



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 980 of 2012

PETER MWAURA KAMAU
.....APPLICANT

VS

KENYA UNION OF POST PRIMARY EDUCATION TEACHERS (KUPPET).....1ST
RESPONDENT

SECRETARY GENERAL OF KUPPET 2ND
RESPONDENT

NATIONAL CHAIRMAN OF KUPPET 3RD
RESPONDENT

NATIONAL TREASURER OF KUPPET 4TH
RESPONDENT

RULING

The application before court is the one dated 7th June 2012 brought by the applicant herein Peter Mwaura Kamau under Certificate of urgency. The application seeks court's immediate intervention on the grounds that:

1. The Respondents herein had withheld salaries and allowances due to him without any lawful reason.
2. The continued refusal by the Respondents to release his withheld salaries and allowances from July 2011 to May, 2012 amounting to Ksh.1,656,400/=, had subjected him to considerable amount of distress, agony, mental anguish torture, humiliation, scandal, opprobrium and contempt in the eyes of his family, friends, members of the branch and those of the public, causing him unable to render services to the members who elected him thereby causing him irreparable loss and damage.

The application is brought through a Notice of Motion filed by Peter Mwaura Kamau and is brought under Section 11 and 12 of the Industrial Court Act, 2011, Section 7, 8, 9,10 and 18 of the Employment Act, 2007, Section 39 of the Labour Relations Act, 2007 and all other enabling provisions of laws. The applicant seeks the following orders:

1. THAT this application be certified urgent, service be dispensed with and the same be heard *exparte* in the first instance.

2. THAT this Honourable court be pleased to issue orders compelling the respondents to be remitting salaries and allowances due to the claimant to the Equity Bank, Kiambu Branch A/C No. 0640192873117

3. THAT this Honourable Court be pleased to issue order compelling the respondents to remit the arrears for salaries and allowances due to the claimant herein for the months of July to December, 2011 and January, February, March, April and May, 2010 at the rate of Ksh.181,532 amounting to Kshs.1,656,400/=.

4. THAT the cost be on cause.

The claim is premised on the following grounds:

1. THAT the respondents have stopped remittances of salaries and allowances without any reasonable cause to the claimant contrary to Section 18 of the Employment Act, 2007.

2. THAT the National Governing Council through its resolutions dated 8th September, 2011 passed *inter alia* that all branch Executive Secretaries shall be paid from National Office on a prorata basis of Kshs.84,500 + 52 (number of members – 700) of the remittances due to the branch.

3. THAT the National Treasurer only remitted Ksh.70,000 to claimant's account in February 2012 and failed to remit the difference together with other preceding months and the past months.

4. THAT the action of the respondents is rendering the claimant and the branch to suffer irreparable loss and damage, unless this Honourable Court intervenes.

The application is also supported by the supporting affidavit of Peter Mwaura Kamau in which several averments are made. The applicant contends that he is the registered Executive Secretary of KUPPET, Kiambu Branch having been appointed as such on 5th February, 2011. He is further engaged there as full time employee pursuant to KUPPET's registered Constitution. He relied on his exhibits such as copies of the extract from the Register of Trade Unions, an employment letter from the Secretary General and Constitution as an attestant to his contentions.

The claimant's contention is that he has not been paid his salary as branch secretary of KUPPET Kiambu branch as previously resolved by National Governing Council of KUPPET. The applicant contends that according to the meeting of the National Governing Council of KUPPET held on 26th August, 2011, the Executive Secretaries shall be paid on prorata basis on the strength of the subscribing members from their representative branches. A copy of the said resolution was attached as exh PMK4. He averred that the current membership of Kiambu County branch stands at 2566 and each contributes 400/=. Exh PMK5 exhibited points to this. The applicant contends that he has demanded payments of the salaries and allowances due to him but the National Treasurer has declined to do so. The Applicant further avers that the Respondents remitted a portion of his salary and allowances to his bank account at Equity Bank, Kiambu Branch and Account No. 0640192873117, for the month of February, 2012 and since then, he has never received any salaries and allowances. He says this contravenes his rights as an employee. He avers that he was elected as Executive Secretary of Kiambu County Branch of KUPPET and the Teachers Service Commission released him on the advice of the Secretary General to take up a full time employment with the Union at the branch level. He annexed his letter of release from the Teachers Service Commission marked PMK9 as proof of this.

However, he avers that because of the non remittance of salaries and allowances, he is unable to serve members of his branch as the 1st respondent had also suspended the remittances of the funds to the branch which is meant to operationalize the branch. He further contends that failure by the respondents to remit his salaries and allowances as provided under the resolution of the Governing Council contravenes Article 6 (4) (a) of the Constitution that requires each official and members to abide with the decision of the National Governing Council as per exh PMK3. That this has placed him in an embarrassing situation as

he cannot meet the needs of his family nor service a loan he had taken with Equity Bank as indicated in exh MKK10.

In reply to this Application the Respondent filed the replying affidavit dated 26th June, 2012, on 27th June 2012. The affidavit was sworn by one Wicks Mwehi Njenga who stated that he is the 4th Respondent and had instructions to swear the said affidavit in his own capacity as an official and on behalf of the other Respondents. He attached the said letter of authorization from other Respondents as an exh. marked KUP1

The affidavit was drawn and filed by the firm of Ashitiva and Company Advocates. The Respondents in this affidavit stated that the matter was *sub judice* as the applicant had filed a similar application in Cause No.1325/2011 against the 1st Respondent seeking similar orders. They also said that the Applicant among other people was irregularly and illegally elected on 5th February, 2011 but the said elections were nullified and various parties proceeded to court for redress and filed Industrial Court cause No.1325/2011. The parties subsequently, reached a consensus and consent was filed in Cause No. 1325/2011 and on 26th January, 2011 an award was issued reflecting who the legitimate officials of KUPPET Kiambu County branch are – as per KPU3.

The names were forwarded to the Registrar Trade Union and an extract from the said Registrar Trade Union shows their names as the recognized and legitimate officials of KUPPET Kiambu County branch. The Respondent further avers that consequent to the election dispute, the KUPPET National Executive Council was the one running the affairs of KUPPET Kiambu County branch. The Executive Council had an agreement with KUPPET National office on the modalities of remitting money to the branch. That the National office remitted money to the Kiambu branch as agreed. That dues for January, February and April were remitted to the bank while dues for the month of March were remitted in cash to branch officials as per exh. KUP5.

The Respondents further avers that Claimant Applicant was suspended from the office for gross misconduct and abuse of office from 27th March, 2012 and this was ratified by the national office. They further averred that it is not the duty of the National office to pay officials of the branch.

The Respondents contend that this application is ill motivated and abuse of the court process and is meant to embarrass the Respondents and should therefore be dismissed accordingly.

Having considered the averments of the parties herein and their respective submissions, the issues for determination by this court are as follows:

1. Whether the Applicant is an official of KUPPET Kiambu branch.
2. Whether the KUPPET National Office owes Kiambu KUPPET County branch office and Applicant herein any moneys.
3. If the answer to 1 and 2 above is Yes, what remedies the Applicant is entitled to.

In answer to question 1 above the issue of the officials of Kiambu branch of KUPPET was addressed at length in this court's ruling in Cause No.1325/2011. The Court made a finding that the Applicant became an official of this branch through a consent order filed in court and entered as award by consent on 26th January, 2011. That consent has neither been vacated varied or reviewed. The contention that the Applicant was suspended as an official of the branch did not hold much water as I made a finding that, this should have been referred to the court that entered the consent to vary the said order and find otherwise. Given that that consent order is unaffected, then the Applicant remains an official of KUPPET.

In relation to remittances to the Kiambu branch of KUPPET by the National office, this matter was also delved into at length in my ruling in Cause No.1325/2011 and I will not repeat it in this ruling.

However, considering question two in relation to payments of salaries and allowances to the applicant herein. I will consider the circumstances which led him to be an official of Kiambu county of KUPPET. Exhibit PMK9 attached to Applicants Application is a release letter from the Teachers Service Commission (TSC) releasing the Applicant to service as Branch Executive Secretary with effect from 1st June, 2011. The letter is categorical of his new employer (KUPPET) to pay him his salary. He was advised to contribute 31% plus WCPS of 2% his monthly salary to maintain his pension. The remittances were expected to be made in banker's cheque drawn in favour of the Director of Pensions. The letter further states as follows:

“in event of you or your employer intending to terminate your employment you should notify this office at least one month in advance to enable us post you to a public school before a break in your service occurs”.

The notification of such a termination has not been communicated to the Applicant nor to the Teachers Service Commission and in effect the Applicant remains an employee of KUPPET as Branch Executive Secretary. It is the duty of KUPPET to pay his salaries and allowances. Exh PMK2 exhibited herein is from the Secretary General of KUPPET – the 2nd Respondent herein and the letter reads as follows:

“Peter Mwaura Kamau

Executive Secretary

Kenya Union of Post Primary

Education Teachers

Kiambu County Branch

Dear Sir,

RE: EMPLOYMENT AS EXECUTIVE SECRETARY

KIAMBU COUNTY BRANCH

Following your election as the Executive Secretary of Kiambu Country Branch of the Union on 5th February 2011, I am pleased to inform you that the Union has employed you fulltime w.e.f. 1st June 2011.

The Union undertakes to release you back to the Teachers Service Commission after five years for redeployment should you cease being an official/fail to be re-elected (refer to Memorandum of Agreement between Teachers Service Commission and the Union part 4.8).

While performing your duties, you will be entitled to remunerations commensurate with this post, which will be reviewed from time to time based on your performance, the capacity to pay and the Union commitments.

I wish to congratulate you as you begin your new task.

Sincerely

SIGNED

Akelo M.T. Misori

SECRETARY GENRAL

c.c.

The Secretary,

Teachers' Service Commission,

NAIROBI

With a letter like this in claimant's hand, he becomes an employee of KUPPET National office. His employer has a duty to pay him his dues.

Article 41 of the Constitution envisages that "**every worker has the right to a fair remuneration**"

Given that the Respondents who are KUPPET and its officials have not paid the claimant his salary and allowances as expected, I find for the claimant and order that he be paid as follows:

1. Arrears of salary for claimants for the month of July to December 2011, and January, February, March, April and May 2012 per exh. PMK 4 which translates to Ksh.181,532. All totaling to 1,656,400/=.
2. The amount outstanding to be paid in the claimant's bank account No. 0640192873117 within 15 days.
3. The Respondent to continue remitting the claimants salary and allowances as and when they fell due.
4. The Respondent to pay costs of this Application.

Dated, signed and delivered this 21st day of November, 2012.

HELLEN WASILWA

JUDGE

Appearances:

Mr. Oduor of Gakoi Maina
& Company Advocates

for Claimant/Applicant

No appearance

for the Respondent

Rachel Gichuki

Court Clerk