

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

PETITION NO. 41 OF 2018

(Formerly Nyeri ELRC Petition No. 14 of 2017)

1. TIMOTHY KAARIA

2. NEWTON NJERU

3. PATRICK KARANI.....PETITIONERS

VERSUS

COUNTY GOVERNMENT OF MERU.....RESPONDENT

JUDGMENT

1. The Petitioners seek redress for the alleged violation of their rights to fair administrative action. The Petition was largely resolved and a consent of sorts entered into and the issue that remained was the costs and damages as the Petitioners had received their settlement. The parties were to file submissions and this was done. In the submissions of the Petitioners, they sought to obtain damages for the unfair labour practices they were subjected to. The Petitioners sought costs as well. The cases of **Dennis Moturi Anyoka v Kenya Revenue Authority & 2 Others [2015] eKLR** and **Cecilia Karuru Ngaru v Barclays Bank of Kenya & Another [2016] eKLR** were also cited in support of the petition. The Petitioners submitted that costs follow the event and that they should be awarded costs as well as the prayer on damages.

2. The Respondent in its submissions stated that the Petitioners were reinstated and the interdiction lifted in September 2017. The Respondent submitted that one of the remedies available to the Petitioners is payment and that the payments were made to them therefore there is no need for multiple remedies as are claimed by the Petitioners. The Respondent relied on the cases of **D. K. Njagi Marete v Teachers Service Commission [2013] eKLR** where the court emphasized proportionality and fairness in evaluating the suitability of employment remedies, and **Cecilia Karuyu Ngayu v Barclays Bank of Kenya & Another [2016] eKLR** for the consideration of costs. The Respondent submitted that the court has to consider the conduct of the parties, the subject of litigation, the circumstances which led to the institution of the proceedings and so on including the need to promote reconciliation amongst the disputing parties pursuant to Article 159(2)(c) of the Constitution.

3. The matter before me was resolved largely by consent of the parties and after the dust settled the parties seek to finalize the matter on account of the issue of costs and damages. In the Petition filed before the court, the reliefs the Petitioners sought were resolved in September 2017 shortly after the Petition was presented to court in August 2017. The issue of damages therefore is moot as the salaries and allowances withheld were settled. I will on the strength of the case of **D. K. Njagi Marete v TSC (supra)** consider the mitigating factors against an award of damages. The Petitioners were reinstated and therefore are not suffering any loss as we speak. They however had to seek redress from Court as the Respondent did not heed the letters written and even the demand letter issued did not prompt the resolution and it was only the petition before court that encouraged a resolution of the matter. The Petitioners will therefore be entitled to costs for the Petition which I hereby order. In the final analysis the Petitioners are to get costs for the Petition.

It is so ordered.

Dated and delivered at Meru this 8th day of November 2018

Nzioki wa Makau

JUDGE