

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

MISC. APPLICATION NO. 3 OF 2016

REPUBLIC.....APPLICANT

VERSUS

1. PUBLIC SERVICE COMMISSION

2. THE COUNTY COUNCIL OF MERU.....RESPONDENTS

EX PARTE JOEL KAITHIA MATHIU

RULING

1. The *Ex Parte* Applicant herein seeks through the Originating Notice of Motion Application dated 20th August 2019 for orders that

1. The Respondents be ordered to jointly and severally pay the *ex parte* Applicant Joel Kaithia Mathiu all the salaries and allowances from the date of the quashed termination to date of the order herein at the rate prevailing at the different periods amounting to Kshs. 23,570,687.70 as at 31/7/17 plus all future accruals at the rate of Kshs. 213,328 per month from 1/8/17 plus all his termination benefits till payment in full plus all the interests thereon at court rates.

2. The motion was supported by the affidavit of the *ex parte* Applicant and the grounds on the face of it, to wit, that the effect of the judgment quashing the *ex parte* Applicant's termination of employment was to give continuity to the then contract of employment as if it were never terminated and that the 2nd Respondent had changed its structures so much that the position of the County Council Treasurer or its equivalent no longer exists. It was asserted that in the interests of justice the *ex parte* Applicant should be paid all his salaries, allowances and terminal benefits and honourably quit the service of the 2nd Respondent and/or its successor.

3. The motion was not opposed by the Respondents and Mr. Mwendwa Mwarania argued the motion before me on 3rd October 2019 and I reserved the Ruling to today. The suit was against the Public Service Commission and the County Council of Meru. At the time in 2001, the 2nd Respondent existed as a legal entity and the 1st Respondent was the agent that hired the *ex parte* Applicant herein. His employer ceased to exist and his judgment was therefore frustrated as there is no one to execute against as the County Government structures established pursuant to the Constitution of Kenya 2010 are not the *ipso facto* successors in title to the former County Councils. County Councils at the time covered vast areas and in devolution some units covered by one County Council are covered by 2 or 3 counties. In my view this motion is a non-starter and not fit for grant. Same is dismissed with no order as to costs.

It is so ordered.

Dated and delivered at Meru this 4th day of October 2019

Nzioki wa Makau

JUDGE

I certify that this is a true

Copy of the original

Deputy Registrar