



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 49 OF 2013**

**(FORMERLY NAIROBI HCC. NO. 1007 OF 2012)**

*(Before Hon. Justice Mathews N. Nduma)*

**ISAAC ONCHERE ONGERI.....CLAIMANT**

**VERSUS**

**TOWN COUNCIL OF MASIMBA.....RESPONDENT**

**RULING**

1. By a Notice of Motion dated 28<sup>th</sup> July, 2017 Claimant/Applicant, a judgment creditor by dint of a judgment delivered by this court on 18/9/2013, in the sum of Kshs.700,756 against the Defendant Town Council of Masimba, prays that the Respondent be substituted by County Government of Kisii which is its successor in law.
2. By a letter dated 15<sup>th</sup> July, 2015, the Transition Authority approved payment of the judgment sum and granted Kisii County Government approval to pay the decretal amount to the Claimant/applicant.
3. The Respondent filed grounds of opposition to the substitution relying on the Kenya Gazette, Legal Notice No.2701, dated 24/3/2017, The County Government Act, 2012 and the Constitution of Kenya 2010 to submit that the County Government of Kisii had not yet assured liabilities of all town Councils in its jurisdiction including Town Council of Masimba.
4. The applicant submits that the opposition is misconceived in that as a matter of fact and law all former county councils are defunct, and the County governments have taken their place.

**Determination**

5. In terms of the 4<sup>th</sup> schedule to the constitution of Kenya 2010 –

*“18 All local authorities established under the Local Government Act (Cap 265) existing immediately before the effective date shall continue to exist subject to any law that might be enacted”*

6. The County Government Act, 2012 was enacted pursuant to this constitutional provision.

7. Transitional Authority was also set up in terms of The Inter Governmental Relations Act, No. 2 of 2012 and a Gazette Notice No.2701 dated 24<sup>th</sup> March, 2017 was issued by cabinet secretary in charge of Devolution on 24<sup>th</sup> March 2017. In terms thereof,

*“All the assets belonging to the defunct local authority as on the 27<sup>th</sup> March, 2013 are hereby transferred to, and shall vest in the respective county government on an “as is, where is” basis.*

*2(1) All the liabilities of the defunct local authority as on the 27<sup>th</sup> March 2013, shall be verified and validated by the inter-governmental Relation & Technical committee*

*2(2) The Inter governmental Relations Committee in consultation with relevant stake holders shall develop liquidation options for the settlement of the liabilities of the defunct local authorities.”*

8. From the foregoing, it is without a doubt that all local authorities are defunct as of 27<sup>th</sup> March, 2013. It is also without a doubt, that the

successor of the Local authorities are the respective County Governments.

9. The defendant, Town Council of Masimba is now defunct and in its place is the County Government of Kisii.

10. The Assets and liabilities of the defendant town council have by operation of the constitution and the law applicable passed on to the County Government of Kisii notwithstanding any procedural and or prudential matters that remain to be implemented for proper succession and governance of the counties.

11. The Judgment debt herein in terms of the judgment of the court of 18<sup>th</sup> September, 2013, was automatically assumed by the County Government. The defendant had become moribund by operation of the law on 27<sup>th</sup> March, 2013.

12. The application for substitution succeeds with costs.

**Dated and Signed in Kisumu this 22nd day of February, 2018**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

J. O. Soire & Co. Advocates for applicant

Kennedy C. Onsembe, Kisii County, Attorney

Chrispo – Court Clerk