



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 13 OF 2017

(Before Hon. Justice Mathews N. Nduma)

PETER ODONGO OBURA.....CLAIMANT

VERSUS

THE SECRETARY OF THE COUNTY

GOVERNMENT OF SIAYA.....RESPONDENT

J U D G M E N T

1. The Constitutional Petition under Article 22(1), 40 & 41 of the Constitution of Kenya 2010 was filed by the Petitioner on 13th March, 2017 seeking the following reliefs:-

- a) A declaration that the Respondent violated Article 41(1) of the Constitution which protects the Petitioner's right to fair labour relations by refusing to pay transfer allowance to the Petitioner.
- b) A declaration that the refusal to either transmit Kshs.279,338 to Family Bank Ltd, Kisii Branch or pay to the Petitioner is tantamount to expropriation of his property contrary to Article 40(3) of the Constitution of Kenya, 2010.
- c) A declaration that occasioning the Petitioner's name to be referred to be Credit Reference Bureau that he is not credit worthy is defamatory and warrants compensation.
- d) General compensation for damages.
- e) Payment of Kshs,534,338/- plus interest thereon at the rate of 36% per annum till date of Judgment.
- f) Costs of the petition.
- g) Interest on 4, 5 and 6.

2. The Petitioner is described as an employee of the predecessor of the Respondent. The capacity in which the Petitioner was employed is not disclosed.

3. The Petitioner states that he authorized the Respondent to deduct from his monthly salary Kshs.14,702 from October 2009 to June 2011 and remit the same to the family bank, Kisii branch. The total deducted and not transmitted was Kshs.279,338.

4. It is alleged that the Respondent also failed to pay the Petitioner transfer allowance in the sum of Kshs.225,000.

5. The Petitioner was listed by the Credit Reference Bureau as being not credit worthy as a result of the failure by the Respondent to remit loan payments to the Bank.

6. The Petitioner prays for a declaration that his constitutional rights have been violated under Article 40 of the Constitution of Kenya 2010. The Petitioner seeks compensation in respect thereof. The Petitioner seeks refund of the unremitted funds. Demand was made but was not made good.

Response

7. The Petition was served and no response was filed. The Petitioner moved court for a default judgment by an application dated 30th May, 2017 and filed on 8th June, 2017. Affidavit of Service sworn by one Elizabeth Mosa Agina an advocate of the High court was filed on 8th June, 2017 indicating service was made on one Lynette Oyugi, Legal officer of the Respondent.

Limitation Period

8. From the supporting Affidavit by the Petitioner, he worked for the County Council of Siaya and on 14th April, 2011 was transferred to Town Council of Awendo where he worked up to June, 2011. The transfer allowance became due and owing on 14th April, 2011.

9. The Petitioner also claims refund of money deducted from his salary and not remitted to the Bank between October 2009 to June, 2011.

10. These are Employment contractual claims disguised as constitutional violations.

11. In terms of section 90 of the Employment Act, these claims ought to have been filed within three (3) years from the date the cause of action arose and in case of continuous injury, one year from the date the injury ceased.

12. In this regard, the claim for refund of unremitted funds arose in the year 2009 and ceased in June 2011. The claim for refund ought to have been filed on or before June 2014. With respect to the claim for transfer allowance, the same became due and owing on 14th April, 2011. The same ought to have been filed on or before 14th April, 2014.

13. The two claims are statute barred by dint of section 90 of the Employment Act, 2007.

14. The claims have been disguised as Constitutional violations under Article 22(1), 40(1) and 41 of the Constitution of Kenya 2010 to circumvent the limitation period.

15. The Petition is an abuse of court process that cannot be condoned by the court.

16. Furthermore, no cause of action has been disclosed against the secretary of the County Government of Siaya. The predecessor of the County Council of Siaya, is the County Government of Siaya and not the Secretary.

17. In view of the above two reasons, the Petition lacks merit and is dismissed with no order as to costs.

Dated and Signed in Kisumu this 19th day of July, 2018

Mathews N. Nduma

Judge

Appearances

M/s. Elizabeth Mosa Agina for Petitioner

Chrispo – Court Clerk