



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 297 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

KISUMU COUNTY ASSEMBLY SERVICE BOARD.....1ST PETITIONER

ANNE ATIENO ADUL.....2ND PETITIONER

VERSUS

COUNTY ASSEMBLY OF KISUMU.....1ST RESPONDENT

COUNTY EXECUTIVE OF KISUMU.....2ND RESPONDENT

ELIUD OWEN OJUOK.....3RD RESPONDENT

NICHOLAS STEVEN OKOLA.....4TH RESPONDENT

HON. GABRIEL OCHIENG.....5TH RESPONDENT

THE HON. ATTORNEY GENERAL.....6TH RESPONDENT

RULING

This file first came before me on 12 April 2017 for mention at the instance of the 2nd Petitioner. Mr. Ongoya for the 2nd Petitioner informed the court that the case had been heard, judgment rendered and a decree extracted. He informed the court that Order No. 15 on the decree directed that the 2nd Petitioner be compensated. He informed the court that the purpose of the mention was for directions on assessment of compensation. He proposed that since the court would require some material to be put before it for purposes of assessing compensation, the 2nd Petitioner will file an affidavit in support of the assessment within 7 days and that the respondents may also file their affidavits within 7 days of service.

Mr. Kasamani who was holding brief for Mr. Rodi for the 1st and 5th respondents sought another date for mention while Ms Alinaitwe who was holding brief for Ms Arony for the 1st Petitioner indicated she would take directions. I directed that 2nd Petitioner files her affidavit within 7 days and the respondents file their replying affidavits within 21 days. I further directed that the petition be mentioned on 19th June 2017 for further directions.

On 19th June 2017, all parties were represented. Only the 2nd Petitioner had complied. The respondents were granted leave to respond within 7 days. However when the matter came up again on 25th July 2017, only the Petitioners were represented. There was no appearance for all the respondents who had also not filed any affidavits in reply to the 1st Petitioner's. I set the matter for ruling on 26th October 2017. The court was however not sitting on 26th October 2017 and the ruling was deferred to 2nd November 2017 when none of the parties were in court.

The only document before me for purposes of preparing the ruling is the affidavit of Ann Atieno Adul, the 2nd petitioner in the affidavit she deposes:-

That on 12/01/2015, the Hon. Lady Justice Hellen Wasilwa delivered a judgment and made a decree in this matter in which she among other things ordered that an order of compensation against the acts of violation of rights complained (of) in the proceedings in favour of the 2nd

petitioner.

She deposes that the violation by the respondents entitle her to general and exemplary/punitive damages. She urged that the court be guided by the following factors in assessing the damages:-

- a) The multiplicity of violations that were carried out against her;
- b) The element of impunity, abuse, insults, ridicule and embarrassment that characterised the violations;
- c) The publicity created by the violations, which were widely circulated in print and electronic media.

She prayed that general damages be assessed at Kshs.3,000,000/= damages and exemplary/punitive damages at Kshs.5,000,000/=. She further prayed for Kshs.2,420,000/= as compensation for sitting allowances broken down as follows: -

- a) Plenary sittings..... Kshs.1,267,400.00
- b) Service Board Committee sittings..... Kshs.550,000.00
- c) House Business Committee sittings..... Kshs.182,000.00
- d) House Privilege Committee sittings..... Kshs.247,000.00
- e) Appointments Committee sittings Kshs.52,000.00
- f) Procedure and Rules Committee sittings..... Kshs.149,500.00

TOTAL KSHS.2,420,000.00

She attached two letters with details of sittings of County Assembly, County Assembly Service Board Committees, House Business Committees, House Privilege Committee, Appointments Committee and Procedure and Rules Committee.

Determination

I have considered the affidavit of the 2nd Petitioner, which as I have alluded to above is the only document before me. It refers to a judgment of both this court and the Court of Appeal, copies of which are not either on the file or annexed to the affidavit of the 2nd Petitioner. There is further reference to a decree but no copy in the file or in the affidavit of the 2nd Petitioner. I do not have the benefit of a replying affidavit by any of the respondents to confirm or deny the averments in the affidavit of the 2nd Petitioner.

In the submissions of Mr. Ongoya in court, he made reference to the judgment having awarded compensation while in the affidavit he refers to general damages and exemplary/punitive damages. I do not even have the benefit of pleadings to confirm what was pleaded, as there are none on the file. Having not heard the case, I have no proof of what was awarded in the judgment to use as a basis of assessment of damages and/or compensation.

In the circumstances, there is no proof that the 2nd respondent is entitled to compensation and/or general and exemplary/punitive damages and I therefore make no orders for the same.

DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF MARCH 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 10TH DAY OF MAY 2018

MATHEWS NDERI NDUMA

JUDGE