



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 51 OF 2012

(Before Hon. Lady Justice Hellen S. Wasilwa on 1st September 2017)

EMMANUEL MOKORO.....CLAIMANT

VERSUS

PERMANENT SECRETARY OFFICE

OF THE PRIME MINISTER1ST RESPONDENT

PERMANENT SECRETARY,

PUBLIC SERVICE COMMISSION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

JUDGMENT

1. The Claimant herein filed an Amended Memorandum of Claim on 5/5/2014 through the firm of Nchogu, Omwanza & Nyasimi Advocates claiming wrongful and illegal withholding of his salary, increments and benefits. The Claimant's case is that he works for the Public Service Commission and had done so since 3.6.1997 when he was employed as an Agricultural Officer II Ministry of Agriculture.
2. He produced his letter of 1st appointment as exhibit 1. He avers that he worked well and later went for a post graduate course graduating in 2004. He was then promoted vide a letter dated 6.1.2006 to the grade of Senior Agricultural Officer Job Group M. He received further promotion and on 21.4.2008, he was appointed to Principal Agricultural Officer Job Group N with effect from 2.4.2008.
3. The Claimant avers that he was briefly attached to the Secretariat on the Task Force on Devolved Government with effect from 22.3.2011 till 22.8.2011. This was after the Ministry of Local Government asked development partners to expand its secretariat given the nature of its mandate.
4. That the Ministry could not afford to pay allowance to all the Task Force Members and staff of the secretariat and as a result UNDP gave the assistance by contracting Programme Officer and Research Assistants to have an effective task force.
5. The Claimant avers that being a Government officer he was requested to move and assist in the Task Force and upon such request, he consulted his Head of Department who advised that the Task Force was a Government initiative and had officials from other Ministries and therefore he could proceed to work with the Task Force while still attending to his official duties.

6. Upon completion of the task force on devolution work on 22.8.2011 Claimant proceeded to represent the Department in that years' Mombasa ASK show from the 31st day of August till the 4th day of September 2011.
7. On 7.9.2011, he avers that one of the officers, Joshua Mwiranga, in the Public Service Transformation Department in the office of the Prime Minister wrote to the Human Resource Office in the office of the Prime Minister asking that the Claimant's salary to be stopped with effect from 1.9.2011. The said letter was not copied to the Claimant and no notice had been issued to him to explain why that had to happen.
8. The stoppage was also made without due regard to his financial obligations including bank loans taken on the basis of the check off system, statutory obligations like pension, insurance and his personal status.
9. The Claimant avers that the 1st Respondent failed to uphold the principle of legitimate expectation of issuing notice and had not been accorded a hearing and natural justice.
10. The Claimant's claim against the Respondent was duly communicated to the 1st Respondent through the Claimant's Lawyer through a demand letter dated 9.12.2011 and despite all efforts made to have the 1st Respondent satisfy the claim, this has been futile.
11. The Claimant avers that the 1st Respondent has refused and/or neglected to pay his terminal dues. The Claimant avers that the Respondent illegally withheld his salary for January, February, March, April, May and June 2012 at 127,000/= per month all totaling to 762,000/=. They however paid him his salary for September, October, November and December 2011 vide a voucher and then reinstated him to the payroll in August 2012.
12. The Claimant avers that he has suffered humiliation as a result of the unlawful and illegal withholding of his salary.
13. His prayer is that the 2nd Respondent be ordered to release his salary for the months of January, February, March, April, May and June 2012 all totaling to 762,000/= plus general damages for malice and violation of rules of natural justice and legitimate expectation. He also seeks to be paid punitive damages and that the Respondents be condemned to pay costs of this suit.
14. The Respondents filed their Memorandum of Response to the claim through the office of the Attorney General on 21.3.2012. The Respondents aver that it is true that the Claimant was in their employment as stated but that his contention that he was appointed to service on the tasks force is false as no records of secondment were supplied.
15. They aver that the Claimant was not officially released for under Regulation E 32 of the Public Officers Code of Regulations of 2006 since he did not get clearance in writing from the Permanent Secretary of the 1st Respondent.
16. Further, the Respondent avers that the letter of 7.9.2011 was signed on behalf of the Head of Public Service Transformation Department after a consultative meeting. They also aver that the Claimant was asked to present the documents of his engagement severally which letters remained unanswered by the Claimant.
17. The Respondents want the Claimant's case dismissed with costs.
18. I have examined all evidence and submissions adduced before me. It is apparent that the Claimant was and still is an employee of the Respondent having been employed in the Public Service in 1997.
19. From the documents on the file, he worked for the Respondent and was continuously appraised as per his Appendix EM 7 signed by his supervisor on 20.7.2011. As per Appendix 8(a) he was one of the officers on the Task Force on Devolved Government whose mandate was to expire on 22.8.2011. A

request was made to extend the term of this task force but an email dated 25.8.2011 at 2.39 pm written by one Reuben K. Chirchir shows that the Claimant declined to extend his contract to the task force and had already reported back to his duties at the office of the DPM and taken over other assignments.

20. It is therefore apparent that he worked continuously for the Respondent except at the time he was attached to the Task Force which is evidenced by the Appendix 8 (a) and this shows his return back to work in August 2011. It is most unlikely that this happened without the knowledge and concurrence of the 2nd Respondent. Appendix EM 4 is proof of his involvement in the task force which is written by his Permanent Secretary – Prof. Karega Mutahi, CBS.

21. It is not clear then why the Respondent decided to stop his salary in 2012. No communication was given to him. No reason whatsoever for the decision was also given. His official appointment to the task force is exhibited in the Kenya Gazette Notice No. 17 of 18.2.2011 Appendix EM 2.

22. It is for this reason that I find that the stoppage of salary of the Claimant by the Respondent in 2012 was illegal and malicious. The contention that he was earning double salary is not supported by any evidence.

23. I therefore find that the Claimant's case is proved as per law and he is entitled to prayers sought.

24. I therefore award him Kshs.762,000/= withheld salaries plus Kshs.200,000/= as damages for unlawful action of withholding his salary.

25. The Respondent to pay costs of this suit.

26. The amount awarded will attract interest at Court rates with effect from the date of this judgement.

27. In view of the fact that the DPM's office no longer exists, this judgement will be executed against the Ministry that took over the functions of DPM's office in this case the Ministry of Devolution.

Read in open Court this **1st day of September, 2017.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Museve holding brief for Claimant – Present

No appearance for Respondent