



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 78 OF 2016

(Before D. K. N. Marete)

DR. ARTHUR KIPRONO KORIR.....CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF KERICHO..... RESPONDENT

JUDGEMENT

This matter was originated by way of a Statement of Claim dated 29th March, 2016. It does not disclose the issue in dispute on its face.

The respondent in a Memorandum of Response dated 13th May, 2016 denies the claim and prays that it be struck out and dismissed with costs to herself.

The claimant's case is that at all material times relating to this cause, he has been a qualified medical doctor, duly registered and licensed to practice clinical medicine in Kenya.

It is the claimant's further case that on or about 14th February, 2008, he was employed by the Ministry of Health and this was subsequently ratified and confirmed vide a letter dated 14th June, 2010. He was posted to Chebiemit District Hospital and then transferred to Iten District Hospital on or about 9th September, 2010. In May, 2010 or thereabouts he was transferred to Iten District Hospital as District Medical Officer of Health up to and including 2nd October, 2013.

On 11th October, 2013, the claimant and another person were arrested and charged before the **Anti Corruption Court in Anti Corruption Cause No. 2 of 2013**, that is **Republic Vs Dr. Arthur Kipronoh Korir & Another**. He was placed on half salary. It is his further case that during the pendency of this prosecution, the services of the claimant were transferred/devolved to the respondent who in turn was responsible for his remuneration but failed to pay his half salary. This was only paid in November, December, 2013 and January, 2014. He is owed half salary for February to October, 2014.

The proceedings in the criminal prosecution were determined vide a judgement rendered on 30th October, 2015 but the claimant's salary has been withheld without lawful cause. He now claims full salary for the period running February 2014 to October, 2014 and half salary for November, 2014 inclusive of allowances and attendant privileges. His claim to outstanding salary/damages is as follows;

i. Full salary for the Months between February – October 2014 1,351,710/=.

ii. *Half salary November 2014 – March 2016 1,985,615/=*

3,337,325/=.

The claimant's further case is that he has been denied readmission to employment, all this amounting to unlawful punishment despite clearance of the criminal charges.

He prays as follows;

a) Payments of Kshs.3,337,325/= only, (details in terms of paragraph 17 hereof and the continued monthly salary, w.e.f April 2016, until full restoration and/or reinstatements.

b) An order compelling the respondent to forthwith restore, readmit and/or reinstate the claimant to his employment, as the District Medical Officer of Health – Bureti District/SubCounty or such other equal portfolio.

c) Interests at court rates (14%) per annum.

d) Costs of the suit/proceedings be borne by the respondent.

e) Any such further and/or other relief as the Honourable Court may deem fit and expedient so to grant.

The respondent denies responsibility for the claim and places this on the Ministry of Health. She also denies having subjected the claimant to unfair labour practice in contravention of Article 41 of the Constitution of Kenya, 2010.

The issues for determination are;

1. Whether the respondent is responsible for the claimant's woes arising out of non reinstatement to employment and payment of salaries?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this cause?

The 1st issue for determination is whether the respondent is responsible for the claimant's woes arising out of non reinstatement to employment and payment of salaries. The claimant enlists a case of unlawful lockout from employment and

Nonpayment of his dues by the respondent denies responsibility and heaps this on the Ministry of Health as the claimant's employer.

The claimant does not file written submissions in this cause. The respondent in her written submissions dated 31st May, 2016 reiterate her defence that the claimant was employed in the Ministry of Health. This is confirmed by the claimant's letter of employment and a letter presented to court and dated 19th April, 2016.

The respondent further submits as follows;

“ The claimant had been charged in Court by the Ethics and AntiCorruption Commission who thereafter vide a letter dated 14th October, 2013 (No. 20 in the claimants bundle of documents) wrote to the Principal Secretary, Ministry of Health to take administrative action against the claimant employee, which they did by suspending the claimant's salary.

Indeed there is no formal communication to the effect that the claimant was to be absorbed by the County

government as its employee. All the correspondence produced by the claimant indicated that he was always under direction and control of the Ministry of Health in the national government which Ministry will exist even under the new constitution.

The respondent therefore has no authority to pay, restore, readmit and/or reinstate the claimant to his employment. It is his employer who has that authority unless otherwise advised by the employer ministry

This court appreciates and takes judicial notice of the constitutional devolution of medical services from the national to the county governments. This should be the case in the circumstances. However, it is notable that the events leading to the issues in dispute took place at the onset of the transition to devolution of medical services to these counties. At this moment, all references to the issues in dispute were being handled by the Ministry of Health – the then employer of the claimant. This included communication with the KACC and placement of the claimant on half salary from November, 2013. This position was not changed or redefined even with the devolution of medical services from the date of national elections in 2013.

The case of the respondent is therefore convincing, compelling and agreeable.

Any other interpretation of the events leading to this case would be an insult to devolution and devolution of medical services. This is a case of transition coming out in an adverse manner and should be managed in its own uniqueness. The reverse would create absurdity and discredit the good intentions of the Constitution of Kenya, 2010. I therefore find that the respondent is not responsible for the issues arising out of non reinstatement and salaries of the claimant. No liability falls on her in the circumstances. So far for the 1st issue for determination.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is not. Having established a case of no liability by the respondent, the entitlement to relief falls by the wayside. And this answers the 2nd issue for determination.

I am therefore inclined to dismiss the claim with orders that each party bears their own costs of the claim. And this clears all the issues for determination.

Delivered, dated and signed this 19th day of July 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Ogutu instructed by Ogutu Mboya & Company Advocates for the claimant.
2. Mr. G. K. Mutai County Attorney for the respondent.