



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CAUSE NO. 18 OF 2015**

**FRANCIS KARONGO WAGANA.....CLAIMANT**

**VERSUS**

**NATIONAL UNION OF WATER & SEWERAGE EMPPOYEES.....RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent asserting that he acted in various capacities for the Respondent such as director and also as the interim chairman between October 2002 up to September 2009. He avers that he was not paid for the period he served and therefore sought the salary for the period he served as director between 27<sup>th</sup> April 2006 and 27<sup>th</sup> September 2007 – @ 35,000/- a month for 17 months – Kshs. 595,000/-, allowances for recruitment @ 15,000/- a month between October 2002 and 3<sup>rd</sup> May 2005 – Kshs. 225,000/-, salary and remuneration for the period he served as national chairman between 27<sup>th</sup> September 2007 and 23<sup>rd</sup> April 2009 @ 35,000/- a month for 15 months – Kshs. 669,000/- making a grand total of Kshs. 1,589,000/-. He also sought costs of the suit and interest thereon.

2. The Respondent denied that the Claimant acted as director, interim chairman or as national chairman of the organization without pay or remuneration. The Respondent asserts that the organization did not exist in the year 2002 and that the calculations in the claim were baseless and without evidence. The Respondent averred that it not owe the Claimant any money and that his suit is just an attempt at unjust enrichment. The Respondent thus sought the dismissal of the suit with costs.

3. The Claimant testified in support of his claim and stated that he worked hard for the organization in the formative years seeking to have representation for workers in the water sector employees. He stated that during the transition from municipal councils to water companies the employees services were transferred to the water companies then in formation leading to disquiet hence the need to have a union representing them. The Claimant stated that he recruited members and despite the registration being resisted by the Kenya Local Government Workers Union and Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers ultimately succeeded in registering the Respondent. He stated that he was not remunerated for the period in question.

4. In submissions filed, the Claimant submitted that the amounts he claimed were due as evident from the annexures to his claim which included minutes indicating the remuneration he was entitled to. He submitted that the Respondent had not adduced any evidence to dislodge the claim as the documents attached confirmed the Claimant was the national chairman and that he was replaced as the organization underwent changes.

5. The Claimant was no doubt an official of the union in 2006 and therefore the allegations by the Respondent that he did not serve in certain capacities lacks merit. No evidence was adduced by the Respondent union as to the payments it allegedly made to the Claimant. The Claimant was entitled to payment from the year 2006 when he was a national chairman. He thus would only be entitled to pay amounting to Kshs. 1,264,000/- as this was the sum he was not paid. He will also have costs of the suit and interest on the sum till payment in full. In the final analysis I enter judgment for the Claimant against the Respondent for:-

- a. Kshs. 1,264,000/-
- b. Costs of the suit
- c. Interest at court rates on the sum in a) above until payment in full.

It is so ordered.

**Dated and delivered at Nyeri this 9<sup>th</sup> day of April 2019**

**Nzioki wa Makau**

**JUDGE**