

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**OF KENYA AT MOMBASA**

**CAUSE NO. 504 OF 2018**

**MICHAEL OUMA ODERO ON HIS OWN BEHALF AND ON BEHALF OF 506 OTHERS..... CLAIMANT**

**- VERSUS -**

**THE PUBLIC SERVICE COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE MINISTRY OF HEALTH.....2<sup>ND</sup> RESPONDENT**

**KENYA NUTRITIONISTS AND DIETICIANS INSTITUTE.....3<sup>RD</sup> RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 29<sup>th</sup> July, 2022)

**JUDGMENT**

The claimant filed the statement of claim on 06.12.2018 through Jackson Muchiri & Company Advocates. The claimant’s case is pleaded as follows:

- a) The 1<sup>st</sup> respondent is a constitutional commission established under Article 233 of the Constitution and brought into operation by the Public Service Commission Act, 2017.
- b) The 2<sup>nd</sup> respondent is a Government Ministry whose mandate is among others to train health personnel and particularly policy on nutrition and preventive health programmes. The 3<sup>rd</sup> respondent

falls under the direct supervision of the 2<sup>nd</sup> respondent. The 3<sup>rd</sup> respondent is established under section 4 of the Nutritionists and Dieticians Act, 2007. Its functions include involvement in the practical training of nutritionists and dieticians and in that regard placing interns in various health facilities within the country to acquire practical training.

- c) The claimant has filed the suit on his behalf and other 506 others for payment of arrears of internship stipend for the claimants who have successfully gone through the government sponsored internship programme but have not received their stipend which they are entitled to under the Government Internship Policy for the year 2017. The list of the 506 persons on whose behalf the suit is filed and who undertook the internship in issue is exhibited and duly signed authorising the claimant to appear, act, and plead on their behalf.
- d) In 2016 the 1<sup>st</sup> respondent established a policy framework for engagement and management of interns (Internship Policy and Guidelines for the Public Service, 2016). The policy established a proper mechanism for managing an effective and efficient program that aims to bridge the gap between academic knowledge and the field of work. The aim was to help the youth gain relevant skills and practical experience and in the process contribute towards alleviating youth unemployment. Through that elaborate policy the



3<sup>rd</sup> respondent engaged the claimants as interns under the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The internship was undertaken and completed but there was a violation of the claimants' legitimate expectation as spelled out under the policy for payment of a stipend of Kshs.25, 000.00 a subsistence allowance of Kshs.4, 000.00 and per month.

- e) Despite numerous demands and reminders by the 3<sup>rd</sup> respondent to the 1<sup>st</sup> and 2<sup>nd</sup> respondents for payment of the claim to the claimants the respondents responsible have remained unresponsive necessitating the filing of the suit.

The amended statement of claim was filed on 16.12.2019. The claimants pray for judgment against the respondents, jointly and severally, for:

- a) Payment of their internship allowances for the year 2017 when they did their internship and have never been paid to date amounting to a graduate intern monthly stipend of Kshs. 25, 000.00 plus subsistence allowance of Kshs. 4,000.00 making Kshs. 29,000.00 per month per claimant for a period of 1-year making Kshs. 348, 000.00 per intern times the 506 interns total claimed Kshs. 176, 088, 000.00.
- b) Costs of the suit plus interest on the judgment.

The 3<sup>rd</sup> respondent filed a response to the amended claim on 05.10.2020 through Prof. Kiama Wangai & Company Advocates. It was pleaded as follows:

- a) The claimant had annexed no documents to show that he had

authority to represent the 506 claimants.

- b) The 3<sup>rd</sup> respondent had no employer – employee relationship with the claimants (but an issue the Court observes was resolved in the ruling delivered by the Court on 06.12.2018).
- c) The 3<sup>rd</sup> respondent stated it was a stranger to the demands made by the claimants.

The 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed a response to claim on 20.06.2022 through the learned Senior State Counsel Mr. Mwanjeje M. Mng'ong'o, for the Attorney General. It was pleaded as follows:

- a) The description of the parties to the suit was admitted as pleaded for the claimant.
- b) The claimed arrears were denied as owing to the claimants who had already successfully gone through the Government sponsored internship programs.
- c) If the claimants were engaged through the Government sponsored internship they were paid their rightful dues and the claimants are invited to strict proof.
- d) The notice of intention to sue was not issued hence the suit was fatally defective and in breach of Government Proceedings Act.

The 2<sup>nd</sup> and 3<sup>rd</sup> respondents prayed that the suit be declared bad in law, incompetent, an abuse of court process and it be struck out and dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.



The 3<sup>rd</sup> respondent did not participate in the hearing as was absent despite the service of the hearing notice. The claimant's witness No. 1 (CW1) was the claimant and No. 2(CW2) was Daniel Meshack Owino Wamunga. The 1<sup>st</sup> and 2<sup>nd</sup> respondents did not call a witness but Mr. Mwandenje attended and cross-examined CW1 and CW2. Final submissions were filed for the claimant and the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The Court has considered the material on record and returns as follows.

To answer the 1<sup>st</sup> issue for determination the Court returns that indeed the Public Service Commission Internship Policy and Guidelines for the Public Service was issued in March, 2016 by the 1<sup>st</sup> respondent and which applied in circumstances of the internship program as pleaded for the claimant. Under clause 1.4 the policy applies to public service except the public service institutions listed in Article 234 (3) of the Constitution but which are free to adopt the provisions of the policy. Clause 1.5 provides for the policy statement thus, **"The Government is committed to providing opportunities in public service organisations to the youth who have completed their courses to acquire workplace experience to enhance their employability. Further, graduates with professional qualifications will continue to be granted internship opportunities to enhance their professional development for registration with respective bodies."** The claimants are therefore covered by the policy as applying to circumstances of the case as alleged.

To answer the 2<sup>nd</sup> issue for determination the Court returns that in the

alleged circumstances, the stipend and subsistence allowance as claimed is payable by the 2<sup>nd</sup> respondent by itself or through the 3<sup>rd</sup> respondent as its responsible department. Clause 2.5.1(vii) of the policy on roles of Ministries, Departments and Agencies (MDAs) provides that the MDAs shall pay the prescribed stipend to interns in accordance with the guidelines. Clause 2.6 on payment of stipend to interns provides, **“Internship shall be non-remunerative. However, interns will be paid a stipend as may be determined by the Commission from time to time. MDAs will be expected to make budgetary allocation for the stipend on annual basis.”** Clause 2.9 on intern entitlements provides that an intern will be entitled to the following:

- a) Sick leave as applicable in the prevailing regulations.
- b) Annual leave.
- c) Compassionate leave.
- d) Stipend.
- e) Subsistence allowance when out of station at a rate to be determined by the Commission from time to time.

Clause 4 on duration states thus, **“The internship period shall be between three (3) and twelve (12) months or the duration prescribed by the institution or professional body that regulates the profession in which the intern is seeking registration.”**

Again, in the letter dated 28.06.2017, the 1<sup>st</sup> respondent’s Secretary and



CEO Mrs. Alice A. Otwala wrote to the 3<sup>rd</sup> respondent's CEO thus, **“Please note that whereas the Public Service Commission issued the Policy and Guidelines on Internship in the Public Service, Individual MDAs are responsible for seeking budgetary provisions to enable them meet any internship related expenses. In this regard therefore, you are advised to consult the Ministry under which your agency falls for necessary guidance.”**

To answer the 3<sup>rd</sup> issue for determination, the stipend and subsistence allowance due to each intern in circumstances such as those pleaded for the claimant is Kshs. 25, 000.00 and Kshs. 4, 000.00 respectively and making Kshs. 29, 000.00 per month. The letter by the 1<sup>st</sup> respondent's CEO dated 15.06.2017 and exhibited for the claimant stated in paragraph 1 that as per the prevailing public service policy the stipend and allowance were payable at those rates and the 2<sup>nd</sup> respondent as the host Ministry was to send a total budget to request for the money from treasury and pay interns for a period of 3 months as prescribed in policy Ref. No. PSC/ADM/14/V/ (105). The letter forwarded a budget for 446 Nutritionists and Dieticians Interns placed across 31 Government health facilities. The amount requested for the three months was a sum of Kshs. 33, 978, 000.00. The letter by the 3<sup>rd</sup> respondent's CEO dated 09.12.2016 refers to stipend for 600 interns at Kshs. 4,000.00 per month making a sum of Kshs. 180, 000, 000.00 which was requested from the 2<sup>nd</sup> respondent for one-year internship.

To answer the 4<sup>th</sup> issue for determination the Court returns that the claimant has on a balance of probability established that the amount of money as claimed is due and owing. CW1 testified that all the 506 persons on whose behalf he sued attended the internship for 12 months and consequential to completion of the internship all were licenced to practice as Nutritionists and Dieticians which, CW/ explained to mean, **"It is a branch of medicine on use of food and food ingredients to manage and treat diseases such as infectious diseases at treatment level and preventive for lifestyle and non-communicable disease."** In cross-examination CW1 confirmed that each of the claimants had been licenced and the registration numbers were as included in the exhibited list of claimants giving authority to sue. CW2 testified thus, **"Just like CW1 noted we underwent the mandatory internship. Internship was not optional. So I had to undertake it for one year. We were not paid as claimed. Per the statement there is internship policy by Public Service Commission. Public Service Commission and Ministry of Health should pay us."** The evidence by CW1 and CW2 was not rebutted in any material respect. On the material before the Court and the respondents having not called a witness to rebut the claimants' testimony, the Court returns that the claimant has established the claims and prayers. As submitted for the respondents, the claimant had to prove the case on a balance of probabilities and the Court returns that the burden has been duly discharged. The 1<sup>st</sup> and 2<sup>nd</sup> respondent while denying the claim also



pleaded that in alternative, the amount claimed had been paid but no evidence was provided to support the allegation. Thus, on a balance of probability the Court finds that the 506 claimants attended internship for a year, it was governed by the relevant internship policy instituted by the 1<sup>st</sup> respondent, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were required to budget and cause the stipend and subsistence allowance to be paid by funds provided through the Treasury, and to date, the same has not been paid at all. The Court finds that there is no reason to doubt that the claimants attended the internship through the 3<sup>rd</sup> respondent's arrangements and they were all subsequently registered and licenced per the disclosed registration and licence numbers. In conclusion, judgment is hereby entered for the claimants against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents jointly and severally for:

- 1) Payment of Kshs. 29,000 x 12-months = Kshs. 348, 000.00 per intern-claimant, times, the 506 intern-claimants, making a total sum of **Kshs. 176, 088, 000.00** payable by 31.12.2022 failing interest to be payable thereon at Court rates from the date of filing the suit until full and final payment.
- 2) The payment of the costs of the suit.

**Signed, dated and delivered by video-link and in Court at Mombasa this Friday 29<sup>th</sup> July, 2022.**

  
**BYRAM ONGAYA**

**JUDGE**