



**Wekulo v Teachers Service Commission (Cause 69 of 2015)
[2016] KEELRC 1873 (KLR) (17 November 2016) (Ruling)**

Wycliffe Mang'oli Wekulo v Teachers Service Commission [2016] eKLR

Neutral citation: [2016] KEELRC 1873 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 69 OF 2015
MA ONYANGO, J
NOVEMBER 17, 2016**

BETWEEN

WYCLIFFE MANG'OLI WEKULO CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. By notice of motion dated 21st April, 2016 the Applicant/Claimant seeks the following orders -
 1. That pending the hearing and determination of the claim herein, this Honourable court may be pleased to order the Respondent to pay to the Claimant/Applicant the sum of Kshs.1,159,821/10 after Tax, which the Respondent has duly acknowledged as the correct salary due to the Claimant/Applicant for the period between 1/11/10 and 6/4/2014.
 2. That costs of this application be provided for.
2. The Application is made under section 1A, 1B & 3A of the *Civil Procedure Act* and Order 51 Rules of the *Civil Procedure Rules* and is supported by the grounds on the face thereof and affidavit of the applicant sworn on 21st April, 2016.
3. It is the applicant's contention that the Respondent admitted owing the Claimant the sum of Shs.1,159,821.10 after tax for the period between 1st November, 2010 and 6th April, 2014 that the Respondent has no reason to continue withholding the said salary and should be compelled to release the same to the Applicant to alleviate the suffering that he is presently subjected to.
4. The Respondent opposed the application and filed the affidavit of Josephine Maundu, the Director in charge of Human Resource Management and Development at Teachers Service Commission. In the Affidavit Ms. Maundu depones that the pleadings in the Respondents Response filed in court do



not constituted admissions but are issues of fact made in response to the averments in the Claimants Memorandum of Claim, that the Claims of admissions made by the Claimant are misleading and that the Respondent has denied owing the claimant the said sum. The Respondent prays that the amount due be determined by the court after hearing.

5. The application was argued on 13th September, 2016 when Mr. Kirenga appeared for the applicant while Ms. Naeku appeared for the Respondent.
6. I have considered the application and the grounds in support thereof as well as the claimant's affidavit in support of the same. I have also considered the Replying affidavit and submissions by counsel for both the applicant and the Respondent.
7. According to the Employment and Labour Relations Court (Procedure) Rules, 2016 there is no provision for summary judgement or for judgement on admission. The Civil Procedure Rules at order 13 however provides for admissions as follows -
 1. Any party to a suit may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or part of the case of any other party.
 2. Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgement or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgement, as the court may think just.
8. Be that as it may, I have considered paragraph 27 of the Reply to the statement of claim which states as follows -

Without prejudice to paragraph 25 the Respondent reiterates that, the correct salary for the period between 1st November, 2010 when he was removed from payroll to 6th April, 2014 when he deserted duty would be Kshs1,159,821.10 after tax and not Kshs.1,159,821.10 as prayed for in the Claimant's Memorandum of Claim. Annexed hereto and marked as Appendix No.12 is the correct tabulation of the salaries and allowances for the said period.
9. The Respondent however at paragraph 9 of the Reply that an administrative decision was made to stop the Claimant's salary after he applied for promotion with certificates alleged to have been issued by Moi University which certificates were found to have been forged. The Respondent further alleges that the Claimant was interdicted on grounds of impropriety as set out in the letter of interdiction.
10. Based on the foregoing it would be unwise for the court to order release of funds referred to at paragraph 27 of the Respondents Reply to the Statement of Claim as it is not an unequivocal admission of the sum referred to therein and which would substantially compromise the suit.
11. It is therefore the courts opinion that the suit be set down for hearing before a determination is made on all the issues raised in the Statement of Claim and in the Reply. For these reasons the application by the Claimant is dismissed with no orders for costs.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF NOVEMBER, 2016.

MAUREEN ONYANGO

JUDGE

