUSE NO. 464 'B' OF 2014

*(Before Hon. Lady Justice Maureen Onyango)*

**BERNARD NDUNGU MBUGUA.....CLAIMANT**

**VERSUS**

**NAIROBI WATER AND**

**SEWERAGE COMPANY LIMITED.....RESPONDENT**

**RULING**

Judgment in this matter was delivered on 12<sup>th</sup> July 2019 in favour of the claimant as follows –

***“I have however considered that the claimant was about 58 years old at the time of dismissal and had served the respondent and its predecessor, the Nairobi City Council, for a cumulative duration of about 24 years. For this reason, I reduce the summary dismissal to normal termination of employment and order that the respondent pays his terminal dues in accordance with his terms of service.”***

By his motion dated 9<sup>th</sup> March 2020 and amended on 6<sup>th</sup> April 2020, the Applicant seeks the following orders –

1. That the present application be certified urgent and the same be accorded a hearing date on priority basis.
2. That the Court be pleased to Grant Orders to confirm and/or endorse the computation of the Award due to the claimant.
3. That the Court be pleased to make an order on the final Award due to the Claimant in light of paragraph 2 above.
4. That costs of the application be provided for.

By a further application dated 4<sup>th</sup> May 2020 the Applicant seeks the following orders –

1. That the Claimant's/Applicant's applications dated 9<sup>th</sup> March, 6<sup>th</sup> April and 20<sup>th</sup> April 2020, respectively be certified as urgent and they be determined on priority basis.
2. That based on the Claimant's/Applicant's Supporting Affidavit, the Claimant's/Applicant's applications dated 9<sup>th</sup> March, 6<sup>th</sup> April, and 20<sup>th</sup> April 2020 respectively be granted a hearing date on priority basis before the Trial Judge.
3. Any other order(s) which the court may deem fit and just to grant in the circumstances.
4. That costs of the application be provided for.

The respondent filed a response to the applications vide the replying affidavit of PATRICK MAINA, an Advocate working with the Respondent as Legal Officer. According to Mr. Maina, the award was computed and the decretal sum paid to S. Ndungu and Company

Advocates, the then Counsel for the claimant, by cheque dated 9<sup>th</sup> October 2019. The computation was as follows: –

1. *Unutilized Leave/Off days*

= 254,135.25

2. *Three Months' Pay in Lieu of Notice*

*Basic Pay* (43,571 x 3) = 130,713.00

*House Allowance* (15,500 x 3) = 45,500.00

*Commuter Allowance* (4,000 x 3) = 6,000.00

*Gross Pay* 443,348.25

(*Less PAYE @ 30%*) (133,004.45)

***Balance payable*** 310,343.75

The Respondent has attached all communication in respect thereof between the Respondent and previous Counsel on record for the applicant.

This therefore means that by the time the present Counsel for the claimant came on record, the decretal sum had already been settled.

For the foregoing reasons the applications by the claimant is overtaken by events.

**The result is that the applications are dismissed with no orders for costs.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2020**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. 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 1B 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.

**MAUREEN ONYANGO**

**JUDGE**