



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO.181 OF 2015**

**KENYA COUNTY GOVERNMENT WORKERS  
UNION .....CLAIMANT**

**VERSUS**

**COUNTY PUBLIC SERVICE BOARD OF  
MURANG'A.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 30<sup>th</sup> September, 2016)

**JUDGMENT**

The claimant filed the memorandum of claim on 08.10.2015 on behalf of its member Joseph Kairu, the grievant. The claimant prayed for judgment against the respondent for:

1. The court to find that the respondent is under obligation to pay the grievant his salary arrears.
2. A finding that the assertion by the Ministry of Devolution to treat the 11 years that the grievant was on suspension or dismissal as unpaid leave is misleading and illegal by itself because it has been contracted by the respondent procedurally.
3. The court to find the letters in issue as not consequential and declare them null and void.
4. The grievant to be paid salary arrears of 13 years as calculated for the claimant.
5. The court to order compensation of 12 months' salaries under current terms of service for loss of earnings during the period of unlawful suspension or dismissal as per section 12 of the Industrial Court Act and section 15(c) of the Labour Institutions Act, 2007.
6. The court to order timelines for implementation of the orders.

The respondent filed the response to the claim on 23.11.2014 through Kimwere Josphat & Company Advocates. The respondent prayed that the claimant's suit be dismissed as it was time barred and that the claimant having engaged in gainful activities during the period before reinstatement, the claimant could not be paid as claimed.

The respondent called no witnesses and did not attend at the hearing. The preliminary objection was dismissed with costs by the ruling delivered by the court on 14.04.2016. The claimant opted to rely on the pleadings and documents on record.

The grievant is a member of the claimant union. The grievant was appointed as a drive by the County Council of Murang'a effective 18.08.1989. On 10.09.1998 he was assaulted and he reported the case at the Murang'a Police Station. The police referred him to hospital and he was treated and was given 4 days sick off. The hospital report upon treating the grievant is on record. By the letter dated 14.04.1999 the claimant was dismissed from employment and subsequently was reinstated back in the service of the County Council of Murang'a by the letter dated 27.07.2011 and with effect from the date he was to report

back on duty. By the letter dated 14.09.2011 the grievant was deployed to the Engineering Department effective 14.04.2011. In absence of any other material on record, the court takes it that the effective date the grievant reported on duty and therefore the effective date of the reinstatement was 14.09.2011.

The claimant has made claims and prayers for pay on the basis of the reinstatement. The terms of the reinstatement are clear that the same was effective the date the claimant reported on duty. The claimant has not disputed the terms of the reinstatement decision and that it took effect the date he resumed duty. Thus the court finds that the reinstatement decision in its own terms that have never been set aside did not entitle the claimant to pay for the period between the dismissal and the reinstatement.

Accordingly, the claimant's suit will fail. The respondent failed to appear at the hearing and the court returns that each party shall bear own costs of the suit.

In conclusion the claimant's suit is hereby dismissed with orders that each party shall bear own costs of the suit.

**Signed, dated and delivered in court at Nyeri this Friday, 30<sup>th</sup> September, 2016.**

**BYRAM ONGAYA**

**JUDGE**