



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 64 OF 2016

JACOB KAMENCHU MWORIA.....CLAIMANT

VERSUS

PUBLIC SERVICE BOARD OF MERU COUNTY.....1ST RESPONDENT

MERU COUNTY GOVERNMENT.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 28th July, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 01.04.2016 through Leonard K. Ondari & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Payment of salary arrears for 26 months at Kshs.28, 323.00.
- b. Interest on (a) above at 12% (court rates).
- c. Costs of the suit.

The claimant's case is that he was at all material times employed as a driver at the Ministry of Home Affairs prior to the Constitution of Kenya 2010 which introduced the devolved system of government. By the 2nd respondent's letter forwarded to the claimant on 23.05.2014, the claimant was deployed from the Ministry and posted to serve the 2nd respondent as a driver for motor vehicle KBY 793C being an ambulance at Kangeta Health Centre. The posting by the 2nd respondent was effective 23.05.2014. The Ministry by the letter dated 21.08.2014 confirmed that the claimant had been released on secondment to the 2nd respondent by the letter dated 02.10.2013 and by the further letter of 05.02.2014 the Ministry had required the 2nd respondent to confirm that the claimant had reported on duty as seconded. The letter requested the 2nd respondent to confirm that the claimant had reported on duty and whether he was on the 2nd respondent's payroll to enable the ministry adjust its records accordingly. By the memo dated 20.08.2014 the Ministry directed stoppage of the claimant's salary on its payroll in view of the release of the claimant on secondment to the 2nd respondent pending confirmation by the 2nd respondent on whether the claimant had reported as seconded and whether he was on the 2nd respondent's payroll.

In the meantime the claimant was interviewed and offered appointment by the 2nd respondent per letter dated 06.01.2015 accepted by the claimant on 09.01.2015 and to report on 25.05.2014 (being erased as a change from 01.07.2014 to 25.05.2014 – and this will have a bearing on the final award). The gross pay was for Kshs.28, 323.00 per month. The document on stoppage of salary filed in court shows that the

Ministry stopped the claimant's salary on 20.08.2014.

The respondents filed the memorandum of response on 01.07.2016 through Binyenya Thurania & Company Advocates. The respondents deny all allegations as per the claimant's case and state that they are strangers to the claimant's allegations of secondment without pay. The respondents' case is that the suit be dismissed with costs.

The claimant testified to support his case as follows:

- a. He worked at the Ministry of Home Affairs as a driver.
- b. By the letter of 01.07.2013 the 2nd respondent's co-ordinator requested the deployment of the claimant to the 2nd respondent as a driver.
- c. The claimant was appointed by the 2nd respondent per the letter dated 06.01.2015 as a driver at the department of health.
- d. The letter forwarded on 23.05.2014 deployed the claimant as a driver in the county government.
- e. He worked as deployed but he was not paid.
- f. His secondment was effective 11.02.2014 and paid by national government until end of June 2014. Thereafter from 01.07.2014 he was to be paid by the 2nd respondent but was not paid.
- g. Demand letter was issued on 14.03.2016.
- h. By the letter dated 25.02.2016 the 2nd respondent informed the claimant that it had been resolved by the 1st respondent that the claimant stops working for the 2nd respondent effective 22.02.2016 and he was being released back to the Ministry of Interior and Co-ordination.
- i. The claimant prayed for payment for period worked from 01.02.2014 (date of secondment) and revising it to 01.07.2014 (the date he said the 2nd respondent should have started to pay him), to 22.02.2016 (date he was released back to the Ministry). He testified that he worked for 2 weeks before he left on 20.
- j. The claimant confirmed during cross-examination that national government paid him until 21.08.2014 when it stopped his payment. Thus from 22.08.2014 to 06.01.2015 (date of formal appointment by 2nd respondent) the salary was not paid and his employer was the 2nd respondent. Further from 06.01.2015 to 22.02.2016 to date of release 22.02.2016 he was not paid by the 2nd respondent as per the letter of appointment.

At close of the claimant's case, the respondent's advocate stated that the respondents were willing to pay the claimant from the date the national government stopped paying to the date the claimant was released back to national government being 25.02.2016. The respondent did not file submissions or call a witness.

The court has considered the material on record and makes findings as follows:

1. The claimant's pay by national government was stopped on 21.08.2014 and the claimant got the 2nd respondent's formal appointment on 06.01.2015 making 5 months at the prevailing national government pay of taxable income of Kshs. 16, 560.00 per attachment on the claimant's submissions. For the five months he is awarded **Kshs.82, 800.00**. while making that finding and award the court considers that in the contract of 06.01.2015 the claimant stated he was to report on 01.07.2014 and then in ink changing it to 25.05.2014. It is clear that the contract of 06.01.2015 had anticipated a future reporting date and the claimant was clearly misguided that even after the

national government had paid him for July 2014, he would receive double pay for the period he had been deployed by the respondent through to the said July 2014. The court further considers that in any event the claimant did not urge the case that prior to signing of the contract of 06.01.2015 he would nevertheless enjoy the terms and conditions of service therein and retrospectively so. In the circumstances, the court returns that for the 5 months prior to signing the contract of 06.01.2015, the respondent would be obligated to pay the claimant only at the rate the national government would have paid the claimant.

2. From 06.01.2015 to date of release back to national government on 25.02.2016 it makes about 14 months at agreed Kshs.28, 323.00 making **Kshs.396.522.00**. The court awards the claimant accordingly.

In conclusion judgment is hereby entered for the claimant against the 2nd respondent for:

- a. The 2nd respondent to pay the claimant **Kshs. 479,322.00** by 01.09.2017 failing interest to be payable thereon at court rates from the date of the respondent's letter of release of the claimant back to national government being 25.02.2016 until the date of full payment.
- b. The 2nd respondent to pay costs of the claimant's costs of the suit.

Signed, dated and delivered in court at **Meru** this **Friday, 28th July, 2017**.

BYRAM ONGAYA

JUDGE