

KENYA / JUDGMENT

Muiru v Kenya National Library Services; County Government of Nyeri (Third party) [2025] KEELRC 2126 (KLR)

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COURT

Employment and Labour Relations Court

BEFORE

ON Makau

CASE / FILE NUMBER

Cause E018 of 2024

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Muiru v Kenya National Library Services; County Government of Nyeri (Third party) (Cause E018 of 2024) [2025] KEELRC 2126 (KLR) (18 July 2025) (Judgment)

Neutral citation:

[2025] KEELRC 2126 (KLR)

Republic of Kenya

In the Employment and Labour Relations Court at Nyeri

Cause E018 of 2024

ON Makau, J

July 18, 2025

Between

James Kamau Muiru

Claimant

and

Kenya National Library Services

Respondent

and

County Government of Nyeri

Third party

Judgment

Introduction

1. This case arose from transfer of Library Services from the National Government to the County Governments. The claimant was formerly employed by the respondent until his services were transferred to the third party with effect from 1st July 2023. Subsequently, he sued the respondent seeking salary arrears that accrued between 2013 and 2023 when the transfer to the third party occurred. The claimant claimed Kshs.465, 683 plus costs and interest.
2. The respondent denied liability to pay the claimant the sums claimed and averred that they were not approved by the Salaries and Remuneration Commission. It further averred that the claimant has since been transferred to the third party and the suit is time barred by dint of section 90 of the Employment Act. Besides, the suits ought to have been filed in the Magistrates court by dint of Kenya Gazette No.6024 of 2018 since the claimant's salary was below Kshs.80,000.
3. The respondent further obtained leave of the court to join the Nyeri County Government where he was transferred to, as a Third Party. The third party filed Response to the claimant's case admitting that the claimant was transferred from the respondent effective 1st July 2023 but denied privity to the nature and terms of claimant's employment by the respondent. It further denied liability to pay the claimant's salary arrears since they arose before Legal Notice No.142 of 2019 by which Library functions were transferred from the National Government to the County Governments. It urged the court to dismiss the claims against it.
4. During the hearing, it was agreed that this suit will be a test suit and the outcome will apply to Cause E019 of 2024. The claimant herein testified as CW1 while the respondent called its Principal HR Officer as CW1. However, the third party never called any witness. After the hearing, the parties filed written submissions.

Evidence

5. James Kamau Muiru, claimant testified that he was employed by the respondent on 20th July 1998 as a Library Clerk based at the Provincial Library in Nyeri. He was a member of KUCFAW union which concluded CBAs with the respondent that entitled him to salary increments from 1st July 2013 until 1st March 2019 when he ceased being union member following his promotion to the Managerial position of Senior Library Assistant (S9).

6. He testified that under the CBA of 2013-2017, his salary was supposed to be as follows: -1. 7.2013 – 30. 6.2014 Kshs.24,6621. 7.2014 – 30. 6.2015 Kshs.26,4141. 7.2015 – 30. 6.2016 Kshs.28,1661. 7.2016 – 30. 6.2017 Kshs.29,9181. 7.2017 – 1. 3.2019 Kshs.29,918
7. He further stated that the respondent continued to pay him the Kshs.17,746 which amounted to underpayment as follows: -1. 7.2013 – 30. 6.2014 (Kshs24,662 – 17,746) x 12= Kshs.82,9921. 7.2014 – 30. 6.2015 (Kshs26,414 – 17,746) x 12= Kshs.104,0161. 7.2015 – 30. 6.2016 (Kshs28,166 – 17,746) x 12= Kshs.125,0401. 7.2016 – 30. 6.2017 (Kshs29,918 – 17,746) x 12= Kshs.146,0641. 7.2017– 1. 3.2019 (Kshs29,918 – 17,746) x 20= Kshs.243,440Total Kshs.701,552
8. He stated that he was paid Kshs.85,708 in October 2019 and Kshs.164,721 (inclusive of Medical allowance Kshs.14,560) in July 2020. The total arrears paid was Kshs.235,869 leaving a balance of Kshs.465,683 still outstanding. He claimed the same from the respondent contending that the IPA dated 15th November 2023 never transferred liabilities to the Third Party.
9. He testified that although the Legal Notice No.142 transferred Library functions from 1st July 2020, his transfer of services and payment of salary to Nyeri County Government took effect on 1st July 2023. He confirmed that the dispute went for conciliation at the Labour office and the conciliator recommended that the respondent pays him Kshs.465,683 which accrued before 1st July 2020 when the Library functions was transferred to the Counties.
10. Elias Ireri Kamwere, respondent's Principal HR Officer testified as RW1. In brief, he confirmed that the respondent employed the claimant from 20th July 1998 as Library Clerk and on 15th March 2012 he was promoted to Library Assistant 1 Job scale 10. He explained that the Salaries and Remuneration for unionisable staff Job Grade 10-16 was negotiated between the respondent and trade union but no CBA was concluded for the period between July 2012 to 30th June 2017. The union sued the respondent alleging refusal to negotiate a CBA for 2012-2016.
11. In the meanwhile, the Government reviewed statutory minimum wages three times in May 2015, 2017 and 2018 and the respondent fully implemented them by paying any resultant arrears to the claimant. He contended that the sums claimed by the claimant were never approved by the SRC. Besides, the respondent requested for funds from the Treasury but the only funds allocated were for the minimum wage increment which were then duly settled to the claimant.
12. He stated that the Library functions were transferred to Nyeri County Government pursuant to Legal Notice No.142 of 19th August 2019 and thereafter the respondent and County Government of Nyeri executed an IPA dated 15th November 2023 which transferred all Assets and Liabilities of the respondent to the County Government. He therefore contended that the third party is in a position to get allocation of funds to settle the claims since the claimant is now its employee. He prayed for the suit to be dismissed with costs.

13. On cross examination, he admitted that the respondent signed a CBA with the claimant's union in 2019 which indicated the effective date as 1st July 2013 and the last date and 30th June 2017. He admitted that the claimant was working for the respondent during the period of the CBA and the respondent was liable to his arrears from 1st July 2013.
14. He further admitted that the circular dated 19th May 2020 by the respondent, acknowledged receipt of Kshs.73,150,000 for settlement of arrears for the CBA 2012/2013 and 2013-2017. He admitted further that by another circular dated 2nd July 2020, the respondent informed the staff that the said money was received on 29th June 2020. He added that by another circular dated 3rd August 2020, the respondent stated that all the arrears for 2012-2013 and 2013-2017 were settled.
15. However, he admitted that he did not know the correct amount which the respondent owed the claimant. He further admitted that Legal Notice No.142 did not state that arrears owed to the staff would be transferred to the County Governments. He also admitted that the IPA with the Third Party did not state that liabilities were transferred to the County Government.
16. He confirmed that the claimant was transferred to the County Government with effect from 1st July 2023 and that before then he was getting salary from the respondent. He admitted that in 2019 and 2020, the claimant was paid Kshs.235,869 as salary arrears from the CBA. He admitted that circular dated 2nd July 2020 confirmed that funds from the Treasury were received to settle salary arrears in respect of the CBA. He further admitted that the claimant was covered by the CBA.

Issues for determination and analysis

17. Having considered the pleadings, evidence and submissions, it is clear that the claimant's services were transferred from the respondent to the third party with effect from 1st July 2023. The issues for determination are: -a.Whether the claimant had outstanding salary arrears before his transfer to the third party, and if so, how much.b.Who is liable to pay the claimant the arrears sought?

Salary arrears

18. The claimant has pleaded and tabled evidence to prove that a CBA dated 10th July 2019 was concluded between his trade Union (KUCFAW) and the respondent before Legal Notice No.142 of 19th August 2019 was published to transfer Library functions to the County Governments. The CBA covered the period between July 2013 and June 2017. The CBA was also to remain in force until the parties amended it.

19. The claimant was covered by the CBA from the effective date, 1st July 2013 till 1st March 2019 when he was promoted to a Managerial position. It follows that he was entitled to the salary arrears that accrued as a result of the concluded CBA on 10th July 2019. He calculated, and the court agrees with him that his salary arrears for July 2013 -1st March 2019 was Kshs.701,552 out of which Kshs.235,869 was paid in 2019 and 2020 leaving a balance of Kshs.465,863, which is the subject of this suit.
20. The matter went for conciliation and the conciliator recommended that the respondent should pay the claimant the Kshs.465,863. The respondent alleged that it paid all the salary arrears and nothing is owing to the claimant. Having considered the evidence before me, I find and hold that the respondent never paid the claimant his CBA salary arrears of Kshs.465,863 which is still owing.

Who should pay the salary arrears of Kshs.465,863

21. Article 187 of the Constitution provided for transfer of powers and functions from one level of Government to the other. Sub Article (2) provides that: -“If a function or power is transferred from a government at one level to a government at the other level-
a.Arrangement shall be put in place to ensure that resources necessary for the performance of the function or exercise of the power are transferred.”
22. The best way to effect transfer liabilities was by executing an IPAs but the parties herein eschewed the issue of existing liabilities in the IPA dated 15th November 2023. The IPA provided for alternative forum for settling any dispute arising from the matter of transfer of the Library function to the third party. I will therefore not make a determination of who between the respondent and the third party should pay the salary arrears to the claimant. I will hold the two liable jointly and severally. In case of any controversy about who should solely be liable, they know where to take that dispute guided by the IPA and the Law.

Conclusion

23. I have further found that the claimant is entitled to his salary arrears of Kshs.465,863 which accrued before his services were transferred to the third party. I have also found the respondent and the third party liable jointly and severally to pay the claimant the said arrears. The claimant is also awarded costs and interest at court rate from the date of filing the suit till payment in full.

DATED, SIGNED AND DELIVERED AT NYERI THIS 18TH DAY OF JULY, 2025. ONESMUS N MAKAUJUDGE
OrderThis judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

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