



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 184 OF 2013

MOSES NGARAMA NJUGUNA.....CLAIMANT

-VERSUS-

THE NANDI COUNTY GOVERNMENT..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 4th October, 2013)

JUDGMENT

The claimant **Moses Ngarama Njuguna** filed the memorandum of claim on 20.06.2013 through Mirugi Kariuki & Company Advocates. The claimant prayed for:

- a. **A declaration that the decision to refuse to give the claimant his February salary, transport and baggage allowances and transfer allowances and failure to issue last pay certificate is unlawful and invalid.**
- b. **A temporary injunction compelling the Respondent to issue the applicant with a last pay certificate pending hearing and determination of the cause.**
- c. **Orders the respondent be compelled to give the claimant:**
 - i. **The salary for February 2013 amounting to Kshs.72,245.00;**
 - ii. **Transport or baggage allowance amounting to Kshs.80,000.00;**
 - iii. **Transfer allowance of Kshs.71,230.00.**
- d. **Interest on (c) (i) (ii) and (iii) above from date of filing this suit until payment in full.**
- e. **Costs of this suit and interest thereon.**
- f. **Any other relief that this honourable court may deem fit and just to grant.**

The respondent filed the response to statement of claim on 4.07.2013 through Wafula Wawire & Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs.

The case was heard on 24.07.2013 when the claimant gave oral evidence to support his case and the respondent's witness was Ali Onamu Apindi, the respondent's Administration Officer (**RW**).

The claimant testified that he served at the County Council of Kilifi as Deputy Treasurer. By the letter dated 24.12.2012, he was transferred by the Ministerial Posting Committee of the Ministry of Local Government to the Town Council of Nandi as Administrative Officer with immediate effect and to report within 14 days from the date of the letter. The Town Clerk was to confirm that the claimant had reported as transferred.

The claimant's evidence was that the designation in the letter of transfer was wrong. Thus, the letter by

the Ministry dated 14.01.2013 corrected the error by advising him that he had been transferred as an accountant and not as Administrative Officer. The claimant testified that he reported as transferred on 21.01.2013 to one Linnet Abdalla, the Town Clerk for County Council of Nandi and went back to Kilifi to handover at his previous station. On 4.02.2013, he reported on duty and Linnet assigned him duties. The claimant stated that he had worked with local authorities for 30 years and he knew that the Town Council of Nandi that he was transferred to did not exist. He further explained that no personnel file was opened in his name at Nandi and Linnet advised him to seek clarification from the Ministry headquarters. He did not understand why the respondent had not processed his last pay certificate. He stated that he worked for Nandi Hills from 4.2.2013 to 18.02.2013 when he was once again transferred to the Town Council of Rumuruti to perform the duties of Treasurer and subject to handing over at the Town Council of Nandi Hills. It was his testimony that he would be entitled to 14 days he worked in Nandi. He stated that Linnet was still in service at Vihiga County Government but he was not going to call her as his witness.

RW testified that at all material time, the Town Council of Nandi did not exist. The local authorities that existed at the material time within the current Nandi County Government included the County Council of Nandi; the Municipal Council of Kapsabet; and Town Council of Nandi Hills. Since the claimant was transferred to the Town Council of Nandi that has never existed, the respondent was therefore not liable as the claimant never served in its employment under the transitional or any other arrangements.

RW testified that the claimant was advised to seek advice from the Ministry. In any event, RW testified that Regulation 16 of the applicable Public Service Commission (Local Authority Officers) Regulations, 2007 prescribed that the receiving local authority had to be consulted and which was never done in the instant claimant's case, the claimant holding the rank of SS.8 for which consultations were necessary. The consultation was vital to confirm a vacancy and the budgetary provision to meet the cost of the remuneration. RW's evidence was that the respondent did not maintain any records on the claimant's service. Upon asking for the last pay certificate, RW testified that the claimant was advised to seek clarification from the parent Ministry.

RW stated that the transfer from Kilifi by letter of 24.12.2013 directed the claimant to report within 14 days yet the last pay certificate for Kilifi was dated **11.12.2013** long after 14 days, the last possible reporting date so that the claimant would be liable for disciplinary action for late reporting. RW testified that it would be abuse of public office and authority to pay the claimant who never served the respondent and without any record on the service. RW testified that the respondent doubted the claimant's transfer letters.

The court has carefully considered the pleadings, the evidence and submissions. The court makes the following conclusions:

- a. The transfer letters from Kilifi and then from the Town Council of Nandi were addressed to the claimant through the respective clerk as his supervisor. There is no evidence that the respective clerks forwarded the transfer letters to the claimant and the claimant has not explained how he received the news of the transfer without such forwarding of the letter by his supervisor, the clerk. The court finds that the communication on the transfers in view of the evidence is suspect and therefore doubtful.
- b. The transfer letters required the claimant to proceed on transfer with immediate effect, to report within 14 days and subject to handing over. The claimant has failed to demonstrate that he made a hand over report in Nandi. In absence of such crucial evidence, the court finds that on a balance of probability, the claimant has failed to establish that he ever worked as alleged and as transferred. The court has scrutinized the transfer letters. They were supposedly authored between 24.12.2012 and 7.03.2013. The letterhead reads **"Ministry of Local Government"** except the letter of 7.03.2013 by the Regional Local Government Officer, Rift Valley whose letterhead reads **"Office of the Deputy Prime Minister & Ministry of Local Government"**. The court has noted the discrepancies and finds that they provide an impetus that the transfers may have been suspect because at all material time the local authorities were under the Office of the

Deputy Prime Minister & Ministry of Local Government.

- c. The claimant failed to call the Ministry officials and Linnet to support his case and has failed to establish that the respondent is liable as claimed. Such evidence was crucial in establishing the validity of his transfer and subsequent alleged service in Nandi.
- d. The claimant appears to have been transferred and to have been expected to hold three different designations of deputy treasurer in Kilifi, accountant in Nandi and treasurer in Rumuruti. The court finds that such moving designation opens the claimant's case to unanswered question, namely, what office did he hold and what job was he expected and required to perform by the transferring authority.
- e. There being undisputed evidence that the alleged Town Council of Nandi never existed, the court finds that the claimant was supposedly transferred to a fictitious entity for which the respondent cannot be ordered to take up the liabilities as alleged by the claimant.

In conclusion, the court enters judgment and makes orders as follows:

1. **The claimant's case is dismissed with orders that each party shall bear own costs of the case.**
2. **The deputy registrar of the court to serve this judgment upon the Public Service Commission within seven days from the date of this judgment for further action by the Commission in exercise of its Constitutional powers and functions.**
3. **The deputy registrar of the court to serve this judgment upon the Transitional Authority for further action in view of its statutory powers and functions.**

Signed, dated and delivered in court at **Nakuru** this **Friday, 4th October, 2013.**

BYRAM ONGAYA

JUDGE