



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO. 280 OF 2016**

**KANAKE JOSHUA MUGO.....CLAIMANT**

**VERSUS**

**COUNTY GOVERNMENT OF EMBU.....1<sup>ST</sup> RESPONDENT**

**GOVERNOR, COUNTY OF EMBU.....2<sup>ND</sup> RESPONDENT**

**EMBU COUNTY PUBLIC SERVICE BOARD.....3<sup>RD</sup> RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday, 21<sup>st</sup> July, 2017)**

**JUDGMENT**

The claimant filed the statement of claim on 21.12.2016 as amended on 24.02.2017 through Wangoko & Gitonga Advocates. The claimant prayed for judgment against the respondent for:

- a. Immediate payment of the claimant's accrued salaries and allowances amounting to Kshs. 160, 270.00 per month from November 2016 to February 2017 as well as any other lawful dues, privileges, benefits and financial emoluments.
- b. Gratuity.
- c. Unpaid leave days for the entire period worked commencing 10.12.2013.
- d. Certificate of service and in default of issuance within 30 days the respondent either jointly or severally be compelled to pay the sum of Kshs.100, 000.00.
- e. Any other remedy that the honourable court may deem fit to grant.
- f. Costs of the suit.

The statement of response was filed on 02.02.2017 through Issa & Company Advocates. The respondent prayed that the memorandum of claim should be struck out and the claim be dismissed with costs.

The claimant was employed as a Political Advisor to the 2<sup>nd</sup> respondent effective 10.12.2013 at Job Group R. The respondents stopped the payment of the claimant's monthly remuneration effective November 2016. The claimant resigned from employment of the respondents effective 08.02.2017 to

contest in the General Elections scheduled for 08.08.2017. The resignation was in accordance with the provisions of the Elections Act, 2012 requiring public officers wishing to participate in a general election as candidates to resign from the public office held within certain stipulated timeframe.

The respondent's case is that the claimant was never terminated from employment and was not affected by the reshuffle of 20.09.2016. Further, a notice to show cause by the letter dated 06.01.2017 had been issued for the claimant to show-cause why disciplinary action should not be taken against him for absconding work. The evidence is that the disciplinary process did not conclude into imposition of any adverse sanction against the claimant.

The case was heard when the respondents did not avail a witness on the date scheduled for the hearing. The claimant testified to support his case. The evidence is that the claimant continued to work as an advisor to the Governor until the date of his resignation. The evidence was that the claimant's work was a personal service to the Governor and he was never dismissed at all material times. The court finds that the claimant remained at work until he resigned from the employment.

The only further issue for determination is whether the claimant is entitled to the remedies as prayed for. The court makes findings as follows:

- a. The claimant prayed for immediate payment of the claimant's accrued salaries and allowances amounting to Kshs. 160, 270.00 per month from November 2016 to February 2017. As the claimant worked up to the date of resignation, he is awarded **Kshs.520, 878.00** as submitted being the withheld and unpaid salary for the period as prayed for.
- b. The claimant prayed for unpaid leave days for the entire period worked commencing 10.12.2013 to the date of resignation on 08.02.2017 and is awarded **Kshs.30, 000.00** as submitted.
- c. The claimant prayed for gratuity and is awarded **Kshs.1, 379, 497.00** as submitted and as per the terms of service in the letter of appointment.
- d. The claimant is entitled to a certificate of service as per section 51 of the Employment Act, 2007.

In conclusion judgment is hereby entered for the claimant against the respondents for:

- a. Payment of **Kshs.1, 930,375.00** by 01.09.2017 failing interest at court rates to be payable thereon at court rates from the date of this judgment till full payment.
- b. The delivery of a certificate of service by 01.09.2017.
- c. The respondents to pay costs of the suit.

**Signed, dated and delivered** in court at Nyeri this **Friday, 21<sup>st</sup> July, 2017.**

**BYRAM ONGAYA**

**JUDGE**