



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 193 OF 2016

(Before Hon. Justice Mathews N. Nduma)

STELLA ONYINKWA.....CLAIMANT

VERSUS

THE KISII COUNTY ASSEMBLY SERVICE BOARD.....1ST RESPONDENT

THE KISII COUNTY GOVERNMENT.....2ND RESPONDENT

RULING

1. The Respondent/Applicant seeks orders of the court to strike out this suit on the basis that the same is *resjudicata* and therefore the court lacks jurisdiction to determine the same.

2. This suit was filed on 6th July 2016 seeking the following reliefs *inter alia*:

(a) A declaration that the acts and/or omission of the respondent amount to constructive dismissal and/or termination of the claimant's service.

(b) A declaration that the termination of the claimant's services and the process thereof was unprocedural, unlawful and unfair.

(c) A declaration that the claimant is entitled to damages; arrear salaries from date of appointment on 1st September 2014, and other terminal benefits.

3. The suit is premised on facts pleaded in the memorandum of claim that the claimant was recruited by the respondents following an advertisement in the Sunday Nation Newspaper of 30th March 2014 and was given letter of appointment pursuant to a successful recruitment on 1st September 2014. That the claimant relocated from Nairobi to take up the appointment at Kisii. That the claimant reported for induction between September to December 2014. That at the end of December 2014, the employment of the claimant was verbally terminated on basis of financial issues the respondent was sorting out. That the claimant was never recalled back to work and was not paid salary for the short period worked between September 2014 and December 2014.

4. The objection raised is that **ELRC Petition No. 271 of 2014, Hon. Samuel Ayese Onuko vs County Assembly Service Board and 4 others** was filed challenging the recruitment exercise in which the claimant and many other employees totaling 273 were appointed by the 1st respondent herein, the County Assembly of Kisii. That upon hearing the petition, this court as per Maureen J. delivered a judgment on 15th June 2017 in which the following orders *inter alia* were issued by the court.

(a) Declaration be and is hereby issued that the enlistment recruitment and/or employment of a total of 273 employees to the Kisii County Assembly by the respondents jointly and/or severally in excess of and/or that was duly advertised for and without regard to the due process of the law, was unlawful, illegal and illegitimate

(b) An order of Judicial Review in nature of certiorari be and is hereby issued to remove unto the Honourable court and quash the enlisting, recruitment and employment of the 273 Employees to the Kisii County Assembly arising from and/or attendant to the non-existing Board Meeting of the 3rd Respondent (sic) on the 29th day of August 2014 and who were employed without the relevant Advertisement and without due regard to the provisions of the *County Government Act No. 17 of 2012 and Article 107 of the constitution of Kenya 2010*.

(c) Permanent injunction be and is hereby issued restraining the respondents either by themselves, agents, servants and/or employees from admitting the subject employees to the payroll of the Kisii County Assembly and/or making any payments to and/or in favour

of the said employees whether on account of remuneration, Allowances and/or salaries without the necessary budgetary approval of the Kisii County Assembly whatsoever and/or howsoever.

5. It is beyond doubt that the claimant herein, though not mentioned by name was one of the 273 employees newly recruited by the Kisii County Assembly who were the subject matter of the ELRC Petition No. 271 of 2014 at Kisumu.

6. It is beyond peradventure that Hon. Maureen Onyango, declared the recruitment and appointment of the 273 employees who included the claimant herein unlawful and illegitimate and injected any payment to anyone of the 273 employees in respect of the impugned appointments.

7. It is my considered finding that the issues raised for determination in this suit are *resjudicata* having been heard and determined in ELRC Petition No. 271 of 2014 at Kisumu.

8. The court therefore lacks jurisdiction to revisit the issues raised in this suit. The court strikes the present suit in its entirety for want of jurisdiction to entertain the issues already determined by a co-ordinate judge.

9. Accordingly, this suit is struck off with costs as prayed.

Ruling Dated, Signed and delivered this 9th day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Onserio Ondimu, Advocate for the Respondent/Applicant.

Mr. Onyinkwa for the Claimant/Respondent

Chrispo – Court Clerk