

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

PETITION NO. 1 OF 2015

GRACE N. MAKORI.....1ST PETITIONER

ISAAC NGOTHO MAINA & 175 OTHERS.....2ND PETITIONER

VERSUS

MURANG'A COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT

PUBLIC SERVICE COMMISSION.....2ND RESPONDENT

MINISTRY OF HEALTH.....3RD RESPONDENT

RULING

1. The members of the County Public Service Board as well as the Secretary of the County Service Board have presented themselves in compliance with order of the Court issued on 12th October 2018. They have come and urge the Court not to issue any adverse orders as they have complied. Through Counsel they state that they have issued the requisite instruction for compliance with the monetary aspect which is outside their preview. They state the mandate of the Board is circumscribed by Section 59 of the County Government Act which provides the functions of the Board as:-

a) Establishment and abolishment of offices in the County Public Service;

(j) Make recommendations to the Salaries and Remuneration Commission on behalf of the County government, on the remuneration pensions and gratuities for County Public Service employees.

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These provisions *inter alia* circumscribe the powers of the Board. They do exercise disciplinary control over the employees and plan as well as budget for emoluments of personnel in Counties. In as far as the judgment before the court goes, the learned Judge in his determination at page 14 of the decision stated that the Secretary and each member of the 1st Respondent shall be responsible for the implementation of the orders issued in relation to retention of the Petitioners on the payroll of the 1st Respondent as well as the obligation to pay the decretal sum. It is not denied that this part of the judgment has not been complied with.

2. The members of the County Public Service Board were brought before Court to show cause why they have not complied with the order of the Court per the decree that ensued from the Judgment of 8th May 2015. It is untenable that the 1st Respondent to date has not complied with this decree and to this end the court finds the members of the County Public Service Board in contempt of the Court order. They are accordingly convicted of this offence. However, given the fact that the payment, is one that has been requested for in writing on 18th October 2018, the Court will not sentence them today but will defer sentence to 15th November 2018 when they will return to Court to confirm if the accounts department has made good the decretal sum. The chief Officer Finance IT & Economic Planning of the Murang'a County shall also attend Court on 15th November 2018.

3. Failure to pay the decretal sum as ordered by Ongaya J. on 8th May 2015 shall have dire consequences for the officers concerned. The contemptors released on their own personal recognizance to attend Court on 15th November 2018 at 9.00am.

It is so ordered.

Dated and delivered at Nyeri this 1st day of November 2018.

Nzioki wa Makau

JUDGE