



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

PETITION NO. 1 OF 2015

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

**ISAAC NGOTHO MAINA & 175
OTHERS.....PETITIONERS**

VERSUS

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

**PUBLIC SERVICE COMMISSION OF KENYA.....2ND
RESPONDENT**

**MINISTRY OF HEALTH.....3RD
RESPONDENT**

(Before Hon. Justice Byram Ongaya on Thursday, 19th October, 2017)

RULING

The court delivered the judgment in the petition on 08.05.2015 in favour of the petitioners against the respondents for:

1. The declaration that the petitioners are each entitled to be retained in the employment of the 1st respondent on regular permanent and pensionable basis with effect from the date of lapsing of their respective initial 3 years' contractual term of service.
2. The 1st respondent to provide for and to meet the resultant financial implications of order 1 by 1.08.2015 in view of the government budgetary cycle and in default interest at court rates to run from 1.08.2015 till full payment of the extra monthly payments that may be due to each of the petitioners till full payment.
3. The secretary and each member of the 1st respondent shall be responsible for implementation of orders 1 and 2 above.
4. The 1st respondent is stopped by itself or by its employees or agents from victimization of the petitioners or the petitioners' representatives with respect to the matters leading to or after the dispute in the present case.

5. The 1st respondent to pay the petitioners' costs of the suit.

6. The 2nd and 3rd respondents to bear own costs of the suit.

The petitioners filed a notice of motion dated 10.10.2016 through Waweru Macharia & Company Advocates. The application was under section 12 of the Employment and Labour Relations Court Act, and, Rules 16 & 31 of the Industrial Court Procedure Rules, 2010. The substantive prayers in the application were for orders:

1. That the county secretary Richard Kamami and all members of the Murang'a County Public Service Board appear before the court and show cause why each of them should not be committed to civil jail for a period of 6 months for failure to comply with the judgment and decree of the court dated 08.05.2015.

2. That the decretal sum plus interest due to the applicants or petitioners be paid through their Advocates' firm, Waweru Macharia and Company Advocates.

3. That costs of the application be provided for.

The application was based on the supporting affidavit of the 1st petitioner attached and upon the following grounds:

1. More than a year had lapsed since the judgment but the 1st respondent had failed to pay the petitioners' salaries, benefits and interest as ordered by the court.

2. The 1st respondent had failed to issue letters of appointment to some of the petitioner as per the decree.

3. Some petitioners had received letters of appointment with wrong job groups.

4. The petitioners' livelihood and employment was suffering.

5. The budgetary provision and funds for satisfying the decree could be diverted to other purposes.

The 1st respondent filed the replying affidavit of Richard Kamami on 25.10.2016 through Mbugua Ng'ang'a & Company Advocates to oppose the application. The grounds of opposition were as follows:

1. The Board had complied by issuing relevant letters of appointment to the petitioner as per order 1 in the decree. The job group assigned had been per the advertised posts and the petitioners should not be allowed to turn around and seek job groups which they had not applied for.

2. The arrears payable under the decree were being settled by instalments due to financial constraints at the county government.

3. That interest would payable per the terms of the decree.

The parties recorded a consent order in court agreeing on the arrears due to each petitioner, that 5 instalments had been paid to the petitioners, the remaining instalments be paid through the petitioners' advocates on record, and all outstanding instalments and accrued interest as at full payment be paid by 01.06.2017. The orders were recorded per the consent letter dated 16.03.2017 and filed in court on 17.03.2017.

On 07.06.2017 counsel for the 1st respondent informed the court that there had been no full compliance as all appointment letters had not been issued and arrears for April and May 2017 salaries had not been paid. The court ordered that the time for full compliance be extended to the hearing date of the contempt

application being 12.07.2017 at 9.00am. On 12.07.2017 counsel for the 1st respondent took the position that the proper letters of appointment had been issued so that the only outstanding issue was about some outstanding arrears, whereas, counsel for the petitioners took the position that improper letters had been issued and prayed for orders in terms of the application. The court directed parties to file submissions on the application and they complied accordingly.

The court has considered the matters in dispute and makes findings as follows:

1. The further supplementary affidavit by Richard Kamami filed on 18.08.2017 confirms that besides full absorption of all petitioners into permanent and pensionable service as per the judgment, the Board had gone ahead and appointed 12 petitioners to job groups that matched their academic qualifications. In absence of an affidavit on the part of the petitioners to dispute that latest evidence by the 1st respondent, the court returns that the 1st respondent has duly complied with the order in the judgment and the decree for absorption of the petitioners in the 1st respondent's permanent and pensionable service.

2. As for payment of outstanding arrears, the 1st respondent has submitted that 4 of the due instalments remained unpaid and the failure to fully comply had not been wilful but it was due to financial constraints. Thus, in the application dated 22.05.2017 pending determination before the court, the 1st respondent had applied that the time for payment of outstanding instalments in the consent order on record be extended by 120 days, essentially being 4 months from 01.06.2017. If the 120 days' extension of time is granted, the court reckons that the payment would be by 01.10.2017 which has since come and gone by. Thus the court returns that the 1st respondent has admitted disobedience with respect to payment of the outstanding instalments and as modified by the timelines in the consent orders. In that regard, the court has further considered that the alleged financial constraints have not been demonstrated by way of financial statements. Accordingly, the court returns that the applicants would be entitled to an order that the county public service board secretary Richard Kamami and all members of the Murang'a County Public Service Board appear before the court and show cause why each of them should not be committed to civil jail for a period of 6 months for failure to comply with the judgment and decree of the court dated 08.05.2015 in so far as the outstanding instalments have not been paid. The court has considered the cited respondents' willingness to pay and directs that the payment of all instalments inclusive all interest be effected by 01.12.2017 failing, the show cause notice will issue as found justified.

In conclusion, the application filed for the petitioners on 11.10.2016 and dated 10.10.2016 is hereby determined with orders as follows:

1. The County Public Service Board Secretary one Richard Kamami and all members of the Murang'a County Public Service Board shall cause payment to each of the petitioners of all outstanding instalments inclusive all interest as per the judgment and decree on record by 01.12.2017 failing each one of them shall be liable to appear before the court and show cause why each of them should not be committed to civil jail for a period of not more than 6 months for failure to comply with the judgment and decree of the court dated 08.05.2015 and in so far as the outstanding instalments are concerned.

2. In view of order 1 above, the matter be mentioned on 15.12.2017 at 9.00am to confirm compliance or for appropriate orders accordingly.

3. The application dated 22.05.2017 filed for the 1st respondent is hereby deemed determined with no orders as to costs as it has been overtaken by events.

4. The 1st respondent to pay costs of the petitioners' costs for the contempt application.

Signed, dated and delivered in court at Nyeri this Thursday, 19th October, 2017.

BYRAM ONGAYA

JUDGE