



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 30 OF 2014**

**SILAS KIPRUTO**

**1<sup>ST</sup> CLAIMANT**

**JOSEPH KOECH**

**2<sup>ND</sup> CLAIMANT**

**v**

**THE COUNTY GOVERNMENT OF BARINGO**

**1<sup>ST</sup> RESPONDENT**

**THE CHAIRMAN BARINGO COUNTY ASSEMBLY SERVICE BOARD**

**2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 4 April 2014, Ongaya J delivered judgment in which he entered judgment for the Claimants against the Respondents in the following terms
  - a) A declaration that the claimants are legitimate employees of the County Government of Baringo
  - b) A declaration that the 2<sup>nd</sup> Respondent's instructions barring the claimants from accessing their respective offices or performing their duties were unlawful.
  - c) A declaration that the purported termination of the claimants' employment contracts and the purported disciplinary action by the 2<sup>nd</sup> respondent was in contravention of the law.
  - d) An order that the claimants to continue in employment in their respective capacities as the Chief Finance and Accounting Officer for 1<sup>st</sup> Claimant and the Clerk to the County Assembly for the 2<sup>nd</sup> claimant in that order.
  - e) An order of permanent injunction barring the respondents jointly and severally from arbitrarily terminating the employment of the claimants.
  - f) ***The 2<sup>nd</sup> respondent to pay costs of the suit.***
  - g) The Deputy Registrar to serve this judgment within 7 days upon the Attorney General, the Transitional Authority, the Commission for the Implementation of the Constitution, and the Public Service Commission towards taking priority steps for initiating the relevant legislation under Article 235 of the Constitution.

2. After the judgment, the costs were taxed and certified by Hon. F Kombo at Kshs 465,142/-.
3. The Claimants thereafter commenced execution proceedings, and warrants of attachment and warrants of sale were given on 30 March 2015.
4. On 9 April 2015, Saddabri Auctioneers moved and proclaimed properties of the 1<sup>st</sup> Respondent.
5. The proclamation prompted the 1<sup>st</sup> Respondent to file a motion under certificate of urgency on 15 March 2015

1..... spent

2. ....spent

3. ....spent

4. THAT this Honourable Court be pleased to Review and interpret the Judgment of this Court issued on 4 April 2014 by Hon Justice Byram Ongaya.

5. ....

6. On 16 April 2015, I granted an order of temporary stay on condition the costs of Kshs 462,242/- be deposited into Court before 17 April 2015, and further directed that the motion be served for *inter partes* hearing on 29 April 2015.
7. The motion was served and the Claimants filed Grounds of Opposition on 23 April 2015.

### **1<sup>st</sup> Respondents submissions**

8. According to the 1<sup>st</sup> Respondent, Saddabri Auctioneers proclaimed its properties on 9 April 2015, while it is the 2<sup>nd</sup> Respondent in his capacity as Chairman of the 2<sup>nd</sup> Respondent, Baringo County Assembly Service Board who was condemned to pay costs because the Court had found he had acted unilaterally without involving the 2<sup>nd</sup> Respondent.
9. The 1<sup>st</sup> Respondent in the same breathe urged that from the judgment it was not clear whether the Chairman of the 2<sup>nd</sup> Respondent, William Kamket was to bear the responsibility for the costs personally or as an office.
10. The 1<sup>st</sup> Respondent contended that because it was the unilateral action of the 2<sup>nd</sup> Respondent which gave rise to the legal action, the costs should be borne by the person who held the office of the Speaker (William Kamket), and who by virtue of that office was the Chairman of the 2<sup>nd</sup> Respondent.
11. And the 1<sup>st</sup> Respondent urged that the Court reviews the judgment and order William Kamket to personally bear the costs.

### **2<sup>nd</sup> Respondent's contentions**

12. Mr. Kipkoech who appeared for the 2<sup>nd</sup> Respondent stated that he would leave the issue to Court to determine.

### **Claimants' response**

13. The Claimants opposed the application. Mr. Kipnyekwei who urged their case submitted that the motion should have been brought as an objection proceeding to execution and not as a review.
14. Counsel further submitted that it was the 2<sup>nd</sup> Respondent who should have sought interpretation on the proper person or office to bear the costs, there being no costs order against the 1<sup>st</sup> Respondent.
15. He further submitted that the properties which were proclaimed belonged to the 2<sup>nd</sup> Respondent.

## **1<sup>st</sup> Respondent's rejoinder**

16. In a brief rejoinder, Mrs. Manyarkiy submitted that the Court should disregard technicalities in dealing with the motion.

### **Evaluation**

17. Judgment was delivered on 4 April 2014. The formal expression of the judgment should have been embodied in a decree. I have keenly perused the file and there is no indication that a decree was applied for and issued.

18. The judgment delivered by Ongaya J was categorical that the 2<sup>nd</sup> Respondent was to pay the costs of the suit. The 2<sup>nd</sup> Respondent was the *Chairman, Baringo County Assembly Service Board*.

19. The 2<sup>nd</sup> Respondent was not sued in his personal capacity. It is the office and not the office holder who was condemned to pay the costs.

20. In his reasoning, Ongaya J noted that appropriate legislation had not been enacted and the 2<sup>nd</sup> Respondents actions were made

without guidance from any specific applicable human resource standards... the disciplinary action as purportedly initiated by the 2<sup>nd</sup> Respondent was not based on any disciplinary regulations and rules.... This case has established that in the absence of such legal provisions, individual players may take initiative that may undermine the purpose for which service boards were established...

21. In my view, if the Court had desired that the office holder rather than the office was to bear the costs of the suit on the basis of any conduct not made in good faith or anchored on any known contractual or statutory authority, nothing would have been easier to say.

22. In this regard, I do find that William Kamket, office holder as chairman was not ordered to personally bear the costs and the prayer for review fails.

23. But that does not technically resolve the dispute. As between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent is a creature established by the Constitution while the County Assembly Service Board is a creation of section 12 of the County Government Act.

24. The County Assembly Service Board is established as a body corporate and in my view it should be responsible for meeting the costs which were ordered.

25. Therefore in so far as the Claimants proclaimed the properties of the 1<sup>st</sup> Respondent, the said execution was against the wrong person (there was no evidence to controvert the deposition by Jekemboi Chemase that the proclaimed properties belonged to the 1<sup>st</sup> Respondent).

26. In this regard, the Court would stay the execution against the 1<sup>st</sup> Respondent and direct that the proclaimed properties be released unconditionally.

27. Further, the monies deposited into Court should be released to the depositor.

**Delivered, dated and signed in Nakuru on this 19<sup>th</sup> day of June 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                      Mr. Nyekwei instructed by Nyekwei & Co. Advocates

For 1<sup>st</sup> Respondent                Mrs. Manyarkiy instructed by Manyarkiy & Co. Advocates

For 2<sup>nd</sup> Respondent                Mr. Kipkoech instructed by Gordon Ogola, Kipkoech & Co. Advocates

Court Assistant

Nixon