



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

ELRC PETITION NO. 5 OF 2017.

(Before Hon. Justice Mathews N. Nduma)

NGARE WYCLIFFE OCHIENG.....1ST PETITIONER

OBONYO KENNETH OKUMU.....2ND PETITIONER

KENNEDY OCHIENG OBONYO.....3RD PETITIONER

VERSUS

CHAIRMAN MIGORI COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT

COUNTY SECRETARY MIGORI COUNTY.....2ND RESPONDENT

JUDGMENT

1. The petitioners seek the following reliefs:

- (a) An order declaring that the Respondents are in breach of *Articles 10, 27 and 47 of the Constitution* and for such violation the Petitioners have been discriminated against.
- (b) An order directing the respondents to effect revised scheme of service for public health assistants and public health officers dated March 2014 and accredit Petitioner's job group to designated job group K.
- (c) An order directing the respondents to pay the petitioners damages in terms of difference in remuneration due for job group H and job group K with effect from 14th March 2014 to date.
- (d) Costs.

2. The petition is supported by grounds set out under paragraphs 3 and 4 of the petition as follows:

- (a) The Petitioners contend and aver that *under Article 10 of the Constitution* the Respondents are bound to apply national values and principles of governance as follows:
 - (i) That Ministry of Health revised the Petitioner's' Scheme of Service and the Respondents had the duty to implement the revised scheme fairly to all Public health workers without discrimination either intended or as a result of oversight as envisaged under *Article 27 of the Constitution*.
 - (ii) That the Respondents being public servants have the duty to uphold the Constitution and execute their duties in harmony with the National Government.
- (b) That the respondents implemented the Ministry of health revised scheme discriminatorily, thereby promoting the petitioners' peers vis COLLINS OMOLLO of personal Number. 2011407726, NAOMI ROOSEVELT OCHANDA of personal number 2011355456 and CHACHA SHEILA MARGARET of personal number 2011361974 among others from job group H to the revised scheme's job group K and leaving out the Petitioners in job group H.
- (c) That the respondents never exercised fair administrative action under *Article 47* by failing to inform and give the Petitioners a hearing on why they were treated differently from the rest of their co-health workers in their cadre.

(d) That in failing to treat the Petitioners equally to their co-employees formerly in job group H the Petitioners have been denied their rightful remuneration.

(e) As a result of the actions by both Respondents in violating the Petitioners rights and violating the provisions which direct them, the Petitioners work in fear not knowing any further acts of discrimination that may be directed against them.

(f) That the Petitioners have been denied their rightful remuneration as a result of discriminatory application of Ministerial directive which ought to revise the Petitioners terms of service.

3. The petition is buttressed by Affidavit of the petitioner in which evidence under oath outlining the alleged discrimination is set out.
4. The petition was served on the respondents and an affidavit of service by a court process server Aggrey Ongini was filed on 9th November 2017. Further Affidavit in support of the particulars of claim in the petition were sworn by the petitioners and filed on 8th March 2018.
5. The petitioners annexed the ministry of Public Service, Youth and Gender Affairs circular from the office of the president which circular detailed review for Civil servants and the various remuneration attributed to various cadre of the civil service and conversion tables upon review of salaries.
6. It is the petitioners' case that the reliefs sought be granted.
7. The respondent did not enter appearance nor file any reply to the petition or any replying affidavit to respond to the evidence tabled before court by the petitioners.
8. Accordingly, the petition is unopposed and the court finds that the particulars of violations and claim have been proved on a balance of probabilities.
9. The court therefore grants the reliefs sought in the petition as against the 1st and 2nd respondents as follows on behalf of the County Government of Migori:
 - (a) The Respondents are in breach of *Articles 10, 27 and 47 of the Constitution* and have violated petitioners rights guaranteed under the said Articles.
 - (b) The respondents are directed to effect revised scheme of service for public health assistants and public officers dated March 2014 and accredit petitioners' job group to designated job group K.
 - (c) The respondents are directed to pay the petitioners remuneration in terms of revised scheme of service for job group H and job group K with effect from 14th March 2014 to the date of judgment.
 - (d) The computation of the revised dues be filed in court within 30 days of this judgment in respect of each petitioner.
 - (e) The respondents to pay costs of the suit.

Judgment Dated, Signed and delivered this 20th day of May, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Kisya for petitioners

Chrispo: Court clerk