



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI LAW COURTS

CASE NUMBER: HCACECS/E018/2024

CITATION: ETHICS AND ANTI-CORRUPTION COMMISSION VS ODHIAMBO OTTOMAN ADEL WALTER

### JUDGMENT

The plaintiff is a corporate body established under statutory and constitutional provisions with wide mandate of investigating and instituting recovery proceedings in respect of loss or damage to public property through corruption among other functions. Specific and relevant to this suit, Section 11(1)(f) of the Ethics and Anti-Corruption Commission Act provides that;

*'In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures including proceedings for the recovery of property or proceeds of corruption located outside Kenya.'*

It is pursuant to the above mandate this suit has been brought on behalf of the County Government of Homabay (hereinafter after referred to as 'the government'). It is claimed that on 30<sup>th</sup> March 2016, the government's Public Service Board appointed the defendant to the position of County Deputy Director of Health-Preventive & Promotive Services while he was engaged on full time basis by the Kenya Medical Training College (hereinafter referred to as 'KMTTC') as a Lecturer II, Medical Laboratory



Services and as part time lecturer at the Great Lakes University of Kisumu attached to the Faculty of Health Services. The plaintiff averred that the defendant never relinquished his earlier appointments and he received from the government a total of Kshs 10,991,712.00 designated as salaries between June 2016 and August 2021 without offering any services.

The defendant filed defence dated 17<sup>th</sup> July 2024 in which he generally denies all the averments in the plaint save for paragraph 8 in which he avers that he responded to the plaintiff's demand letter and entered into a mutual agreement with it and that he was surprised by the turn of events. He claims in the alternative that any salaries paid to him were legitimately and lawfully earned.

The plaintiff called three witnesses while the defendant neither testified nor called any witness. Bob Collins Otieno who was the County Government Director of Human Resources and Development between 1-09-2022 and 10-10-2024 testified by adopting his witness statement filed alongside the plaint. He told the court that the defendant was appointed to the position of Deputy Director of Health Preventive Promotive Services on 30/3/2016 on permanent and pensionable terms effective 1-04-2016. He added that, by the time he recorded his statement, the defendant was still an employee of the government and was by then under disciplinary proceedings for absconding duty and his salary was stopped in July 2023 following the disciplinary process.

The witness produced the defendant's appointment letter dated 30-03-2016, letter of confirmation dated 4-12-2017, the defendant's pay slips from the government and KMTCC for the period from June 2016 to August 2021. He alleged that he knew the defendant who he interacted with during the time of service until when the disciplinary process was initiated. He concluded by stating that, instructions to stop his salary were given to him in July 2023 by the County Secretary.

Nicodemus Amakaka who worked at Equity Bank, Mbita branch was the second witness. He testified that the plaintiff approached the bank with warrants to produce statements and records for account number 0291xxxx1712 held by the defendant among others which he executed. He produced the records including the bank statement and a certificate of electronic evidence as exhibits



PW3 one Augustine Mukwekwe an investigator with EACC told the court that he requested for information in respect of this case from several institutions which included KMTC, the government and Equity bank to help him investigate. He stated that their investigations revealed that the defendant was offered employment as a lecturer II by KMTC on 10<sup>th</sup> May 2013 which he accepted on 15<sup>th</sup> May 2013. He was posted to Kisumu campus on 4<sup>th</sup> June 2013 and was confirmed on permanent and pensionable position of Deputy Head of Department and posted to Portreiz on 18<sup>th</sup> July 2019.

The defendant remained an employee of KMTC until 5<sup>th</sup> May 2022 when he was dismissed from service. PW2 added that on 25<sup>th</sup> February 2015, the defendant was appointed as a part-time lecturer at Great Lakes University of Kisumu (GLUK) with his appointment backdated to 1<sup>st</sup> January 2015 and was attached to the Faculty of Health Services.

On 30<sup>th</sup> March 2016, the government appointed the defendant to the position under investigations which he accepted on 31<sup>st</sup> March 2016 and to which he was confirmed on 4<sup>th</sup> December 2017. His terms of employment by the government were permanent and pensionable. He added that the defendant was as at August 2021 earning a salary of Kshs 287,230.00. Mukwekwe added that the defendant's salary was stopped in July 2021 and upon analysis of the defendant's statements which he had obtained through a court warrant in Kisii Misc. criminal application number 95 of 2021, it was established that the defendant had received Kshs 10,991,712.00 which the plaintiff sought to recover.

Upon completion of investigations, the defendant was invited to the plaintiff's office for statement recording but he did not have an explanation for the payment of the salaries and requested the plaintiff to allow him refund the money he had received from the government. The witness produced a letter to that effect dated 2<sup>nd</sup> September 2021 as an exhibit.

The defendant did not appear for the hearing neither did he provide any evidence to despite having filed a defence. He also did not see it fit to file any submissions. Upon conclusion of the hearing, the plaintiff filed its submissions dated 18<sup>th</sup> December 2025. I have gone through the pleadings,



the evidence produced by the plaintiff and the submissions filed by the plaintiff.

It is indisputable that the defendant was at the time he sought employment with the government a permanent and pensionable employee of the KMTC which is a public body. There is no proof that he resigned from this position after the appointment by the government. What is available is evidence that, he got more engagement in Great Lakes University of Kisumu during the same period. It is also clear that the defendant remained an employee of the KMTC until 5-05-2022 when he was dismissed from service for desertion of duties.

In my view, it was illegal and unethical for the defendant to secure employment with the government while he was on permanent and pensionable terms at KMTC and fail to resign from either. It is also unlawful and unethical of a public servant to receive payment from two government institutions in a manner that is inconsistent with his efficient provision of services. It is also unlawful, unprofessional and unethical for a public servant to receive payment for services they have not rendered.

In this case, I take judicial notice that it would be practically impossible for one to work in Homabay and Kisumu Counties at the same time yet the defendant received salaries from both the government and KMTC. Obviously, the defendant was paid by the government for services he did not offer. Once the plaintiff produced documents to show that the defendant was paid by the two institutions during the period under investigations, the defendant had a burden to adduce evidence to the contrary or show that he provided services to the government which he failed to discharge. I also note that in his letter dated 2<sup>nd</sup> September 2022, the defendant requested to be allowed to refund the money paid by the government which he acknowledged in paragraph 8 of his defence. Although the said paragraph does not technically amount to an admission, it resonates with the evidence produced by the plaintiff.

The plaintiff has cited Section 26 of the Leadership and Integrity Act which has since been deleted by the Conflict of Interest Act number 11 of 2025. The Section which was in force at the time of the cause of action in this matter applied to the defendant by virtue of Section 52 of the Leadership



and Integrity Act despite the position he held not fitting within the definition of a state officer under Article 260 of the Constitution. In addition, it is my opinion receipt of the salaries for services not rendered was fraudulent and in violation of Articles 232(1)(a) and (b) and Chapter Six of the Constitution.

It is my opinion that any funds which are found to have been illegally or unlawfully obtained from a government or public institution are liable to forfeiture to the government. Further, it is my holding that any process or acts which breach the law specifically in this case, Leadership and Integrity Act, cannot give rise or produce legitimate source of income and any payments made from such processes are illegal and unlawful.

In addition to the unlawful part of the payments, the principle against unjust encirclement would also apply in this case against the defendant. The defendant received payments from the government which he had not worked for or was not entitled to; the same was at the expense of the government and no defence claiming bar to the case has been fronted by the defendant. All this satisfies the conditions for application of this principle as restated by the court in **Kenya Anti-Corruption Commission v Kinyua & others [2023] KEELC 17857 (KLR)** thus;

*'Goff and Jones on Law of Restitution that was cited by the plaintiff, set out the elements of unjust enrichment as follows;*

- 1. the defendant has been enriched by receipt of a benefit;*
- 2. the defendant has been so enriched at the expense of the plaintiff;*
- 3. it would be unjust to allow the defendant to retain the benefit and;*
- 4. there is no defence or bar to the claim.'*

As I conclude and just as I did in this court's civil suit number **E019 of 2024; Ethics and Anti-Corruption Commission v Boniface Oloo Otiato** and as I hold the defendant herein liable, I express my disappointment and disapproval of acts of commission and omission of the officers of the County Government of Homabay who must have knowingly enabled or facilitated loss of public funds through illegal salaries payments in the said County Government for the period between 2013 and 2022. I say this because this is the fifth matter involving loss of public funds in the said government in similar if not the same circumstances I am handling



and I am aware that more are pending while others are concluded.

One may not tell which department was the weak link but what is clear is that there were collusions between the employees and their supervisors and/or colleagues. It is clear that there were well calculated plans to benefit identified employees in specific departments. One would wonder how the defendant's absence would go unnoticed for six years. It is hoped that systems and structures have been put in place to thwart these kinds of shameless operations.

Having said the above, I see no difficulty in declaring that the sum of Kshs 10,991,712.00 paid to the defendant by the County Government of Homabay was illegal and unlawful benefit. Consequently, this suit is allowed and succeeds in the following terms;

- a. A declaration is hereby issued that the defendant illegally benefitted from public funds in the sum of Kshs 10,991,712.00 paid as salary from the County Government of Homa Bay.
- b. The defendant is ordered to retribute to the Government of Kenya Kshs 10,991,712.00 plus interest within 90 days from the date of this judgment failure to which the plaintiff shall be at liberty to execute for the same.
- c. The interest referred to in (b) above shall be calculated at court rates from the date of filing this suit until payment in full.
- d. The defendant shall pay the costs of this suit.

Dated, signed and delivered at Nairobi this **13<sup>th</sup>** day of **March** 2026.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Mr. Makori for the plaintiff and Mr. Aguko for the defendant.



SIGNED BY: HON. JUSTICE BENJAMIN MWIKYA MUSYOKI



THE JUDICIARY OF KENYA.  
MILIMANI HIGH COURT  
HIGH COURT ANTI CORRUPTION AND ECONOMIC CRIMES  
DATE: 2026-03-13 20:16:20+03

