Tribunal de Justiça do Estado do Ceará - 2º Grau

Processo Judicial Eletrônico

Processos em pauta de julgamento

Sessão de 25/11/2024 às 14:00:00

Emitido em 08/04/2026 11:51

Processo	0158026-27.2018.8.06.0001
Número de ordem	1
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Anulação de Débito Fiscal
Polo ativo	TIM CELULAR S.A.
Advogado(s) - Polo ativo	ANTONIO RODRIGO SANT ANA - (SP234190-A) RUBENS EMIDIO COSTA KRISCHKE JUNIOR - (CE25189-S) CARLOS ROBERTO DE SIQUEIRA CASTRO - (CE14325-A) CARLOS FERNANDO DE SIQUEIRA CASTRO - (CE14326-A)
Polo passivo	ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO DO CEARÁ PROCURADORIA GERAL DO ESTADO PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

Processo	0158026-27.2018.8.06.0001
Acordão	<span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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	vertical-align: baseline; white-space: pre-wrap;">1. Apelação interposta por TIM Celular S.A. contra sentença que manteve multa administrativa imposta pelo Decon no valor de R$ 39.442,40. A multa foi aplicada em razão de suposta recusa da empresa em migrar linhas telefônicas para outro plano solicitado por um consumidor. A autora pleiteou a nulidade da penalidade ou, subsidiariamente, sua redução a um patamar proporcional e razoável. O juízo de primeira instância julgou improcedente o pedido, e a TIM recorreu, reiterando seus argumentos e insistindo na revisão do valor da multa.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Há duas questões em discussão: (i) verificar se o Poder Judiciário pode rever o mérito de ato administrativo, sob a alegação de ilegalidade ou abusividade; e (ii) analisar a razoabilidade e a proporcionalidade do valor da multa aplicada pelo Decon, com possibilidade de revisão.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A competência administrativa do Decon para aplicar sanções, incluindo multas, está amparada na legislação consumerista e na legislação estadual, que lhe confere poder-dever de fiscalização.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. O Poder Judiciário não revisa o mérito das decisões administrativas, salvo casos de ilegalidade ou abusividade manifesta, em respeito ao princípio da separação dos poderes. No entanto, é possível o controle de legalidade, quanto à proporcionalidade e razoabilidade da multa aplicada por órgão de defesa do consumidor, pois a definição do valor da penalidade depende da estrita observância aos requisitos legais e não consiste em ato discricionário.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. A presunção de veracidade dos fatos no processo administrativo decorreu da revelia da TIM, por não apresentar defesa, conforme a teoria da aparência para a validação da citação. Não há vício de citação ou ofensa ao contraditório e à ampla defesa, pois a comunicação foi recebida no endereço da empresa.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Porém, a aplicação da multa mostrou-se desarrazoada e desproporcional, especialmente porque o consumidor não informou ter sofrido prejuízos expressivos pela demora na migração do plano, e o Decon reconheceu o baixo potencial ofensivo da infração.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Recurso parcialmente provido, para reduzir o valor da multa de 10.000 Ufirces para 2.000 Ufirces.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ______&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos relevantes citados: CRFB/88,

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	art. 2º e art. 5º, incisos XXXV, LIV e LV; Lei nº 8.078/90 (CDC), art. 39, II, IV e V; Decreto nº 2.181/97, arts. 24 a 28; CPC, art. 86, parágrafo único, e art. 85, § 11; Lei Estadual nº 16.132/2016, art. 5º, parágrafo único. &#160; </p><p style="line-height: 2.16; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ACÓRDÃO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, para dar-lhe parcial provimento, tudo nos termos do voto do relator, parte integrante deste.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.&#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO&#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Relator&#160; &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Tem-se apelação que transfere a este tribunal o conhecimento sobre ação ajuizada pela Tim Celular S.A. em face do Estado do Ceará.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Petição inicial (id 14531885): a parte autora pediu a declaração de nulidade de multa aplicada pelo Decon no valor de R$ 39.442,40 (trinta e nove mil quatrocentos e quarenta e dois reais e quarenta centavos). Narrou que a pena foi imposta, por não ter atendido à solicitação do consumidor reclamante de migração de linhas de celular para outro plano de serviços de telefonia ofertado pela empresa. Defendeu a possibilidade de o Judiciário examinar o mérito do ato administrativo, diante do abuso patente. Alternativamente, pediu a redução da multa para patamar razoável e proporcional.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Sentença (id 14531990): <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant:

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	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">o juízo de origem julgou improcedente o pedido, por entender razoável a multa aplicada, bem como ter havido observância do devido processo legal na via administrativa.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Apelação (id 14531998): a parte autora requereu a reforma da sentença, reiterando os argumentos e os pedidos constantes da petição inicial&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Contrarrazões (id 14532005): o Estado requereu o não provimento do recurso, por entender que o Decon atuou dentro dos limites de sua competência administrativa e agiu conforme as normas jurídicas aplicáveis, inclusive, quanto à dosimetria da multa. Sustentou a impossibilidade de o Judiciário adentrar no mérito administrativo.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Parecer da Procuradoria de Justiça (id 15598215)&#160; pelo desprovimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial. &#160; </p><p style="line-height: 2.16; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> A sentença deve ser reformada, em parte, para reduzir o valor da penalidade imposta.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> O Decon tem, sim, competência administrativa para aplicar multa.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> A legislação consumerista atribui aos órgãos públicos de defesa do consumidor o poder-dever de fiscalizar e intervir na iniciativa privada, não havendo falar em ofensa à livre iniciativa e ao livre exercício da atividade econômica (art. 5º, XII e 170 da CF/88).</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o que dispõe o art. 4º, da Lei Complementar Estadual nº 30/2002:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> <span style="font-

Processo	0158026-27.2018.8.06.0001
	size: 11pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Art. 4º. Ao Programa Estadual de Proteção e Defesa do Consumidor – DECON, no âmbito do Estado do Ceará, compete exercer as atribuições previstas nos artigos 3º e 4º do Decreto 2.181/97:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> […]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> II – fiscalizar as relações de consumo, aplicando as sanções administrativas previstas na Lei nº 8.078, de 1990, e em outras normas pertinentes à Defesa do Consumidor;</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> A autora foi apenada, pois não apresentou defesa na via administrativa.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> O Decon, portanto, aplicou os efeitos materiais da revelia, notadamente, a presunção de veracidade dos fatos narrados na reclamação.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> As conclusões fático-probatórias a que o Decon chegou não são passíveis de revisão judicial, em razão da necessária independência entre as instâncias jurisdicional e administrativa, bem como em virtude da separação entre os Poderes (art. 2º, da CRFB/88).</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> Não se constata, ademais, vício de citação no processo administrativo, pois o ato de comunicação foi recebido por pessoa que presumidamente trabalha no endereço da fornecedora, com base na teoria da aparência.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> De mais a mais, a fundamentação do ato impugnado mostra-se idônea e a parte reclamada pôde influir no julgamento do caso, de modo que não se vislumbra ofensa ao contraditório e à ampla defesa, nem ao devido processo legal (art. 5º, incisos LIV e LV, da CRFB/88).</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr">Logo, entende-se que a Administração agiu corretamente, pois, diante desse quadro fático constatado pela autoridade administrativa, a conduta da parte requerente afigura-se abusiva, à luz do art. 39, caput, incisos II, IV e V do CDC, que, em rol exemplificativo, elenca as práticas predatórias do mercado de consumo:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> <span style="font-size: 11pt; font-family: Arial,sans-serif; color: #000000; background-color:

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	transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Art. 39. É vedado ao fornecedor de produtos ou serviços, dentre outras práticas abusivas:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> II - recusar atendimento às demandas dos consumidores, na exata medida de suas disponibilidades de estoque, e, ainda, de conformidade com os usos e costumes;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> […]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> IV - prevalecer-se da fraqueza ou ignorância do consumidor, tendo em vista sua idade, saúde, conhecimento ou condição social, para impingir-lhe seus produtos ou serviços;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> V - exigir do consumidor vantagem manifestamente excessiva;</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> Em giro diverso, quanto à razoabilidade e proporcionalidade da multa, o apelante obtém melhor sorte, pois se vislumbra exorbitância da pena pecuniária.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> Os atos administrativos praticados no exercício de poder de polícia podem ser revistos se desproporcional ou desarrazoada a sanção aplicada.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> Não se trata aqui de intromissão do Poder Judiciário sobre a Administração Pública (art. 2º, da CRFB/88), mas, antes, do controle judicial de legalidade dos atos administrativos, em decorrência da inafastabilidade da tutela jurisdicional (art. 5º, inciso XXXV, da CRFB/88).</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> Aliás, por ocasião do julgamento do ARE 951561 AgR/DF, ocorrido em 25/08/2017, o Ministro Roberto Barroso, do Supremo Tribunal Federal, reafirmou que “ o controle pelo Poder Judiciário, de ato administrativo eivado de ilegalidade ou abusividade, não viola o princípio da separação dos Poderes, podendo atuar, inclusive, nas questões relativas à proporcionalidade e à razoabilidade. Precedentes ”.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> De acordo com o STJ, “a fixação do montante pecuniário da sanção administrativa não se insere no âmbito da discricionariedade” (STJ – Resp 462.732/PR, Relator o Ministro HERMAN BENJAMIN, Segunda Turma, julgado em 20/08/2009, DJe 31/08/2009).</p><p style="line-

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	height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> O arbitramento da multa depende da estrita observância aos requisitos legais. Logo, definir o valor da pena não é um ato discricionário.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> A pena, fixada em 10.000 Ufirces (id 14531911, pp. 27-31 e id 14531912, pp. 1-2), correspondente a R$ 33.390,00 (trinta e três mil trezentos e noventa reais), à época de seu arbitramento (2015).</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> No entanto, consideradas a gravidade da infração e a vantagem auferida, esse valor não é razoável, nem tampouco proporcional, pois o reclamante não informou ter sofrido prejuízos em razão da demora na migração do plano, e o próprio Decon reconheceu o menor potencial ofensivo da infração (14531912, p. 2).</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 7pt;" dir="ltr"> A decisão foi, aliás, absolutamente desprovida de fundamentação quanto aos critérios de mensuração da pena (id 14531913, pp. 2-4), de modo que não há circunstâncias agravantes, na forma dos arts. 24 a 28, do Decreto nº 2.181/97:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Art. 24. Para a imposição da pena e sua gradação, serão considerados:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> I - as circunstâncias atenuantes e agravantes;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> II - os antecedentes do infrator, nos termos do art. 28 deste Decreto.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Art. 25. Consideram-se circunstâncias atenuantes:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> I - a ação do infrator não ter sido fundamental para a consecução do fato;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> II - ser o infrator primário;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> III - ter o infrator adotado as providências pertinentes para minimizar ou de imediato reparar os efeitos do ato lesivo.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Art. 26.

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	Consideram-se circunstâncias agravantes:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> I - ser o infrator reincidente;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> II - ter o infrator, comprovadamente, cometido a prática infrativa para obter vantagens indevidas;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> III - trazer a prática infrativa conseqüências danosas à saúde ou à segurança do consumidor;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> IV - deixar o infrator, tendo conhecimento do ato lesivo, de tomar as providências para evitar ou mitigar suas conseqüências;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> V - ter o infrator agido com dolo;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> VI - ocasionar a prática infrativa dano coletivo ou ter caráter repetitivo;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> VII - ter a prática infrativa ocorrido em detrimento de menor de dezoito ou maior de sessenta anos ou de pessoas portadoras de deficiência física, mental ou sensorial, interditadas ou não;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> VIII - dissimular-se a natureza ilícita do ato ou atividade;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> IX - ser a conduta infrativa praticada aproveitando-se o infrator de grave crise econômica ou da condição cultural, social ou econômica da vítima, ou, ainda, por ocasião de calamidade.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Art. 27. Considera-se reincidência a repetição de prática infrativa, de qualquer natureza, às normas de defesa do consumidor, punida por decisão administrativa irrecorrível.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Parágrafo único. Para efeito de reincidência, não prevalece a sanção anterior, se entre a data da decisão administrativa definitiva e aquela da prática posterior houver decorrido período de tempo superior a cinco anos.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Art. 28. Observado o disposto no art. 24 deste Decreto pela autoridade competente, a pena de multa será fixada considerando-se a gravidade da prática infrativa, a extensão do dano causado aos consumidores, a vantagem auferida com o ato infrativo e a condição econômica do infrator, respeitados os parâmetros estabelecidos no parágrafo único do art. 57 da Lei nº 8.078, de 1990.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt; font-

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	family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">O apelante, por seu turno, não defendeu a aplicação de circunstâncias atenuantes.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Quanto ao valor da Ufirce a ser considerada, é aquele vigente quando do arbitramento da multa pelo Decon no primeiro grau do processo administrativo, pois o valor reduzido é aquele que deveria ter sido aplicado pela Administração na primeira oportunidade.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Por fim, quanto ao termo inicial dos encargos moratórios, observa-se que, diante da redução da pena pecuniária, houve a descaracterização da mora, considerando que foi necessária a judicialização da controvérsia para que o valor da multa fosse, enfim, ajustado.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Logo, tendo em vista que o processo inflacionário é permanente e ocorre independentemente da vontade das partes, o termo inicial da correção monetária é aquele da data do acórdão.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Já quanto ao termo inicial dos juros de mora, sua incidência ocorre a partir do momento em que a dívida se torna definitiva, não sendo mais passível discussão sobre seu valor, isto é, a partir do trânsito em julgado.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Confira-se a respeito precedente do Tribunal de Justiça do Estado do Paraná, ementado da seguinte maneira:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> EMBARGOS DE DECLARAÇÃO NA APELAÇÃO CÍVEL. ANULATÓRIA DE MULTA ADMINISTRATIVA. CORREÇÃO MONETÁRIA E JUROS SOBRE O VALOR DA NOVA SANÇÃO. OMISSÃO SANADA. ÍNDICE DE CORREÇÃO. IPCA-E. INCIDÊNCIA A PARTIR DA PUBLICAÇÃO DO ACÓRDÃO. JUROS MORATÓRIOS APLICADOS À CADERNETA DE POUPANÇA, DESDE O TRÂNSITO EM JULGADO. HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS. FIXAÇÃO NO MÍNIMO LEGAL SOBRE O PROVEITO ECONÔMICO OBTIDO. ARBITRAMENTO ESCALONADO. CAUSA A ENVOLVER A FAZENDA PÚBLICA. OBSCURIDADE INEXISTENTE. RECURSO PARCIALMENTE ACOLHIDO, COM EFEITOS INFRINGENTES. (TJPR. Embargos de Declaração Cível nº 0008684-22.2016.8.16.0004. 4ª Câmara Cível. Des. Rel. Luiz Taro Oyama. J. 20.04.2021)</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Assim, conheço da apelação, para dar-lhe parcial provimento, reduzindo a multa aplicada pelo DECON de 10.000 Ufirces para 2.000 Ufirces, com base no valor da Ufirce vigente à época da primeira decisão administrativa do Decon.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Quanto aos consectários de mora, os índices serão aqueles já aplicados pela Administração e os termos iniciais da correção monetária e do juros de

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	mora serão, respectivamente, a data deste acórdão e o trânsito em julgado neste processo judicial.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Com base no art. art. 86, parágrafo único do CPC, condeno o Estado do Ceará à integralidade dos ônus de sucumbência, uma vez que - tomando por base o valor da multa - a parte autora decaiu de apenas 20% (vinte por cento) do seu pedido, isto é, parte mínima dele, haja vista ainda o afastamento dos consectários de mora incidentes no período anterior a esta decisão.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Mantenho os honorários advocatícios fixados pela sentença em 10% (dez por cento), que deverá ser calculado sobre o valor do proveito econômico obtido pela autora.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Não cabe majoração dos honorários, com base no art. 85, § 11, do CPC (honorários recursais), a teor do que dispõe a tese fixada pelo STJ no Tema 1.059 de recursos especiais repetitivos: “a majoração dos honorários de sucumbência prevista no art. 85, § 11, do CPC pressupõe que o recurso tenha sido integralmente desprovido ou não conhecido pelo tribunal, monocraticamente ou pelo órgão colegiado competente. Não se aplica o art. 85, § 11, do CPC em caso de provimento total ou parcial do recurso, ainda que mínima a alteração do resultado do julgamento ou limitada a consectários da condenação”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> À luz do art. 82, § 2º, do CPC e do art. 5º, parágrafo único, da Lei Estadual nº 16.132/2016, condeno o Estado do Ceará à obrigação de reembolsar todas as despesas judiciais feitas pela apelante, haja vista a proporção do ganho de causa pela autora.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Caberá à parte interessada requerer ao juízo de origem o levantamento do depósito judicial feito com o fim de obter a suspensão da exigibilidade da dívida.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o voto que submeto à consideração de meus pares.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.44; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p style="line-height: 1.44; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relator</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	2
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público

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Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	JOSE RENATO DE SANTANA DE ARAUJO
Advogado(s) - Polo ativo	Não informado
Polo passivo	ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO DO CEARÁ Secretaria de Saude do Estado do Ceara SECRETARIA DA SAUDE DO ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0202718-77.2022.8.06.0064
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6uu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQhRkKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaAyAan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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align: center;" align="center">   <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">ESTADO DO CEARÁ </p><p
style="margin: 0cm; text-align: center;" align="center">   <span style="font-size:
13.0pt; font-family: &quot;Arial&quot;,sans-serif; color: black;">PODER
JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;"
align="center">   <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">TRIBUNAL DE JUSTIÇA
</p><p style="margin: 0cm; text-align: center;" align="center">   GABINETE
DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO
</p><p style="text-align: center;" align="center"> <span style="font-size: 8.5pt;
font-family: &quot;Arial&quot;,sans-serif; color: black;">&#160;</p><p style="text-
align: left;">&#160;</p><p style="text-align: left;"> <span style="font-size: 13.5pt; font-
family: &quot;Arial&quot;,sans-serif; color: black;">   <strong style="font-family: Arial,
Verdana, sans-serif; font-size: 11px;">   <span style="font-size: 13.5pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">Processo: <span
style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">&#160;0202718-77.2022.8.06.0064 </p><p style="text-align:
left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">   <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">[Obrigação de Fazer / Não Fazer] </p><p style="text-align: left;">

<span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">REMESSA NECESSÁRIA CÍVEL </p><p style="text-align: left;">
<span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">Recorrente:&#160;JOSE RENATO DE SANTANA DE ARAUJO</p><p
style="text-align: left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-
serif; color: black;">Recorrido:&#160;ESTADO DO CEARA e outros</p><p
style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-
justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate:
auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p
class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;
mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-
align-alt: auto;">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-
bottom: 0cm; background: transparent;" align="justify">
      <span style="text-
decoration: none;">   <span style="font-
size: small;">
E
              <span style="font-
variant: normal;">   <span style="text-decoration:
none;">
         menta
              <span style="font-
variant: small-caps;">   <span style="text-decoration:
none;">

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	   : Direito Processual civil. Direito à saúde. Reexame necessário. Ação ordinária para compelir o Estado do Ceará a fornecer fraldas geriátricas . D ispensa do duplo grau de jurisdição. Art. 496, §3º, inciso II, do cpc. Não conhecimento do reexame. Sentença mantida. I. Caso em exame <br /> 1. R <span style="text-

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decoration: none;"> emessa necessária de sentença que condeno   u   o   Estado do Ceará   a fornecer   fraldas geriátricas em benefício da parte autora   .   </p><p style="font-variant: small-caps; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify">   II. Questão em discussão </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify">   2. A questão a ser dirimida consiste em saber se, diante da iliquidez da sentença e do valor estimado da condenação estar abaixo do limite legal, é cabível a dispensa do reexame necessário. </p><p class="western" style="font-variant: small-caps; line-height: 150%; margin-bottom: 0cm;" align="justify">   III. Razões de decidir   </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">   3   . Atualmente, ainda se encontra em vigor a Súmula nº 490 do STJ, pela qual   “a dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas”.   <span

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	style="font-family: Arial, serif;"> Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. <br /> IV. Dispositivo </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 4. Remessa necessária não conhecida, mantendo-se a sentença. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> ________ </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Dispositivos relevantes citados: CPC/2015, art. 496, §3º, III. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Jurisprudência relevante citada: AgInt no REsp n. 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022 e AgInt no AREsp n. 1.969.907/TO, relator Ministro Herman Benjamin, Segunda Turma, julgado em 11/4/2022, DJe de 25/4/2022. </p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0.6cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em não conhecer do reexame necessário, tudo nos termos do voto do relator, parte integrante deste. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> F ortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;"

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	align="justify">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p class="western" style="font-variant: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm; page-break-before: auto;" align="justify"> Tem-se reexame necessário da sentença de procedência prolatada pelo juízo da 1ª Vara Cível da Comarca de Caucaia em Ação de Obrigação de Fazer c/c Pedido de Tutela Provisória de Urgência , que confirmou a tutela antecipada concedida, para conden ar o Estado do Ceará no fornecimento de fraldas geriátricas, tamanho G, mensalmente, de forma contínua e por tempo indeterminado, de acordo com as especificações médicas de Id. 40982057 . </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm; background: transparent; page-break-before: auto;" align="justify"> Sentença: julgou procedente o pleito autoral , considerando que os documentos médicos comprovam que o paciente necessita dos insumos prescritos, indispensáveis à manutenção de sua

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	saúde. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm;" align="justify"> Parecer da PGJ: manifesta-se pelo conhecimento e não provimento da remessa necessária . </p><p style="letter-spacing: 0.6pt; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> É o relatório, no essencial. </p><p style="letter-spacing: 0.6pt; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> <br /> </p><p style="letter-spacing: 0.6pt; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0.21cm; background: transparent;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify"> Conforme se observa o juízo a quo consignou: “ Sentença sujeita ao duplo grau de jurisdição obrigatório, nos termos do artigo 496, inciso I, do Código de Processo Civil. Empós o decurso do prazo para recurso voluntário, remetam-se os autos ao c. Tribunal de Justiça do Ceará, em remessa necessária ” . </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify"> Todavia, não obstante o entendimento do juízo a quo , a demanda não alcança o valor de alçada para reexame obrigatório que, na situação, dos autos é de 5 00 (quinhentos) salários mínimos, inclusive este é posicionamento das <span style="color:

Processo	0202718-77.2022.8.06.0064
	#000000;"> três câmaras de Direito Público deste e.TJCE, explico. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> I - proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> § 3º Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> II - 500 (quinhentos) salários-mínimos para os Estados, o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Em se tratando de sentença ilíquida, poder-se-ia pensar, a princípio, ser o caso de aplicação, no caso concreto, da Súmula 490 do STJ, cujo enunciado prevê que “ A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas ”. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Nesse sentido, os seguintes precedentes do STJ, in verbis : </p><p class="western" style="line-height: 200%; text-indent: 2.49cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <span style="font-family:

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	Arial, serif;"> PROCESSUAL CIVIL. RECURSO ESPECIAL. ENTE ESTADUAL. REEXAME NECESSÁRIO. VALOR DE ALÇADA. PROVEITO ECONÔMICO DA DEMANDA. PARÂMETRO PARA AFASTAMENTO DA ILIQUIDEZ. POSSIBILIDADE . 1. "Aos recursos interpostos com fundamento no CPC/1973 (relativos a decisões publicadas até 17 de março de 2016) devem ser exigidos os requisitos de admissibilidade na forma nele prevista, com as interpretações dadas, até então, pela jurisprudência do Superior Tribunal de Justiça" (Enunciado Administrativo n. 2 - STJ). 2. De acordo com o disposto no art. 475, I, § 2º, do CPC/1973, a sentença cuja condenação, ou o direito controvertido, não ultrapasse o valor correspondente a 60 (sessenta) salários-mínimos, não está sujeita ao reexame necessário. 3. O entendimento consolidado na Súmula 490 do STJ pode ser relativizado nas hipóteses em que o proveito econômico buscado na demanda servir como parâmetro balizador ao afastamento da iliquidez da sentença. 4. Hipótese em que o Tribunal de origem ratificou que o direito controvertido na ação de cobrança não supera, de forma manifesta, o patamar de 60 (sessenta) salários-mínimos, quantia tida como alçada pela legislação processual para tornar obrigatória a remessa necessária da sentença proferida em desfavor do ente estatal. 5. Agravo interno não provido. GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) </p><p class="western" style="font-weight: normal; line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> No mesmo sentido, é o entendimento das três Câmaras de Direito Público deste e.TJCE: </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> CONSTITUCIONAL E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO. PROVEITO ECONÔMICO DECORRENTE DA CONDENAÇÃO INFERIOR AOS VALORES DO ARTIGO 496, INCISO II DO CPC. REEXAME NECESSÁRIO NÃO CONHECIDO. FORNECIMENTO DE LEITO. DEMANDA AJUIZADA CONTRA O ESTADO DO CEARÁ. HONORÁRIOS ADVOCATÍCIOS. PAGAMENTO EM FAVOR DA DEFENSORIA PÚBLICA ESTADUAL. NÃO CABIMENTO. INCIDÊNCIA DA SÚMULA 421 E DO RECURSO ESPECIAL Nº 1199715/RJ, JULGADO NA SISTEMÁTICA DOS RECURSOS REPETITIVOS (TEMA 433), AMBOS DO SUPERIOR TRIBUNAL DE JUSTIÇA. SENTENÇA EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ E DESTA CORTE ESTADUAL. MANUTENÇÃO. REMESSA NECESSÁRIA NÃO CONHECIDA. APELO CONHECIDO E DESPROVIDO. 1. Revela-se dispensável a remessa necessária quando o proveito econômico decorrente da condenação é inferior ao valor expresso no inciso II do § 3º do artigo 496 do CPC, que constitui exceção ao duplo grau de jurisdição obrigatório. Precedentes. 2. São indevidos honorários sucumbenciais pelo Estado do Ceará à Defensoria Pública Estadual. Inteligência da Súmula 421 do Superior Tribunal de Justiça e do Recurso Especial nº 1199715/RJ, repetitivo (Tema 433), do STJ. 3. Os arestos proferidos após a Lei Complementar Federal nº 132/2009 mostram-se atualizados e estão baseados na tese de que a Defensoria Pública é parte integrante da estrutura orgânica do Estado e com ele se confunde. As autonomias funcional e administrativa

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	tratadas no art. 4º, XXI, da Lei Orgânica Nacional da Defensoria Pública e no art. 134, § 2º, da Constituição Federal não possuem aptidão para afastar a sua qualidade de órgão vinculado ao Poder Executivo do ente federativo que a instituiu, não lhe sendo permitido cobrar honorários a este, sob pena de confusão entre devedor e credor. 4. Remessa necessária não conhecida. Apelação conhecida e desprovida. ACÓRDÃO Vistos, relatados e discutidos estes autos, acordam os Desembargadores integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por julgamento de Turma e decisão unânime, em não conhecer da remessa necessária e conhecer da apelação para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 08 de novembro de 2021. DESEMBARGADOR FERNANDO LUIZ XIMENES ROCHA Relator (Apelação / Remessa Necessária - 0000833-80.2018.8.06.0119, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 08/11/2021 , data da publicação: 08/11/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> RECURSOS OFICIAL E APELATÓRIO EM AÇÃO DECLARATÓRIA C/C OBRIGAÇÃO DE PAGAR QUANTIA CERTA. VENCIMENTOS INFERIORES AO MÍNIMO NACIONAL. IMPOSSIBILIDADE. CONDENAÇÃO INFERIOR A 100 (CEM) SALÁRIOS-MÍNIMOS. APURAÇÃO POR SIMPLES CÁLCULO ARITMÉTICO. REMESSA NECESSÁRIA NÃO CONHECIDA. RECURSO APELATÓRIO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O Código de Processo Civil, em seu art. 496, § 3º, inciso III, estabelece que não há reexame necessário quando o valor da condenação for inferior a 100 (cem) salários-mínimos, tratando-se dos Municípios e respectivas autarquias e fundações de direito público. 2. Assim, diante dos precisos parâmetros indicados para a apuração do valor da condenação, é possível concluir, por simples cálculo aritmético, que será muito inferior ao patamar legal previsto para dispensa da remessa necessária, impondo a aplicação da respectiva norma (art. 496, § 3º, inciso III, do CPC). 3. Recurso apelatório conhecido e provido. Remessa Necessária não conhecida. Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, conhecer do Recurso Apelatório, para dar-lhe provimento, não conhecendo da Remessa Necessária, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data registrada no sistema. FRANCISCO GLADYSON PONTES Relator(Apelação / Remessa Necessária - 0008365-65.2019.8.06.0121, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 15/12/2021 , data da publicação: 16/12/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. PROCESSUAL CIVIL. CONSTITUCIONAL. AÇÃO DE OBRIGAÇÃO DE FAZER. FORNECIMENTO DE MEDICAÇÃO EM QUANTIDADE PREVIAMENTE DETERMINADA. CONDENAÇÃO EM VALOR INFERIOR A 500 SALÁRIOS-MÍNIMOS. OBSERVÂNCIA DO ART. 496, §3º, II E III DO CPC. NÃO CONHECIMENTO DO REEXAME NECESSÁRIO. <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-weight: normal;">APELAÇÃO CÍVEL. PROCESSUAL CIVIL. AÇÃO DE OBRIGAÇÃO DE FAZER. CONDENAÇÃO DO ENTE MUNICIPAL EM HONORÁRIOS ADVOCATÍCIOS. POSSIBILIDADE. APRECIAÇÃO EQUITATIVA. VALOR INESTIMÁVEL DA CAUSA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Trata o caso de apelação cível em ação ordinária por meio da qual se busca a realização do fornecimento de injeções intravítrea de BEVACIZUMAB e fotocoagulação a laser, conforme prescrição médica. 2. Fornecimento de medicamento em quantidade previamente determinada, não alcançando 500 (quinhentos) salários-mínimos, razão pela qual o não conhecimento do reexame necessário é medida que se impõe. 3. Nesse contexto, tendo em vista tratar-se

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	de causa de valor inestimável (direito à saúde), é imperioso ajustar a verba honorária a patamares razoáveis, com fulcro no mencionado §8º do art. 85 do CPC, na medida em que a fixação de honorários no montante de R$ 200,00 (duzentos reais) não valora adequadamente o trabalho desenvolvido. 4. Destarte, merece acolhimento a pretensão de majoração dos honorários advocatícios arbitrados, razão pela qual arbitro o valor de R$ 800,00 (oitocentos reais), porquanto razoável e adequado à remuneração do serviço prestado. - Precedentes do STF, STJ e desta egrégia Corte de Justiça. - Reexame Necessário não conhecido. - Apelação conhecida e parcialmente provida. - Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0001031-18.2019.8.06.0173, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do reexame necessário e conhecer da apelação interposta, para dar parcial provimento a esta última, reformando em parte a sentença, tão somente para reformar a sentença no tocante aos honorários sucumbenciais, nos termos do voto da Relatora. Fortaleza, 31 de janeiro de 2022 DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora(Apelação / Remessa Necessária - 0001031-18.2019.8.06.0173, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE , 3ª Câmara Direito Público, data do julgamento: 31/01/2022, data da publicação: 31/01/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nesse sentido ainda, o seguinte precedente da relatoria do iminente Desembargador FRANCISCO LUCIANO LIMA RODRIGUES: (Apelação/Remessa Necessária - 0000044-89.2014.8.06.0194, 3ª Câmara Direito Público, data do julgamento: 07/02/2022, data da publicação: 08/02/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A matéria é, inclusive, objeto de exame na Corte Superior, sob o regime dos Recursos Repetitivos, Tema 1081 (REsp 1882236/RS, REsp 1893709/RS e REsp 189466/SC), ainda pendente de julgamento, que tem por objetivo “Definir se a demanda previdenciária cujo valor da condenação seja aferível por simples cálculos aritméticos deve ser dispensada da remessa necessária, quando for possível estimar que será inferior ao montante previsto no artigo 496, § 3º, inc. I do Código de Processo Civil” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Dos precedentes acima citados, transcrevo, por pertinente, trecho do voto do Ministro Og Fernandes em que o magistrado destaca "Importante frisar que não se propõe o cancelamento da Súmula nº 490/STJ, mas sim a delimitação da sua aplicação ou não à demanda presente e às similares” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Deste modo, embora a condenação do Estado não tenha sido em valor líquido, certamente não ultrapassará o valor de 5 00 (quinhentos) salários-

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	mínimos, levando-se em conta o proveito econômico obtido. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Em outras palavras, o proveito econômico obtido, ainda que ilíquido, é mensurável, de modo que não se alcançará valor superior a 500 (quinhentos) salários-mínimos (referente ao teto previsto no art. 496, § 3º, inciso II, do CPC). </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nestes termos, não conheço do reexame necessário, mantendo a sentença de primeiro grau em todos os seus termos, com fulcro no art. 932, III , do Código de Processo Civil/2015 </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> É como voto.</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent; page-break-before: auto;" align="justify"> Fortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent;" align="justify"> <br /> <br /></p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify">&#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>

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Número de ordem	3
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	DANIEL MACIEL DE MELO PEIXOTO
Advogado(s) - Polo ativo	GUALTER RAFAEL MACIEL BEZERRA - (CE21432-A)
Polo passivo	MUNICIPIO DE ICO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;">

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	Arial, sans-serif;">Agravo de instrumento objetivando a reforma de decisão interlocutória que rejeitou exceção de pré-executividade, sob fundamento de ausência de prova da impenhorabilidade de valores bloqueados em conta-corrente e em conta de investimento.</p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> II. Questão em discussão </p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> 2. A questão em discussão consiste em saber se restou caracterizada a impenhorabilidade de quantia inferior a quarenta salários mínimos bloqueada em conta-corrente e em conta de investimento..</p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> III. Razões de decidir </p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> 3. O STJ, evoluindo em sua jurisprudência, tem dado novos contornos à interpretação do art. 833, X, do CPC/2015, assentando orientação segundo a qual, "à luz do princípio da proporcionalidade e da razoabilidade, é inadequado formar-se posicionamento jurisprudencial que consubstancie orientação no sentido de que toda aplicação de até 40 (quarenta) salários mínimos, em qualquer tipo de aplicação bancária ou financeira, estará sempre enquadrada na hipótese do art. 833, X, do CPC" (REsp n. 1.660.671/RS, relator Ministro Herman Benjamin, Corte Especial, julgado em 21/2/2024, DJe de 23/5/2024)..</p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> 4. Caso concreto em que o executado, ora agravante, não fez prova de que a quantia bloqueada era reserva para garantir o mínimo existencial.</p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> IV. Dispositivo e tese </p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> 5. Agravo de instrumento conhecido e desprovido.</p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> Tese de julgamento : “Não se admite exceção de pré-executividade para análise de questões que demandam dilação probatória, na forma da Súmula 393/STJ”.</p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> _________</p><p class="EmentadoAcf3rde3o" style="text-align: justify; line-height: 200%;"> Dispositivo relevante citado : n/a</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Jurisprudência relevante citada : STJ, Súmula 393; e REsp n. 1.660.671/RS, relator Ministro Herman Benjamin, Corte Especial, julgado em 21/2/2024, DJe de 23/5/2024 .</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: 380.65pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> ACÓRDÃO </p><p class="EmentadoAcrdo" style="text-align: justify; text-indent: 42.55pt; line-height: 200%;"> Acordam os integrantes da 3ª Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer do agravo de instrumento, mas para negar a ele provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify;

Processo	3004547-53.2024.8.06.0000
	text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-indent: 42.55pt; line-height: 200%;"> Fortaleza, data indicada pelo sistema.</p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> RELATOR </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br /> </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: center 216.0pt right 432.0pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p class="MsoNormal" style="margin-bottom: 2.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> Tem-se agravo de instrumento interposto por DANIEL MACIEL DE MELO PEIXOTO em desfavor de decisão proferida pelo Juiz de Direito da 1ª Vara Cível da Comarca de Icó/CE, rejeitando exceção de pré-executividade apresentada pelo ora agravante na execução fiscal em trâmite sob o n.º 0048398-98.2016.8.06.0090.</p><p class="MsoNormal" style="margin-bottom: 2.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> O processo principal : execução fiscal para cobrança de crédito referente ao julgamento do processo de apropriação indébita Previdenciária do Tribunal de Contas do Município (TCM) sob o n° 2012.ICO.PSC.13062/2013, com inscrição na Certidão de Dívida Ativa de nº 1627505927/2016 no valor de R$ 712.793,03 (setecentos e doze mil, setecentos e noventa e três reais e três centavos (id 35652676).</p><p class="MsoNormal" style="margin-bottom: 2.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> A decisão agravada (id 14347274) : rejeitou exceção de pré-executividade ajuizada pela agravante, por impropriedade da via eleita.</p><p class="MsoNormal" style="margin-bottom: 2.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> Agravo de instrumento (id 14347276) : o agravante sustenta que o título executivo carece de fundamento legal, eis que o campo aparece vazio, sem indicação nenhuma que possa embasar a cobrança e garantir ao executado seu direito de defesa, embasado no art. 202, III, do CTN e no art. 2º, §5º, III, da LEF. Sem pedido de efeito suspensivo.</p><p class="MsoNormal" style="margin-bottom: 2.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> Contrarrazões : não apresentadas no prazo legal.</p><p class="MsoNormal" style="margin-bottom: 2.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> Desnecessária a manifestação da PGJ, na forma da Súmula 189/STJ.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> É o relatório, no essencial.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination:

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	widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> VOTO </p><p class="LO-normal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> Presentes os requisitos de admissibilidade, conheço do agravo de instrumento, com fundamento no art. 1.015, parágrafo único, do Código de Processo Civil – CPC.</p><p class="LO-normal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.5pt; line-height: 200%;"> A questão em discussão é o cabimento de exceção de pré-executividade para tratar de matéria que demandaria dilação probatória.</p><p class="LO-normal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.5pt; line-height: 200%;"> O agravante argumenta que a CDA carece de fundamento legal, eis que o campo aparece vazio, sem indicação nenhuma que possa embasar a cobrança e garantir ao executado seu direito de defesa, embasado no art. 202, III, do CTN e no art. 2º, §5º, III, da LEF. Na decisão agravada, contudo, o Juiz da causa concluiu o seguinte (ID 90309010):</p><p class="LO-normal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> Observo que o ente requerente ingressou com ação de execução fiscal contra o requerido, alegando que este possui débitos oriundos de multa imposta pelo Tribunal de Contas do Município, juntando CDA (ID 57390118) e acórdão (ID 57390119). </p><p class="LO-normal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> Dessa forma, entendo que o Município prejudicado apresentou CDA com fundamento legal na multa aplicada por Tribunal de Contas em razão de danos causados ao erário municipal, motivo pelo qual não há nulidade na dívida cobrada. </p><p class="LO-normal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> Na sequência, verifico que o excipiente pugnou pelo desbloqueio dos valores bloqueados via SISBAJUD, considerando a impenhorabilidade dos valores até o limite de 40 salários mínimos. </p><p class="LO-normal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> Entretanto, embora o excipiente tenha acostado documentos nos autos, é necessária a análise documental para eventual acolhimento das teses suscitadas, que sequer cuidam de questões de ordem pública . (...) </p><p class="LO-normal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> Ante o exposto, com fulcro nas motivações supra e normas atinentes à espécie, REJEITO a exceção de pré-executividade interposta, por impropriedade da via eleita. </p><p class="LO-normal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.5pt; line-height: 200%;"> Examinando-se os autos, efetivamente se percebe que a petição inicial indica que o crédito é decorrente de multa imposta em acórdão do TCM que julgou apropriação indébita previdenciária, anexando tanto a CDA (ID:57390118) quanto a cópia do referido acórdão do Tribunal de Contas dos Municípios (IDs:57390119 a 57391934), de modo a atender aos requisitos do art. 202, III, do CTN e a concretizar as garantias de contraditório e ampla defesa.</p><p class="LO-normal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.5pt; line-height: 200%;">Quanto ao pedido de desbloqueio de valores, quantia inferior a 40 salários-mínimos, a Corte Especial do STJ, sobre a questão, firmou a seguinte e recente orientação:&#160;</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height:

Processo	3004547-53.2024.8.06.0000
	150%;"> PROCESSUAL CIVIL. BLOQUEIO DE DINHEIRO VIA BACEN JUD. DINHEIRO DISPONÍVEL EM CONTA-CORRENTE, NÃO EM CADERNETA DE POUPANÇA. IMPENHORABILIDADE ABSOLUTA. ART. 833, X, DO CPC (ANTIGO ART. 649, X, DO CPC/1973). NORMA RESTRITIVA. INTERPRETAÇÃO AMPLIATIVA. IMPOSSIBILIDADE. PRESTÍGIO À JURISPRUDÊNCIA FIRMADA NESSE SENTIDO. AUSÊNCIA DE JUSTIFICATIVA EXCEPCIONAL OU RELEVANTES RAZÕES PARA ALTERAÇÃO. DEVER DOS TRIBUNAIS SUPERIORES DE MANTER SUAS ORIENTAÇÕES ESTÁVEIS, ÍNTEGRAS E COERENTES. DELIMITAÇÃO DA CONTROVÉRSIA</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 1. A controvérsia cinge-se ao enquadramento das importâncias depositadas em conta-corrente até 40 (quarenta) salários mínimos na impenhorabilidade prevista no art. 649, X, do CPC/1973, atual art. 833, X, do CPC/2015.</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 2. O Tribunal de origem reformou a decisão de primeiro grau para considerar impenhorável o valor de R$ 15.088,97 depositado em conta-corrente do executado, pois tal garantia "pode ser estendida a outras formas de reserva financeira além da poupança" (fl. 127, e-STJ). JURISPRUDÊNCIA DO STJ A RESPEITO DA QUESTÃO CONTROVERTIDA</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 3. A orientação cediça do STJ, desde a introdução do instituto no Código de Processo Civil de 1973, sempre foi no sentido de que a disposição contida no art. 649, X, do CPC/1973 - atual art. 833, X, do CPC/2015 - era limitada aos valores depositados em caderneta de poupança, consoante dicção expressa da lei. Por todos: "O art. 649, X, do CPC, não admite intepretação extensiva, de modo a abarcar outras modalidades de aplicação financeira, de maior risco e rentabilidade, que não detêm o caráter alimentício da caderneta de poupança" (REsp 1.330.567/RS, Rel. Ministra Nancy Andrighi, DJe 27.5.2013). No mesmo sentido: AgRg no REsp 1.371.567/SP, Rel. Ministro Antonio Carlos Ferreira, Quarta Turma, DJe 12.6.2013; AgRg no AREsp 385.316/RJ, Rel. Ministro João Otávio de Noronha, Terceira Turma, DJe 14.4.2014; AgRg no AREsp 511.240/AL, Rel. Ministro Benedito Gonçalves, Primeira Turma, DJe 30.3.2015; AgInt no AgInt no AREsp 886.532/SP, Rel. Ministro Raul Araújo, Quarta Turma, DJe 14.6.2017.</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> (...)</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 11. Em segundo lugar, tem-se como claro e incontroverso, pela leitura dos dois votos até aqui apresentados, que a redação literal do Código de Processo Civil (tanto o de 1973 - art. 649, X - como o atual - art. 833, X) sempre especificou que é absolutamente impenhorável a quantia de até quarenta (40) salários-mínimos aplicada apenas em caderneta de poupança.</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 12. Sucede que não é despropositado observar que realmente houve alteração na realidade fática relativamente às aplicações financeiras.</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> (...)</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 19. Dito de outro modo, o que se tem por razoável é considerar, na melhor das hipóteses, que a norma sobre a impenhorabilidade deve ser interpretada, à luz da CF/1988, sob a perspectiva de preservar direitos fundamentais, sem que isso autorize, entretanto, a adoção de interpretação ampliativa em relação a normas editadas com finalidade eminentemente restritiva (já que a impenhorabilidade, como se sabe, constitui exceção ao princípio da responsabilidade patrimonial), pois, em tal contexto, não haveria interpretação buscando compatibilizar normas jurídicas, mas construção de um ordenamento jurídico sustentado por sistema hermenêutico autofágico, em que uma norma aniquilaria o espírito e a razão de existir de outra.</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> (...)</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 21. Como base no acima exposto, à luz do princípio da proporcionalidade e da razoabilidade, é absolutamente inadequado formar-se posicionamento jurisprudencial que

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	consubstancie orientação no sentido de que toda aplicação de até quarenta 40 (quarenta), em qualquer tipo de aplicação bancária ou financeira, estará sempre enquadrada na hipótese do art. 833, X, do CPC. </p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 22. A partir do raciocínio acima, a melhor interpretação e aplicação da norma é aquela que respeita as seguintes premissas:</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> a) é irrelevante o nome dado à aplicação financeira, mas é essencial que o investimento possua características e objetivo similares ao da utilização da poupança (isto é, reserva contínua e duradoura de numerário até quarenta salários-mínimos, destinada a conferir proteção individual ou familiar em caso de emergência ou imprevisto grave) - o que não ocorre, por exemplo, com aplicações especulativas e de alto risco financeiro (como recursos em bitcoin, etc.);</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> b) não possui as características acima o dinheiro referente às sobras que remanescem, no final do mês, em conta-corrente tradicional ou remunerada (a qual se destina, justamente, a fazer frente às mais diversas operações financeiras de natureza diária, eventual ou frequente, mas jamais a constituir reserva financeira para proteção contra adversidades futuras e incertas);</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> c) importante ressalvar que a circunstância descrita no item anterior, por si só, não conduz automaticamente ao entendimento de que o valor mantido em conta-corrente será sempre penhorável. Com efeito, deve subsistir a orientação jurisprudencial de que o devedor poderá solicitar a anulação da medida constritiva, desde que comprove que o dinheiro percebido no mês de ingresso do numerário possui natureza absolutamente impenhorável (por exemplo, conta usada para receber o salário, ou verba de natureza salarial);</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> d) para os fins da impenhorabilidade descrita na hipótese "a", acima, ressalvada a hipótese de aplicação em caderneta de poupança (em torno da qual há presunção absoluta de impenhorabilidade), é ônus da parte devedora produzir prova concreta de que a aplicação similar à poupança constitui reserva de patrimônio destinado a assegurar o mínimo existencial ou a proteger o indivíduo ou seu núcleo familiar contra adversidades. </p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> SÍNTESE DA TESE OBJETIVA AQUI APRESENTADA</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 23. A garantia da impenhorabilidade é aplicável automaticamente, no patamar de até 40 (quarenta), ao valor depositado exclusivamente em caderneta de poupança. Se a medida de bloqueio/penhora judicial, por meio físico ou eletrônico (Bacenjud), atingir dinheiro mantido em conta-corrente ou quaisquer outras aplicações financeiras, poderá eventualmente a garantia da impenhorabilidade ser estendida a tal investimento - respeitado o teto de quarenta salários-mínimos -, desde que comprovado, pela parte processual atingida pelo ato constritivo, que o referido montante constitui reserva de patrimônio destinada a assegurar o mínimo existencial.</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> HIPÓTESE DOS AUTOS</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 24. No caso concreto, conforme descrito pela parte recorrida, a penhora incidiu sobre numerário em conta-corrente, constituindo-se, em tese, verba perfeitamente penhorável. </p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 25. Superada a exegese adotada na Corte regional, devem os autos retornar para que esta, em respeito ao princípio da não supressão de instância, prossiga no julgamento do Agravo de Instrumento, no que concerne aos demais argumentos veiculados pela parte contrária, isto é, de liberação da penhora em razão de: a) o débito se encontrar parcelado (importante identificar se eventual parcelamento foi concedido antes ou depois da medida constritiva); e b) necessidade de utilização dos valores para sobrevivência da parte devedora.</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> <span style="font-family: &quot;Arial&quot;,sans-

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	serif;">26. Recurso Especial provido.</p><p class="Textbodyindent" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 36.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> (REsp n. 1.677.144/RS, relator Ministro Herman Benjamin, Corte Especial, julgado em 21/2/2024, DJe de 23/5/2024.)</p><p class="Textbodyindent" style="text-align: justify; text-indent: 42.55pt; line-height: 200%;"> No caso concreto, o valor foi bloqueado em conta-corrente e a parte agravante juntou apenas procuração, documentos de identificação, extratos (IDs: 86033994 e 86033995) e contracheque (ID:86033998), prova insuficiente para demonstrar que o montante bloqueado seria reserva para fins de garantir o mínimo existencial. Logo, não se vislumbra inequívoca demonstração acerca da impenhorabilidade, tal como exigido em exceção de pré-executividade, nos termos da Súmula n.º 393 do STJ. A seguir:</p><p class="LO-normal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> A exceção de pré-executividade&#160;é admissível na execução fiscal relativamente às matérias conhecíveis de ofício que não demandem dilação probatória. (Súmula 393/STJ) </p><p class="LO-normal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 200%;"> Estabelecidas essas premissas, verificando a insuficiência das provas coligidas aos autos para demonstrar a alegada impenhorabilidade, impõe-se a manutenção da decisão recorrida.</p><p class="LO-normal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> Isso posto, conheço do agravo de instrumento, mas para negar a ele provimento, mantendo inalterada a decisão agravada.</p><p class="LO-normal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 200%;"> É o voto que submeto à consideração de meus pares.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema. &#160;</p><p> <br style="mso-special-character: line-break;" /> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	4
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adesão a Programa de Parcelamento de Débito
Polo ativo	MUNICIPIO DE LIMOEIRO DO NORTE
Advogado(s) - Polo ativo	PIERRE OLIVEIRA BELMINO - (CE45055-A)
Polo passivo	MARIA DO SOCORRO ARAUJO DA SILVA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3lPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	style="text-align: justify;"> 1.Execução fiscal&#160;para cobrança de valor correspondente a&#160;1.890,98 (MIL OITOCENTOS E NOVE, E NOVENTA E OITO REAIS).</p><p class="MsoNormal" style="text-align: justify;"> 2. Apelação de sentença&#160;que julgou extinta a execução fiscal por falta de interesse de agir, em razão do baixo valor do crédito executado, uma vez que não houve a tentativa de conciliação ou solução administrativa para a satisfação do crédito, além do protesto da dívida.</p><p class="MsoNormal" style="text-align: justify;"> 3. O apelante alega que peticionou requerendo a suspensão do processo para a adoção dessas providências.</p><p class="MsoNormal" style="text-align: justify;"> II. Questão em discussão.</p><p class="MsoNormal" style="text-align: justify;"> 4. A questão em discussão permeia a aplicabilidade do tema 1184 do STF e da Resolução nº 547/2024 do CNJ ao caso.</p><p class="MsoNormal" style="text-align: justify;"> III. Razões de decidir</p><p class="MsoNormal" style="text-align: justify;"> 5. O STF, no tema 1184, fixou a tese de que é legítima a extinção de execução fiscal de baixo valor, por falta de interesse de agir, respeitada a competência constitucional de cada ente federativo, estabelecendo, ademais, que só há interesse de agir para o ajuizamento de execuções fiscais consideradas de baixo valor se precedidas de tentativa de conciliação ou solução administrativa para satisfação do crédito, além do prévio protesto da dívida. No caso de execuções fiscais em trâmite quando da fixação da tese, facultou-se ao exequente requerer a suspensão do processo para a adoção dessas medidas.</p><p class="MsoNormal" style="text-align: justify;"> 6. A Resolução nº 547/2024 do CNJ disciplina os critérios para extinção da execução fiscal em razão do baixo valor, à luz do tema 1184 do STF, tratando-se de um ato normativo capaz de inovar na ordem jurídica sem incorrer em inconstitucionalidade formal ou material, por força do art. 103-B, parágrafo 4º, II, da C.F/88, e do art. 37, caput, da C.F/88, respectivamente.</p><p class="MsoNormal" style="text-align: justify;"> 7. O art. 1º , parágrafo 1º, da Resolução nº 547/2024 fixa a quantia inferior a R$ 10.000,00 (dez mil reais) na data do ajuizamento da execução como definição de baixo valor.</p><p class="MsoNormal" style="text-align: justify;"> 8. No caso, a execução fiscal se encaixa na definição de baixo valor, e foi realizado pelo apelante, na instância de origem, pedido de suspensão do processo para adoção das medidas extrajudiciais de cobrança.</p><p class="MsoNormal" style="text-align: justify;"> 9. Sentença que cometeu vício de procedimento ao não analisar o pedido de suspensão, o qual constitui direito subjetivo processual amparado pelo item 3 da tese fixada no tema 1184 do STF.</p><p class="MsoNormal" style="text-align: justify;"> IV. Dispositivo.</p><p class="MsoNormal" style="text-align: justify;"> 10. Sentença anulada. Apelação&#160;provida.</p><p class="MsoNormal" style="text-align: justify;"> ______</p><p class="MsoNormal" style="text-align: justify;"> Dispositivos relevantes citados:&#160;Constituição Federal:&#160;art. 37,&#160;caput, e art. 103-B, parágrafo 4º, II;&#160;Resolução nº 547/2024 do CNJ:&#160;Art. 1º, parágrafo 1º, art. 2º e art. 3º. Art. 34 da Lei nº 6.830/80.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: justify;"> Jurisprudência relevante citada: Súmula 189 do STJ; Tema 1184 do STF, ADC 12 MC.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: 380.65pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center">

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	   ACÓRDÃO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema.</p><p style="text-align: center;" align="center"> RELATÓRIO </p><p style="text-align: center;" align="center"> &#160;</p><p> &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;&#160;</p><p class="MsoNormal" style="text-align:justify;line-height:150%">&#160; &#160; &#160; &#160; &#160;&#160;Trata-se de apelação cível interposta contra sentença proferida pelo juízo da 1ª Vara Cível da Comarca de Limoeiro Norte, que declarou extinta a execução fiscal, por considerar que o baixo valor do débito executado não justifica o acionamento do Poder Judiciário para cobrá-lo.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;">&#160; &#160; &#160; &#160; &#160; &#160;&#160; Petição inicial (ID nº 15595334): o Município de&#160;Limoeiro do Norte promove execução fiscal em face de Maria do Socorro Araújo da Silva&#160;para a cobrança de&#160;crédito&#160;de valor de 1.890,98 (MIL OITOCENTOS E NOVE, E NOVENTA E OITO REAIS), materializado na CDA nº 236/2023 (ID nº 1559536).</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; Sentença (ID nº 15595393) : declarou extinta a execução fiscal, por falta de interesse de agir,&#160;considerando que o baixo valor do crédito cobrado se adequa as teses fixadas no tema 1189 do STF, regulamentado pela Resolução nº 547/2024 do CNJ, no sentido de que o apelante não utilizou meios extrajudiciais de cobrança do crédito, antes de acionar o Poder Judiciário.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; &#160; &#160;Apelação (ID nº15595399):&#160; Aduz&#160;que a sentença incorreu em vício de procedimento ao extinguir a execução fiscal antes de atender ao pedido de suspensão constante no ID nº 15595391, para que fosse atendido ao item 3 das teses fixadas no tema 1189 do STF.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; &#160; &#160;&#160; Contrarrazões (ID nº 15595404): Sustenta o acerto da sentença, por ser aplicável ao caso as teses fixadas no tema 1189 do STF, disciplinado pela Resolução nº 547/2024 do STJ, considerando o baixo valor do crédito executado e ausência de cobrança extrajudicial desse crédito.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Remetidos os autos, esses foram conclusos após regular distribuição por sorteio.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; &#160; Feito que dispensa a manifestação da PGJ, conforme assentado na Súmula nº 189 do STJ:"É desnecessária a intervenção do Ministério Público nas execuções fiscais". &#160;</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#16

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	0;É o relatório, no essencial.</p><p class="MsoNormal" style="text-align: center;" align="center"> VOTO </p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;É cabível o&#160;presente apelo, pois o valor de&#160;1.890,98 (MIL OITOCENTOS E NOVE, E NOVENTA E OITO REAIS),&#160;apurado na data da distribuição da execução fiscal, em 7 de dezembro de 2023, é maior do que o valor de 1.320,10 (MIL TREZENTOS E VINTE REAIS, E DEZ CENTAVOS), o qual corresponde a 50 ORTN´s na data referida.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; &#160; &#160; &#160; &#160; Portanto, superado o valor de alçada previsto no art. 34 da Lei nº 6.830/80.</p><p class="MsoNormal" style="margin-left: 141.6pt; text-align: justify; line-height: 150%;"> Art.&#160;34- Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; &#160; &#160; &#160; &#160; &#160;Presentes os&#160;demais&#160;requisitos de admissibilidade do apelo, passo a examinar o mérito recursal, o qual&#160;permeia&#160;a análise da presença de interesse de agir para a cobrança de crédito considerado de baixo valor, por meio de execução fiscal.</p><p class="MsoNormal" style="text-align: justify; text-indent: 35.4pt; line-height: 150%;"> De partida, aplicam-se ao caso as teses fixadas no Tema 1184 do STF</p><p class="MsoNormal" style="margin-left: 70.8pt; text-align: justify; text-indent: 35.4pt; line-height: 150%;"> “1. É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado.&#160;2. O ajuizamento da execução fiscal dependerá da prévia adoção das seguintes providências: a) tentativa de conciliação ou adoção de solução administrativa; e b) protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida. 3. O trâmite de ações de execução fiscal não impede os entes federados de pedirem a suspensão do processo para a adoção das medidas previstas no item 2, devendo, nesse caso, o juiz ser comunicado do prazo para as providências cabíveis.”&#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 35.4pt; line-height: 150%;"> &#160;A Resolução nº 547/2024 do CNJ regulamentou as teses fixadas no tema 1184 do STF.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; &#160; &#160; &#160; A constitucionalidade formal dessa resolução como ato normativo primário&#160;se fundamenta no&#160;art. 103-B, parágrafo 4º, II, da C.F/88, que&#160;dá&#160;ao CNJ a atribuição de&#160;assegurar que o Poder Judiciário, no exercício da função administrativa e dentro da sua esfera de independência,&#160;garanta&#160;o cumprimento do art. 37 da C.F/88.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; &#160; &#160; &#160; Já a constitucionalidade material da resolução deriva do art.&#160;37,&#160;caput,&#160;da C.F/88,&#160;uma vez&#160;que esse ato normativo primário&#160;concretiza&#160;o princípio da eficiência&#160;voltado&#160;a racionalizar o volume de execuções fiscais cujo resultado arrecadatório praticamente não compensa a movimentação do Poder Judiciário, gerando somete custos administrativos, financeiros e operacionais e prejuízo à Administração da Justiça.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160; &#160; &#160; &#160; &#160; &#160; Colaciono os dispositivos constitucionais:</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: 150%;">&#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; Art. 37.&#160;A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá&#160;aos princípios de legalidade, impessoalidade, moralidade, publicidade&#160;e eficiência&#160;e, também, ao seguinte:&#160;</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: 150%;">

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	&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Art. 103-B. O Conselho Nacional de Justiça compõe-se de 15 (quinze) membros com mandato de 2 (dois) anos, admitida 1 (uma) recondução, sendo:&#160; &#160; &#160;&#160;</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: 150%;"> &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;§&#160; 4º Compete ao Conselho o controle da atuação administrativa e financeira do Poder Judiciário e do cumprimento dos deveres funcionais dos juízes, cabendo-lhe, além de outras atribuições que lhe forem conferidas pelo Estatuto da Magistratura:&#160;</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; II - zelar pela observância do art. 37&#160; e apreciar, de ofício ou mediante provocação, a legalidade dos atos administrativos praticados por membros ou órgãos do Poder Judiciário, podendo desconstituí-los, revê-los ou fixar prazo para que se adotem as providências necessárias ao exato cumprimento da lei, sem prejuízo da competência do Tribunal de Contas da União &#160;</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;O STF já se manifestou no de sentido de que o CNJ tem a atribuição de editar atos normativos primários com fundamento direto em normas constitucionais:</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: 150%;"> <span style="font-size: 13.0pt; line-height: 150%; font-family: &quot;Arial&quot;,sans-serif;">EMENTA: AÇÃO DECLARATÓRIA DE CONSTITUCIONALIDADE, AJUIZADA EM PROL DA RESOLUÇÃO Nº 07, de 18/10/2005, DO CONSELHO NACIONAL DE JUSTIÇA. MEDIDA CAUTELAR. Patente a legitimidade da Associação dos Magistrados do Brasil - AMB para propor ação declaratória de constitucionalidade. Primeiro, por se tratar de entidade de classe de âmbito nacional. Segundo, porque evidenciado o estreito vínculo objetivo entre as finalidades institucionais da proponente e o conteúdo do ato normativo por ela defendido (inciso IX do art. 103 da CF, com redação dada pela EC 45/04). Ação declaratória que não merece conhecimento quanto ao art. 3º da resolução, porquanto, em 06/12/05, o Conselho Nacional de Justiça editou a Resolução nº 09/05, alterando substancialmente a de nº 07/2005. A Resolução nº 07/05 do CNJ reveste-se dos atributos da generalidade (os dispositivos dela constantes veiculam normas proibitivas de ações administrativas de logo padronizadas), impessoalidade (ausência de indicação nominal ou patronímica de quem quer que seja) e abstratividade (trata-se de um modelo normativo com âmbito temporal de vigência em aberto, pois claramente vocacionado para renovar de forma contínua o liame que prende suas hipóteses de incidência aos respectivos mandamentos) .&#160;A Resolução nº 07/05 se dota, ainda, de caráter normativo primário, dado que arranca diretamente do § 4º do art. 103-B da Carta-cidadã e tem como finalidade debulhar os próprios conteúdos lógicos dos princípios constitucionais de centrada regência de toda a atividade administrativa do Estado, especialmente o da impessoalidade, o da eficiência, o da igualdade e o da moralidade.&#160;O ato normativo que se faz de objeto desta ação declaratória densifica apropriadamente os quatro citados princípios do art. 37 da Constituição Federal, razão por que não há antinomia de conteúdos na comparação dos comandos que se veiculam pelos dois modelos normativos: o constitucional e o infraconstitucional. Logo, o Conselho Nacional de Justiça fez adequado uso da competência que lhe conferiu a Carta de Outubro, após a Emenda 45/04.&#160;Noutro giro, os condicionamentos impostos pela Resolução em foco não atentam contra a liberdade de nomeação e exoneração dos cargos em comissão e funções de confiança (incisos II e V do art. 37). Isto porque a interpretação dos mencionados incisos não pode se desapegar dos princípios que se veiculam pelo caput do mesmo art. 37. Donde o juízo de que as restrições constantes do ato normativo do CNJ são, no rigor dos termos, as mesmas restrições já impostas pela Constituição de 1988, dedutíveis dos republicanos princípios da impessoalidade, da eficiência, da igualdade e da moralidade. É dizer: o que já era constitucionalmente proibido permanece com essa tipificação, porém, agora, mais expletivamente positivado. Não se trata, então, de discriminar o Poder Judiciário perante os outros dois Poderes Orgânicos do Estado, sob a equivocada proposição de que o Poder Executivo e o Poder Legislativo estariam inteiramente libertos de peias jurídicas para prover seus cargos em comissão e funções de confiança, naquelas situações em que os respectivos ocupantes não hajam ingressado na atividade estatal por meio de concurso público. O modelo normativo em exame não é

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	suscetível de ofender a pureza do princípio da separação dos Poderes e até mesmo do princípio federativo. Primeiro, pela consideração de que o CNJ não é órgão estranho ao Poder Judiciário (art. 92, CF) e não está a submeter esse Poder à autoridade de nenhum dos outros dois; segundo, porque ele, Poder Judiciário, tem uma singular compostura de âmbito nacional, perfeitamente compatibilizada com o caráter estadualizado de uma parte dele. Ademais, o art. 125 da Lei Magna defere aos Estados a competência de organizar a sua própria Justiça, mas não é menos certo que esse mesmo art. 125, caput, junge essa organização aos princípios "estabelecidos" por ela, Carta Maior, neles incluídos os constantes do art. 37, cabeça. Medida liminar deferida para, com efeito vinculante: a) emprestar interpretação conforme para incluir o termo "chefia" nos inciso II, III, IV, V do artigo 2° do ato normativo em foco b) suspender, até o exame de mérito desta ADC, o julgamento dos processos que tenham por objeto questionar a constitucionalidade da Resolução nº 07/2005, do Conselho Nacional de Justiça; c) obstar que juízes e Tribunais venham a proferir decisões que impeçam ou afastem a aplicabilidade da mesma Resolução nº 07/2005, do CNJ e d) suspender, com eficácia ex tunc, os efeitos daquelas decisões que, já proferidas, determinaram o afastamento da sobredita aplicação.</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: 150%;"> (ADC 12 MC, Relator(a): CARLOS BRITTO, Tribunal Pleno, julgado em 16-02-2006, DJ 01-09-2006 PP-00015&#160; EMENT VOL-02245-01 PP-00001 RTJ VOL-00199-02 PP-00427)</p><p class="MsoNormal" style="text-align: justify; text-indent: 35.4pt; line-height: 150%;"> Fixada&#160;a premissa da constitucionalidade&#160;da Resolução 547/2024 do CNJ, constam as seguintes previsões nos seus artigos 1º, parágrafo 1º e 5º, e artigos 2 e 3:</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> Art. 1º É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado. </p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> § 1º Deverão ser extintas as execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento, em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis. </p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> Art. 2º O ajuizamento de execução fiscal dependerá de prévia tentativa de conciliação ou adoção de solução administrativa. </p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> § 1º A tentativa de conciliação pode ser satisfeita, exemplificativamente, pela existência de lei geral de parcelamento ou oferecimento de algum tipo de vantagem na via administrativa, como redução ou extinção de juros ou multas, ou oportunidade concreta de transação na qual o executado, em tese, se enquadre.</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> § 2º A notificação do executado para pagamento antes do ajuizamento da execução fiscal configura adoção de solução administrativa.</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> § 3º Presume-se cumprido o disposto nos §§ 1º e 2º quando a providência estiver prevista em ato normativo do ente exequente.</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> Art. 3º O ajuizamento da execução fiscal dependerá, ainda, de prévio protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida. </p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> Parágrafo único. Pode ser dispensada a exigência do protesto nas seguintes hipóteses, sem prejuízo de outras, conforme análise do juiz no caso concreto:</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> I – comunicação da inscrição em dívida ativa aos órgãos que operam bancos de dados e cadastros relativos a consumidores e aos serviços de proteção ao crédito e congêneres (Lei nº 10.522/2002, art. 20-B, § 3º, I);</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> II – existência da averbação, inclusive por meio eletrônico, da certidão de dívida ativa nos órgãos de registro de bens e direitos sujeitos a arresto ou penhora (<a

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	href="https://www.planalto.gov.br/ccivil_03/leis/2002/l10522.htm" target="_blank">Lei nº 10.522/2002, art. 20-B, § 3º, II); ou</p><p class="MsoNormal" style="margin-left: 106.2pt; text-align: justify; line-height: normal;"> III – indicação, no ato de ajuizamento da execução fiscal, de bens ou direitos penhoráveis de titularidade do executado.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Pela previsão do art. 1º, parágrafo 1º, da Resolução nº 547/2024, as execuções fiscais ajuizadas cobrando crédito fiscal de valor inferior a R$ 10.000,00 (dez mil reais) devem ser extintas por falta de interesse de agir, desde que, por mais de um ano, não tenha ocorrido movimentação útil que tenha conseguido realizar a citação do executado.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; Essa previsão não se aplica ao caso em análise, uma vez que a execução fiscal foi ajuizada em 7 de dezembro de 2023 (ID nº 15595334), e a sentença foi proferida em 29 de fevereiro de 2024 (ID nº 15595393), ou seja, sequer um ano se passou entre o ajuizamento da ação e a prolação da sentença, tendo ocorrido, inclusive, a citação nesse meio tempo (ID nº 15595402), em 6 maio de 2024, ainda que posteriormente a sentença.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; Por seu turno, não há, de fato, notícia nos autos de que houve a tentativa de conciliação ou solução administrativa para cobrança do crédito, cumulada com o prévio protesto do mesmo, conforme requerem o item 2 do tema 1184 do STF e os artigos 2 e 3 da Resolução nº 547 do CNJ, para justificar o ajuizamento da execução fiscal.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; Todavia, vem ao socorro do apelante, para impedir a extinção da execução fiscal por não terem sido atendidos esses requisitos, o fato de que essas exigências surgiram com a fixação das teses do tema 1184 do STF, em 19 de dezembro de 2023.</p><p class="MsoNormal" style="text-align: justify; text-indent: 35.4pt; line-height: 150%;"> Embora essas teses devam ser aplicadas retroativamente, uma vez que não houve modulação dos efeitos da decisão que as fixou, as execuções fiscais ajuizadas anteriormente a essa data, por imperativo lógico, não tinham como obedecer a exigências que até então não existiam.</p><p class="MsoNormal" style="text-align: justify; text-indent: 35.4pt; line-height: 150%;"> Dessa forma, passa-se ao item 3 das teses fixadas no tema 1184, que estatui expressamente que pode ser requerida a suspensão da execução fiscal para adoção das medidas de tentativa de conciliação ou solução administrativa, além do prévio protesto, antes de proceder-se a extinção da execução fiscal por falta de interesse de agir em razão do baixo valor do crédito executado.</p><p class="MsoNormal" style="text-align: justify; text-indent: 35.4pt; line-height: 150%;"> Valendo-se desse item 3, foi requerida a suspensão do processo na petição de ID nº 15595391, não tendo havido manifestação do juízo sentenciante acerca desse pedido, o que significa vício de procedimento, já que o deferimento da suspensão, nos moldes delineados, é direito subjetivo processual fixado por meio do tema 1184 do STF.</p><p class="MsoNormal" style="text-align: justify; text-indent: 35.4pt; line-height: 150%;"> &#160;Portanto, merece provimento o apelo, para a anulação da sentença, determinando-se o prosseguimento do feito com a apreciação da petição de ID nº 15595391.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;É o voto que submeto à consideração de meus pares.</p><p style="margin: 0cm; text-align: center;" align="center">&#160;</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Fortaleza, data informada pelo sistema.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br /> </p><p class="MsoNormal" style="text-

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	align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	5
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Prestação de Serviços
Polo ativo	MUNICIPIO DE QUIXADA
Advogado(s) - Polo ativo	MAIKON CAVALCANTE CHAVES - (CE44665-A)
Polo passivo	SINDICATO DOS SERVIDORES PUBLICOS MUNICIPAIS DE QUIXADA, IBARETAMA, BANABUIU, CHORO E IBICUITINGA
Advogado(s) - Polo passivo	DEODATO JOSE RAMALHO NETO - (CE15895-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	2tra8ee/PPW9cu5MfFJ22uMt1OYscqQgE0i1KWNCJJhZQxQapkY7bBpiphaR8FyhHP9kNP06UynFZgbQKyv4lQWxLFIaUf2FU6WnOjuk8x0pUjNngnQtlNay2YK1lhKIzE58PHn+Uurs8+fDrU3147V1NWhksXwZmTni/+t04vgJ69bW5rsdpM2h4aHy2Wezyj2DfaWmIQ4Xv2BOnSw2YG6QENalaeGbTENsStPDfEZz7PLudwCCd2BVjByWUMDiCqLCmdmc34wRYr8b881eQ/DsM8NHiaoEjDbDeQs+t5WES4z/89bW1qrZX2aVx8aOlTU01KGjveXu6OioNUfc/xpRqJ3X2ta8h3lz4WBH09PTZ08H0G5plrOqBxwTA/GeBYGx3kBCM0ds9P2VZn7VmhC7xVqTvAvRhwoR0r0Pq2NUMZc5AvuDFpnfCFQQWYj9Jiwz5oVTrA9YrBrm7G946tKlhIbmxqcH21pRU1u1h5GNI+Z/n6anp53rG2oH+w/1obGh9t6Th/dbaNG8irrKa7rBdlTRkN95b2efQLG7bgYAm6niIT8yb4jEzMwPHZd/vtmhUur98n3T1zXNJG7mb5pjqS0ftCLskVuef2326Yu8p0+etNCa1/v6e1BZXTl49epVZ45Y/14iQO8O9fXJlpeXXG8k/2xpabo4+/MDlZ+mZwLKm2quKHjo410XEtR1G+ZRlfMWA5SJvGSe2/YYIudY40R4T+7El3HUXzIvuDIaZIAxmvfixkonQci66yKnpvDK9N3pAHIJle7uzosEDmWlxdfa2tpkGRk44vx1dO/e7LKuri7DurraUTKVH7u629sf3r6nPjU1lRGwN+awfIgJ3janiEsVD/NqJfM855MYJXyZuAsfRythCdWXjOmyG1gy7bm22yAXaMic9R2evDyZ8XDmoXpvZ1tNbU3ldGVlyWhzc53hvXv3lnGW/79Lvb3dvgf2Zfa0HWxGe1d7NO2w3ejoiK9VoNNN5h0WLg8edvKez1QnTLHAMMc3mc7lSycZWPjZ3RwZ7GcioV17V0d0c3MTjhw5jIHBviTOMv9viZx9xfj4WPOh4UMoKi16MTFxsXj24S9u3QN9ZxRc9Z4uMucmk6TgweQyhgnk23Y7IOWs9bSpo/nM859/drs8MVFcSPf2DfVjYKC3+Zdnz9Q40//PIAK5+ObNqW1dvV3flpUVo6GxYfrx9AP5mxcnvaMOpNxf5yEPLncetkbfM+dDcEbMz1fPX/Z+PP2TXPPBpinyMbR1dXx7ceriNmYuzrT/M+nYsWPq+QW5VTU11Th39nQNmZ5DbE5S8Zc6AvhqtyBKWFUP6TePSxfP1TDvx7V3tD0dONT71/7r6l9BVTWV4e3tbSgoyKsmQGu7OrtedLa1vaDvPjX1NU3Uh6KhoT6e/pbh3PK/j65enQwZIr8qKS1pJyBRDFeVF1ZTcML4+HgIZ9j/brp//6fAgcF+akKLK9taWRXDw0OU9GcCOZf//6CpqSthpWVFyMvPweTk5f8/NPd7SklLCz956iQFSazm/PQXExfX/wGXuTX16scS8AAAAABJRU5ErkJggg==" alt="" /></p><p style="margin: 0cm; text-align: center;" align="center"> ESTADO DO CEARÁ </p><p style="margin: 0cm; text-align: center;" align="center"> PODER JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;" align="center"> TRIBUNAL DE JUSTIÇA </p><p style="margin: 0cm; text-align: center;" align="center"> GABINETE DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO </p><p style="text-align: center;" align="center"> &#160;</p><p style="text-align: left;">&#160;</p><p style="text-align: left;"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> Processo: &#160;0050350-50.2021.8.06.0151 </p><p style="text-align: left;"> [Prestação de Serviços] </p><p style="text-align: left;"> APELAÇÃO CÍVEL </p><p style="text-align: left;"> Recorrente:&#160; MUNICIPIO DE QUIXADA</p><p style="text-align: left;"> Recorrido:&#160; SINDICATO DOS SERVIDORES PUBLICOS MUNICIPAIS DE QUIXADA, IBARETAMA, BANABUIU, CHORO E IBICUITINGA</p><p style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;

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	direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ementa : Previdenciário. Apelação. Base de cálculo do desconto da contribuição previdenciária. &#160; Periculosidade. Incidência. Caráter remuneratório reconhecido pelo STJ . Desempenho. Não incidência . C aráter indenizatório e temporário. Apelo conhecido e parcialmente provido.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I . Caso em exame &#160; &#160; </p></div><div

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	class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Apelação interposta pelo M unicípio de Quixadá , que busca a reforma d a sentença que determinou a inclusão na base de cálculo dos descontos previdenciári o s , d os valores que são pagos a título de gratificação por desempenho e por periculosidade .&#160; &#160; <span class="EOP SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text; font-size: 12pt; line-height: 20.7px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II . Questão em discussão &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. O apelante sustenta que age com respaldo da ordem jurídica , pois há expressa previsão em norma municipal que exclui tais gratificações d a base de cálculo. <span class="NormalTextRun SCXW90121357 BCX0" style="-webkit-

Processo	0050350-50.2021.8.06.0151
	user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Desse modo, propugna pela reforma da sentença e que não seja compelido a inclusão na base de cálculo das mencionad a s contribuições .&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III . Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Conforme entendimento do Superior Tribunal de Justiça , a gratificação por periculosidade tem caráter remuneratório, razão pela

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	qual deve ser incluíd a na base de cálculo da contribuição previdenciária. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Entretanto , no que tange à gratificação por desempenho, esta possui caráter propter laborem e não é <span class="NormalTextRun SCXW90121357 BCX0" style="-

Processo	0050350-50.2021.8.06.0151
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">incorporável aos proventos de aposentadoria, logo, não deve ser incluída na base de cálculo. &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV . Dispositivo&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelo conhecido e parcialmente provido. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; <span class="EOP SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 13pt; line-height: 31.5px; font-family: Arial,

Processo	0050350-50.2021.8.06.0151
	Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; &#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ACÓRDÃO &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas <span class="NormalTextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text;">julgadoras, à unanimidade, em conhecer do recurso, para dar parcial provimento ao recurso do ente m unicipal , tudo nos termos do voto do relator, parte integrante deste&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Fortaleza, data informada pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATOR <span class="EOP SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

Processo	0050350-50.2021.8.06.0151
	text; font-size: 13pt; line-height: 31.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Tem-se apelação interposta pelo Município de Quixadá , em face da sentença proferida pelo juízo da 2ª Vara Cível da Comarca de Quixadá , que julgou procedente o pedido formulado <span

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	class="NormalTextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">pelo Sindicato dos Servidores Públicos Municipais de Quixadá, Iba retama, Banabuiu , Choro e Ibicutinga para que o município procedesse ao desconto das verbas previdenciárias levando em conta as gratificações que os servidores recebem . &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Petição Inicial (ID 14931808) : O sindicato ajuizou a presente demanda devido à conduta da Prefeitura de Quixadá <span class="NormalTextRun

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	SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">, que deixou de proceder ao desconto previdenciário sob as verbas de gratificação que os servidores recebem . Com a ausência do desconto , e consequente redução da base de cálculo , o sindicato alega que os servidores poderão enfrentar problemas em relação a o valor de suas futura s aposentadoria s . &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Sentença (<span class="NormalTextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0050350-50.2021.8.06.0151
	padding: 0px; user-select: text;">ID 14932022) : Julgou procedente o pleito afirmando que a jurisprudência determina que essas verbas sejam incorporadas à base de cálculo para fins previdenciários. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Apelação (ID 14932026): Argumenta que as contribuições possuem caráter <span class="NormalTextRun SpellingErrorV2Themed SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0050350-50.2021.8.06.0151
	padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">propter laborem e que, em virtude de tal característica , cessa m com o término d as circunstâncias que justificam o seu pagamento . Dessa forma, como tais contribuições não são incorporáveis no momento da aposentadoria, não devem compor a base de cálculo do desconto previdenciári o .&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Parecer ministerial (ID <span class="TextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 13pt; line-height: 31.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> 15628158) : Ministério Público manifestou-se pelo conhecimento do recurso, mas não teceu análise meritória .&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Vieram-me os autos conclusos. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> É o relatório no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; <span class="EOP SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 13pt; line-height: 22.6625px; font-family: Arial, Arial_EmbeddedFont,

Processo	0050350-50.2021.8.06.0151
	Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> No que se refere ao juízo de admissibilidade, analisando os pressupostos processuais recursais necessários, tenho que os requisitos intrínsecos (cabimento, interesse e legitimidade, inexistência de súmula impeditiva) e extrínsecos (tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também, os específicos, descritos no art. 1.010 do CPC motivo pelo qual conheço do apelo.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Já em relação ao mérito, o apelo comporta parcial provimento.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text;

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	overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> O sindicato almeja que o Município de Quixadá inclua , na base de cálculo para fins de incidência do desconto previdenciário , as parcelas que são pagas a título de gratificações, quais sejam: periculosidade e desempenho . O município deixou de incluir tais parcelas na base do desconto previdenciário , tanto em relação aos agentes de trânsito quanto a os g uardas m unicipais. O sindicato afirma que tal <span class="NormalTextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text;">conduta pode se r prejudicial aos servidores no momento da concessão d e suas aposentadoria s .&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Assim , a controvérsia do apelo refere -se à inclusão das gratificações mencionadas na base de cálculo , e à análise de sua obrigatoriedade.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Em relação ao adicional de periculosidade, convém ressaltar , desde já , a existência do Tema Repetitivo 689 do Superior Tribunal de Justiça , que afirma que: “ O adicional de periculosidade constitui verba de natureza remuneratória, razão pela qual se sujeita à incidência de contribuição previdenciária ” . P ortanto , a referida gratificação deve ser incluída na base de cálculo da contribuição previdenciária.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Já em relação à gratificação de desempenho, el <span

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	class="NormalTextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">a poss ui caráter propter laborem . Vejamos o conceito exposto por Marçal Justen Filho sobre tal gratificação: &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Como ensinou Hely Lopes Meirelles:&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> O que caracteriza o adicional e o distingue da gratificação é o ser aquele uma recompensa ao tempo de serviço do servidor, ou uma retribuição pelo desempenho de funções especiais

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	que refogem da rotina burocrática, e esta, uma compensação por serviços comuns executados em condições anormais para servidor, ou uma ajuda pessoal em face de certas situações que agravam orçamento do servidor &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Aprofundando a distinção, pode-se afirmar que a gratificação é uma vantagem relacionada a circunstâncias subjetivas do servidor, enquanto o adicional se vincula a circunstâncias objetivas. Para permitir a melhor compreensão, pode-se afirmar que dois servidores que desempenhem um mesmo cargo farão jus a adicionais idênticos. Já as gratificações serão concedidas em vista das características individuais de cada servidor. No entanto, é evidente que tais gratificações se sujeitam ao princípio da isonomia, de modo a que dois servidores que apresentem idênticas circunstâncias subjetivas farão jus a benefícios iguais. (Filho, Marçal Justen . Curso de Direito Administrativo. Atlas, São Paulo, 2024, p. 608) &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;">

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	 C omo é cediço, somente serão passíveis de incorporação aos proventos de aposentadoria aquelas gratificações concedidas de forma geral pela administração, sem que nelas se observem quaisquer critérios propter laborem .&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Assim, cumpre analisar com mais atenção a natureza jurídica da gratificaç ão de desempenho que fo i excluída pelo Município da base de cálculo .&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-

Processo	0050350-50.2021.8.06.0151
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> As gratificações propter laborem , como o próprio nome indica , são aquelas recebidas pelos servidores públicos enquanto estiverem prestando o serviço que as enseja . S ão gratificações em função do efetivo exercício das atribuições do cargo, somente tendo fundamento o seu recebimento enquanto o servidor encontrar-se em efetivo exercício do cargo. Cessado o vínculo de trabalho, com a consequente cessação do exercício das atribuições, não existe fundamento para o pagamento da gratificação que detenha natureza propter laborem , razão pela qual elas não <span class="NormalTextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text;">se incorporare m aos proventos de aposentadoria do servidor, nem podem integrar a base de cálculo dos descontos previdenciários. &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Ademais, tendo em vista o caráter transitório da gratificação, uma vez cessada a condição especial que fundamentava o seu recebimento, não mais se mostra possível o pagamento pela administração pública. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> A temática já foi alvo de apreciação pelo Supremo Tribunal Federal e ensejou a confecção do Tema 163, cuja ementa possui o seguinte teor: &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> <span class="TextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 13pt; line-height: 31.5px; font-family: Arial,

Processo	0050350-50.2021.8.06.0151
	Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Direito previdenciário. Recurso Extraordinário com repercussão geral. Regime próprio dos Servidores públicos. Não incidência de contribuições previdenciárias sobre parcelas não incorporáveis à aposentadoria . 1. O regime previdenciário próprio, aplicável aos servidores públicos, rege-se pelas normas expressas do art. 40 da Constituição, e por dois vetores sistêmicos: (a) o caráter contributivo; e (b) o princípio da solidariedade. 2. A leitura dos §§ 3º e 12 do art. 40, c/c o § 11 do art. 201 da CF, deixa claro que somente devem figurar como base de cálculo da contribuição previdenciária as remunerações/ganhos habituais que tenham “repercussão em benefícios”. Como consequência, ficam excluídas as verbas que não se incorporam à aposentadoria. 3. Ademais, a dimensão contributiva do sistema é incompatível com a cobrança de contribuição previdenciária sem que se confira ao segurado qualquer benefício, efetivo ou potencial. 4. Por fim, não é possível invocar o princípio da solidariedade para inovar no tocante à regra que estabelece a base econômica do tributo. 5. À luz das premissas estabelecidas, é fixada em repercussão geral a seguinte tese: “Não incide contribuição previdenciária sobre verba não incorporável aos proventos de aposentadoria do servidor público, tais como ‘terço de férias’, ‘serviços extraordinários’, ‘adicional noturno’ e ‘adicional de insalubridade.” 6. Provimento parcial do recurso extraordinário, para determinar a restituição das parcelas não prescritas. (STF - RE: 593068 SC, Relator: ROBERTO BARROSO, Data de Julgamento: 11/10/2018, Tribunal Pleno, Data de Publicação: 22/03/2019) &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px

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	10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Um trecho do voto do Ministro Luís Roberto Barroso merece destaque, vejamos: &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dois fundamentos principais têm sido invocados para dar suporte à orientação dominante no STF, acerca da não incidência de contribuição previdenciária sobre verbas não incorporáveis aos proventos de aposentadoria do servidor público: (i) a natureza indenizatória destas parcelas não se amoldaria ao conceito de remuneração, base econômica da contribuição previdenciária dos servidores; (ii) a incidência de contribuição previdenciária sobre parcelas não incorporáveis aos proventos dos servidores desconsideraria a dimensão contributiva do regime próprio de previdência. (fls. 8 e 9) &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> A decisão do Supremo Tribunal Federal afirma que não incidem contribuições previdenciárias sobre parcelas não incorporáveis à aposentadoria . Logo , tais valores não podem integrar a base de cálculo. Assim , o ato da sua não cobrança é legal , visto que a gratificação d e desempenho possu i caráter <span class="TextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 13pt; font-style: italic; line-height: 31.5px; font-family: Arial,

Processo	0050350-50.2021.8.06.0151
	Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> propter laborem . &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Corroborando o caráter propter laborem da s gratificaç õe s de desempenho vejamos os julgados a seguir :&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> DIREITO PROCESSUAL CIVIL. ADMINISTRATIVO. RECURSO EM MANDADO DE SEGURANÇA. SERVIDOR PÚBLICO. POLICIAL MILITAR. BOLSA DE DESEMPENHO PROFISSIONAL. LEI ESTADUAL 9.383/2011. NATUREZA JURÍDICA PROPTER LABOREM. EXTENSÃO AOS INATIVOS. IMPOSSIBILIDADE. 1. O aresto recorrido decidiu em conformidade com a jurisprudência do STJ de que a bolsa de desempenho instituída pela lei estadual 9.383/2011, do Estado da Paraíba, possui natureza propter laborem, não sendo devida aos servidores inativos. 2. Recurso Ordinário não provido (STJ - RMS: 68357 PB 2022/0041364-5, Data de Julgamento: 22/03/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 24/06/2022) &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-

Processo	0050350-50.2021.8.06.0151
	indent: 56px;"> Existem julgados desse Tribunal de Justiça tanto determinando a restituição dos valores que foram descontados, quanto pelo reconhecimento do seu caráter propter laborem , vejamos:&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ADMINISTRATIVO E PROCESSUAL CIVIL. AGRAVO INTERNO EM APELAÇÃO CÍVEL. GRATIFICAÇÃO DE DESEMPENHO NA EXCELÊNCIA DO ATENDIMENTO. DESCONTO PREVIDENCIÁRIO. DESCABIMENTO. VANTAGEM QUE SE AFIGURA COMO PROPTER LABOREM. LEI MUNICIPAL INSTITUIDORA QUE NÃO PREVÊ EXPRESSAMENTE INCORPORAÇÃO AOS PROVENTOS DE APOSENTADORIA. DEDUÇÃO INDEVIDA. PRECEDENTE VINCULANTE DO STF (RE 593068). DECISÃO QUE NEGOU PROVIMENTO AO APELO MANTIDA. AGRAVO CONHECIDO E DESPROVIDO. 1. O cerne da presente controvérsia consiste em examinar se é legítimo o desconto previdenciário de 11% (onze por cento) sobre o valor pago à apelada a título de ¿Gratificação de Desempenho na Excelência do Atendimento¿, criada pela Lei Municipal nº 2.166/2004. 2. Segundo o entendimento do Pretório Excelso firmado, por ocasião do julgamento do Recurso Extraordinário nº 593068, sob o rito da repercussão geral, somente é viável o desconto previdenciário se a parcela correspondente for incorporável aos proventos de aposentadoria do servidor público regido por regime próprio. 3.Percebe-se que a ¿Gratificação de Desempenho na Excelência do Atendimento¿ consiste numa vantagem própria da execução de um serviço público específico (<span class="NormalTextRun SpellingErrorV2Themed SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-

Processo	0050350-50.2021.8.06.0151
	image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">propter laborem) e, assim, transitória, de modo que se torna forçoso reconhecer que esta não se somará nos eventuais proventos da servidora recorrida. 4. Ademais, o dispositivo legal que criou a aludida gratificação não previu expressamente a hipótese de incorporação aos proventos de aposentadoria dos servidores beneficiados. 5. Dessa forma, a decisão agravada não merece reproche, encontrando-se em sintonia com a lei de regência e o entendimento jurisprudencial do STF e deste Tribunal. 6. Agravo interno conhecido e desprovido. (TJ-CE - Agravo Interno Cível: 0050463-04.2021.8.06.0151 Quixadá, Relator: LUIZ EVALDO GONÇALVES LEITE, Data de Julgamento: 15/03/2023, 2ª Câmara Direito Público, Data de Publicação: 15/03/2023) &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> REMESSA NECESSÁRIA. AÇÃO DE REPETIÇÃO DE INDÉBITO. SERVIDORES PÚBLICOS MUNICIPAIS. CONTRIBUIÇÃO PREVIDENCIÁRIA INCIDENTE SOBRE AS PARCELAS NÃO INCORPORÁVEIS AOS PROVENTOS DE APOSENTADORIA. IMPOSSIBILIDADE. ORIENTAÇÃO FIRMADA PELO STF EM SEDE DE REPERCUSSÃO GERAL. PRECEDENTES STJ E TJCE. REEXAME NECESSÁRIO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. A controvérsia cinge-se a aferir a legalidade dos descontos previdenciários efetuados sobre as parcelas não incorporáveis aos proventos de aposentadoria dos servidores públicos do Município de Crato. 2. O STF, com espeque no art. 201, § 11, da Lei Maior, possui diversos precedentes no sentido de que "somente as parcelas incorporáveis ao salário do servidor sofrem a incidência da contribuição previdenciária" (AgR no AI 603.537/DF, 2ª Turma, Rel. Min. Eros Grau, DJ de 30.3.2007). O terço de férias, horas extras, adicional noturno, de insalubridade e periculosidade não se incorporam à remuneração do servidor para fins de aposentadoria, razão pela qual não se justifica a incidência dos descontos previdenciários sobre tais verbas. 3. Essa é a conclusão extraída do RE nº 593.068/SC, julgado na sistemática de repercussão geral (TEMA 163), ficando estabelecida a seguinte tese: "Não incide contribuição previdenciária sobre verba não incorporável aos proventos de aposentadoria do servidor público, tais como terço de férias, serviços extraordinários, adicional noturno e adicional de insalubridade." 4. Remessa necessária conhecida e desprovida. Sentença mantida. (TJ-CE - Remessa Necessária Cível: 00062278120198060071 Crato, Relator: FERNANDO LUIZ XIMENES ROCHA, Data de Julgamento: 07/02/2022, 1ª Câmara Direito Público, Data de Publicação: 07/02/2022) &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-

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	wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> DIREITO ADMINISTRATIVO E PREVIDENCIÁRIO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. PRETENSÃO À DEVOLUÇÃO DE CONTRIBUIÇÕES PREVIDENCIÁRIAS. SENTENÇA DE PARCIAL PROCEDÊNCIA. PRELIMINAR DE AUSÊNCIA DE PROVAS AFASTADA. DIREITO À DEVOLUÇÃO DAS PARCELAS DESCONTADAS INDEVIDAMENTE. TEMA 163 DO STF. SENTENÇA MANTIDA, EM CONSONÂNCIA. HONORÁRIOS MAJORADOS. ART. 85, § 11, DO CPC. As aposentadorias dos servidores públicos serão calculadas com base nos valores da remuneração que serviram de parâmetro para a cobrança das contribuições previdenciárias. Caso a verba não integre os proventos de aposentadoria ou qualquer outro benefício previdenciário, a exemplo das gratificações e da ampliação de carga horária, sobre elas não poderão incidir descontos contributivos de natureza previdenciária. Matéria pacificada pelo Supremo Tribunal Federal, o qual, no julgamento do RE nº 593.068/SC, em sede de repercussão geral (Tema nº 163), fixou a seguinte tese: ¿Não incide contribuição previdenciária sobre verba não incorporável aos proventos de aposentadoria do servidor público, tais como 'terço de férias', 'serviços extraordinários', 'adicional noturno' e 'adicional de insalubridade."Apelação Cível conhecida e desprovida, em consonância com o parecer da Procuradoria-Geral de Justiça. Honorários majorados. Art. 85, § 11, do CPC.&#160; (TJ-CE - AC: 00511843620208060071 Crato, Relator: TEREZE NEUMANN DUARTE CHAVES, Data de Julgamento: 29/03/2023, 2ª Câmara Direito Público, Data de Publicação: 29/03/2023) &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> APELAÇÃO. CONSTITUCIONAL. ADMINISTRATIVO. PREVIDENCIÁRIO. AÇÃO ORDINÁRIA. REPETIÇÃO DE INDÉBITO. SERVIDOR PÚBLICO. MUNICÍPIO DE BOA VIAGEM. PRELIMINAR DE ILEGITIMIDADE PASSIVA AD CAUSAM DO INSTITUTO DE

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	PREVIDÊNCIA DO MUNICÍPIO DE BOA VIAGEM. REJEIÇÃO. MÉRITO. DESCONTOS PREVIDENCIÁRIOS SOBRE TERÇO DE FÉRIAS. VANTAGEM NÃO INCORPORÁVEL AOS PROVENTOS DE APOSENTADORIA. IMPOSSIBILIDADE. TEMA Nº 163 DO STF. DIREITO À RESTITUIÇÃO DOS VALORES DESCONTADOS INDEVIDAMENTE. PRECEDENTES DO TJCE. SENTENÇA ILÍQUIDA. FIXAÇÃO DA VERBA HONORÁRIA NA LIQUIDAÇÃO. ART. 84, § 4º, II, DO CPC. APELAÇÃO CONHECIDA E DESPROVIDA. 1. PRELIMINAR DE ILEGITIMIDADE PASSIVA AD CAUSAM. 1.1 O recorrente suscita sua ilegitimidade para figurar no polo passivo da demanda, sob a tese de que, sendo o Município o responsável tributário por efetuar os descontos previdenciários nos proventos da parte requerente, deve ser este o demandado pela eventual repetição do indébito. 1.2 O Instituto de Previdência do Município de Boa Viagem é uma autarquia municipal, com personalidade jurídica própria, criada pela Lei Municipal nº 662/1998, sendo responsável pela arrecadação das contribuições previdenciárias e concessão dos benefícios previdenciários aos servidores municipais, estando apto a figurar no polo passivo. Precedentes do TJCE. Preliminar rejeitada. 2. MÉRITO 2.1 A controvérsia recursal cinge-se a aferir a legalidade dos descontos previdenciários efetuados sobre os valores recebidos pelo autor, servidor público municipal, referentes ao terço de férias. 2.2. Em se tratando de verbas de natureza indenizatória, não se mostra possível a incidência da contribuição previdenciária, uma vez que não representam ganho habitual e, por esse motivo, não podem integrar a base de cálculo de aposentadoria. Incidência do entendimento firmado no Tema nº 163 do STF. Precedentes do TJCE. 2.3 Em se tratando de sentença ilíquida, o percentual das verbas honorárias deve ser definido somente por ocasião da liquidação do julgado, a teor do art. 85, § 4º, II, do CPC. 3. Apelação conhecida e desprovida. (TJ-CE - Apelação Cível: 0002387-26.2019.8.06.0051 Boa Viagem, Relator: JORIZA MAGALHAES PINHEIRO, Data de Julgamento: 24/04/2023, 3ª Câmara Direito Público, Data de Publicação: 24/04/2023) &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 7.53333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 57px;"> Com base nas jurisprudências que foram colacionadas, a conduta do Município de Quixadá em relação a gratificação de desempenho , ao não incluir ela na base de cálculo encontra o devido respaldo da ordem jurídica <span class="NormalTextRun SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

Processo	0050350-50.2021.8.06.0151
	user-select: text;">e, nesse ponto específico, o apelo comporta o devido provimento .&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 7.53333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 57px;"> Por outro lado, no que diz respeito à gratificação por periculosidade, conforme entendimento do Superior Tribunal de Justiça, deve ser incluída, tendo em vista seu caráter remuneratório. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 7.53333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 57px;"> Diante do exposto, conheço do apelo para julgar-lhe PARCIALMENTE PROCEDENTE , reconhecendo a i legalidade da conduta do município em não incluir na base de cálculo o adicional de periculosidade. Desse modo, o município deve proceder a inclusão da ferida gratificação na base de cálculo, mas, por outro lado, a legalidade da não inclusão da gratificação por desempenho em virtude do seu caráter <span class="TextRun SCXW90121357 BCX0" style="-webkit-

Processo	0050350-50.2021.8.06.0151
	user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 13pt; font-style: italic; line-height: 31.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> propter laborem . &#160;</p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 7.53333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 57px;"> É o voto que submeto à consideração de meus pares. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 7.53333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Fortaleza, data informada pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 11.3333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-

Processo	0050350-50.2021.8.06.0151
	kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relator &#160; </p></div><div class="OutlineElement Ltr SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW90121357 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3003658-83.2024.8.06.0167
Número de ordem	7
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	FGTS/Fundo de Garantia Por Tempo de Serviço
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	JOSE EUDENIR DE SOUSA ALVES
Advogado(s) - Polo passivo	RAFAEL FURTADO BRITO DA PONTE - (CE38478-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003658-83.2024.8.06.0167
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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	Mangal;">1. Apelação cível interposta contra sentença de procedência proferida no âmbito de ação ordinária de cobrança ajuizada em desfavor do Estado do Ceará.</p><p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto"> II. Questão em discussão: </p><p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto">2. Analisar a possibilidade de condenação no pagamento de FGTS aos agentes socioeducativos contratados junto ao Sistema Estadual de Atendimento Socioeducativo com prorrogação no período pandêmico (Covid-19).</p><p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto"> III. Razões de decidir: </p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto;text-autospace:none"> 3. As Lei Complementares Estaduais nº 169/2016 e 228/2020, autorizam o poder público a contratar agente s socioeducativo s &#160;junto ao Sistema Estadual de Atendimento Socioeducativo em caráter temporário a fim de atender à necessidade do SEAS, atendendo, portanto, ao exigido na tese jurídica fixada no Tema nº 612 do STF .</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto;text-autospace:none"> 4. Reconhecida a regularidade das normas que versam sobre a contratação temporária dos socioeducadores para atender demandas do Sistema Estadual de Atendimento Socioeducativo , tal declaração se aplica aos contratos de trabalho delas decorrentes .</p><p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto"> IV. Dispositivo: </p><p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto">5. Recurso do Estado do Ceará conhecido e provido.</p><p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto"> _________</p><p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph;line-height:150%;mso-hyphenate:auto">Dispositivos relevantes citados: CF/1988, art. 37, IX; Complementar Estadual nº 169, de 28/12/2016 e Lei Complementar Estadual nº 228, de 17/12/2020.</p><p class="Standard" style="text-align:justify;text-justify:inter-ideograph;line-height:150%"> Jurisprudência relevante citada: temas 612 do STF.</p><p class="MsoNormal" style="page-break-before:always;mso-hyphenate:auto">&#160;</p><p class="Textbody" style="margin-bottom:0cm;margin-bottom:.0001pt;text-align:center;line-height:150%;tab-stops:380.65pt" align="center"> <strong style="mso-bidi-font-weight: normal"> ACÓRDÃO </p><p class="Standard" style="text-align:justify;text-justify:inter-ideograph;text-indent:42.55pt;line-height:150%"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso voluntário para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante

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	deste.</p><p class="Standard" style="text-align:justify;text-justify:inter-ideograph;text-indent:42.55pt;line-height:150%"> Fortaleza, data informada pelo sistema. &#160;</p><p class="Standard" style="text-align:justify;text-justify:inter-ideograph;text-indent:69.0pt;mso-line-height-alt:10.0pt"> &#160;</p><p class="Corpodetextorecuado" style="text-align:center;text-indent:0cm" align="center"> <strong style="mso-bidi-font-weight:normal"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="Corpodetextorecuado" style="text-align:center;text-indent:0cm;tab-stops:0cm 102.75pt" align="center"> <strong style="mso-bidi-font-weight:normal"> Relator </p><p class="Corpodetextorecuado" style="text-align:center;text-indent:0cm;tab-stops:0cm 102.75pt" align="center"> <strong style="mso-bidi-font-weight:normal"> <br /> </p><p class="Standard" style="margin-bottom:6.0pt;text-align:center;line-height:150%;page-break-before:always;tab-stops:142.25pt center 212.6pt 216.0pt right 432.0pt" align="center"> <strong style="mso-bidi-font-weight:normal"> RELATÓRIO </p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> Tem-se apelação cível interposta de sentença de procedência proferida pelo juízo da 2ª Vara Cível da Comarca de Sobral no âmbito de ação ordinária de cobrança.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> <strong style="mso-bidi-font-weight:normal"> Petição inicial : narra a promovente que exerceu a função de agente socioeducativo junto ao Estado do Ceará, de forma temporária, mas prorrogada, requerendo, ao final, verbas referentes ao FGTS, ante a alegada nulidade da contratação.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> <strong style="mso-bidi-font-weight:normal"> Contestação : defende a regularidade da contratação; a natureza do vínculo jurídico entre as partes, no âmbito local, é mesmo de contrato administrativo temporário de trabalho por excepcional interesse da Administração Pública, incompatível com as verbas fundiárias; no contexto da pandemia de COVID-19, o Poder Legislativo estadual autorizou que as contratações temporárias para o Sistema Socioeducativo se mantivessem, até a realização do concurso público próprio e o subsequente preenchimento das vagas oferecidas.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> Sentença : o juízo 2ª Vara Cível da Comarca de Sobral entendeu que a natureza da função desempenhada – agente socioeducador – não se caracteriza como atividade extraordinária, antes se configurar como de natureza essencial e permanente, ferindo a regra contida no art. 37, inciso IX, da CF/88, e condenou o ente público ao recolhimento dos depósitos de FGTS entre o período de 9/04/2018 a 8/04/2022 e&#160;1/06/2022 até o fim da contratação.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> Razões recursais : remissiva a contestação, repetindo-a em sua integralidade.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-

Processo	3003658-83.2024.8.06.0167
	ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> <strong style="mso-bidi-font-weight:normal"> Contrarrazões : alega que o Estado do Ceará não impugnou os fundamentos da sentença recorrida e pugna pela sua manutenção.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> Parecer ministerial de mérito opinando pelo conhecimento e provimento do recurso (id 15622799).</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> Vieram os autos conclusos.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.5pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> É o relatório, no essencial.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.5pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> &#160;</p><p class="Standard" style="margin-bottom:6.0pt;text-align:center;line-height:150%" align="center"> &#160;</p><p class="Standard" style="margin-bottom:6.0pt;text-align:center;line-height:150%;page-break-before:always" align="center"> <strong style="mso-bidi-font-weight:normal"> VOTO </p><p class="MsoNormal" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none;mso-vertical-align-alt:auto"> Inicialmente, no que se refere ao juízo de admissibilidade, analisando os pressupostos processuais recursais necessários, tenho que os requisitos intrínsecos (cabimento, interesse e legitimidade, inexistência de súmula impeditiva) e extrínsecos (tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também, os específicos, descritos no art. 1.010 do CPC/2015 <!--[if !supportFootnotes]--> [1] <!--[endif]--> , motivo pelo qual conheço do apelo.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none">Conforme brevemente relatado, narra a promovente que exerceu a função de agente socioeducativo junto ao Estado do Ceará, de forma temporária, mas prorrogada, requerendo, ao final, verbas referentes ao FGTS, ante a alegada nulidade da contratação.</p><p class="Standard" style="margin-bottom: 6pt; text-indent: 42.8pt; line-height: 150%; text-align: justify;"> Ao final da instrução, o juízo 2ª Vara Cível da Comarca de Sobral entendeu que a natureza da função desempenhada – agente socioeducador – não se caracteriza como atividade extraordinária, antes se configurar como de natureza essencial e permanente, ferindo a regra contida no art. 37, inciso IX, da CF/88, e condenou o ente público ao recolhimento dos depósitos de FGTS entre o período de 9/04/2018 a 8/04/2022 e&#160;1/06/2022 até o fim da contratação.</p><p class="Standard" style="margin-bottom: 6pt; text-indent:

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	42.8pt; line-height: 150%; text-align: justify;"> Em suas razões recursais, o Estado do Ceará insiste na regularidade da contratação e requer a improcedência da ação.</p><p class="Standard" style="margin-bottom: 6pt; text-indent: 42.8pt; line-height: 150%; text-align: justify;"> Pois bem. </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Na hipótese dos autos, o autor foi contratado para ocupar o cargo de agente socioeducativo a exercer suas funções junto a Superintendência do Sistema Estadual de Atendimento Socioeducativo, nos termos da Lei Complementar Estadual nº 169, de 28/12/2016, e do Edital nº 001/2017 – SEAS/SEPLAG, de 26/04/2018 (id 15419033). </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> O referido contrato foi assinado em 9/04/2018, com prazo de vigência de 12 (doze) meses, com possibilidade de prorrogação por igual período, que foi prorrogado em 9/04/2019, por meio de 1º aditivo, até 8/04/2020 (id 15419034). </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Não houve juntada de contrato de trabalho e eventual aditivo referente ao período compreendido entre 8/04/2020 e 1/06/2022, mas há prova de que o vínculo continuou e foi ininterrupto, o que se pode extrair das fichas financeiras que constam no id 15419035. </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Em 1/06/2022, o autor foi recontratado, nos termos da Lei Complementar Estadual nº 169, de 28/12/2016 e Lei Complementar Estadual nº 228, de 17/12/2020, e do Edital nº 003/2021 – SEAS, de 15/10/2021, com prazo de vigência de 12 (doze) meses, com possibilidade de prorrogação por igual período (id 15419033), podendo, pelo menos em tese, perdurar até junho de 2024. </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> É cediço que a Administração Pública tem a obrigatoriedade de realizar certame para prover os cargos existentes em seu quadro de pessoal, existindo, contudo, exceções à referida regra, por meio da qual se permite que sejam contratados, de forma excepcional e precária, servidores para o exercício de cargos em comissão, além da <strong style="mso-bidi-font-weight:normal">contratação por tempo determinado para atender necessidade temporária de excepcional interesse público, esta última prevista no art. 37, IX, da CF/88. </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> A Lei nº 8.745/1993, regulamentou o dispositivo constitucional retro, estabelecendo as hipóteses de contratação temporária, e, acerca do tema, o Supremo Tribunal Federal, no julgamento do RE nº. 658.026 (Tema 612), fixou a seguinte tese:</p><p class="Recuodecorpodetexto33" style="margin: 0cm 0cm 6pt 4cm; text-indent: 0cm; text-align: justify;"> “Nos termos do art. 37, IX, da Constituição Federal, para que se considere válida a contratação temporária de servidores públicos, é preciso que: a) <strong style="mso-bidi-font-weight:normal">os casos excepcionais estejam previstos em lei; b) o prazo de contratação seja predeterminado; c) <strong style="mso-bidi-font-weight: normal">a necessidade seja temporária; d) o interesse público seja excepcional; e) a contratação seja indispensável, sendo vedada para os serviços ordinários permanentes do Estado que estejam sob o espectro das contingências normais da Administração”.</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> No caso específico do Estado do Ceará, as Lei Complementares Estaduais nº 169/2016 e 228/2020 previram e regularam a possibilidade de contratação temporária de servidores para atender o Sistema Estadual de Atendimento Socioeducativo .</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Já na Lei Complementar Estadual nº 228/2020, editada durante a pandemia de Covid-19, apontou-se a imprescindibilidade do serviço de socioeducadores e a impossibilidade de realização de concurso durante a vigência das medidas sanitárias em curso, autorizando a Superintendência do Sistema Estadual de Atendimento&#160;Socioeducativo a admitir, por tempo determinado, para atender à necessidade temporária de excepcional interesse público, profissionais para atuarem no

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	referido sistema. </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Como se pode observar, as normas retrocitadas autorizam o poder público a contratar servidores em caráter temporário a fim de atender à necessidade do Sistema Estadual de Atendimento Socioeducativo, atendendo, portanto, ao exigido na tese jurídica fixada no Tema nº 612 do Supremo Tribunal Federal.</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Há julgados deste tribunal que reconhece a excepcionalidade que justifica a contratação temporária na forma ora rediscutida durante o período pandêmico, declarando a legalidade do edital de seleção simplificada; senão vejamos: &#160; </p><p class="Recuodecorpodetexto33" style="margin: 0cm 0cm 6pt 4cm; text-indent: 0cm; text-align: justify;"> <span style="font-size: 11.0pt; font-family: &quot;Arial&quot;,sans-serif; background: white;">DIREITO PÚBLICO. APELAÇÃO. AÇÃO ORDINÁRIA. DECLARAÇÃO DE NULIDADE DO EDITAL PARA CONTRATAÇÃO TEMPORÁRIA DE PESSOAL. EDIÇÃO DE LEI COMPLEMENTAR PARA TRATAR DA MATÉRIA. CONSTITUCIONALIDADE DO ART. 154, XIV, DA CONSTITUIÇÃO DO ESTADO DO CEARÁ. TEMA 612, DO STF. RECURSO CONHECIDO E NÃO PROVIDO. 1. Trata-se de Ação Anulatória de Ato Administrativo c/c Pedido de Tutela de Urgência Cautelar com o objetivo de impugnar o Edital nº 02/2021, da Superintendência do Sistema Estadual de Atendimento Socioeducativo ¿ SEAS, o qual iniciou Seleção Simplificada para preenchimento de vagas temporárias de nível superior - Assistente Social, Psicólogo e Pedagogo; e de nível médio de Socioeducador. 2. Alegação de inconstitucionalidade do art. 154, XIV, da Constituição do Estado do Ceará e, por consequência, da Lei Complementar nº 163, de 05 de julho de 2016, da Lei Complementar nº 169, de 28 de dezembro de 2016, e da Lei Complementar nº 228, de 17 de dezembro de 2020, com a declaração de invalidade das referidas leis e a suspensão de sua eficácia. 3. Tema reservado a Lei Ordinária regulamentado por Lei Complementar. Possibilidade de procedimentalização mais gravosa para a regulamentação do direito previsto, dificultando a normatização necessária e consequente ausência de efetivação de tal direito. Precedentes do STF. Inaplicabilidade ao caso, ante a farta regulamentação elaborada pelo Estado do Ceará (Leis Complementares nºs 163/2016, 169/2016 e 228/2020). Constitucionalidade dos diplomas normativos impugnados. 4. <strong style="mso-bidi-font-weight: normal">Presença da excepcionalidade que justifica a contratação temporária, inteligência do Tema 612, do STF. Ausência de ofensa ao art. 37, I e IX, da CRFB/88, na medida em que a seleção impugnada fora realizada durante a pandemia, situação de excepcional necessidade e interesse público, possuindo prazo determinado de um ano, o qual inclusive já se esgotou no curso do processo, bem como que carcaterizada sua indispensabilidade, ante a necessidade de manutenção de funcionamento do sistema Socioeducativo do Estado do Ceará. 5. Sentença mantida em todos os seus termos. Apelação conhecida e não provida. (Apelação Cível&#160;- 0251005-03.2021.8.06.0001, Rel. Desembargador(a) MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara Direito Público, data do julgamento:&#160; 30/08/2023, data da publicação:&#160; 31/08/2023)</p><p class="Recuodecorpodetexto33" style="margin: 0cm 0cm 6pt 4cm; text-indent: 0cm; text-align: justify;"> <span style="font-size: 11.0pt; font-family: &quot;Arial&quot;,sans-serif; background: white;">DIREITO PÚBLICO. AGRAVO DE INSTRUMENTO. AÇÃO ORDINÁRIA. TUTELA DE URGÊNCIA INDEFERIDA. DECLARAÇÃO DE NULIDADE DO EDITAL PARA CONTRATAÇÃO TEMPORÁRIA DE PESSOAL. EDIÇÃO DE LEI COMPLEMENTAR PARA TRATAR DA MATÉRIA. ADOÇÃO DO REGIME GERAL DE PREVIDÊNCIA SOCIAL. PERICULUM IN MORA INVERSO. RECURSO CONHECIDO E NÃO PROVIDO. 1. De acordo com o artigo 300 do CPC para a concessão da tutela de urgência é necessário a demonstração da probabilidade do direito alegado na inicial e o perigo de dano grave. 2. <strong style="mso-bidi-font-weight:normal">Em que pese os argumentos da parte agravante, não restou demonstrada a probabilidade do direito alegado, porquanto não comprovado, até o momento, vícios de nulidade no Edital nº 002/2021 da Superintendência do Sistema Estadual de Atendimento Socioeducativo - SEAS, para o preenchimento excepcional de vagas nas funções temporárias de nível superior de Assistente Social, Psicólogo e Pedagogo, e de nível médio de Socioeducador, para compor temporariamente o quadro de pessoal da SEAS. 3. O artigo 37, inciso IX, da Constituição Federal permite a contratação temporária de pessoal para atender a necessidade temporária de excepcional interesse público, que será regulamentado por Lei Ordinária. Por sua vez, o artigo 154, inciso XIV, da Constituição do Estado do Ceará estabeleceu que a matéria deve ser tratada por meio de Lei Complementar. 4. Ao contrário do alegado, o fato do Legislativo Estadual ter aprovando leis complementares (Leis Complementares <strong style="mso-bidi-font-weight:normal">nºs 163/2016, 169/2016 e 228/2020), cuja aprovação é mais onerosa, estabelecendo as regras de contratação temporária no âmbito do SEAS, não conduz a

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	violação do artigo 37, IX, da Constituição Federal, pois a exigência de quórum qualificado não foi obstáculo para regulamentação da matéria. 5. Como bem asseverou a Procuradoria-Geral de Justiça não houve violação ao princípio democrático, à separação dos poderes e à simetria, pois, no caso em apreço, não houve óbice a edição de lei para regulamentação da contratação temporária. Pelo contrário, foram aprovadas várias Leis Complementares para tratar da matéria. 6. Quanto ao argumento de que não há excepcionalidade que justifique a contratação temporária, tal discussão diz respeito ao mérito da ação ordinária, não existindo provas, até o momento, que justifique afastar a escolha da Administração Pública para contratação temporária de tais profissionais, inclusive sob o Regime Geral de Previdência Social, dada a excepcionalidade da contratação. Inclusive, o § 13 do art.40 da Constituição Federal, dispõe que: "Aplica-se ao agente público ocupante, exclusivamente, de cargo em comissão declarado em lei de livre nomeação e exoneração, de outro cargo temporário, inclusive mandato eletivo, ou de emprego público, o Regime Geral de Previdência Social". 7. Por fim, importa destacar que o referido processo seletivo foi concluído e os profissionais aprovados na seleção pública foram convocados, em setembro de 2021, para atuarem no sistema socioeducativo, como se verifica no site da SEAS. Logo, a concessão da tutela pretendida implicaria em periculum in mora inverso, posto que suspenderia a contratação temporária e causaria enorme prejuízo ao regular funcionamento do sistema socioeducativo. 8. Agravo de Instrumento conhecido e não provido. (Agravo de Instrumento&#160;- 0633900-48.2021.8.06.0000, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 2ª Câmara Direito Público, data do julgamento:&#160; 08/06/2022, data da publicação:&#160; 08/06/2022)</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Assim, a primeira contratação com prorrogação, que precede a pandemia de Covid-19, encontra respaldo na Lei Complementar Estadual nº 169, de 28/12/2016, e a recontratação seguinte está amparada na Lei Complementar Estadual nº 228, de 17/12/2020, diante da impossibilidade de realizar concurso público naquele momento .</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Reconhecida a regularidade das normas que versam sobre a contratação temporária dos socioeducadores para atender demandas do Sistema Estadual de Atendimento Socioeducativo , tal declaração se aplica aos contratos de trabalho delas decorrentes, com atendimento da Constituição Federal, leis estaduais e jurisprudência do STF e TJCE. Prejudicado, portanto, o pedido de condenação no recolhimento de FGTS, ante a regularidade da contratação.</p><p class="Standard" style="margin-bottom: 5.65pt; text-indent: 42.8pt; line-height: 150%; text-align: justify;"> Isto posto, conheço do apelo cível para dar-lhe provimento, reformando a sentença de primeiro grau, no sentido de julgar improcedente o pedido .</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%; text-align: justify;"> Deixo de fixar os honorários recursais, vez que se trata de sentença ilíquida, cuja definição da verba honorária somente ocorrerá <em style="mso-bidi-font-style:normal">a posteriori, ocasião em que o juízo de origem levará em consideração o trabalho adicional realizado em sede recursal para fins de fixação dos honorários advocatícios, conforme disposição do art. 85, §§ 2º, 3º, 4º e 11, do CPC/2015, entendimento que adoto em consonância com a jurisprudência do Superior Tribunal de Justiça (EDCL no REsp nº 1785364/CE, 06/04/2021).</p><p class="Standard" style="margin-bottom:5.65pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%"> É o voto que submeto à consideração de meus pares.</p><p class="Standard" style="margin-bottom:5.65pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.5pt;line-height:150%"> Fortaleza, data informada pelo sistema.</p><p class="Standard" style="margin-bottom:5.65pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.5pt;line-height:150%"> &#160;</p><p class="Corpodetextorecuado" style="text-indent:99.25pt"> &#160;</p><p class="Corpodetextorecuado" style="text-align:center;text-indent:0cm" align="center"> <strong style="mso-bidi-font-weight:normal"> <span style="font-size: 13.0pt; mso-bidi-font-size: 12.0pt; font-family:

Processo	3003658-83.2024.8.06.0167
	&quot;Arial&quot;,sans-serif; mso-bidi-font-family: Symbol;">Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="Corpodetextorecuado" style="text-align:center;text-indent:0cm;tab-stops:0cm 102.75pt" align="center"> <strong style="mso-bidi-font-weight:normal"> Relator </p><p class="Standard" style="margin-bottom:5.65pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%"> &#160;</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-justify:inter-ideograph;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto;text-autospace:none"> &#160;</p><div style="mso-element:footnote-list"><!--[if !supportFootnotes]--><br /> <hr size="1" /><!--[endif]--> <div id="ftn1" style="mso-element:footnote"> <p style="margin:0cm;margin-bottom:.0001pt;text-align:justify;text-justify: inter-ideograph"> <!--[if !supportFootnotes]--> [1] <!--[endif]--> Art. 1.010. A apelação, interposta por petição dirigida ao juízo de primeiro grau, conterá:</p> <p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph; mso-hyphenate:auto;mso-vertical-align-alt:auto"> I - os nomes e a qualificação das partes; </p> <p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph; mso-hyphenate:auto;mso-vertical-align-alt:auto"> II - a exposição do fato e do direito; </p> <p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph; mso-hyphenate:auto;mso-vertical-align-alt:auto"> III - as razões do pedido de reforma ou de decretação de nulidade; </p> <p class="MsoNormal" style="text-align:justify;text-justify:inter-ideograph; mso-hyphenate:auto;mso-vertical-align-alt:auto"> IV - o pedido de nova decisão. </p></div></div><p>&#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	8
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Processo Administrativo Fiscal
Polo ativo	NORDESTE CORDIS LTDA
Advogado(s) - Polo ativo	EDUARDO CERQUEIRA DE ARRUDA CABRAL - (PE23544-A)
Polo passivo	PROCURADORIA GERAL DO ESTADO PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

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	bottom: 0.21cm;" align="justify"> II. Questão em discussão </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> 2 . A questão em discussão é a constitucionalidade da conduta do Estado do Ceará de inscrever a parte impetrante no CADINE (Cadastro de Inadimplentes da Fazenda Pública Estadual), sem que haja a devida intimação de qualquer decisão quanto à defesa administrativa.</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> III. Razões para decidir </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> 3. Nos autos do processo, constata-se a ofensa aos princípios da ampla defesa e do contraditório, tendo em vista a ausência de intimação válida na esfera administrativa. Consequentemente, é indevida a inscrição da impetrante no CADINE.</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> IV. Dispositivos e tese </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> 4. Sentença confirmada em remessa necessária.</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> ______</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> Legislação relevante citada: CF/88, art. 5º, LV. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: 380.65pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> ACÓRDÃO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em confirmar a sentença em remessa necessária, tudo nos termos do voto do relator, parte integrante deste.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> RELATOR </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br /> </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-

Processo	0222977-88.2022.8.06.0001
	hyphenate: auto; tab-stops: center 216.0pt right 432.0pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.04cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Tem-se Remessa Necessária de sentença proferida pelo juízo da 10ª Vara da Fazenda Pública da Comarca de Fortaleza, que concedeu parcialmente a segurança perseguida. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.04cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Petição inicial (id 14652004) : mandado de segurança impetrado para o fim de declarar ilegal e indevido o ato da autoridade coatora de certificar o trânsito em julgado do processo administrativo sem intimação válida da contribuinte da decisão administrativa do julgado, devendo por consequência, ser declarado nulo o processo administrativo cujo objeto é o Auto de Infração nº 201818435, por flagrante violação a direito líquido e certo, garantido constitucionalmente e nas legislações a ampla defesa e o contraditório. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.04cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Sentença (id 14652161) : concedeu parcialmente a segurança, determinando apenas que o procedimento administrativo relacionado com o Auto de Infração n.º 201818435 seja retomado a partir da intimação da decisão proferida em primeiro grau na instância administrativa. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.04cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Manifestação da Procuradoria de Justiça (id 15587074) : indiferente ao mérito. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.04cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Vieram os autos conclusos após regular distribuição por sorteio. </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.04cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> É o relatório, no essencial. </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%;

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	page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> VOTO Presentes os requisitos de admissibilidade, conheço da remessa necessária, com fundamento no art. 14, § 1º, da Lei n.º 12.016/2009. A questão em discussão é a constitucionalidade d a conduta do Estado do Ceará de inscrever a impetrante no CADINE (Cadastro de Inadimplentes da Fazenda Pública Estadual), sem que haja a devida intima ção de qualquer decisão quanto à defesa administrativa. D e acordo com a documentação acostada (id 14652011), denota-se a ausência de intimação da parte impetrante em relação à decisão na esfera administrativa. Noutras palavras, a inscrição no CADINE com a falta da intimação válida da parte devedora, encontra-se em desacordo com o princípio do contraditório e da ampla defesa. A Constituição Federal assegura o direito ao contraditório e à ampla defesa, como garantias fundamentais, que são pressupostos de todos os processos judiciais e administrativos. É o que dispõe o art. 5º, LV, da CF/88. In verbis: Art. 5º:[...] LV - aos litigantes, em processo judicial ou administrativo, e aos acusados em geral são assegurados o contraditório e ampla defesa, com os meios e recursos a ela inerentes; Nesse sentido é o entendimento desta Câmara de Direito Público: <span style="font-size: 12pt;">DIREITO ADMINISTRATIVO. REMESSA NECESSÁRIA. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. CONVÊNIO ADMINISTRATIVO. EXECUÇÃO DE PROJETO CULTURAL. PRESTAÇÃO DE CONTAS FEITA DE FORMA TEMPESTIVA. INSCRIÇÃO DO AUTOR NO CADASTRO DE INADIMPLENTES. SUPOSTA IRREGULARIDADE. NECESSIDADE DE OBSERVÂNCIA AOS PRINCÍPIOS DO CONTRADITÓRIO E DA AMPLA DEFESA. NULIDADE DO ATO QUE REPROVOU A PRESTAÇÃO DE CONTAS. REMESSA NECESSÁRIA E APELAÇÃO CÍVEL CONHECIDAS E DESPROVIDAS. SENTENÇA MANTIDA. Cinge-se a controvérsia em aferir a higidez da sentença que julgou procedente o feito, com fundamento no art. 487, inciso I, do CPC, para determinar a exclusão da parte promovente dos cadastros de irregularidade e inadimplência do Estado do Ceará, em razão do Convênio n.º 156/2014, bem como para declarar a nulidade do ato que reprovou a prestação de contas apresentada pela parte autora, com o intuito de que lhe seja assegurado o direito de se manifestar sobre o alegado descumprimento aos artigos 72 e 78, VI, da Lei 8.666/93, em observância ao princípio do contraditório. A parte autora alega ilegalidade do ato administrativo que reprovou sua prestação de contas, tendo em vista a divergência entre o relatório da análise do ente público e a motivação da reprovação da prestação de contas, considerando o que dispõe o art. 25 da Instrução Conjunta Normativa SEON/SEFAZ/SEPLAN n.º 01/2005. Da análise dos autos, é possível concluir

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	que padece de nulidade, por manifesta afronta aos princípios que regem a Administração Pública, o ato administrativo em questão que, sem a prévia observância das garantias constitucionais ao contraditório e à ampla defesa, reprovou a prestação de contas da parte promovente, com sua inscrição no cadastro de inadimplentes. Assim deve ser confirmada a sentença que reconheceu a nulidade do ato guerreado, sobretudo porque não observou os princípios do contraditório e da ampla defesa. Ressalta-se que a intervenção do poder judiciário na esfera administrativa é admissível nos casos em que se constatam atos de ilegalidade do Poder Público, como no caso dos autos, sem constituir interferência indevida em matéria reservada ao juízo de conveniência e oportunidade do administrador. Remessa Necessária e Apelação Cível conhecidas e desprovidas. Sentença mantida. (Apelação / Remessa Necessária - 0120099-27.2018.8.06.0001, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 04/09/2023, data da publicação: 04/09/2023) DIREITO ADMINISTRATIVO E CONSTITUCIONAL. AGRAVO DE INSTRUMENTO EM MANDADO DE SEGURANÇA. SUSPENSÃO DE INSCRIÇÃO ESTADUAL NO CADASTRO GERAL DA FAZENDA (CGF). INEXISTÊNCIA DE PROCEDIMENTO ADMINISTRATIVO. VIOLAÇÃO DO PRINCÍPIO DA AMPLA DEFESA E CONTRADITÓRIO. OBSTÁCULO AO LIVRE EXERCÍCIO DA ATIVIDADE ECONÔMICA. NECESSIDADE DO DEVIDO PROCESSO LEGAL. 1 – O agravo de instrumento em tela relaciona-se ao suposto ato praticado pelo Exmo. Sr. Secretário da Fazenda do Estado do Ceará – SEFAZ, o qual suspendeu a inscrição da empresa agravante no Cadastro Geral da Fazenda, sem oportunizar o exercício da ampla defesa e do contraditório, desrespeitando o devido processo legal. 2 – O devido processo legal é necessário para que ocorra a defesa contra decisões ilegais ou abusivas nas quais não ocorreu a oportunidade da parte envolvida se manifestar. Diante disso, a suspensão sem a observância do devido princípio do contraditório e a ampla defesa reputa-se ilegal e, consequentemente, abusiva. 3 – Desse modo, faz-se necessário a existência de um procedimento administrativo, oportunizando o contraditório e a ampla defesa para que se possa aplicar quaisquer penalidades administrativas. 4 – É proibido, também, conforme entendimento sumulado do Superior Tribunal Federal, constrições ilegais que visem compelir ao contribuinte a pagar débitos devidos, sendo estas chamadas sanções políticas. 5 – As cobranças devem ocorrer através dos procedimentos administrativos, com o contraditório e a ampla defesa ou através de execução fiscal do débito referente. RECURSO DE AGRAVO DE INSTRUMENTO CONHECIDO E PROVIDO. AGRAVO INTERNO PREJUDICADO. (Agravo de Instrumento - 0625940-46.2018.8.06.0000, Rel. Desembargador(a) FRANCISCO DE ASSIS FILGUEIRA MENDES, 3ª Câmara Direito Público, data do julgamento: 20/04/2020, data da publicação: 22/04/2020) C olacion o trecho da sentença de primeiro grau : Sendo assim, não há falar em ausência de interesse de agir. Passo, então, ao exame de mérito. Dois são os pedidos formulados, recorde-se: (a) anulação do trânsito em julgado administrativo e (2) anulação do processo administrativo instaurado. O documento de id. 38887666 (p. 3) e a

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	manifestação do Estado do Ceará (id. 38887655) deixam claro que houve equívoco na intimação da decisão de primeiro grau proferida na seara administrativa, do que resultou errônea expedição da certidão de trânsito em julgado (id. 38887662).</p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Sendo assim, há o procedimento de ser anulado, MAS APENAS A PARTIR DESTE PONTO, para que seja retomado, com renovação da intimação da Impetrante da decisão em referência, para que possa manejar o recurso cabível.</p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> O primeiro dos pedidos aludidos merece, pois, acolhida.</p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Quanto ao mais, não foi apontado qualquer vício que maculasse os atos anteriores do procedimento. Razão nenhuma há, pois, para considerar inválidos os demais atos do procedimento em referência.</p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Quanto à suspensão da inscrição no CADINE (liminar inicialmente requerida), tal é providência que se impõe, notadamente ante a possibilidade de que seja manejado recurso ordinário administrativo, dotado de efeito suspensivo (art. 108 da Lei Estadual nº 15.614/2014).</p><p style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify">Isto posto, constata-se a ausência de intimação válida da impetrante na esfera administrativaconfirmando -se a ofensa à ampla defesa e ao contraditório. Por essa razão, escorreita a sentença q ue, além de determinar a anulação do trânsito em julgado administrativo , reconhece a necessidade da suspensão da inscrição no CADINE . </p><p style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Isso posto, confirmo a sentença em remessa necessária. </p><p style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> É o voto que submeto à consideração de meus pares. </p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema. &#160;</p><p> <br style="mso-special-character: line-break;" /> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> <span style="font-size:

Processo	0222977-88.2022.8.06.0001
	13.5pt; font-family: &quot;Arial&quot;,sans-serif; color: black;">Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	9
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Abono de Permanência
Polo ativo	MUNICIPIO DE QUIXADA
Advogado(s) - Polo ativo	VITORIA MARIA DINIZ GOMES - (CE49267-A) ANA KELLI DE OLIVEIRA AZEVEDO - (CE43955-A)
Polo passivo	ROSEMARY DA COSTA RUBENS
Advogado(s) - Polo passivo	MARCOS ANTONIO INACIO DA SILVA - (CE20417-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	serif;"> c/c obrigação de fazer . Servidor a públic a municipal. Abono de permanência. Preenchimento dos requisitos legais no ano de 20 17 . Vigência da lei municipal nº 2.103/2002. Fixação de percentual de honorários advocatícios sucumbenciais. Sentença ilíquida. Recurso conhecido e parcialmente provido. I. Caso em exame: 1. A pelação interposta pelo Município de Quixadá contra a sentença que julgou procedente ação de cobrança c/c obrigação de fazer , condenando-o a implantar o abono de permanência no contracheque da autora, e a pagar os valores devido s a este título, <span style="font-

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	size: 12pt;">a partir do implemento dos requisitos de aposentadoria, até a efetiva implantação. O ente político apelou sustentando ausência d e interesse de agir d a servidora e, no mérito, alegou que o abono de permanência só foi implantado no âmbito local em fevereiro de 2023, se insurgindo ainda, contra a fixação do percentual de honorários advocatícios sucumbenciais, por ser a sentença ilíquida . II. Questão em discussão: 2. A questão em discussão consiste em definir se: i) há interesse de agir d a autor a; ii) havia, no período destacado na inicial, legislação municipal que garantisse o direito à percepção do abono de permanência; e iii) deve ser fixado percentual de honorários advocatícios sucumbenciais em caso de sentença ilíquida . III. Razões de decidir: 3. Não merece prosperar a alegação de suposta ausência de interesse de agir d a autor a por ausência de prévio requerimento administrativo porque não se pode condicionar o direito de se buscar a tutela jurisdicional ao esgotamento da via administrativa, sob pena de violação do acesso à Justiça, ou seja, do princípio da inafastabilidade do controle jurisdicional previsto no art. 5º, XXXV, da CF/1988. 4. O direito d

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	a servidora nasceu muito antes da regulamentação pela Lei Complementar Municipal nº 25/2022. Em 04/07/2017 , a promovente preencheu os requisitos legais para aposentadoria voluntária, mas optou por permanecer em atividade. Deve, contudo, haver respeito à prescrição quinquenal. 5. Reza o art. 85, § 4º, inciso II, do CPC/2015, que não sendo líquida a sentença, a definição do percentual dos honorários advocatícios somente deverá ocorrer na liquidação do julgado. IV. Dispositivo: 6 . Apel açã o conhecid a e parcialmente provid a apenas para postergar a fixação do percentual dos honorários sucumbenciais . ______ Dispositivos relevantes citados: CF, arts. 5º, XXXV, e 40, § 19; Emendas Constitucionais nº 41/2003 e 103/2019; CPC, arts. 85, § 4º, II, 292, I, e 496, § 3º, III; Lei Municipal nº 2.103/2002; e Lei Complementar Municipal nº 25/2022. Jurisprudência relevante citada : Súmulas nº 85 e 490 do STJ; Tema 888 do STF; ARE 954408 RG, Relator(a): TEORI ZAVASCKI, Tribunal Pleno, julgado em 14/04/2016, ACÓRDÃO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-077 DIVULG 20-04-2016 PUBLIC22-04-2016 STJ, 2ª Turma, EDcl no REsp nº 1.785.364/CE, 6/04/2021 – Informativo nº 691. &#160; &#160; <br /> <br /> ACÓRDÃO &#160; Vistos, relatados e discutidos, acordam os integrantes da

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	Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer a apelação, para d ar-lhe parcial provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. &#160; &#160; &#160; &#160; &#160; Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO RELATOR &#160; &#160; RELATÓRIO &#160; T e m-se a pelação c ível interposta contra a sentença de procedência proferida pelo juízo da 2ª Vara Cível da Comarca de Quixadá em a ção o rdinária de c obrança de a bono de p ermanência c/c o brigação de f azer. Em que pese a inicial ter sido endereçada ao juízo de Direito de uma das V aras do Juizado Especial da Fazenda Pública da Comarca de Quixadá e constar na Classe processual: “ Procedimento do Juizado Especial da Fazenda Pública”, visualizo ter o feito tramitado sob o rito de Procedimento Comum Cível , tanto que houve o deferimento da justiça gratuita no despacho inicial (Id. 15640390), condenação em honorários advocatícios sucumbenciais na sentença, e <span style="font-family: Arial,

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	serif;">interposição do recurso de apelação. &#160;&#160; Petição inicial : narra a Promovente ser servidor a públic a do Município de Quixadá/CE, com lotação na Secretaria de Educação, admitid a em 01/ 1 0/19 98 , para o exercício do cargo de Professor a , com ato concessório de aposentadoria publicado, aguardando homologação pelo Tribunal de Contas do Estado do Ceará . Sustenta que em 04 /0 7 /20 17 preencheu todos os requisitos para a aposentadoria voluntária, mas, optando por permanecer em exercício, passou a faz er jus ao abono de permanência. Requer o recebimento dos valores devidos e não pagos do período entre 04/07/2017 até a efetiva implantação, atualizados e respeitada a prescrição quinquenal . Contestação:&#160; alega impossibilidade de procedência da ação nos termos requeridos, por necessidade de prévio conhecimento pelo Município e ausente requerimento administrativo no caso . Sustenta que somente disciplinou o benefício no ano de 2022, através da Lei Complementar nº 25, produzindo efeitos em fevereiro de 2023. Di z que, di ante do princípio da legalidade, não há qualquer ato ilegal praticado, devendo a ação ser julgada improcedente. Sentença : julgou procedente o pleito autoral para condenar a parte requerida <span style="font-

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	family: Arial, sans-serif;">a implantar no contracheque da autora, o abono de permanência até a data de aposentadoria, correspondente ao valor descontado a título de contribuição previdenciária; e a paga r os valores correspondentes ao abono de permanência, devidos a partir do implemento dos requisitos de aposentadoria pela autora, até a efetiva implantação em contracheque, atualizados . Se m remessa necessária (art. 496, § 3º, III, do CPC) . Apelação : suscita carência da ação e falta de interesse de agir, por ausência de prévio requerimento administrativo, reiterando os argumentos lançados na contestação. Diz que, sendo a sentença ilíquida, a definição do percentual dos honorários só ocorrerá após a liquidação do julgado. R equer a modificação da sentença, para julgar a ação improcedente, bem como, pugna pela condenação da promovente em custas processuais e honorários de sucumbência. Contrarrazões : sustenta ofensa ao princípio da dialeticidade, por ausência de impugnação específica aos fundamentos da sentença. Rechaça os argumentos da apelação e requer a manutenção da decisão .&#160; Manifestação da&#160; Procuradoria Geral de Justiça &#160; indiferente ao mérito.&#160; É o relatório, no essencial. &#160; &#160; <br /> <br />

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	VOTO </p><p style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.2cm;" align="justify"> N o que se refere ao juízo de admissibilidade, analisando os pressupostos processuais recursais necessários, tenho que os requisitos intrínsecos (cabimento, interesse e legitimidade, inexistência de súmula impeditiva) e extrínsecos (tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também, os específicos, descritos no art. 1.010 do CPC/2015, motivo pelo qual conheço do apelo. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Cinge-se a controvérsia à verificação dos requisitos legais para concessão do abono de permanência pelo Município de Quixadá à su a servidor a públic a municipal, pelo período correspondente ao tempo que se manteve na ativa após ter completado tempo para obtenção de aposentadoria voluntária em 04/07/2017 . </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> De ofício e p reliminarmente, r econheço a incidência da prescrição quinquenal dos valores devidos anteriores a 28/06/2018. Com relação às pretensões contra a Fazenda Pública, a prescrição aplicável é a prevista no Decreto nº 20.910/1932, que prevê em seu art. 1º: “As dívidas passivas da União, Estados e dos Municípios, bem assim todo e qualquer direito ou ação contra a Fazenda Pública federal, estadual ou municipal, seja qual for a natureza, prescrevem em 5 cinco anos, contados da data do ato ou fato do qual se originarem”. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> N o caso, a ação foi ajuizada em &#160; 28/06/2023 , impondo-se o reconhecimento da prescrição das parcelas anteriores a 28/06/2018. </p><p style="line-height: 200%;

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	text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Quanto ao recurso, n as razões apresentadas , o ente público suscita, preliminarmente, ausência de interesse de agir d a autor a por ausência de prévio requerimento administrativo e consequentemente, inexistência de pretensão resistida. No entanto, tal alegação não merece prosperar, pois, como é cediço, não se pode condicionar o direito de se buscar a tutela jurisdicional ao esgotamento da via administrativa, sob pena de violação do acesso à Justiça, ou seja, do princípio da inafastabilidade do controle jurisdicional previsto no art. 5º, inciso XXXV, da CF/1988, que prevê: “A lei não excluirá da apreciação do Poder Judiciário lesão ou ameaça de direito”. Nesse sentido é o entendimento deste e. Tribunal de Justiça do Estado do Ceará em caso idêntico, se não, vejamos: REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA MUNICIPAL.&#160; PRELIMINAR DE AUSÊNCIA DE INTERESSE DE AGIR. REJEIÇÃO. DESNECESSIDADE DE PRÉVIO REQUERIMENTO ADMINISTRATIVO. &#160;MÉRITO. ABONO DE PERMANÊNCIA. INTELIGÊNCIA DO ART. 40, § 19, DA CF/88. PREENCHIMENTO DAS EXIGÊNCIAS CONSTITUCIONAIS PARA O DIREITO DA VANTAGEM. AUSÊNCIA DE PROVA DE FATO IMPEDITIVO OU EXTINTIVO DO DIREITO DA AUTORA. REEMBOLSO DEVIDO DESDE A DATA DA AQUISIÇÃO DO DIREITO À APOSENTADORIA VOLUNTÁRIA ATÉ A SUA IMPLEMENTAÇÃO. RECURSO DE APELAÇÃO CONHECIDO E DESPROVIDO. REEXAME NECESSÁRIO CONHECIDO E PARCIALMENTE PROVIDO. 1. O cerne da questão consiste em examinar se a promovente faz jus ao pagamento do abono de permanência desde a aquisição do direito à aposentadoria voluntária por idade e tempo de serviço até a implementação pelo promovido, uma vez que continuou laborando. 2.&#160; PRELIMINAR DE AUSÊNCIA DE INTERESSE DE AGIR. 2.1. Em suas razões recursais, o promovido requereu, preliminarmente, a extinção do processo sem resolução de mérito, ante a falta de interesse de agir, em virtude da inexistência de requerimento administrativo da autora. 2.2. Todavia, não se faz necessário o prévio requerimento ou o esgotamento da via administrativa para que o autor busque a tutela jurisdicional, sob pena de malferimento ao princípio da inafastabilidade da jurisdição, insculpido no artigo 5º, inciso XXXV, da Carta Magna de 1988. 2.3. Preliminar rejeitada.&#160; [...]. 4. Remessa necessária conhecida e parcialmente provida e apelação cível conhecida e desprovida. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, ACORDAM os Desembargadores integrantes da Segunda Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer do recurso voluntário para rejeitar a preliminar suscitada e, no mérito negar-lhe provimento, bem como conhecer e dar parcial provimento ao reexame necessário, tudo nos termos do voto do Relator. Fortaleza, data e hora indicadas pelo sistema. Presidente do Órgão Julgador DESEMBARGADOR LUIZ EVALDO GONÇALVES LEITE RELATOR (Apelação / Remessa Necessária&#160;- 0050768-85.2021.8.06.0151, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento:&#160; 16/11/2022, data da publicação:&#160; 16/11/2022) – negritei Assim, rejeito a preliminar de&#160;ausência de interesse de agir d a autor <span

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	style="font-family: Arial, serif;"> a e passo ao mérito. &#160; Do bojo dos autos, extrai-se que a apelad a exerce o cargo de Professor a lotad a na Secretaria de Educação do Município de Quixadá desde 01/ 1 0/19 9 8. Em 04/07/2017 preencheu todos os requisitos necessários para a concessão do benefício de aposentadoria voluntária por idade e tempo de contribuição, com proventos integrais, tendo optado por permanecer em atividade, todavia, o Município apelante continuou a realizar os descontos referentes à contribuição previdenciária para seu Instituto de Previdência. O ente político aduz que o abono de permanência no âmbito local só foi regulamentado em 2022, quando editou-se a Lei Complementar Municipal nº 25/2022, produzindo efeitos em fevereiro de 2023, de forma que, por falta de regulamentação anterior, a apelad a não fa z jus ao direito de recebimento do abono. O direito d a servidor a , entretanto, nasceu muito antes da regulamentação pela LC Municipal nº 25/2022. Em 04/07/2017 a servidor a <span style="font-family:

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	Arial, serif;"> preencheu os requisitos legais para aposentadoria voluntária, mas optou por permanecer em atividade. A redação&#160;do art. 40 e § 19, da CF/88,&#160;vigente&#160;à época do preenchimento dos requisitos para aposentadoria voluntária (04/07/2017) era a seguinte : Art. 40. Aos servidores titulares de cargos efetivos da União, dos Estados, do Distrito Federal e dos Municípios, incluídas suas autarquias e fundações, é assegurado regime de previdência de caráter contributivo e solidário, mediante contribuição do respectivo ente público, dos servidores ativos e inativos e dos pensionistas, observados critérios que preservem o equilíbrio financeiro e atuarial e o disposto neste artigo.&#160;(Redação dada pela Emenda Constitucional nº 41, 19.12.2003) […] § 19. O servidor de que trata este artigo que tenha completado as exigências para aposentadoria voluntária estabelecidas no § 1º, III, a, e que opte por permanecer em atividade fará jus a um abono de permanência equivalente ao valor da sua contribuição previdenciária até completar as exigências para aposentadoria compulsória contidas no § 1º, II. (Incluído pela Emenda Constitucional nº 41, 19.12.2003) - negritei C onsiderando que o Município réu ainda não promulgou sua reforma da previdência, o regramento aplicável ao caso é a Lei Municipal nº 2.103/2002, que garante a isenção da contribuição previdenciária, de forma que, como consectário lógico, tendo sido as contribuições descontadas d a autor a , devem lhe ser ressarcidas. Trata-se de direito de servidor público efetivo, existindo, como aduzido, lei de iniciativa do Chefe do Poder Executivo, vigente à época dos fatos (tempus regit actum). A &#160;interessad a se encontrava em efetivo exercício no período de vigência e preenchia os requisitos exigidos na norma regulamentadora: <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAogAAAEdCAYAAACPCpbXAAAACXBIWXMAAA7DAAAOwwHHb6hkAAAgAElEQVR4nOzdd5TU9b3/8ee3Tp+d2d5gd9llqbJU6QioiCAqoFiw3xRNuYm5ufcm+aUnN8mNJZpcjdEo9t5QUBGk916XzgK7bO+707/l98ciihTFoLTP4xzO4ezMfOcz9fua96dJtm3bCIIgCIIgnKVs2wbbRpLlM92UC4YkAqIgCIIg

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Processo	3001061-29.2023.8.06.0151
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	R7z3w+Xxxs1Xzob6+PjbslnBv26ans5OGOc2xAPyR56E4sWqp0h6PodSoh0aSpJzKWBCPjk51Q0PR7zN8uDRTedm2nbX9Dk8jWm98Pl9C2tnYRrZ1R1VVGhoaUqaZq/fY5/PhdrsTJpAJexZMJnKOQfzh9u2xGMIPfOByPvKRmzh06DBNTQrXX7+Ww8cPQyiyd6GiNLFly52xSrXj6afZ8dwOLr9mJRu/9Hl2/n4vIV8P13/8auqV2YV9MsGkwbZtdEkn1G6jzJESRNpo4qmyIVP6xbx/sZ8tF0KE8LafpTpNRz0ZsC0LqcSHIG1suts7aJ4zJ/O1tp1U4I3q/jkIP8hs32c7OmiePTvjPdPdL3rexsan+hj0eie9LU9GRkqiybyEXV47qTz33J8AuOz9s2meM4cQoaSek1IiWYOUy1exoHTxer00NDSgqipKvZJUIBazkVdVNRITVp+8DhRCxKXqUKNpj9ZDWgiioqM6OrNWSvTmTgbOtrdnJbzGkxAhQmooK5sMqSFCSoh6pXB1KNs6kUs+MxFtJ1K1+9Hz0XsOer0pRwUEpU++/btX9RKNFpIkaVJ/IIzZVnvjTbIGqdjCQTA2TIQOebQMqoPo6Gm9lONty9EPRcuy8Hq91DbWis61RClm2EO2jLXNRtuJ4fcd/h4mQztS7th2ZGc227bRfTq1jdltuxvd9lGWZY7p3dSfDWHbNjUXXTTu7ep4UtrjIAVEqVcmdUGXM5OhUdeV1OIQSmOIOSoGf//7ndx//xYhDksYn89H94XNCsaLsbbZZO1Ed0dHLD5xMrQj5Y7P52Pjho2svGolmzdlv5zexg0bWbPmY/h8Pj6gNNPcMIdDxzqKl9EJwqTxIAoEAoFAIBAIsmPSeBAFAoFAIBAIBNkhBKJAIBAIBAKBIA4hEAUCgUAgEAgEcQiBKBAIBAKBQCCIQwhEgUAgEAgEAkEcQiAKBAKBQCAQCOIQAlEgEAgEAoFAEIcQiAKBQCAQCASCOIRAFAgEAoFAIBDEIQSiQCAQCAQCgSAOIRAFAoFAIBAIBHH8P8L6IVfZ6UjEAAAAAElFTkSuQmCC" alt="" /> O direito ao abono de permanência decorre, única e tão somente, da continuidade em atividade do servidor que tenha completado as exigências para se aposentar voluntariamente. Nas lições da doutrina de Frederico Amado: “(...) o objetivo do Poder Público com a criação do abono de permanência é manter o servidor público que já possui direito a uma das regras de aposentadoria acima referidas em atividade, com um gasto extra equivalente ao valor de sua contribuição previdenciária, postergando o aumento das despesas com a nomeação de novos servidores para suprir a inatividade do aposentado”. (in Curso de Direito e Processo Previdenciário, editora Jus Podivm, 13ª edição, 2020). A jurisprudência do STF foi pacificada neste mesmo sentido: Repercussão Geral – Tema 888 : É legítimo o pagamento do abono de permanência previsto no art. 40, § 19, da Constituição Federal ao servidor público que opte por permanecer em atividade após o preenchimento dos requisitos para a concessão da aposentadoria voluntária especial (art. 40, § 4º, da Carta Magna). ADMINISTRATIVO E PREVIDENCIÁRIO. RECURSO EXTRAORDINÁRIO COM AGRAVO. SERVIDORPÚBLICO EM ATIVIDADE APÓS O PREENCHIMENTODOS REQUISITOS PARA A CONCESSÃO DEAPOSENTADORIA VOLUNTÁRIA ESPECIAL. CONCESSÃO DO ABONO DE PERMANÊNCIA. LEGITIMIDADE. 1. É legítimo o pagamento do abono de permanência previsto no art. 40, § 19, da Constituição Federal ao servidor público que opte por permanecer em atividade após o preenchimento dos requisitos para a concessão da aposentadoria voluntária especial (art. 40, § 4º, da Carta Magna). 2. Agravo conhecido para negar provimento ao recurso extraordinário, com o reconhecimento da repercussão geral do tema e a reafirmação da jurisprudência sobre a matéria.” (ARE 954408 RG, Relator(a): TEORI ZAVASCKI, Tribunal Pleno, julgado em 14/04/2016, ACÓRDÃO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-077 DIVULG 20-04-2016 PUBLIC22-04-2016). (grifei) O entendimento desta Corte Estadual de Justiça também se encontra firme no sentido do direito ao recebimento do abono de permanência ao servidor que, podendo se aposentar voluntariamente, opta por continuar na atividade, inclusive em análise de casos do próprio Município de Quixadá: ADMINISTRATIVO E PROCESSO CIVIL. REMESSA NECESSÁRIA E APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA DE OBRIGAÇÃO DE FAZER C/C COBRANÇA. SERVIDORA PÚBLICA MUNICIPAL. AUSÊNCIA DE INTERESSE DE AGIR - NECESSIDADE DE PRÉVIO REQUERIMENTO ADMINISTRATIVO. PRELIMINAR AFASTADA. ABONO DE PERMANÊNCIA. IMPLEMENTAÇÃO. PAGAMENTO DE VERBAS

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	RETROATIVAS - ÔNUS DO ENTE MUNICIPAL - ART. 373, INCISO II, DO CPC. AUSÊNCIA DE COMPROVAÇÃO. REQUISITOS PREENCHIDOS. PRECEDENTES DO TJCE. HONORÁRIOS ADVOCATÍCIOS. DEFINIÇÃO DO PERCENTUAL POSTERGADA PARA A FASE DE LIQUIDAÇÃO DO JULGADO (ART. 85, §4º, INCISO II, CPC). RECURSO CONHECIDO E DESPROVIDO. REMESSA NECESSÁRIA CONHECIDA E PARCIALMENTE PROVIDA. SENTENÇA PARCIALMENTE REFORMADA. 1. (...) 2. No mérito, o cerne da questão discutida cinge-se em aferir se a autora/apelada, servidora pública do Município de Quixadá, possui direito à implantação de abono de permanência, bem como o ressarcimento dos valores correspondentes ao referido abono, de maio de 2018 até a efetiva implantação em contracheque. 3. Com efeito, o art. 40, da Carta Magna, assegura o pagamento de abono de permanência correspondente, no máximo, ao valor da contribuição previdenciária ao servidor que completar o tempo para aposentadoria voluntária e que opte por continuar em atividade. 4. A Lei Municipal nº 2.103, de 29 de julho de 2002, que dispõe sobre a Seguridade Social dos Servidores Públicos do Município de Quixadá, assegura o direito ao abono de permanência à parte autora. 5. Cotejando os fólios, percebe-se que a autora demonstra que integra o serviço público do Município de Quixadá, lotada na Secretaria Municipal de Saúde, exercendo a função de enfermeira, desde 18 de março de 1988, tendo na data de maio de 2018, completado 31 (trinta e um) anos de contribuição e 53 (cinquenta e três) anos de idade. Além disso, cumpre registrar que a autora comprovou averbação do período (18/03/1988 a 24/10/1991) em que contribuiu para o Regime Geral de Previdência Social no instituto previdenciário municipal, que equivalem a cerca de 4 anos e 11 meses. 6. Desse modo, constata-se que a parte autora demonstrou o preenchimento das condições legais para o percebimento do abono de permanência, ao passo em que o ente municipal demandado, não comprovou a existência de qualquer fato impeditivo, modificativo ou extintivo do direito vindicado, deixando de se desincumbir do ônus probatório de que trata o art. 373, inciso II, do CPC. 7. (...) 9. Recurso conhecido e desprovido. Remessa necessária conhecida e parcialmente provida. Sentença parcialmente reformada. (Apelação / Remessa Necessária - 0052547-12.2020.8.06.0151, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160; 17/04/2023, data da publicação:&#160; 17/04/2023) - negritei &#160; REEXAME NECESSÁRIO. CONSTITUCIONAL E ADMINISTRATIVO. SERVIDORA PÚBLICA MUNICIPAL. DIREITO À PERCEPÇÃO DE ABONO DEPERMANÊNCIA. REQUISITOS PREENCHIDOS. SENTENÇA ILÍQUIDA. HONORÁRIOS SUCUMBENCIAIS DE ACORDO COM O DISPOSTO NO ART. 85, § 4º, II, DO CPC. SENTENÇA REFORMADA EM PARTE. 1. Tratam os autos de reexame necessário em face de sentença que decidiu pela procedência do pedido inicial, a fim de condenar o Município de Quixadá a proceder à implementação do abono de permanência no contracheque da autora e ao ressarcimento do montante referente a essas verbas, as quais deveriam ter sido implantadas desde julho de 2014. 2. Preenchidos os requisitos legais, a servidora pública municipal possui direito ao abono de permanência nos termos do disposto no § 19, art. 40, da CF/88 e da Lei Municipal nº 2.103/2002. 3. (...) (Remessa Necessária Cível - 0050724-66.2021.8.06.0151, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 01/08/2022, data da publicação: 01/08/2022) - negritei Outrossim, o direito d a apelad a ao recebimento do abono nasceu em 04/07/2017 , não tendo a Lei Complementar Municipal nº 25/2022 o

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	condão de alterar o termo inicial do exercício do sobredito direito. Destarte, faz jus, a recorrid a , às parcelas do abono de permanência, devidas desde 28/06/2018, em observância à prescrição quinquenal, até a data da efetiva implementação em folha. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Já com relação aos honorários sucumbenciais, reza o art. 85, § 4º, inciso II, do CPC/2015, que não sendo líquida a sentença, a definição do percentual dos honorários advocatícios somente deverá ocorrer posteriormente, quando da liquidação do julgado. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Desse modo, revela-se inapropriada a fixação de tal verba sucumbencial na sentença, por malferir o dispositivo legal supracitado. Por essa razão, merece a sentença ser reformada nesta parte, ex officio , para excluir da condenação o percentual arbitrado a título de honorários advocatícios, o qual deverá ser definido, a posteriori , em liquidação, a teor do que preconiza o dispositivo retro. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Isto posto, conheço da apelação, para d ar-lhe parcial provimento, apenas para determinar que a fixação do percentual da verba honorária sucumbencial ocorra a posteriori , na fase de liquidação, a teor do art. 85, § 4º, inciso II, do CPC/2015, e de ofício, reconheço a incidência da prescrição quinquenal sobre os valores devidos anteriores a 28/06/2018 . </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Sem majoração de honorários advocatícios sucumbenciais, em observância ao Tema repetitivo 1059 do STJ – Tese firmada: “ A majoração dos honorários de sucumbência prevista no art. 85, § 11, do CPC pressupõe que o recurso tenha sido integralmente desprovido ou não conhecido pelo tribunal, monocraticamente ou pelo órgão colegiado competente. Não se aplica o art. 85, § 11, do CPC em caso de provimento total ou parcial do recurso, ainda que mínima a alteração do resultado do julgamento ou limitada a consectários da condenação”. </p><p style="line-height:

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	200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> É o voto que submeto à consideração de meus pares. </p><p style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> Fortaleza, data registrada pelo sistema. </p><p> <br style="mso-special-character: line-break;" /> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	10
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Busca e Apreensão
Polo ativo	JANYCCE EMYLLE OLIVEIRA DE LIMA
Advogado(s) - Polo ativo	Não informado
Polo passivo	DEPARTAMENTO ESTADUAL DE TRANSITO PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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	transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação cível interposta contra sentença que julgou improcedente o pedido de nulidade de multas de trânsito. A autora alegou ter alienado o veículo a terceiro sem que o comprador realizasse a comunicação ao Detran, o que resultou em multas imputadas após a venda. Pleiteou a declaração de nulidade das penalidades ou, subsidiariamente, o reconhecimento da renúncia à propriedade.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão principal em discussão consiste em verificar se é possível afastar a responsabilidade da autora, ex-proprietária, pelas infrações de trânsito cometidas após a alienação do veículo, a despeito da ausência de comunicação ao Detran acerca da transferência.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A falta de comunicação ao Detran não implica necessariamente a responsabilidade solidária do antigo proprietário, quando comprovada a alienação do bem, mitigando-se a regra do art. 134 do CTB.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A autora apresentou declaração de venda com firma reconhecida e registros de troca de mensagens comprovando a alienação, constituindo prova suficiente da transferência.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. A preclusão administrativa não impede a comprovação judicial do verdadeiro responsável pelas infrações, garantindo-se o direito à inafastabilidade da tutela jurisdicional (art. 5º, XXXV, da CF).</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Porém, apesar da procedência do pedido, mantém-se a condenação da autora aos ônus sucumbenciais, aplicando-se o princípio da causalidade, pois a demanda decorreu da ausência de comunicação ao Detran.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Apelação provida.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ______&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos relevantes citados: CF, art. 5º, XXXV, LIV e LV; CPC, arts. 9º e 10, art. 85, caput, 373, I; CTB, arts. 123, I e § 1º, 134, 257, § 7º. &#160; </p><p style="line-height: 2.16; text-align: justify;

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	margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ACÓRDÃO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.&#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO&#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Relator&#160; &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Tem-se apelação que transfere a este tribunal o conhecimento sobre ação ajuizada por Janycce Emilly Oliveira de Lima em face do Departamento Estadual de Trânsito do Ceará.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Petição inicial (id 15369492): a parte autora narrou que vendeu o veículo I/FORD RANGER XLT 13F, cor: prata; ano: 2004/2005, marca: Ford, chassi: 8AFER13F25J371365, placa: HWG6G39, sem que o comprador tenha comunicado a transferência junto ao Detran/CE. Narrou ainda que, por falta de comunicação à autarquia, tem recebido notificações de multa por infrações cometidas após a alienação. Pediu a declaração de nulidade da multa nº 9630043, bem como de quaisquer outras multas referentes ao veículo. Subsidiariamente, pediu o reconhecimento da renúncia à propriedade, nos termos do art. 1275, II, do CC.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Sentença (id 15369514): o juízo de origem julgou improcedente o pedido, ao fundamento de que “a autora não comprovou que fez a comunicação do veículo, tal como exige a legislação de trânsito, tampouco apresentou prova capaz de demonstrar de forma segura que a alienação de fato ocorreu, ademais, apenas informou que vendeu a terceiro que conhecia por Antônio Valdemir Pereira Alves, o qual já teria repassado para terceira pessoa, de

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	modo que é legítima a autuação daquele que se apresenta, ainda, como proprietário do veículo, de acordo com o art. 257, §7º, do CTB”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Apelação (id 15369518): a parte autora requereu a antecipação dos efeitos da tutela recursal, suspendendo-se a exigibilidade da multa de nº 9630043, bem como quaisquer outras multas do veículo após o dia 28/1/2022. Requereu ainda a anulação da sentença, por ausência de intimação das partes para se manifestarem sobre o julgamento antecipado do mérito. Alternativamente, pugnou pela procedência do pedido, declarando-se a nulidade da multa nº 9630043, bem como de quaisquer outras multas referentes ao veículo em apreço desde a data da tradição, ou, subsidiariamente, a renúncia ao direito de propriedade do veículo, retirando-se seu nome dos documentos respectivos.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Sem contrarrazões (id 15369520) .</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Dispensada a vista à Procuradoria de Justiça em razão da evidente falta de interesse público primário a justificar a atuação do órgão como fiscal da ordem jurídica.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial. &#160; </p><p style="line-height: 2.16; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> De início, rejeito a alegação de nulidade da sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Não houve ofensa ao contraditório e ampla defesa (art. 5º, LIV e LV, da CF), nem decisão surpresa (arts. 9º e 10 do CPC) no julgamento antecipado da lide, pois a autora foi intimada sobre o despacho de id 15369508, que lhe deu a oportunidade de especificar ou requerer novas provas, mas não se manifestou no prazo assinalado, o que implica preclusão do direito de produzi-las.</p><p style="line-height: 1.7999999999999998; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Quanto ao mérito, o pedido é procedente.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline;

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	white-space: pre-wrap;">A autora fez prova de que alienou o veículo (art. 373, I, do CPC), pois juntou declaração com firma reconhecida do adquirente, informando que a alienação ocorreu em 28 de janeiro de 2022 (id 15369494).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> As capturas de tela de id 15369493 registram conversas em aplicativo de troca de mensagens entre ela e o comprador sobre a necessidade da transferência ser comunicada ao Detran, sobretudo, diante da notificação de infração.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> A autarquia estadual de trânsito, aliás, não contestou o pedido, nem apresentou resposta a essa apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Embora não seja possível aplicar os efeitos materiais da revelia, como os da presunção de veracidade dos fatos narrados na inicial, o conjunto probatório é robusto e inequívoco no sentido de que houve transferência do veículo em 28 de janeiro de 2022.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Partindo do pressuposto de que houve transferência do veículo em 28.01.2022, a multa nº 9630043 não é de responsabilidade da autora, pois a infração foi cometida em 06.02.2022 (id 15369496, p. 1).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Sabe-se que, em caso de transferência de automotor, é obrigatória providenciar a expedição de novo Certificado de Registro de Veículo (CRV), conforme estatui o art. 123, inciso I e §1º do CTB:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Art. 123. Será obrigatória a expedição de novo Certificado de Registro de Veículo quando: I - for transferida a propriedade; (...) § 1º No caso de transferência de propriedade, o prazo para o proprietário adotar as providências necessárias à efetivação da expedição do novo Certificado de Registro de Veículo é de trinta dias, sendo que nos demais casos as providências deverão ser imediatas.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por seu turno, o art. 134 do CTB acrescenta que o vendedor deverá encaminhar ao DETRAN, no prazo de 30 dias, cópia autenticada do comprovante de transferência de propriedade, devidamente assinado e datado, sob pena de ter que se responsabilizar solidariamente pelas penalidades impostas e suas reincidências.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Todavia, a jurisprudência do STJ e deste Tribunal admite afastar a responsabilização do antigo proprietário do veículo, tanto por débito de IPVA, quanto de multa, quando houver prova da transferência do bem. Confiram-se, senão, as seguintes ementas:</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 11pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">PROCESSUAL CIVIL E ADMINISTRATIVO. ALIENAÇÃO DE VEÍCULO AUTOMOTOR. MULTAS. RESPONSABILIDADE SOLIDÁRIA DO ALIENANTE. INTERPRETAÇÃO DO ART. 134 DO CTB. RELATIVIZAÇÃO. 1. Hipótese em que o Tribunal local consignou: "É certo que o requerente logrou comprovar a venda do veículo a outrem e a respectiva tradição, bem como a comunicação de transferência de propriedade do bem, todavia tal comunicação apenas se deu quando há muito ultrapassado o prazo previsto no artigo 134 do Código de Trânsito Brasileiro, haja vista que a venda do veículo se deu em 07 de fevereiro de 2010 e a comunicação apenas foi protocolada em 19 de abril de 2010, ato que se revela ineficaz perante o Poder Público em relação às autuações lavradas em data anterior àquela em que protocolada a comunicação de transferência do veículo" (fl. 206, e-STJ).</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Consoante entendimento do Superior Tribunal de Justiça, a regra prevista no art. 134 do CTB sofre mitigação quando ficarem comprovadas nos autos que as infrações foram cometidas após a aquisição de veículo por terceiro, ainda que não ocorra a transferência afastando a responsabilidade do antigo proprietário.</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Nesse sentido: AgRg no AREsp 811.908/RS, Rel. Ministra Assusete Magalhães, Segunda Turma, DJe 29.2.2016; REsp 1.659.667/SP, Rel. Ministro Herman Benjamin, Segunda Turma, DJe 16.6.2017; AgInt no AREsp 429.718/RS, Rel. Ministro Gurgel de Faria, Primeira Turma, DJe 21.8.2017; AgRg no AREsp 174.090/SP, Rel. Ministro Humberto Martins, Segunda Turma, DJe 29.6.2012.</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Recurso Especial provido.</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (REsp n. 1.685.225/SP, relator Ministro Herman Benjamin, Segunda Turma, julgado em 19/9/2017, DJe de 9/10/2017.)</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 11pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">APELAÇÃO CÍVEL. ADMINISTRATIVO. TRANSFERÊNCIA DE VEÍCULO. ART. 123 E 134 DO CTB. RESPONSABILIDADE SOLIDÁRIA DO ANTIGO PROPRIETÁRIO. MITIGAÇÃO. PRECEDENTES DO STJ. MULTAS E ENCARGOS POSTERIORES À ALIENAÇÃO DO VEÍCULO. PRESUNÇÃO JURIS TANTUM DE VERACIDADE E LEGITIMIDADE DOS ATOS ADMINISTRATIVOS NÃO ILIDIDA. TEORIA DA ASSERÇÃO. POSSIBILIDADE DE BLOQUEIO ADMINISTRATIVO DO VEÍCULO. APELAÇÃO CONHECIDA E DESPROVIDA. 1. O direito litigioso das apelações corresponde à reforma da sentença que julgou parcialmente procedente o pedido para busca e apreensão e exclusão dos encargos e multas e propriedade do veículo em nome do antigo proprietário. 2. O Superior Tribunal de Justiça consolidou o entendimento de que a solidariedade entre o vendedor e o comprador do veículo não é absoluta, devendo ser mitigada e relativizada a regra prevista no art. 134 do CTB, quando restar devidamente comprovado nos autos que as infrações foram cometidas após a aquisição de veículo por terceiro, ainda que não tivesse sido realizada a transferência do veículo pelo adquirente, afastando a responsabilidade do antigo proprietário. 3. Embora gozem os atos administrativos de presunção de veracidade e legitimidade, estes se presumem verdadeiros e legais até prova em contrário, operando-se em seu benefício a presunção juris tantum, ou seja, uma presunção relativa. Não se incumbiu o autor, entretanto, de ilidir a legalidade das multas e débitos imputadas. 4. Não há qualquer prova da alienação do veículo e de que os débitos e as infrações de trânsito são relativas ao período em que o veículo seria de propriedade de terceiro, não se incumbindo o autor de cumprir o requisito do art. 373, I, do CPC, quanto ao fato constitutivo de seu direito. Assim, não há como mitigar o disposto no art. 134 do Código de Trânsito Brasileiro, não havendo como retirar a responsabilidade solidária do apelado quanto às infrações cometidas após a suposta alienação e tradição do veículo. 5. Fundamentado na Teoria da Asserção, a qual preceitua, com base nos princípios da boa-fé objetiva e da lealdade processual, que na aferição das condições da ação o julgador deve admitir uma presunção de veracidade a respeito dos fatos alegados na petição inicial, a mera declaração do autor, ora recorrente, é suficiente para o deferimento do pedido de bloqueio administrativo do veículo, haja vista que não haveria sentido no fato do

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	requerente ajuizar uma ação visando bloquear o próprio veículo em sua posse. 6. APELAÇÃO CONHECIDA E DESPROVIDA. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em votação, por unanimidade, em CONHECER da Apelação PARA NEGAR-LHE PROVIMENTO, nos termos do voto da Relatora. Fortaleza, 05 de julho de 2023. Presidente do Órgão Julgador DESEMBARGADORA MARIA IRANEIDE MOURA SILVA Relatora (Apelação Cível - 0054435-41.2017.8.06.0112, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento:&#160; 05/07/2023, data da publicação:&#160; 05/07/2023)</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por esse motivo, afasta-se a responsabilidade solidária da demandante pelas infrações de trânsito ora questionadas.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Da mesma maneira, a jurisprudência do STJ se consolidou no sentido de que é possível indicar, na via judicial, o verdadeiro responsável pela infração de trânsito, mesmo depois do transcurso do prazo previsto no art. 257, § 7º, do CTB, que acarreta apenas a preclusão administrativa para fazê-lo.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de imperativo da inafastabilidade da tutela jurisdicional (art. 5º, XXXV, da CF).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Confiram-se, senão, as seguintes ementas da Corte Infraconstitucional:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> PROCESSO CIVIL. DIREITO ADMINISTRATIVO. INFRAÇÃO DE TRÂNSITO. INDICAÇÃO DE CONDUTOR DIVERSO. PRECLUSÃO ADMINISTRATIVA. POSSIBILIDADE DE DISCUSSÃO EM FASE JUDICIAL. VIOLAÇÃO DO ART. 1.022 DO CPC. NÃO OCORRÊNCIA. AUSÊNCIA DE OMISSÃO. CONDUTOR DO VEÍCULO NO MOMENTO DA INFRAÇÃO. REEXAME DE FATOS E PROVAS. INCIDÊNCIA DA SÚMULA 7/STJ. PROVIMENTO NEGADO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. É firme a orientação desta Corte de que o decurso do prazo previsto no art. 257, § 7º, do Código de Trânsito Brasileiro acarreta somente a preclusão administrativa, não afastando o direito de o proprietário do veículo, no âmbito judicial, comprovar o verdadeiro responsável pelo cometimento da infração de trânsito, sob pena de ofensa ao que dispõe o art. 5º, XXXV, da Constituição Federal.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. Inexiste a alegada violação do art. 1.022 do Código de Processo Civil (CPC), pois, ao contrário do alegado, o Tribunal de origem se pronunciou sobre as questões levantadas e concluiu não haver substrato fático para afastar a responsabilidade da proprietária do veículo. Percebe-se, assim, que não há omissão, mas que a matéria foi decidida de forma diferente da que pretendia a parte recorrente.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Entendimento diverso sobre quem estaria na condução do veículo no momento da infração, conforme pretendido, implicaria o reexame do contexto fático-

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	probatório dos autos, circunstância que redundaria na formação de novo juízo acerca dos fatos e das provas, e não na valoração dos critérios jurídicos concernentes à utilização da prova e à formação da convicção, o que impede o conhecimento do recurso especial quanto ao ponto. Incidência no presente caso da Súmula 7 do Superior Tribunal de Justiça (STJ), segundo a qual "a pretensão de simples reexame de prova não enseja recurso especial".</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. Agravo interno a que se nega provimento.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (AgInt nos EDcl no AREsp n. 1.973.726/SP, relator Ministro Paulo Sérgio Domingues, Primeira Turma, julgado em 26/2/2024, DJe de 29/2/2024, grifo inexistente no original).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ADMINISTRATIVO. MULTA DE TRÂNSITO. IDENTIFICAÇÃO DO CONDUTOR-INFRATOR. PRAZO ADMINISTRATIVO PREVISTO NO ART. 257, § 7º, DO CTB. PRECLUSÃO APENAS ADMINISTRATIVA. POSSIBILIDADE DE DISCUSSÃO NA VIA JUDICIAL. QUESTÃO DE DIREITO. REFORMA DO ACÓRDÃO RECORRIDO. RETOMADA DO JULGAMENTO DO RECURSO INOMINADO DO ORA REQUERENTE.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> I - Pedido de uniformização de interpretação de lei, formulado com fundamento no art. 18, § 3º, da Lei n. 12.153/2009, contra acórdão proferido pela 2ª Turma Recursal&#160; da Fazenda Pública do Tribunal de Justiça do Estado de São Paulo o qual considerou que, decorrido o prazo administrativo do art. 257, § 7°, do CTB, estaria precluso o direito da parte em demonstrar, na via judicial, o condutor-infrator.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> II - Pressupostos do PUIL cumpridos pela parte requerente, que demonstrou a identidade dos casos confrontados, controvérsia que não demanda revolvimento fático-probatório, mas somente questão de direito.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III - O acórdão atacado diverge do entendimento de outras Turma Recursais no sentido de que o prazo previsto no respectivo dispositivo do CTB preclui tão somente na esfera administrativa, mas não na via judicial.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> IV - Precedentes do STJ: PUIL n. 1.501/SP, relator Ministro Sérgio Kukina, Primeira Seção, DJe 4/11/2019, AgInt no REsp n. 1.825.757/RS, relatora Ministra Regina Helena Costa, Primeira Turma, DJe 20/11/2019, REsp n. 1.774.306/RS, relator Ministro Gurgel de Faria, Primeira Turma, DJe 14/5/2019.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> V - Pedido de uniformização de interpretação de lei provido, a fim de reformar o acórdão recorrido, com a determinação de que a 2ª Turma Recursal da Fazenda Pública do Tribunal de Justiça de São Paulo retome e prossiga no julgamento do referido recurso - acórdão aqui atacado - , e, ultrapassada a impossibilidade de preclusão do direito de indicação do condutor na vida judicial, examine a controvérsia como entender de direito.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (PUIL n. 1.816/SP, relator Ministro Francisco Falcão, Primeira Seção, julgado em 9/3/2022, DJe de 15/3/2022, grifos inexistentes no original).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 11pt; font-family:

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	Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">ADMINISTRATIVO. MULTA NA CONDUÇÃO DE VEÍCULO. INFRAÇÃO COMETIDA POR TERCEIRO. AUSÊNCIA DE COMPROVAÇÃO DE QUE O INFRATOR NÃO ERA O PROPRIETÁRIO. PRETENSÃO DE REEXAME FÁTICO-PROBATÓRIO. IMPOSSIBILIDADE. ALEGAÇÕES DE VÍCIOS NO ACÓRDÃO. INEXISTENTES.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> I - Na origem, trata-se de ação objetivando afastar a aplicação de infração administrativa na condução de veículo automotor. Na sentença, julgou-se improcedente o pedido. No Tribunal a quo, a sentença foi mantida. Nesta Corte, indeferiu-se liminarmente o Pedido de Uniformização de Interpretação de Lei, tendo em vista a impossibilidade de exame de matéria fática, mantendo-se a decisão do Tribunal de origem no sentido da responsabilização do requerente pela infração de trânsito.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160; II - Em relação ao Pedido de Uniformização de Interpretação de Lei, com razão em parte o particular, visto que o entendimento firmado nesta Corte é no sentido de que o decurso do prazo previsto no art. 257, § 7º, do Código de Trânsito Brasileiro acarreta somente a preclusão administrativa, não afastando o direito de o proprietário do veículo, em sede judicial, comprovar o verdadeiro responsável pelo cometimento da infração de trânsito, sob pena de ofensa ao que dispõe o art. 5º, XXXV, da Constituição Federal. A esse respeito, os seguintes julgados: REsp 1.774.306/RS, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 09/05/2019, DJe 14/05/2019 e REsp 765.970/RS, Rel. Ministro MAURO CAMPBELL MARQUES, SEGUNDA TURMA, julgado em 17/09/2009, DJe 02/10/2009.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III - Entretanto, no caso dos autos, o Tribunal a quo não ficou convencido da veracidade da declaração prestada por um terceiro assumindo estar na condução do veículo da requerente no momento do cometimento da infração, a uma, pela ausência de reconhecimento de firma, a duas, por ter sido o documento impugnado pelos réus.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> IV - Confira-se os trechos extraído da decisão monocrática e da sentença vergastada (fls. 39 e 51): ‘De qualquer forma, anote-se que a declaração de fls. 18 não pode ser aceita como elemento de prova, pois não houve reconhecimento de firma e foi impugnada pelos réus.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> [...]Cumpre ainda salientar que a declaração de terceiro não pode ser aceita como forma de afastar a infração.’</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> V - Dessa forma, em que pese esta Corte Superior entender pela possibilidade, na esfera judicial, de indicação do real condutor do veículo após o transcurso do prazo administrativo de 15 (quinze) dias após a notificação da autuação, também é condição necessária o convencimento do julgador de que o infrator não era o proprietário do veículo, o que não se deu nos autos.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (AgInt no PUIL n. 1.487/SP, relator Ministro Francisco Falcão, Primeira Seção, julgado em 11/3/2020, DJe de 16/3/2020, grifo inexistente no original).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Não há falar em ofensa à cláusula de reserva de plenário (art. 97, da CF e Súmula Vinculante nº 10), uma vez que não se declara a inconstitucionalidade d o art. 257, § 7º, do CTB , nem se lhe recusa a aplicação, mas apenas interpreta o texto normativo, definindo as consequências da norma nas vias administrativa e judicial, diante do silêncio da lei quanto à abrangência de seus efeitos.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Nesse sentido, veja-se, mais uma vez, a jurisprudência do STJ, representada pela seguinte ementa:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. APLICABILIDADE. INFRAÇÃO DE TRÂNSITO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">INDICAÇÃO DO CONDUTOR. PRECLUSÃO ADMINISTRATIVA. INAFASTABILIDADE DA JURISDIÇÃO. VIOLAÇÃO À CLÁUSULA DE RESERVA DE PLENÁRIO. INEXISTENTE. ARGUMENTOS INSUFICIENTES PARA DESCONSTITUIR A DECISÃO ATACADA. APLICAÇÃO DE MULTA. ART. 1.021, § 4º, DO CÓDIGO DE PROCESSO CIVIL DE 2015. DESCABIMENTO. I - Consoante o decidido pelo Plenário desta Corte na sessão realizada em 09.03.2016, o regime recursal será determinado pela data da publicação do provimento jurisdicional impugnado. In casu, aplica-se o Código de Processo Civil de 2015. II - O acórdão recorrido está em confronto com orientação desta Corte, segundo a qual em obediência ao princípio da inafastabilidade da jurisdição previsto no art. 5º, XXXV da Constituição da Republica, o proprietário do veículo autuado tem direito a apresentar o condutor responsável pela infração ainda que fora do prazo, uma vez que a preclusão temporal prevista no art. 257, § 8º do Código de Trânsito Brasileiro é meramente administrativa. III - Não há de se falar em ofensa à cláusula de reserva de plenário (art. 97 da Constituição da Republica) e ao enunciado 10 da Súmula vinculante do Supremo Tribunal Federal quando não haja declaração de inconstitucionalidade dos dispositivos legais tidos por violados, tampouco afastamento desses, mas tão somente a interpretação do direito infraconstitucional aplicável ao caso, com base na jurisprudência desta Corte. IV - Não apresentação de argumentos suficientes para desconstituir a decisão recorrida. V - Em regra, descabe a imposição da multa, prevista no art. 1.021, § 4º, do Código de Processo Civil de 2015, em razão do mero improvimento do Agravo Interno em votação unânime, sendo necessária a configuração da manifesta inadmissibilidade ou improcedência do recurso a autorizar sua aplicação, o que não ocorreu no caso.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VI - Agravo Interno improvido. (STJ, 1ª Turma, AgInt no REsp 1.825.757/RS , Rel. Ministra REGINA HELENA COSTA, julgado em 18/11/2019, DJe 20/11/2019, grifo inexistente no original).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O presumido condutor do veículo é o declarante de id 15369494, uma vez que era o verdadeiro proprietário do carro à época da infração.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O Detran, repita-se, não contestou o pedido, logo, tampouco impugnou a identificação do adquirente como o infrator.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-

Processo	0202402-94.2022.8.06.0151
	align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> A procedência do pedido, porém, não implica condenação do Detran a ônus de sucumbência, pois, apesar de vencido (art. 85, caput do CPC), quem deu causa ao ajuizamento da demanda foi a autora, considerando que, se ela tivesse procedido com a comunicação da transferência do veículo, não teria havido litígio, muito menos judicializado.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por outro lado, a autora não fez prova de que o Detran tenha indeferido administrativamente o pedido de reconhecimento da transferência do veículo, pois o documento de id 15369493, supostamente, trata de indicação de condutor, e não traz informações sobre se, naquela solicitação administrativa, a autora juntou a documentação apresentada neste processo. </p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Isto é, não há prova de pretensão resistida, mesmo porque o Detran, repita-se, não contestou o pedido, nem apresentou contrarrazões à apelação. Logo, a autarquia não pode ser condenada a ônus de sucumbência, pois não deu causa ao ajuizamento da ação. </p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Diga-se de passagem que, a despeito do princípio da causalidade, a jurisprudência do STJ caminha no sentido de que, “para o estabelecimento de qual das partes deverá arcar com o pagamento dos honorários advocatícios e das custas processuais, deve-se levar em consideração não apenas a sucumbência, mas também o princípio da causalidade, segundo o qual a parte que deu causa à instauração do processo deve suportar as despesas dele decorrentes (1ª T. AgInt no REsp n. 1.757.370/SC, Rel. Min. Gurgel de Faria, DJe de 24.2.2022)”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Assim, conheço da apelação, para dar-lhe provimento, julgando procedente a demanda, para declarar a nulidade da multa nº 9630043, bem como de quaisquer outras multas referentes ao veículo I/FORD RANGER XLT 13F, cor: prata; ano: 2004/2005, marca: Ford, chassi: 8AFER13F25J371365, placa: HWG6G39, desde a data da tradição, qual seja: 28/1/22, em nome da Sra. Janycce Emylle Oliveira De Lima.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Mantenho, porém, a condenação da autora à integralidade dos ônus de sucumbência, em razão do princípio da causalidade, mantida, igualmente, a suspensão da exigibilidade da dívida em razão da gratuidade de Justiça concedida à demandante.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Não cabe majoração dos honorários, com base no art. 85, § 11, do CPC (honorários recursais), a teor do que dispõe a tese fixada pelo STJ no Tema 1.059 de recursos especiais repetitivos: “a majoração dos honorários de sucumbência prevista no art. 85, § 11, do CPC pressupõe que o recurso tenha sido integralmente desprovido ou não conhecido pelo tribunal, monocraticamente ou pelo órgão colegiado competente. Não se aplica o art. 85, § 11, do CPC em caso de provimento total ou parcial do recurso, ainda que mínima a alteração do resultado do julgamento ou limitada a consectários da condenação”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o voto que submeto à consideração de meus pares.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400;

Processo	0202402-94.2022.8.06.0151
	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.44; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p style="line-height: 1.44; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relator</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	11
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Práticas Abusivas
Polo ativo	ANTONIO ALMEIDA DE SOUZA FREITAS
Advogado(s) - Polo ativo	Não informado
Polo passivo	DEPARTAMENTO ESTADUAL DE TRANSITO PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo 3000939-16.2023.8.06.0151

Acordão

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italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-
wrap;">Ementa: <span style="font-size: 13pt; font-family: Arial,sans-serif; color:
#000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant:
small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Direito
Processual, Administrativo e Civil. Apelação Cível. Multa de trânsito. Alienação de veículo.
Julgamento antecipado da lide não anunciado previamente. Sentença baseada na falta de
prova da compra e venda. Decisão cassada. Apelação provida.</p><p style="line-
height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;"
dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000;
background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps;
text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">I. Caso Em
Exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-
top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-

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	serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação interposta contra sentença que julgou improcedente o pedido de desresponsabilização do autor por infrações de trânsito alegadamente cometidas após a transferência do veículo, não comunicada ao Detran. <br /> 2. O autor, ora apelante, requereu a anulação da sentença, por cerceamento de defesa, haja vista o julgamento antecipado da lide sem anúncio prévio. Quanto ao mérito, reiterou o pedido de que seja afastada sua responsabilidade por multas de trânsito ou, subsidiariamente, haja o bloqueio administrativo do veículo.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Há duas questões em discussão: (i) verificar se houve cerceamento de defesa no julgamento antecipado da lide; e (ii) no mérito, se é possível afastar a responsabilidade do autor, ex-proprietário, pelas infrações de trânsito cometidas após a alienação do veículo, a despeito da ausência de comunicação ao Detran acerca da transferência.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. O julgamento antecipado da lide caracteriza ofensa ao contraditório e ampla defesa e consiste em decisão surpresa, se não tiver sido anunciado antes da sentença e o julgamento se basear na falta de provas. <br /> 5. O apelante demonstrou a pertinência de ouvir as testemunhas, haja vista a necessidade de comprovar a celebração de contrato verbal. <br /> 6. Não se tratando de negócio jurídico ao qual a lei imponha forma específica, a prova testemunhal é admissível como subsidiária ou complementar da prova por escrito, qualquer que seja o valor do negócio jurídico.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Recurso provido. Sentença cassada, para que os autos retornem à origem e os litigantes tenham a oportunidade de produzir as provas que entenderem pertinentes.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <strong id="docs-internal-guid-d8eb087a-7fff-379b-ae9b-0345016eedd2" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">______&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CF, art. 5º, LIV e LV; CPC, arts. 9º, 10, 1.013, § 3º; CC, art. 227, parágrafo único.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; </p><p style="line-height: 2.16; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ACÓRDÃO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, para dar-lhe parcial provimento, tudo nos termos do voto do relator, parte integrante deste.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.&#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO&#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Relator&#160; &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Tem-se apelação que transfere a este tribunal o conhecimento sobre ação ajuizada por Antônio Almeida de Souza Freitas em face do Departamento Estadual de Trânsito do Ceará.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Petição inicial (id 15666432): a parte autora narrou que vendeu a motocicleta Sundown/Max 125 SE, placa NQX 1245, sem que o comprador tenha comunicado a transferência junto ao Detran/CE. Narrou ainda que o adquirente alienou o veículo a terceiro desconhecido. Afirmou que, por falta de comunicação à autarquia, tem recebido notificações de multa por infrações cometidas após a alienação. Pediu que o réu seja condenado a proceder à “restrição de

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	INTRANSFERIBILIDADE, BUSCA E APREENSÃO DO MOTOCICLETA Sundown/Max 125 SE, Placa NQX 1245, declarando-se, ainda, que desde a data da venda (abril de 2019), o requerente deixa de se responsabilizar solidariamente com o atual proprietário por atos praticados a bordo do veículo, bem como por multas, pontuações, infrações, tributos, seguro obrigatório e licenciamento, sob pena de multa diária”. Subsidiariamente, pediu que se declare que “o requerente deixa de se responsabilizar solidariamente com o atual proprietário por atos praticados a bordo do veículo, bem como por multas, pontuações, infrações, tributos, seguro obrigatório e licenciamento, sob pena de multa diária”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Sentença (id 15666597): o juízo de origem julgou improcedente o pedido, ao fundamento de que “à míngua de prova segura acerca da venda da motocicleta, não há como acolher a pretensão autoral de se ver desonerado da responsabilidade pelas infrações de trânsito, tampouco determinar a transferência compulsória da propriedade do veículo a terceiro”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Apelação (id 15666601): a parte autora requereu a anulação da sentença, por ausência de intimação das partes para se manifestarem sobre o julgamento antecipado do mérito. Sustentou que o juiz de origem cerceou sua defesa, ao impedir a produção de prova testemunhal acerca da alienação do veículo. Quanto ao mérito, arguiu que mesmo que “não tenha observado as regras para transferências de veículos, não pode ser ad eternum responsabilizado por um bem que não está em sua posse, sem sequer saber a identidade e localização do atual proprietário”. Pugnou, pois, pela procedência do pedido ou, subsidiariamente, pela restrição de circulação do veículo para fins de regularização.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Contrarrazões (id 15666605) : o Detran sustentou sua ilegitimidade passiva, ao argumento de que “não consegue efetivar a suspensão ou o cancelamento de multas lavradas por outros entes, não havendo falar, portanto, na sua responsabilização a respeito de atos praticados por outros órgãos de fiscalização”. Argumentou que há transferência solidária entre o antigo e novo proprietários, caso não tenha havido a comunicação da transferência de propriedade do veículo junto ao Detran. Alegou a impossibilidade de o veículo permanecer sem vinculação a um proprietário, razão pela qual rogou pela “formação de uma decisão que apenas determine o bloqueio do bem, mas se assim não entender, que determine a baixa veicular, tendo em vista a impossibilidade de cumprimento de eventual comando judicial que somente determine a desvinculação de propriedade, bem como seus reflexos”. Por fim, arguiu que não deve suportar os ônus de sucumbência, pois pelo princípio da causalidade não contribuiu para a situação.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Dispensada a vista à Procuradoria de Justiça em razão da evidente falta de interesse público primário a justificar a atuação do órgão como fiscal da ordem jurídica.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial. <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight:

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	400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> &#160; </p><p style="line-height: 2.16; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Houve ofensa ao contraditório e ampla defesa (art. 5º, LIV e LV, da CF) e à vedação de decisão surpresa (arts. 9º e 10 do CPC) no julgamento antecipado da lide anunciado na própria sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O pedido foi julgado improcedente por falta de provas da alienação do veículo, mas a verdade é que a parte autora nem sequer teve a oportunidade de produzi-las.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O demandante, aliás, demonstrou, na apelação, a pertinência de ouvir as testemunhas que já haviam sido indicadas, diante da necessidade de comprovar a celebração de um contrato verbal; todavia o juízo de origem julgou improcedente o pedido, por falta de provas, sem considerar o rol de testemunhas trazido pelo autor na petição inicial. Ressalte-se que, não se tratando de negócio jurídico ao qual a lei imponha forma específica, a prova testemunhal é admissível como subsidiária ou complementar da prova por escrito, qualquer que seja o valor do negócio jurídico.(art. 227, parágrafo único, do CC).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Não existe tampouco causa madura (art. 1.013, § 3º, do CPC), pois os litigantes não tiveram a oportunidade de manifestar interesse na produção das provas.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por tais motivos, impõe-se a devolução dos autos à origem, para prosseguimento da demanda.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Assim, conheço da apelação, para dar-lhe provimento, cassando a sentença e devolvendo os autos à origem, para prosseguimento da demanda, dando-se aos litigantes a oportunidade de produzir as provas que entenderem pertinentes.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o voto que submeto à consideração de meus pares.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.44; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-

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	align-alt: auto;">&#160;</p><p style="line-height: 1.44; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relator</p><div> <br /> </div><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	12
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA
Assunto principal	Prova de Títulos
Polo ativo	FUNDACAO REGIONAL DE SAUDE - FUNSAUDE DIRETOR-PRESIDENTE DA FUNDAÇÃO REGIONAL DE SAÚDE ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	ALAN BASTOS MAIA
Advogado(s) - Polo passivo	HANDREI PONTE SALES - (CE33647-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	background-color: #ffffff; font-weight: 700; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ementa: Direito Administrativo. Apelação e Remessa Necessária em Mandado de Segurança. Concurso público para Médico Neonatologista da Funsaúde. Títulos para pontuação de experiência profissional. Sentença concessiva da segurança confirmada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Remessa necessária da sentença que concedeu segurança determinando que a autoridade impetrada considere a documentação apresentada pelo impetrante a título de experiência profissional.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. Da decisão, o Estado do Ceará interpôs apelação, por entender que a sentença ofende a isonomia entre os candidatos e a separação de poderes, invadindo o mérito do ato administrativo.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I I. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A questão em discussão consiste em decidir se o impetrante, candidato ao cargo de Médico Neonatologista, faz jus, na fase de Títulos, à pontuação referente à experiência profissional.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A declaração apresentada pelo impetrante comprova experiência profissional como médico neonatologista após a conclusão do curso de graduação, conforme exigido pelo edital do concurso.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. A jurisprudência admite a entrega de documentação comprobatória em sede de recurso administrativo, em nome da razoabilidade, proporcionalidade e da finalidade do ato.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. O ato impugnado revela-se inválido por violar o princípio da vinculação aos motivos determinantes, uma vez que o fundamento para a negativa de pontuação é inverídico e desconsidera a experiência validamente comprovada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Não há invasão ao mérito administrativo, mas sim controle de legalidade, limitando-se a atuação do Judiciário à análise de aspectos vinculados e de observância obrigatória do edital.</p><p

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	style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Sentença confirmada e apelação desprovida.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ______&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr">Dispositivos relevantes citados: CF/1988, arts. 2º, 5º, caput e XXXV, 37, caput; Lei nº 12.016/2009, art. 1º.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STF, Tema 485 da repercussão geral; TJCE, Mandado de Segurança Cível - 0623963-77.2022.8.06.0000, Rel. Des. Inácio de Alencar Cortez Neto, Órgão Especial, j. 23.05.2024. &#160;</p><p style="text-align: left;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da remessa necessária e da apelação, para confirmar a sentença e negar provimento ao recurso, tudo nos termos do voto do relator, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Relator&#160; &#160; &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span

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	style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Tem-se remessa necessária e a apelação interposta pelo Estado do Ceará no mandado de segurança impetrado por Alan Bastos Maia.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Petição inicial (id 14410654): o impetrante atacou ato atribuído ao Diretor-Presidente da extinta Fundação Regional de Saúde - Funsaúde de, na fase de títulos do concurso para Médico Neonatologista da instituição, não reconhecer como válida a documentação apresentada a título de experiência profissional e, consequentemente, não atribuir a pontuação correspondente.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Decisão de id 14410687 : deferiu a liminar, para que os impetrados “adotem as providências necessárias para, no prazo de dez dias, proceder o cômputo de pontos referentes à análise de Títulos de comprovação de efetivo exercício de atividade profissional dos pontos que não foram devidamente contabilizados”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Sentença (id 14410703) : o juízo de origem concedeu a segurança, confirmando a liminar, ao fundamento de que “não há dúvidas que o impetrante tem direito a pontuação relativa ao exercício da função de Médico Neonatologista, conforme consta na declaração da EBSERH (fl. 1, ID 38123012) e faz jus a pontuação que requereu”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Apelação (id 14410711): o Estado do Ceará, sucessor da Funsaúde, requereu a reforma da sentença, ao argumento de que ela ofende a isonomia entre os candidatos e a separação de poderes, invadindo o mérito do ato administrativo. Sustentou que “como o candidato não apresentou Diploma de Graduação/Residência Profissional, não fez jus à pontuação, pois não restou comprovada a especialidade”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Contrarrazões (id 14410711): requereu o desprovimento do recurso, por entender que a documentação comprova sua experiência, nos termos do edital do concurso.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Parecer da Procuradoria de Justiça (id 15659783): pela confirmação da sentença e pelo não provimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">É o relatório, no essencial. <span style="font-size: 13pt; font-

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	family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Preenchidos os requisitos de admissibilidade, conheço da apelação e da remessa necessária.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 6pt 0pt 6pt 0pt;" dir="ltr"> O recurso não comporta provimento e a sentença deve ser confirmada.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Ao rejeitar o recurso administrativo do candidato, a banca examinadora afirmou que somente seriam considerados os títulos em conformidade com os critérios do edital e que fossem voltados para a área específica do cargo (id 14410659).</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Nas informações prestadas pela autoridade impetrada, o motivo dado para rejeitar a titulação do impetrante foi a ausência de demonstração da experiência profissional após a graduação como médico (id 14410685, p. 11).</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Todavia, a documentação apresentada pelo candidato é admissível, pois comprova sua experiência profissional na área do cargo pretendido e após a conclusão do curso superior, tal como exigia o item 12.20 do edital e na forma do item 12.15, “a”, parte final, do edital (id 14410664, p. 25)</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">A declaração de id 14410658 informa que o impetrante trabalhou como médico neonatologista desde 03.06.2019 na Empresa Brasileira de Serviços Hospitalares - EBSERH.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"><span style="font-size: 13pt; font-family: Arial,sans-

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	serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Portanto, a experiência teve início depois da sua diplomação como médico, ocorrida em 2013, conforme atesta a carteira do Conselho Federal de Medicina (id 14410656).</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> A cópia do diploma foi entregue como pré-requisito para o cargo, em anexo nas razões do recurso administrativo (id 14410659).</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Essa alegação do candidato não foi rebatida pela Fazenda Pública, quer na via administrativa, quer na via judicial.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Em momento algum, diga-se de passagem, a Funsaúde afirmou que a cópia do diploma foi entregue intempestivamente ou que o recurso administrativo foi desacompanhado dela.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> De toda forma, conforme visto acima, é fato que a experiência profissional do impetrante é posterior à sua diplomação como médico e deve ser contabilizada.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> &#160; Bem assim, a jurisprudência deste Tribunal, em nome da razoabilidade e da proporcionalidade, admite a entrega da documentação em sede de recurso administrativo, como se verifica deste precedente do Órgão Especial, assim ementado:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">MANDADO DE SEGURANÇA. CONCURSO PÚBLICO PARA INGRESSO NO CARGO DE PROMOTOR DE JUSTIÇA DO ESTADO DO CEARÁ. INDEFERIMENTO DA INSCRIÇÃO DEFINITIVA. EXIGÊNCIA DE TRÊS DECLARAÇÕES DE IDONEIDADE MORAL PRESTADAS POR AUTORIDADES RESIDENTES NO DOMICÍLIO DO CANDIDATO. APRESENTAÇÃO DE DECLARAÇÃO FIRMADA POR PROMOTOR DE JUSTIÇA DO ESTADO DE GOIÁS. IMPETRANTE DOMICILIADO NO ESTADO DE SÃO PAULO. RECURSO ADMINISTRATIVO COM ESCLARECIMENTOS E JUNTADA DE NOVAS DECLARAÇÕES. POSSIBILIDADE. MITIGAÇÃO DO PRINCÍPIO DA VINCULAÇÃO AO EDITAL. FORMALISMO EXCESSIVO. RAZOABILIDADE E PROPORCIONALIDADE. AUSÊNCIA DE OFENSA À ISONOMIA E À SEPARAÇÃO DOS PODERES. SEGURANÇA CONCEDIDA. [...] Sucede-se que os Tribunais Pátrios vêm admitindo a mitigação do princípio da vinculação ao instrumento convocatório quando o excesso de formalismo das exigências da Administração Pública, em detrimento da finalidade do ato, ultrajar os princípios da razoabilidade e da proporcionalidade, sem que a atuação do Poder Judiciário nessas situações importe em invasão no mérito administrativo ou em ofensa ao princípio da separação dos poderes. 6 - Tal entendimento é aplicável ao caso sub judice, pois a

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	decisão que deixou de acolher a juntada e a apreciação, em sede de recurso administrativo, das novas declarações de idoneidade moral apresentadas pelo ora impetrante, bem como dos esclarecimentos prestados pelo Promotor de Justiça Renner Carvalho Pedroso acerca do seu domicílio, está eivada de evidente formalismo exacerbado em detrimento do alcance da finalidade do ato, importando, assim, em violação aos princípios da razoabilidade e da proporcionalidade, de modo que a admissão dessa documentação não implica em ofensa ao princípio da vinculação ao edital ou à isonomia entre os candidatos, inclusive porque a etapa em comento, qual seja, de inscrição definitiva, possui caráter meramente eliminatório, e não classificatório. 7 - Conclui-se, portanto, que o vício da documentação inicialmente apresentada pelo impetrante para fins de inscrição definitiva no concurso público regido pelo Edital nº 01/MPCE, de 29 de novembro de 2019, foi adequadamente sanado em sede de recurso administrativo, seja em razão da apresentação de três novas declarações de idoneidade moral firmadas em consonância com o instrumento convocatório, seja em decorrência do esclarecimento, pelo Promotor de Justiça Renner Carvalho Pedroso, no sentido de que além do domicílio necessário no Estado de Goiás, possui dois domicílios voluntários no Estado de São Paulo, onde o impetrante reside. 8 ¿ Segurança concedida. (Mandado de Segurança Cível - 0623963-77.2022.8.06.0000, Rel. Desembargador(a) INACIO DE ALENCAR CORTEZ NETO, Órgão Especial, data do julgamento:&#160; 23/05/2024, data da publicação:&#160; 23/05/2024, grifos inexistentes no original)</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> É uma necessidade de se evitar formalismo exacerbado e preservar a finalidade do ato, que é o de aferir a bagagem do candidato, diferenciando-o, em razão disso, dos demais concorrentes.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Bem assim, a declaração de id 14410658 também comprova que a experiência era voltada para a área específica do cargo pretendido (médico neonatologista), de modo que o item 12.5 do edital foi igualmente atendido.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> O ato impetrado foi, portanto, abusivo e ilegal, pois desconsiderou a experiência do impetrante, em inobservância ao edital do concurso.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> O fundamento apresentado pela banca examinadora foi inverídico, de modo que o ato impugnado é inválido, pois “pela Teoria dos Motivos Determinantes, a validade do ato administrativo está vinculada à existência e à veracidade dos motivos apontados como fundamentos para a sua adoção, a sujeitar o ente público aos seus termos" (AgRg no REsp 670.453/RJ, Rel. Min. CELSO LIMONGI, Des. Conv. do TJSP, Sexta Turma, DJe 8/3/10).</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Não há ofensa à separação de poderes (art. 2º, da CF), pois apenas se realiza o controle judicial de legalidade (art. 37, caput, da CF), decorrente da inafastabilidade da tutela jurisdicional (art. 5º, XXXV, da CF).</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Não existe tampouco ofensa à isonomia, nem à impessoalidade (arts. 5º, caput, 37, caput, da CF), pois anti-isonômico é o ato arbitrário e ilegal da Administração de descumprir o edital, prejudicando o candidato em prol dos demais concorrentes ao cargo, ainda que aparentemente sem dolo.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Muito menos se invade o mérito do ato administrativo, em substituição à banca, porque apenas se

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	analisam aspectos vinculados do ato impetrado à luz do edital, tal como preconiza a tese jurídica do STF referente ao Tema 485 de repercussão geral: “não compete ao Poder Judiciário substituir a banca examinadora para reexaminar o conteúdo das questões e os critérios de correção utilizados, salvo ocorrência de ilegalidade ou de inconstitucionalidade”.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Por seu turno, a jurisprudência citada pelo Estado do Ceará confirma o entendimento aqui esposado de que cabe ao Judiciário realizar o controle de legalidade do ato impugnado, de acordo com as regras do edital.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Em suma, o ato impetrado é verdadeiramente ilegal e arbitrário (art. 37, caput, da CF), pois ofende direito subjetivo líquido e certo do impetrante (art. 5º, LXIX, da CF e art. 1º, da Lei Federal nº 12.016/2009) de ter sua experiência profissional reconhecida e contabilizada.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Por fim, impõe-se consignar que não houve determinação, nem pedido de nomeação e posse do candidato, mas apenas atribuição da pontuação na fase de títulos. É, consequentemente, impertinente a tese do Estado sobre impossibilidade de nomeação antes do trânsito em julgado (art. 1º Lei Federal nº 9.494/1997 c/c art. 2º-B da Lei Federal nº 9.494/1997), pois nada tem a ver com o objeto da lide.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Assim, conheço da remessa necessária e da apelação, para confirmar a sentença e negar provimento ao recurso.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> É o voto que submeto à consideração de meus pares.</p><p style="line-height: 1.692; text-indent: 42.51968503937009pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO</p><p style="text-align: left;">&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Relator</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	13
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Fruição / Gozo
Polo ativo	MUNICIPIO DE RUSSAS
Advogado(s) - Polo ativo	LUIZ JOSE SILVA - (CE6384-A)
Polo passivo	MARIA CRISTINA MARTINS DE ALMEIDA
Advogado(s) - Polo passivo	RENATO SILVERIO PINTO - (CE27047-A) PEDRO MARTINS PINTO - (CE21855-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	&quot;Arial&quot;,sans-serif; color: black;">Apelação cível em ação de cobrança ajuizada por ex-servidora temporária contra o Município de Russas, visando, dentre outros pedidos, o recebimento de saldo de salário, férias, 13º salário e FGTS.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto;"> II. Questão em discussão: </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto;">2. Definir quais direitos faz jus a servidora contratada temporariamente em desacordo com a CF/1988 e teses jurídicas fixadas pelo STF em repercussão geral.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto;"> III. Razões de decidir: </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">3. A contratação temporária da servidora, realizada de forma sucessiva e sem atender aos requisitos constitucionais, é nula. A jurisprudência do STF é pacífica no sentido de que a contratação temporária irregular desde a origem não gera quaisquer efeitos jurídicos válidos, exceto o direito à percepção do saldo de salário referente ao período trabalhado, se houver, e ao recolhimento/levantamento dos depósitos de FGTS. &#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> IV. Dispositivo: </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">4. Apelação conhecida e parcialmente provida.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> __________</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Dispositivos relevantes citados: CF/88, art. 37, IX.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Jurisprudência relevante citada: RE 658.026 (Tema 612/STF), RE 765.320 (Tema 916/STF) e RE 1066677 (Tema 551/STF).</p><p class="MsoNormal" style="page-break-before: always; mso-hyphenate: auto;">&#160;</p><p class="Textbody" style="margin-bottom: .0001pt; text-align: center; line-height: 150%; tab-stops: 380.65pt;" align="center"> <strong style="mso-bidi-font-weight: normal;"> ACÓRDÃO </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height: 150%;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, para dar-lhe parcial provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; mso-line-height-alt: 10.0pt;"> &#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 69.0pt; mso-line-height-alt: 10.0pt;"> &#160;</p><p

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	class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 69.0pt; mso-line-height-alt: 10.0pt;"> &#160;</p><p class="Corpodetextorecuado" style="text-align: center; text-indent: 0cm;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="Corpodetextorecuado" style="text-align: center; text-indent: 0cm; tab-stops: 0cm 102.75pt;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Relator </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always; tab-stops: 142.25pt center 212.6pt 216.0pt right 432.0pt;" align="center"> <strong style="mso-bidi-font-weight: normal;"> RELATÓRIO </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> Tem-se apelação cível interposta contra a sentença de parcial procedência proferida pelo juízo da 1ª Vara Cível da Comarca de Russas no âmbito de ação ordinária de cobrança de débitos trabalhistas.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"><strong style="mso-bidi-font-weight: normal;"> Petição inicial: narra a Promovente que foi contratada para o cargo de instrutor de esportes e que, em janeiro de 2018, informou aos seus colegas que estava grávida, tendo sido demitida sumariamente em 31/12/2017, em plena gestação, e foi informada que entrariam em contato posteriormente para resolver sua situação, o que nunca ocorreu. Acrescenta que não gozou da estabilidade gestante e que nunca recebeu férias e 13º salário dos períodos aquisitivos de 2014 e 2017 ou saldo de salário referente ao mês de dezembro de 2017, tampouco teve o FGTS depositado. Requer as verbas em juízo, além da condenação em danos morais e materiais e a regularização da sua CTPS.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> <strong style="mso-bidi-font-weight: normal;"> Sem contestação: &#160;certidão de decurso de prazo no Id. 15652228.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"><strong style="mso-bidi-font-weight: normal;"> Sentença: julgou parcialmente procedentes os pedidos autorais, indeferindo o pedido de indenização decorrente da licença gestante e declarando nulos os contratos temporários firmados entre as partes, condenando o Município de Russas ao pagamento de férias acrescidas do adicional de 1/3, bem como 13º salário, depósito de FGTS e saldo de salário não pago, todos referentes ao período de trabalho, devidamente atualizados.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"><strong style="mso-bidi-font-weight: normal;"> Razões recursais: alega que a autora foi contratada através de contrato de prestação de serviços por prazo determinado, tendo recebido toda a remuneração equivalente ao acordado no contrato, de maneira que não são gerados efeitos trabalhistas, requerendo a reforma&#160;da sentença para que seja declarada a extinção do feito.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> <strong style="mso-bidi-font-weight: normal;"> Sem contrarrazões: &#160;certidão de decurso de prazo no Id.

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	15652248.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> A&#160;Procuradoria Geral de Justiça&#160;opina pelo conhecimento e desprovimento da apelação.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> Vieram os autos conclusos.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> É o relatório no essencial.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%;" align="center"> &#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always;" align="center"> <strong style="mso-bidi-font-weight: normal;"> VOTO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Inicialmente, no que se refere ao juízo de admissibilidade, analisando os pressupostos processuais recursais necessários, tenho que os requisitos intrínsecos (cabimento, interesse e legitimidade, inexistência de súmula impeditiva) e extrínsecos (tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também os específicos, descritos no art. 1.010 do CPC/2015, motivo pelo qual conheço do apelo.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">Conforme brevemente relatado, narra a Promovente que foi contratada para o cargo de instrutor de esportes e que, em janeiro de 2018, foi demitida enquanto gestante, sem ter gozado da estabilidade gravídica, férias, 13º salário, saldo de salário e FGTS. Acrescenta que teve seu contrato temporário renovado 6 (seis) vezes, prestando serviços de forma consecutiva e ininterrupta, com o primeiro contrato assinado em 03/02/2014 e automaticamente renovado todos os anos até sua demissão em 31/12/2017.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">Para fazer prova do alegado, atendendo ao comando legal contido no inciso I do art. 373 do CPC/2015, a parte autora trouxe aos autos, dentre outros documentos, Termos de Contrato Administrativo por Prazo Determinado correspondentes aos períodos 03/02/2014 a 28/02/2014, 14/08/2017 a 31/12/2017 e 01/09/2017 a 31/12/2017 (Ids. 15652187-15652188, 15652197-15652198 e 15652199-15652200), Extrato Previdenciário do INSS indicando vínculo entre a autora e o Município de Russas entre os anos de 2014 a 2017 (Id. 15652179) e Declaração da Secretaria de Gestão de Pessoas do Município de Russas evidenciando que a autora foi servidora pública municipal contratada com vínculo temporário no período compreendido entre 2014 e 2017 (Id. 15652186).</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto;">Por outro lado, o Município de Russas não contesta a documentação e alegações autorais, restringindo-se a apontar a regularidade da contratação temporária e a incompatibilidade das verbas com o regime estatutário.</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> Eis os fatos. Pois bem. </p><p class="Recuodecorpodetexto33"

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	style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> É cediço que a Administração Pública tem a obrigatoriedade de realizar certame para prover os cargos existentes em seu quadro de pessoal, existindo, contudo, exceções à referida regra, por meio da qual se permite que sejam contratados, de forma excepcional e precária, servidores para o exercício de cargos em comissão, além da <strong style="mso-bidi-font-weight: normal;">contratação por tempo determinado para atender necessidade temporária de excepcional interesse público, esta última prevista no art. 37, IX, da CF/88. </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> Muitos Municípios de nosso Estado têm transformado a exceção em regra ao se utilizarem da contratação temporária para manter a máquina administrativa funcionando, burlando, assim, a exigência constitucional de submissão prévia do colaborador ao concurso público de provas e títulos. </p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> Enfrentando reiteradamente o tema, o Supremo Tribunal Federal, no julgamento do RE nº. 658.026 (Tema 612), fixou a seguinte tese: &#160;</p><p class="Recuodecorpodetexto33" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-indent: 0cm;"> “Nos termos do art. 37, IX, da Constituição Federal, para que se considere válida a contratação temporária de servidores públicos, é preciso que: a) <strong style="mso-bidi-font-weight: normal;">os casos excepcionais estejam previstos em lei; b) o prazo de contratação seja predeterminado; c) <strong style="mso-bidi-font-weight: normal;">a necessidade seja temporária; d) o interesse público seja excepcional; e) a contratação seja indispensável, sendo vedada para os serviços ordinários permanentes do Estado que estejam sob o espectro das contingências normais da Administração”.</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> Observa-se, contudo, que, na hipótese, nem o interesse público é excepcional, visto que a autora comprovadamente laborou de fevereiro de 2014 a dezembro de 2017, o que demonstra a evidente falta de excepcionalidade da medida e torna a situação irregular, nem a função contratada, de Instrutor de Esportes, evidencia a necessidade temporária do Poder Público.</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> Em casos desse jaez, o Pretório Excelso também fixou tese a respeito, no julgamento do RE nº. 765.320 (Tema 916/STF), entendendo que: </p><p class="Recuodecorpodetexto33" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 4.0cm; text-indent: 0cm;"> A contratação por tempo determinado para atendimento de necessidade temporária de excepcional interesse público realizada em desconformidade com os preceitos do art. 37, IX, da Constituição Federal não gera quaisquer efeitos jurídicos válidos em relação aos servidores contratados, com exceção do direito à percepção dos salários referentes ao período trabalhado e, nos termos do art. 19-A da Lei 8.036/1990, ao levantamento dos depósitos efetuados no Fundo de Garantia do Tempo de Serviço - FGTS.</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> Note-se que os Ministros, em suma, replicam o enunciado do repositório de jurisprudência nº. 363/TST, pois é matéria afeta à Justiça Laboral; vejamos: </p><p class="Recuodecorpodetexto33" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 4.0cm; text-indent: 0cm;"> A contratação de servidor público, após a CF/1988, sem prévia aprovação em concurso público, encontra óbice no respectivo art. 37, II e § 2º, somente lhe conferindo direito ao pagamento da contraprestação pactuada, em relação ao número de horas trabalhadas, respeitado o valor da hora do salário-mínimo, e dos valores referentes aos depósitos do FGTS.</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> Neste caso, por ser nula a contratação, o contratado é equiparado ao empregado celetista e somente terá direito a verba fundiária, exclusiva à relação de emprego, não decorrendo qualquer outro direito, salvo, por óbvio, saldo de salário, a fim de evitar o locupletamento indevido da Administração Pública, por isso, afasto as condenações da sentença relativas a férias e 13º salário.</p><p class="MsoNormal"

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	style="margin-bottom: 5.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Como a contratação inexiste no mundo jurídico, o STF reconheceu, apenas, a existência de efeito jurídico residual, qual seja, o recolhimento de FGTS – este próprio dos trabalhadores regidos pela CLT.</p><p class="Recuodecorpodetexto33" style="margin-bottom: 5.65pt; text-indent: 42.5pt; line-height: 150%;"> Mesmo que decorrente de ato imputável à Administração, trata-se de contratação manifestamente contrária às normas constitucionais, cuja força normativa alcança a todos, e cujo sentido e alcance não poderia ser ignorado pela parte autora.</p><p class="MsoNormal" style="margin-bottom: 5.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Ademais, importante frisar que não se aplica à hipótese dos autos a tese jurídica fixada no Tema 551/STF utilizada em contratações originariamente regulares, o que não é o caso, já que os contratos da promovente são irregulares desde a origem, por ausência de previsão legal.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Neste precedente, diante do desvirtuamento da contratação temporária, os Ministros do STF decidiram equiparar o contratado (titular de contrato regular que transpassou à irregularidade ante prorrogações/renovações sucessivas) ao servidor público, passando a gozar dos direitos sociais previstos no art. 7º da CF/1988 (férias acrescidas do terço constitucional e 13º salário, caso lei e/ou contrato silenciem a respeito), sem a eles aplicar as normas da CLT; segue ementa:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> RECURSO EXTRAORDINÁRIO. REPERCUSSÃO GERAL. CONSTITUCIONAL. ADMINISTRATIVO. SERVIDOR PÚBLICO. CONTRATAÇÃO TEMPORÁRIA. DIREITO A DÉCIMO TERCEIRO SALÁRIO E FÉRIAS REMUNERADAS, ACRESCIDAS DO TERÇO CONSTITUCIONAL. 1. A contratação de servidores públicos por tempo determinado, para atender a necessidade temporária de excepcional interesse público, prevista no art. 37, IX, da Constituição, submete-se ao regime jurídico-administrativo, e não à Consolidação das Leis do Trabalho. 2. O direito a décimo terceiro salário e a férias remuneradas, acrescidas do terço constitucional, não decorre automaticamente da contratação temporária, demandando previsão legal ou contratual expressa a respeito. 3. No caso concreto, o vínculo do servidor temporário perdurou de 10 de dezembro de 2003 a 23 de março de 2009. 4. Trata-se de notório desvirtuamento da finalidade da contratação temporária, que tem por consequência o reconhecimento do direito ao 13º salário e às férias remuneradas, acrescidas do terço. 5. Recurso extraordinário a que se nega provimento. Tese de repercussão geral: “Servidores temporários não fazem jus a décimo terceiro salário e férias remuneradas acrescidas do terço constitucional, salvo (I) expressa previsão legal e/ou contratual em sentido contrário, ou (II) comprovado desvirtuamento da contratação temporária pela Administração Pública, em razão de sucessivas e reiteradas renovações e/ou prorrogações”. (RE 1066677, Relator(a): MARCO AURÉLIO, Relator(a) p/ Acórdão: ALEXANDRE DE MORAES, Tribunal Pleno, julgado em 22/05/2020, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-165 &#160; DIVULG 30-06-2020 &#160; PUBLIC 01-07-2020) – negritei</p><p class="MsoNormal" style="margin-bottom: 5.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Portanto, se uma tutela jurisdicional entrega direito próprio do trabalhador regido pela CLT e outra o equipara ao servidor público, essas soluções jurídicas jamais poderão ser aplicadas à mesma situação fática, pois são juridicamente incompatíveis. O eventual reconhecimento do direito à percepção de FGTS e, concomitantemente, verbas extraídas do serviço público possibilitaria uma acumulação indevida de direitos relativos a dois regimes jurídicos distintos, por parte do contratado.</p><p class="MsoNormal" style="margin-bottom: 5.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Em arremate, para melhor ilustrar essa incompatibilidade temática e seus efeitos decorrentes, imaginemos dois contratos distintos, sendo um nulo de pleno direito – hipótese dos autos – e outro regular que transitou para a irregularidade diante do desvirtuamento da provisoriedade. No primeiro caso, em que o contrato é nulo, se aplicarmos, juntos, os Temas 916 e 551, o empregado terá direito a receber FGTS, férias acrescidas do terço constitucional e 13º salário. Já no segundo caso, em que há um contrato legal e inicialmente regular, mas que sofre efeito jurídico com a renovação/prorrogação, o jurisdicionado terá direito apenas a férias acrescidas do terço constitucional e 13º salário (Tema 551/STF). Ou seja, o contrato nulo acaba entregando

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	mais direitos que o contrato que nasceu regular, pois contempla o contratado com vantagens celetistas e estatutárias o que, em meu sentir, é incabível.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Isto posto, conheço do apelo cível para dar-lhe parcial provimento, reformando a sentença de 1º grau no sentido de excluir a condenação do ente público no pagamento de 13º salário e férias, mas preservando o dever de pagamento de saldo de salário e de recolhimento da verba fundiária de todo o período trabalhado .</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Deixo de fixar os honorários recursais, vez que se trata de sentença ilíquida, cuja definição da verba honorária somente ocorrerá <em style="mso-bidi-font-style: normal;">a posteriori, ocasião em que o juízo de origem levará em consideração o trabalho adicional realizado em sede recursal para fins de fixação dos honorários advocatícios, conforme disposição do art. 85, §§ 2º, 3º, 4º e 11, do CPC/2015, entendimento que adoto em consonância com a jurisprudência do Superior Tribunal de Justiça (EDCL no REsp nº 1785364/CE, 06/04/2021).</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> É o voto que submeto à consideração de meus pares.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> &#160;</p><p class="Corpodetextorecuado" style="text-indent: 99.25pt;"> &#160;</p><p class="Corpodetextorecuado" style="text-align: center; text-indent: 0cm;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="Corpodetextorecuado" style="text-align: center; text-indent: 0cm; tab-stops: 0cm 102.75pt;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Relator </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> &#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	14
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adicional de Periculosidade
Polo ativo	SINDICATO DOS TRABALHADORES NO SERVICO PUBLICO MUNICIPAL DE GUAIUBA
Advogado(s) - Polo ativo	JULIO CESAR DE SOUZA MUNHOZ - (CE38839-A) FRANCISCO ARTUR DE SOUZA MUNHOZ - (CE18458-A)
Polo passivo	MUNICIPIO DE GUAIUBA Procuradoria do Município de Guaiuba
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão

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align: center;" align="center">   <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">ESTADO DO CEARÁ </p><p
style="margin: 0cm; text-align: center;" align="center">   <span style="font-size:
13.0pt; font-family: &quot;Arial&quot;,sans-serif; color: black;">PODER
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&quot;Arial&quot;,sans-serif; color: black;">TRIBUNAL DE JUSTIÇA
</p><p style="margin: 0cm; text-align: center;" align="center">   GABINETE
DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO
</p><p style="text-align: center;" align="center"> <span style="font-size: 8.5pt;
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Verdana, sans-serif; font-size: 11px;">   <span style="font-size: 13.5pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">Processo: <span
style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">&#160;0001068-24.2019.8.06.0083 </p><p style="text-align:
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black;">[Obrigação de Fazer / Não Fazer, Adicional de Periculosidade]
</p><p style="text-align: left;"> <span style="font-size: 13.5pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">   <span style="font-size: 13.5pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">APELAÇÃO CÍVEL </p><p
style="text-align: left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-
serif; color: black;">Recorrente:&#160;SINDICATO DOS TRABALHADORES NO
SERVICO PUBLICO MUNICIPAL DE GUAIUBA</p><p style="text-align: left;">
<span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">Recorrido:&#160;MUNICIPIO DE GUAIUBA</p><p style="text-align:
left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-
ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-
autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal"
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widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt:
auto;">&#160;</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;">
   <em style="mso-bidi-font-style: normal;">   <span style="font-size: 13.0pt;
line-height: 150%; font-family: &quot;Arial&quot;,sans-serif; mso-bidi-font-family: Tahoma;
font-variant: small-caps;">Ementa   <span
style="font-size: 13.0pt; line-height: 150%; font-family: &quot;Arial&quot;,sans-serif; mso-
bidi-font-family: Tahoma; font-variant: small-caps;">: Constitucional, Administrativo e
processual civil. apelação cível. Ação ordinária de cobrança. Adicional de periculosidade.
Legislação pretérita que não atendia a categoria. Ausência de laudo médico.
Impossibilidade de pagamento retroativo. </p><p
class="MsoListParagraph" style="margin-left: 0cm; text-align: justify; line-height: 150%;
mso-hyphenate: auto;">   <span style="font-size: 13.0pt; line-height: 150%; font-
family: &quot;Arial&quot;,sans-serif; mso-bidi-font-family: Mangal; font-variant: small-
caps;">I. Caso em exame: </p><p class="MsoListParagraph"

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	style="margin-left: 0cm; text-align: justify; line-height: 150%; mso-hyphenate: auto;"> 1. Apelação cível interposta contra sentença de improcedência proferida no âmbito de ação ordinária de cobrança ajuizada em desfavor do Município de Guaiuba.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;"> II. Questão em discussão: </p><p class="MsoNormal" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;">2. Analisar a possibilidade de pagamento de adicional de periculosidade a categoria dos vigilantes com fundamento na Lei Municipal nº 286/2002.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;"> III. Razões de decidir: </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">3. O adicional de periculosidade somente poderia ser atribuído a servidores públicos que exerciam atividades perigosas, as quais, por sua natureza ou métodos de trabalho, impliquem em <strong style="mso-bidi-font-weight: normal;">contato permanente com inflamáveis ou explosivos em condições de risco acentuado, o que não se aplica aos vigilantes. Outrossim, a norma local exige que tais condições sejam previamente averiguadas por meio de junta médica, o que não se verificou na hipótese dos autos.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">4. O Anexo 3 da Norma Regulamentadora nº 16 do MTE não se aplica aos servidores públicos, sobretudo quando existe norma local específica regulamentando o direito discutido em juízo.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;"> IV. Dispositivo: </p><p class="MsoNormal" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;">5. Recurso da parte autora conhecido, mas desprovido.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;"> __________</p><p class="MsoNormal" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;">Dispositivos relevantes citados: CF/1988, art. 7º, XXIII; Lei Municipal nº 286/2002, art. 80 e 80-A, inserido pela Lei Municipal 745/2016.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> ACÓRDÃO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de

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	Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do apelo, mas para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema. &#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 69.0pt; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> RELATOR </p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> <br /> </p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: center 216.0pt right 432.0pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Tem-se apelação cível interposta contra sentença de improcedência proferida pelo juízo da Vara Única da Comarca de Guaiuba no âmbito de ação ordinária de cobrança.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Petição inicial : narra a entidade sindical promovente, Sindicato dos Servidores Públicos Municipais, que os servidores ocupantes do cargo de vigilante fazem jus ao recebimento de periculosidade a partir da edição da Lei Municipal nº 286/2002, alterada pela Lei Municipal nº 745/2016, requerendo a condenação do ente público no pagamento do adicional não prescrito.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Contestação : traz aos autos um parecer da Procuradoria Geral do Município que sugere a impossibilidade de pagamento de adicional de insalubridade aos agentes de endemias, salvo se União, Estados e Municípios legislarem nesse particular; e alega que a Lei Municipal nº 286/2002, condiciona a percepção do adicional a laudo técnico elaborado por junta médica, conforme preceitua o art. 80, § 5º, da Lei Municipal nº 286/2002.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Sentença : o juízo da Vara Única da Comarca de Guaiuba entendeu inexistir avaliação por junta médica hábil a constatar a insalubridade e julgou improcedente o pedido autoral .</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Recurso : alega que “a atividade

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	desempenhada pelos servidores é perigosa, fato comprovado tanto pelo recebimento atual do adicional quanto pela perfeita adequação da atividade ao Anexo 3 da Norma Regulamentadora nº 16 do MTE”.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Sem contrarrazões : certidão de decurso de prazo (id 15563095).</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Manifestação ministerial alheia ao mérito.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Vieram os autos conclusos.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> É o relatório, no essencial.</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> VOTO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Inicialmente, no que se refere ao juízo de admissibilidade, analisando os pressupostos processuais recursais necessários, tenho que os requisitos intrínsecos (cabimento, interesse e legitimidade, inexistência de súmula impeditiva) e extrínsecos (tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também, os específicos, descritos no art. 1.010 do CPC/2015 <!--[if !supportFootnotes]--> [1] <!--[endif]--> , motivo pelo qual conheço do apelo.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">Conforme brevemente relatado, narra a entidade sindical promovente que os servidores ocupantes do cargo de vigilante fazem jus ao recebimento de periculosidade a partir da edição da Lei Municipal nº 286/2002, alterada pela Lei Municipal nº 745/2016, requerendo a condenação do ente público no pagamento do adicional não prescrito.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Cinge-se a questão controversa em aferir se a categoria dos vigilantes, representada pelo Sindicato dos Servidores Públicos Municipais, teria direito ao adicional de periculosidade a partir do ano de 2002, em que foi promulgada a Lei Municipal nº 286/2002.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Ao apreciar o feito, o magistrado a quo julgou improcedente a pretensão autoral, asseverando a impossibilidade de concessão do benefício sem que exista prévia apuração por meio de junta médica.</p><p class="MsoNormal"

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	style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Pois bem.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Com o advento da Emenda Constitucional nº 19/98, o adicional de remuneração para as atividades penosas, insalubres ou perigosas, previsto no art. 7º, XXXIII, da Constituição Federal de 1988, foi excluído dos direitos sociais estendidos aos servidores públicos (art. 39, § 3º, CF). No entanto, a possibilidade de concessão dos referidos benefícios se manteve, desde que houvesse previsão no regramento local; vejamos:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> (…)</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> XXIII - adicional de remuneração para as atividades penosas, insalubres ou perigosas, na forma da lei; - negritei</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> No âmbito municipal, o adicional de periculosidade está previsto na Lei Municipal nº 286/2002 (Estatuto dos Servidores Públicos da Administração Direta e Indireta do Município de Guaiuba):</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> Art. 77 - O servidor público municipal que trabalhar, com habitualidade, em locais insalubres ou em contato permanente com substâncias tóxicas, radioativas ou com risco de vida, fará jus ao adicional pelo exercício de atividades insalubres ou perigosas, a incidir sobre o vencimento do cargo público efetivo</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> Art. 78 - O direito ao adicional de insalubridade ou periculosidade cessa com a eliminação das condições ou dos riscos que deram causa a sua concessão.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> Art. 79 - Haverá permanente controle da atividade de servidores públicos municipais em operações ou locais considerados insalubres ou perigosos.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> Parágrafo único - A servidora pública municipal gestante ou lactante será afastada, enquanto durar a gestação e a lactação, das operações e locais previstos neste <br /> artigo, exercendo suas atividades em local salubre e em serviço não penoso e não perigoso.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> &#160;Art. 80 - Na concessão dos adicionais de atividades insalubres ou perigosas, serão observados as situações concretas que serão avaliadas e enquadradas nos seguintes níveis:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> I- Atividade

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	insalubre de grau;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> a) mínimo:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> b) médio;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> c) máximo;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> II - Atividade perigosa de grau:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> a) mínimo:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> b) médio;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> c) máximo;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> §1° Os adicionais de atividades insalubres e perigosas, serão concedidos de acordo com os seguintes percentuais:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> I - 15% (quinze por cento) do vencimento básico do servidor público municipal para a atividade de grau mínimo:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> II - 20% (vinte por cento) do vencimento básico do servidor público municipal para a atividade de grau médio;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> II - 25% (vinte e cinco por cento) do vencimento básico do servidor público municipal para a atividade de grau máximo</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> §2° Aos servidores públicos municipais que fizerem jus a mais de um tipo de adicional será atribuído somente o adicional de maior índice. &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> §3° São consideradas atividades insalubres aquelas que, por sua natureza, condições ou métodos de trabalho, exponham os empregados à agentes nocivos à saúde, acima dos limites de tolerância fixados em razão da natureza e da intensidade do agente e do tempo de exposição a seus efeitos.</p><p class="MsoNormal" style="margin-left: 4.0cm;

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	text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> §4° <strong style="mso-bidi-font-weight: normal;">São consideradas atividades ou operações perigosas, aquelas que, por sua natureza ou métodos de trabalho, impliquem no contato permanente com inflamáveis ou <br /> explosivos em condições de risco acentuado.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> §5 <strong style="mso-bidi-font-weight: normal;">Os adicionais a se refere este artigo serão concedidos após averiguação feita por junta médica, verificados os parâmetros referidos pelo § 6° deste artigo.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric ideograph-other; mso-vertical-align-alt: auto;"> §6° Na identificação das atividades consideradas insalubres e perigosas serão observados os parâmetros fixados pelo Ministério do Trabalho para os trabalhadores em <br /> geral, exceto quanto à fixação dos percentuais dos adicionais que obedecerão ao disposto no §1° deste artigo.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Como se pode extrair da legislação retrotranscrita, o adicional de periculosidade somente poderia ser atribuído a servidores públicos que exerciam atividades perigosas, as quais, por sua natureza ou métodos de trabalho, impliquem em <strong style="mso-bidi-font-weight: normal;">contato permanente com inflamáveis ou explosivos em condições de risco acentuado, o que não se aplica aos vigilantes. Outrossim, a norma local exige que tais condições sejam previamente averiguadas por meio de junta médica, o que não se verificou na hipótese dos autos.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Portanto, a tentativa de reconhecimento do direito ao adicional de periculosidade nos termos da Lei Municipal nº 286/2002, não merece prosperar, sob pena de violação ao princípio da legalidade, uma vez que “o pagamento de adicional de insalubridade ou de periculosidade a servidores públicos deve estar amparado em laudo técnico que comprove as condições de trabalho do servidor, não sendo devido o pagamento em período pretérito ao reconhecimento das referidas condições” (RESP 1.400.637 RS)</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;Em arremate, importante destacar que o Anexo 3 da Norma Regulamentadora nº 16 do MTE não se aplica aos servidores públicos, sobretudo quando existe norma local específica regulamentando o direito discutido em juízo. Será, portanto, devido o adicional de periculosidade apenas após a entrada em vigor da Lei Municipal 745/2016, que alterou a Lei Municipal nº 286/2002, acrescentando o art. 80-A, no percentual de 30% (trinta por cento) sobre o valor do vencimento base da categoria; <em style="mso-bidi-font-style: normal;">in verbis:</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <span style="font-size: 13.0pt; line-height: 150%; font-family: &quot;Arial&quot;,sans-serif; mso-font-kerning: 0pt;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAWgAAADXCAIAAAC4bFyWAAAgAElEQVR4Aey9eThV3/c4fq55lsxDyJh5FiJTikhlHkolSSRKFA1UUkhpoEiSiEKiQaRQiZIhQ4MGczLPs3vP73xbz+8897r732Onuvvbaen518H/3dw+Ktl/g3Y/huaDFvKRkHoDIwMNDY2EgkEmtqar5+/QqV4dXjx4+zs7MnJyd/BJG88NwyeFcfPnyYk5PTyfcPt2dmT5zXBeRFFc++8/MIXBSWrbYcf8qJYmJzXM8OxXh+O7ePXgOaYZFFcUvbcWWlnhfwqZm2IKZZjHY8R2KOrvt0lGbNUVFu5jn7IihPUiQDJ8Zv1YEPP/lC7SSaopyrD/a1oNtjsEkqVa+Fz5mHVIBu4BZvfYqKjkmYYOWAVTuRepZjqzp2QaGZo0DL8tp2W2qp6nnnbtrQhKOdgq9QcHeF29ssJaeETDxwbWyw3KemK9Q/2CwYCEJoAl6gKH3pKfSUZJSEBbzf/s9Kr37ci8RJ1ux6x3dt4H0IIqY4sp9HYVbtYUyKxpZOcNVKAQyrPPLrX3cgZQERyKEgqFqa9n8XSF1kgVW1bDSVW6Hnz4DQWGoi4pKbjbx4eT4jM/yLmoYlJRzbqebHJLfTY1cYrAvbVAiZFPjk5KBJhhoIUSRhAYh4DLAM17kRJZ5tOuyxBHpW/8bsWBphsbL7LWxJl3uYMJiRE57WkgSIkmGdYMr6bEvgYIJz/fbxzGRCdP5edSuSFQz4m+iPQOqeHFoMLKjMlJANiaOwvq6IQx5bmb/vdDRlHxQcR6hYkhYvXswVJySbeSmdoKKzMGpbmA6E8hmH9eR+h27rvsvqXtfS/5PF1qpaRSz3htx4WltVNOYEsv5gq/2lDyKQQeFVnlsGzQKFVk5K28xBkBuxSDOl0giwBOxBq6HgtXOQyqDd9JcDVIgm1MX8ORRdr+wW46XOmi/07SGnBBmy/ShHLMHmRh3Qw4qCt9YySJiOuxl5r7xNncdE+NaivDDn7kKs2Ds0D4sMcIMDuBhErCcW9qx1JJCsSHz/1HZZf5IImMEzXmADqRODvf3W3cCVmR9k6YeqcXfMoVtnyjJWAYBsHj1ZxRWALP1IIPuE0KdDdhrLNMHDH4rJsxQg+ipvvq8H4yKEzrErxZ5EdiNEWDNFHqaGUHqVQVcVFRDx7VmmX96fSQcyfyPDjPhdOtrL4X5H9FIyEPC7F3UfMfv/z1X2Lwe3p9ahv57fyOu6pDFnMLbG9f8SRzLBybEsZTY4s9Ofc2a+ioPr6rEnqkgnIsoAA4ZTp2jOHtyAgbnFeT0TLnyNKgGRGG80A2j

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7ke4Hpgsgf+D7xQdeijZu/JAAAAAElFTkSuQmCC" alt="" /> </p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Como o adicional passou a ser pago a partir de então e não houve insurgência contra o período posterior a entrada em vigor do art. 80-A, o pedido deve ser julgado improcedente, confirmando a sentença de 1º grau por seus próprios fundamentos.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Isto posto, conheço do apelo, mas para negar-lhe provimento, mantendo íntegra a sentença recorrida.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Em consequência, tendo sido desprovido o recurso e preservada a sentença em todos os seus termos, hei por bem elevar a verba sucumbencial, por ser imposição da lei processual. Considerando o teor do Enunciado Administrativo nº 7 do STJ, determino a majoração dos honorários advocatícios acrescendo em 2% (dois por cento) o percentual fixado na origem em desfavor dos Promoventes, ficando, contudo, suspensa a exigibilidade, nos termos do art. 98, §3º do CPC/2015.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> É o voto que submeto à consideração

Processo	0001068-24.2019.8.06.0083
	de meus pares.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema.</p><p class="MsoNormal" style="margin-bottom: 8.5pt; text-align: justify; text-indent: 70.85pt; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> Relator </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; text-indent: 70.5pt; line-height: 150%;" align="center"> &#160;</p><p class="MsoNormal">&#160;</p><div style="mso-element: footnote-list;"><!--[if !supportFootnotes]--><br /> <hr size="1" /><!--[endif]--> <div id="ftn1" style="mso-element: footnote;"> <p style="margin: 0cm; margin-bottom: .0001pt; text-align: justify; text-indent: 26.35pt;"> <!--[if !supportFootnotes]--> [1] <!--[endif]--> Art. 1.010. A apelação, interposta por petição dirigida ao juízo de primeiro grau, conterá:</p> <p class="MsoNormal" style="text-align: justify; text-indent: 26.35pt; mso-hyphenate: auto; mso-vertical-align-alt: auto;"> I - os nomes e a qualificação das partes; </p> <p class="MsoNormal" style="text-align: justify; text-indent: 26.35pt; mso-hyphenate: auto; mso-vertical-align-alt: auto;"> II - a exposição do fato e do direito; </p> <p class="MsoNormal" style="text-align: justify; text-indent: 26.35pt; mso-hyphenate: auto; mso-vertical-align-alt: auto;"> III - as razões do pedido de reforma ou de decretação de nulidade; </p> <p class="MsoNormal" style="text-align: justify; text-indent: 26.35pt; mso-hyphenate: auto; mso-vertical-align-alt: auto;"> IV - o pedido de nova decisão. </p></div></div><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	15
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA
Assunto principal	Conversão em Pecúnia

Processo	3035962-85.2023.8.06.0001
Polo ativo	GILBER ALEXSSANDRO DO NASCIMENTO SILVA ESTADO DO CEARA
Advogado(s) - Polo ativo	GILBER ALEXSSANDRO DO NASCIMENTO SILVA - (CE43600-A) GILBER ALEXSSANDRO DO NASCIMENTO SILVA - (CE43600-A)
Polo passivo	ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO DO CEARÁ GILBER ALEXSSANDRO DO NASCIMENTO SILVA
Advogado(s) - Polo passivo	OTHAVIO CARDOSO DE MELO - (CE21871-A) OTHAVIO CARDOSO DE MELO - (CE21871-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Processo	3035962-85.2023.8.06.0001
	asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal;">I. Caso em exame </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 1. Remessa necessária e apelações cíveis em ação indenizatória ajuizada por servidor público estadual contra o Estado do Ceará, visando a conversão em pecúnia de períodos de férias não gozados durante a atividade. O autor alega que não usufruiu de tais férias e que o Estado não as computou em seu tempo de serviço. O Estado, por sua vez, defende a prescrição da pretensão e a ausência de previsão legal para a conversão em pecúnia.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> II. Questão em discussão </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 2. A questão central é a possibilidade de conversão em pecúnia de férias não gozadas por servidor público estadual após sua passagem para a reserva remunerada, bem como a incidência da prescrição quinquenal sobre essa pretensão, além de pedidos não analisados pelo juízo a quo.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> III. Razões de decidir </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3. A jurisprudência do Supremo Tribunal Federal e do Superior Tribunal de Justiça é pacífica no sentido de que é possível a conversão em pecúnia de férias não gozadas por servidor público quando este não mais pode usufruí-las em razão da inatividade, a fim de evitar o enriquecimento sem causa da Administração. A prescrição quinquenal para essa pretensão tem como termo a quo a data em que ocorreu a aposentadoria do servidor (passagem à reserva remunerada).</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> IV. Dispositivo </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 4. Remessa necessária não conhecida (art. 496, § 3º, II, do CPC). Apelações conhecidas, desprovida a estatal e parcialmente provida a autoral.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> ______</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Dispositivos relevantes citados: CPC, arts. 496, 99, 373, 85, 86; Lei 1.060/1950.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Jurisprudência relevante citada: Tema 635/STF, Tema 516/STJ, Súmula 125/STJ.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> &#160;</p><p class="MsoNormal" style="page-break-before: always; mso-hyphenate:

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	auto;">&#160;</p><p class="Standard" style="text-align: center; line-height: 150%;" align="center"> ACÓRDÃO </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height: 150%;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em não conhecer da remessa necessária e conhecer das apelações, para negar provimento à interposta pelo Estado do Ceará e dar parcial provimento a do autor, tudo nos termos do voto do relator, parte integrante deste.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height: 150%;"> Fortaleza, data informada pelo sistema. &#160; &#160;</p><p class="Standard" style="text-align: center; text-indent: 69.0pt; mso-line-height-alt: 10.0pt;" align="center"> &#160;</p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> <strong style="text-indent: 0cm; font-family: Arial, Verdana, sans-serif; font-size: 11px;"> RELATOR <strong style="text-indent: 0cm; font-family: Arial, Verdana, sans-serif; font-size: 11px;"> &#160; </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br style="mso-special-character: line-break; page-break-before: always;" /> </p><p class="MsoNormal"> &#160; </p><p class="Corpodetextorecuado" style="text-align: center; text-indent: 0cm;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Têm-se remessa necessária e apelações cíveis que transferem a este Tribunal o reexame da sentença de parcial procedência proferida pelo juízo da 4ª Vara da Fazenda Pública em ação indenizatória compensatória de férias não gozadas.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Petição inicial : narra o Promovente que ingressou nos quadros da Polícia Militar do Ceará (PMCE) através de concurso público em 07/02/1994, permanecendo na ativa até 16/12/2019. Diz ter averbado e adicionado ao seu tempo de serviço 5 (cinco) anos de serviços prestados à Força Aérea Brasileira. Acrescenta que seu ato de ingresso na reserva remunerada só foi publicado em 16/05/2022, com ingresso retroativo à data de 17/12/2019, mas não usufruiu de 10 (dez) períodos de férias enquanto esteve na ativa, não lhe sendo oportunizados os gozos referentes aos anos de 1994, 1995, 1996, 1997, 1998, 2001, 2006, 2007, 2008 e 2009, em que algumas foram concedidas e não oportunizadas o gozo e outras sequer foram concedidas, tampouco contadas para fins de tempo de serviço. Requer a conversão em pecúnia das férias não gozados e não contadas para ingresso na inatividade.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Contestação : preliminarmente, suscita prejudicial de prescrição quinquenal e, no mérito, defende a vinculação da Administração ao princípio da legalidade, pois não encontra amparo na legislação estadual a conversão em pecúnia de férias não gozadas - Súmula Vinculante nº 37. Aponta inércia do autor e inexistência de enriquecimento ilícito da Administração, requerendo a improcedência da ação.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> <span style="font-size: 13pt; line-height: 150%; font-family: Arial, sans-

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	serif;">Sentença : julgou parcialmente procedente o pleito autoral, para determinar que o demandado efetue o pagamento, em favor do autor, das férias não gozadas referentes aos períodos de 1994, 1996, 1998, 2001, 2006, 2007, 2008 e 2009, conforme certidão de Id. 71954417, respeitada a restrição temporal do artigo art. 210 da Lei nº 13.729/2006 (até 15 de dezembro de 1998) e descontados os valores eventualmente pagos sob o título retratado, atualizado.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Sentença remetida para reexame necessário.&#160;</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Embargos de declaração &#160;opostos pelo autor,&#160; rejeitados pela sentença&#160;de Id. 14638330.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Recurso (Estado do Ceará) : reitera a prescrição quinquenal e submissão da Administração Pública ao princípio da legalidade - ausência de base legal para acolhimento da pretensão. Defende a expressa proibição legal de desaverbação (Lei nº 13.035/2000) / impossibilidade de conversão em pecúnia de férias já averbadas e ausência de prova de que o não usufruto das férias decorreu da necessidade do serviço público. Subsidiariamente sustenta a ausência de homologação da reforma pelo Tribunal de Contas. Pugna pela reforma da sentença para que seja julgada improcedente a ação.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Recurso (autor): &#160;alega que seu pleito de justiça gratuita não foi analisado pelo juízo&#160; a quo&#160;e se insurge contra o indeferimento do pedido de conversão em pecúnia das férias não gozadas referentes aos anos de 1995 e 1997. Requer a concessão dos pleitos, além do reconhecimento de sua sucumbência mínima, nos termos do art. 86, parágrafo único, do CPC/2015, condenando o Estado do Ceará ao pagamento das despesas totais dos honorários advocatícios.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Contrarrazões&#160; do autor no Id. 14638340 e do Estado do Ceará no Id. 14694626.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> Manifestação da&#160; Procuradoria Geral de Justiça&#160;indiferente ao mérito.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> É o relatório no essencial.</p><p class="MsoNormal" style="margin-bottom: 4.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; text-autospace: none;"> &#160;</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: center; line-height: 150%; page-break-before: always;" align="center">&#160;</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: center; line-height: 150%; page-break-before: always;" align="center"> VOTO </p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Analisando os autos do processo, noto que a sentença foi equivocadamente submetida à remessa oficial, quando desnecessário o reexame. Explico.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> A respeito do cabimento do reexame necessário , o art. 496 do CPC assim estabelece:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-

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	ideograph;"> I - proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> (...)</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> § 3º Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> (...)</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> II&#160;- 500 (quinhentos) salários-mínimos para os Estados, o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados. – negritei</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> In casu, o proveito econômico decorrente da condenação obtida pelo autor – conversão em pecúnia das férias referentes aos anos de 1994, 1996, 1998, 2001, 2006, 2007, 2008 e 2009, considerando os proventos integrais de R$ 22.387,81 (vinte e dois mil, trezentos e oitenta e sete reais e oitenta e um centavos), valor percebido na data da publicação de sua reserva remunerada, em 16/05/2022 (com efeitos a partir de 17/12/2019), conforme contracheque de Id. 14638298 – é inferior ao importe de 500 (quinhentos) salários-mínimos assente no inciso II do § 3º do art. 496 do CPC, que constitui exceção ao duplo grau de jurisdição obrigatório.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> A espécie evidencia a desnecessidade de reexame, acostando-se à disposição contida no mencionado § 3º do art. 496 do CPC, a qual excepciona a aplicação do disposto no caput da referida norma, afastando assim, igualmente, a incidência da Súmula 490 do STJ.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Desta forma, sendo possível estimar que o valor global da condenação não ultrapassa o valor de alçada, mesmo sendo ilíquida a sentença, não será obrigatório o duplo grau de jurisdição, inexistindo necessidade de remessa oficial.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;">Nesse sentido, a jurisprudência mais recente do Superior Tribunal de Justiça, após vigência do novo estatuto processual, tem firmado entendimento de que a elevação do limite para conhecimento da remessa necessária significa uma opção pela preponderância dos princípios da eficiência e da celeridade, “e não obstante a aparente iliquidez das condenações, se houver possibilidade de aferição por simples cálculos aritméticos, forçoso reconhecimento que se trata de verdadeira hipótese de dispensa de reexame” (AgInt no AgInt no REsp n. 1.955.594/MG, relator Ministro Paulo Sérgio Domingues, Primeira Turma, julgado em 29/5/2023, DJe de 6/6/2023).</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Por essa razão, não conheço da remessa necessária. Porém, presentes os pressupostos de admissibilidade, conheço das apelações e passo a analisá-las conjuntamente.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Primeiramente, a parte autora/apelante requer a isenção da realização do preparo recursal, sob a alegação de que é financeiramente hipossuficiente. Quanto a isso, denota-se que, nos autos, não houve apreciação do pedido de concessão de justiça gratuita formulado pelo recorrente por ocasião da apresentação da petição inicial. Porém, considerando que esse pedido é renovado em sede recursal, passo ao seu exame.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Conforme está previsto na Lei 1.060/1950 e no novo Código de Processo Civil, a justiça gratuita consiste na dispensa

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	do adiantamento de despesas processuais e seu objetivo é evitar que a falta de recursos financeiros constitua um óbice intransponível ao acesso à justiça. O direito à gratuidade da justiça constitui direito fundamental do jurisdicionado (CF, art. 5º, inciso LXXIV). Assim sendo, nos termos do artigo 99 do CPC, o seu pedido pode ser formulado em petição inicial, contestação, petição para ingresso de terceiro ou em recurso, como é o caso. Consoante o § 7º do artigo em questão, requerida a gratuidade da justiça em recurso, o recorrente estará dispensado de comprovar o recolhimento do preparo, incumbindo ao relator, neste caso, apreciar o requerimento.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> E, para o deferimento do benefício, é suficiente a simples alegação de insuficiência econômica para arcar com o pagamento das despesas processuais sem o prejuízo próprio ou de sua família, ante a presunção juris tantum de veracidade da declaração prestada por pessoa física, desde que inexistam indícios que militem em sentido contrário (art. 99, § 3º do CPC/15).</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Da análise dos documentos acostados com a inicial, verifica-se que apesar do valor líquido a receber de R$ 14.888,93 (quatorze mil, oitocentos e oitenta e oito reais e noventa e três centavos), o promovente apresentou demonstrativo de suas receitas e despesas no Id. 14638304, e conforme se verifica após o confronto entre a receita e as despesas, restou o saldo de apenas R$ 43,02 (quarente três reais e dois centavos), que não é suficiente para o autor arcar com as custas processuais e honorários advocatícios. Além disso, o Estado do Ceará não impugnou o pedido, de modo que ele possui direito à integralidade dos benefícios da justiça gratuita, que ora concedo e, em consequência, afasto as condenações do autor a pagar custas no percentual de 50% (cinquenta por cento), bem como honorários advocatícios.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Ainda preliminarmente, noto a presença de questão prejudicial que exige apreciação antes do invadir o mérito relacionada à prescrição.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Segundo o Estado do Ceará, “A pretensão está fulminada pela prescrição. Isso porque, conforme se extrai da leitura detida da documentação acosta aos autos, o período de férias requestados pelo demandante fora averbado há mais de cinco anos antes da solicitação para a reserva remunerada”.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Ocorre que o pedido de conversão em pecúnia de direitos decorrentes da relação de trabalho que não são mais passíveis de fruição em razão da passagem à inatividade está submetido à prescrição quinquenal, tendo como dies a quo da contagem do prazo o registro da aposentadoria na respectiva Corte de Contas.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Esse entendimento pode ser extraído do julgamento do REsp nº 1.254.456/PE, cuja tese jurídica firmada deu origem ao Tema nº 516/STJ: “A contagem da prescrição quinquenal relativa à conversão em pecúnia de licença-prêmio não gozada e nem utilizada como lapso temporal para a aposentadoria, tem como termo&#160;a quo&#160;a data em que ocorreu a aposentadoria do servidor público”. Apesar de específico à licença-prêmio, a tese abrange demais direitos de mesma natureza, cuja ratio decidendi reside na impossibilidade de enriquecimento ilícito da Administração Pública em prejuízo do servidor.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;">Assim, tendo o ato de passagem à inatividade (transferência para a reserva remunerada) sido publicado no DOE em 16/05/2022, com efeitos a partir de 17/12/2019 (Id. 14638297), o dies ad quem do prazo prescricional dar-se-ia em 17/12/2024, e, sendo a ação ajuizada em 16/11/2023 – dentro do quinquênio – não há que se falar em prescrição, portanto, rejeito-a e passo, doravante, à análise da questão de fundo.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Conforme brevemente relatado, a causa de pedir remota versa sobre pedido de compensação

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	pecuniária por não haver o servidor militar gozado férias quando na atividade, ou as utilizado na contagem do tempo de serviço para o ingresso na reserva remunerada.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;">Pelo que dos autos consta, durante sua atividade funcional iniciada em 7/02/1994 até sua passagem para a reserva remunerada, ocorrida em 17/12/2019 (publicada no DOE em 16/05/2022 com efeitos a partir de 17/12/2019 - Id. 14638297), o autor não gozou as férias referentes aos anos de 1994, 1996, 1998, 2001, 2006, 2007, 2008 e 2009, não as tendo averbado para fins de contagem do tempo de serviço.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;">Em suas razões recursais, o Estado do Ceará alega ausência de autorização legal para conversão de férias em pecúnia, de modo que o acolhimento da pretensão importaria em violação ao princípio da separação dos poderes, e sustenta que o autor deu causa à não fruição dos afastamentos, pois não os requereu no momento devido.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> A questão foi decidida no Tema nº 635/STF, sob repercussão geral reconhecida, com a seguinte orientação:</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “Conversão de férias não gozadas em indenização pecuniária, por aqueles que não mais podem delas usufruir, seja por conta do rompimento do vínculo com a Administração, seja pela inatividade, tendo em vista a vedação do enriquecimento sem causa pela Administração. Extensão do entendimento a outros direitos de natureza remuneratória não usufruídos no momento oportuno, a exemplo da licença-prêmio”.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> A tese recursal contraria a orientação firmada pelo Pretório Excelso, que não exige autorização legal para a conversão dos afastamentos não usufruídos na atividade em pecúnia/indenização, pois o fundamento do direito é a vedação ao enriquecimento sem causa pela Administração em detrimento do servidor. Igualmente, não há ofensa à Súmula Vinculante nº 37 do STF, dada a própria integridade da jurisprudência daquela Corte Constitucional.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Com efeito, faz jus o autor ao pagamento dos períodos de férias não gozadas e não contados em dobro para o ingresso da inatividade (art. 61, § 4º), considerando que, ao tempo, antes da revogação da Lei nº 10.072/1976, restou-lhe assegurado pela ordem constitucional tal benefício em razão do direito adquirido, e o obstáculo criado pelo ente estatal para o pagamento da verba pleiteada importa em indevido locupletamento vedado pela jurisprudência pátria.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;">Nesse aspecto, observa-se do documento Fé de Ofício acostado pelo autor no Id. 14638296 e pelo Estado do Ceará às págs. 18/30 do Id. 14638311, que o período pleiteado pelo promovente alusivo às férias dos anos de 1994, 1996, 1998, 2001, 2006, 2007, 2008 e 2009&#160;não foram gozados, o que enseja a indenização pecuniária (já concedidos na sentença). Veja:</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> <span style="font-size: 13pt; line-height: 150%; font-family: Arial, sans-serif;"> <img 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</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> A respeito do tema, trago à baila entendimento firmado pelo Supremo Tribunal Federal, sob repercussão geral reconhecida, no julgamento do ARE nº 721.001/RG, cuja ementa é a seguinte:</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Recurso extraordinário com agravo. 2. Administrativo. Servidor Público. 3.   Conversão de férias não gozadas – bem como outros direitos de natureza remuneratória – em indenização pecuniária, por aqueles que não mais podem delas usufruir. Possibilidade. Vedação do enriquecimento sem causa da Administração. 4. Repercussão Geral reconhecida para reafirmar a jurisprudência desta Corte. (ARE 721001 RG, Relator(a): GILMAR MENDES, Tribunal Pleno, julgado em 28/02/2013, ACÓRDÃO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-044 DIVULG 06-03-2013 PUBLIC 07-03-2013)</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Há precedentes desta e. Corte de Justiça em casos análogos; senão vejamos:</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span style="font-size: 11pt; font-family: Arial, sans-serif; background-image: initial; background-position: initial; background-size: initial;

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	background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;">APELAÇÃO E REMESSA NECESSÁRIA. SERVIDOR PÚBLICO. POLÍCIA MILITAR DO ESTADO DO CEARÁ. RESERVA REMUNERADA. LICENÇA-ESPECIAL E FÉRIAS NÃO GOZADAS. CONVERSÃO EM PECÚNIA. SENTENÇA CONFIRMADA EM REMESSA NECESSÁRIA. APELAÇÃO CONHECIDA E NÃO PROVIDA. 1- O Supremo Tribunal Federal, ao apreciar o ARE 721.001-RG (tema 635), Rel. Min. Gilmar Mendes, Tribunal Pleno, DJe 7.3.2013, reconheceu a existência de repercussão geral da matéria em debate e reafirmou a jurisprudência do STF, no sentido de que, à luz da proibição do enriquecimento sem causa, é devida a conversão de férias não usufruídas, bem assim de outros direitos de natureza remuneratória, como a licença especial, em indenização pecuniária por aqueles que não mais podem delas usufruir, quer pela inatividade, quer pelo rompimento do vínculo com a Administração Pública. 2- Sentença confirmada em remessa necessária. Apelação conhecida e não provida. Majoração dos honorários, cujo percentual deverá ser definido por ocasião da liquidação do julgado. (Apelação / Remessa Necessária&#160;-0215479-09.2020.8.06.0001, Rel. Desembargador(a) TEODORO SILVA SANTOS, 1ª Câmara Direito Público, data do julgamento:&#160; 23/05/2022, data da publicação:&#160; 23/05/2022)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;">&#160;</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> APELAÇÃO CÍVEL. CONSTITUCIONAL E ADMINISTRATIVO. MILITAR DA RESERVA REMUNERADA. PEDIDO DE CONVERSÃO DA LICENÇA ESPECIAL E DAS FÉRIAS NÃO USUFRUÍDAS E NEM COMPUTADAS PARA FINS DE INATIVIDADE. POSSIBILIDADE SOB PENA DE ENRIQUECIMENTO ILÍCITO. HONORÁRIOS ADVOCATÍCIOS A SER FIXADO NA LIQUIDAÇÃO. SENTENÇA REFORMADA. APELO CONHECIDO E PROVIDO. 1. Tratam os autos de Ação de Indenização Compensatória de Licença Especial e de Férias não Gozadas interposta por Luis Napoleão Feitosa em desfavor do Estado do Ceará, em cujos autos pretende que seja o ente estatal condenado a lhe pagar em pecúnia as licenças especiais e as férias alusivas ao período ali descrito. 2. Faz jus o autor ao pagamento dos períodos de meses de férias e licença especial não gozadas e não contados em dobro para o ingresso da inatividade (art. 65, § 3º), considerando que ao tempo, antes da revogação da Lei nº 10.072/1976, restou-lhe assegurado pela ordem constitucional tal benefício em razão do direito adquirido, e o obstáculo criado pelo ente estatal para o pagamento da verba pleiteada importa em indevido locupletamento. 3. A conversão desse benefício em pecúnia é conduta admitida pela jurisprudência da Corte Superior quando da aposentadoria do servidor. 4. A definição do percentual alusivo aos honorários advocatícios deverá ser fixada pelo juízo da liquidação (art. 85, § 4º, II, do CPC). 5. Apelo conhecido e provido. (Apelação Cível&#160;-0188915-27.2019.8.06.0001, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento:&#160; 09/03/2022, data da publicação:&#160; 09/03/2022)</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Quanto às férias referentes aos anos de 1995 e 1997, o juízo de primeiro grau entendeu por bem indeferir a conversão em pecúnia, por não constarem nas informações do servidor, não "constando na tabela os anos de 1995 e 1997 e, portanto, não tenho como converter em pecúnia as férias desses 2 (dois) anos sem me certificar se foram concedidas ou não". Em sede recursal o autor reiterou serem devidas, pois não as gozou. &#160;</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Em que pese o promovente ter sustentado na inicial o não gozo de 10 (dez) períodos de férias, o ente político quedou-se inerte de comprová-los, não se desincumbindo do ônus probatório previsto no art. 373, II, do CPC, que determina que o ônus da prova incumbe ao réu, quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor. O Estado do Ceará somente acostou os documentos de Id. 14638311, que, além do quadro colacionado alhures, traz a averbação das férias referentes apenas aos anos de 1994 e 1995, se não, vejamos:</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> <span style="font-size: 13.0pt; line-height: 150%; font-family: &quot;Arial&quot;,sans-serif; mso-font-kerning: 0pt; mso-no-proof: yes;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAnkAAACLCAYAAAAdzI+aAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAKowSURBVHhe7J0FVB3Hw8Vfm0rqbdq0aRp3d2nc3d3RWCBQ1OgBAgkOBOcHd3gru7u8P8P9Zvc9EiCkjf2bNt/cc+6B3Z2d2d3fmN7DwOqKioqKioqKioPjpRyKOioqKioqKi

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Todavia, quanto às férias de 1997, tenho que não houve qualquer comprovação quanto à concessão, gozo ou contagem no tempo de serviço. Destaco que a comprovação por parte da Administração seria deveras simples, tendo em vista que detém os documentos aptos a demonstrar a realização das operações por si realizadas.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> <span style="font-size: 13pt; line-height: 150%; font-family:

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	Arial, sans-serif;">Assim, é medida que se impõe o deferimento das férias referentes ao ano de 1997.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Outrossim, na inicial o autor também requereu a aplicação da Súmula nº 125 do Superior Tribunal de Justiça, no caso concreto, para isentá-lo do pagamento de imposto de renda sobre o valor da indenização decorrente da conversão em pecúnia das férias não gozadas. Vejamos o teor do verbete:</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> O pagamento de férias não gozadas por necessidade do serviço não está sujeito à incidência do Imposto de Renda.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> O Imposto de Renda tem por fato gerador a efetiva aquisição ou disponibilidade econômica e jurídica da renda. Os valores pagos a título de indenização por férias não gozadas não se inserem no conceito de renda tributável, pois tem nítido caráter indenizatório, razão pela qual acolho o pleito.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Em arremate, com relação aos honorários sucumbenciais, reza o art. 85, § 4º, inciso II, do CPC/2015 que, não sendo líquida a sentença, a definição do percentual dos honorários advocatícios somente deverá ocorrer posteriormente, quando da liquidação do julgado. Desse modo, revela-se inapropriada a fixação de tal verba sucumbencial neste momento, por malferir o dispositivo legal retrocitado.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Por essa razão, merece a sentença ser reformada nesta parte, ex officio, para excluir da condenação o percentual arbitrado a título de honorários advocatícios, o qual deverá ser definido, a posteriori, em liquidação, a teor do que preconiza o dispositivo retrocitado.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Por fim, o autor sustenta sucumbência mínima, vez que dentre os dez períodos pleiteados, apenas dois não lhes foram concedidos pelo juízo de primeiro grau, devendo ser aplicada a disposição do parágrafo único do art. 86 do Código de Processo Civil, que prevê:</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Art. 86.&#160;Se cada litigante for, em parte, vencedor e vencido, serão proporcionalmente distribuídas entre eles as despesas.</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Parágrafo único. Se um litigante sucumbir em parte mínima do pedido, o outro responderá, por inteiro, pelas despesas e pelos honorários. &#160;</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Destarte, devem as despesas e&#160;honorários&#160;advocatícios ser suportados apenas pelo réu, por inteligência do art. 86, parágrafo único, do CPC.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;">Isto posto, deixo de conhecer a remessa necessária e conheço das apelações, para negar provimento a do Estado do Ceará e dar parcial provimento a do autor, para conceder a justiça gratuita e a conversão em pecúnia das férias referentes ao ano de 1997. Determino a observância da Súmula 125 do STJ e reconheço a sucumbência mínima do autor, devendo o ente político responder, por inteiro, pelos honorários sucumbenciais (art. 86, p.u., do CPC). De ofício, determino que a fixação do percentual da verba honorária sucumbencial, assim como a majoração decorrente da etapa recursal, ocorra a posteriori, na fase de liquidação, a teor do art. 85, § 4º, inciso II, do CPC/2015, entendimento que adoto em consonância com a jurisprudência do STJ (EDCL no Resp 1785364/CE, 06/04/2021).</p><p class="Standard" style="margin-

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	bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> É o voto que submeto à consideração de meus pares.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	16
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MARIA SONETE DE PADUA OLIVEIRA
Advogado(s) - Polo ativo	ANTONIO FERREIRA BEZERRA - (CE26246-A) DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A)
Polo passivo	MUNICIPIO DE ACOPIARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004023-56.2024.8.06.0000
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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	#000000;"> . Agravo de instrumento. Cumprimento de sentença. Liquidação e execução individual de sentença coletiva. Título executivo judicial. Meros cálculos aritméticos. Tema 1.169/stj. Sentença genérica. Inaplicabilidade no caso. Precedentes . Recurso conhecido e provido. Decisão modificada. I. Caso em exame 1. Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça. II. Questão em discussão 2. Analisar a higidez da decisão proferida em sede de Cumprimento Individual de Sentença que determinou a suspensão do feito até o julgamento do Tema Repetitivo n.º 1169 pelo C. Superior Tribunal de Justiça. III. Razões

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	de decidir 3. Compulsando-se os autos, observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. 4. Nesse contexto, é evidente que o caso em análise se refere ao cumprimento de uma sentença condenatória perfeitamente liquidável por meio de simples cálculos aritméticos, e não de uma sentença condenatória genérica, desse modo, não se enquadrando, na discussão abordada pelo Tema 1.169 do STJ. 5. Conforme o art. 509, § 2º, do CPC/15, quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover desde logo o cumprimento de sentença. IV. Dispositivo e tese 6. Agravo de Instrumento conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva. Tese de julgamento : Deve ser reformada a decisão recorrida, determinando o prosseguimento do cumprimento individual da sentença coletiva. ______________________________ Dispositivos relevantes citados: CPC, art. 509, §2º. &#160; Jurisprudência relevante citada: TJ-CE Agravo de Instrumento nº 30031999720248060000, Relator: Des. WASHINGTON LUIS BEZERRA DE ARAUJO, Data de Julgamento: 21/10/2024, 3ª Câmara de Direito Público, Data de Publicação: 23/10/2024; AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024; AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024. &#160; &#160; ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em conhecer e dar provimento ao agravo de instrumento , nos termos do voto do relator. &#160; &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; <br /> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> &#160; <strong style="font-size: small;">

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	Relator &#160; &#160; &#160; RELATÓRIO &#160; <br /> &#160; <br /> Trata-se de&#160; A gravo de&#160; I nstrumento&#160;interposto por Maria Sonete de Padua Oliveira, contra Decisão Interlocutória – Id 90247054 proferida pelo juízo da 2ª Vara Cível Da Comarca De Acopiara que determinou a suspensão do feito até a decisão sobre o Tema nº 1169 pelo Superior Tribunal De Justiça. Ação:&#160;Maria Sonete de Padua Oliveira ajuizou Ação de Execução (processo n.º 3000959-48.2024.8.06.0029) referente ao cumprimento da sentença proferida nos autos da ação coletiva nº 0004059-72.2018.8.06.0029, por meio da qual o Município de Acopiara foi condenado a pagar aos professores da rede básica de ensino as diferenças em relação ao 1/3 de férias a ser calculado sobre os 45 (quarenta e cinco) dias de férias a que têm direito, relativamente aos anos de 2013, 2014, 2015, 2016, 2017 e as que se vencerem no decorrer do andamento do feito. Decisão agravada:&#160;Distribuído o Cumprimento de Sentença, o juízo de origem decidiu pela suspensão dos autos, até que proferida decisão sobre o tema 1.169 pelo C. Superior Tribunal de Justiça (Id 90247054 dos autos de origem). Razões recursais:&#160;Irresignada, a recorrente interpôs o presente Agravo de Instrumento de Id 13506436, sustentando, em síntese,&#160;aplicação&#160;o tema de forma equivocada, uma vez que o referido tema somente se aplica aos casos de sentenças genéricas, o que não é o caso do presente processo. Ao final, pugna pelo conhecimento e provimento do recurso, reformando a decisão do juízo a quo que suspendeu o feito, para determinar que se mantenha o trâmite processual do cumprimento individual de sentença coletiva. Sem contrarrazões, não obstante a parte agravada tenha sido devidamente intimada (Id 13516406). &#160; É o relatório. &#160; &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> <br /> Presentes os requisitos de admissibilidade, conheço do recurso interposto. Compulsando-se os autos, cuida-se na origem de Cumprimento de Sentença de forma individualizada de ação coletiva ajuizada pela Associação dos Professores da Rede Municipal de Acopiara em face do Município de Acopiara/CE na qual a parte autora aduz que, enquanto ocupante do cargo de professora da rede municipal de ensino, tem direito a gozar de 45 (quarenta e cinco) dias de férias e a receber o adicional respectivo calculado sobre todo o período, situação que não estaria sendo respeitada pelo Ente Municipal, ao limitar o respectivo terço ao período de apenas 30 (trinta) dias. No aludido processo coletivo foi proferida Sentença que condenou o Município ao <span style="font-

Processo	3004023-56.2024.8.06.0000
	size: 12pt;"> “pagamento das diferenças observadas em relação ao adicional de 1/3 de férias dos professores da rede pública municipal que tenham, de fato, gozado o período de 45 (quarenta e cinco) dias de férias nos anos respectivos, relativamente aos anos de 2013, 2014, 2015, 2016, 2017 e as que vencerem no decorrer do andamento deste processo, devendo o referido adicional ser calculado sobre todo o período de férias.” A decisão de primeiro grau foi confirmada por esta Corte de Justiça, tendo ocorrido o trânsito em julgado. Assim, por força do título executivo judicial mencionado foi necessária a promoção de cumprimento individual de sentença coletiva. Após distribuído, o juízo a quo decidiu pela “suspensão dos presentes autos até decisão sobre o tema 1169 pelo C. Superior Tribunal de Justiça – STJ” (Id. 90247054). No presente recurso, a Agravante busca a reforma do mencionado decisum para que seja dado prosseguimento ao feito. Dessa forma, cinge-se a controvérsia em aferir a higidez da decisão proferida em sede de Cumprimento Individual de Sentença que determinou a suspensão do feito até o julgamento do Tema Repetitivo n.º 1169 pelo C. Superior Tribunal de Justiça. Já adianto que assiste razão à parte Agravante. Verifica-se que no Tema 1.169/STJ houve a determinação de suspensão do processamento das execuções. A questão submetida a julgamento se refere a "Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento da ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos nos autos". Ocorre que a hipótese dos autos não se amolda à matéria analisada no âmbito do referido precedente qualificado. Isso porque o título judicial que deu ensejo ao presente Cumprimento de Sentença apresenta todos os parâmetros necessários para a elaboração dos cálculos do valor a ser executado, não constituindo, assim, sentença genérica. Ressalta-se que o título coletivo indicou precisamente a correção monetária e os juros de mora incidentes sobre o valor devido. (Id. <span

Processo	3004023-56.2024.8.06.0000
	style="color: #000000;"> 84797732 dos autos originários) </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent;" align="justify"> Nesse contexto, é evidente que o caso em análise se refere ao cumprimento de uma sentença condenatória perfeitamente liquidável por meio de simples cálculos aritméticos, e não de uma sentença condenatória genérica, desse modo, não se enquadrando, na discussão abordada pelo Tema 1.169 do STJ. </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent;" align="justify"> Conforme o art. 509, § 2º, do CPC/15, quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover desde logo o cumprimento de sentença. </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent;" align="justify"> Portanto, não há falar em sobrestamento do feito, pois inaplicável ao caso o Tema 1.169/STJ. </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent;" align="justify"> A propósito, esse é o posicionamento que vem sendo adotado pela 3ª Câmara de Direito Público do presente Tribunal, com destaques: </p><p style="margin-left: 4cm; margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> Ementa: Direito processual civil. Agravo de instrumento em cumprimento individual de sentença coletiva. Liquidação. Título executivo judicial. Cálculos aritméticos. Tema repetitivo 1.169/STJ. Inaplicabilidade. Agravo provido. I. Caso em exame 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos para a realização dos cálculos. II. Questão em discussão 2. A questão central é definir se o Tema 1.169/STJ é aplicável ao caso, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos. III. Razões de decidir 3. O Tema 1.169/STJ não se aplica ao caso, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos. &#160;IV. Dispositivo 4. Recurso conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva. (TJ-CE Agravo de Instrumento nº 30031999720248060000, Relator: Des. WASHINGTON LUIS BEZERRA DE ARAUJO, Data de Julgamento: 21/10/2024, 3ª Câmara de Direito Público, Data de Publicação: 23/10/2024) </p><p style="margin-left: 4cm; margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> Tema Repetitivo 1.169 do STJ. Simples Cálculos Aritméticos. Decisão Reformada. Recurso Conhecido e Provido. I. Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça.&#160;II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado. III. Razões De Decidir: III.1. Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça . (AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024) </p><p style="margin-left: 4cm;

Processo	3004023-56.2024.8.06.0000
	margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> DECISÃO QUE DETERMINOU O SOBRESTAMENTO DO FEITO ATÉ O JULGAMENTO DO TEMA 1169/STJ. NÃO CABIMENTO. TÍTULO EXECUTIVO JUDICIAL QUE DEPENDE DE MEROS CÁLCULOS ARITMÉTICOS. POSSIBILIDADE DE SEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. DECISÃO REFORMADA. (AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024) </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent;" align="justify"> Assim, considerando que, no caso dos autos, o título executivo judicial já especificou todos os elementos necessários para a apuração dos valores devidos de forma detalhada, sendo necessário apenas cálculos aritméticos simples para individualizar o crédito e definir o valor a ser recebido, entendo que a determinação de prosseguimento do feito na origem é medida cabível, não havendo justificativa para sobrestamento do processo com base no Tema 1169 do STJ. </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent;" align="justify"> Por conseguinte, impõe-se a reforma da decisão agravada. </p><p style="text-indent: 8%; text-align: justify;"> Isso posto, conheço do agravo de instrumento para dar-lhe provimento, reformando a decisão interlocutória adversada para determinar o prosseguimento do feito. </p><p style="text-indent: 8%; text-align: justify;"> &#160;É como voto.</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	17
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	ELEONIDES FERNANDES LIMA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3002177-06.2024.8.06.0064
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Processo	3002177-06.2024.8.06.0064
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alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;3002177-06.2024.8.06.0064 -&#160;REMESSA NECESSÁRIA CÍVEL (199) </p><p> AUTOR: ESTADO DO CEARA </p><p> RECORRIDO: ELEONIDES FERNANDES LIMA </p><p> S2</p><p style="text-align: justify;">&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> Ementa : Direito constitucional e Processual civil. Remessa Necessária. Obrigação de Fazer. Fornecimento de insumos

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	(fraldas). Direito à Saúde. Dever do Poder Público. Inteligência dos arts. 6º a 196 da CF/88. Necessidade de renovação periódica da prescrição médica. Honorários. Alteração do critério de fixação. Proveito econômico inestimável. Fixação da verba honorária por equidade. Art. 85, § 8º, do CPC, e Tema nº 1076 do STJ. Precedentes deste Egrégio Tribunal de Justiça. Remessa Necessária conhecida e parcialmente provida. Sentença parcialmente confirmada. &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> I. Caso em exame </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> 1. Trata-se de reexame necessário da sentença proferida nos autos da Ação de Obrigação de Fazer proposta por Eleonides Fernandes Lima em face do Estado do Ceará, por meio da qual se objetivou o fornecimento mensal, de forma contínua e por tempo indeterminado, de 150 (cento e cinquenta) unidades de fraldas geriátricas, tamanho XXG.&#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> II. Questão em discussão </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> 2. O presente reexame visa analisar o acerto da sentença no que diz respeito à condenação do ente estatal a fornecer à autora, de forma contínua e por tempo indeterminado, 150 (cento e cinquenta) unidades de fraldas geriátricas, tamanho XXG, bem como verificar as questões acessórias relativas à obrigação imposta. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> III. Razões de decidir </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> 3. Como se sabe, a saúde é um direito constitucional assegurado a todos, inerente à vida, bem maior do homem, matriz de todos os direitos, sendo, portanto, atribuição do Estado o dever de prover condições indispensáveis ao seu pleno exercício. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> 4. Considerando a comprovação da necessidade, incumbe ao Poder Judiciário determinar o fornecimento do insumo pela parte demandada, tendo em vista que o direito à saúde é uma garantia do cidadão e dever do Estado, conforme arts. 6º e 196 da CF/88, devendo ser repelido qualquer iniciativa que contrarie tal preceito fundamental. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> 5. No entanto, considerando que se trata de medida judicial de prestação continuativa, é imprescindível que o jurisdicionado promova a renovação periódica da prescrição médica, a fim de comprovar a permanência da necessidade da prestação determinada, conforme enunciado n° 2 da I Jornada de Direito da Saúde do CNJ. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> 6. Ademais, considerando que no presente caso o proveito econômico obtido pelo vencedor da ação é inestimável (direito à saúde), o arbitramento dos honorários advocatícios em percentual se mostra inadequado, conforme entendimento deste Tribunal e orientação do Tema 1076 do STJ. &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> IV. Dispositivo e tese </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> 7. Conhecimento e parcial provimento da Remessa Necessária no sentido de

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	reformar a sentença objurgada somente para determinar que a parte autora comprove, semestralmente, por meio de prescrição médica, a necessidade do insumo requerido, bem como para modificar o critério de fixação dos honorários sucumbenciais, arbitrando-se, por equidade, em R$ 1.000,00 (um mil reais), nos termos do art. 85, §8º, do CPC. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> Dispositivos relevantes: Art. 1º, inciso I, art. 6º e art. 196 da CF; Súmula nº 45 do TJCE; enunciado n° 2 da I Jornada de Direito da Saúde do CNJ; Tema 1076 do STJ; e, art. 85, § 8º do CPC. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> Jurisprudência relevante citada: Agravo de Instrumento – 0623309-90.2022.8.06.0000, Rel. Desembargadora MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 30/05/2022, data da publicação: 30/05/2022; e, Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023. &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> &#160; </p><p style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Remessa Necessária para parcialmente provê-la , nos termos do voto do relator.</p><p style="margin-bottom: 12.0pt; line-height: 200%;"> Fortaleza/CE, data e hora indicadas pelo sistema. </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> Relator &#160;</p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center">&#160;</p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> RELATÓRIO </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Trata-se de reexame necessário da sentença proferida nos autos da Ação de Obrigação de Fazer proposta por Eleonides Fernandes Lima em face do Estado do Ceará, por meio da qual se objetivou o fornecimento mensal, de forma contínua e por tempo indeterminado, de 150 (cento e cinquenta) unidades de fraldas geriátricas, tamanho XXG.&#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Sentença (Id.15356322) : o magistrado julgou procedente a demanda, nos seguintes termos: “ julgo procedente o pedido autoral, condenando a parte promovida na obrigação de fornecer ao(à) paciente 150 (cento e cinquenta) unidades de fralda geriátrica tamanho XG, mensalmente, de forma contínua e por tempo indeterminado, de acordo com as especificações médicas de ID 85875805, pág. 6. Honorários advocatícios pelo promovido, à ordem de 10% (dez por cento) sobre o valor atualizado da causa, nos termos do artigo 85 do Código de Processo Civil.”. &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Parecer do Ministério Público (Id.15556058): manifestação pelo conhecimento e desprovimento do reexame. <span

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	style="line-height: 200%;">&#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> É o relatório. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> &#160;</p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> VOTO </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Presentes os pressupostos de admissibilidade, visto não ser o caso de aplicação das ressalvas previstas nos §§3º e 4º do art. 496 do CPC, conheço da Remessa Necessária. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Como se sabe, a saúde é um direito constitucional assegurado a todos, inerente à vida, bem maior do homem, matriz de todos os direitos, sendo, portanto, atribuição do Estado o dever de prover condições indispensáveis ao seu pleno exercício.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> O direito constitucional à saúde também encontra previsão no Art. 6º da CF/88, sendo nessa regra enquadrado como um direito social e fundamental que, atrelado ao princípio fundamental do direito à vida digna, fundamento da República Federativa do Brasil (Art. 1º, inciso I da CF/88), assegura a todos atendimento necessário na área da saúde, estando inclusos os serviços de assistência médica, farmacêutica e hospitalar</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Com base em tais premissas, é dever incontestável do Estado, portanto, garantir o direito à saúde de todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo, especialmente quando o que se tem não é exatamente o exercício de uma política pública de saúde, mas a sua completa ausência ou cumprimento insuficiente.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Registre-se, ainda, que este egrégio Tribunal de Justiça, ao editar a Súmula 45, firmou entendimento no sentido de responsabilizar o Poder Público em garantir a pacientes o fornecimento de tratamento médico necessário ou medicamento, devidamente registrado no órgão de vigilância sanitária, não disponíveis na rede pública de saúde, nestes termos: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Súmu la 45 do TJCE – Ao Poder Público compete fornecer a pacientes tratamento ou medicamento registrado no órgão de vigilância sanitária competente, não disponibilizados no sistema de saúde.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Tra çado esse breve panorama normativo e volvendo ao caso em análise, depreende-se que a parte autora comprovou a necessidade e a urgência do insumo pleiteado, conforme documentos acostados aos autos, tendo se desincumbido do ônus de provar o fato constitutivo de seu direito. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Importante salientar que os documentos médicos juntados pela parte autora gozam de presunção de idoneidade técnica e veracidade sobre a necessidade da paciente, não tendo sido objeto de impugnação pelo promovido no curso da ação. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Outrossim, resta incontroverso nos autos que a parte autora é pessoa hipossuficiente, dependente, inclusive, do cuidado de terceiros, de idade avançada, e desprovida de recursos para arcar com os custos financeiros do insumo pleiteado. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Dessa forma, incumbe ao Poder Judiciário determinar o fornecimento do insumo pela parte demandada, tendo em vista que o direito à saúde é uma garantia do cidadão e dever do Estado, conforme arts. 6º e 196 da CF/88, devendo ser repelido qualquer iniciativa que contrarie tal preceito

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	fundamental. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Nesse sentido, destaco os seguintes julgados desta 3ª Câmara de Direito Público: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> DIREITO CONSTITUCIONAL. REMESSA NECESSÁRIA. OBRIGAÇÃO DE FAZER. FORNECIMENTO DE FRALDAS GERIÁTRICAS. SAÚDE. DEVER DO PODER PÚBLICO. INTELIGÊNCIA DOS ARTS. 6º E 196 DA CF/88. NECESSIDADE DE RENOVAÇÃO PERIÓDICA DA PRESCRIÇÃO MÉDICA. HONORÁRIOS. ALTERAÇÃO DO CRITÉRIO DE FIXAÇÃO. PROVEITO ECONÔMICO INESTIMÁVEL. FIXAÇÃO DA VERBA HONORÁRIA POR EQUIDADE. ART. 85, §8º, DO CPC/15, E TEMA 1076 DO STJ. PRECEDENTES DESTE EGRÉGIO TRIBUNAL DE JUSTIÇA. REMESSA NECESSÁRIA CONHECIDA E PARCIALMENTE PROVIDA. SENTENÇA PARCIALMENTE REFORMADA. (Remessa Necessária – 3002593-08.2023.8.06.0064, Rel. Desembargadora JORIZA MAGALHÃES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 29/04/2024, data da publicação: 29/04/2024) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> AGRAVO DE INSTRUMENTO. CONSTITUCIONAL. PROCESSUAL CIVIL. AÇÃO CIVIL PÚBLICA. PRELIMINAR DE ILEGITIMIDADE PASSIVA DO MUNICÍPIO DE JAGUARETAMA AFASTADA. MÉRITO. PACIENTE MENOR, HIPOSSUFICIENTE E ACOMETIDA DE DOENÇA GRAVE. NECESSIDADE DO FORNECIMENTO DE FRALDAS DESCARTÁVEIS E OUTROS INSUMOS. DIGNIDADE DA PESSOA HUMANA. DIREITO À VIDA E À SAÚDE. REQUISITOS PARA A ANTECIPAÇÃO DOS EFEITOS DA TUTELA DEMONSTRADOS. INCIDÊNCIA DA SÚMULA Nº 45 DO TJCE. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. DECISÃO INTERLOCUTÓRIA CONFIRMADA. [...] (Agravo de Instrumento – 0623309-90.2022.8.06.0000, Rel. Desembargadora MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 30/05/2022, data da publicação: 30/05/2022). </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Com isso, deve ser mantida a sentença que condenou o Estado do Ceará a fornecer, em favor da parte autora, o insumo requerido na inicial, como forma de efetivação do direito à saúde.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> No entanto, considerando que se trata de medida judicial de prestação continuativa, é imprescindível que o jurisdicionado promova a renovação periódica da prescrição médica, a fim de comprovar a permanência da necessidade da prestação determinada, conforme enunciado n° 2 da I Jornada de Direito da Saúde do CNJ, veja-se: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Enun ciado nº 02 do CNJ – Concedidas medidas judiciais de prestação continuativa, em tutela provisória ou definitiva, é necessária a renovação periódica do relatório e prescrição médicos a serem apresentados preferencialmente ao executor da medida, no prazo legal ou naquele fixado pelo julgador como razoável, considerada a natureza da enfermidade, de acordo com a legislação sanitária, sob pena de perda de eficácia da medida. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Outro ssim, verifico que o magistrado condenou a parte promovida ao pagamento de honorários advocatícios em 10% (dez por cento) do valor da causa. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Tal determinação, contudo, é contrária aos recentes julgados deste Tribunal, cuja orientação é no sentido de que, tratando-se de processos envolvendo prestação à saúde, o proveito econômico é inestimável, devendo, pois, o ônus de sucumbência ser fixado na forma equitativa, conforme disposição do art. 85, §8º, do CPC, <em style="mso-bidi-font-style: normal;"> in verbis : </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif; color: black; mso-themecolor: text1; mso-bidi-font-

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	style: italic;"> <span style="font-size: small;">CONSTITUCIONAL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL INTERPOSTA PELA DEFENSORIA PÚBLICA. AÇÃO DE OBRIGAÇÃO DE FAZER C/C PEDIDO DE TUTELA DE URGÊNCIA (ALIMENTOS, INSUMOS E FRALDAS). AVOCAÇÃO DO FEITO EM REMESSA NECESSÁRIA. DIREITO À SAÚDE. ARTS. 5º, §1º, 6º, CAPUT, 23, II, 196 E 197 DA CF. TEMA 793 DO STF E SÚMULA 45 DO TJCE. COMPROVAÇÃO DA HIPOSSUFICIÊNCIA DA PARTE AUTORA E DA NECESSIDADE DA ALIMENTAÇÃO ESPECIAL, DOS INSUMOS E DAS FRALDAS. MANUTENÇÃO DA CONDENAÇÃO DO ESTADO. RECURSO DE APELAÇÃO. HONORÁRIOS EM FAVOR DA DEFENSORIA PÚBLICA. MUDANÇA DE ENTENDIMENTO. JULGAMENTO DO RE 1140005 PELO STF, EM SEDE DE REPERCUSSÃO GERAL. TEMA 1.002. TESE QUE IMPÕE A CONDENAÇÃO A QUALQUER ENTRE PÚBLICO A PAGAR VERBA HONORÁRIA SUCUMBENCIAL EM FAVOR DA DEFENSORIA PÚBLICA, INCLUINDO-SE O ESTADO AO QUAL A INSTITUIÇÃO SE VINCULA. FORÇA VINCULANTE DOS PRECEDENTES. ART. 927, III DO CPC. REMESSA NECESSÁRIA AVOCADA E DESPROVIDA. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. SENTENÇA PARCIALMENTE REFORMADA. 1. Busca a Defensoria Pública em seu apelo a reforma parcial da sentença, objetivando a condenação do Estado do Ceará ao pagamento de honorários advocatícios em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. (…) 8. A respeito da questão discutida no recurso voluntário, impende esclarecer que, até bem pouco tempo, o entendimento jurisprudencial unânime nesta Corte de Justiça, em consonância com o enunciado sumular nº 421 do STJ, era no sentido da impossibilidade jurídica de condenação do Estado do Ceará em honorários em favor da Defensoria Pública, em virtude de ser a instituição vinculada ao ente federado em alusão. 9. Todavia, em data recente (23.06.2023), o STF julgou o RE 114005, em sede de Repercussão Geral (Tema 1.002), no qual firmou a seguinte tese: "1. É devido o pagamento de honorários sucumbenciais à Defensoria Pública, quando representa parte vencedora em demanda ajuizada contra qualquer ente público, inclusive aquele que integra; 2. O valor recebido a título de honorários sucumbenciais deve ser destinado, exclusivamente, ao aparelhamento das Defensorias Públicas, vedado o seu rateio entre os membros da instituição". 10. Com o mencionado julgado, encerra-se a discussão acerca da possibilidade, ou não, de a pessoa jurídica, à qual se encontra vinculada a Defensoria Pública ser condenada em honorários advocatícios de sucumbência em prol do mencionado órgão, isso em decorrência da força vinculante dos precedentes, com previsão no art. 927, III, do CPC/2015. 11. Em consequência, devem ser fixados na hipótese honorários sucumbenciais, em atendimento aos parâmetros estabelecidos no artigo 85, §§ 2º e 3º, do CPC/ 2015. 12. Na hipótese, como se trata de causa de valor que não se pode estimar, envolvendo direito à saúde, constitucionalmente garantido e inserido no conceito de mínimo existencial, a fixação dos honorários deve ocorrer por apreciação equitativa, nos termos do art. 85, § 8º, do CPC, mostrando-se cabível a fixação do valor de R$ 1.000,00 (mil reais) a título de honorários sucumbenciais, a serem pagos pelo Estado do Ceará em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. 13. Remessa necessária avocada e desprovida. Recurso de apelação conhecido e provido. Sentença parcialmente reformada. ACÓRDÃO – Vistos, relatados e discutidos os presentes autos, nesta Comarca de Fortaleza, em que figuram as partes indicadas. ACORDAM os membros integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em AVOCAR o feito em remessa necessária, para NEGAR LHE PROVIMENTO, e em CONHECER do recurso de apelação interposto, para DAR-LHE PROVIMENTO, reformando parcialmente a sentença, nos termos do voto do Relator. Fortaleza, 30 de outubro de 2023. Des. José Tarcílio Souza da Silva Relator (Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023). </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Ademais, considerando que no presente caso o proveito econômico obtido pelo vencedor da ação é inestimável (direito à saúde), o arbitramento de honorários advocatícios em percentual se mostra inadequado, conforme orientação do Tema 1076 do STJ: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Questão submetida a julgamento: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Definição do alcance da norma inserta no §8º do artigo 85 do Código de Processo Civil nas causas em que o valor da causa ou o proveito econômico da demanda forem elevados. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm;

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	margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Tese Firmada: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I) A fixação dos honorários por apreciação equitativa não é permitida quando os valores da condenação, da causa ou o proveito econômico da demanda forem elevados. É obrigatória nesses casos a observância dos percentuais previstos nos §§ 2º ou 3º do artigo 85 do CPC – a depender da presença da Fazenda Pública na lide –, os quais serão subsequentemente calculados sobre o valor: (a) da condenação; ou (b) do proveito econômico obtido; ou (c) do valor atualizado da causa. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II) Apenas se admite arbitramento de honorários por equidade quando, havendo ou não condenação: (a) o proveito econômico obtido pelo vencedor for inestimável ou irrisório; ou (b) o valor da causa for muito baixo. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> A ssim, considerando os julgados do TJCE, em especial desta 3ª Câmara de Direito Público, arbitro os honorários sucumbenciais, de forma equitativa, em R$ 1.000,00 (mil reais), nos moldes do art. 85, § 8º do CPC, revelando-se como razoável e proporcional . </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Importante salientar que o valor ora fixado se justifica no fato de se tratar de demanda de baixa complexidade, havendo sobre o tema farta jurisprudência, tanto desta Egrégia Corte, como também dos Tribunais Superiores. Ademais, considerando o trabalho desempenhado, o local de prestação, o tempo despendido e a natureza da causa, afigura-se justo e razoável o montante arbitrado, por se revelar uma quantia consentânea com os critérios previstos no referido digesto processual, além de seguir a coerência dos valores fixados por esta Câmara nos julgados supracitados.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Anoto, por fim, que deverá a totalidade da verba honorária ser destinada exclusivamente ao aparelhamento da Defensoria Pública, vedado o seu rateio entre os membros da instituição, em conformidade com a tese jurídica fixada no Tema nº 1.002 do STF.</p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Isso posto, conheço da Remessa Necessária para parcialmente provê-la, reformando a sentença objurgada somente para determinar que a parte autora comprove, semestralmente, por meio de prescrição médica, a necessidade do insumo requerido, bem como para modificar o critério de fixação dos honorários sucumbenciais, oportunidade em que arbitro, por equidade, em R$ 1.000,00 (um mil reais), nos termos do art. 85, §8º, do CPC. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> É como voto. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Fortaleza, data e hora informadas pelo sistema. </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> Relator </p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3003650-25.2024.8.06.0000
Número de ordem	18
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Liminar
Polo ativo	MUNICIPIO DE VICOSA DO CEARA

Processo	3003650-25.2024.8.06.0000
Advogado(s) - Polo ativo	Não informado
Polo passivo	ANTONIA MARIA DA CONCEICAO
Advogado(s) - Polo passivo	DENISE ALVES DE SOUSA - (CE39461-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003650-25.2024.8.06.0000
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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">(periculum in mora).</p><p style="line-height:1.38;margin-left: 113.38582677165354pt;text-align: justify;margin-top:8pt;margin-bottom:8pt;" dir="ltr"> 3. A probabilidade do direito invocada pela autora/agravada se encontra configurada no presente caso, uma vez que preenche a condição de segurada e há indícios suficientes da incapacidade para o exercício de sua profissão.</p><p style="line-height:1.38;margin-left: 113.38582677165354pt;text-align: justify;margin-top:8pt;margin-bottom:8pt;" dir="ltr">4. Por outro lado, o periculum in mora também se faz evidente, eis que se trata de verba de natureza alimentar.</p><p style="line-height:1.38;margin-left: 113.38582677165354pt;text-align: justify;margin-top:8pt;margin-bottom:8pt;" dir="ltr"> 5. Nesses termos, a manutenção da decisão é medida que se impõe.</p><p style="line-height:1.38;margin-left: 113.38582677165354pt;text-align: justify;margin-top:8pt;margin-bottom:8pt;" dir="ltr"> - Agravo de Instrumento conhecido e desprovido.</p><p style="line-height:1.38;margin-left: 113.38582677165354pt;text-align: justify;margin-top:8pt;margin-bottom:8pt;" dir="ltr"> - Decisão interlocutória mantida.</p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p align="center"> &#160;</p><p style="line-height:1.7470588235294116;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:8pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3003650-25.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Agravo de Instrumento interposto, mas para negar-lhe provimento, mantendo integralmente a decisão interlocutória de primeira instância, nos termos do voto da Relatora.</p><div> <br /> </div><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center">&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> <span style="font-family: Arial, sans-

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	serif;"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.2cm;" align="justify"> Trata-se de agravo de instrumento interposto contra decisão interlocutória oriunda do Juízo de primeira instância que, em sede de ação ordinária, deferiu o pleito liminar de concessão do benefício de auxílio-doença à requerente. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="justify"> O caso/a ação originária: Antônia Maria da Conceição ingressou com ação ordinária em face do Regime Próprio de Previdência Social do Município de Viçosa do Ceará – VIÇOSA PREV e do Município de Viçosa do Ceará requerendo a concessão de aposentadoria por incapacidade permanente ou, subsidiariamente, o deferimento de auxílio-doença. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="justify"> Para tanto, afirma que é servidora pública efetiva da citada edilidade desde 15 de março de 2004, exercendo o cargo de auxiliar de serviços gerais, sob a função de cozinheira, mas que, desde novembro de 2021, passou a sentir desconforto e dores intensas enquanto exercia suas atividades laborais, tendo sido diagnosticada com Síndrome do Túnel do Carpo de Moderada Intensidade em dezembro de 2021 e, posteriormente, em fevereiro de 2022, com dor crônica, tendinite, epicondilite, bursite e fibromialgia ocasionadas pelo esforço repetitivo no trabalho. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="justify"> Sustenta que o laudo médico apontou a necessidade de afastamento das atividades habituais e que, a partir de então, houve sucessivos afastamentos do trabalho. Alega que, mesmo havendo a indicação de readaptação, não houve mudança em relação às funções por ela desempenhadas e que o ambiente laboral contribuiria para o agravamento do quadro de depressão e de ansiedade do qual padece. Além disso, assevera que, em 2024, foi diagnosticada também com “ outras escolioses idiopáticas – F41.2 ”. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="justify"> Nesses termos, requereu, inclusive liminarmente, a concessão de aposentadoria por incapacidade permanente com proventos integrais ou, subsidiariamente, o benefício de auxílio-doença. Ademais, pugnou pela condenação dos promovidos ao pagamento de indenização por danos morais no valor de R$ 50.000,00. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="justify"> Manifestação ofertada Município de Viçosa do Ceará (ID 87945611 dos autos originários) alegando que a autora gozou de auxílio-doença em diversas ocasiões, benefício esse que ainda estaria em vigor até 18 de maio de 2024, além de ter concedida a readaptação funcional temporária por três vezes. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Decisão agravada

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	(ID 13722010), em que o magistrado da 2ª Vara da Comarca de Viçosa do Ceará deferiu o pedido liminar formulado. Confira-se trecho de seu dispositivo:</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm;" align="justify">“Com efeito, nos argumentos alhures repousam o fumus boni iuris e o periculum in mora, consubstanciados na qualidade de segurada do RPPSV, na incapacidade laborativa ainda persistente e no caráter alimentar do benefício pleiteado.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Assim, com esteio no art. 300 do CPC, considerando a necessidade de perícia médica, defiro o pedido subsidiário de antecipação de tutela, para restabelecer o auxílio-doença da autora de pág. 35 (ID 86246118), concedendo o prazo máximo de 10 (dez) dias para sua implantação, sob pena de multa diária de R$ 500,00 (quinhentos reais), limitada a R$ 10.000,00 (dez mil reais).”</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Inconformado , o Município de Viçosa do Ceará interpôs o presente agravo de instrumento , pugnando pela reforma da decisão prolatada na instância a quo , sob o fundamento de que as provas colacionadas aos autos (atestados médicos datado dos anos de 2023) seriam insuficientes para comprovar a incapacidade alegada, bem como que a perícia oficial teria descartado essa hipótese e que a ora agrava está trabalhando de forma readaptada.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Intimada, a parte agravada não apresentou contraminuta . </p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Parecer da Procuradoria Geral de Justiça (ID 15401942) no qual não houve emissão de opinião sobre o mérito do recurso. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> É o relatório. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm; text-align: center;"> VOTO </p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Presentesos requisitos de admissibilidade, conheço do recurso, passando, a seguir, ao exame do mérito de suas razões.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"><span style="font-size: 12pt;

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	font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Pelo que se extrai dos autos, a agravada alega sofrer de lesões/doenças incapacitantes para o trabalho, razão pela qual requer a concessão de benefício previdenciário. Não obstante, o agravante afirma que o referido pleito administrativo foi negado em razão de não ter a autora comprovado a incapacidade que alega, o que também não teria sido corroborado pelos elementos trazidos aos autos. <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Sabe-se que, para a concessão da tutela provisória de urgência, deve ser observado o disposto no art. 300, caput, do Código de Processo Civil, isto é, a probabilidade do direito (fumus boni iuris), bem como o perigo de dano e/ou o risco ao resultado útil do processo (periculum in mora).</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Pois bem. Em análise perfunctória, típica deste momento processual, infere-se que a agravada, de fato, é servidora pública do Município de Viçosa do Ceará e apresenta Síndrome do túnel do carpo de moderada intensidade e fibromialgia, consoante laudos elaborados pelos Médicos Seiji Matsui (CREMEC 6850) e Ana Rivia <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Silva Jovino (CRM 14740), nos termos dos documentos acostados aos autos (ID 13721994), o que persiste até os dias atuais (ID 13722002). Além disso, laudo elaborado por Médico da Secretaria Municipal de Saúde atestou ser a autora portadora de transtorno de ansiedade e depressão. <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Ademais, verifica-se que o pedido de auxílio-doença e de readaptação foi deferido pela perícia médica oficial em 22/02/2022, inicialmente pelo período de 22/08/2022 a 26/08/2022, havendo, contudo, sucessivas prorrogações do benefício de auxílio-doença e da readaptação temporária funcional. <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Verifica-se que a recorrida de fato esteve afastada por incapacidade laboral até 18 de agosto de 2024, um dia antes do protocolo da presente ação, sem que haja notícia de pleito de renovação do benefício de auxílio-doença ao ente público. Ainda que não se condicione o auxílio-doença a prévio pedido administrativo para seu deferimento pela via judicial, é necessário atestar a necessidade de afastamento das funções para o seu deferimento. <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">No <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">caso dos autos, o requerimento foi deferido sem prévia realização de perícia judicial que atestasse a necessidade de afastamento das funções da requerente. O derradeiro atestado médico acostado aos autos (ID 13722009, fl. 19) atestou a necessidade de afastamento das atividades da agravada tão somente pelo prazo de 5 dias, por motivo de fibromialgia (CID 10 M79.7). <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Contudo, é certo que, embora o diagnóstico e as causas da fibromialgia, moléstia não inserida no rol das doenças relacionadas ao trabalho (Portaria GM/MS nº 1999, de 27 de novembro de 2023) ainda não estejam inteiramente esclarecidas, é certo que rotinas laborais repetitivas e desgastantes ao trabalhador podem contribuir para o agravamento da condição. <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Assim, vislumbra-se, ao menos neste momento processual, presença de fumus boni iuris necessário à concessão do <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-

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	align: baseline; white-space: pre-wrap;">auxílio-doença, nos termos dos requisitos previstos no art. 59 da Lei nº 8.213/91, ex vi: <br /></p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“Art. 59. O auxílio-doença será devido ao segurado que, havendo cumprido, quando for o caso, o período de carência exigido nesta Lei, ficar incapacitado para o seu trabalho ou para a sua atividade habitual por mais de 15 (quinze) dias consecutivos.” (destacado). <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Incontestável, ainda, a existência de periculumin mora no caso, por se tratar de verba alimentar.<span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000;

Processo	3003650-25.2024.8.06.0000
	background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Por tudo isso, o desprovimento do recurso, com a consequente manutenção da decisão interlocutória ora adversada, é medida que se impõe neste azo. <br /></p><p style="line-height: 1.38; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <br /> </p><p style="line-height: 1.38; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> DISPOSITIVO <br /> </p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Isso posto, conheço do agravo de instrumento mas para negar-lhe provimento, mantendo integralmente a decisão interlocutória ora adversada. <br /></p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> É como voto. <br /> </p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.2cm" align="justify"> <span style="font-size: 12pt; font-family: Arial, sans-serif; background-color: transparent; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates:

Processo	3003650-25.2024.8.06.0000
	normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">&#160; Fortaleza/CE, data e hora indicadas pelo sistema.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	19
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Unidade de terapia intensiva (UTI) / unidade de cuidados intensivos (UCI)
Polo ativo	RAIMUNDO NONATO BARROS
Advogado(s) - Polo ativo	Não informado
Polo passivo	MUNICIPIO DE FORTALEZA ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	ADRIANA PEREIRA BARROS DE ABREU MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3017744-72.2024.8.06.0001
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-2c9cd64e-7fff-1480-ce2a-6b7d09ef55f1" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Processo: 3017744-72.2024.8.06.0001 – Apelação cível</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Apelante: DEFENSORIA PÚBLICA ESTADUAL</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Apelado(s): ESTADO DO CEARÁ e MUNICÍPIO DE FORTALEZA</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Processo civil. Saúde. Apelação cível. Ação de obrigação de fazer. Honorários. Extinção do processo sem resolução de mérito. Falecimento da parte autora após a citação dos promovidos. Princípio da causalidade. Aplicação Equitativa dos Honorários. Recurso parcialmente provido. Sentença parcialmente reformada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color:

Processo	3017744-72.2024.8.06.0001
	#000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1.Trata-se de Apelação Cível interposta pela Defensoria Pública Estadual contra a sentença que extinguiu o processo sem resolução de mérito, nos termos do Art. 485, inciso IX, do CPC/2015, em razão do falecimento da parte autora, e não condenou os entes públicos ao pagamento de honorários advocatícios, sob o fundamento de que o falecimento da parte autora ocorrera antes da citação dos promovidos.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Há duas questões em discussão: (i) saber se a extinção do processo sem resolução de mérito, por falecimento da parte autora, deve implicar na condenação dos réus ao pagamento de honorários sucumbenciais; e (ii) saber se os honorários devem ser fixados em percentual ou de forma equitativa, devendo neste último caso, ser aplicado o disposto no §8º-A do CPC/15.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. O falecimento da parte autora após a citação dos promovidos impõe a aplicação do princípio da causalidade, nos termos do Art. 85, §10, do CPC/2015, devendo, pois, os promovidos serem condenados ao pagamento de honorários sucumbenciais.&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Em relação ao valor dos honorários, tratando-se de demanda envolvendo o direito à saúde, o proveito econômico é inestimável, razão pela qual o ônus da sucumbência deve ser fixado na forma equitativa, nos termos do §8º do CPC/15.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Não há que se falar em aplicação do § 8º-A do Art. 85 do CPC/15 para a fixação dos honorários advocatícios, tal como requer a parte apelante, uma vez que, tratando-se de regimes jurídicos distintos, a tabela de honorários da OAB/CE não deve servir de parâmetro para a remuneração do trabalho do Defensor Público.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Recurso parcialmente provido. Sentença parcialmente reformada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color:

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	#000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">CPC, arts. 85, §10 e §8º.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STF, RE nº 1.140.005, Tema 1.002, Rel. Min. Dias Toffoli, Plenário, j. 23.06.2023; TJCE – Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador José Tarcílio Souza da Silva, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023; e Embargos de Declaração Cível – 0008825-73.2017.8.06.0169, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 05/02/2024, data da publicação: 07/02/2024.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em conhecer da apelação cível para dar-lhe parcial provimento, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Trata-se de Apelação Cível interposta por DEFENSORIA PÚBLICA ESTADUAL contra a sentença proferida pelo Juízo da 15ª Vara da Fazenda da Comarca de Fortaleza que, em Ação de Obrigação de Fazer cumulada com Pedido de Tutela de Urgência Liminar com Preceito Cominatório, ajuizada por RAIMUNDO NONATO BARROS em face do ESTADO DO CEARÁ e do MUNICÍPIO DE FORTALEZA, julgou extinto o feito, sem resolução de mérito, nos moldes do disposto no Art. 485, inciso IX, do CPC/2015. Sem condenação em honorários.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

Processo	3017744-72.2024.8.06.0001
	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Em suas razões recursais, a Defensoria Pública do Estado do Ceará defende, em suma, a reforma da sentença de 1º grau, para o fim de condenar os apelados ao pagamento de honorários advocatícios sucumbenciais no percentual de, no mínimo, 10% (dez por cento) e, no máximo, 20% (vinte por cento) sobre o valor da causa de R$ 84.725,00 (oitenta e quatro mil e setecentos e vinte e cinco reais) em observância à tese jurídica firmada nos REsp's 1.850.512/SP e 1.906.618/SP (Tema 1.076) do STJ e aplicação do inciso I, §3°, Art. 85, do CPC/15. Aduz, ainda, caso ultrapassado o pleito anterior, que os honorários advocatícios sejam fixados em valor não inferior a R$ 9.552,60 (nove mil, quinhentos e cinquenta e dois reais e sessenta centavos), conforme patamares mínimos estabelecidos em UAD'S, da tabela de honorários da OAB/CE, efetivando-se, portanto, a regra estabelecida no §8º-A do CPC/15. Ao final, pugnou pelo provimento do apelo.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Contrarrazões recursais do Estado do Ceará (ID nº 15673827).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Contrarrazões recursais do Município de Fortaleza (ID nº 15673828).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> É o relatório. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> De início, deixo de abrir vista dos autos à Procuradoria-Geral de Justiça, uma vez que o mérito recursal se restringe exclusivamente à discussão acerca de honorários sucumbenciais, matéria de cunho patrimonial e disponível, não havendo interesse público primário que justifique a intervenção ministerial, inclusive conforme já reconhecido pela própria Procuradoria-Geral de Justiça através de pareceres emitidos em processos análogos que tramitaram sob o crivo desta Relatoria (Apelação cível – 0056616-49.2016.8.06.0112; Apelação cível – 0287997-26.2022.8.06.0001; e Apelação cível – 3001625-13.2023.8.06.0117).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Preenchidos os requisitos de admissibilidade, conheço da apelação interposta pela Defensoria Pública Estadual, passando, a seguir, ao exame da matéria jurídica discutida nos autos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O cerne da irresignação recursal paira sobre a aplicação do princípio da causalidade, ante o julgamento do feito, sem resolução de mérito, na forma do Art. 485, inciso IX, do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Já adianto que o recurso merece parcial provimento. Explico.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Da análise dos autos, é possível inferir que a parte autora propôs a presente demanda com o fim de obter dos promovidos, Estado do Ceará e Município de Fortaleza, a disponibilização de leito de enfermaria de clínica médica, com suporte em cirurgia vascular e geral, tendo a ação sido proposta em 24/07/2021, especificamente às 18h33min.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Nesse sentido, o Juízo de 1º grau, às 13h56min do dia 25/07/2024, proferiu decisão interlocutória, o qual, em sede de tutela de urgência, concedeu o leito requerido (ID nº 15673796), vindo os mandados a serem cumpridos no mesmo dia, às 15h57min, o Município de Fortaleza, conforme ID nº 17673801, e às 15h59min, o Estado do Ceará, nos termos do ID nº 16673803.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Após regular trâmite processual, o Município de Fortaleza, em petição ID nº 15673816, veio aos autos informar o falecimento da parte autora em 01/08/024.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Na sequência, o Juízo da 15ª Vara da Fazenda Pública da Comarca de Fortaleza, considerando a informação do óbito, sentenciou o feito extinguindo o processo sem resolução de mérito, oportunidade em que deixou de condenar os entes públicos em honorários advocatícios, justificando que “(…) o falecimento da parte autora ocorreu antes mesmo dos entes requeridos serem citados do processo em análise (…)”.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Como se vê, diferentemente do que fundamentou o Magistrado, o óbito da parte autora ocorreu após a citação e intimação dos promovidos. Tanto é verdade que o Município de Fortaleza, no dia 27 de julho de 2024, apresentou contestação (ID nº 15673808).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Em tais situações, à luz do princípio da causalidade, o ônus da sucumbência deve ser suportado por quem deu causa ao ajuizamento da ação, conforme Art. 85, §10, do CPC/15:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Art. 85. A sentença condenará o vencido a pagar honorários ao advogado do vencedor.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> (…)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> § 10. Nos casos de perda do objeto, os honorários serão devidos por quem deu causa ao processo.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">

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	Desse modo, não há dúvidas de que os promovidos devem ser condenados ao pagamento de honorários sucumbenciais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">Tratando-se de demanda envolvendo o direito à saúde, o proveito econômico é inestimável, e o ônus da sucumbência deve ser fixado de forma equitativa.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> Outro não é o entendimento deste egrégio Tribunal de Justiça:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">CONSTITUCIONAL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL INTERPOSTA PELA DEFENSORIA PÚBLICA. AÇÃO DE OBRIGAÇÃO DE FAZER C/C PEDIDO DE TUTELA DE URGÊNCIA (ALIMENTOS, INSUMOS E FRALDAS). AVOCAÇÃO DO FEITO EM REMESSA NECESSÁRIA. DIREITO À SAÚDE. ARTS. 5º, §1º, 6º, CAPUT, 23, II, 196 E 197 DA CF. TEMA 793 DO STF E SÚMULA 45 DO TJCE. COMPROVAÇÃO DA HIPOSSUFICIÊNCIA DA PARTE AUTORA E DA NECESSIDADE DA ALIMENTAÇÃO ESPECIAL, DOS INSUMOS E DAS FRALDAS. MANUTENÇÃO DA CONDENAÇÃO DO ESTADO. RECURSO DE APELAÇÃO. HONORÁRIOS EM FAVOR DA DEFENSORIA PÚBLICA. MUDANÇA DE ENTENDIMENTO. JULGAMENTO DO RE 1140005 PELO STF, EM SEDE DE REPERCUSSÃO GERAL. TEMA 1.002. TESE QUE IMPÕE A CONDENAÇÃO A QUALQUER ENTRE PÚBLICO A PAGAR VERBA HONORÁRIA SUCUMBENCIAL EM FAVOR DA DEFENSORIA PÚBLICA, INCLUINDO-SE O ESTADO AO QUAL A INSTITUIÇÃO SE VINCULA. FORÇA VINCULANTE DOS PRECEDENTES. ART. 927, III DO CPC. REMESSA NECESSÁRIA AVOCADA E DESPROVIDA. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. SENTENÇA PARCIALMENTE REFORMADA. 1. Busca a Defensoria Pública em seu apelo a reforma parcial da sentença, objetivando a condenação do Estado do Ceará ao pagamento de honorários advocatícios em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. (…) 8. A respeito da questão discutida no recurso voluntário, impende esclarecer que, até bem pouco tempo, o entendimento jurisprudencial unânime nesta Corte de Justiça, em consonância com o enunciado sumular nº 421 do STJ, era no sentido da impossibilidade jurídica de condenação do Estado do Ceará em honorários em favor da Defensoria Pública, em virtude de ser a instituição vinculada ao ente federado em alusão. 9. Todavia, em data recente (23.06.2023), o STF julgou o RE 114005, em sede de Repercussão Geral (Tema 1.002), no qual firmou a seguinte tese: "1. É devido o pagamento de honorários sucumbenciais à Defensoria Pública, quando representa parte vencedora em demanda ajuizada contra qualquer ente público, inclusive aquele que integra; 2. O valor recebido a título de honorários sucumbenciais deve ser destinado, exclusivamente, ao aparelhamento das Defensorias Públicas, vedado o seu rateio entre os membros da instituição". 10. Com o mencionado julgado, encerra-se a discussão acerca da possibilidade, ou não, de a pessoa jurídica, à qual se encontra vinculada a Defensoria Pública ser condenada em honorários advocatícios de sucumbência em prol do mencionado órgão, isso em decorrência da força vinculante dos precedentes, com previsão no art. 927, III, do CPC/2015. 11. Em consequência, devem ser fixados na hipótese honorários sucumbenciais, em atendimento aos parâmetros estabelecidos no artigo 85, §§ 2º e 3º, do CPC/2015. 12. Na hipótese, como se trata de causa de valor que não se pode estimar, envolvendo direito à saúde, constitucionalmente garantido e inserido no conceito de mínimo existencial, a fixação dos honorários deve ocorrer por apreciação equitativa, nos termos do art. 85, § 8º, do CPC, mostrando-se cabível a fixação do valor de R$ 1.000,00 (mil reais) a título de honorários sucumbenciais, a serem pagos pelo Estado do Ceará em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. <span style="font-size: 10pt; font-

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	family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">13. Remessa necessária avocada e desprovida. Recurso de apelação conhecido e provido. Sentença parcialmente reformada. ACÓRDÃO – Vistos, relatados e discutidos os presentes autos, nesta Comarca de Fortaleza, em que figuram as partes indicadas. ACORDAM os membros integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em AVOCAR o feito em remessa necessária, para NEGAR-LHE PROVIMENTO, e em CONHECER do recurso de apelação interposto, para DAR-LHE PROVIMENTO, reformando parcialmente a sentença, nos termos do voto do Relator. Fortaleza, 30 de outubro de 2023. Des. José Tarcílio Souza da Silva Relator (Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023). (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> E nem poderia ser diferente, pois, considerando que no presente caso o proveito econômico é inestimável (direito à saúde), o arbitramento de honorários advocatícios em percentual se mostra inadequado, conforme orientação do Tema 1076 do STJ:</p><p style="line-height: 1.7999999999999998; margin-left: 111pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Questão submetida a julgamento :</p><p style="line-height: 1.7999999999999998; margin-left: 111pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Definição do alcance da norma inserta no §8º do artigo 85 do Código de Processo Civil nas causas em que o valor da causa ou o proveito econômico da demanda forem elevados.</p><p style="line-height: 1.7999999999999998; margin-left: 111pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Tese Firmada :</p><p style="line-height: 1.7999999999999998; margin-left: 111pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> I) A fixação dos honorários por apreciação equitativa não é permitida quando os valores da condenação, da causa ou o proveito econômico da demanda forem elevados. É obrigatória nesses casos a observância dos percentuais previstos nos §§ 2º ou 3º do artigo 85 do CPC – a depender da presença da Fazenda Pública na lide –, os quais serão subsequentemente calculados sobre o valor: (a) da condenação; ou (b) do proveito econômico obtido; ou (c) do valor atualizado da causa.</p><p style="line-height: 1.7999999999999998; margin-left: 111pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> II) Apenas se admite arbitramento de honorários por equidade quando, havendo ou não condenação: (a) o proveito econômico obtido pelo vencedor for inestimável ou irrisório; ou (b) o valor da causa for muito baixo. (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Vale ressaltar, ainda, que, no caso dos autos, o arbitramento dos honorários sucumbenciais de forma equitativa não está vinculado ao valor dos honorários à tabela de honorários da OAB/CE. Isso porque, <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700;

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	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">tratando-se de regimes jurídicos distintos, tenho que a referida tabela não deve servir de parâmetro para a remuneração do trabalho do Defensor Público que, diferentemente dos honorários voltados à classe dos Advogados (verbas alimentar destinada à subsistência do credor e de sua família), àquela é voltada, exclusivamente, ao aparelhamento da instituição, sendo vedado o seu rateio entre seus membros (Tema 1002 do STF).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Além do que, segundo entendimento firmado pelo STF, no julgamento de mérito do RE nº 1.240.999/SP (Tema 1074), com repercussão geral reconhecida, que trata da possibilidade de exigência de inscrição de Defensor Público nos Quadros da Ordem dos Advogados do Brasil para o exercício de suas funções públicas, fixou a seguinte tese: “É inconstitucional a exigência de inscrição do Defensor Público nos quadros da Ordem dos Advogados do Brasil.”.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Em caso análogo, assim já decidiu este egrégio Tribunal de Justiça:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO REMESSA NECESSÁRIA E APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER. FORNECIMENTO DE MEDICAÇÃO E ALIMENTAÇÃO ESPÉCIA. DIREITO A SAÚDE. BENEFÍCIO ECONÔMICO INESTIMÁVEL. PRECEDENTES RECENTES DO STJ E TJCE. DEFENSORIA PÚBLICA ESTADUAL. VERBA HONORÁRIA SUCUMBENCIAL FIXADA POR APRECIAÇÃO EQUITATIVA (§ 8º, ART. 85, CPC). OMISSÃO. APLICAÇÃO DA TABELA DE HONORÁRIOS DA ORDEM DOS ADVOGADOS (§ 8-A, ART. 85, CPC). IMPOSSIBILIDADE. REGIMES JURÍDICOS DISTINTOS. INOCORRÊNCIA DE VÍCIOS NO ARESTO IMPUGNADO. PREQUESTIONAMENTO. DESNECESSIDADE DE REFERÊNCIA EXPLÍCITA AOS DISPOSITIVOS LEGAIS. PRECEDENTES. ACLARATÓRIOS CONHECIDOS E DESPROVIDOS. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer dos aclaratórios, todavia para negar-lhe provimento, nos termos do voto do relator. Fortaleza, data e hora indicados pelo sistema. DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES Relator (Embargos de Declaração Cível – 0008825-73.2017.8.06.0169, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 05/02/2024, data da publicação: 07/02/2024). (Destaque-se). <br

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	/></p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">De igual modo: Embargos de Declaração Cível – 0292356-19.2022.8.06.0001, Rel. Desembargador(a) LISETE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento: 18/12/2023, data da publicação: 19/12/2023; Agravo Interno Cível – 0240380-36.2023.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 04/12/2023, data da publicação: 04/12/2023; e Embargos de Declaração Cível – 0050564-20.2020.8.06.0137, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 21/08/2023, data da publicação: 21/08/2023.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Não há que se falar, portanto, em aplicação do §8º-A do Art. 85 do CPC/15 para fixação dos honorários advocatícios, tal como requer a parte apelante.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Assim sendo, observados os parâmetros do §2º do Art. 85 do CPC/15, hei por bem condenar os promovidos em R$ 1.000,00 (um mil reais), conforme §8º do Art. 85 do CPC/15 (apreciação equitativa), devendo cada ente público demandado ficar responsável pelo pagamento da importância de R$ 500,00 (quinhentos reais), como forma de atender o que preconiza o §1º do Art. 87 do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Tal quantia se justifica em razão do menor grau de complexidade da causa, do cenário jurídico já sedimentado sobre o tema e, por fim, do trabalho e zelo profissional desenvolvido pelo(a) Defensor(a) Público(a) no processo, atendendo, assim, aos princípios da razoabilidade e da proporcionalidade, além de seguir o montante adotado por este Órgão Julgador para casos análogos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Registre-se, outrossim, que o referido montante deverá ser destinado, exclusivamente, ao Fundo de Apoio e Aparelhamento da Defensoria Pública do Estado do Ceará – FAADEP, sendo vedado o seu rateio entre os membros da instituição.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O valor da condenação em honorários deverá sofrer incidência de juros de mora e correção monetária na forma do Art. 3º, da Emenda Constitucional nº 113/2021.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-

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	family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Pelo exposto, CONHEÇO da apelação cível da Defensoria Pública Estadual e DOU-LHE parcial provimento para, modificando em parte o julgamento de 1º grau, condenar os promovidos ao pagamento de honorários sucumbenciais, conforme acima delineado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Sem majoração da verba honorária prevista no Art. 85, §11, do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	20
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Revisão de Tutela Antecipada Antecedente
Polo ativo	PAULO ROBERTO MARQUES
Advogado(s) - Polo ativo	DIEGO NOGUEIRA KAUR - (CE19387-A) RODRIGO PINHEIRO NOBRE - (CE22196-A)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3002269-79.2024.8.06.0000
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	Tribunal de Contas do Estado do Ceará . Requisitos para a concessão da antecipação dos efeitos da tutela de urgência não demonstrados. Recurso conhecido e desprovido. Decisão de origem mantida. I. Caso em exame 1. Trata-se de Agravo de Instrumento c/c Pedido de Tutela Recursal de Urgência contra a decisão interlocutória proferida nos autos n° 3006768-06.2024.8.06.0001 que indeferiu o pedido de tutela de urgência. II. Questão em discussão 2. A questão em discussão consiste em analisar se há nos autos os requisitos de tutela de urgência capaz de suspender a exigibilidade dos Acórdãos 2881/2019 e 3018/2023 do Tribunal de Contas do Estado. III. Razões de decidir 3. A tutela provisória de urgência é medida que se impõe sempre que estão presentes, concomitantemente, o fumus boni iuris e o perículum in mora, sendo proferida mediante cognição sumária, ou seja, o julgador ainda não tem acesso a todos os elementos de prova capazes de formar sua inteira convicção acerca dos direitos trazidos ao Estado Juiz. 4. In casu , verifica-se o requisito da probabilidade do direito resta fragilizado, pois o autor, ora agravante, não logrou êxito em comprovar, na exordial, que havia ocorrido a prescrição em prejuízo do Tribunal de Contas do Estado. Portanto, mantêm-se a presunção de legitimidade dos Acórdãos 2881/2019 e 3018/2023 do TCE. 5. Quanto ao segundo requisito para a concessão da tutela de urgência, entendo pela ausência de perigo imediato ao patrimônio do recorrente, uma vez que medidas constritivas em face do patrimônio do agravante/autor dependem de ordem judicial, não havendo sequer execução ajuizada até o presente momento, que, inclusive, poderá demorar. IV. Dispositivo e tese 6. Agravo de Instrumento conhecido e desprovido. <span

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	style="font-size: medium;"> Tese de julgamento: “ Em juízo sumário de cognição, ausentes os requisitos autorizadores da tutela de urgência, o provimento da suspensão da exigibilidade dos Acórdãos proferidos pelo Tribunal de Contas do Estado do Ceará fica inviabilizado. ” <br /> _________ Dispositivos relevantes citados: Art. 300, CPC. <br /> Jurisprudência relevante citada: TJCE, Agravo de Instrumento - 0625415-54.2024.8.06.0000, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 3ª Câmara Direito Público, data do julgamento: 09/09/2024, data da publicação: 09/09/2024. <br /> <br /> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Agravo de Instrumento para negar-lhe provimento , nos termos do voto do relator. &#160; &#160; F ortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; <br /> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> &#160; <strong style="font-size: small;"> Relator &#160; &#160; &#160; RELATÓRIO <br /> Trata-se de Agravo de Instrumento c/c Pedido de Tutela Recursal de Urgência contra a decisão interlocutória proferida nos autos n° 3006768-06.2024.8.06.0001 pela Juíza de Direito da 7ª Vara da Fazenda Pública da Comarca de Fortaleza. Ação (Id. 83250270 – Autos originais): Ação Anulatória c/c Antecipação dos Efeitos da Tutela promovida por Paulo Roberto Marques em desfavor do Estado do Ceará, objetivando a desconstituição e declaração de nulidade dos Acórdãos 2881/2019 e 3018/2023 oriundos do Tribunal de Contas do Estado do Ceará, provenientes dos autos nº 04663/2012-0. Aduz que resta caracterizada a prescrição da pretensão punitiva, a violação de dispositivos constitucionais e infraconstitucionais e de tese firmada em sede de Repercussão Geral, bem como a demonstração da ausência de prática de ato de gestão antieconômico e ilegítimo danoso ao erário e/ou de quaisquer irregularidades na prestação de contas ofertadas pelo postulante. Decisão agravada (Id. 84359356): proferida nos seguintes termos:

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	“Conforme se observa, a parte autora não comprova, documentalmente, que durante o curso do processo nº 04663/2012-0, que culminou no reconhecimento da responsabilidade solidária da parte autora, ocorreu a preclusão aludida, ou seja, uma vez que não resta comprovado o deslinde processual, apenas a mera narração da parte autora quanto ao lapso temporal entre o marco inicial e o Acórdão. Ademais, no tocante à apreciação dos critérios de legalidade que circundam as decisões na esfera administrativa, em atenção ao caso em apreço, a ocorrência de prescrição quanto ao julgamento das contas pelo TCE/CE, entendo, em análise precária, que não fora demonstrado o desrespeito às normas que vinculam à apreciação pela Corte de Contas, uma vez que resta comprovado a observância ao devido processo. Por fim, considerando o pedido de tutela de urgência, não se vislumbra a constituição dos requisitos autorizadores da concessão, inclusive quanto à existência do perigo da demora, uma vez que sequer consta documentação que comprove o trânsito em julgado do Acórdão nº 3018/2023. Ante o exposto, indefiro o pedido de tutela de urgência.”</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Decisão de Id. 12385389 indeferindo o pedido de efeito suspensivo.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Contrarrazões (Id. 12858960): pugna pelo desprovimento do Agravo de Instrumento, mantendo-se inalterada a decisão de primeiro grau, por ser medida de direito.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Parecer da Procuradoria Geral de Justiça (Id. 14720958): opinando pelo conhecimento e desprovimento do recurso.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> É o relatório. </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;"> <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> <br /> </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Destaque-se que o foco da presente análise, dada a própria natureza do agravo de instrumento, e em observância aos princípios do contraditório, ampla defesa e devido processo legal, não abrange uma apreciação meritória definitiva acerca da questão discutida, que deve ficar restrita ao que foi decidido em interlocutória, a qual, antes da análise do mérito recursal pode, inclusive, ser reformada pelo juízo a quo em retratação.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Conforme brevemente relatado, cinge-se a controvérsia em aferir a higidez da decisão interlocutória que indeferiu a tutela de urgência no sentido de suspender, até o trânsito em julgado da ação, a exequibilidade dos acórdãos nº 2881/2019 e 3018/2023, proferidos pelo Tribunal de Contas do Estado do Ceará.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> A tutela provisória de urgência é medida que se impõe sempre que estão presentes, concomitantemente, o fumus boni iuris e o perículum in mora, sendo proferida mediante cognição sumária, ou seja, o julgador ainda não tem acesso a todos os elementos de prova capazes de formar sua inteira convicção acerca dos direitos trazidos ao Estado Juiz. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> A tutela provisória de urgência está prevista no art. 300 do Código de Processo Civil, nos seguintes termos: </p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;"

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	align="justify"> Art. 300. A tutela de urgência será concedida quando houver elementos que evidenciem a probabilidade do direito e o perigo de dano ou o risco ao resultado útil do processo. <br /> São, portanto, dois os requisitos para a concessão da tutela antecipada de urgência: 1) a probabilidade do direito; e o 2) perigo de dano ou risco ao resultado útil do processo. Quanto ao primeiro requisito, da narração dos fatos e documentos carreados aos autos de origem, verifica-se que a probabilidade do direito resta fragilizada, pois o autor, ora agravante, não logrou êxito em comprovar, na exordial, que havia ocorrido a prescrição em prejuízo do Tribunal de Contas do Estado. É assente o entendimento de que os atos da Administração Pública, desde que respeitem o princípio da legalidade, gozam de presunção de legitimidade e veracidade, somente podendo ser objeto de revisão mediante prova de que foram praticados em desacordo com as leis ou princípios constitucionais. Portanto, mantém-se a presunção de legitimidade dos Acórdãos nº 2881/2019 e nº 3018/2023 do Tribunal de Contas do Estado. Somente em momento posterior à instrução processual, em cognição exauriente, diante das provas obtidas, será possível delinear com o grau de certeza necessária á aferição da ocorrência, ou não, da prescrição. Quanto ao segundo requisito para a concessão da tutela de urgência, reforço o meu entendimento (exarado na decisão interlocutória de indeferimento do efeito suspensivo no bojo deste recurso, no Id. 12385389), da ausência de perigo imediato ao patrimônio do recorrente, uma vez que medidas constritivas em face do patrimônio do agravante/autor dependem de ordem judicial, não havendo sequer execução ajuizada até o presente momento, que, inclusive, poderá demorar. Ressalto que, ainda assim, nada impede ao autor que, no decorrer da ação, caso seja necessário, formule pedido de tutela incidental, nos moldes do art. 294, parágrafo único, do CPC. Desse modo, conclui-se como ausentes em favor do agravante tanto a fumaça do bom direito como o perigo na demora, o que inviabiliza o provimento da irresignação em apreço. Nesse sentido, o seguinte julgado: <br /> AGRAVO DE INSTRUMENTO. AÇÃO DE OBRIGAÇÃO DE FAZER C/C REPARAÇÃO DE DANOS MORAIS E MATERIAIS. INDEFERIMENTO DE TUTELA DE URGÊNCIA. IRRESIGNAÇÃO DO AUTOR. PLEITO RECURSAL PARA EXCLUSÃO DE RESTRIÇÕES POR ROUBO E QUALIDADE DE LEILÃO DE VEÍCULO AUTOMOTOR. AUSÊNCIA DOS REQUISITOS DO ART. 300 DO CÓDIGO DE PROCESSO CIVIL. PROBABILIDADE DO DIREITO E O PERIGO DE DANO OU O RISCO AO RESULTADO ÚTIL DO PROCESSO NÃO DEMONSTRADOS. MANUTENÇÃO DA DECISÃO DE PRIMEIRO GRAU. RECURSO CONHECIDO E

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	DESPROVIDO. 1 - O autor alega que é o legítimo proprietário de veículo Toyota Corola, placa NYS1A59, que está erroneamente em situação de bem leiloado e com histórico de roubo. In casu, o cerne da controvérsia consiste em avaliar o acerto da decisão que indeferiu pedido de exclusão das ¿restrições por roubo¿ e ¿qualidade de leilão¿ do veículo objeto da lide. 2 - Constata-se que as razões de fato e de direito que alicerçam o pleito formulado pela parte recorrente, não trazem consigo elementos capazes de comprovar a probabilidade do direito e o perigo de dano ou o risco ao resultado útil e regular do processo. O magistrado a quo, ao realizar pesquisas em diversos sites especializados, constatou que o veículo em questão aparece ¿sem restrição¿. Considerando a inexistência de comprovação cabal das alegações invocadas pelo recorrente, no que se refere a existência de restrições no veículo objeto da lide, não é arrazoado determinar o provimento antecipado pleiteado. 3 - Em juízo sumário de cognição, ausentes os requisitos autorizadores da tutela de urgência, a manutenção da decisão a quo é medida que se impõe . 4 - Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos em que são partes as acima indicadas, acordam os desembargadores integrantes da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso para negar-lhe provimento, nos termos do relatório e do voto da relatora, que passam a fazer parte integrante do presente acórdão. Fortaleza, data da inserção no sistema. MARIA DO LIVRAMENTO ALVES MAGALHÃES Desembargadora Relatora (Agravo de Instrumento - 0625415-54.2024.8.06.0000, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 3ª Câmara Direito Público, data do julgamento: 09/09/2024, data da publicação: 09/09/2024) </p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Nesses termos, em juízo sumário de cognição, ausentes os requisitos autorizadores da tutela de urgência, a manutenção da decisão a quo é medida que se impõe. </p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Diante do exposto, conheço do Agravo de Instrumento para NEGAR-LHE PROVIMENTO , mantendo a decisão agravada em todos os seus termos. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> &#160; É como voto. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	21
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público

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Relator	FRANCISCO GLADYSON PONTES
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Prestação de Contas
Polo ativo	JACQUELINE FERREIRA GOUVEIA FRANCISCO DEMONTIER ARAUJO GRANJEIRO GLEDSON LIMA BEZERRA JOSE BARRETO COUTO FILHO
Advogado(s) - Polo ativo	DORIAM LUCENA SILVA MATOS - (CE42094-A)
Polo passivo	JOSE ARNON CRUZ BEZERRA DE MENEZES MUNICIPIO DE JUAZEIRO DO NORTE Procuradoria do Município de Juazeiro do Norte
Advogado(s) - Polo passivo	JOSE BOAVENTURA FILHO - (CE11867-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2IrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	AÇÃO POPULAR. SUSPENSÃO DOS EFEITOS DA MENSAGEM Nº 062/2019. OPERAÇÃO DE CRÉDITO EXTERNO. ALEGAÇÃO DE PREJUÍZO AO PATRIMÔNIO PÚBLICO. AUSÊNCIA DE PROVAS CAPAZES DE DEMONSTRAR AS SUPOSTAS ILEGALIDADES E LESIVIDADES DO ATO IMPUGNADO. PRECEDENTES DESTE TJCE. IMPROCEDÊNCIA DO PLEITO. REMESSA NECESSÁRIA CONHECIDA E DESPROVIDA. SENTENÇA CONFIRMADA.</p><p class="EmentadoAcf3rde3o" style="margin-left: 155.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> &#160;</p><p class="EmentadoAcf3rde3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> ACÓRDÃO: vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e desprover a Remessa Necessária, restando confirmada a sentença, nos termos do voto do relator.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Fortaleza, data e hora indicadas pelo sistema. </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 200%;" align="center"> Relator </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 200%;" align="center">&#160;</p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 200%;" align="center"> &#160; &#160;</p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> RELATÓRIO </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Trata-se de reexame necessário da sentença Id. 15466747, proferida pelo Juízo de Direito da 2ª Vara Cível da Comarca de Juazeiro do Norte, nos autos de Ação Popular proposta por Glêdson Lima Bezerra e outros em face do Município de Juazeiro do Norte e José Arnon Cruz Bezerra de Menezes.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Aç ão (Id. 15466470): a Ação Popular foi proposta com o fito de suspender os efeitos advindos da aprovação legislativa da Mensagem nº 062/2019, que versa sobre operação de crédito externo, cujo pedido foi pelo reconhecimento da lesividade ao patrimônio público em decorrência da efetivação da mencionada operação.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Sentença (Id. 15466747): julgamento de improcedência, nos seguintes termos: “ Desta forma, sendo os requisitos da ação popular a ilegalidade e a lesividade e devem estar configurados a apontar condutas lesivas ao patrimônio de pessoas jurídicas de direito público, constata-se que, na hipótese dos autos, a prova é pouco contundente a identificar com clareza o ato lesivo. Ante o exposto, JULGO IMPROCEDENTE o pedido inicial e determino a extinção do processo com resolução do mérito, conforme artigo 487, I, do CPC. ”.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Parecer do Ministério Público (Id. 15466743): manifestação do Parquet pela improcedência da Ação Popular.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> É o relatório. </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> &#160;&#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;">&#160;</p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> <strong

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	style="mso-bidi-font-weight: normal;"> VOTO </p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Presentes os pressupostos de admissibilidade, visto não ser o caso de aplicação das ressalvas previstas nos §§3º e 4º do art. 496 do CPC, conheço da Remessa Necessária. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Conforme brevemente relatado, a Ação Popular proposta objetivou a suspensão dos efeitos da Mensagem nº 062/2019, sob a alegação de se tratar de ato lesivo ao patrimônio público. Referida mensagem teve como objeto a operação de crédito de um projeto junto à Corporação Andina de Fomento – CAF, com acervo econômico de até US$ 80.000.000,00 (oitenta milhões de dólares), para a realização de investimentos de infraestrutura. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Assim, o cerne do presente reexame é verificar se há efetivo prejuízo ao patrimônio público decorrente de atos praticados pela parte ré e se há provas suficientes para atestar o suposto ato lesivo. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> A Constituição Federal de 1988 estabeleceu que a Ação Popular é o meio de que dispõe todo e qualquer cidadão para "anular ato lesivo ao patrimônio público ou de entidade de que o Estado participe, à moralidade administrativa, ao meio ambiente e ao patrimônio histórico cultural" (art. 5º, inciso LXXIII, CF/88). </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Nesse sentido, a lição de Hely Lopes Meirelles (Mandado de Segurança e Ações Constitucionais, 32. ed., São Paulo: Malheiros, 2009, págs. 148/149): </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> "A ação popular é o meio constitucional posto à disposição de qualquer cidadão para obter a invalidação de atos ou contratos administrativos ou a estes equiparados ilegais e lesivos do patrimônio federal, estadual e municipal, ou de suas autarquias, entidades paraestatais e pessoas jurídicas subvencionadas com dinheiros públicos."</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> A f im de regulamentar o processamento da Ação Popular, a Lei nº 4.717/65 estabeleceu as hipóteses em que haverá a nulidade do ato lesivo ao patrimônio público, vejamos: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> Art . 2º São nulos os atos lesivos ao patrimônio das entidades mencionadas no artigo anterior, nos casos de: a) incompetência; b) vício de forma; c) ilegalidade do objeto; d) inexistência dos motivos; e) desvio de finalidade. &#160; &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> No mesmo dispositivo legal, o legislador estabeleceu que “o vício de forma consiste na omissão ou na observância incompleta ou irregular de formalidades indispensáveis à existência ou seriedade do ato;” e que “a ilegalidade do objeto ocorre quando o resultado do ato importa em violação de lei, regulamento ou outro ato normativo;” (alíneas “b” e “c” do parágrafo único do art. 2º da Lei da Ação Popular). Daí conclui-se que a ação popular somente pode ser julgada procedente se o ato por ela atacado contiver os vícios da ilegalidade e da lesividade. Dessa forma, cabe à parte autora

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	demonstrar a efetiva ocorrência de ambos, sob pena de improcedência da ação. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Da análise dos autos, verifica-se a ausência de provas capazes de atestar a ilegalidade da Lei Municipal e de efetivo prejuízo. A propósito, destaco a observação feita pelo magistrado em sede de Decisão Interlocutória (Id. 15466556): </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> “[. ..] </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> Insta consignar no prólogo desta decisão que constitui ônus dos Autores a demonstração da ilegalidade da Lei Municipal ou indicar de forma concreta a lesividade que adviria da contratação do empréstimo, o que não foi, sob meu ponto de vista, concretamente apontado, posto que os argumentos referem a uma possível ausência de informações à Câmara Municipal do contrato e suas cláusulas, “condições e forma de pagamento, incrementos contratuais, aplicação de juros, critérios de atualização (cambial e monetário), implicações em caso de mora.”. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Os argumentos suscitados pelos autores não são suficientes para o reconhecimento da pretensão da Ação Popular. Pelo contrário, embora as partes tenham apresentado estimativa de valores, no atual momento, isso não implica factualmente que a medida tenha causado danos concretos à coletividade, não sendo suficiente basear a propositura de Ação Popular em uma perspectiva de dano.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Patente, portanto, que a parte promovente não se desincumbiu de seu ônus probatório quanto à demonstração da ilegalidade e da lesividade do ato, acarretando a improcedência de seu pleito.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Nesse sentido, colaciono julgados deste Tribunal de Justiça:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> R EMESSA NECESSÁRIA. AÇÃO POPULAR. CONTROLE DE LEGALIDADE DO DECRETO DE REVISÃO DA TARIFA DE ÔNIBUS NO MUNICÍPIO DE FORTALEZA NO ANO DE 2019. ABUSIVIDADE DO AUMENTO TARIFÁRIO NÃO DEMONSTRADA. SENTENÇA DE IMPROCEDÊNCIA MANTIDA. REEXAME CONHECIDO E NÃO PROVIDO. 1. Não demonstrada a ilegalidade ou lesividade decorrente da revisão da tarifa do transporte público municipal procedida pelo Decreto nº 14.350/2019 do Município de Fortaleza, impõe-se a improcedência da ação popular fundada na abusividade do aumento tarifário. 2. A circunstância excepcional e transitória de suspensão de circulação de ônibus por motivos de segurança pública justificaria a manutenção do valor da tarifa, mesmo porque é inconteste que o aumento tarifário foi autorizado em valor inferior ao da inflação observada no período. 3. Sentença de improcedência mantida. Remessa conhecida e não provida. ACÓRDÃO Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da remessa necessária, mas para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. DESEMBARGADOR WASHINGTON LUÍS BEZERRA DE ARAÚJO RELATOR (Remessa Necessária Cível - 0105512-63.2019.8.06.0001, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 21/02/2022, data da publicação: 21/02/2022). &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> ADMINISTRATIVO E CONSTITUCIONAL. REMESSA EM AÇÃO POPULAR. PORTARIA/PGE Nº 038/2022. ATO NORMATIVO GENÉRICOE GERAL. EFEITOS CONCRETOS DO ATO NÃO DEMONSTRADOS. NÃO COMPROVAÇÃO DE LESIVIDADE. INADEQUAÇÃO DA VIA ELEITA. PRECEDENTES TJCE. REMESSA CONHECIDA E

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	DESPROVIDA. SENTENÇA MANTIDA. 1. A ação popular possui base normativa constitucional (art. 5º, LXXIII, CF/88) e Infra constitucionalmente (Lei nº 4.717/1965). O writ visa a tutela do patrimônio público, da moralidade administrativa, do meio ambiente e do patrimônio histórico e cultural, possuindo o cidadão (eleitor) legitimidade por excelência com vistas a ajuizála. 2. In casu, a autora objetiva declarar a nulidade da Portaria/PGE nº 038/2022, que regulamentou as audiências perante a Central de Licitações do Estado do Ceará por representante de licitante ou interessado em participar de licitação. 3. Todavia, a presente ação popular volta-se contra ato normativo, de teor genérico e geral, não havendo a demandante se desincumbido de demonstrar a existência de ato de efeitos concretos, tampouco a comprovação inequívoca da lesividade do ato combatido patrimônio público, à moralidade administrativa, ao meio ambiente e ao patrimônio histórico e cultural, o que evidencia a ausência de interesse processual por inadequação da via eleita. 4. Remessa conhecida e desprovida. Sentença mantida ACÓRDÃO Vistos, relatados e discutidos os presentes autos, em que litigam as partes, acima nominadas, ACORDA, a TURMA JULGADORA DA TERCEIRA CÂMARA DE DIREITO PÚBLICO DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ, à UNANIMIDADE, em CONHECER DA REMESSA e NEGAR-LHE PROVIMENTO, tudo nos termos do voto da Relatora. Fortaleza, data e hora da assinatura digital. Presidente do Órgão Julgador MARIA VILAUBA FAUSTO LOPES Desembargadora Relatora (Remessa Necessária Cível - 0228444-48.2022.8.06.0001, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 28/11/2022, data da publicação: 28/11/2022.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Evidente, assim, que a ação sob exame foi proposta contra ato normativo de teor genérico, não havendo o demandante se desincumbido de demonstrar a existência de ato de efeitos concretos, tampouco a comprovação inequívoca da lesividade do ato ao patrimônio público, à moralidade administrativa, ao meio ambiente e ao patrimônio histórico e cultural.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Por fim, mostra-se correta a sentença ao não condenar a parte autora ao pagamento dos ônus de sucumbência, porquanto o art. 5º, inciso LXXIII <!--[if !supportFootnotes]--> [1] <!--[endif]--> da CF, dispõe expressamente que o autor da Ação Popular somente deverá pagar custas e honorários sucumbenciais caso tenho procedido de má-fé, não sendo o caso dos autos. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Isso posto, conheço da Remessa Necessária para desprovê-la, restando confirmada a sentença em reexame. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> É como voto. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Fortaleza, data e hora indicadas pelo sistema. </p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> Relator </p><div style="mso-element: footnote-list;"><!--[if !supportFootnotes]--><br /> <hr size="1" /><!--[endif]--> <div id="ftn1" style="mso-element: footnote;"> <p class="MsoFootnoteText"> <!--[if !supportFootnotes]--> <span style="font-

Processo	0013423-76.2019.8.06.0112
	size: 10.0pt; mso-bidi-font-size: 9.0pt; line-height: 103%; font-family: &quot;Liberation Serif&quot;,serif; mso-fareast-font-family: NSimSun; mso-bidi-font-family: Mangal; mso-font-kerning: 0pt; mso-ansi-language: PT-BR; mso-fareast-language: ZH-CN; mso-bidi-language: HI;">[1] <!--[endif]--> Art. 5º, inciso LXXIII - qualquer cidadão é parte legítima para propor ação popular que vise a anular ato lesivo ao patrimônio público ou de entidade de que o Estado participe, à moralidade administrativa, ao meio ambiente e ao patrimônio histórico e cultural, ficando o autor, salvo comprovada má-fé, isento de custas judiciais e do ônus da sucumbência; &#160;</p> <p class="MsoFootnoteText">&#160;</p></div></div><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	22
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Leito de enfermaria / leito oncológico
Polo ativo	PAULO MOURA DE ABREU
Advogado(s) - Polo ativo	Não informado
Polo passivo	MUNICIPIO DE FORTALEZA ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004652-30.2024.8.06.0000

Acordão

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AAAAAASUVORK5CYII=

" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;3004652-30.2024.8.06.0000 -&#160;AGRAVO DE INSTRUMENTO (202)</p><p> AGRAVANTE: PAULO MOURA DE ABREU.</p><p> AGRAVADO: MUNICIPIO DE FORTALEZA, ESTADO DO CEARA.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Ementa: Agravo de instrumento. Decisão interlocutória. Tutela de urgência indeferida. Transferência administrativa do paciente para leito hospitalar. Ausência de interesse recursal. Perda de objeto. Recurso não conhecido. <br />I. Caso em exame</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 1. Agravo de Instrumento interposto contra decisão interlocutória do Juízo da 15ª Vara da Fazenda Pública de Fortaleza-CE, que indeferiu a tutela de urgência na Ação de Obrigação de Fazer proposta contra o Estado do Ceará e o Município de

Processo	3004652-30.2024.8.06.0000
	Fortaleza.</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">II. Questão em discussão</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">2. A controvérsia consistia na delibação processual acerca da possibilidade ou não de concessão de tutela antecipada recursal, para o fim específico de determinar a transferência do agravante para leito de enfermaria clínica em hospital público ou, caso não haja vaga disponível, o custeio de sua internação na rede particular de saúde.</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de Decidir</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">3. Compulsando os autos, verifica-se que o agravante foi transferido administrativamente para Hospital Leonardo da Vinci, em leito com especialidade em clínica médica, em 16/09/2024 (ID's 14809597 e 14857942), antes mesmo do deferimento da tutela recursal por este juízo ad quem.</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 4. E, inexistindo interesse recursal, uma vez que o processo não é efetivamente necessário à satisfação do direito perseguido e a tutela jurisdicional não pode ser concedida sem uma utilidade, o não conhecimento do presente recurso é medida que se impõe.</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">IV. Dispositivo e Tese</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">5. Recurso não conhecido.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos do Agravo de Instrumento nº 3004652-30.2024.8.06.0000 em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do recurso, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

Processo	3004652-30.2024.8.06.0000
	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Fortaleza, data e hora indicados no sistema.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Portaria nº 1550/2024</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">&#160; <br /> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de agravo de instrumento interposto contra decisão interlocutória proferida pelo Juízo da 15ª Vara da Fazenda Pública da Comarca de Fortaleza que indeferiu a tutela de urgência requerida na ação originária.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> O caso/a ação originária : Paulo Moura de Abreu, idoso com 80 (oitenta) anos de idade, representado por sua filha, Silvinia do Nascimento Moura da Silva, ingressou com ação de obrigação de fazer c/c pedido de tutela de urgência (Processo nº 3024978-08.2024.8.06.0001), em face do Estado do Ceará e do Município de Fortaleza, aduzindo e anexando documentos comprobatórios de que é portador de dispneia, edema de membros inferiores e tosse produtiva (insuficiência cardíaca congestiva) (CID 10. I500).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Diante de tal situação, requereu, com urgência, o fornecimento de leito de enfermaria clínica, bem como adequado transporte do local em que se encontra para unidade hospitalar terciária, uma vez que a unidade pré-hospitalar não dispõe de internação de longo prazo nem de investigação diagnóstica.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Daí a postulação pela concessão de medida que lhe garantisse a urgente transferência para leito em hospital da rede pública ou, na falta de vagas disponíveis, o custeio de sua internação na rede particular de saúde, diante da gravidade do seu quadro.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> A decisão agravada <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

Processo	3004652-30.2024.8.06.0000
	baseline; white-space: pre-wrap;">: ID. 14491737, o Juízo da 15ª Vara da Fazenda Pública da Comarca de Fortaleza indeferiu a tutela de urgência requestada (fls. 02/06 do ID nº 14491737). Transcrevo abaixo o seu dispositivo, no que interessa:</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-indent: -2.614173228346459pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 2.614173228346459pt;" dir="ltr"> “Por tudo que restou dito, portanto, REJEITO o pleito de tutela provisória de urgência.” </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Irresignado, o autor interpôs o presente agravo de instrumento reiterando a necessidade do tratamento. Daí o pedido de reforma da decisão de primeiro grau de jurisdição.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">&#160;Decisão Interlocutória, ID. 14536098, deferindo a tutela recursal, “para o fim específico de determinar que o Estado do Ceará e o Município de Fortaleza providenciem, com a máxima urgência, a transferência do agravante para leito de enfermaria clínica, ou, caso não haja vaga na rede pública, que os agravados custeiem as despesas necessárias para internação em hospital ligado à rede privada, bem como o adequado transporte do local em que se encontra o recorrente para a unidade hospitalar terciária, [...]”.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Pedido de extinção, ID 14809596, protocolado pelo Município de Fortaleza, aduzindo que houve a transferência do recorrente no dia 16/09/2024, antes mesmo da citação da edilidade nos autos principais. Acostou documentação comprobatória em ID 14809597.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial, sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-

Processo	3004652-30.2024.8.06.0000
	decoration: underline;">Petitório do Estado do Ceará em ID 14857287, igualmente informando a transferência do paciente para o Hospital Leonardo da Vinci.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria Geral de Justiça, ID 14857287, opinando pelo não conhecimento do recurso, em razão da perda do objeto e da consequente ausência de interesse de agir.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Consultando o sistema processual desta egrégia Corte de Justiça (PJE 1º grau), percebe-se que o recurso em análise, que tinha por objetivo desconstituir decisão interlocutória de 1ª instância, perdeu completamente o seu objeto. Explica-se:</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">O agravante se encontrava internado na Unidade de Pronto Atendimento – Canindezinho, desde 10 de setembro de 2024, com diagnóstico de dispneia, edema de membros inferiores e tosse produtiva (insuficiência cardíaca congestiva) (CID 10. I500), necessitando, de acordo com laudo médico (fl. 17 do ID nº 14491737), com urgência ser transferido para hospital da rede pública ou particular, sob pena de agravamento de seu quadro.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Assim, controvérsia consistia na delibação processual acerca da possibilidade ou não de concessão de tutela antecipada recursal, para o fim específico de determinar a transferência do agravante para leito de enfermaria clínica em hospital público ou, caso não haja vaga disponível, o custeio de sua internação na rede particular de saúde.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Ocorre que, compulsando os autos, verifica-se que o agravante foi transferido administrativamente para Hospital Leonardo da Vinci, em leito com especialidade em clínica médica, em 16/09/2024 (ID's 14809597 e 14857942), com reserva de leito confirmada à 23h e 22min do dia anterior (fl. 4, ID 14857942), conforme igualmente informado na origem.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal;

Processo	3004652-30.2024.8.06.0000
	font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Tornou-se, então, sem qualquer utilidade/necessidade este recurso, devendo ser extinto por falta superveniente de interesse de agir, pois, não há interesse material no provimento deste recurso, como visto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Colaciona, por oportuno, precedentes Pátrios, ex vi:</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> AGRAVO DE INSTRUMENTO - PEDIDO LIMINAR - PROCEDIMENTO CIRÚRGICO REALIZADO - PERDA DE OBJETO - RECURSO PREJUDICADO. R estando evidenciado que a cirurgia requerida liminarmente nos autos já foi realizada, é patente a perda do objeto, devendo ser julgado prejudicado o agravo de instrumento. Verifica-se a perda integral do objeto do agravo de instrumento na hipótese em que não subsiste a utilidade e a necessidade de julgamento das teses debatidas no recurso. V.v EMENTA: AGRAVO DE INSTRUMENTO - AÇÃO DE OBRIGAÇÃO DE FAZER - TUTELA DE URGÊNCIA - ART. 300 DO CPC - PRELIMINAR - CUMPRIMENTO DA LIMINAR - PERDA DE OBJETO - NÃO OCORRÊNCIA - AUSENTES OS REQUSITOS DA TUTELA DE URGÊNCIA - RECURSO CONHECIDO E PROVIDO. 1. Não se configura como perda de objeto do recurso quando verificar o cumprimento da tutela de urgência, uma vez que a parte tem o dever de cumprir, com exatidão, as decisões judiciais, finais ou provisórias, e não criar embaraços à sua efetivação (CPC, art. 77, IV). Acresça-se, outrossim, que as tutelas de urgências - satisfativas ou cautelares - são caracterizadas pela provisoriedade, no sentido de que conserva sua eficácia na pendência do processo, podendo, nesse passo, a qualquer tempo, ser revogadas ou modificadas, conforme estabelece art. 296, do CPC, bem como não se revestem pelo instituto da coisa julgada. 2. Nos termos do art. 300 do Código Processual Civil de 2015, a tutela de urgência antecipatória deve ser deferida quando presentes os requisitos da probabilidade do direito invocado e do perigo de dano ou risco ao resultado útil do processo. 3. Ausente o perigo de dano ou risco ao resultado útil do processo, porquanto não ter sido demonstrado, neste momento processual, que a não realização do procedimento cirúrgico, para o tratamento ao gigantismo mamário bilateral que a parte agravada é portadora, pode, a qualquer tempo, evoluir ainda mais e, assim, trazer consequências extremamente lesiva s a sua própria saúde, deve ser indeferida a tutela de urgência. 4. Recurso conhecido e provido. (TJ-MG - AI: 10000191482660001 MG, Relator: José Arthur Filho, Data de Julgamento: 14/04/2020, Data de Publicação: 17/04/2020)</p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> **** </p><p style="line-height: 1.7999999999999998; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: AGRAVO INTERNO EM AGRAVO DE INSTRUMENTO - AÇÃO ORDINÁRIA - TUTELA DE URGÊNCIA - PERDA DO OBJETO - CIRURGIA REALIZADA - RECURSO PREJUDICADO. Versando a tutela de urgência, deferida na origem, sobre transferência da autora/agravada para o hospital por ela indicado, para que lá fosse realizada a cirurgia de plastia valvar e, tendo o paciente sido submetido à cirurgia no hospital em questão, o recurso não comporta conhecimento, por perda superveniente do objeto. (TJ-MG - AGT: 14901478420228130000, Relator: Des.(a) Marco Aurelio Ferenzini, Data de Julgamento: 27/10/2022, 14ª CÂMARA CÍVEL, Data de Publicação: 27/10/2022) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> E, inexistindo interesse recursal, uma vez que o processo não é efetivamente necessário à satisfação do direito perseguido e a tutela jurisdicional não pode ser

Processo	3004652-30.2024.8.06.0000
	concedida sem uma utilidade, o não conhecimento do presente recurso é medida que se impõe.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Por tais razões, NÃO CONHEÇO DO PRESENTE RECURSO, haja vista a perda de seu objeto e a consequente ausência de interesse de agir.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Portaria nº 1550/2024</p><div> <br /> </div><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center">&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	23
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A) MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	ANTONIA ELIZABETE RAMOS
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

Processo	3000734-23.2024.8.06.0160
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> &#160;&#160;&#160; </p><p style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-f4ff64c7-7fff-fdbb-db33-cc870433dd66" style="font-weight:normal;"> <br /> </p><p style="line-height:1.2;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Processo nº 3000734-23.2024.8.06.0160 - Apelação Cível</p><p style="line-height:1.2;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Apelante: Município de Santa Quitéria</p><p style="line-height:1.2;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Apelado: Antonia Elizabete Ramos</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.2;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Ementa: Direito administrativo. Apelação cível. Base de cálculo de terço de férias de servidora pública. Remuneração integral. Município de Santa Quitéria. Recurso desprovido.&#160;</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr">I. Caso em exame <span style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-

Processo	3000734-23.2024.8.06.0160
	decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">&#160;</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 1. Apelação cível interposta pelo ente público contra sentença que deu parcial procedência à pretensão autoral de servidora pública, para determinar o pagamento de terço de férias sobre a sua remuneração integral.</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr">2. Verifica-se as seguintes questões em discussão: i) qual é a base de cálculo do pagamento da verba de terço constitucional de férias de servidora pública do Município de Santa Quitéria; ii) a eficácia da legislação municipal que trata desta verba; iii) alegação de regra municipal de não cumulação de vencimentos; e iv) aplicação do princípio da legalidade e da Súmula Vinculante 37 do STF no presente caso.</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 3. A Constituição Federal, em seus artigos 7º, inc. XVII e 39, §3º, prevê o direito à percepção de terço de férias pelos servidores públicos, ao passo que o art. 80 da Lei Municipal n.º 081-A/1993 de Santa Quitéria determina que a verba será paga sobre a remuneração integral dos servidores. Precedentes deste Tribunal.</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 4. A norma do art. 80 da Lei Municipal n.º 081-A/1993 de Santa Quitéria afigura-se plenamente aplicável, com carga normativa relevante e aptidão para produzir todos os efeitos, prescindindo da edição de qualquer outro diploma normativo para tanto.</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 5. A regra de não cumulação do art. 55 da Lei Municipal n.º 081-A/1993 de Santa Quitéria não se aplica ao terço constitucional, mas às vantagens descritas no art. 54 do normativo.</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 6. A atuação do Poder Judiciário neste feito visa tão somente à aplicação dos dispositivos vigentes que determinam expressamente o pagamento de terço constitucional sobre a remuneração integral de servidor e a medida não cuida de aumento de vencimento de servidor público sob o fundamento de isonomia, mas reconhecimento de direito posto do servidor, razão pela qual não há mácula ao princípio da legalidade ou à Súmula Vinculante 37.</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-

Processo	3000734-23.2024.8.06.0160
	top:0pt;margin-bottom:0pt;" dir="ltr"> IV. Dispositivo e tese</p><p style="line-height:1.2;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr">7. Apelação cível desprovida.</p><p> _________</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.2;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Dispositivos relevantes citados: CF, art. 7º, inc. XVII, e art. 39, §3º; Lei Municipal nº 81-A/1993, arts. 54, 55 e 80.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.2;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Jurisprudência relevante citada: STF, RE 1.400.787, Rel. Luiz Fux, Tribunal Pleno, j. 09.12.2015.</p><p> <strong style="font-weight:normal;"> <br /> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 72pt;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, conhecer parcialmente da Apelação Cível para, nesta extensão, negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.&#160;</p><p style="line-height:1.7999999999999998;text-indent: 72pt;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 6pt 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p style="line-height:1.728;text-align: justify;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;&#160;</p><p style="line-height:1.728;text-align: center;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height:1.728;text-align: center;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height:1.728;text-

Processo	3000734-23.2024.8.06.0160
	align: center;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height:1.728;text-align: center;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160; RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE SANTA QUITÉRIA em face da sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Santa Quitéria que, nos autos da Ação de Cobrança proposta por ANTONIA ELIZABETE RAMOS em desfavor do ente público, julgou parcialmente procedente a pretensão autoral, nos termos do dispositivo abaixo transcrito (id. 15581151):</p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Ante o exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão inaugural, com a resolução do mérito, na forma do art. 487, I, do CPC, para o fim de DETERMINAR que o requerido proceda ao pagamento do terço de férias à parte autora com incidência sobre sua remuneração integral, bem como CONDENÁ-LO ao pagamento das diferenças do terço de férias dos anos anteriores, ressalvada a prescrição quinquenal, e prestações vincendas, com juros e correção monetária na forma exposta na fundamentação;</p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">&#160;</p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Deixo de condenar o demandado ao pagamento de custas processuais ante a isenção legal do ente público concedida no art. 5º, I, da Lei estadual nº. 16.132/2016.&#160;</p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent:

Processo	3000734-23.2024.8.06.0160
	2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Condeno a parte requerida ao pagamento dos honorários advocatícios sucumbenciais à contraparte, os quais fixo desde já no percentual de 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, § 3º, I, do CPC.&#160;</p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Deixo de promover a remessa necessária, uma vez que é possível antever que o proveito econômico referente às prestações vencidas não ultrapassará 100 (cem) salários-mínimos, conforme preconizado no artigo 496, §3º, inciso I, do CPC.&#160;</p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Transcorrido o prazo recursal sem impugnação das partes, certifique-se o trânsito em julgado e, após as cautelas de praxe, arquive-se.&#160;</p><p style="line-height:1.2;margin-left: 113.38582677165351pt;text-indent: 2.842170943040401e-14pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Em suas razões recursais (id. 15581155), o Município alegou que a parte autora não tem direito ao recebimento de terço de férias sobre a sua remuneração integral, sob os argumentos de que: o art. 7º, inciso XVII da CF/88 prevê seu pagamento sobre o salário e não remuneração; os arts. 54 e 55 da a Lei Municipal n.º 081-A/1993 (Estatuto dos Servidores Públicos do Município de Santa Quitéria) preveem que as vantagens não podem ser acumuladas; a referida legislação é de eficácia limitada e que não há norma regulamentadora que defina a forma da concessão da vantagem aos servidores; a Súmula Vinculante nº 37 e o entendimento jurisprudencial impedem que o Poder Judiciário aumente os vencimentos de servidores públicos sob o fundamento da isonomia; e a Administração Pública agiu em conformidade com o princípio da legalidade.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Em sede de contrarrazões (id. 15581158), a parte embargante alega que os argumentos da recorrente não encontram amparo na Constituição Federal, razão pela qual requer o conhecimento e o desprovimento da Apelação.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr">Por fim, consigno que deixei de abrir vistas dos autos à Procuradoria-Geral de Justiça, uma vez que não há interesse público primário que justifique sua intervenção, conforme já reconhecido pelo próprio <span style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-

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	color:transparent;font-weight:400;font-style:italic;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">Parquet por meio de pareceres emitidos em processos análogos, envolvendo a mesma temática e município, que tramitam sob o crivo desta relatoria (3001038-56.2023.8.06.0160; 3000164-37.2024.8.06.0160; 3000155-75.2024.8.06.0160).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da Apelação.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> O cerne da questão em deslinde consiste em analisar a higidez da sentença que julgou parcialmente procedente a pretensão autoral, condenando o ente requerido a implementar, em favor da autora, o pagamento do terço constitucional de férias tendo como base de cálculo a sua remuneração integral, bem como ao pagamento das diferenças das parcelas vencidas e prestações vincendas, observada a prescrição quinquenal e a devida&#160; correção monetária.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Em face do julgado, o ente público se insurgiu, sustentando a tese de que a base de cálculo do terço constitucional deve ser o salário-base e não a remuneração, bem como que a norma local que prevê o direito seria de eficácia limitada e veda a acumulação de vantagens.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Como se sabe, a Constituição Federal de 1988, em seu art. 39, § 3º c/c art. 7º, XVII, garante a todos os ocupantes de cargos públicos em geral, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre eles o de recebimento de férias acrescidas do terço constitucional. Vejamos:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> [...]</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:10pt;font-family:'Times New Roman',serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-

Processo	3000734-23.2024.8.06.0160
	decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal;</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas. [...]</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> No âmbito do Município de Santa Quitéria, a matéria se encontra disciplinada na Lei Municipal nº 081-A/1993, (Estatuto Jurídico dos Servidores Públicos do Município de Santa Quitéria), que assim dispõe:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Art. 46 - Vencimento é a retribuição pecuniária pelo exercício de cargo público, com valor fixado em lei.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Art. 47 - Remuneração é o vencimento de cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em Lei.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Art. 80 - Independente de solicitação, será pago ao servidor por ocasião de férias, um adicional correspondente a 1/3 (um terço) da remuneração do período das férias.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Parágrafo único - <span style="font-size: 10pt; font-family: &quot;Times New Roman&quot;, serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal;

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	font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">No caso de servidor exercer função de direção, chefia ou assessoramento, ou ocupar cargo em comissão, a respectiva vantagem será considerada no cálculo do adicional de que trata este artigo. (destaca-se)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Verifica-se, assim, que o pagamento do terço constitucional de férias deve ter como base de cálculo a remuneração integral do servidor que, por sua vez, compreende o vencimento do cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> A redação do parágrafo único do art. 80 elucida perfeitamente esta interpretação, pois que assegura que os servidores que exerçam função de direção, chefia ou assessoramento ou que ocupem cargos em comissão devem receber o terço constitucional considerando as gratificações de seus cargos ou funções, abarcando, portanto, a remuneração integral do servidor e não seu salário-base.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Desta feita, resta claro que a regra de não cumulação do art. 55 do Estatuto mencionado não se aplica ao terço constitucional, mas apenas às conceituadas “vantagens pecuniárias” do Capítulo II do Título IV do Estatuto, quais sejam: indenizações, gratificações e adicionais.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Capítulo II - DAS VANTAGENS PECUNIÁRIAS</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Art. 54 - Além do vencimento, poderão ser pagas ao servidor as seguintes vantagens:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> I - Indenizações;</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> II - Gratificações;</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> III - Adicionais.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:10pt;font-family:'Times New Roman',serif;color:#000000;background-color:transparent;font-weight:400;font-

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	style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">§1º - As indenizações não se incorporam ao vencimento ou provento para qualquer efeito.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> §2º - As gratificações e os adicionais incorporam-se ao vencimento ou provento, nos casos e condições indicados em Lei.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Art. 55 - As vantagens pecuniárias não serão computadas, nem acumuladas, para efeito de concessão de qualquer outros acréscimos pecuniários ulteriores, sob mesmo título ou idêntico fundamento. (destaca-se)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Por óbvio, o terço de férias não integra nenhuma dessas espécies de vantagens, não configurando “mesmo título ou idêntico fundamento”, de modo que a norma em questão não tem o condão de impedir seu cálculo sobre a remuneração integral do servidor.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Além do mais, diferentemente do alegado pelo ente público, a norma do art. 80 afigura-se plenamente aplicável, com carga normativa relevante e aptidão para produzir todos os efeitos, prescindindo da edição de qualquer outro diploma normativo para tanto. Nesse sentido: Apelação Cível - 3000658-33.2023.8.06.0160, Rel. Desembargador(a) LISETE DE SOUSA GADELHA 1ª Câmara Direito Público, data do julgamento: 10/05/2024.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr">Acerca da temática, cumpre registrar que o Supremo Tribunal Federal, ao concluir o julgamento do Leading Case RE 1400787 RG/CE (Tema nº 1241<span

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	style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-color:#ffffff;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">), sob a sistemática da repercussão geral, fixou a tese de que “O adicional de 1/3 (um terço) previsto no art. 7º, XVII, da Constituição Federal incide sobre a remuneração relativa a todo período de férias”.&#160;</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr">Nessa perspectiva, conjugando o texto constitucional e a norma de regência local, tenho que os elementos de prova coligidos (notadamente as fichas financeiras, demonstrando que o autor é servidor público municipal ativo no exercício do magistério e que o cálculo da verba requerida era efetuado sobre o seu salário-base), comprovam o fato constitutivo do direito autoral (art. 373, I, CPC).</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral (art. 373, II, CPC), tendo se limitado a defender a tese de que o pagamento do terço de férias deve ser apenas sobre o salário-base, tornando, pois, o fato incontroverso.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Dessa forma, escorreita sentença que condenou o ente federado a efetuar o pagamento do terço constitucional de férias da autora com base na sua remuneração integral e ao pagamento das diferenças que lhe são devidas, observada a prescrição quinquenal, conforme dispõe o art. 1º, do Decreto Lei nº 20.910/32 e a Súmula 85 do Superior Tribunal de Justiça.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr">Perfilhando o entendimento ora esposado, colaciono precedentes das três Câmaras de Direito Público deste Tribunal de Justiça, referentes ao mesmo município e com causa de pedir semelhantes, in verbis:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> EMENTA: DIREITO CONSTITUCIONAL. DIREITO ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. MUNICÍPIO DE SANTA QUITÉRIA. TERÇO CONSTITUCIONAL DE FÉRIAS. REMUNERAÇÃO INTEGRAL. ART. 39, §3º C/C ART. 7º, INCISO XVII, DA CONSTITUIÇÃO FEDERAL. ARTS. 46, 47 E 80 DA LEI MUNICIPAL Nº

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	081-A/93. ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. PRESCRIÇÃO QUINQUENAL. ART. 1º DO DECRETO Nº 20.910/32. PRECEDENTES DO TJCE. APELAÇÃO CONHECIDA E NÃO PROVIDA. SENTENÇA MANTIDA.&#160;</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 1. A Constituição Federal de 1988, em seu art. 39, § 3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito pleiteado na presente demanda, qual seja, o terço constitucional de férias. Por sua vez, a Lei Municipal nº 081-A/93 (Estatuto dos Servidores Públicos de Santa Quitéria) prevê expressamente que a parcela deve ser calculada com base na remuneração integral do servidor.&#160;</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">2. In casu, conjugando o texto constitucional, a norma de regência local e os elementos de prova coligidos, restam comprovados os fatos constitutivos do direito da autora. A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral.&#160;</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 3. Nesse contexto, escorreita sentença que condenou o ente federado a implementar o pagamento do terço constitucional de férias da autora com base na sua remuneração e ao pagamento das diferenças que lhes são devidas, das parcelas vencidas e vincendas até a efetiva implementação, observada a prescrição quinquenal contida no art. 1º, do Decreto Lei nº 20.910/32.&#160;</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 4. Apelação conhecida e não provida. Sentença mantida.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">(APELAÇÃO CÍVEL - 30006407520248060160, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 15/10/2024) (destaca-se)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">EMENTA: CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÕES CÍVEIS. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. MUNICÍPIO DE SANTA QUITÉRIA. TERÇO CONSTITUCIONAL DE FÉRIAS. REMUNERAÇÃO INTEGRAL. ART. 39, §3º C/C ART. 7º, INCISO XVII, DA CONSTITUIÇÃO FEDERAL. ARTS. 46, 47 E 80 DA

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	LEI MUNICIPAL Nº 081-A/93. ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. PRESCRIÇÃO QUINQUENAL. ART. 1º DO DECRETO Nº 20.910/32. PRECEDENTES DO TJCE. APELAÇÕES CONHECIDAS E DESPROVIDAS. SENTENÇA MANTIDA. 1. A Constituição Federal de 1988, em seu art. 39, § 3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito pleiteado na presente demanda, qual seja, o terço constitucional de férias. Por sua vez, a Lei Municipal nº 081-A/93 (Estatuto dos Servidores Públicos de Santa Quitéria) prevê expressamente que a parcela deve ser calculada com base na remuneração integral do servidor. 2. In casu, conjugando o texto constitucional, a norma de regência local e os elementos de prova coligidos, restam comprovados os fatos constitutivos do direito da autora. A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral. 3. Nesse contexto, escorreita sentença que condenou o ente federado a implementar o pagamento do terço constitucional de férias da autora com base na sua remuneração e ao pagamento das diferenças que lhes são devidas, das parcelas vencidas e vincendas até a efetiva implementação, observada a prescrição quinquenal contida no art. 1º, do Decreto Lei nº 20.910/32. 4. Apelações conhecidas e desprovidas. Sentença mantida.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">(APELAÇÃO CÍVEL - 30010385620238060160, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 12/08/2024) (destaca-se)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">APELAÇÕES. CONSTITUCIONAL E ADMINISTRATIVO. COBRANÇA. SERVIDOR PÚBLICO EFETIVO. COBRANÇA DE DIFERENÇAS DE VERBA SALARIAL. ART. 7º, CF. OBRIGAÇÃO DE PAGAR. PRESCRIÇÃO QUINQUENAL. ENCARGOS LEGAIS RETIFICADOS. SENTENÇA POSTERIOR A EMENDA CONSTITUCIONAL Nº 113/2021. APELOS CONHECIDOS. DESPROVIDO O APELO DA PARTE AUTORA E PROVIDO EM PARTE O DO ENTE MUNICIPAL. 1.<span style="font-size:10pt;font-family:'Times New Roman',serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-

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	space:pre;white-space:pre-wrap;">Trata-se de Apelações oriundas de Ação de Cobrança interpostas em desfavor do Município de Santa Quitéria, em cujos autos referido ente municipal restou condenado a pagar a autora a diferença do terço de férias, acrescido dos encargos legais, deixando a fixação da condenação honorária a ser arbitrada pelo juízo da liquidação. 2.Quanto a prejudicial de mérito, acertada a decisão do Juízo originário ao aplicar a prescrição quinquenal em observância à Súmula nº 85 da Corte Superior, segundo a qual: “Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação.” Prejudicial rejeitada. 3. Não logrou êxito o ente promovido em trazer prova em seu favor, na forma do art. 373, II, do CPC, mediante apresentação de simples dados interna corporis. Na verdade, é entendimento pacificado nesta Corte de Justiça que em feitos desta natureza compete à Fazenda Pública comprovar os pagamentos solicitados, ao passo que ao autor compete demonstrar o vínculo funcional, o que restou cumprido pela promovente sob pena de locupletamento ilícito. 4.O novo índice (SELIC) instituído pela EC 113/2021 incide a partir do dia 9 de dezembro de 2021, data de sua publicação no Diário Oficial. Como no caso em exame a sentença fora proferida em 16.01.2024, resta alterado esse capítulo do julgado. 5. Apelos conhecidos. Desprovido o apelo da parte autora e provido em parte o do ente municipal. (Apelações cíveis - 3000883-53.2023.8.06.0160, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 22/04/2024) (destacou-se)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">CONSTITUCIONAL, ADMINISTRATIVO E PROCESSO CIVIL. REEXAME NECESSÁRIO. APELAÇÃO CÍVEL. SERVIDOR PÚBLICO MUNICIPAL. DIFERENÇAS SALARIAIS. GRATIFICAÇÃO NATALINA E <span style="font-size:10pt;font-family:'Times New Roman',serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:normal;text-

Processo	3000734-23.2024.8.06.0160
	decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">ADICIONAL DE FÉRIAS. COMPOSIÇÃO. VERBAS REMUNERATÓRIAS. PAGAMENTO DEVIDO SOBRE O VALOR TOTAL PERCEBIDO PELO SERVIDOR. REEXAME NECESSÁRIO NÃO CONHECIDO. RECURSO DE APELAÇÃO DESPROVIDO. 1. Trata-se de reexame necessário e de recurso de Apelação interposto contra sentença que condenou o município de Santa Quitéria/CE ao pagamento de diferenças salariais. 2. À luz das disposições da Constituição Federal de 1988, são garantidos aos servidores públicos em geral, efetivos ou temporários, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre os quais, a percepção de décimo terceiro salário e de férias remuneradas, acrescidas do terço constitucional. 3. Os valores devidos a título de gratificação natalina (décimo terceiro salário) e adicional de férias (terço constitucional) devem ser pagos em paridade com a remuneração do servidor, compreendida como o vencimento básico e as demais verbas remuneratórias a que faz jus.&#160; [...] Recurso de apelação conhecido e desprovido.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">(Remessa Necessária Cível - 0001925-04.2017.8.06.0160, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 12/09/2022, data da publicação:&#160; 12/09/2022) (destaca-se)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr">E ainda: Apelações cíveis - 3000660-03.2023.8.06.0160, Rel. Desembargador(a)&#160; MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 20/05/2024; Apelação / Remessa Necessária - 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO

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	LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 11/07/2022, data da publicação:&#160; 11/07/2022; Remessa Necessária Cível - 0001898-21.2017.8.06.0160, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 1ª Câmara Direito Público, data do julgamento:&#160; 05/10/2020, data da publicação:&#160; 06/10/2020; Apelação / Remessa Necessária - 0001900-88.2017.8.06.0160, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento:&#160; 17/02/2020, data da publicação:&#160; 18/02/2020; Apelação / Remessa Necessária - 0001919-94.2017.8.06.0160, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento:&#160; 13/05/2020, data da publicação:&#160; 13/05/2020; Apelação / Remessa Necessária - 0050380-29.2019.8.06.0160, Rel. Desembargador(a) INACIO DE ALENCAR CORTEZ NETO, 3ª Câmara Direito Público, data do julgamento:&#160; 28/06/2021, data da publicação:&#160; 28/06/2021.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Por fim, afasta-se também as alegações de desrespeito ao princípio da legalidade e à Súmula Vinculante 37 do Supremo Tribunal Federal, visto que a atuação do Poder Judiciário neste feito visa tão somente à aplicação dos dispositivos vigentes que determinam expressamente o pagamento de terço constitucional sobre a remuneração integral de servidor e a medida não cuida de aumento de vencimento de servidor público sob o fundamento de isonomia, mas reconhecimento de direito posto do servidor.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr">Ante o exposto, conheço parcialmente da Apelação, para, nessa extensão, negar-lhe provimento.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Determino, ainda, a majoração da condenação do Município de Santa Quitéria ao pagamento de honorários advocatícios, nos termos do art. 85, §1º e §11 do CPC, a serem definidos na fase de liquidação de sentença, nos termos do art. 85, §4º, inciso II, do CPC.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 57pt;text-align: justify;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:6pt;" dir="ltr"> <span style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-

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	space:pre;white-space:pre-wrap;">Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>

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Número de ordem	24
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MARIA GERLANE GONCALVES CAVALCANTE CALIXTA
Advogado(s) - Polo ativo	ROBSON ALVES DE ALMEIDA DINIZ - (CE21428-A)
Polo passivo	MUNICIPIO DE ACOPIARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003366-17.2024.8.06.0000
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	#000000;"> . Agravo de instrumento. Cumprimento de sentença. Liquidação e execução individual de sentença coletiva. Título executivo judicial. Meros cálculos aritméticos. Tema 1.169/stj. Sentença genérica. Inaplicabilidade no caso. Precedentes . Recurso conhecido e provido. Decisão modificada. I. Caso em exame 1. Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça. II. Questão em discussão 2. Analisar a higidez da decisão proferida em sede de Cumprimento Individual de Sentença que determinou a suspensão do feito até o julgamento do Tema Repetitivo n.º 1169 pelo C. Superior Tribunal de Justiça. <span

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	style="font-family: Arial, serif;"> III. Razões de decidir 3. Compulsando-se os autos, observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. 4. Nesse contexto, é evidente que o caso em análise se refere ao cumprimento de uma sentença condenatória perfeitamente liquidável por meio de simples cálculos aritméticos, e não de uma sentença condenatória genérica, desse modo, não se enquadrando, na discussão abordada pelo Tema 1.169 do STJ. 5. Conforme o art. 509, § 2º, do CPC/15, quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover desde logo o cumprimento de sentença. IV. Dispositivo e tese 6. Agravo de Instrumento conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva. Tese de julgamento : Deve ser reformada a decisão recorrida, determinando o prosseguimento do cumprimento individual da sentença coletiva. _____________________________ Dispositivos relevantes citados: CPC, art. 509, §2º. &#160; Jurisprudência relevante citada: TJ-CE Agravo de Instrumento nº 30031999720248060000, Relator: Des. WASHINGTON LUIS BEZERRA DE ARAUJO, Data de Julgamento: 21/10/2024, 3ª Câmara de Direito Público, Data de Publicação: 23/10/2024; AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024; AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024. &#160; &#160; ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em conhecer e dar provimento ao agravo de instrumento , nos termos do voto do relator. &#160; &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; <br /> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> <span style="font-size:

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	small;"> &#160; <strong style="font-size: small;"> Relator &#160; &#160; &#160; RELATÓRIO &#160; <br /> &#160; Trata-se de&#160; A gravo de&#160; I nstrumento&#160;interposto por Maria Gerlane Gonçalves Cavalcante Calixta, contra Decisão Interlocutória – Id 88243326 proferida pelo juízo da 1ª Vara Cível Da Comarca De Acopiara que determinou a suspensão do feito até a decisão sobre o Tema nº 1169 pelo Superior Tribunal De Justiça. Ação:&#160;Maria Gerlane Gonçalves Cavalcante Calixta ajuizou Ação de Execução (processo n.º 3000959-48.2024.8.06.0029) referente ao cumprimento da sentença proferida nos autos da ação coletiva nº 0004059-72.2018.8.06.0029, por meio da qual o Município de Acopiara foi condenado a pagar aos professores da rede básica de ensino as diferenças em relação ao 1/3 de férias a ser calculado sobre os 45 (quarenta e cinco) dias de férias a que têm direito, relativamente aos anos de 2013, 2014, 2015, 2016, 2017 e as que se vencerem no decorrer do andamento do feito. Decisão agravada:&#160;Distribuído o Cumprimento de Sentença, o juízo de origem decidiu pela suspensão dos autos, até que proferida decisão sobre o tema 1.169 pelo C. Superior Tribunal de Justiça (Id 88243326 dos autos de origem). Razões recursais:&#160;Irresignada, a recorrente interpôs o presente Agravo de Instrumento de Id 13506436, aduzindo, em síntese, “ que o Ilmo. Magistrado tem aplicado o tema de forma equivocada, uma vez que o referido tema somente se aplica aos casos de sentenças genéricas, o que não é o caso do presente processo”. Ao final, pugna pelo conhecimento e provimento do recurso, reformando a decisão do juízo a quo que suspendeu o feito, para determinar que se mantenha o trâmite processual do cumprimento individual de sentença coletiva. <strong style="background-color: transparent; text-indent: 2.5cm;">Sem contrarrazões , não obstante a parte agravada tenha sido devidamente intimada (Id 13516406). <strong style="background-color: transparent; text-indent: 2.5cm;">Manifestação da Procuradoria de Justiça &#160;– Id 15582848 opinando pelo conhecimento e provimento do recurso. &#160; É o relatório. &#160; &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> <br /> Presentes os requisitos de admissibilidade, conheço do recurso interposto. Compulsando-se os autos, cuida-se na origem de Cumprimento de Sentença de forma individualizada de ação coletiva ajuizada pela Associação dos Professores da Rede Municipal de Acopiara em face do Município de Acopiara/CE na qual a parte autora

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	aduz que, enquanto ocupante do cargo de professora da rede municipal de ensino, tem direito a gozar de 45 (quarenta e cinco) dias de férias e a receber o adicional respectivo calculado sobre todo o período, situação que não estaria sendo respeitada pelo Ente Municipal, ao limitar o respectivo terço ao período de apenas 30 (trinta) dias. No aludido processo coletivo foi proferida Sentença que condenou o Município ao “pagamento das diferenças observadas em relação ao adicional de 1/3 de férias dos professores da rede pública municipal que tenham, de fato, gozado o período de 45 (quarenta e cinco) dias de férias nos anos respectivos, relativamente aos anos de 2013, 2014, 2015, 2016, 2017 e as que vencerem no decorrer do andamento deste processo, devendo o referido adicional ser calculado sobre todo o período de férias.” A decisão de primeiro grau foi confirmada por esta Corte de Justiça, tendo ocorrido o trânsito em julgado. Assim, por força do título executivo judicial mencionado foi necessária a promoção de cumprimento individual de sentença coletiva. Após distribuído, o juízo a quo decidiu pela “suspensão dos presentes autos até decisão sobre o tema 1169 pelo C. Superior Tribunal de Justiça – STJ” (Id. 88243326). No presente recurso, a Agravante busca a reforma do mencionado decisum para que seja dado prosseguimento ao feito. Dessa forma, cinge-se a controvérsia em aferir a higidez da decisão proferida em sede de Cumprimento Individual de Sentença que determinou a suspensão do feito até o julgamento do Tema Repetitivo n.º 1169 pelo C. Superior Tribunal de Justiça. Já adianto que assiste razão à parte Agravante. Verifica-se que no Tema 1.169/STJ houve a determinação de suspensão do processamento das execuções. A questão submetida a julgamento se refere a "Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento da ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos nos autos". <span

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	style="font-size: 12pt;">Ocorre que a hipótese dos autos não se amolda à matéria analisada no âmbito do referido precedente qualificado. Isso porque o título judicial que deu ensejo ao presente Cumprimento de Sentença apresenta todos os parâmetros necessários para a elaboração dos cálculos do valor a ser executado, não constituindo, assim, sentença genérica. Ressalta-se que o título coletivo indicou precisamente a correção monetária e os juros de mora incidentes sobre o valor devido. (Id. 87871754 dos autos originários) Nesse contexto, é evidente que o caso em análise se refere ao cumprimento de uma sentença condenatória perfeitamente liquidável por meio de simples cálculos aritméticos, e não de uma sentença condenatória genérica, desse modo, não se enquadrando, na discussão abordada pelo Tema 1.169 do STJ. Conforme o art. 509, § 2º, do CPC/15, quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover desde logo o cumprimento de sentença. Portanto, não há falar em sobrestamento do feito, pois inaplicável ao caso o Tema 1.169/STJ. A propósito, esse é o posicionamento que vem sendo adotado pela 3ª Câmara de Direito Público do presente Tribunal, com destaques: Ementa: Direito processual civil. Agravo de instrumento em cumprimento individual de sentença coletiva. Liquidação. Título executivo judicial. Cálculos aritméticos. Tema repetitivo 1.169/STJ. Inaplicabilidade. Agravo provido. I. Caso em exame 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos para a realização dos cálculos. II. Questão em discussão 2. A questão central é definir se o Tema 1.169/STJ é aplicável ao caso, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos. III. Razões de decidir 3. O Tema 1.169/STJ não se aplica ao caso, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos. &#160;IV. Dispositivo 4. Recurso conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva. (TJ-CE Agravo de Instrumento nº 30031999720248060000, Relator: Des. WASHINGTON LUIS BEZERRA DE ARAUJO, Data de Julgamento: 21/10/2024, 3ª Câmara de Direito Público, Data de Publicação: 23/10/2024) Tema Repetitivo 1.169 do STJ. Simples Cálculos Aritméticos. Decisão Reformada. Recurso Conhecido e Provido. I. Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça.&#160;II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado.&#160; III. Razões De Decidir: III.1. Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos

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	aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça . (AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024) </p><p style="margin-left: 4cm; margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> DECISÃO QUE DETERMINOU O SOBRESTAMENTO DO FEITO ATÉ O JULGAMENTO DO TEMA 1169/STJ. NÃO CABIMENTO. TÍTULO EXECUTIVO JUDICIAL QUE DEPENDE DE MEROS CÁLCULOS ARITMÉTICOS. POSSIBILIDADE DE SEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. DECISÃO REFORMADA.&#160; (AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024) </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent;" align="justify"> Assim, considerando que, no caso dos autos, o título executivo judicial já especificou todos os elementos necessários para a apuração dos valores devidos de forma detalhada, sendo necessário apenas cálculos aritméticos simples para individualizar o crédito e definir o valor a ser recebido, entendo que a determinação de prosseguimento do feito na origem é medida cabível, não havendo justificativa para sobrestamento do processo com base no Tema 1169 do STJ. </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent;" align="justify"> Por conseguinte, impõe-se a reforma da decisão agravada. </p><p style="text-indent: 8%; text-align: justify;"> Isso posto, conheço do agravo de instrumento para dar-lhe provimento, reformando a decisão interlocutória adversada para determinar o prosseguimento do feito. </p><p style="text-indent: 8%; text-align: justify;"> &#160;É como voto.</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	25
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Multas e demais Sanções
Polo ativo	VANDA LUCIA BARROS ROZENDO
Advogado(s) - Polo ativo	ANDERSSON BELEM ALEXANDRE FERREIRA - (CE38679-A) ALLISSON BARROS ROZENDO - (CE41837-A) EDSON FERREIRA LIMA - (CE34239-A)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	serif;">PROTOCOLADO PEDIDO DE REVISÃO JUNTO AO TCE SEM PREVISÃO DE EFEITO SUSPENSIVO, APÓS O TRÂNSITO EM JULGADO DO ACÓRDÃO. INEXISTENTE CAUSA DE SUSPENSÃO DA EXIGIBILIDADE DO CRÉDITO (ART. 151 DO CTN). APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA DE IMPROCEDÊNCIA MANTIDA.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I. Caso em exame </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;">1. Apelação cível interposta por Vanda Lúcia Barros Rozendo em face de sentença prolatada pelo Juízo do 1º Núcleo da Justiça 4.0 – Execuções Fiscais da Comarca de Fortaleza, que julgou improcedentes os embargos à execução fiscal opostos pela ora apelante em face de ação executória ajuizada contra ela pelo Estado do Ceará, referente a uma multa de R$ 17.451,24 (dezessete mil, quatrocentos e cinquenta e um reais e vinte e quatro centavos), aplicada à embargante pelo Tribunal de Contas do Município.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II. Questão em discussão </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;">2. A questão em discussão consiste em analisar o direito da embargante, ora apelante, de ver suspensa a exigibilidade do crédito em virtude de interposição de pedido de revisão administrativa do acórdão do TCM, que a condenou ao pagamento da multa em referência.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> III. Razões de decidir </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;">3. De início, quanto ao apelo, afasta-se a preliminar de ausência de dialeticidade suscitada pelo recorrido em suas contrarrazões, uma vez que, conforme jurisprudência do STJ, “não há ofensa ao princípio da dialeticidade quando puderem ser extraídos do recurso de apelação fundamentos suficientes e notória intenção de reforma da sentença”, como no caso dos autos.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;">4. Afasta-se também a alegação da recorrente de que a sentença seria nula por falta de fundamentação, pois, da leitura do decisório, verifica-se que este delimitou a controvérsia do pedido nos moldes estabelecidos na petição inicial, pelo que considerou, de forma motivada, a existência de pedido de revisão administrativa de acórdão do TCM como insuficiente para suspender a execução. Atente-se que a deliberação do juízo motivada em aspectos fático-jurídicos, embora sucinta e contrária à pretensão da parte ré, não caracteriza falta de fundamentação.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 5. Conforme o art. 151, III, do Código Tributário Nacional, suspendem a exigibilidade do crédito tributário as reclamações e os recursos, nos termos das leis reguladoras do processo tributário administrativo. Por sua vez, a Lei Orgânica do Tribunal de Contas dos Municípios do Estado do Ceará prevê, em seu art. 34, §1º, que “o despacho que admitir o recurso de revisão poderá atribuir-lhe imediato efeito suspensivo, conforme juízo discricionário do relator do processo, devendo ser submetido ao Pleno para ratificação “(...)”.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 6. Compulsando o processo administrativo nº 02190/2020-0, observa-se que o Acórdão nº 6240/2014 transitou em julgado em 16/01/2015, sendo a ação executiva ajuizada em 11/01/2018, e o recurso de revisão protocolado somente em 13/11/2019. Ademais, o Relator não atribuiu efeito suspensivo ao pedido de revisão, nos termos do § 1º, do art. 34, da citada norma, conforme se observa dos documentos acostados pela própria insurgente à peça recursal.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 7. Desse modo, como corretamente consignado pelo Juízo a quo, o recurso de revisão não tem o condão de suspender o cumprimento de acórdão proferido pelo Tribunal de Contas. Precedentes deste TJCE.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> IV. Dispositivo e tese </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 8. Apelação cível conhecida e desprovida. Sentença mantida.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-

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	height: 200%;"> Tese de julgamento : “ No caso em tela, o recurso de revisão não tem o condão de suspender o cumprimento de acórdão proferido pelo Tribunal de Contas, uma vez que inexiste previsão de atribuição de efeito suspensivo, além de ter sido interposto após o trânsito em julgado do acórdão”.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Dispositivos relevantes citados: art. 93, IX, da Constituição Federal; arts. 11, caput, e 489, II, do Código de Processo Civil; art. 151, III, do Código Tributário Nacional; art. 34, §1º, Lei Orgânica do Tribunal de Contas dos Municípios do Estado do Ceará.&#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Jurisprudência relevante citada : TJCE, Agravo de Instrumento - 0635976-11.2022.8.06.0000, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 06/02/2023, data da publicação:&#160; 06/02/2023; TJCE, Apelação Cível nº 0171561-91.2016.8.06.0001, Rel. Des. WASHINGTON LUIS BEZERRA DE ARAUJO, 3ªCÂMARA DIREITO PÚBLICO, data do julgamento:12/09/2022.&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em conhecer da apelação para negar-lhe provimento, nos termos do voto do relator. </p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p class="Textbody" style="margin-top: .05pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Trata-se de apelação cível interposta por Vanda Lúcia Barros Rozendo em face de sentença prolatada pelo Juízo do 1º Núcleo da Justiça 4.0 – Execuções Fiscais da Comarca de Fortaleza.</p><p class="Textbody" style="margin-top: .15pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ação (Id. 14139730): embargos à execução opostos por Vanda Lúcia Barros Rozendo, relativa à execução fiscal nº 0090008-09.2018.8.06.0112 movida contra a autora pelo Estado do Ceará.</p><p class="Textbody" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Sentença (Id. 14140031): proferida nos seguintes termos: “ JULGO, por sentença, para que surta seus jurídicos e legais efeitos,&#160; IMPROCEDENTES OS PRESENTES EMBARGOS À EXECUÇÃO FISCAL, com resolução do mérito, o que faço com arrimo no art. 487, inciso I, do CPC. CUSTAS&#160;pelo embargante, se ainda não recolhidas.&#160; CONDENO&#160;o embargante em&#160; HONORÁRIOS ADVOCATÍCIOS, estes no valor correspondente a 10% (dez por cento) do valor originário da causa, nos termos do art. 85, caput e parágrafos 2º e

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	3º, do Código de Processo Civil, cuja exigibilidade ficará suspensa em razão da gratuidade judiciária deferida. Ultrapassado o prazo para apresentação de recurso voluntário,&#160; CERTIFIQUE-SE&#160;o imediato trânsito em julgado desta decisão e&#160; ARQUIVEM-SE&#160;os presentes autos, adotando-se as demais providências de estilo”.</p><p class="Textbody" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Razões recursais (Id. 14140041): pleiteia a insurgente a anulação da sentença, em atenção ao princípio da congruência, pois a sua fundamentação não guarda consonância com os dispositivos legais e jurisprudências trazidas à baila no seu próprio texto, sendo tal hipótese prevista no art. 1.013, §3º, inciso IV do CPC; ou, no mérito, pela reforma da sentença, aplicando o conteúdo legal do inciso III do art. 151 do CTN, suspendendo a exigibilidade do crédito, extinguindo a execução fiscal.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Contrarrazões (Id. 14140052): pugna o ente público pelo não conhecimento do recurso ou, no mérito, pelo seu desprovimento.</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Parecer da Procuradoria Geral de Justiça (Id. 14198958): opinou pelo conhecimento e improvimento do recurso de apelação.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;">&#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> De início, quanto ao apelo, afasta-se a preliminar de ausência de dialeticidade suscitada pelo recorrido em suas contrarrazões.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Da leitura da peça recursal, verifica-se que, embora tenha reiterado alguns argumentos expendidos na inicial, a insurgente impugnou especificamente os fundamentos da sentença, expondo os fatos e o direito, além das razões do pedido de reforma.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> Nesse ensejo, impende ressaltar que o Superior Tribunal de Justiça tem firmado entendimento no sentido de que o recurso que realiza a mera reprodução dos argumentos já apresentados poderá ser conhecido se for possível vislumbrar, a partir das razões recursais, relação entre tais argumentos e o que foi decidido na sentença, bem como evidente intenção de reforma desta, como no caso em tela. Assim, a referida Corte adotou posicionamento segundo o qual "não há ofensa ao princípio da dialeticidade quando puderem ser extraídos do recurso de apelação fundamentos suficientes e notória intenção de reforma da sentença" (STJ, AgInt nos EDcl no AREsp n. 1.959.390/PR, Rel. Ministra Nancy Andrighi, Terceira Turma, julgado em 23/5/2022, DJe de 25/5/2022).</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;Portanto, presentes os requisitos de admissibilidade, conheço do recurso de apelação.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Alega, inicialmente, a parte apelante que a sentença deve ser anulada por falta de fundamentação.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ocorre que, da leitura da sentença, verifica-se que esta delimitou a controvérsia do pedido nos moldes estabelecidos na petição inicial, pelo que considerou, de forma motivada, a existência de pedido de revisão administrativa do acórdão do TCM como insuficiente para suspender a execução. Atente-se que a deliberação do juízo motivada em aspectos fático-jurídicos, embora sucinta e contrária à pretensão da parte ré, não caracteriza falta de fundamentação.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Nesse contexto, segundo a reiterada jurisprudência do STJ, “não há que se confundir decisão contrária aos interesses da parte com negativa de prestação jurisdicional, nem fundamentação sucinta com ausência de fundamentação” (STJ, AgInt no Ag 1.400.631/PR, Rel. Ministro Marco Buzzi, Quarta Turma, julgado em 07/06/2016, DJe 17/06/2016).</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Portanto, tendo a sentença ora combatida apresentado as razões fáticas e jurídicas para a improcedência da ação, não se verifica qualquer nulidade no tocante ao requisito da fundamentação desse decisum, estando o pronunciamento judicial conforme os preceitos do art. 93, IX, da Constituição Federal e os

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	arts. 11, caput, e 489, II, do Código de Processo Civil, razão pela qual rejeito a preliminar.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Conforme relatado, cinge-se a controvérsia em analisar a sentença que julgou improcedentes os embargos à execução fiscal opostos por Vanda Lúcia Barros Rozendo em face de ação executória ajuizada contra ela pelo Estado do Ceará, referente a uma multa de R$ 17.451,24 (dezessete mil, quatrocentos e cinquenta e um reais e vinte e quatro centavos), aplicada à embargante pelo Tribunal de Contas do Município (decisão nos Ids. 14139991 a 14139992).</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> A sentença deve ser mantida, conforme será explicitado a seguir.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Aduz a recorrente que a exigibilidade do crédito tributário objeto da execução fiscal (multa acima referida) deve ser suspensa em virtude de ter requerido, ao Tribunal de Contas do Estado, a revisão do acórdão do TCM.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Conforme o art. 151, III, do Código Tributário Nacional, suspendem a exigibilidade do crédito tributário as reclamações e os recursos, nos termos das leis reguladoras do processo tributário administrativo.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Por sua vez, a Lei Orgânica do Tribunal de Contas dos Municípios do Estado do Ceará prevê, em seu art. 34, §1º, que “o despacho que admitir o recurso de revisão poderá atribuir-lhe imediato efeito suspensivo, conforme juízo discricionário do relator do processo, devendo ser submetido ao Pleno para ratificação, legitimadas as decisões proferidas em igual sentido até a entrada em vigor deste dispositivo”.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Compulsando o processo administrativo nº 02190/2020-0, observa-se que o Acórdão nº 6240/2014 transitou em julgado em 16/01/2015, sendo a ação executiva ajuizada em 11/01/2018, e o recurso de revisão protocolado somente em 13/11/2019. Ademais, o Relator não atribuiu efeito suspensivo ao pedido de revisão, nos termos do § 1º, do art. 34, da citada norma, conforme se observa dos documentos de Id. 14140042 ao Id. 14140048, acostadas pela própria insurgente à peça recursal.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Desse modo, como corretamente consignado pelo Juízo a quo, o recurso de revisão não tem o condão de suspender o cumprimento de acórdão proferido pelo Tribunal de Contas.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Nesse sentido, deste TJCE: &#160; </p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">CONSTITUCIONAL. AGRAVO DE INSTRUMENTO COM PEDIDO DE ANTECIPAÇÃO DE TUTELA. AÇÃO DE OBRIGAÇÃO DE FAZER COM PEDIDO DE TUTELA DE URGÊNCIA. SUSPENSÃO DE PROCESSO DE INSCRIÇÃO EM DÍVIDA ATIVA. INVIABILIDADE. RECURSO DE REVISÃO JUNTO AO TCE SEM PREVISÃO DE EFEITO SUSPENSIVO. PRESUNÇÃO DE LEGALIDADE DO ATO ADMINISTRATIVO. PROMOVENTE NÃO LOGROU COMPROVAR OS FATOS CONSTITUTIVOS DO SEU DIREITO. AUSÊNCIA DA PROBABILIDADE DO DIREITO ARGUIDO PELO AGRAVANTE. RECURSO CONHECIDO E DESPROVIDO. DECISÃO MANTIDA. 1.Tratam os autos de agravo de instrumento com pedido de antecipação da tutela recursal, interposto em face de decisão proferida na Ação de Obrigação de Fazer com Pedido de Tutela de Urgência, a qual indeferiu o pleito de suspensão, imediata, do processo de inscrição em dívida ativa e da exigibilidade dos débitos e multas em desfavor da mesma, bem como eventuais juros e multas decorrentes do não pagamento, em razão de alegado julgamento irregular do Acórdão nº 4125/2021 até o julgamento do recurso de revisão pelo Tribunal de Contas do Estado do Ceará. 2. A princípio, esta e. Corte possui o entendimento de que os Tribunais de Contas possuem a competência constitucional de estabelecer seus próprios regimentos, devendo esta regulamentação própria, portanto, incidir. Nesse sentido, extrai-se, da análise do art. 32 da Lei Orgânica do Tribunal de Contas Estadual (Lei nº 16.819/2019), que citado dispositivo, prevê expressamente que o recurso de revisão não terá efeito suspensivo. 3. Por outro lado, é possível concluir que, militando presunção legal de veracidade e legalidade em favor do ato administrativo, cabe àquele que o contesta fazer prova de eventual ilegalidade, uma vez que esse é o fato supostamente constituidor do seu direito, o que a parte agravante não logrou comprovar.4. Com efeito, a recorrente busca rediscutir o mérito da decisão do TCE no presente agravo de instrumento em sede de tutela de urgência. A pretensão, além de mostrar-se inadequada, em face ao caráter sumário da cognição própria das tutelas provisórias, implicaria verdadeira afronta à

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	separação dos poderes, adentrando o mérito do ato administrativo da Corte de Contas. 5. Verificando a argumentação e o acervo documental acostado aos autos, não se vislumbra, em uma análise perfunctória, a probabilidade acerca da existência do direito alegado, o que inviabiliza a concessão da tutela pretendida, de onde mister se faz a manutenção da decisão proferida em sede de primeiro grau. 5. Recurso conhecido e desprovido. Decisão mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de agravo interposto, mas para NEGAR-LHE PROVIMENTO, no sentido de confirmar a decisão do Juízo de primeiro grau, em sua integralidade Fortaleza, 06 de fevereiro de 2023 DES. JOSÉ TARCÍLIO SOUZA DA SILVA Relator (TJCE, Agravo de Instrumento - 0635976-11.2022.8.06.0000, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 06/02/2023, data da publicação:&#160; 06/02/2023. Grifei)</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">APELAÇÃO. CONSTITUCIONAL E ADMINISTRATIVO. DECISÃO DO TRIBUNAL DE CONTAS DOS MUNICÍPIOS. IMPOSSIBILIDADE DE ANÁLISE DO MÉRITO. ATO ADMINISTRATIVO QUE SE REVESTE DE LEGALIDADE. SENTENÇA DE IMPROCEDÊNCIA MANTIDA. RECURSO CONHECIDO EDESPROVIDO. 1. É inaplicável a Lei Federal nº 9.784/99e o Manual de Recursos do TCU, pois o TCM tinha regulamentação própria (Lei Estadual nº 12.160/93 Lei Orgânica do TCM e Regimento Interno), editada dentro da autonomia normativa do Estado do Ceará (art. 18, da CRFB) e da competência constitucional dos Tribunais de Contas de estabelecer seus regimentos (art. 96, inciso i, alínea "a", da CRFB c/c art. 78, inciso XII, da Constituição Estadual). 2 Partindo desse pressuposto , é a Lei Orgânica do TCM e seu regimento interno que devem incidir no caso. E, de fato, à luz desse normativo, os atos impugnados se revestem de legalidade, na medida em que o Regimento Interno do TCM expressamente admitia a possibilidade de retirada, por qualquer motivo, da pauta de julgamento, ao passo que a lei local não instituía a preclusão pro judicato da análise do pedido de efeito suspensivo ao recurso de revisão, nem tampouco estabelecia a maneira como o requerimento deveria ser formulado. Por conseguinte, o relator podia se retratar da decisão anterior que indeferira o pleito; do mesmo modo, o pedido de retratação podia, por decorrência do direito a petição, ser apresentado em peça individual, mesmo porque, consoante a legislação mencionada, o relator podia atribuir efeito suspensivo de ofício, sem provocação da parte recorrente. 3. A documentação, por outro lado, não é suficiente para inferir que, necessariamente, houve ofensa à moralidade e à impessoalidade. Eventuais circunstâncias desabonadoras da conduta do Conselheiro relator ou dos demais membros do TCM poderiam, em tese, ser demonstradas por outros meios de prova; porém, houve intimação das partes para especificar as provas que pretendiam produzir, mas o autor quedou inerte, de modo que não há prova de que os atos impugnados, conquanto legais, sejam imorais ou praticados com o fim de favorecer a pessoa da promovida. 4. Frise-se que, de acordo com a jurisprudência deste tribunal, o mérito das decisões das Cortes de Contas (e.g. no caso em tela, se os requisitos do efeito suspensivo estavam ou não presentes) é insindicável perante o Judiciário, sob pena de ofensa à separação de Poderes (art. 2º, da CRFB). 5. Apelação conhecida e não provida.” (TJCE, Apelação Cível nº 0171561-91.2016.8.06.0001, Rel. Des. WASHINGTON LUIS BEZERRA DE ARAUJO, 3ªCÂMARA DIREITO PÚBLICO, data do julgamento:12/09/2022. Destaquei)</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Diante do exposto, conheço da apelação para negar-lhe provimento, mantendo a sentença recorrida.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Considerando a sucumbência da autora também nesta segunda instância, majoro os honorários advocatícios para 12% (doze por cento) sobre o valor atualizado da causa, com exigibilidade suspensa em virtude da gratuidade judiciária concedida.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É como voto.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> <span style="font-size:

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	medium;">DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	26
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Pagamento
Polo ativo	MUNICIPIO DE PORTEIRAS
Advogado(s) - Polo ativo	JOSE SERGIO DANTAS LOPES - (CE10534-A)
Polo passivo	MARIA APARECIDA DA SILVA
Advogado(s) - Polo passivo	PEDRO HENRIKE VEREDA BARBOSA - (CE44958-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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	style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">III. Razões de Decidir</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Em relação à preliminar de ilegitimidade da parte autora para pleitear crédito oriundo da Ação Civil Pública nº 0002082-15.2014.8.06.0149, a análise dos autos daquela ação coletiva revela que também os servidores contratados temporariamente foram contemplados naquele feito, garantindo-lhes o direito a remuneração não inferior ao salário-mínimo vigente. Preliminar rejeitada.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Quanto à alegação de inépcia da inicial, impõe-se ressaltar que se fez evidente e expresso o intuito do autor de individualizar seu crédito, bem como ao feito foi atribuído o rito da liquidação nos termos previstos no CPC, sem que se verifique a ocorrência de processamento conjunto de procedimentos distintos, como defende o recorrente, nem tampouco a existência de prejuízo ao ora agravante, razão pela qual se torna inviável a decretação de nulidade dos atos processuais. Preliminar rejeitada.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Por fim, no que se refere à possibilidade de condenação em honorários na fase de liquidação, o STJ tem posicionamento sedimentado no sentido de que se trata de ato excepcional, que demanda a constatação de litigiosidade excessiva entre as partes, não sendo este o caso dos autos, razão pela qual se afasta a condenação do ente público em honorários de sucumbência.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Recurso conhecido e parcialmente provido. Sentença parcialmente reformada para afastar a condenação da edilidade ao pagamento de honorários de sucumbência.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ____________</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CPC, art. 85 e arts. 509 a 512.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgInt no REsp n. 1.367.363/DF, relator Ministro Paulo de Tarso Sanseverino, Terceira Turma, julgado em 1/9/2016, DJe de 9/9/2016.</p><p style="line-height:

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	1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="background-color: transparent; font-size: 13pt; text-indent: 113.25pt;"> ACÓRDÃO </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos da Agravo de Instrumento nº 3002308-76.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do agravo interposto, para rejeitar as preliminares suscitadas e, quanto ao mérito, dar-lhe parcial provimento, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Local, data e hora indicados pelo sistema.</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height: 1.3499999999999999; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Portaria 1550/2024</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Em evidência, agravo de instrumento adversando decisão proferida do M.M. Juiz de Direito da 1ª Vara da Comarca de Brejo Santo/CE proferida em liquidação de sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">O caso/a ação originária: Maria Aparecida da Silva ingressou com pedido de liquidação de

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	sentença (processo nº 0201327-26.2022.8.06.0052), a fim de apurar o quantum devido na Ação Civil Pública nº 0002082-15.2014.8.06.0149, pugnando, assim, pelo pagamento do crédito que entende lhe ser devido pelo Município de Porteiras em razão da aludida decisão, que condenou o mencionado ente público a implementar para todos os servidores públicos, concursados, estabilizados e terceirizados, a título de remuneração mínima, o equivalente ao salário-mínimo nacional vigente.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">O Município de Porteiras apresentou contestação (ID 12339408), alegando, em síntese, que a parte autora não seria legítima para requerer a liquidação da sentença, pois ela não incluiria temporários, bem como a inépcia da inicial, já que o exequente supostamente teria cumulado pedidos relativos ao procedimento de liquidação e de cumprimento de sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">No ensejo, indicou que o “valor total correto devido, conforme previsão contida na sentença, equivale a R$ 14.998,84, com posição em 10.02.2023, que corresponde a soma do principal (R$ 6.618,59) com a correção monetária (R$ 4.257,76) e juros de mora (R$ 4.122,49)”.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Nesses termos, requereu a extinção do feito sem apreciação do mérito, e, subsidiariamente, que fossem não acolhidos os pedidos formulados na atrial, julgando totalmente improcedente a liquidação de sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Decisão agravada, (ID 12339411), em que o juízo de primeiro grau decidiu pela procedência do pedido. Confira-se:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “Ante o exposto, JULGO

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	PROCEDENTE o pedido de liquidação de sentença, para reconhecer o direito do (a) exequente em receber o pagamento de R$ 14.998,84 a título de diferenças salariais, com resolução de mérito, nos termos do artigo 487, inciso I, do CPC. Condeno o Município ao pagamento de honorários advocatícios de 10%do valor executado. ”</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Inconformado, o Município de Porteiras interpôs o presente Agravo de Instrumento, requerendo a reforma do referido decisum, repisando os argumentos ventilados na peça contestatória e afirmando.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Assim, pleiteou a concessão de efeito suspensivo ao decisório agravado e, ao fim, a extinção do pedido de liquidação sem resolução do mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Decisão interlocutória (ID 13284944), indeferindo o pleiteado efeito suspensivo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Contrarrazões (ID 13614230) pugnando pela manutenção do decisório recorrido.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria Geral de Justiça (ID 14152966), opinando pelo conhecimento do recurso, mas sem adentrar no mérito por ausência de interesse.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Conforme relatado, o recorrente insurge-se contra decisão da Juíza de Direito da 1ª Vara da Comarca de Brejo Santo/CE que, em sede de liquidação de sentença oposto contra o Município de Porteiras, fixou o valor devido e condenou o ente municipal ao pagamento de honorários sucumbenciais.</p><p style="line-height: 1.7999999999999998; text-indent:

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	113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> O agravante sustenta, em síntese, a ilegitimidade da parte autora, a inépcia da inicial, a ocorrência de nulidades processuais e a impossibilidade de condenação em honorários advocatícios.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Por parte e em tópicos, passo a analisar os argumentos apresentados.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> - Da (i)legitimidade da parte: </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> O recorrente afirma que o autor não teria legitimidade para requerer a liquidação da decisão proferida na Ação Civil Pública nº 0002082-15.2014.8.06.0149, por ser contratado temporário do Município de Porteiras.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Inicialmente, cumpre esclarecer que a referida ACP teve por base a prática, pela edilidade, de remuneração inferior ao salário-mínimo nacional aos servidores públicos municipais durante a vigência da Lei Municipal nº 252/2002. Extrai-se da inicial daquela ação coletiva que os servidores temporários foram abarcados naquele feito, in verbis:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “A presente ação civil pública tem 3 (três) objetivos, que podem ser assim sintetizados: </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1º – o reconhecimento judicial de que, enquanto estavam submetidos ao regime jurídico estatutário da Lei Municipal nº 252/02 – ou seja, até 03 de fevereiro de 2013 – os agentes públicos municipais concursados, assim como os estáveis por força do artigo 19 do ADCT ou pela Emenda Constitucional nº 51/2006, e, ainda, os contratados temporariamente faziam jus ao recebimento de remuneração total não inferior ao salário mínimo nacional vigente, independentemente da jornada de trabalho a que estavam submetidos.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (…) </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4 – DA CONCLUSÃO E DOS PEDIDOS </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> c.4) seja o Município de Porteiras-CE condenado ao pagamento aos agentes públicos municipais concursados, estáveis ou <span style="color: #000000; background-color: transparent; font-weight: 700;

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	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">contratados temporariamente , independentemente da jornada de trabalho a que eventualmente submetidos, da diferença entre o valor efetivamente pago e aquele que deveria ter sido efetuado acaso observada a garantia constitucional da irredutibilidade dos vencimentos, tomando-se como parâmetro o valor que deve servir de base para o cálculo do 13º salário e do 1/3 (terço) constitucional de férias;” (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Ademais, da sentença prolatada naquele feito, confirmada integralmente pelo acórdão de fls. 833/845 dos autos da ACP, verifica-se que o pedido retrocitado foi deferido, nos seguintes termos: </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “Diante de todo o exposto, e de tudo mais que dos autos consta, extingo o processo com julgamento do mérito, na forma do artigo 487, I do CPC, para: </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> a) declarar que os servidores públicos do Município de Porteiras (concursados, estáveis por força do art. 19 do ADCT ou pela EC nº 51/06 e contratados temporariamente) , enquanto submetidos ao regime jurídico estatutário, possuem o direito de remuneração total não inferior ao salário-mínimo nacional vigente, independentemente da jornada de trabalho a que estiverem/estivessem submetidos, bem como possuem a garantia constitucional da irredutibilidade de suas remunerações, tomando-se como parâmetro o valor do salário-mínimo nacional vigente;</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> b) condenar o Município de Porteiras/CE, enquanto vigente o regime jurídico único estatutário, ao pagamento retroativo referente ao período não alcançado pela prescrição quinquenal estabelecida pelo decreto nº 20.910/32, da diferença entre o valor a menor efetivamente pago e aquele que deveria ter sido realizado aos servidores públicos com base em valor de remuneração não inferior ao valor do salário-mínimo nacional vigente, observadas as repercussões financeiras no que concerne ao 13º salário e 1/3 de férias, assegurada a garantia constitucional da irredutibilidade das remunerações, valores estes que devem ser corrigidos monetariamente pelo Índice de Preços ao Consumidor Amplo Especial (IPCA-E), além de incidirem juros de mora no patamar aplicado à caderneta de poupança, nos termos da regra do art. 1º-F da Lei 9.494/97, com redação da Lei 11.960/09, desde a citação.” </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> E, nessa perspectiva, cumpre rememorar o que dispõe o Código de Processo Civil sobre o procedimento de liquidação de sentença, em seu art. 509, §4º, ipsis litteris :</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “CPC. Art. 509. Quando a sentença condenar ao pagamento de quantia ilíquida, proceder-se-á à

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	sua liquidação, a requerimento do credor ou do devedor: </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (…) </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 4º Na liquidação é vedado discutir de novo a lide ou modificar a sentença que a julgou .” (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> À luz do dispositivo citado, é nítido que a pretensão de modificar os termos da decisão já transitada em julgada e, portanto, albergada sob o manto da coisa julgada, não merece guarida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Assim, impõe-se a rejeição da preliminar de ilegitimidade da parte autora para postular a liquidação da referida sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 100%; margin-bottom: 0cm;"> - A alegação de inépcia da inicial: </p><p style="line-height: 1.8; text-indent: 113.25pt; text-align: left; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.8; text-indent: 113.25pt; text-align: left; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><strong style="font-family: Arial, serif; font-size: 11px;">&#160;Sobre esse ponto, convém transcrever o que decidiu a julgadora que proferiu a decisão agravada, ipsis litteris:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “Por conseguinte, não vislumbro inépcia da inicial, tendo em vista que foi aplicado o rito da liquidação pelo procedimento comum, conforme despacho inicial, não havendo incompatibilidade de procedimento.” (fl. 128 dos autos originários) </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> De fato, observa-se que ao feito em exame foi aplicado o rito da liquidação de sentença, previsto nos arts. 509 a 512 do CPC. Assim, não se vislumbra a ocorrência de processamento conjunto de procedimentos distintos, como afirma o recorrente.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Além disso, vale destacar que nos termos da mansa orientação jurisprudencial não se proclama uma nulidade sem a constatação de prejuízo concreto à parte, sob pena de a forma superar a essência. E, no presente caso, não foi demonstrada a existência de prejuízo ao ora agravante, razão pela qual não há que se reconhecer qualquer nulidade no feito em exame.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13pt;

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	font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Preliminar, igualmente, rejeitada.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> - Da condenação em honorários advocatícios: </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Consoante relatado, o caso em apreço tratou tão somente da fase de liquidação do julgado, a qual se situa entre a sentença e o cumprimento de sentença, tendo por finalidade apenas a apuração do quantum devido à parte credora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> O artigo 85 do Código de Processo Civil, ao tratar sobre as hipóteses de cabimento de honorários sucumbenciais, nada menciona acerca da fase de liquidação, a saber:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “Art. 85. A sentença condenará o vencido a pagar honorários ao advogado do vencedor. </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 1º São devidos honorários advocatícios na reconvenção, no cumprimento de sentença, provisório ou definitivo, na execução, resistida ou não, e nos recursos interpostos, cumulativamente.” </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Nesse contexto, importa verificar o entendimento jurisprudencial sobre o tema, já que o STJ tem posicionamento sedimentado no sentido de que é cabível, embora de maneira excepcional, a fixação de honorários advocatícios na fase de liquidação de sentença, desde que se vislumbre litigiosidade excessiva entre as partes. Confira-se:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “RECURSO ESPECIAL. PROCESSUAL CIVIL. HONORÁRIOS DE SUCUMBÊNCIA EM LIQUIDAÇÃO DE SENTENÇA POR ARTIGOS. INCIDÊNCIA DO PARÁGRAFO 4º DO CPC/73. INEXISTÊNCIA DE CONDENAÇÃO. </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. A jurisprudência desta Corte Superior orienta-se no sentido da possibilidade de fixação de honorários de sucumbência na fase de liquidação de sentença, nas hipóteses de litigiosidade excessiva.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Por não haver condenação na fase de liquidação de sentença, os honorários de sucumbência nela fixados deverão atentar aos critérios estabelecidos no § 4º do CPC/73. </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="color: #000000; background-

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	color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> 3. Distinção entre as hipóteses de honorários de sucumbência fixados na fase de liquidação litigiosa da fase de cumprimento do título liquidado. (REsp 1.028.855/SC; Relª. Minª. NANCY ANDRIGHI, DJe 5.3.2009) . </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. AGRAVO INTERNO DESPROVIDO.” </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (STJ. AgInt no REsp n. 1.367.363/DF, relator Ministro Paulo de Tarso Sanseverino, Terceira Turma, julgado em 1/9/2016, DJe de 9/9/2016.) </p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> No caso dos autos, verifica-se que, embora o Município de Porteiras tenha defendido a extinção do feito em preliminares, houve homologação do valor entendido como devido pela edilidade. Assim, não se verifica a litigiosidade excessiva apta a ensejar a condenação em honorários.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Nesse sentido, já se manifestou esta e. Corte de Justiça em casos semelhantes, como ilustram os julgados adiante colacionados (sem grifos no original):</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. LIQUIDAÇÃO INDIVIDUAL DE SENTENÇA PROFERIDA EM AÇÃO CIVIL PÚBLICA. IMPUGNAÇÃO. PRELIMINAR DE ILEGITIMIDADE ATIVA AD CAUSAM DA EXEQUENTE. REJEITADA. NULIDADES PROCESSUAIS. NÃO CONFIGURADAS. IMPUGNAÇÃO NÃO ACOLHIDA. HONORÁRIOS ADVOCATÍCIOS. FASE DE LIQUIDAÇÃO DE SENTENÇA. ARBITRAMENTO. EXCEPCIONALIDADE. NÃO CABIMENTO. PRECEDENTES DO STJ. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 01. A tese de que a sentença condenatória tocaria apenas os servidores estatutários não procede, porquanto, da leitura da parte dispositiva do título judicial objeto de cumprimento, este abrange expressamente os ¿contratados temporariamente¿. Preliminar de ilegitimidade ativa rejeitada. 02. Quanto a nulidade, por violação ao § 5º do art. 272 do CPC, ainda que tenha havido pedido de que as intimações fossem dirigidas ao advogado específico, os autos denotam que as comunicações foram feitas através do portal eletrônico e-SAJ, observando o disposto no art. 270, do CPC e, ainda, pessoalmente, através de mandado, diretamente ao órgão de representação judicial do ente público, na pessoa da Procuradora do Município de Porteiras, conforme certificou a Oficiala de Justiça responsável pelo expediente, não cabendo falar, pois, em nulidade dos atos posteriores. Precedente TJCE. 03. Também não identifico inépcia da inicial, uma vez que foi aplicado no rito da liquidação o procedimento comum, conforme despacho inicial, não havendo incompatibilidade de procedimento, tampouco entre os pedidos formulados na exordial, consoante de verifica das págs. 01/10 e 42 do feito de origem. 04. Não se vislumbrando qualquer prejuízo às partes, em especial ao ente público agravante, tem-se por afastada a nulidade processual aventada, em homenagem ao princípio pas de nulitté sans grief. 05. Quanto à condenação em honorários de sucumbência, de acordo com a jurisprudência do STJ, a fixação de honorários sucumbenciais na fase de liquidação de sentença não é a regra, mas sim uma exceção. 06. Contudo, não se pode confundir eventuais honorários a serem fixados na fase de cumprimento de sentença com a verba possível de ser arbitrada/majorada na liquidação de sentença. Precedentes do STJ. 07. In casu, por trata-se de liquidação individual de sentença em ação coletiva, mostra-se incabível a condenação de honorários de sucumbência na liquidação, devendo a decisão

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	ser reformada nesta parte para extirpar a condenação da verba sucumbencial, embora que por fundamento diverso do adotado em julgados anteriores. 08. Recurso conhecido e parcialmente provido.” (TJCE. Agravo de Instrumento - 0626194-43.2023.8.06.0000, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 04/09/2023, data da publicação: 04/09/2023)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> *** </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. EXECUÇÃO INDIVIDUAL DE SENTENÇA PROFERIDA EM AÇÃO CIVIL PÚBLICA. PRELIMINAR DE ILEGITIMIDADE ATIVA AD CAUSAM DA EXEQUENTE REJEITADA. NULIDADES PROCESSUAIS NÃO CONFIGURADAS. CONDENAÇÃO EM HONORÁRIOS DE SUCUMBÊNCIA. NÃO CABIMENTO. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1. A sentença condenatória da Ação Civil Pública de nº 0002082-15.2014.8.06.0149 na parte dispositiva abrange expressamente os contratados temporariamente. Preliminar de ilegitimidade ativa rejeitada. 2. Não vislumbro nulidade que justifique a pretendida anulação de atos processuais, na medida em que os expedientes de intimação foram encaminhados à Procuradoria-Geral do Município de Porteiras, através de seu cadastro eletrônico, em observância ao que dispõe o art. 270 do CPC, e, ainda, pessoalmente, por mandado cumprido na pessoa da Procuradora do Município. 3. Inexiste inépcia da inicial, vez que foi aplicado no rito da liquidação o procedimento comum, conforme despacho inicial, não havendo incompatibilidade de procedimento, tampouco entre os pedidos formulados na exordial, consoante de verifica das fls. 01/10 e 42 do feito de origem (0200631-87.2022.8.06.0052). 4. Com relação à condenação em honorários de sucumbência, de acordo com a jurisprudência do STJ, esta somente é cabível na hipótese de acolhimento, ainda que parcial, da impugnação ao cumprimento de sentença, o que não é o caso dos autos, devendo a decisão ser reformada nesta parte. 5. Agravo de instrumento conhecido e parcialmente provido apenas para afastar a condenação do agravante no pagamento de honorários.” (TJCE. Agravo de Instrumento - 0626173-67.2023.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 07/08/2023, data da publicação: 08/08/2023)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> *** </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. IMPUGNAÇÃO AO CUMPRIMENTO DE SENTENÇA. LIQUIDAÇÃO. PRELIMINAR DE ILEGITIMIDADE ATIVA AD CAUSAM. REJEITADA. NULIDADES PROCESSUAIS. NÃO CONFIGURADAS. PRECEDENTES DO TJCE. CONDENAÇÃO EM HONORÁRIOS DE SUCUMBÊNCIA. NÃO CABIMENTO. PRECEDENTES DO STJ E DESTE COLEGIADO. RETIFICAÇÃO DA DECISÃO, NO PONTO. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1. O argumento levantado de ilegitimidade ativa ad causam não prospera, pois a sentença da ACP incluiu expressamente os contratados temporariamente, que é o caso do agravado, de forma que não há mais o que se discutir

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	em relação a esse ponto sedimentado no decisum. Inteligência do art. 509, § 4º, do CPC. Preliminar rejeitada. 2. Não prospera a tese de nulidade por violação ao art. 272, § 5º do CPC, uma vez que as comunicações foram feitas pessoalmente, através de mandado, diretamente ao órgão de representação judicial do ente público, cumprido na pessoa da Procuradora do Município de Porteiras, conforme certificou a Oficiala de Justiça responsável pelos expedientes. 3. Ademais, incabível tese de inépcia da inicial, uma vez que foi aplicado no rito da liquidação o procedimento comum, conforme despacho inicial, não havendo incompatibilidade de procedimento, tampouco entre os pedidos formulados. Precedentes do TJCE. 4. Quanto à condenação em honorários advocatícios, assiste razão ao agravante, devendo a decisão ser reformada no ponto, a teor da Súmula nº 519 do STJ, segundo a qual "na hipótese de rejeição da impugnação ao cumprimento de sentença, não são cabíveis honorários advocatícios" . Precedentes do TJCE. 5. Recurso conhecido e parcialmente provido.” (TJCE. Agravo de Instrumento - 0623079-14.2023.8.06.0000, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 24/07/2023, data da publicação: 24/07/2023)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> *** </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “AGRAVO DE INSTRUMENTO. DIREITO PROCESSUAL CIVIL. LIQUIDAÇÃO INDIVIDUAL DE SENTENÇA COLETIVA. DIREITO AO SALÁRIO-MÍNIMO QUE SE ESTENDE AOS CONTRATADOS TEMPORARIAMENTE. PEDIDO DE LIQUIDAÇÃO E CUMPRIMENTO DE SENTENÇA. COMPATIBILIDADE. CONDENAÇÃO EM HONORÁRIOS DE SUCUMBÊNCIA NA FASE DE LIQUIDAÇÃO. IMPOSSIBILIDADE. PRECEDENTES. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 01. Cuida-se de Agravo de Instrumento com vistas a reforma da decisão que entendeu pela procedência da liquidação de sentença ¿para reconhecer o direito do autor em receber o pagamento da diferença salarial com relação ao salário mínimo vigente à época do período laborado, no período de 2009 a 2013¿. Em suas razões de agravo aduz equivocada a decisão de piso, notadamente em razão de que trata-se de contratação temporária e a sentença coletiva se limita aos servidores estatutários. Ainda, argui a inépcia da inicial por ausência de cálculo dos valores que seriam devidos e de valor da causa, bem como a ausência de título executivo judicial e de valor da causa. Entende presentes os requisitos necessários à concessão do efeito suspensivo ao recurso. 02. Não há dúvidas acerca da extensão do comando decisório contido na sentença transitada em julgado e proferida na Ação Civil Pública nº 0002082-15.2014.8.06.0149, sendo ela aplicada também aos servidores contratados temporariamente pela edilidade, como é o caso do autor/agravado. Precedentes. 03. A edilidade em momento algum refuta os argumentos e provas colacionados aos autos que dão conta da existência de contratação temporária do agravado (entre 2009 e 2013) e que recebeu contraprestação em valor abaixo do salário-mínimo vigente à época. 04. Inexiste incompatibilidade entre o pleito de liquidação de sentença e o cumprimento de sentença, notadamente em razão de serem eles procedimentos complementares e subsequentes logicamente. A liquidação individual de sentença coletiva agora em discussão, não requer liquidação complexa, mas se poderá alcançar o valor por meros cálculos aritméticos, não havendo qualquer incompatibilidade em que esta preceda o cumprimento de sentença. 05. A fixação de honorários sucumbenciais não tem lugar por ocasião do procedimento de liquidação de sentença, somente cabendo tal condenação em honorários sucumbenciais na eventual impugnação ao cumprimento de sentença, nos termos do Tema 973 e Súmula 345, ambos do STJ. Precedentes. 06. Agravo de Instrumento conhecido e parcialmente provido, reformando a decisão agravada apenas para afastar a condenação da edilidade agravante no pagamento de honorário sucumbenciais.” (TJCE. Agravo de

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	Instrumento - 0626127-78.2023.8.06.0000, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento: 24/07/2023, data da publicação: 25/07/2023)</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Assim, impõe-se o parcial provimento ao agravo ora em exame, mas tão somente para afastar a condenação em honorários sucumbenciais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Isto posto, voto por conhecer do agravo de instrumento interposto, para afastar as preliminares suscitadas, e, quanto ao mérito, dar-lhe parcial provimento, tão somente para excluir da condenação do ente público os honorários sucumbenciais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Local, data e hora indicados pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 113.25pt; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	0014618-84.2018.8.06.0095
Número de ordem	27
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA

Processo	0014618-84.2018.8.06.0095
Assunto principal	Transporte de Pessoas
Polo ativo	MUNICIPIO DE IPU
Advogado(s) - Polo ativo	RAIMUNDO AUGUSTO FERNANDES NETO - (CE6615-A) ESIO RIOS LOUSADA NETO - (CE18190-A)
Polo passivo	MINISTERIO PUBLICO DO ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0014618-84.2018.8.06.0095
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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	8UYpJ3iRVPfSrR2y+FyfZwu6bpd/fe/hB+3X2e/XN13UcjdZ/qw19nYvhWyy4aSLN3IeFyGkT0m1P/vE3NiKO7Uyuf1JeQkykmravc13/dnMbqqKA5+LUCBSkGQoj1TzwwAP/WdTj6ikRIaQoR0SxH8MxbKfZ4Grcf1wbKcgRUaQg/v6PZK9TPX1DUaQgyiDDcqca8x95jfLoquuv/v8y6HRP/99Ri/0v+MTumTb4YCQAAAAASUVORK5CYII=" alt="" /> &#160; ESTADO DO CEARÁ PODER JUDICIÁRIO &#160; TRIBUNAL DE JUSTIÇA &#160; <br /> &#160; &#160; Nº PROCESSO:&#160;0014618-84.2018.8.06.0095 CLASSE:&#160;APELAÇÃO / REMESSA NECESSÁRIA &#160; &#160; &#160; EMENTA: &#160; ACÓRDÃO: O Colegiado, por unanimidade, acordou em conhecer do recurso para negar-lhe provimento, nos termos do(a) eminente Relator(a). &#160; RELATÓRIO: &#160; VOTO: <img 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	SEGURANÇA DOS ALUNOS. INTERPOSIÇÃO DE RECURSO EXTRAORDINÁRIO. RETORNO DOS AUTOS A ESTE ÓRGÃO FRACIONÁRIO. DISTINGUISHING EM RELAÇÃO AO TEMA DE REPERCUSSÃO GERAL 698. JUÍZO NEGATIVO DE RETRATAÇÃO. DECISÃO MANTIDA. </p><p style="line-height: 150%; margin-bottom: 0cm;"> I. CASO EM EXAME </p><p class="western" style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 01. Trata-se de Recurso de Apelação interposto pelo Município de Ipu o qual confirmou a sentença proferida pelo Juízo da Vara Única da Comarca de Ipu/CE que decidiu pela procedência da Ação Civil Pública, no sentido de determinar a adequação de toda a frota dos veículos que prestam serviço de transporte escolar, conforme os ditames da legislação aplicável, devolvido para possibilitar eventual juízo de retratação, nos termos do art. 1.030, II, do CPC. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> 02. Examinar se o acórdão de Id 7484583 diverge do seguinte entendimento exarado pelo STF no julgamento do Recurso Extraordinário 684612/RJ, afeto ao Tema 698 de repercussão geral. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> 03. O Supremo Tribunal Federal, ao apreciar o RE 684.612/RJ, em sede de Repercussão Geral, firmou tese reconhecendo que: “ 1. A intervenção do Poder Judiciário em políticas públicas voltadas à realização de direitos fundamentais, em caso de ausência ou deficiência grave do serviço, não viola o princípio da separação dos poderes. 2. A decisão judicial, como regra, em lugar de determinar medidas pontuais, deve apontar as finalidades a serem alcançadas e determinar à Administração Pública que apresente um plano e/ou os meios adequados para alcançar o resultado. 3. No caso de serviços de saúde, o déficit de profissionais pode ser suprido por concurso público ou, por exemplo, pelo remanejamento de recursos humanos e pela contratação de organizações sociais (OS) e organizações da sociedade civil de interesse público (OSCIP). ” (Tema nº 698). </p><p class="western" style="line-height: 150%; margin-bottom: 0cm;" align="justify"> 3.1. No presente caso, o julgado, ao identificar a omissão da Administração em promover todas as adequações devidas e determinar que na disponibilização de transporte escolar se observe o que dispõe o Código de Trânsito Brasileiro e legislação correlata de trânsito, não contrapôs os termos estabelecidos pelo Tema 698 do Supremo Tribunal Federal, pois apenas ajustou às necessidades apontadas com o atendimento das normas de circulação e segurança , objetivando adequar a prestação do serviço público de educação no Município de Ipu e garantir a integridade das crianças e adolescentes envolvidas. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> 3.2. Em verdade, conclui-se que o julgado em questão não apresenta incompatibilidade com o tema acima referido, em verdadeira distinção, tanto em relação ao assunto abordado quanto, especificamente na parte que trata da possibilidade de intervenção do Poder Judiciário em âmbito administrativo, quando verificada a omissão do

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	Poder Público, com o objetivo de conferir efetividade aos direitos fundamentais já garantidos na área da educação e segurança . </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TESE </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> 04. Juízo de retratação negativo. Acórdão ratificado. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> Tese de julgamento: “Inexiste divergência entre o acórdão agora reexaminado em juízo de retratação e a tese firmada no Tema 698 de repercussão geral pelo Supremo Tribunal Federal. ”. </p><p style="line-height: 150%; margin-top: 0.13cm; margin-bottom: 0.13cm;" align="justify"> <br /> </p><p style="line-height: 150%; margin-top: 0.13cm; margin-bottom: 0.13cm;" align="justify"> Dispositivos e jurisprudência relevante citada: art. 1.030, II, do CPC; STF, Recurso Extraordinário 684612/RJ - Tema 698 de repercussão geral; TJCE, Apelação Cível - 0000107-68.2019.8.06.0088, Rel. Desembargador(a) FÁTIMA MARIA ROSA MENDONÇA PORT. 2220/22, 3ª Câmara Direito Público, data do julgamento: 05/12/2022, data da publicação: 05/12/2022; Apelação Cível - 0008417-69.2017.8.06.0141, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 2ª Câmara Direito Público, data do julgamento: 30/11/2022, data da publicação: 30/11/2022; Apelação/Remessa Necessária - 0007065-34.2016.8.06.0134, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 29/01/2024, data da publicação: 29/01/2024 e Apelação/Remessa Necessária - 0044659-06.2013.8.06.0064, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 11/12/2023, data da publicação: 11/12/2023. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a do Tribunal de Justiça do Estado do Ceará, em refutar o juízo de&#160;retratação, mantendo-se o acórdão impugnando, tudo nos termos do voto do relator, parte integrante deste. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Fortaleza, data e hora indicadas pelo sistema. </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> <br /> </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> &#160; </p><p class="western" style="text-indent: 1.73cm; margin-top: 0.18cm; margin-bottom: 0.18cm;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> Relator </p><p class="western" style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> <br /> </p><p class="western" style="margin-top: 0.85cm; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Trata-se de análise de Juízo de Retratação , nos termos do art. 1.030, II, do CPC, em face do acórdão desta 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará (Id 7484583) que não conheceu de Reexame Necessário e conheceu, mas negou provimento ao Recurso de Apelação interposto pelo Município de Ipu, e que confirmou a sentença proferida pelo Juízo da Vara Única da Comarca de Ipu/CE que

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	decidiu pela procedência da Ação Civil Pública, no sentido de determinar a adequação de toda a frota dos veículos que prestam serviço de transporte escolar, conforme os ditames da legislação aplicável.</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Diante disso, a parte autora interpôs recurso extraordinário em face do acórdão mencionado, defendendo a necessidade de reforma do Acórdão proferido, para desobrigar o Município à implementação das politicas impostas no referido decisum. A Vice-presidência desta Corte, em sede de admissibilidade por meio de decisão monocrática , identificou possível inconsistência do julgado para com o entendimento exarado pelo STF no julgamento do Recurso Extraordinário 684612/RJ, afeto ao Tema 698 de repercussão geral e devolveu os autos para possibilitar eventual juízo de retratação, nos termos do art. 1.030, II, do CPC (Id 12179856).</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> &#160; É o relatório.</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 1.27cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p style="line-height: 150%; text-indent: 1.27cm; margin-bottom: 0cm;" align="justify"> A Vice-Presidência do TJCE (Id 12179856) determinou o retorno dos autos ao órgão colegiado, pois entendeu que o Acórdão impugnado poderia estar em dissonância com o entendimento exarado pelo STF no julgamento do Recurso Extraordinário 684612/RJ, afeto ao Tema 698 de repercussão geral, a seguir reproduzido: </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 1. A intervenção do Poder Judiciário em políticas públicas voltadas à realização de direitos fundamentais, em caso de ausência ou deficiência grave do serviço, não viola o princípio da separação dos poderes. 2. A decisão judicial, como regra, em lugar de determinar medidas pontuais, deve apontar as finalidades a serem alcançadas e determinar à Administração Pública que apresente um plano e/ou os meios adequados para alcançar o resultado; 3. No caso de serviços de saúde, o déficit de profissionais pode ser suprido por concurso público ou, por exemplo, pelo remanejamento de recursos humanos e pela contratação de organizações sociais (OS) e organizações da sociedade civil de interesse público (OSCIP). (RE 684612, Relator(a): RICARDO LEWANDOWSKI, Relator(a) p/ Acórdão: ROBERTO BARROSO, Tribunal Pleno, julgado em 03/07/2023, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-s/n DIVULG 04-08-2023, PUBLIC 07-08-2023. </p><p style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> O acórdão objurgado manteve na íntegra a sentença que determinou a adequação de toda a frota dos veículos que prestam serviço de transporte escolar ao Município de Ipu, conforme os ditames da legislação aplicável. Por oportuno, colaciono a ementa do julgado: </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> EMENTA: CONSTITUICIONAL E ADMINISTRATIVO. REMESSA NECESSÁRIA. SENTENÇA DE PROCEDÊNCIA. INEXISTÊNCIA DE OBRIGATORIEDADE DO DUPLO GRAU DE JURISDIÇÃO. REEXAME NÃO CONHECIDO. APELAÇÃO CÍVEL. AÇÃO CIVIL PÚBLICA. TRANSPORTE ESCOLAR. NECESSIDADE ADEQUAÇÃO DA FROTA DE VEÍCULOS E DE SEUS CONDUTORES AO DISPOSTO NO CTB. OMISSÃO DO MUNICÍPIO DE IPU/CE. RISCO A VIDA, A SAÚDE E A SEGURANÇA DOS ALUNOS. FIXAÇÃO DE PRAZO PARA SANEAMENTO DAS PENDÊNCIAS APONTADAS PELO MP/CE. POSSIBILIDADE. PRECEDENTES.

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	INVOCAÇÃO GENÉRICA DA TEORIA DA RESERVA DO POSSÍVEL. AFASTAMENTO. REMESSA NECESSÁRIA NÃO CONHECIDA. RECURSO DE APELAÇÃO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 01. Trata-se, no presente caso, de Apelação Cível, buscando a reforma de sentença em que o magistrado de primeiro grau considerou procedente ação civil pública. </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 02. Inicialmente, nota-se que o presente feito não se sujeita à remessa oficial, nos termos do que preconiza o art. 19 da Lei 4.717/65, que regula a Ação Popular e aplica-se a Ação Civil Pública por analogia. </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 02. Ora, pelo que se extrai dos autos, o transporte dos alunos da rede pública de ensino no Município de Ipu/CE não estava sendo prestado adequadamente, porque determinados veículos e alguns de seus condutores se apresentavam em desconformidade como disposto no CTB, colocando em risco a vida, a saúde e a segurança das crianças e dos adolescentes. </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 03. Assim, demonstrada a omissão da Administração em promover todas as adequações devidas, descumprindo sua obrigação de zelar pela integridade física dos alunos que se utilizavam do serviço público, era realmente de rigor a intervenção do Judiciário, para fixar um prazo para o saneamento das pendências apontadas pelo MP/CE. </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 04. No que diz respeito ao princípio da reserva do possível, ainda que inegável seja a existência da discricionariedade quanto à execução do orçamento face a otimização de atos e resultados sociais, o juízo de conveniência e oportunidade, que compõe a discricionariedade administrativa, não afasta a necessidade de submissão das decisões realizadas pelo agente público ao princípio da legalidade e ao atendimento do interesse público primário, autorizando a interferência do Poder Judiciário para garantir a eficiente implementação de um direito fundamental. </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 05. Permanecem, então, inabalados os fundamentos do decisum a quo, impondo-se sua confirmação neste azo. </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 06. Remessa não conhecida e recurso conhecido e não provido. Sentença mantida. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Passo, pois, ao reexame da matéria, posicionando-me, desde já, pela imperiosa necessidade de ratificação do julgado, consoante os fundamentos a seguir expostos. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;"

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	align="justify"> De início, não se nega que não é adequado que o Judiciário assuma as políticas públicas, estabelecendo, por sua valoração própria, o que é conveniente e o que é oportuno. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Por outro lado, há valores, entretanto, notadamente de ordem constitucional, que não podem ser desconsiderados. São mandamentos ascendentes que condicionam o juízo de conveniência do administrador; ou seja, nessas hipóteses não há disposição da faculdade de negar implemento a essas prestações mínimas. Na omissão injustificada, cabe intervenção do julgador para, por assim dizer, purgar a mora injustificada do Estado. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> É o caso do fornecimento de ensino público obrigatório e dos mecanismos para o seu fortalecimento. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Na efetivação do direito fundamental à educação está inclusa obrigação de disponibilizar transporte escolar para aluno da rede pública de ensino. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Nos termos do art. 205 da CF, os entes municipais e estaduais têm obrigação solidária de assegurar a educação, bem como promover ações que a ela garantam amplo acesso, compreendendo-se, neste conceito, a inclusão do transporte escolar. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> No presente caso, o julgado, ao identificar a omissão da Administração em promover todas as adequações devidas e determinar que na disponibilização de transporte escolar se observe o que dispõe o Código de Trânsito Brasileiro e legislação correlata de trânsito, não contrapôs os termos estabelecidos pelo Tema 698 do Supremo Tribunal Federal, pois apenas ajustou às necessidades apontadas com o atendimento das normas de circulação e segurança , objetivando adequar a prestação do serviço público de educação no Município de Ipu.</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Ademais, busca-se garantir a integridade das crianças e adolescentes envolvidas segundo o que já determinam as normas de trânsito , sendo desnecessária a reforma do julgado, não havendo que se falar em violação ao princípio da separação de poderes, sobretudo porque buscou apenas garantir os direitos já constitucionalmente protegidos.</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Assim é o entendimento das Câmaras de Direito Público, inclusive em sede de juízo de retratação. Confira-se: </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <span style="color: #000000;"> <span style="font-family: &quot;Liberation Serif&quot;, serif;"> <span style="font-size: 12pt;"> <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-size: 10pt;"> <em> <span style="font-size: x-small;">APELAÇÃO CÍVEL. AÇÃO CIVIL PÚBLICA. TRANSPORTE ESCOLAR. NECESSIDADE ADEQUAÇÃO DA FROTA DE VEÍCULOS E DE SEUS CONDUTORES AO DISPOSTO NO CTB. OMISSÃO DO MUNICÍPIO DE IBUCUITINGA/CE. RISCO A VIDA, A SAÚDE E A SEGURANÇA DOS ALUNOS. FIXAÇÃO DE PRAZO PARA SANEAMENTO DAS PENDÊNCIAS APONTADAS PELO MP/CE. POSSIBILIDADE. PRECEDENTES. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. Trata-se, no presente caso, de Apelação Cível, buscando a reforma de sentença em que o magistrado de primeiro grau considerou procedente ação civil pública. 2. Ora, pelo que se extrai dos autos, o transporte dos alunos da rede pública de ensino no Município de Ibicuitinga/CE não estava sendo prestado adequadamente, porque determinados veículos e alguns de seus condutores se apresentavam em desconformidade com o disposto no CTB, colocando em risco a vida, a saúde e a segurança das crianças e dos adolescentes. 3. Assim, demonstrada a omissão da Administração em promover todas as adequações devidas, descumprindo sua obrigação de zelar pela integridade física dos alunos que se utilizavam do serviço público, era realmente de rigor a intervenção do Judiciário, para fixar um prazo para o saneamento das

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	pendências apontadas pelo MP/CE. 4. Permanecem, então, inabalados os fundamentos do decisum a quo, impondo-se sua confirmação neste azo. - Precedentes. - Recurso conhecido e não provido. - Sentença mantida. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0000107-68.2019.8.06.0088, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, mas para lhe negar provimento, mantendo inalterada a sentença, nos termos do voto da Relatora. Fortaleza, 5 de dezembro de 2022 JUÍZA CONVOCADA FÁTIMA MARIA ROSA MENDONÇA PORT. 2220/22 Relatora (Apelação Cível - 0000107-68.2019.8.06.0088, Rel. Desembargador(a) FÁTIMA MARIA ROSA MENDONÇA PORT. 2220/22, 3ª Câmara Direito Público, data do julgamento: 05/12/2022, data da publicação: 05/12/2022) <span style="color: #000000;"> <span style="font-family: &quot;Liberation Serif&quot;, serif;"> <span style="font-size: 12pt;"> <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-size: 10pt;"> <em> <span style="font-size: x-small;">CONSTITUCIONAL E ADMINISTRATIVO. AÇÃO CIVIL PÚBLICA. APELAÇÃO CÍVEL. TRANSPORTE ESCOLAR. DIREITO FUNDAMENTAL À EDUCAÇÃO. LAUDOS DO DETRAN QUE ATESTAM IRREGULARIDADES NOS VEÍCULOS UTILIZADOS NO DESLOCAMENTO DOS ALUNOS. TEORIA DA RESERVA DO POSSÍVEL. NÃO ACOLHIDA. EFETIVAÇÃO DE DIREITO FUNDAMENTAL E SOCIAL. NECESSIDADE DE DEMONSTRAÇÃO PELO ENTE PÚBLICO DA IMPOSSIBILIDADE FINANCEIRA DE ARCAR COM A POLÍTICA PÚBLICA CONSTITUCIONALMENTE IMPOSTA. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA. 1. Trata-se de recurso de apelação interposto pelo Município de Paraipaba contra a sentença de fls. 134/138, proferida pelo Juízo da Vara Única da Comarca de Paraipaba, que julgou parcialmente procedente Ação Civil Pública ajuizada pelo Ministério Público do Estado do Ceará. 2. O cerne da questão, ora em apreço, gira em torno de Ação Civil Pública proposta pelo Ministério Público Estadual, com o fito de que o Município demandado, garanta o acesso ao ensino público às crianças e adolescentes de Paraipaba, compelindo o requerido a efetuar o transporte escolar seguro, eficiente, integral e adequado, com ônibus em condições de uso e de acordo com as normas de segurança estabelecidos pelo CONTRAN e do CTB, garantindo-lhes uma existência digna, conforme determinação constitucional e da legislação de piso (Estatuto da Criança e do Adolescente, Lei de Diretrizes e Bases da Educação, Lei do Plano Nacional de Educação, dentre outros). 3. A oferta de transporte escolar inadequado às crianças e adolescentes por parte do apelante viola frontalmente os fundamentos constitucionais supramencionados. Nessa senda, a Constituição Federal de 1988 tem como direito social basilar dos cidadãos o acesso à educação, com a atribuição de dever do Estado garantir o atendimento ao educando, em todas as etapas da educação básica, por meio de programas suplementares de material didático escolar, transporte, alimentação e assistência à saúde. 4. No que diz respeito ao princípio da reserva do possível, ainda que inegável seja a existência da discricionariedade quanto à execução do orçamento face a otimização de atos e resultados sociais, o juízo de conveniência e oportunidade, que compõe a discricionariedade administrativa, não afasta a necessidade de submissão das decisões realizadas pelo agente público ao princípio da legalidade e ao atendimento do interesse público primário, autorizando a interferência do Poder Judiciário para garantir a eficiente implementação de um direito fundamental. 5. Ademais, verifica-se que a teoria da reserva do possível deve ser aplicada quando demonstrada a insuficiência de recursos ou a falta de dotação orçamentária para o fornecimento do medicamento e/ou tratamento da substituída, ou seja, a simples postulação da teoria sem provas contundentes não tem o condão de afastar a prestação positiva, por parte dos entes estatais. 6. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso interposto, para negar-lhe provimento, tudo nos termos do voto do Relator. Fortaleza, 30 de novembro de 2022. DESEMBARGADOR RAIMUNDO NONATO SILVA SANTOS RELATOR (Apelação Cível - 0008417-69.2017.8.06.0141, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 2ª Câmara Direito Público, data do julgamento: 30/11/2022, data da publicação: 30/11/2022) <span style="color: #000000;"> <span style="font-family: &quot;Liberation Serif&quot;, serif;"> <span style="font-size: 12pt;"> <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-size: 10pt;"> <em> <span style="font-size: x-small;">CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÃO E REEXAME NECESSÁRIO. AÇÃO CIVIL PÚBLICA AJUIZADA COM O FITO DE CONDENAR ESTADO DO CEARÁ A SUPRIR DÉFICIT DE PESSOAL NA DELEGACIA DE NOVO ORIENTE, MEDIANTE NOMEAÇÃO/LOTAÇÃO/DESIGNAÇÃO DE DELEGADO, INSPETORES E ESCRIVÃES. UNIDADE DA POLÍCIA CIVIL QUE SÓ CONTAVA COM UM ÚNICO DELEGADO, TITULAR DE OUTRA UNIDADE E

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	RESPONSÁVEL POR MAIS QUATRO LOCALIDADES, ASSOBERBADO PELO VOLUME DE TRABALHO EXCEPCIONAL NO MUNICÍPIO DE NOVO ORIENTE. JUÍZO DE RETRATAÇÃO EM RECURSO EXTRAORDINÁRIO, APÓS JULGAMENTO DE ACÓRDÃO PARADIGMA PELO SUPREMO TRIBUNAL FEDERAL- STF. APLICAÇÃO DO TEMA. 698, DE REPERCUSSÃO GERAL. INAPLICABILIDADE DO TEMA 220, DE REPERCUSSÃO GERAL. SENTENÇA DE PROCEDÊNCIA REFORMADA, EM PARTE APENAS, PARA REDIMENSIONAR O EFETIVO NECESSÁRIO ÀQUELE EXISTENTE APÓS O ESTADO DO CEARÁ CUMPRIR, EM PARTE, VOLUNTARIAMENTE O ACÓRDÃO E RECONHECER JURIDICAMENTE PARTE DO PEDIDO. CUMPRIMENTO DO ACÓRDÃO QUE NÃO IMPLICA PERDA DO OBJETO, MAS CONFIRMAÇÃO DE JURIDICIDADE DO ACÓRDÃO, NO QUE TANGE À NECESSIDADE DE INTERVENÇÃO JUDICIAL EM POLÍTICA PÚBLICA DE SEGURANÇA PÚBLICA, SEM IMPLICAR OFENSA À SEPARAÇÃO DE PODERES. DEMONSTRAÇÃO DA NECESSIDADE DE, PELAS PARTICULARIDADES DO CASO, PRESTIGIAR A ADOÇÃO DE MEDIDA PONTUAL DE IMPOR A RECOMPOSIÇÃO DO EFETIVO DA DELEGACIA, E NÃO A SOLUÇÃO, EM REGRA, PREFERENCIAL DE APONTAR AS FINALIDADES A SEREM ALCANÇADAS E DETERMINAR O PLANEJAMENTO. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO EM PARTE. REEXAME NECESSÁRIO NÃO CONHECIDO, POR NÃO SE AJUSTAR A HIPÓTESE DOS AUTOS A QUALQUER DAS PREVISTAS NO ART. 19, DA LEI DE AÇÃO POPULAR, APLICADA POR FORÇA DO MICROSSISTEMA DE TUTELA COLETIVO. ACÓRDÃO Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em exercer parcialmente o juízo de retratação, para conhecer da apelação e dar-lhe parcial provimento e não conhecer da remessa necessária, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO Relator (Apelação/Remessa Necessária - 0007065-34.2016.8.06.0134, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 29/01/2024, data da publicação: 29/01/2024) <span style="color: #000000;"> <span style="font-family: &quot;Liberation Serif&quot;, serif;"> <span style="font-size: 12pt;"> <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-size: 10pt;"> <em> <span style="font-size: x-small;">PROCESSUAL CIVIL. APELAÇÃO CÍVEL. APLICAÇÃO DO DISPOSTO NO INCISO II DO ART. 1.040 DO CPC. JUÍZO DE RETRATAÇÃO. NECESSIDADE DE SUBMISSÃO AO ÓRGÃO COLEGIADO. MÉRITO: POSSIBILIDADE DE INTERVENÇÃO DO JUDICIÁRIO PARA IMPLEMENTAÇÃO DE POLÍTICAS PÚBLICAS. TEMA 698 DO STF. DETERMINAÇÃO DE ADOÇÃO DE MEDIDAS NECESSÁRIAS PARA PREVENIR O RISCO DE DOENÇAS INFECTOCONTAGIOSAS E PARASITÁRIAS DA POPULAÇÃO CARCERÁRIA DA CPPL, LOCALIZADA NO MUNICÍPIO DE CAUCAIA. GARANTIA DE EFETIVIDADE DOS DIREITOS FUNDAMENTAIS À DIGNIDADE DA PESSOA HUMANA, SAÚDE, INTEGRIDADE FÍSICA E MORAL. PRECEDENTES DO STF E DESTA CORTE DE JUSTIÇA. Ratificação DO ACÓRDÃO por estar em consonância com o PRECEDENTE. 1. Trata o caso de agravo interno em reexame necessário e apelação cível em face de decisão monocrática que manteve inalterada a sentença que decidiu pela parcial procedência da demanda. 2. A questão foi inicialmente apreciada pela então 3ª Câmara Cível, sob relatoria do Excelentíssimo Des. Francisco Gladyson Pontes, oportunidade na qual restou reconhecida a possibilidade de o Poder Judiciário determinar a adoção pelo Estado do Ceará, quando demonstrada sua omissão, de medidas ou providências destinadas a assegurar os direitos fundamentais dos detentos recolhidos na Casa de Privação Provisória (CPPL) - Carrapicho, no Município de Caucaia, sem que ocorra ofensa ao postulado da separação dos poderes. 3. O Supremo Tribunal Federal, ao apreciar o RE 684.612/RJ, em sede de Repercussão Geral, firmou tese reconhecendo que: 1. A intervenção do Poder Judiciário em políticas públicas voltadas à realização de direitos fundamentais, em caso de ausência ou deficiência grave do serviço, não viola o princípio da separação dos poderes. 2. A decisão judicial, como regra, em lugar de determinar medidas pontuais, deve apontar as finalidades a serem alcançadas e determinar à Administração Pública que apresente um plano e/ou os meios adequados para alcançar o resultado. 3. No caso de serviços de saúde, o déficit de profissionais pode ser suprido por concurso público ou, por exemplo, pelo remanejamento de recursos humanos e pela contratação de organizações sociais (OS) e organizações da sociedade civil de interesse público (OSCIP). (Tema nº 698). 4. Em verdade, conclui-se que o julgado da então 3ª Câmara Cível é plenamente compatível com o tema acima referido, especificamente na parte que trata da possibilidade de intervenção do Poder Judiciário em âmbito administrativo, quando verificado a omissão do Poder Público, com o objetivo de conferir efetividade aos direitos fundamentais. 6. Considerando que o acórdão anteriormente proferido se encontra de acordo com o precedente do STF, a ratificação é medida que se impõe, com fulcro no art. 1.040, inciso II do CPC/2015. - Acórdão ratificado. ACÓRDÃO Vistos, relatados e discutidos os presentes

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	autos de Agravo Interno em Reexame Necessário e Apelação Cível nº 0044659-06.2013.8.06.0064, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do agravo interno em reexame necessário e da apelação interposto para, em juízo de retratação, ratificar o acórdão proferido, uma vez que o julgado se encontra de acordo com o posicionamento do Supremo Tribunal Federal em sede de repercussão geral, nos termos do voto da Relatora. Fortaleza, 11 de dezembro de 2023. DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora (Apelação/Remessa Necessária - 0044659-06.2013.8.06.0064, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 11/12/2023, data da publicação: 11/12/2023) </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Não é demais lembrar que a revisão da posição firmada somente se viabiliza em situações muito específicas (art. 494 do Código de Processo Civil). É o caso, hipoteticamente, do juízo de retratação, mas para tanto se exige "o acórdão recorrido contrariar a orientação do tribunal superior" (art. 1.040, inc. II), em cenário no qual se observe "idêntica controvérsia" (art. 1.039, caput). </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Não vislumbro, porém, estrita adesão dos fatos relevantes controvertidos na presente demanda com o objeto delimitado para fins de repercussão geral pela Suprema Corte. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> A própria descrição do tema esclarece o particular enquadramento do debate travado perante o STF, claramente direcionado num contexto mais amplo para a área da saúde, enquanto o presente caso retrata questões atinentes a educação, transporte público e segurança dos alunos, sem determinação de criação de politicas públicas.</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Desse modo , inviável a incidência do tema ao presente caso, impossibilitando a retratação da decisão, que deve ser mantida nos termos em que proferida. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Por todo o exposto, em juízo de retratação negativo , ratifico o acórdão proferido junto ao Id 7484583.</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> É como voto. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Fortaleza, data e hora indicadas pelo sistema. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	28
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Férias
Polo ativo	ANTONIO FRANCISCO DO NASCIMENTO
Advogado(s) - Polo ativo	EDUARDO CERQUEIRA DA CUNHA MASCARENHAS - (CE14359-A)
Polo passivo	MUNICIPIO DE ACARAPE

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Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0200454-05.2022.8.06.0156
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eminente Relator(a).</p><p>&#160;</p><p>   <span style="font-size:
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	Alegação de contratação temporária e assunção de função pública voluntária. Exercício d a função de inspetor patrimonial de guarda municipal voluntário no Município de Acarape . Ausência de submissão a concurso público. Sentença de im procedência. Apelo acerca do recebimento de férias simples e proporcionais, acrescidas do terço constitucional, bem como o recebimento do décimo terceiro integral e proporcional. Inovação recursal quanto ao recebimento d o saldo de salário e d o depósito do FGTS. <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal;

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	font-variant-position: normal;"> Apelação não conhecida neste ponto. No mérito, constata-se a ausência de prova do direito alegado. Inobservância à distribuição do s ônus da prova (art. 373, I, do cpc) . Apelação parcialmente conhecida e d esprovida. Sentença mantida. I. Caso em exame 1. Tratam os autos de Apelação Cível interposta p or Antônio Francisco do Nascimento em face d a sentença que exting ui u o feito com resolução de mérito, julgando totalmente improcedente o pleito autoral, quanto recebimento das verbas trabalhistas referentes às férias simples e proporcionais, acrescidas do terço constitucional, bem como

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	a o décimo terceiro integral e proporcional. II. Questão em discussão 2. A questão em discussão consiste na análise do direito do autor ao recebimento de verbas trabalhistas, quais sejam: férias simples e proporcionais, acrescidas do terço constitucional, bem como o décimo terceiro integral e proporcional. III. Razões de decidir 3. Inicialmente, o apelante pretende introduzir apenas em sede de recurso o argumento relativo à condenação do ente público às verbas referente a o saldo de salário e d o depósito do FGTS. A pretensão de discutir tal matéria caracteriza nítida inovação recursal, impedindo a apreciação do recurso. Dessarte, a apelação não é cabível neste ponto, pois, do contrário, seria caracterizada a supressão de instância. 4. De plano, é necessário definir a natureza da relação jurídica havida entre as partes . O autor/apelante alega que foi contratado pelo Município de Acarape, para exercer a atividade de Guarda Municipal, admitido aos serviços no dia 03/04/2017 , recebendo mensalmente salário no importe de R$ 1.100,00 (um mil e cem reais) . <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-

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	variant-position: normal;"> Afirma que trabalhou de forma contínua e ininterrupta sem receber o direito às f érias, nem ao 13º s alário, até o dia 08/05/2019, quando foi comunicado do fim de sua contratação. 5. O Município de Acarape, por intermédio da L ei nº 504/ 2015, criou o "Programa Inspetor Patrimonial de Guarda Municipal Voluntário", tendo o autor/apelante sido aprovado no concurso realizado para ocupação deste "cargo/função de Inspetor Patrimonial Voluntário". 6 . Todavia, restado demonstrado, pelo art. 5°, II da L ei nº 504/ 2015 e pelo Edital de 09 de janeiro de 2017, que o "Programa Inspetor Patrimonial de Guarda Municipal

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	Voluntário" destina-se ao preenchimento de função voluntária e sem remuneração. 7. A L ei F ederal nº 9.608/1998 permite o serviço voluntário, todavia ressalta que não gera vínculo empregatício, nem obrigação de natureza trabalhista previdenciária ou afim. 8. In casu , o a utor não se desincumbiu do ônus de provar o direito alegado, o que decorre da distribuição estática do ônus da prova. Dos documentos constantes nos autos, especialmente do colacionado junto à exordial, não há como concluir que o autor tinha um vínculo empregatício com o Município e recebia, a título de salário, a importância de R$ 1.100,00 (um mil e cem reais) por mês, a justificar o ajuizamento da demanda a fim de receber as verbas trabalhistas. IV. Dispositivo e tese 9.

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	Apelação parcialmente conhecida e desprovida. Tese de julgamento: “ A inexistência de prova de que prestou serviço remunerado em virtude da aprovação em processo seletivo para preenchimento do cargo de Inspetor Patrimonial Voluntário impõe a improcedência do pedido inaugural ”. <br /> _________ <em> Dispositivos relevantes citados: Art. 5°, II, da L ei nº 504/2015 do Município de Acarape; Art. 1° da L ei F ederal nº 9.608/1998; A rt. 373, I, do CPC/2015. <br /> Jurisprudência relevante citada:

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	  TJCE, Apelação Cível - 0000898-06.2019.8.06.0066, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 24/11/2021, data da publicação: 24/11/2021; TJCE, Apelação Cível - 0200105-98.2022.8.06.0027, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 13/03/2023, data da publicação: 13/03/2023. <br /> <br /> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhe cer parcialmente da Apelação Cível para negar-lhe provimento , nos termos do voto do relator. &#160; &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; <br /> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> &#160; <strong style="font-size: small;"> Relator &#160; &#160; &#160; RELATÓRIO <br /> Tratam os autos de Apelação Cível interposta p or Antônio Francisco do Nascimento em face de sentença prolatada pelo Juízo da 2ª Vara da Comarca de Redenção. Ação (Id. 14858014): ação ordinária ajuizada por Antônio Francisco d o Nascimento em face do M unicípio de A carape, objetivando o pagamento das verbas trabalhistas, tais como 13º salário na forma integral e de forma proporcional, bem como as férias vencidas de todo o período laborado e as férias proporcionais, devendo as férias serem acrescidas de 1/3 constitucional. Ademais, requer t udo acrescido de juros e correção monetária respectivo, até a data do efetivo pagamento. Sentença (Id. 14858051): exting uindo

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	        o feito com resolução de mérito, julgando totalmente improcedente o pleito autoral, posto que "(...) caberia à parte autora, em tese, apenas os valores delineados no art. 19-A da Lei 8.036/1990, qual seja o depósito do FGTS na conta vinculada do trabalhador cujo contrato de trabalho seja declarado nulo, e, sendo o caso, o direito ao saldo de salário. Todavia, no que tange aos depósitos de FGTS, não houve, na inicial, qualquer pedido da parte autora neste sentido, limitando-se os pedidos ao pagamento de férias acrescidas do terço constitucional e do décimo terceiro salário . Assim, restaria caracterizado o julgamento extra petita , em face da condenação do Município em parcela que não consta do rol de pedidos formulados pela parte promovente, não podendo se <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-

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	variant-alternates: normal; font-variant-position: normal;"> deferi r de ofício o pagamento do FGTS”. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Razões recursais (I d. 14858056): requer a reforma da sentença no sentido de c ondenar o Município d e Acarape no pagamento das verbas constitucionais pleiteadas na petição inicial, a saber: férias simples e proporcionais, acrescidas do terço constitucional, bem como o décimo terceiro integral e proporcional ao período de trabalho reconhecido na sentença . Ademais, requer ainda os saldos de salário e o depósito do FGTS (fundo de garantia por tempo de serviço), est e últim o devid o e reconhecid o ex officio, por se tratar de verba de natureza alimentar decorrente da contratação do Recorrente. Por fim, pugna pela condena ção d o Recorrido em honorários sucumbenciais fixados em 15% em favor dos patronos do Recorrente.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> O M unicípio de A carape , embora regularmente intimada, deixou de ofertar contrarrazões, conforme certidão em documento de Id. 14858059.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Parecer da Procuradoria Geral de Justiça (I d. 15165455): opinando pelo conhecimento do presente apelo recursal, mas pelo seu não provimento.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> É o relatório. </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p

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	style="text-align: center;"> <br /> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> <br /> Inicialmente, observa-se que o apelante pretende introduzir apenas em sede de recurso o argumento relativo à condenação do ente público às verbas re ferente s a o saldo de salário e d o depósito do FGTS . Entretanto, o tema não foi suscitado na primeira instância, não sendo objeto de apreciação pelo J uízo a quo , bem como não sendo matéria cognoscível de ofício. Dessa forma, entende-se que a pretensão de discutir a matéria caracteriza nítida inovação recursal, impedindo a apreciação do recurso. Destarte, a apelação não é cabível neste ponto, pois, do contrário, seria caracterizada a supressão de instância. Nesse diapasão, veja-se ementa de julgado proferido no âmbito deste Tribunal de Justiça: <br /> RECURSO APELATÓRIO EM AÇÃO ORDINÁRIA DE COBRANÇA. ADICIONAL DE PERICULOSIDADE. DIREITO ABRANGIDO EM LEI MUNICIPAL. QUESTÕES TRAZIDAS NO APELO NÃO CONHECIDAS. MATÉRIAS NÃO APRECIADAS PELO JUÍZO SINGULAR. INOVAÇÃO RECURSAL. OFENSA AO DUPLO GRAU DE JURISDIÇÃO E AO DEVIDO PROCESSO LEGAL. IMPOSSIBILIDADE. RECURSO NÃO CONHECIDO. SENTENÇA MANTIDA. 1. É cediço que a devolutividade no recurso de apelação fica restrita ao que foi abordado pela decisão impugnada. Dessa forma, resta proibida manifestação sobre pontos não ventilados no primeiro grau, pois do contrário, poderia incorrer em verdadeira supressão de instância, o que é vedado. 2. Recurso Apelatório não conhecido. Sentença mantida. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em não conhecer do Recurso Apelatório, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data registrada no sistema. FRANCISCO GLADYSON PONTES Relator (Apelação Cível - 0000898-06.2019.8.06.0066, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 24/11/2021, data da publicação: 24/11/2021) <br /> Em relação aos demais temas, conheço do apelo, pois preenchidos os requisitos de admissibilidade extrínsecos e intrínsecos. O caso é de não provimento do recurso, já adianto. <span

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	style="font-size: 12pt;"> O cerne da presente querela consiste em analisar o direito do autor, ora apelante, ao recebimento de verbas trabalhistas que entende lhe serem devidas , quais sejam: férias simples e proporcionais, acrescidas do terço constitucional, bem como o décimo terceiro integral e proporcional. De plano, é necessário definir a natureza da relação jurídica havida entre as partes . O autor/apelante alega que foi contratado pelo Município de Acarape, para exercer a atividade de Guarda Municipal, admitido aos serviços no dia 03/04/2017 , recebendo mensalmente salário no importe de R$ 1.100,00 (um mil e cem reais) . <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-

Processo	0200454-05.2022.8.06.0156
	alternates: normal; font-variant-position: normal;"> Afirma que trabalhou de forma contínua e ininterrupta sem receber o direito às f érias, nem ao 13º s alário, até o dia 08/05/2019, quando foi comunicado do fim de sua contratação. </p><p style="line-height: 200%; orphans: 0; widows: 0; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Dos documentos acostados pelo próprio autor à sua peça preambular, temos que o Município de Acarape, por intermédio da L ei nº 504/ 2015, criou o "Programa Inspetor Patrimonial de Guarda Municipal Voluntário" (Id. 14858028) , tendo o autor/apelante sido aprovado no concurso realizado para ocupação deste "cargo/função de Inspetor Patrimonial Voluntário" (Id. 14858031). </p><p style="line-height: 200%; orphans:

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	0; widows: 0; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Acerca do referido programa e funções, a L ei municipal nº 504/2015 dispõe que : </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Art. 1º. Fica criado, no âmbito do Município de Acarape, o Programa Inspetor Patrimonial de Guarda Municipal Voluntário. </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> Parágrafo único. Os procedimentos para o desenvolvimento do programa e admissão dos voluntários dar-se- á na forma da regulamentação desta lei, a ser expedida pelo poder Executivo. </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> (...) </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> Art. 3º. A atividade de Inspetor Patrimonial de Guarda Municipal Voluntário não gera vínculo empregatício, nem qualquer obrigação de natureza trabalhista, previdenciária ou afim, e é considerada serviço público relevante, estabelecendo presunção de idoneidade moral, bem como preferência, em igualdade de condições, nas licitações e concursos públicos </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> (...) </p><p style="line-height: 200%; orphans: 0;

Processo	0200454-05.2022.8.06.0156
	widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> Art. 5º. Ao Inspetor Patrimonial de Guarda Municipal Voluntário não é permitido: (...) II – receber, a qualquer título, remuneração pela prestação do serviço voluntário; (grifei) <br /> Ademais , importa, ainda, transcrever o Edital de 09 de janeiro de 2017, publicado no Diário Oficial da União tratando do referido "cargo/função" (Id. 14858030) , in verbis: <br /> “ <span style="font-

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	size: 10pt;"> A Secretaria Municipal de Segurança Pública de Acarape, através da portaria 04/2017, abre concurso público para seleção e preenchimento de 70 vagas de Inspetor Patrimonial voluntário; cargo e/ou função pública relevante, completamente sem remuneração, criado pela lei municipal 504/2015 de 12 de Dezembro de 2015 ; com prerrogativas e/ou função de auxiliar voluntariamente na segurança desarmada dos eventos desta prefeitura, e vigilância dos prédios públicos em casos de falta de algum vigia. A inscrição terá valor de R$ 20,00. As inscrições serão realizadas de 16 a 18 de Janeiro de 2017, na Secretaria M. de Segurança pública de Acarape; no horário de 08:00h as 17:00h. E o edital estará disponível ao acesso de todos os interessados no referido local de inscrição. Para inscrever-se o interessado deve preencher o requerimento de inscrição, que também estará disponível no local, e entregar junto com o requerimento uma cópia de seu RG. As provas serão realizadas no dia 21 de Janeiro de 2017, as 14hs na escola Antônio Marinheiro, na localidade de Pau Branco em Acarape-CE”. <br /> Nesse sentido, restado demonstrado que o "Programa Inspetor Patrimonial de Guarda Municipal Voluntário" destina-se ao preenchimento de função voluntária e sem remuneração. A L ei F ederal nº 9.608/1998 permite o serviço voluntário, todavia ressalta que não <span style="background:

Processo	0200454-05.2022.8.06.0156
	transparent;">gera vínculo empregatício, nem obrigação de natureza trabalhista previdenciária ou afim , senão vejamos: <br /> Art. 1º - Considera-se serviço voluntário, para os fins desta Lei, a atividade não remunerada prestada por pessoa física a entidade pública de qualquer natureza ou a instituição privada de fins não lucrativos que tenha objetivos cívicos, culturais, educacionais, científicos, recreativos ou de assistência à pessoa. Parágrafo único. O serviço voluntário não gera vínculo empregatício, nem obrigação de natureza trabalhista previdenciária ou afim. (grifei) <br /> Nesse sentido , não há nos autos prova de que tenha havido vínculo empregatício e o pagamento da respectiva remuneração de R$ 1.100,00 (um mil e cem

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	reais) , relacionado ao cargo de Inspetor Patrimonial de Guarda Municipal Voluntário. Compulsando os autos, percebe-se que o a utor, p ara fazer prova do direito alegado, traz apenas aos autos fotocópia de sua carteira de Inspetor da Guarda Municipal (I d. 14858020), emitida em 03/04/2017 , como também certificação do ente público no Curso de Inspetor Patrimonial de Guarda Municipal (I <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-

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	alternates: normal; font-variant-position: normal;"> d. 14858035). A inexistência de prova de que prestou serviço remunerado em virtude da aprovação em processo seletivo para preenchimento do cargo de Inspetor Patrimonial Voluntário impõe a improcedência do pedido inaugural. Assim, tenho que o a utor não se desincumbiu do ônus de provar o direito alegado, o que decorre da distribuição estática do ônus da prova disposto no inciso I do art. 373 do CPC/2015: &#160; Art. 373. O ônus da prova incumbe: I - ao autor, quanto ao fato constitutivo de seu direito; <br /> A respeito da mesma situação versada dos autos, cabe expor o precedente deste egrégio Tribunal de Justiça do Estado do Ceará: <br /> <span style="font-family: arial, helvetica, sans-serif;"> <span style="font-size: 10pt;"> <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal;"> <span style="font-size: small;">DIREITO ADMINISTRATIVO. AÇÃO ORDINÁRIA. ALEGAÇÃO DE CONTRATATAÇÃO TEMPORÁRIA E ASSUNÇÃO DE FUNÇÃO PÚBLICA VOLUNTÁRIA. AUSÊNCIA DE PROVA DO DIREITO ALEGADO. SENTENÇA EXTRA

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	PETITA. INOBSERVÂNCIA À DISTRIBUIÇÃO ESTÁTICA DO ÔNUS DA PROVA. A ADMINISTRAÇÃO PODE ANULAR SEUS ATOS ILEGAIS OU REVOGÁ-LOS QUANDO INCONVENIENTES OU INOPORTUNOS. RECURSOS CONHECIDOS, MAS PROVIDO APENAS O DO MUNICÍPIO. 1. Quanto ao capítulo da sentença que condenou o Município de Acarape ao recolhimento da verba fundiária (FGTS), este deve ser cassado por não integrar o pleito inaugural. 2. Não há prova de tenha havido vínculo jurídico-administrativo ou estatutário entre o Promovente e Município de Acarape, nem de que tenha havido prestação de serviço ou o pagamento da respectiva remuneração, relacionado ao cargo de Guarda Municipal ou Inspetor Patrimonial Voluntário. O inciso II do art. 5º da Lei Municipal nº 504/2015, dispõe que ao Inspetor Patrimonial de Guarda Municipal Voluntário não é permitido receber, a qualquer título, remuneração pela prestação do serviço voluntário. 3. A inexistência de prova de que prestou serviço remunerado antes e/ou depois do lançamento do edital de processo seletivo para preenchimento do cargo de Inspetor Patrimonial Voluntário impõe a improcedência do pedido inaugural. 4. Quanto ao teor do Decreto nº 5/2019, que formalizou a anulação do processo seletivo simplificado de escolha dos inspetores patrimoniais, não vislumbro ilegalidade ou abuso de poder uma vez que a Administração tem o poder-dever de anular seus atos quando eivados de vícios ou revogá-los, quando inconvenientes ou inoportunos, a teor da Súmula nº 473 do STF. 5. Recursos conhecidos, mas provido apenas o do Município de Acarape. ACÓRDÃO Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer dos recursos, mas para dar provimento apenas ao do Réu, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO Relator (Apelação Cível - 0200105-98.2022.8.06.0027, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 13/03/2023, data da publicação: 13/03/2023) </p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> <br /> </p><p style="line-height: 200%; orphans: 0; widows: 0; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Portanto, dos documentos constantes nos autos, especialmente do colacionado junto à exordial, não há como concluir que o autor tinha um vínculo empregatício com o Município e recebia, a título de salário, a importância de R$ 1.100,00 (um mil e cem reais) por mês, a justificar o ajuizamento da demanda a fim de receber as verbas trabalhistas. </p><p style="line-height: 200%; orphans: 0; widows: 0; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Diante do exposto, conheço parcialmente da Apelação Cível para NEGAR-LHE PROVIMENTO , devendo ser mantida a improcedência do pleito inaugural, ainda que por fundamento diverso.</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> Majoro os honorários advocatícios acrescentando 2% (dois por cento) ao fixado na instância singular, o que faço com supedâneo no art. 85, §4º, II c/c §11º, todos do CPC, no entanto, mantenho a condição suspensiva de exigibilidade prevista no art. 98, § 3º, do CPC.&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> É como voto. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	29
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	JEFFERSON DE PAULA VIANA FILHO - (CE18401-A)
Polo passivo	PAULO HENRIQUE INACIO LUCENA
Advogado(s) - Polo passivo	JOSE EDAVIVERTON ALVES DE SOUSA - (CE43575-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgoI+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7R7ews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGlI9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <br /> </p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 200%;"> ACÓRDÃO : Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>&nbsp;MERGEFIELD &quot;&Oacute;rg&atilde;o Julgador#Retorna o nome da vara onde est&aacute; o processo=8@PROC&quot; <![endif]--> 3ª Câmara Direito Público<!--[if supportFields]><![endif]--> do Tribunal de Justiça do Estado do Ceará, por unanimidade, em ACOLHER os embargos de declaração para sanar o apontado vício, nos termos do voto do relator.</p><p class="EmentadoAcrdo" style="margin-bottom: 12.0pt; line-height: 200%;"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p><p class="EmentadoAcrdo" style="text-align: center; line-height: 200%;" align="center"><!--[if supportFields]>&nbsp;MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot; <![endif]--> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <!--[if supportFields]><![endif]--> &#160; </p><p class="EmentadoAcrdo" style="text-align: center; line-height: 200%;" align="center"><!--[if supportFields]>&nbsp;MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC&quot; <![endif]--> Relator <!--[if supportFields]><![endif]--> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> &#160; </p><p class="MsoNormal" style="text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Trata-se de Embargos de Declaração opostos pela parte apelante em face do acórdão Id. 13873940, cuja ementa transcrevo a seguir: </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> EM ENTA: DIREITO ADMINISTRATIVO E&#160;PROCESSUAL CIVIL.&#160;APELAÇÃO CÍVEL. AÇÃO DE

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	OBRIGAÇÃO DE FAZER C/C ANULAÇÃO DE ATO ADMINISTRATIVO. CONCURSO PÚBLICO. PROCEDIMENTO DE HETEROIDENTIFICAÇÃO. AUTODECLARAÇÃO REJEITADA. DEFICIÊNCIA NA FUNDAMENTAÇÃO CONFIGURADA. VIOLAÇÃO AO ART. 93, IX, CF/88 E ART. 50, I E III DA LEI Nº 9.784/1999. AÇÃO JULGADA PROCEDENTE. RECONDUÇÃO DO CANDIDATO ÀS VAGAS DESTINADAS À COTA RACIAL. IMPOSSIBILIDADE DE SUBSTITUIÇÃO DA COMISSÃO DE AVALIAÇÃO PELO PODER JUDICIÁRIO. NECESSIDADE DE SUBMISSÃO DO CANDIDATO À NOVA AVALIAÇÃO DE HETEROIDENTIFICAÇÃO. IMPOSSIBILIDADE DE AFERIÇÃO DO PROVEITO ECONÔMICO. HIPÓTESE DE ARBITRAMENTO POR EQUIDADE DA VERBA HONORÁRIA. PRECEDENTES DO TJCE. RECURSO DE APELAÇÃO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Em síntese , a parte embargante aponta a existência de contradição no julgado em relação à condenação do recorrente em honorários sucumbenciais majorados quando foi vencedor em seu recurso, mesmo que parcialmente. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Sem contrarrazões, por não ser o caso de aplicação do disposto no § 4º <!--[if !supportFootnotes]--> [1] <!--[endif]--> do art. 1.024 do CPC. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> É o relato necessário. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;"> &#160; VOTO </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Nos termos do art. 1.022 do CPC, os embargos de declaração têm a finalidade de esclarecer obscuridade, eliminar contradição, suprir omissão e corrigir erro material. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Como se sabe, toda e qualquer sentença ou acórdão, independentemente do seu conteúdo, é passível de complementação ou integração pelo manejo de embargos de declaração, caso haja algum dos mencionados vícios, consistindo, pois, em espécie recursal com fundamentação vinculada. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> No presente caso, da leitura da decisão embargada, verifica-se que, embora a parte recorrente tenha obtido parcial provimento em seu pleito, houve majoração parcial dos honorários, tornando a decisão contraditória. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Pois bem. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Segundo a jurisprudência, a contradição atinente aos embargos de declaração é entendida como a decisão que não se encontra coerente com a fundamentação do juiz ou colegiado, de modo que o saneamento de tal vício, isto é, o esclarecimento da decisão, não implica, necessariamente, alteração do conteúdo do provimento jurisdicional, ou seja, não incide o chamado efeito infringente. </p><p

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	class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Nesse sentido são os julgados das turmas do STJ: AgInt no AREsp 1945761/RJ, Rel. Ministro MAURO CAMPBELL MARQUES, SEGUNDA TURMA, julgado em 14/02/2022, DJe 17/02/2022; EDcl no AgInt no REsp 1600622/MT, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 13/12/2021, DJe 15/12/2021; EDcl no REsp 1769209/AL (recurso repetitivo), Rel. Ministro BENEDITO GONÇALVES, PRIMEIRA SEÇÃO, julgado em 21/10/2021, DJe 26/10/2021; EDcl no AgInt no AREsp 1197814/RS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 05/10/2021, DJe 11/10/2021; EDcl nos EDcl no AgRg no REsp 425788/RJ, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 20/04/2021, DJe 31/05/2021; EDcl no AgInt no REsp 1879319/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 01/03/2021, DJe 03/03/2021. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Compulsando os autos, verifico que assiste razão ao recorrente, visto que o pleito recursal foi parcialmente acolhido, não sendo o caso, assim, de majoração da verba honorária. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Portanto, onde se lê : “Desse modo, fixo os honorários sucumbenciais em R$ 1.200,00 (hum mil e duzentos reais), já majorados em grau recursal (art.85, §11º do CPC), devendo o pagamento ser efetuado de forma equitativa entre os promovidos.”; leia-se : Desse modo, fixo os honorários sucumbenciais em R$ 1.000,00 (hum mil reais), por equidade, nos termos do art. 85, § 8º do CPC, devendo o pagamento ser efetuado de forma equitativa entre os promovidos. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Isso posto, acolho os presentes Embargos de Declaração para sanar a contradição referenciada, restando eliminado, assim, o apontado vício, nos moldes acima. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> É como voto. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Fortaleza, data e hora indicadas pelo sistema. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Relator </p><div style="mso-element: footnote-list;"><!--[if !supportFootnotes]--><br /> <hr size="1" /><!--[endif]--> <div id="ftn1" style="mso-element: footnote;"> <p class="MsoFootnoteText"> <!--[if !supportFootnotes]--> [1] <!--[endif]--> Art. 1.024. O juiz julgará os embargos em 5 (cinco) dias.</p> <p class="MsoFootnoteText">[...]</p> <p class="MsoFootnoteText">§ 4º Caso o acolhimento dos embargos de declaração implique modificação da decisão embargada, o embargado que já tiver interposto outro recurso contra a decisão originária tem o direito de complementar ou alterar suas razões, nos exatos limites da modificação, no prazo de 15 (quinze) dias, contado da intimação da decisão dos embargos de declaração.</p></div></div><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	30
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dano ao Erário
Polo ativo	FRANCISCO ADRIAN MARCIO DE SOUZA
Advogado(s) - Polo ativo	FRANCISCO ADRIAN MARCIO DE SOUZA - (CE33765-A)
Polo passivo	MUNICIPIO DE ALTO SANTO
Advogado(s) - Polo passivo	JOSE ALEIXON MOREIRA DE FREITAS - (CE28119-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaAan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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alt="" /> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; PROCESSO:&#160;0050120-77.2021.8.06.0031 -&#160;APELAÇÃO CÍVEL (198) APELANTE: FRANCISCO ADRIAN MARCIO DE SOUZA APELADO: MUNICIPIO DE ALTO SANTO EP4/A4 <br /> EMENTA:&#160; PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO POPULAR COM PEDIDO LIMINAR. SENTENÇA DE PROCEDÊNCIA. LEI MUNICIPAL Nº 750/2020. SUBSÍDIO DO PREFEITO, VICE-PREFEITO E SECRETÁRIOS DO MUNICÍPIO DE ALTO SANTO. NULIDADE DOS EFEITOS. IRRESIGNAÇÃO DO PATRONO DO DEMANDANTE APENAS QUANTO À FIXAÇÃO DOS HONORÁRIOS ADVOCATÍCIOS DE SUCUMBÊNCIA. BEM JURÍDICO INESTIMÁVEL. APRECIAÇÃO EQUITATIVA. DEVER DE UNIFORMIZAÇÃO DE JURISPRUDÊNCIA. PRECEDENTES DO STJ

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	E&#160;DESTE&#160;TJCE. RECURSO DE APELAÇÃO&#160;CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA.</p><p class="EmentadoAcrdo" style="margin-bottom: 10.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> I. Caso em exame </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 1. Trata-se de Recurso de Apelação Cível interposto por Francisco Adrian Marcio de Souza em face de Sentença proferida pelo juízo da Vara Única da Comarca de Alto Santo/CE que julgou procedente a Ação Popular com pedido Liminar proposta em face do Município de Alto Santo.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> II. Questão em discussão </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 2. A controvérsia recursal consiste em averiguar o critério de fixação dos honorários advocatícios em sede de Ação Popular.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> III. Razões de decidir </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3. No presente caso, não é possível aferir de forma precisa o conteúdo econômico da demanda, tendo em vista que o provimento jurisdicional exarado na sentença da ação popular visa, precipuamente, preservar o interesse público e a coibir práticas ímprobas, o que, por si, já revela seu valor inestimável para o respeito à lei e à administração pública. &#160;</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 4. Em sede de Ação Popular, quando não for possível aplicar a regra geral de fixação dos honorários advocatícios (art. 85, § 2º, do CPC), deve-se adotar o critério da equidade, conforme previsto no art. 85, § 8º, do CPC.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> IV. Dispositivo e tese </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 5. Recurso de Apelação Cível conhecido e desprovido. Sentença mantida.</p><p class="EmentadoAcrdo" style="margin-bottom: 10.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> &#160;Tese de julgamento: “Devem ser fixadas as verbas honorárias conforme determinado pelo juízo do primeiro grau em pela quantia de R$ 1.000,00 (mil reais), com base no art. 85, § 8º.” &#160;</p><p class="EmentadoAcrdo" style="margin-bottom: 10.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Dispositivos relevantes citados: arts. 85, §§ 2º, 8º, 11º e 291 do CPC.</p><p class="EmentadoAcrdo" style="margin-bottom: 10.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;">Jurisprudência relevante citada: AgRg no AREsp 744.900/DF, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRATURMA, julgado em 22/9/2016, DJe 30/9/2016; Recurso Especial nº 1.885.691 - RS. Relator: Ministro Ricardo Villas Bôas Cueva. Julgado em: 26/10/2021. DJe 09/11/2021; STJ - REsp: 1975514 CE 2021/0375173-9, Relator: Ministro MARCO AURÉLIO BELLIZZE, Data de Publicação: DJ 22/02/2022; Apelação / Remessa Necessária&#160;- 0200292-74.2022.8.06.0070, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento:&#160; 30/10/2024, data da publicação:&#160; 30/10/2024; Apelação Cível&#160;- 0036561-53.2011.8.06.0112, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento:&#160; 09/11/2022, data da publicação:&#160; 10/11/2022. &#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em conhecer e negar provimento ao recurso de apelação cível, nos termos do voto do relator.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> &#160; <strong style="font-size: small;">Relator</p><p style="text-align: center;">&#160;</p><p

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	style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Trata-se de&#160; Recurso de Apelação Cível&#160;interposto por Francisco Adrian Marcio de Souza em face de Sentença proferida pelo juízo da Vara Única da Comarca de Alto Santo/CE que julgou procedente a Ação Popular com pedido Liminar proposta em face do Município de Alto Santo.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Ação:&#160;Aduziu o autor, em síntese, que a Câmara de Municipal de Alto Santo do Ceará aprovou a Lei municipal nº 750, de 27 de novembro de 2020, a qual define critérios para fixar o valor do subsídio do prefeito municipal, vice-prefeito e secretários para o período de 2021-2024. Todavia, tais vantagens geram aumento de despesas no período vedado por lei, bem como os vereadores não poderiam ter instituído tais benefícios remuneratórios, pois com o advento da Lei Complementar Federal n. 173/2020, em seu Art. 8º, veda qualquer aumento dessa natureza até dezembro de 2021, em virtude, da crise sanitária do Coronavírus. Destacou que as normas carecem de observância à Lei Complementar nº 101/2000 – Lei de Responsabilidade Fiscal, porquanto não estão acompanhadas de estimativa do impacto financeiro-orçamentário no exercício em que entrou em vigor e nos subsequentes, além da vedação de aumento de despesas nos últimos 180 dias que antecedem o fim do mandato, tornando nulo de pleno direito os valores alusivos ao aumento dessas despesas. Requereu, ao final, a concessão de medida liminar,&#160; inaudita altera pars, com lastro no Art.2º, c, parágrafo único, c, Art. 5º, §4º da Lei 4.717/65 e Art. 300 do CPC/15, para que o Requerido, até o final do julgamento da presente ação, se abstenha de pagar o aumento, a título de subsídio, prescritos na Lei municipal nº 750, de 27 de novembro de 2020. No mérito, requer a procedência do pleito autoral, decretando a nulidade dos atos lesivos ao erário público, presente no aumento do subsídio previstos na Lei municipal nº 750, de 27 de novembro de 2020, condenando os favorecidos ao integral ressarcimento pelo recebimento indevido das referidas vantagens, amparado nos Arts. 11 e 14 da 4.717/1965.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Sentença:&#160; (Id. 14415717)&#160; O juízo a quo julgou procedente os pedidos da autora, nestes termos:&#160; "Isso posto,&#160; JULGO PROCEDENTE o pedido exordial,&#160; para &#160;DECLARAR a nulidade dos efeitos decorrentes da aprovação da Lei Municipal nº 750, de 27 de novembro de 2020, da Câmara Municipal de Alto Santo-CE, exclusivamente em relação ao aumento do subsídio do Prefeito, Vice-Prefeito e seus Secretários para a legislatura 2021-2024, ratificando e tornando definitiva a tutela de urgência deferida ao ID 79632508.Sem custas. Condeno ainda o réu ao pagamento de honorários advocatícios,&#160;que fixo no valor de R$ 1.000,00 (CPC, art. 85, § 8º) ." </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Embargos de Declaração (Id. 14415723):&#160;alega o autor que houve contradição/obscuridade, no que tange a condenação da parte ré ao pagamento de honorários na referida sentença, haja vista, que o "valor de R$ 1.000,00, fundamentado no " (CPC, art. 85, § 8º) ", é contraditório ao caso em tela devendo ser sanado. Desse modo, requer que seja provido os embargos de declaração para fixar os honorários nos termos do Art. 85, § 2º, do CPC/2015.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Sentença dos Embargos de Declaração (Id. 14415726):&#160;Não Acolheu&#160;os&#160; aclaratórios, eis que ausentes as hipóteses previstas no art. 1.022 do CPC, mantendo inalterada a sentença.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Recurso de Apelação (Id. 14415729):&#160;Irresignado, o autor, apresentou o vertente Recurso de Apelação impugnando, exclusivamente, o critério de fixação da verba sucumbencial.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Contrarrazões Recursais (Id. 14415733):&#160;&#160;requer que seja mantida a sentença recorrida.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Manifestação do Ministério Público, o qual entende não haver mais interesse justificador da atuação respectiva, não cabendo, assim, manifestação sobre o mérito da demanda. No azo, reconhece inexistir irregularidade a ensejar a nulidade do feito ou matéria de ordem pública digna de observação. (Id.

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	15493922).</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> É o relatório. </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;">&#160;</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Trata-se de Apelação Cível interposta por Francisco Adrian Marcio de Souza que impugna, exclusivamente, os critérios de fixação dos honorários de sucumbência estipulados na sentença que julgou procedente a Ação Popular com pedido Liminar proposta em face do Município de Alto Santo.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Insurge-se o recorrente contra a sentença que condenou o réu em honorários advocatícios arbitrados no valor de R$ 1.000,00 (mil reais), nos moldes do art . 85, § 8º, do CPC. Para tanto, alega que o arbitramento de honorários por equidade, como fez o Juízo a quo, resume-se às causas em que for inestimável ou irrisório o proveito econômico ou, ainda, quando o valor da causa for muito baixo, o que não seria o caso dos autos, devendo a verba honorária ser fixada sobre o valor atribuído à causa, qual seja, R$ 438.400,08 (quatrocentos e trinta e oito mil reais e quatrocentos e oito centavos), de acordo com o art. 85, § 2º, do CPC.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Pois bem.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> A controvérsia recursal consiste em averiguar o critério de fixação dos honorários advocatícios.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> De início, acerca da possibilidade de fixação dos honorários advocatícios na Ação Popular, a &#160;Lei nº 4.717/65, em seu art. 12, prevê que a sentença sempre incluirá, na condenação dos réus, o pagamento dos honorários advocatícios ao autor.&#160; </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Nesse contexto, o referido artigo deve ser interpretado nos seus estritos termos, tendo em vista que isentar a parte ré da ação popular da obrigação de pagar honorários ao advogado da parte autora pode funcionar como um contraestimulo à participação do cidadão, que de alguma forma precisa remunerar o advogado que o representa. </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Desse modo, é o entendimento do Superior Tribunal de Justiça (STJ), destaca-se: </p><p style="line-height: 100%; margin-left: 4cm;" align="justify"> PROCESSUAL CIVIL. AÇÃO POPULAR. CONCESSÃO DE TUTELA ANTECIPADA. PERDA DO OBJETO. EXTINÇÃO SEM RESOLUÇÃO DO MÉRITO. CONDENAÇÃO DA PARTE RÉ AO PAGAMENTO DE HONORÁRIOS. PRINCÍPIO DA CAUSALIDADE.&#160; REGRA ESPECÍFICA DA LEI 4.717/1965. &#160;RECURSO PROVIDO.1. O entendimento de que, pelo princípio da simetria, o art. 18 da Lei 7.347/1985 também beneficia a parte ré da ação civil pública não pode ser aplicado no processo instaurado por ação popular. Isso porque a Lei 4.717/1965 contém regra específica acerca do ônus da sucumbência, impondo expressamente a condenação da parte ré a custas e honorários sempre que vencida na demanda.2.&#160; Há julgados mais recentes do Superior Tribunal de Justiça aderindo ao entendimento de que, mesmo no caso de ações civil públicas propostas por associações, deve haver a condenação da parte ré ao pagamento de honorários, como forma de estimular a participação da sociedade civil no processo coletivo. As mesmas razões levam à conclusão de que isentar a parte ré da ação popular da obrigação de pagar honorários ao advogado da parte autora pode funcionar como um contraestimulo à participação do cidadão, que de alguma forma precisa remunerar o advogado que o representa. 3. No

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	caso dos autos, após o ajuizamento da ação popular pela parte ora recorrente e o deferimento de cautelar, as partes contratantes rescindiram a avença, o que ensejou a extinção do processo sem resolução do mérito por perda de seu objeto. Consequentemente, as partes recorridas, que deram causa à demanda, devem ser condenadas ao pagamento de custas e honorários, nos termos do art. 12 da Lei 4.717/1965.4. Recurso especial provido.&#160;(REsp n. 2.137.086/PA, relator Ministro Paulo Sérgio Domingues, Primeira Turma, julgado em 18/6/2024, DJe de 26/6/2024.)&#160; </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Ressalta-se no que se refere à forma de fixação de honorários advocatícios de sucumbência em se tratando de ação popular, o Superior Tribunal de Justiça esclarece que “ há que se ter a devida cautela nas ações coletivas, em que os valores comumente são indicados de forma estimativa, pois, se de um lado, não devemos permitir a fixação da ação em patamar ínfimo, com vistas à diminuição dos honorários advocatícios, de outro, também não podemos incentivar a supervalorização da causa a fim de permitir que, a depender do critério utilizado, a verba honorária possa alcançar montante que se afigure desarrazoado (AgRg no AREsp 744.900/DF, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRATURMA, julgado em 22/9/2016, DJe 30/9/2016).”.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Compulsando-se os autos, entendo, nesse caso, não ser possível aferir de forma precisa o conteúdo econômico da demanda, tendo em vista que o provimento jurisdicional exarado na sentença da ação popular visa, precipuamente, preservar o interesse público e a coibir práticas ímprobas, o que, por si, já revela seu valor inestimável para o respeito à lei e à administração pública.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Ademais, nem mesmo foi explicitado, na inicial, como foi aferido o valor da causa em R$ 438.400,08 (quatrocentos e trinta e oito mil reais e quatrocentos e oito centavos).</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Por conseguinte, não se pode inferir, com a certeza desejada, qual o valor do proveito econômico alcançado pela parte autora, com o julgamento favorável à sua pretensão.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Salienta-se que o art . 291 do CPC exige que todo processo tenha um valor da causa certo, mesmo quando o conteúdo econômico não possa ser facilmente determinado. Esse valor deve, sempre que possível, representar o benefício econômico que a parte pretende obter ao ingressar com a ação. A definição do valor da causa é fundamental para o cálculo das custas processuais e para estabelecer a competência do juízo. Assim, ainda que o pedido não tenha um valor econômico imediato, o montante atribuído deve refletir o potencial ganho buscado no processo.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> In casu, não se pode apontar, com precisão, qual o valor do dano ao erário.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Assim, não merece acolhimento a insurgência do apelante quanto à condenação nos honorários advocatícios sucumbenciais, fundamentada na regra geral, ao argumentar que a condenação deveria se basear no valor da causa. Isso porque não é possível considerar esse valor como o efetivo proveito econômico obtido com o desfecho desta ação.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Nesse contexto, o Superior Tribunal de Justiça, ao julgar o REsp 1.885.691-RS, sob a relatoria do Ministro Ricardo Villas Bôas Cueva, decidiu que, em Ação Popular, quando não for possível aplicar a regra geral de fixação dos honorários advocatícios (art. 85, § 2º, do CPC), deve-se adotar o critério da equidade, conforme previsto no art. 85, § 8º, do CPC.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Com efeito, quando se tratar de demanda cujo&#160; bem jurídico é inestimável,&#160;e, conforme jurisprudência do&#160; STJ ,&#160;os honorários advocatícios devem ser fixados por equidade, podendo, inclusive, serem revistos a qualquer momento e até mesmo de ofício, sem que isso configure&#160; reformatio in pejus.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> A propósito, do STJ:</p><p class="Textbody" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> <em> <span style="font-size: x-small;"> <span style="font-family:

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	arial, helvetica, sans-serif;"> <span style="font-family: Arial, Verdana, sans-serif; font-size: 11px;">PROCESSUAL CIVIL. AÇÃO POPULAR. PERDA SUPERVENIENTE DO OBJETO. EXTINÇÃO. HONORÁRIOS ADVOCATÍCIOS. PRINCÍPIO DA CAUSALIDADE. FIXAÇÃO. JUÍZO DE EQUIDADE. POSSIBILIDADE. PROVEITO ECONÔMICO. AFERIÇÃO. REEXAME DE MATÉRIA FÁTICA. INVIABILIDADE. PREQUESTIONAMENTO. AUSÊNCIA. 1. Conforme estabelecido pelo Plenário do STJ, aos recursos interpostos com fundamento no CPC/2015 (relativos a decisões publicadas a partir de 18 de março de 2016) serão exigidos os requisitos de admissibilidade recursal na forma nele prevista (Enunciado Administrativo n. 3). 2. N o novo regime processual, a fixação dos honorários advocatícios mediante juízo de equidade ganhou caráter residual, a ser exercido nas causas de inestimável ou irrisório proveito econômico, conforme o § 8º do art. 85 do CPC/2015. 3. A "equidade constante do § 8º do art. 85 do CPC/2015 incide apenas quando o proveito econômico obtido não seja identificado, ou seja, inestimável ou irrisório" (AgInt no REsp 1807225/DF, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 12/11/2019, DJe 26/11/2019). 4. Quando não é possível estimar eventual proveito econômico, a egrégia Primeira Turma tem entendido que os honorários de sucumbência devem ser arbitrados, por apreciação equitativa, com observância dos critérios do § 2º do art. 85 do CPC/2015, conforme disposto no § 8º desse mesmo dispositivo (REsp 1826794/SE, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 17/09/2019, DJe 11/10/2019). 5. Nas hipóteses de extinção da demanda sem resolução do mérito por perda superveniente de objeto, em que a demandada deve arcar com os ônus sucumbenciais, diante do princípio da causalidade, é possível arbitrar a verba honorária "com base na equidade, critério que encontra respaldo nos princípios da razoabilidade e da proporcionalidade previstos no art. 8º do CPC/2015." (AgInt no REsp 1836344/SE, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA TURMA, julgado em 10/08/2020, DJe 17/08/2020). 6. Caso em que a ação popular foi extinta sem resolução do mérito, por perda superveniente do objeto (revogação no curso da demanda do edital de concorrência internacional cuja anulação se pleiteava) e, ante o princípio da causalidade, a parte ré foi condenada a pagar a verba sucumbencial. 7. Enquanto a parte autora, ora agravante, pretende o arbitramento dos honorários advocatícios em prol de seus advogados de acordo com os critérios dos §§ 3º e 4º do art. 85 do CPC/2015, ou seja, entre os percentuais mínimo de 1% e máximo de 3% sobre o valor atualizado da causa de R$ 1.660.000.000,00 (um bilhão, seiscentos e sessenta milhões), a Corte de origem reputou inestimável o valor da causa e entendeu que a verba honorária de sucumbência deveria ser fixada mediante apreciação equitativa, no montante de R$ 12.000,00 (doze mil reais), haja vista o seguinte: a) trata-se de pedido declaratório e não condenatório; b) não há proveito econômico a aferir; e c) houve exagero no valor atribuído à causa, porquanto a parte autora desconsiderou "o quantum que o Estado gastaria com o contrato sem ter um centavo sequer de retorno". 8. Não é possível discordar do pressuposto fático referente à impossibilidade de estimar o proveito econômico a ser obtido com o resultado da demanda e, assim, afastar a fixação da verba por equidade, em face do óbice inserto na Súmula 7 do STJ. Precedentes. 9. A tese de que o valor da causa espelhava o valor do contrato, segundo prescreve o art. 259 do CPC/1973, então vigente, não foi enfrentada na origem&#160; porquanto deixou de ser agitada nos dois embargos de declaração ali opostos, pelo que, no ponto, o especial esbarra no óbice da Súmula 282 do STF. 10. O teor do §6° do art. 85 do CPC/2015, a despeito de invocado nos primeiros embargos, também não foi analisado pelo Tribunal a quo, o que permite a incidência da Súmula 211 do STJ. 11. Segundo o entendimento desta Corte de Justiça, para se reconhecer o prequestionamento ficto de que trata o art. 1.025 do CPC/2015, na via do especial, impõe-se ao recorrente a indicação de contrariedade ao art. 1.022 do CPC/2015, o que não ocorreu. 12. Agravo interno desprovido. (AgInt no REsp n&#160; 1975514 /RS, relator Ministro Gurgel de Faria, Primeira Turma, julgado em 16/11/2020, DJe de 30/11/2020.)</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm;"> Salienta-se precedente do Tribunal de Justiça do Estado do Mato Grosso do Sul sobre temática semelhante, destaca-se:</p><p class="western" style="line-height: 100%; margin-left: 4cm;" align="justify"> EMENTA – RECURSO DE APELAÇÃO DA PARTE AUTORA E DA PARTE RÉ - AÇÃO POPULAR – REAJUSTE DO SUBSIDIO DOS VEREADORES DA CÂMARA MUNICIPAL – LAPSO TEMPORAL PREVISTO NO ART. 21 DA LEI DE RESPONSABILIDADE FISCAL NÃO OBSERVADO - ILEGALIDADE – ATO NORMATIVO NULO - HONORÁRIOS DE SUCUMBÊNCIA FIXADOS PRO EQUIDADE - POSSIBILIDADE - MAJORAÇÃO DEVIDA - RECURSO DA PARTE RÉ NÃO PROVIDO – RECURSO DA PARTE AUTORA PROVIDO EM PARTE. Segundo previsão do parágrafo único, do art. 21, da Lei Complementar nº 101/2000, Lei de Responsabilidade Fiscal, é nulo, de pleno direito, o ato que resulta aumento da despesa com pessoal

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	expedido nos cento e oitenta dias anteriores ao final do mandato do titular do respectivo Poder . Ainda que a parte vencida seja a Fazenda Pública, não sendo possível mensurar o proveito econômico, como na hipótese em que o valor atribuído à causa foi por estimativa, os honorários devem ser fixados de forma equitativa pelo juiz, nos termos do § 8º do art. 85 do CPC, observando o disposto nos incisos do § 2º, do mesmo códex. Analisando o grau de zelo, o trabalho desenvolvido pelo advogado e o tempo exigido para os seus serviços e, ainda, atento aos princípios da proporcionalidade e razoabilidade, concluo que os honorários advocatícios devem ser majorados, nos termos do § 8º do art. 20 do Código de Processo Civil/2015.&#160;&#160; (TJMS. Apelação Cível n. 8000941-28.2020.8.12.0800,&#160; Anastácio,&#160; 2ª Câmara Cível, Relator (a):&#160; Juiz Vitor Luis de Oliveira Guibo, j: 24/08/2023, p:&#160; 28/08/2023) </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm;"> E desta Corte de Justiça do Estado do Ceará, com desta ques: </p><p class="Textbody" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> <em> <span style="font-size: x-small;"> <span style="font-family: arial, helvetica, sans-serif;">DIREITO CONSTITUCIONAL E ADMINISTRATIVO. REMESSA OFICIAL E APELAÇÃO CÍVEL EM AÇÃO POPULAR. PRELIMINAR DE INTEMPESTIVIDADE RECURSAL. REJEIÇÃO. IRRESIGNAÇÃO INTERPOSTA NO PRAZO LEGAL. MÉRITO. SUBSTITUIÇÃO DO POLO PASSIVO. PRECLUSÃO. AUSÊNCIA DE RECURSO NO TEMPO CERTO. SUBSÍDIO DO PRESIDENTE DA CÂMARA DOS VEREADORES. FIXAÇÃO EM PATAMAR ACIMA DO QUE PERCEBEM OS DEMAIS VEREADORES. POSSIBILIDADE, DESDE QUE RESPEITADO O TETO CONSTITUCIONAL (ART. 29, VI, ¿A¿, DA CF/1988). IMPOSSIBILIDADE DE ATRELAR O SUBSÍDIO DOS VEREADORES AOS AUMENTOS CONCEDIDOS AOS DEPUTADOS ESTADUAIS. AUTONOMIA MUNICIPAL. PRINCÍPIO DA ANTERIORIDADE. RESERVA DE LEI LOCAL. PRECEDENTE DO STF. HONORÁRIOS DE SUCUMBÊNCIA. FIXAÇÃO SOMENTE EM DESFAVOR DA PROMOVIDA. REEXAME NECESSÁRIO E RECURSO VOLUNTÁRIO CONHECIDOS E EM PARTE PROVIDOS. 1. O cerne submetida a exame reside em aferir se a Câmara de Vereadores de Crateús é parte legítima para compor o polo passivo da lide ou se há possibilidade, no atual estágio processual, de substituí-la pelo Município de Crateús. No mais, deve ser averiguado se houve equívoco na sentença ao suspender os efeitos da Lei Municipal de nº 859/2020 apenas quanto ao valor pago ao Presidente da Câmara que ultrapassar 40% do subsídio dos Deputados Estaduais, até mesmo com os acréscimos posteriores que ocorrerão, em favor do legislativo estadual, em 01/02/2024 e 01/02/2025. 2. PRELIMINAR DE INTEMPESTIVIDADE RECURSAL 2.1. No caso em apreço, ao inverso do que entendeu a recorrida, a decisão proferida nos embargos declaratórios foi disponibilizada no Diário da Justiça de 1º de novembro de 2023, uma quarta-feira. Ocorre que o dia 02.11 foi feriado (dia de finados), enquanto que no dia 03.11 foi declarado ponto facultativo no Poder Judiciário, conforme informação presente no sítio eletrônico do TJCE e corroborada pela parte promovida, situação na qual ficam suspensos os prazos processuais. Desse modo, considera-se publicada a intimação na data de 06.11.2023 (segunda-feira), nos termos do artigo 4º, § 3º, da Lei Federal de nº 11.419/2006. 2.2. Sendo de 15 (quinze) dias úteis o prazo do qual dispunha o apelante para recorrer (art. 219 do CPC/2015) e sabendo-se que, na contagem dos prazos no âmbito do processo civil exclui-se o dia do início, tem-se que o termo a quo foi o dia 07.11.2023 (terça-feira) de forma que o prazo fatal ocorreria em 28 de novembro de 2023, também um dia de terça-feira, isso excluindo o feriado relativo ao dia da Proclamação da República (dia 15.11). Nesse cenário, tendo o apelante ingressado com sua irresignação na data de 28.11.2023, consoante se constata pelo sistema SAJ-SG, aba ¿propriedades do documento¿, tempestivo é o recurso que se cuida. 2.3. Preliminar rejeitada. 3. MÉRITO 3.1. Conquanto se trate a (i)legitimidade para a causa matéria de ordem pública, está sujeita à preclusão nos casos em que já houve decisão sobre o assunto na ação de origem, como na espécie, não havendo interposição de agravo de instrumento. Veja-se que a omissão do Juízo a quo em decidir a questão corresponde à negativa do pedido. 3.2. Ademais, nos termos do enunciado sumular nº 525 do Superior Tribunal de Justiça, embora não possua personalidade jurídica mas apenas personalidade judiciária, a Câmara de Vereadores poderá demandar em Juízo para defender suas prerrogativas institucionais. No caso concreto, discute-se possível ilegalidade no valor do subsídio do Presidente da Casa Legislativa de Crateús, fixado por lei daquele poder, no âmbito de sua prerrogativa institucional, de modo que não se pode afastar sua capacidade de ser parte e, portanto, a legitimidade passiva para responder a demanda que se cuida. 3.3. É importante frisar que, não obstante a causa de pedir tenha por fundamento pretensa afronta perpetrada pela lei municipal sob análise, ao teto do subsídio dos vereadores previsto no art. 29, VI, "c", da Constituição Federal de 1988, a jurisprudência vem admitindo o manejo da via popular em tais casos, em virtude não constar pedido de declaração de inconstitucionalidade da norma. 3.4. A verba em discussão deve ser fixada, por meio de lei específica, em cada legislatura para a

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	subsequente (art. 29, VI, da CF/1988). E isso é assim em virtude da necessária previsão, no orçamento, de numerário para custear tal despesa, bem como para que seja respeitada a autonomia municipal. Permitindo-se o aumento automático a cada vez que houvesse majoração nos subsídios dos deputados, estaria se chancelando uma espécie de gatilho para aumentar despesas na própria legislatura, tal qual ocorria com a edição de resoluções, prática julgada inconstitucional pelo Órgão Especial deste Tribunal de Justiça (Incidente de arguição de Inconstitucionalidade de nº 0000232-43.2018.8.06.0000). 3.5. O subsídio de Presidente da Câmara Municipal pode ir além do valor pago aos demais vereadores, desde que se obedeça ao teto constitucional e mediante expressa previsão legal. Não se pode ter por parâmetro, para o aumento discutido na lide, o Ato Deliberativo da Assembleia Legislativa do Ceará, de nº 917, em virtude do que decidiu o Pretório Excelso em sede de Ação Direta de Inconstitucionalidade (ADI 6545). 3.6. Na hipótese, houve a sucumbência recíproca, tendo em vista que não foi atendido o pleito autoral de ressarcimento ao erário. Contudo, o autor da ação popular somente pagará custas e honorários se comprovada má-fé, situação não evidenciada nos autos, impondo-se, assim, apenas a condenação da promovida na referida verba. 3.7. Reexame necessário e recurso voluntário conhecidos e em parte providos. ACÓRDÃO Acordam os integrantes da Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, unanimemente, em conhecer da remessa oficial e do recurso apelatório para rejeitar-lhe a preliminar suscitada e, no mérito, dar-lhes parcial provimento, nos termos do voto do Relator. Fortaleza, data e hora indicadas pelo sistema. Presidente do Órgão Julgador DESEMBARGADOR LUIZ EVALDO GONÇALVES LEITE Relator (Apelação / Remessa Necessária&#160;- 0200292-74.2022.8.06.0070, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento:&#160; 30/10/2024, data da publicação:&#160; 30/10/2024) </p><p class="Textbody" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> DIREITO PROCESSUAL CIVIL. AÇÃO POPULAR. SENTENÇA DE PROCEDÊNCIA. ANULAÇÃO DE DOAÇÃO DE PATRIMÔNIO PÚBLICO MUNICIPAL. APELAÇÃO CÍVEL. IRRESIGNAÇÃO DO PATRONO DOS DEMANDANTES APENAS QUANTO À FIXAÇÃO DOS HONORÁRIOS ADVOCATÍCIOS DE SUCUMBÊNCIA EM VALOR DETERMINADO. APRECIAÇÃO EQUITATIVA DE VERBAS HONORÁRIAS EM CASO DE VALOR INESTIMÁVEL DA CAUSA. POSSIBILIDADE. JULGAMENTO DO TEMA 1076 DO STJ NA SISTEMÁTICA DOS RECURSOS REPETITIVOS. FIXAÇÃO DOS HONORÁRIOS PELO CRITÉRIO EQUITATIVO EM AÇÃO POPULAR. PRECEDENTES DO STJ. MAJORAÇÃO DA VERBA HONORÁRIA. SENTENÇA PARCIALMENTE REFORMADA. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. ACÓRDÃO ACORDA a Turma Julgadora da Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Recurso Apelação, para provê-lo em parte, nos termos do voto da Desembargadora Relatora. Fortaleza, 09 de novembro de 2022 MARIA IRANEIDE MOURA SILVA Presidente do Órgão Julgador TEREZE NEUMANN DUARTE CHAVES Relatora (Apelação Cível&#160;- 0036561-53.2011.8.06.0112, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento:&#160; 09/11/2022, data da publicação:&#160; 10/11/2022) &#160; &#160; </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Outrossim, destaca-se que, no caso em questão, a condenação restringiu-se a verificar suposto dano ao erário, não havendo, portanto, condenação ou proveito econômico que possam ser mensurados em termos monetários. Por outro lado, observa-se que o valor da causa foi arbitrado de forma aleatória, sem qualquer cálculo correspondente que justifique tal quantia.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Entende-se, pois, razoável a fixação das verbas honorárias conforme determinado pelo juízo do primeiro grau em pela quantia de R$ 1.000,00 (mil reais), com base no art. 85, § 8º, observando os parâmetros dispostos nos incisos I a IV, § 2º, do mesmo artigo, qual seja, o grau de zelo profissional, o lugar da prestação do serviço e a natureza e importância da causa, o trabalho realizado pelo advogado e o tempo exigido para o seu serviço.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Ante o exposto, conheço do recurso de Apelação Cível da parte autora, mas para negar-lhe provimento, mantendo-se inalteradas as disposições da sentença recorrida.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> É como

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	voto. </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	31
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Inexequibilidade do Título / Inexigibilidade da Obrigação
Polo ativo	ITAU UNIBANCO S.A. ITAU UNIBANCO S.A. ESTADO DO CEARA
Advogado(s) - Polo ativo	BRUNO CAVARGE JESUINO DOS SANTOS - (SP242278-A) BRUNO CAVARGE JESUINO DOS SANTOS - (SP242278-A) BRUNO CAVARGE JESUINO DOS SANTOS - (SP242278-A)
Polo passivo	ESTADO DO CEARA ITAU UNIBANCO S.A. ITAU UNIBANCO S.A.
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0180288-68.2018.8.06.0001
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Processo: 0180288-68.2018.8.06.0001 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Apelante/Apelado: Itaú Unibanco S.A e Estado do Ceará&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Apelado/Apelante: Estado do Ceará e Itaú Unibanco S.A</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ementa: <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-

Processo	0180288-68.2018.8.06.0001
	color: transparent; font-weight: 400; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Direito processual civil. Administrativo. Consumidor. Recursos de apelação cível em embargos à execução fiscal. Preliminar de ausência de dialeticidade afastada. Sanção aplicada em razão de infração à legislação consumerista. Presunção de certeza e liquidez da cda. Inexistência de vícios que justifiquem a nulidade do processo administrativo. Multa arbitrada em valor excessivo. Possibilidade de redução. Necessidade de observância aos princípios da proporcionalidade e da razoabilidade. Honorários advocatícios sucumbenciais. Fixação por equidade. Impossibilidade. Apelação da parte autora parcialmente provida. Apelação do estado do ceará provida.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> I. Caso em exame &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 1. Recursos de apelação interpostos pelas partes em face da sentença que julgou improcedentes os Embargos à Execução fiscal, condenando o embargante ao pagamento da verba honorária sucumbencial, consoante apreciação equitativa.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">2. Consiste em verificar (i) se o recurso da parte autora atendeu ao princípio da dialeticidade recursal; (ii) a higidez do processo administrativo instaurado pelo DECON que ensejou a constituição da Certidão de Dívida Ativa (CDA) ora executada; (iii) o capítulo da sentença que trata dos honorários advocatícios sucumbenciais.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">3. A parte autora, ao elaborar o apelo, trouxe em suas razões conteúdo que guarda pertinência com o abordado na decisão, demonstrando de forma objetiva os motivos do inconformismo.&#160;Logo, afasta-se a preliminar suscitada pelo ente estadual quanto à ausência de dialeticidade do instrumento recursal.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

Processo	0180288-68.2018.8.06.0001
	pre-wrap;">4. Não se constata, na espécie, qualquer vulneração aos princípios do contraditório e da ampla defesa. Do cotejo dos documentos colacionados, observa-se que a parte reclamada foi devidamente notificada de todos os atos do procedimento administrativo, inclusive da&#160;decisão que culminou no arbitramento da multa ora impugnada.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 5. Do mesmo modo, não se verifica fundamento apto para declarar a nulidade do processo administrativo pela ausência da reclamante em uma das audiências designadas, porquanto o próprio órgão administrativo entendeu pela possibilidade de remarcar o ato designado anteriormente, do qual a parte reclamada teve ciência e participou.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 6. Não se observa qualquer vício de motivação na decisão administrativa proferida, uma vez que a própria empresa reclamada informou, em audiência, que os contratos de empréstimo da reclamante encontravam-se com os pagamentos em dia, deixando de apresentar, ainda, justificativa para a ausência da retirada da inscrição do nome da consumidora no órgão de proteção ao crédito.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">7. Por outro lado, verifica-se que o quantum da multa aplicada se demonstra excessivo na hipótese dos autos, considerando, sobretudo, os valores questionados pela reclamante no âmbito administrativo, de modo que a sua redução é medida que se impõe.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 8. Não sendo inestimável ou irrisório o proveito econômico ou, ainda, não sendo o valor da causa muito baixo, não há que se falar em fixação do valor dos honorários por apreciação equitativa.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">9. Observados os parâmetros do §2º do art. 85 do CPC/15, os honorários advocatícios sucumbenciais devem ser arbitrados sobre o valor da causa, para ambas as partes, ante a ocorrência da sucumbência recíproca, estando vedada a compensação.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> IV. Dispositivo &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 10. Apelação da parte autora parcialmente provida para reduzir o valor da multa arbitrada no

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	âmbito do processo administrativo. Apelação do Estado do Ceará provida para fixar os honorários advocatícios sucumbenciais sobre o valor da causa.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> _______________&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Dispositivos relevantes citados: CDC, art. 57. CPC, art. 85, §§1º, 2º e 14.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Jurisprudência relevante citada: STJ, REsp n. 1.850.512/SP,, Rel. Ministro Og Fernandes, Corte Especial, j. 16/3/2022.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em dar parcial provimento à Apelação da parte autora e dar provimento ao apelo do Estado do Ceará, nos termos do voto da relatora, parte integrante deste.&#160;&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p> &#160; &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom:

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	6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Trata-se de RECURSOS DE APELAÇÃO CÍVEL interpostos pelo ITAÚ UNIBANCO S/A e pelo ESTADO DO CEARÁ em face da sentença proferida pelo Juízo da 1ª Vara de Execuções Fiscais da Comarca de Fortaleza/CE que, em sede de Embargos à Execução Fiscal, julgou improcedente o pleito autoral, nos termos do dispositivo abaixo transcrito (id. 14015030):</p><p style="line-height: 1.44; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr">Ante o exposto, julgo IMPROCEDENTES os embargos à execução.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> Condeno o embargante ao pagamento da verba honorária sucumbencial, consoante apreciação equitativa deste Juízo, na forma do art. 85, §8º do CPC, no valor de R$ 500,00 (quinhentos reais) , quantia que deverá ser corrigida, na forma da lei, a partir do seu arbitramento, e com juros de mora incidentes a partir do trânsito em julgado.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> Publique-se. Intime-se.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> Com o trânsito em julgado certificado nos autos, arquivem-se.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Opostos embargos de declaração (id. 14015034), foram eles rejeitados (id. 14015038).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Em suas razões

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	recursais (id. 14015192), o Itaú Unibanco S/A alega (i) a nulidade do processo administrativo, em face da ausência de intimação de decisão que imputou a multa e do não comparecimento da consumidora em audiência designada; (ii) a culpa exclusiva do consumidor; (iii) inexistência de infração à legislação consumerista; (iv) a violação aos princípios da razoabilidade e da proporcionalidade na multa arbitrada; e (v) a necessária limitação dos juros e da correção monetária à taxa SELIC. Por fim, pugna pelo provimento do recurso para julgar procedente os Embargos à Execução Fiscal, com a consequente inversão do ônus de sucumbência. Subsidiariamente, requer a redução do quantum arbitrado.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Preparo recolhido (id. 14015193).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">O Estado do Ceará (id. 14015200), por sua vez, alega que a sentença objurgada incorreu em afronta ao previsto nos §§3º e 8º, do art. 85 do CPC, uma vez que o pagamento da verba honorária sucumbencial por apreciação equitativa deve ser utilizada apenas nas causas em que for inestimável ou irrisório o proveito econômico ou, ainda, quando o valor da causa for muito baixo. Ao final, requer a reforma parcial da sentença, de forma a elevar a condenação relativa aos honorários advocatícios e fixá-los nos moldes dos arts. 85 e 90 do CPC, para que correspondam a, no mínimo, 10% (dez por cento) do valor atualizado do crédito cuja anulação foi pleiteada na demanda, observando-se os percentuais previstos no § 3º do art. 85.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em sede de contrarrazões (id. 14015198), o ente estadual defende, preliminarmente, o não conhecimento do recurso por ausência de impugnação específica aos fundamentos da sentença. No mérito, aduz (i) a presunção legal de certeza e liquidez do débito inscrito em dívida ativa; (ii) impossibilidade de controle do mérito administrativo pelo poder judiciário; (iii) a razoabilidade e proporcionalidade da multa arbitrada pelo órgão de defesa do consumidor. Por fim, pugna pelo não conhecimento do recurso ou, caso o seja, pelo não provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Em contrarrazões (id. 14555083), o Itaú Unibanco defende o estabelecimento da base de cálculo dos honorários advocatícios sucumbenciais sobre apreciação equitativa, em face do valor da causa ser muito alto, sob pena de imposição de imposição desproporcional do quantum. Ao final, roga pela manutenção da sentença no tocante à base de cálculo dos honorários advocatícios sucumbenciais.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Instada a manifestar-se, a Procuradoria-Geral de Justiça apresentou parecer (id. 15603459) opinando pelo não conhecimento do recurso de Apelação interposto pelo Itaú Unibanco

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	S/A, em razão da ofensa ao princípio da dialeticidade e, em caso de conhecimento, pelo não provimento daquele. No que se refere ao apelo do ente estatal, entendeu que, por se tratar apenas de discussão quanto aos honorários advocatícios sucumbenciais, cuja repercussão é meramente no direito individual das partes envolvidas, não há interesse público coletivo a ser tutelado.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> De pronto, afasto a preliminar suscitada pelo ente estadual quanto à ausência de dialeticidade do instrumento recursal. Isso porque observa-se que a recorrente, ao elaborar o apelo, trouxe em suas razões conteúdo que guarda pertinência com o abordado na decisão, demons trando de forma objetiva os motivos do inconformismo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Dando seguimento, presentes os requisitos de admissibilidade, conheço dos recursos.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Cinge-se a controvérsia em aferir a higidez da sentença que julgou improcedentes os os Embargos à Execução, com fulcro no art. 487, inciso I, do CPC, tendo em vista a inexistência de suporte probatório hábil a corroborar as alegações da parte embargante a fim de declarar a nulidade da multa aplicada (CDA nº 2017.95725-9), referente à sanção imposta pelo DECON (Processo Administrativo 0114.007.626-6).&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Ab initio , cumpre destacar que, em se tratando de controle jurisdicional no processo administrativo, cabe ao Poder Judiciário verificar a legalidade dos atos praticados pela Administração Pública, devendo a examinar matérias relativas à ampla defesa, ao contraditório e ao rito procedimental, ou seja, aos requisitos legais de validade do ato, não podendo adentrar em questões de mérito, segundo conveniência e oportunidade propriamente ditas, exceto nos casos de flagrante ilegalidade, sob pena de, assim não o fazendo, a decisão administrativa poder ser reduzida a mero arbítrio do julgador.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Com relação à temática, o Supremo Tribunal Federal tem jurisprudência no sentido de que “[...] o controle jurisdicional do ato administrativo considerado ilegal ou abusivo não viola o princípio da separação dos

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	Poderes, sendo permitido, inclusive, ao Judiciário sindicar os aspectos relacionados à proporcionalidade e à razoabilidade [...]” (STF - AgR RE: 1103448 PB - PARAÍBA 0003093-75.2010.4.05.8202, Relator: Min. EDSON FACHIN, Data de Julgamento: 11/10/2019, Segunda Turma, Data de Publicação: DJe-230 23-10-2019).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">A par disso, sabe-se que os atos administrativos trazem em si a presunção de legitimidade, ou seja, de que nasceram em conformidade com as devidas normas legais, sendo esta presunção iuris tantum ou relativa, ou seja, que admite prova em contrário. Um dos efeitos da presunção de legitimidade do ato administrativo é a autoexecutoriedade, ou seja, possibilidade de ele ser imediatamente executado; outro efeito é o da inversão do ônus da prova, cabendo a quem alegar não ser o ato legítimo a comprovação da ilegalidade, o que não ficou demonstrado nos autos.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em que pese as alegações da recorrente, não se constata, na espécie, qualquer vulneração aos princípios do contraditório e da ampla defesa. Do cotejo dos documentos colacionados, observa-se que a empresa reclamada participou da audiência realizada em 05/11/2014, oportunidade em que requereu prazo para manifestação em escrito (id. 14015004, pág. 08/29), mas limitou-se em apresentar planilha com demonstrativo de pagamento.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Devidamente notificada da decisão administrativa que culminou no arbitramento da multa ora impugnada (id. 14015004, pág. 31/32), deixou transcorrer o prazo para apresentar recurso, conforme despacho da 4ª Promotoria de Defesa do Consumidor (id. 14015004, pág. 33). Logo, não há que se falar na nulidade por ausência de intimação.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Do mesmo modo, não se verifica fundamento apto para declarar a nulidade do processo administrativo pela ausência da reclamante em uma das audiências, porquanto o próprio órgão administrativo entendeu pela possibilidade de remarcar o ato designado anteriormente, do qual a parte reclamada teve ciência e participou (id. 14015003, pág. 07).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em seguimento, não se observa qualquer vício de motivação na decisão administrativa proferida, uma vez que a própria empresa reclamada informou, em audiência, que os contratos de empréstimo da reclamante encontravam-se com os pagamentos em dia, deixando de apresentar, ainda, justificativa para a ausência de retirada da inscrição do nome da da consumidora no órgão de proteção ao crédito. Senão vejamos (id. 14015004, pág. 08/09):</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">(...) Os contratos mencionados encontram-se com pagamentos em dia e não identificou qualquer apontamento em nome da consumidora junto aos órgãos de defesa de proteção ao crédito. Segue em anexo as planilhas evolutivas dos contratos. Quanto à negativação de

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	que trata a consulta supra-referida requer o prazo de 10 dias úteis para manifestação por escrito. (...)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Não há que se falar, portanto, em culpa exclusiva da consumidora.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Assim, uma vez que os contextos fático e jurídico estão descritos de maneira suficientemente clara, tendo sido apresentada oportunidade de defesa na via administrativa, deflui a inafastável conclusão acerca da inexistência de quaisquer ilegalidades ou desvios de finalidade no processo administrativo sob análise.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Por outro lado, observa-se que o quantum da multa aplicada de 8.000 (oito mil) UFIRCE demonstra-se excessivo na hipótese dos autos, considerando, sobretudo, os valores questionados pela reclamante no âmbito administrativo.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em assim sendo, considerando as particularidades do caso concreto e em atenção aos critérios previstos no art. 57 da Lei nº 8.078/90, a saber, a gravidade da infração, a vantagem auferida e a condição econômica do fornecedor, entendo que a sanção de 4.000 (quatro mil) UFIRCE mostra-se razoável às irregularidades que foram verificadas, observando, para tanto, o valor da Unidade Fiscal de Referência na data da decisão administrativa.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Por oportuno, trago à baila precedente deste e. Tribunal de Justiça, em que foi imposta a redução da multa arbitrada em 10.0000 (dez mil) UFIRCE’s para 4.000 (quatro mil) UFIRCE's, em procedimento administrativo instaurado por inscrição indevida do nome do consumidor em órgão de proteção do crédito. Vejamos:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: Direito constitucional e administrativo. Apelação cível. Ação anulatória. Multa decon. Possibilidade de controle judicial. Decisão administrativa. Violação ao direito do consumidor. Multa desproporcional à situação em concreto. Circunstâncias agravantes não fundamentadas. Sanção reduzida ao patamar médio de outras condenações. Precedentes. Apelação conhecida e parcialmente provida.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal;

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	font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação cível interposta em face de sentença que julgou improcedente a ação anulatória de multa aplicada pelo órgão estadual de proteção ao consumidor.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. Há três questões em discussão: (ii) discutir se é possível o controle judicial de atos administrativos sancionadores; (iii) apreciar a validade de decisão administrativa que fixou multa em desfavor da instituição bancária e (iii) analisar se a sanção pecuniária guarda proporção com a suposta lesão ao consumidor.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. É possível o controle judicial do ato administrativo, sem que isso implique violação ao princípio da separação dos poderes. Decerto, nada impede que o Poder Judiciário examine os atos da administração pública, inclusive, incursionando no mérito, porquanto, sem essa limitação, estaria a administração dotada de poder absoluto e irrestrito, viabilizando práticas arbitrárias, o que, na realidade, deve ser avaliado à luz do caso concreto, pena de se cometer injustiças.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. É inconteste a regularidade do procedimento administrativo discutido nos autos, visto que a decisão proferida pelo DECON fundamentou, adequadamente, a violação ao direito do consumidor, bem como, conferiu oportunidade de defesa e exercício do contraditório à parte apelante.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Ante a ausência de motivação para o valor excessivamente arbitrado e, também, a fragilidade da argumentação das circunstâncias agravantes, impõe-se reduzir a multa ao valor de 4.000 (quatro mil) UFIRCE's, que se mostra mais proporcional à situação concreta.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">6. Apelo conhecido e parcialmente provido.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 01687800420138060001, Relator(a): FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara de Direito Público, Data do julgamento: 05/11/2024) (destaca-se)</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-

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	decoration: none; vertical-align: baseline; white-space: pre-wrap;">Em vista de todo o apresentado, o recurso do autor deve ser provido, em parte, para reduzir a pena de multa fixada pelo DECON/CE, de 8.000 (oito mil) UFIRCE’s para 4.000 (quatro mil) UFIRCE’s, montante que mais se adequa às circunstâncias do caso concreto, atendendo ao caráter sancionatório e pedagógico que a multa exige.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">No tocante à fixação da verba honorária de sucumbência, tem-se que o magistrado a quo julgou improcedente a pretensão autoral, condenando a parte autora ao pagamento no valor R$ 500,00 (quinhentos) reais, por apreciação equitativa, na forma do art. 85, §8º, do CPC.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Ocorre que, nos termos do que dispõe o art. 85, § 2º, do CPC, os honorários serão fixados entre o mínimo de dez e o máximo de vinte por cento sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa. Desta feita, não sendo inestimável ou irrisório o proveito econômico ou, ainda, não sendo o valor da causa muito baixo, não há que se falar em fixação do valor dos honorários por apreciação equitativa.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Nesse diapasão, o Superior Tribunal de Justiça – STJ, ao apreciar o Tema 1.076, corroborou o referido entendimento, com a fixação da seguinte tese:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 1) A fixação dos honorários por apreciação equitativa não é permitida quando os valores da condenação, da causa ou o proveito econômico da demanda forem elevados. É obrigatória nesses casos a observância dos percentuais previstos nos §§ 2º ou 3º do artigo 85 do CPC – a depender da presença da Fazenda Pública na lide –, os quais serão subsequentemente calculados sobre o valor: (a) da condenação; ou (b) do proveito econômico obtido; ou (c) do valor atualizado da causa.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 2) Apenas se admite arbitramento de honorários por equidade quando, havendo ou não condenação: (a) o proveito econômico obtido pelo vencedor for inestimável ou irrisório; ou (b) o valor da causa for muito baixo.&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Em assim sendo, observados os parâmetros do §2º do art. 85 do CPC/15, arbitro os honorários advocatícios sucumbenciais em 10% (dez por cento) sobre o valor da causa, nos termos do art. 85, §§ 2º e 3º, e art. 86, ambos do CPC/15, para ambas as partes, ante a ocorrência da sucumbência recíproca, estando vedada a compensação. Nesse sentido:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-

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	bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">CONSUMIDOR E ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA. MULTA ADMINISTRATIVA APLICADA PELO DECON NO VALOR DE 3.000 UFIRCES. INFRAÇÃO APURADA. DEVIDO PROCESSO LEGAL. CONTRADITÓRIO E AMPLA DEFESA OBSERVADOS. INEXISTÊNCIA DE VÍCIOS QUE JUSTIFIQUEM A INTERVENÇÃO DO PODER JUDICIÁRIO NO MÉRITO ADMINISTRATIVO, CABÍVEL APENAS EM CASOS DE MANIFESTA ILEGALIDADE. PRECEDENTES DESTA EG. CORTE. NÃO CABIMENTO DE CONDENAÇÃO EM HONORÁRIOS SUCUMBENCIAIS COM BASE EM APRECIAÇÃO EQUITATIVA. TEMA 1.076 DO STJ. ARBITRAMENTO COM BASE NO VALOR DA CAUSA. ART. 85, 2º, CPC/15. APELAÇÃO DO ESTADO DO CEARÁ CONHECIDA E PROVIDA. APELAÇÃO DA CAGECE CONHECIDA E NÃO PROVIDA. 01.No que concerne ao recurso do ente estadual, quanto à fixação da verba sucumbencial no caso dos autos, não se aplicará os parâmetros do art. 85, § 8º, CPC/15, pois a regra de fixação dos honorários advocatícios encontra-se prevista no § 2º do art. 85 do CPC/15, o qual estabelece que estes devem ser fixados entre o mínimo de dez e o máximo de vinte por cento sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa. Por sua vez, a fixação dos honorários por apreciação equitativa tem cabimento apenas nas hipóteses previstas no § 8º do art. 85 do CPC/15, quais sejam, nas demandas de valor inestimável ou irrisório, bem como quando o valor da causa for muito baixo. 02. No caso em análise, verifica-se que a causa possui valor atualizado quantificado, qual seja, R$ 15.542,77 (quinze mil, quinhentos e quarenta e dois reais e setenta e sete centavo) que é mensurável e não é um valor considerado baixo, não se enquadrando nas hipóteses do § 8º do art. 85 do CPC/15, conforme recente entendimento do STJ. Assim, quanto a fixação dos honorários sucumbenciais, merece provimento o apelo, haja vista que os honorários sucumbenciais somente serão fixados com base na apreciação equitativa, conforme o art. 85, §8º, CPC/15, quando for inestimável ou irrisório o proveito econômico ou, ainda, quando o valor da causa for muito baixo. 03. No tocante ao recurso da CAGECE, a insurgência recursal persiste na alegada incompetência do DECON para multar companhias que já são fiscalizadas por autarquias, argumento que não merece razão, pois nos termos do art. 4º, II, da Lei Complementar Estadual nº 30/2002, o Programa Estadual de Proteção e Defesa do Consumidor - PROCON/DECON detém competência para, no exercício regular do poder de polícia, impor sanções administrativas relacionadas às transgressões dos preceitos estabelecidos pelo Código de Defesa do Consumidor. 04. Outrossim, da análise do processo administrativo às fls. 21/53, em que pese as decisões estejam fundamentadas, respeitando o devido processo legal e pautadas no princípio do contraditório e da ampla defesa, não observada também a existência de ilegalidade no tocante ao quantum da multa – 3.000 UFIRCES, equivalente a quantia de R$ 11.793, 69(onze mil, setecentos e noventa e três reais e sessenta e nove centavos) à época da aplicação da sanção administrativa-, isso porque não se mostra excessiva, observando, assim, os princípios da proporcionalidade e razoabilidade, de acordo com os parâmetros estabelecidos por esta eg. Corte. 04. Recurso de Apelação do Estado do Ceará conhecido e provido; Recurso de Apelação da CAGECE conhecido e desprovido. (Apelação Cível - 0184035-89.2019.8.06.0001, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 18/07/2022, data da publicação: 18/07/2022) (destaca-se)</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ante o exposto,

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	conheço dos recursos de Apelação Cível para dar parcial provimento ao apelo da parte autora, com o fim de reduzir a pena de multa fixada pelo DECON/CE, de 8.000 (oito mil) UFIRCE’s para 4.000 (quatro mil) UFIRCE’s, e dar provimento ao recurso do ente estadual, com o fim de arbitrar os honorários advocatícios sobre o valor da causa, nos termos acima delineados.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> No que se refere aos consectários legais da multa administrativa, destaco que o termo inicial da correção monetária é aquele da data do acórdão prolatado. Os juros de mora, por sua vez, começam a incidir a partir do trânsito em julgado da decisão, momento em que a dívida se torna definitiva.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 2.16; text-indent: 28pt; text-align: center; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;&#160;</p><p style="line-height: 2.16; text-indent: 28pt; text-align: center; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> &#160; Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	32
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE VICOSA DO CEARA
Advogado(s) - Polo ativo	Não informado

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Polo passivo	MARCIO MIRANDA DE OLIVEIRA
Advogado(s) - Polo passivo	CARLOS ALBERTO CASTRO MONTEIRO - (CE8704-A) VALESCA BELCHIOR DE OLIVEIRA - (CE39669-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MUNICIPIO DE VICOSA DO CEARA

Processo	0003558-13.2019.8.06.0182
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	8UYpJ3iRVPfSrR2y+FyfZwu6bpd/fe/hB+3X2e/XN13UcjdZ/qw19nYvhWyy4aSLN3IeFyGkT0m1P/vE3NiKO7Uyuf1JeQkykmravc13/dnMbqqKA5+LUCBSkGQoj1TzwwAP/WdTj6ikRIaQoR0SxH8MxbKfZ4Grcf1wbKcgRUaQg/v6PZK9TPX1DUaQgyiDDcqca8x95jfLoquuv/v8y6HRP/99Ri/0v+MTumTb4YCQAAAAASUVORK5CYII=" alt="" /> &#160; </p><p style="margin-bottom: 0cm; text-align: center;"> ESTADO DO CEARÁ </p><p style="margin-bottom: 0cm; text-align: center;"> PODER JUDICIÁRIO </p><p style="text-align: center;"> &#160; TRIBUNAL DE JUSTIÇA </p><p style="text-align: center;"> &#160; </p><p style="text-align: center;"> <br /> </p><p> &#160; &#160;</p><p> Nº PROCESSO:&#160;0003558-13.2019.8.06.0182 </p><p> CLASSE:&#160;APELAÇÃO CÍVEL </p><p> &#160;</p><p>&#160;</p><p>&#160;</p><p> EMENTA: </p><p>&#160;</p><p> ACÓRDÃO: </p><p> O Colegiado, por unanimidade, acordou em conhecer do recurso para negar-lhe provimento, nos termos do(a) eminente Relator(a).</p><p>&#160;</p><p> RELATÓRIO: </p><p>&#160;</p><p> VOTO: </p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-3223d34e-7fff-5a67-58e9-fc3895908366" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 0003558-13.2019.8.06.0182 - Apelação Cível</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Município de Viçosa do Ceará</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado(a): Marcio

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	Miranda de Oliveira</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Custos Legis: Ministério Público Estadual</p><p> <strong style="font-weight: normal;"> <br /> <br /> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito constitucional, administrativo e processual civil. Apelação cível. Ação de cobrança. Servidor municipal. Cargo comissionado. Exoneração. Férias. Ônus da prova. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Apelação cível interposta pelo município buscando a reforma da sentença que julgou procedente a pretensão autoral de recebimento de férias remuneradas acrescidas do terço constitucional relacionadas ao período que laborou em cargo comissionado.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Analisar a possibilidade de pagamento a servidor público com cargo de natureza comissionada de férias remuneradas acrescidas do terço constitucional quando da sua rescisão com o ente público.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. A Constituição Federal, em seus art. 7º, XVII c/c art. 37, II, c/c art. 39, §3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito ao percebimento de décimo terceiro e férias acrescidas do terço constitucional, havendo, inclusive, previsão semelhante nos&#160; arts. 2º, 3º, 98, 106 e 192 Lei Municipal nº 485/2007. Precedente do STF.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. O ente público ficou inerte quanto à demonstração de que efetivamente adimpliu as verbas remuneratórias pleiteadas, não se desincumbindo do ônus que lhe competia, nos termos do art. 373, II, do CPC. Precedentes do TJCE.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family:

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	'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CF/1988, arts. 7º, XVII, 37, II, e 39, §3º; Lei Municipal nº 485/2007, arts. 2º, 3º, 98, 106 e 192; &#160; CPC/2015, arts. 85 e 373.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STF, Tema nº 30; TJCE, AC nº 00503267420218060069, Rel. Des. Francisco Luciano Lima Rodrigues, 3ª Câmara de Direito Público, j. 05/11/2024;&#160; AC nº&#160; 02007900220228060126, Rel. Des. Washington Luis Bezerra de Araújo, 3ª Câmara de Direito Público, j. 22/10/2024; AC nº 00503991020218060178, Rel. Desa. Maria Iracema Martins do Vale, 3ª Câmara de Direito Público, j. 15/10/2024; AC nº 02000353920228060041, Rel. Desa. Joriza Magalhães Pinheiro, 3ª Câmara de Direito Público, j. 18/12/2023.</p><p> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, conhecer do recurso para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 14pt; margin-bottom: 14pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p>&#160;</p><p>&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline;

Processo	0003558-13.2019.8.06.0182
	white-space: pre-wrap;">Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE VIÇOSA DO&#160; DO CEARÁ contra sentença proferida pelo Juízo da Vara Única da Comarca de Viçosa do Ceará que, em sede de Ação de Cobrança ajuizada por MARCIO MIRANDA DE OLIVEIRA em desfavor do ente público, julgou procedente a pretensão, nos termos do dispositivo abaixo (ID nº 15540999):</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Ante todo o exposto, e o que mais dos autos consta, JULGO, por SENTENÇA, para que produza seus jurídicos e legais efeitos, PROCEDENTES os pedidos da parte autora, declarando resolvido o mérito do processo, nos termos do artigo 487, inciso I, do CPC, e assim o faço para condenar o promovido ao pagamento de férias (não gozadas e proporcionais, acrescidas de 1/3), referentes ao período de 02/2014 a 12/2016.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Os juros moratórios serão aqueles aplicáveis à caderneta de poupança, na forma do art. 1º-F da Lei nº 9.494/1997, e a correção monetária deverá ser calculada com base no IPCA-E, em consonância com o entendimento jurisprudencial do STJ, firmado sob o rito dos recursos repetitivos (tema 905), determinado após a vigência da Lei nº 11.960/2009. Frisa-se que os juros incidem a partir da citação e a correção monetária a partir da data em que a parcela deveria ter sido paga.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> A parte promovida deverá arcar com os honorários advocatícios no importe de 10% (dez por cento) sobre o valor do benefício financeiro que caberá a parte autora, a ser apurado em sede de liquidação, na forma do artigo 85, parágrafos 2º e 3º do CPC.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Isenta de custas a Fazenda Pública.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> P.R.I.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Expedientes necessários.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Transitado em julgado, arquivem-se os autos com a baixa definitiva.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões recursais (ID nº 15541004), o ente público alega, em suma, que a parte autora não faz jus à percepção das verbas descritas na exordial, uma vez que exercia cargo em comissão, de modo que somente tem direito ao recebimento do seu salário mensal, como de fato ocorreu. Por fim, requer provimento do recurso, com a improcedência da pretensão.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em sede de contrarrazões (ID nº 15541007), a parte adversa rechaça as teses aventadas, requerendo o desprovimento do recurso e majoração da verba honorária, nos termos do art. 85, §11, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Instado a manifestar-se, o <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color:

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	transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Parquet opinou pelo conhecimento e desprovimento do recurso (ID nº 15656344).</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 10pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da Apelação. &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O cerne da controvérsia cinge-se em aferir se a parte autora faz jus à percepção de valores a título de férias remuneradas acrescidas do terço constitucional, em relação ao período em que laborou para Município de Viçosa do Ceará, no exercício de cargo de natureza comissionada.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A Constituição Federal, em seu art. 7º, XVII c/c art. 37, II, c/c art. 39, §3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito ao percebimento de férias acrescidas do terço constitucional. Vejamos:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios de legalidade, impessoalidade, moralidade, publicidade e eficiência e, também, ao seguinte: (Redação dada pela Emenda

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	Constitucional nº 19, de 1998)&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">II- a investidura em cargo ou emprego público depende de aprovação prévia em concurso público de provas ou de provas e títulos, de acordo com a natureza e a complexidade do cargo ou emprego, na forma prevista em lei, ressalvadas as nomeações para cargo em comissão declarado em lei de livre nomeação e exoneração.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão conselho de política de administração e remuneração de pessoal, integrado por servidores designados pelos respectivos Poderes.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir. (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Esse entendimento foi reafirmado pelo Supremo Tribunal Federal, por ocasião do julgamento do RE nº 570.908/RN, em 16/9/2009, submetido à sistemática de repercussão geral que, discutindo acerca do direito de servidor comissionado exonerado em receber férias não gozadas acrescidas de um terço, fixou a seguinte tese vinculante:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">TEMA 30/STF<span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant:

Processo	0003558-13.2019.8.06.0182
	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">, Leading case RE nº 570.908/RN - I - O direito individual às férias é adquirido após o período de doze meses trabalhados, sendo devido o pagamento do terço constitucional independente do exercício desse direito; II - A ausência de previsão legal não pode restringir o direito ao pagamento do terço constitucional aos servidores exonerados de cargos comissionados que não usufruíram férias. (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ademais, as férias dos servidores comissionados ou efetivos tem previsão legal no âmbito municipal, em referência ao texto constitucional, conforme se depreende da leitura em conjunto dos arts. 2º, 3º, 98, 106 e 192, da Lei Municipal nº 485/2007 – Regime Jurídico Único dos Servidores Públicos do Município. É assim disposto:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 2º. Para efeito desta lei, servidor público é a pessoa legalmente investida em Cargo Público.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 3º. Cargo Público é aquele criado em lei, em número certo, com denominação própria, remunerado pelos cofres municipais, ao qual corresponde um conjunto de atribuições e responsabilidades cometidas ao servidor público.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Parágrafo Único. Os cargos públicos serão de provimento efetivo ou <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

Processo	0003558-13.2019.8.06.0182
	baseline; white-space: pre-wrap;">em comissão.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 98. O servidor terá direito anualmente ao gozo de um período de férias, sem prejuízo da remuneração.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 106. O servidor percebera durante as férias a remuneração integral, acrescido de 1/3(um terço).&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art.192.São assegurados ao servidor público os direitos e garantias previstos nos incisos IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX do art. 7º da Constituição Federal, podendo Lei Municipal especificar estabelecer requisitos diferenciados de admissão quando a natureza do cargo exigir. (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No caso dos autos, o autor afirma que ocupou cargo de

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	natureza comissionada de ‘’Ouvidor Específico ADO - 01’’, no âmbito do Departamento de Gestão, Estratégia e Participativa do SUS, junto à Secretaria de Saúde do Município de Viçosa do Ceará, no período de fevereiro de 2014 a dezembro de 2016. Nesse ponto, tanto o exercício do cargo, quanto o interregno temporal, são tidos como incontroversos (ID nº 15540988/15540989). As partes acostaram fichas financeiras aos autos (ID’s nº 15540976 e 15540986), nas quais não consta o pagamento das verbas pleiteadas. Logrou o autor comprovar, portanto, o fato constitutivo do seu direito, a teor do que preconiza o art. 373, I, do CPC.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O ente municipal, por sua vez, não negou a prestação de serviços do autor durante o período apontado, tendo se limitado a refutar a existência de previsão legal para o pagamento das verbas requeridas face à natureza do vínculo estabelecido.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ao Município de Viçosa do Ceará incumbia comprovar os fatos impeditivos, modificativos ou extintivos do direito autoral, consoante o art. 373, II, do CPC, ônus do qual não se desincumbiu. O ente público quedou-se inerte quanto à comprovação de que efetivamente adimpliu as verbas remuneratórias pleiteadas durante o período laborado, bem como não demonstrou se tratar de cargo de agente político.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Nessa toada, à míngua de prova do pagamento das referidas parcelas, escorreita a sentença que condenou o ente público ao pagamento dos referidos valores.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Perfilhando o mesmo entendimento, colaciona-se precedentes recentes desta 3ª Câmara de Direito Público em situações análogas. Veja-se:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Cargo comissionado. Férias e décimo terceiro salário. Previsão constitucional. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Caso em exame: Apelação cível objetivando a reforma de sentença que julgou procedente a pretensão autoral de condenação do Município de Coreaú ao pagamento das verbas trabalhistas referentes a férias e décimo terceiro salário.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. Questão em discussão: A questão em discussão consiste em analisar se servidora ocupante de cargo comissionado faz jus a férias e décimo terceiro salário.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. Razões de decidir: Demandado que não se desincumbiu de comprovar fato impeditivo, modificativo ou extintivo do direito da

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	demandante.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Dispositivo e tese: Apelação conhecida e desprovida.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 00503267420218060069, Relator(a): FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara de Direito Público, Data do julgamento: 05/11/2024) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Servidor público municipal ocupante de cargo comissionado. Exoneração. Direito a férias e 13º salário . Apelação desprovida.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">1. Apelação interposta pelo Município de Mombaça contra a sentença que julgou procedente ação de cobrança, condenando-o a pagar ao ex-servidor ocupante de cargo comissionado férias e 13º salário. O autor alegou ter sido exonerado sem receber as verbas trabalhistas, enquanto o Ente político sustentou a inexistência destes direitos aos ocupantes de cargos em comissão.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em saber se o servidor público municipal ocupante de cargo comissionado, após sua exoneração, faz jus ao recebimento de férias e 13º salário.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. A Constituição Federal garante a todos os servidores públicos, inclusive aos ocupantes de cargos em comissão, o direito a férias e 13º salário. A jurisprudência do Supremo Tribunal Federal e deste Tribunal de Justiça é pacífica no sentido do reconhecimento desses direitos aos ocupantes de cargos comissionados. No caso, o autor comprovou o vínculo e o Município não apresentou provas de pagamento das verbas.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2;

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	margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Recurso conhecido e desprovido.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 02007900220228060126, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">DIREITO À PERCEPÇÃO DE VERBAS RESCISÓRIAS (DÉCIMO TERCEIRO SALÁRIO E DE FÉRIAS ACRESCIDAS DO ADICIONAL DE UM TERÇO). ART. 7º, INCISOS VIII E XVII, C/C O ART. 39, § 3º, DA CONSTITUIÇÃO FEDERAL DE 1988. PAGAMENTO DEVIDO. ÔNUS DA PROVA QUE INCUMBIA AO MUNICÍPIO DE URUBURETAMA/CE. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Cuida-se, na espécie, de apelação cível, adversando sentença proferida pelo magistrado de primeiro grau, que deu total procedência a ação ordinária (Processo nº 0050399-10.2021.8.06.0178), condenando o Município de Uruburetama/CE ao pagamento de verbas rescisórias (décimo terceiro salário e férias acrescidas do adicional de um terço) para ex-servidora, que exerceu cargo em comissão, entre os anos de 2017 e 2019.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;2. Ora, o art. 39, §3º, da CF/88 assegura, expressamente, aos servidores em geral, efetivos ou comissionados, alguns direitos trabalhistas, dentre eles, 13º salário e férias acrescidas do adicional de 1/3 (art. 7º, VIII e XVII).</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; 3. E, nas causas movidas por ex-servidores para a cobrança de tais verbas rescisórias, se evidenciada a existência do vínculo funcional, o ônus da prova da realização dos pagamentos cabe à Administração.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;4. Incide, aqui, a Teoria da Carga Dinâmica da Prova, segundo a qual o seu ônus deve ser imputado à parte que, dadas as circunstâncias existentes, tenha melhores condições para dele se desincumbir&#160; in concreto.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">5. Logo, não havendo dúvida

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	em torno da existência do vínculo funcional, incumbia ao Município de Uruburetama/CE ter demonstrado que realizou o pagamento de tais verbas rescisórias devidas à ex-servidora (13º salário e férias acrescidas do adicional de 1/3), o que, entretanto, não ocorreu.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Permanecem, então, inabalados os fundamentos da sentença, impondo-se sua confirmação por este Tribunal.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Recurso conhecido e não provido.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Sentença mantida.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 00503991020218060178, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 15/10/2024) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No mesmo sentido, de minha relatoria:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">FÉRIAS ACRESCIDAS DO TERÇO CONSTITUCIONAL, 13º SALÁRIO E SALDO SALÁRIO. ART. 39, § 3º C/C ART. 7º, IV, VIII E XVII, DA CF/88. CABIMENTO. PRECEDENTES DO STF E DO TJCE. ÔNUS DA PROVA DA EDILIDADE. NÃO COMPROVAÇÃO. ART. 373, II, DO CPC. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA PARCIALMENTE REFORMADA, DE OFÍCIO, APENAS QUANTO AO ÔNUS DE SUCUMBÊNCIA.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Inicialmente, cumpre esclarecer que o pedido de efeito suspensivo: resta prejudicado, por ocasião do julgamento do recurso. Precedentes do STJ e do TJCE.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. O cerne da controvérsia cinge-se em aferir se a parte autora, ora apelada, faz jus à percepção de valores a título de férias, acrescidas do terço constitucional, 13º (décimo terceiro) salário e saldo salário referente ao período em que laborou para o apelante no exercício de cargo de natureza comissionada.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 10pt; font-family: 'Times New

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	Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">3. A Constituição Federal, em seus arts. 39, § 3º, e 7º, IV, VIII e XVII, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito ao percebimento de décimo terceiro e férias acrescidas do terço constitucional. Precedentes do STF e do TJCE.&#160;&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. Nessa perspectiva, dada as peculiaridades do caso em análise, perfeita a decisão do juízo a quo que condenou o Município de Aurora ao pagamento dos valores requestados, respeitada a prescrição quinquenal.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Apelação conhecida e desprovida. Sentença parcialmente reformada, ex offício, apenas quanto ao ônus de sucumbência.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 02000353920228060041, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 18/12/2023) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por fim, no tocante à fixação da verba honorária de sucumbência, tratando-se de sentença ilíquida imposta à Fazenda Pública, o percentual dos honorários de sucumbência, inclusive a majoração decorrente do trabalho adicional realizado em grau recursal, deverá ser definido por ocasião da liquidação do julgado, nos termos do art. 85, §4º, II c/c §11º, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço do recurso, para negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">Relatora</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	33
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adesão a Programa de Parcelamento de Débito
Polo ativo	MUNICIPIO DE LIMOEIRO DO NORTE
Advogado(s) - Polo ativo	PIERRE OLIVEIRA BELMINO - (CE45055-A)
Polo passivo	SEBASTIAO MAIA DE ANDRADE
Advogado(s) - Polo passivo	DIOGO FERNANDO DOS SANTOS COSTA - (CE18996-A)
Terceiros	Não informado

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Acordão	&#160; &#160; <div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);"> <img class="WACImage SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 89px; height: 120px; text-wrap-mode: nowrap !important;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAFkAAAB4CAIAAAAWmclrAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAACxMAAAsUAU/bCt8AAFFrSURBVHhevb0HgB1luTc+feb0sr1vNtmSHtJJSEJCCTUUQQgdFVAEFcu13U/RT6+9N6SoKAhESggkQAikkd77Znvvp9fp/98zuyD3Kv5v/K73ze7ZOXNm3vd9fk/7Pe/MnLC2bTP/RLNsm2NZm7FYm2Xwwxm6qus6Z3OMIsk8Z9nc3p1bu04ciUYj2dioaeXVTDoxNuIvn/KJL3+7tLIM4/7wC59W9E6324vuBFYyWW14zFx+w8eXXnIp5vTKU09uefExv9sjuoKSR+YFj8sfrqqsWXLVtcXFxThd1/K6YYkCx4iSxPHYg/kwHIve8GdinufS/kkscJKl5ZPZnJHND/Z2dfe0DXd3D7Q1501t3tLLlq26uKim+lsPfmRGVaKyslJWeNHllV3SmWOtZ4/3GJ6aG+7/0qSmpq/dt/aOm5aWVFXouikIAsvpG9a9EZh80VU33fT0Y48MH3ndxajLL1/kCSj5VFKD5Fltx96eFbd+ed6ipQf37nzzpefjfa1F1fWVkyaXVk0uq5tUFC5QFMXl85ssIzAA5dzauWNhmwzLWoz9+vMv7H3jGVYd83BqZVWoqsI3OJRM5z1FpSVv72g+b/X1p3bvvPGKysraUs20GFOEtPt2H2o/2aN45dYhpnLylFTfmbV3XhkoLrVNlkMTrB2vbT3RHHW53bGRzimloVQ6dvkNlwZCAVM3eJ7lGfXllw+o4XmRng6/Ndg4raqnuXX67NJsOtPbkxyJG2lDKa2bddenvhgsLGCAxjm2c8YCYnEMjz8/+MpDMws6G2YWsCymqfA8f/Rw+7HDsalzage6h4aGx9xu+fKrFxUUhCxBYGxB5uVUKtvX1+dSPOHisCjiDNkXLGLwCQ9DZzRD1VRVTybgUNlsdmQ45vWLpWUVDKtaps7Bhaz8sf1nDx9u9bnEyprqXN5IR4ZWXzvH53PZlmVbuVxae2Pr0DUP/qS6birHT0z4v9/+CbvAP7K/n339i02FzZPqwnnV4lhBkqR02hruGRI8YmlJSag4KHoUQ+UsmiVnMrxp6gKnCLxiQDLTZE3JZGzITBMAmizCji1KtiQqAmczPCfJHGuZmq5SNOERlgye5WQBg1upRHZ0aDQyHHX5lNJyn2Uxlq5xPM9xxltvDV75wE9q66dOzPZc2rnbhWUgPsE0Hv/ZT7zxNxctrrQpUPEkMwP18smMkctqmbSazehqOp/WdAxhGjpj2Jqlmjjb5jjbMngal7MQgDnsMsntWHxkchZHTkixmRNgPOhUYiVOtjnFJcuy6EHk8XFuj4ygKwoaojgrGJauwwcTkfTzm4Y/95M/+UJFwPZc2zlj4RxN8+7v7vrtV+5cPq8gkcmkk2Y2b+f0vKZpPAu5BE7QEd1ZAfYiYq6iIAuSybEyC+FYXeQk6sWyOBKWEzgePRq2CTw5S4A3ABkIqcOAMKJhWjqPXxUeZFisxpg6Y1Le4EX0KMtuFwBSCoNi31AmIsz/1De/zQJNmue5tXP3kYmEBbtkv/OVz+Zb3wwXu2zeRO4TRNEtUxQ0bZ5DnrHgFoymW4LNZnKWAYgsC3aBEeE5UDtjw6ctnheBILQq8jAS1jBg8oDGRJYERjAbxEy3S6EELtoiz0gUaETWzhuMYBgG0ouZMvKGbulc17Dw2V8+W1lVRRGNkuu5tXPHgsDAj4CXoeH+n33lM2VKV/UkdyKhxyP5rArhTR5gsDzULSlyYaG3vycRCMglWHII8suQYbbyzYvICgILCMJ8r49J2omlVZUlOZxsqkDNs3WOd3Oa0Y+n+dt68TxroqyMD5KpXXIj1/AKHE27xKDfiEcciP47js4PO2iB267976JaZ57+2d8hB23DYqJTCoeee6xR/o6TqZ6W2Y0eUMhl9vr8vjccGy34uJso6NrdNf21ksumz51TpNBtgEpbUgBZgRoLOJJ/JZXdjXMqK2ZUmHkdRvGwekWIqGJQMLwghUZiz39x11NU0rmLpvEMqKW0UDqEghIaQ3bew52i6XTeZZZsPKaq268hdCdaOdMt/5JLBAvcR4CPfwcztJ6+sSGn3x67e1NasqGseagVg2hXd29s6OguNoX9p093lxWovCyYmm6lsGHliiLFDZZGxY/OprxehWXIuqmAVcwDU43NcUlgqTBSvqHk43Tpmv59EBf78L5k9wBnmNFt0sAY3F5pDMnuoeFS66/4yPYhn+CAdMMnVmeaztnLODJjghAgPIgYzIw3d/+8D+43tf8YTkR00ARIafPL5843r1s9WpO1pOjyfLa6m0bt6y5dr7sFs8e70PGmLegEfw5NhLtOdOfylscx5SUBSc1lHm8vs72rrbTPVNnT/IGlPVP71mwYlk8FgVtFUXf2xs2zZhZYahGLK0pMhf0SYpL2H9G/fqTG0P+oM2iJIA4CM/GP8G1ztmQkPKoAkHCI/OwENhi8UjP8c31jWU1k0rq6osDQWXV6qmXr5lTP3VSuDj06os7tm89hGhXXhYsryoNFQRFUeREzh3wpCPR00cHPFWTp8yaXTtzZiYnHt/fLkqcy+UBy0QCLS0pDBf63F739m271z+/w+Nhp06vWrG66fo7FtZNLiop8c2YXVk2KTyjVtj++iswBHJaAEHqhRefcztnLGBKxIrAuGwTXgpK/tbG9YtnB+qnFxWX+vI50zB5NW+dOdWDjJDPJhEIS4sLkBeHBmKHdh3fveVwV9fIYOfwW6/u2vzq4frZs9vPnH38N0+u//MrPhwm+5965NVTR9tGRpKH97Xs3HJweCCWU7XSomKO03KZrGmxJ49293bHYJ6pTJZXhOqq8KILave/9jz8C+oxoSAUjQzl7HNt/MMPPzyx+d9rMApgAWNEiAMsyJF/+O6/V/m1jq5IV/vo0GBGM/R0PNfRMsKLnkDYf+JQa0lFqLQsnE2MNkyv8fq8U6ZVzJrXlEml/QWlY6OJt97eJ9hCPJkd6h+avXBGPptasnJa08zagpJgOOxPJTMury+bTHX1jjQ2TQLvHukZyub0VCybSeujg/HBnkQynh7pHfaUNlTV1hEOUBRVz+ccMM4ZC/BigyizkwYYZue2t7KtbxSW+TyKXFLkb5xRMmNO6YyZtbILE/Jkc9rZU61zz5vOiVLQw8xZMEVWBMXlRkDp6x4pKK44fORMJp5gwUw4kMd8ZXlRKOx2C1ww6GUFKxAOo9DPZBmvO3D2VFt1RXmw0Dt5irLkoum1NeGGpuKiYj9CJhJ4YZFr796OFVdea7E6yIUTO88Zi38QO53EOf4hsKYX7KPk4aQO8CXgYT/8wN3XLlF9hV41q+o6n8vlUgkD5cOxI30FFZXVkxu7unpqJ1Ud2L7fzMerJxXmwNBzOaARjWRmL1n6xqbtw72joNjoEb/LVszzh/x9HS0o8WF6gYALNV46JSy/YlVnR9+kmtLh3sG2s0dn

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SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:
transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 23px;

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	font-family: Calibri, Calibri_EmbeddedFont, Calibri_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt;

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	line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Processo: 3000961-85.2023.8.06.0115 – Apelação Cível. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelante: Município de Limoeiro do Norte. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-

Processo	3000961-85.2023.8.06.0115
	alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Apelado: Sebastião Maia de Andrade. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ementa: Direito tributário e processual civil. Apelação cível. Extinção da execução fiscal sem resolução do mérito. Tema de repercussão geral nº 1.184 e resolução cnj nº 547/2024. Recurso provido.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	3000961-85.2023.8.06.0115
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Apelação cível interposta por ente municipal em face de sentença que extinguiu execução fiscal, sem resolução do mérito, nos termos do art. 485, inciso s IV e VI, do CPC , c/c Tema de Repercussão Geral nº 1.184 e Resolução CNJ nº 547/2024. &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. Questão em discussão <span class="EOP SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman

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	Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. Há duas questões em discussão: (i) verificar a admissibilidade do recurso de apelação no contexto das execuções fiscais, nos termos do art. 34 da Lei nº 6.830/1980; e (ii) aferir se restam presentes os requisitos autorizadores da extinção da contenda, sem resolução do mérito, nos termos do Tema da Repercussão Geral n º 1.184 c/c Resolução CNJ nº 547/2024. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. Razões de decidir &#160; </p></div><div

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	class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. O recurso de apelação é admissível, considerando que o valor do débito exequendo (R$ 2.208,47) supera o limite de alçada (R$ 1.320,10), conforme fixado pelo STJ no REsp nº 1.168.625/MG e corrigido pelo IPCA-E. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. O Supremo Tribunal Federal, no julgamento do Tema de Repercussão Geral nº 1.184 (RE nº 1.355.208), reconheceu a possibilidade de extinção de execuções fiscais de baixo valor por ausência de interesse de agir (tese nº 1) , bem como indicou as providências administrativas que necessariamente devem ser adotadas antes da propositura da demanda executiva de baixo valor (tese

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	nº 2) .&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. A Resolução CNJ nº 547/2024, por sua vez, institui medidas de tratamento racional e eficiente na tramitação das execuções fiscais pendentes no Poder Judiciário, a partir do julgamento do Tema de Repercussão Geral 1.184. &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. As providências administrativas mencionadas na tese nº 2 são exigíveis no momento do ajuizamento, conforme dispõe a própria premissa e, também, os arts . 2º e 3º, da Resolução CNJ nº 547/2024, <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-

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	family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">de modo que não são exigíveis nos processos que já tramitavam em 19 de dezembro de 2023, caso do presente feito. &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7. Já a extinção dos feitos pelo baixo valor (tese nº 1), deve observar o quanto disposto no art. 1º da Resolução CNJ nº 547/2024. Este dispositivo exige, além do valor inferior a R$ 10.000,00 (dez mil reais), a ausência de movimentação útil há mais de 1 (um ano), sem citação do executado ou, ainda que citado, sem localização de bens penhoráveis (§ 1º). &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 8. Na hipótese, não se vislumbra o requisito da “ausência de movimentação útil há mais de 1 (um) ano”, eis que entre o protocolo da petição inicial e a prolação da sentença sequer decorreu período superior a 4 (quatro) meses. <span class="EOP SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New

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	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 9 . Resta evidente o error in procedendo do Juízo de origem ao extinguir a contenda, sem resolução do mérito, com supedâneo nas premissas estatuídas no Tema nº 1.184 c/c Resolução CNJ nº 547/2024. &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV. Dispositivo &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear:

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	both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 10 . Recurso provido . Sentença anulada. Retorno dos autos à origem. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> __________ &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dispositivos relevantes citados: Lei Federal nº 6.830/1980, arts . 2º, §1º, e 34; Resolução CNJ nº 547/2024,

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	art s . 1º ao 3º .&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 9.46667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Jurisprudência relevante citada: STJ, Súmula nº 452; STF, RE nº 1.355.208/SC, Relatora: Cármen Lúcia, Data de Julgamento: 27/06/2022, Data de Publicação: 12/07/2022 – Tema de Repercussão Geral nº 1.184. &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 9.46667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

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	SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer o recurso para dar-lhe provimento, nos termos do voto da Relatora, parte integrante deste.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color:

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	windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de Apelação Cível interposta pelo MUNICÍPIO DE LIMOEIRO DO NORTE em face de sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Limoeiro do Norte que, nos autos de Ação de Execução Fiscal proposta pelo apelante em desfavor de SEBASTIÃO MAIA DE ANDRADE, extinguiu o processo, sem resolução do mérito, nos termos do art. 485, incisos IV e VI, do CPC (ID nº 15596106). &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais (ID nº 15596111), o ente municipal sustenta que a sentença está eivada de nulidade, pois não seguiu o caminho traçado na lei, extinguindo-o prematuramente. Aduz que, existindo disposição expressa na Lei de Execuções Fiscais, não é permitido ao magistrado optar pela aplicação do Código de Processo Civil em detrimento da lei específica, extinguindo o feito, quando deveria apenas suspender o curso do processo, após a intimação pessoal da Fazenda Pública. Ao final, pugna pelo conhecimento e provimento do recurso, para anular a sentença e determinar o retorno dos autos à origem para prosseguimento da ação executiva.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em sede de contrarrazões (ID nº 15596117), o apelado defende, em suma, que o imóvel está localizado em zona rural, não devendo ser objeto de incidência de IPTU. Por fim, requer o desprovimento do apelo.&#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Deixo de abrir vista dos autos à Procuradoria Geral de Justiça, com esteio na Súmula nº 189, do STJ, verbis : “é desnecessária a intervenção do Ministério Público nas execuções fiscais” . <span class="EOP SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times

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	New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório, no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Segundo dispõe o art. 34, da Lei Federal nº 6.830/1980, das sentenças proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional (ORTN), somente serão cabíveis Embargos Infringentes e de Declaração. Vejamos:&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-

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	collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 34 – Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional—ORTN, só se admitirão embargos infringentes e de declaração.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Assim, partindo dessa premissa legal, faz-se necessário verificar se o recurso apelatório carece de requisito de admissibilidade intrínseco, notadamente, o cabimento. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> De início, registre-se que, com a extinção das ORTN como fator de indexação econômica, o colendo Superior Tribunal de Justiça definiu, no julgamento do REsp. nº 1.168.625/MG, o valor mínimo para o recurso de apelação em execução fiscal, fixando-o em R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), como correspondente ao valor das antigas 50 ORTN, a ser corrigido pelo IPCA-E a partir de janeiro de 2001, considerada a data da propositura da ação.&#160; &#160; </p></div><div

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	class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Na hipótese vertente, conforme se infere da inicial, protocolada em 19 de dezembro de 2023 , pretende a Fazenda Pública do Município de Limoeiro do Norte a cobrança, via execução fiscal, de crédito tributário no valor de R$ 2.208,47 (doi s mil, duzentos e oito reais e quarenta e sete centavos). Nessa data, o valor mínimo de alçada apto a dar ensejo à interposição de eventual apelação correspondia a R$ 1. 320,10 (um mil, trezentos e vinte reais e dez centavos) , corrigido pela calculadora do Banco Central do Brasil.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates:

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	normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Assim, vê-se que a importância exequenda é superior ao patamar fixado pelo art. 34, da Lei Federal nº 6.830/1980, sendo o caso, portanto, de admissibilidade do recurso apelatório dirigido a este egrégio Tribunal de Justiça. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Diante de tais ponderações, hei por bem, preenchidos os requisitos de admissibilidade, conhecer a apelação cível, passando, a seguir, ao exame da matéria jurídica discutida nos autos. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Em um primeiro momento, a análise deve observar o que dispõe a Lei de Execuções Fiscais (Lei nº 6.830/1980), veja-se: &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> Art. 2º - Constitui Dívida Ativa da Fazenda Pública aquela definida como tributária ou não tributária na Lei nº 4.320, de 17 de março de 1964, com as alterações posteriores, que estatui normas gerais de direito financeiro para elaboração e controle dos orçamentos e balanços da União, dos Estados, dos Municípios

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	e do Distrito Federal. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> § 1º - Qualquer valor, cuja cobrança seja atribuída por lei às entidades de que trata o artigo 1º, será considerado Dívida Ativa da Fazenda Pública. (destacou-se). &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify; text-indent: 78px;"> Depreende-se do texto legal que a Fazenda Pública poderá promover a cobrança de dívida fiscal de qualquer valor, não tendo estabelecido um valor mínimo ou de alçada sobre o tema. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify; text-indent: 78px;"> Além disso, o Superior Tribunal de Justiça solidificou sua jurisprudência no sentido de que não cabe ao Poder Judiciário a extinção, de ofício, de ações de pequeno valor, tendo em vista que se trata de uma faculdade da Administração Pública, leia-se: <span class="EOP SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-

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	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> A extinção das ações de pequeno valor é faculdade da Administração Federal, vedada a atuação judicial de ofício. (Súmula n. 452 , Corte Especial, julgado em 2/6/2010, DJe de 21/6/2010). &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify; text-indent: 78px;"> Nessa linha, sendo prerrogativa exclusiva da Administração Pública, apenas mediante expresso requerimento poderia o juízo e origem extinguir o processo de execução sob fundamento de que se trata de pequeno valor. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;

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	direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify; text-indent: 78px;"> A despeito disso, deve-se considerar que o entendimento inicialmente adotado pelos Tribunais aponta mudança, sobretudo considerando o volume de execuções fiscais em trâmite no país. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify; text-indent: 78px;"> O raciocínio encontra amparo no recente julgamento do Recurso Extraordinário nº 1.355.208 pelo Supremo Tribunal Federal, de relatoria da Ministra Carmen Lúcia, afetado em repercussão geral (Tema nº 1.184), verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	3000961-85.2023.8.06.0115
	Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">1. É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. O ajuizamento da execução fiscal dependerá da prévia adoção das seguintes providências: a) tentativa de conciliação ou adoção de solução administrativa; e b) protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. O trâmite de ações de execução fiscal não impede os entes federados de pedirem a suspensão do processo para a adoção das medidas previstas no item 2, devendo, nesse caso, o juiz ser comunicado do prazo para as providências cabíveis. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify; text-indent: 78px;"> Ocorre que, até o momento, não houve a fixação, pela Corte Constitucional, sobre as balizas para se apreciar o que seria "baixo valor" das execuções fiscais, de forma a permitir a extinção da execução fiscal por ausência de interesse de agir. <span class="EOP SCXW237473897 BCX8" style="-webkit-

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	user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify; text-indent: 78px;"> Em atenção ao mencionado Tema nº 1.184, o Conselho Nacional de Justiça, em 22 de fevereiro de 2024, editou a Resolução nº 547, que “institui medidas de tratamento racional e eficiente na tramitação das execuções fiscais pendentes no Poder Judiciário, a partir do julgamento do tema 1184 da repercussão geral pelo STF” . Transcreve-se: &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> Art. 1º. É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	3000961-85.2023.8.06.0115
	transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> § 1º. Deverão ser extintas as execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento, em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> § 2º. Para aferição do valor previsto no § 1º, em cada caso concreto, deverão ser somados os valores de execuções que estejam apensadas e propostas em face do mesmo executado. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> § 3º. O disposto no § 1º não impede nova propositura da execução fiscal se forem encontrados bens do executado, desde que não consumada a prescrição. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji:

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	normal; color: windowtext; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">§ 4º. Na hipótese do § 3º, o prazo prescricional para nova propositura terá como termo inicial um ano após a data da ciência da Fazenda Pública a respeito da não localização do devedor ou da inexistência de bens penhoráveis no primeiro ajuizamento. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> § 5º. A Fazenda Pública poderá requerer nos autos a não aplicação, por até 90 (noventa) dias, do § 1º deste artigo, caso demonstre que, dentro desse prazo, poderá localizar bens do devedor. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> Art. 2º. O ajuizamento de execução fiscal dependerá de prévia tentativa de conciliação ou adoção de solução administrativa. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> § 1º. A tentativa de conciliação pode ser satisfeita, exemplificativamente, pela existência de lei geral de parcelamento ou oferecimento de algum tipo de vantagem na via administrativa, como redução ou extinção de juros ou multas, ou oportunidade concreta de transação na qual o executado, em tese, se enquadre. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> § 2º. A notificação do executado para pagamento antes do ajuizamento da execução fiscal configura adoção de solução administrativa. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> § 3º Presume-se cumprido o disposto nos §§ 1º e 2º quando a providência estiver prevista em ato normativo do ente exequente. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> <span class="EOP SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;

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	color: windowtext;">&#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> Art. 3º O ajuizamento da execução fiscal dependerá, ainda, de prévio protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> Parágrafo único. Pode ser dispensada a exigência do protesto nas seguintes hipóteses, sem prejuízo de outras, conforme análise do juiz no caso concreto: &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> I - comunicação da inscrição em dívida ativa aos órgãos que operam bancos de dados e cadastros relativos a consumidores e aos serviços de proteção ao crédito e congêneres (Lei <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; color: windowtext; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">nº 10.522 /2002, art. 20-B , § 3º , I); &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear:

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	both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> II - existência da averbação, inclusive por meio eletrônico, da certidão de dívida ativa nos órgãos de registro de bens e direitos sujeitos a arresto ou penhora (Lei nº 10.522 /2002, art. 20-B , § 3º <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; color: windowtext; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">, II); ou &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> III - indicação, no ato de ajuizamento da execução fiscal, de bens ou direitos penhoráveis de titularidade do executado. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> [...] &#160;&#160;&#160;&#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Com

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	efeito, tem-se que as providências administrativas mencionadas na tese nº 2 são exigíveis no momento do ajuizamento, conforme dispõe a própria premissa e, também, os arts . 2º e 3º, da Resolução CNJ nº 547/2024, de modo que não são exigíveis nos processos que já tramitavam em 19 de dezembro de 2023, caso do presente feito. &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Já a extinção dos feitos pelo baixo valor (tese nº 1), deve observar o quanto disposto no art. 1º d a Resolução CNJ nº 547/2024 . Este dispositivo , como destacado acima, exige, além do valor inferior a R$ 10.000,00 (dez mil reais), a ausência de movimentação útil há mais de 1 (um ano), sem citação do executado ou, ainda que citado, sem localização de bens penhoráveis (art. 1º, § 1º).&#160; <span class="EOP SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Na hipótese , não se vislumbra o requisito da “ausência de movimentação útil há mais de 1 (um) ano” , eis que entre o protocolo da petição inicial e a prolação da sentença sequer decorreu período superior a 4 (quatro) meses.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Des ta feita , resta evidente o <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; font-style: italic; line-height: 27px; font-family: &quot;Times New Roman&quot;,

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	&quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> error in procedendo do Juízo de origem ao extingui r a contenda, sem resolução do mérito, com sup edâneo nas premissas estatuídas no Tema nº 1.184 c/c Resolução CNJ nº 547/2024.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Ante o exposto, conheço e dou provimento ao apelo <span class="TextRun SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">, para anular a sentença vergastada e determinar o retorno dos autos à origem para regular prosseguimento da execução. &#160;</p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Fortaleza, data e hora informadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse:

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	preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW237473897 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 11.3333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	34
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	MUNICIPIO DE BARRO
Advogado(s) - Polo ativo	Não informado
Polo passivo	ADRIANO TEODORIO DA SILVA
Advogado(s) - Polo passivo	PATTRICK LUIS RAMOS DE CARVALHO - (CE20725-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-e4250401-7fff-9734-e4e7-4a462be5e223" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 3000028-94.2024.8.06.0045</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelação Cível</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Município de Barro-CE&#160;</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: Adriano Teodório da Silva</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito administrativo. Apelação cível. Adicional por tempo de serviço (anuênio). Lei municipal autoaplicável. Prescrição quinquenal das parcelas vencidas. Recurso Desprovido.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação cível interposta pelo Município de Barro-CE contra sentença que reconheceu o direito do servidor ao adicional por tempo de serviço no percentual de 1% ao ano, determinando a readequação do pagamento e o pagamento das parcelas vencidas nos cinco anos anteriores ao ajuizamento da ação.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. A controvérsia envolve a alegação de ausência de prévio requerimento administrativo, a prescrição quinquenal das parcelas vencidas e a aplicabilidade direta da Lei Municipal nº 10/1994, que prevê o adicional por tempo de serviço,</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. Não há necessidade de requerimento administrativo prévio, conforme a Constituição Federal e o entendimento consolidado pelo STJ.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. A prescrição quinquenal foi corretamente aplicada às parcelas anteriores ao quinquênio que antecede o ajuizamento da ação, conforme a Súmula nº 85 do STJ. <br />5. A Lei Municipal nº 10/1994 assegura o direito ao adicional de 1% ao ano sem necessidade de regulamentação adicional.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Recurso desprovido.</p><p style="line-height: 1.656; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">_________________&#160;</p><p style="line-height: 1.44; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: Lei Municipal nº 10/1994, art. 3º, XVIII; Decreto nº 20.910/1932, art. 1º; CPC, art. 373, inciso I e II.</p><p style="line-height: 1.44; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.44; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgRg no AREsp 622.282/RJ, Rel. Ministro SÉRGIO KUKINA, Primeira Turma, julgado em 17/03/2016, DJe 01/04/2016; STJ, Súmula nº 85; TJCE, Apelação Cível - 0050248-55.2021.8.06.0045, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento:&#160; 01/02/2023, data da publicação: 01/02/2023.</p><p style="line-height: 1.44; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p> </p><p style="line-height: 1.44; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.44; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><hr /><p>&#160;</p><p style="line-height: 1.44; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; RELATÓRIO </p><p> <strong style="font-weight: normal;"> <br /> </p><p> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE BARRO, em face de sentença proferida pelo Juízo

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	da Vara Única da Comarca de Barro-CE, que, nos autos da AÇÃO ORDINÁRIA DE OBRIGAÇÃO DE FAZER C/C PAGAMENTO DE ANUÊNIOS NÃO PRESCRITOS E DEVIDOS proposta por ADRIANO TEODÓRIO DA SILVA, julgou parcialmente procedente a demanda, nos termos do dispositivo abaixo transcrito (Id. 15372745):</p><p>&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">Ante o exposto e o mais que dos autos consta:</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">I. julgo PROCEDENTE EM PARTE o pedido autoral, declarando solucionado o mérito, nos termos do art. 487, inciso I. do Código de Processo Civil, para fins de reconhecer o direito da parte autora ao recebimento do adicional de 1% (um por cento) por cada ano de serviço público municipal, devendo o Município fazer a READEQUAÇÃO do percentual da gratificação da parte promovente, e assim, deferindo a tutela de urgência pleiteada;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">II. CONDENO o município de Barro/CE ao pagamento das parcelas de anuênio vencidas e as que se vencerem até a data da implantação em folha de pagamento, deduzindo-se os valores que já vinham sendo pagos a título desta gratificação e ressaltando que o retroativo limitar-se-á à data de 21/02/2019.</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">CONDENO o réu ao pagamento de honorários advocatícios em percentual a ser apurado em liquidação de sentença, já que se trata de condenação ilíquida e o percentual dos honorários dependem de apuração do montante da condenação.</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">Para fins de atualização monetária, de remuneração do capital e de compensação da mora, as parcelas integrantes do débito, até 08/12/2021, deverão ser corrigidas monetariamente, desde cada vencimento,

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	conforme o IPCA-E, acrescidas de juros de mora, nos moldes do art. 1°-F da Lei n.° 9.494/97, com a redação conferida pela Lei n.° 11.960/09, a contar da citação.A partir de 09/12/2021, passa a incidir apenas a SELIC, consoante Emenda Constitucional nº 113/2021, para fins de atualização monetária e compensação da mora</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Demandado isento de custas, por força do que dispõe o art. 10, inciso I, da Lei Estadual nº 12.381/94.</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Publique-se. Registre-se. Intime-se.</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Transcorrido o prazo legal sem a interposição de recurso, arquivem-se os autos sem prejuízo de eventual requerimento de cumprimento de sentença.</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Expedientes necessários.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Em suas razões (Id. 15372749), a Apelante alega, preliminarmente, a ausência de interesse processual, sustentando que o servidor não apresentou solicitação administrativa prévia. Além disso, defende a prescrição quinquenal dos valores cobrados, limitando o direito às quantias devidas nos últimos cinco anos, contados a partir do ajuizamento da ação. No mérito, argumenta que a sentença recorrida deve ser reformada, pois, embora o Estatuto dos Servidores Municipais preveja o adicional de anuênio, o servidor não comprovou o efetivo exercício no serviço público municipal, o que inviabiliza a apuração correta dos valores eventualmente devidos. Assim, requer o acolhimento da preliminar de ausência de interesse processual. Caso não seja acolhida, pleiteia a aplicação da prescrição quinquenal. Caso nenhuma das preliminares seja conhecida, requer a reforma da sentença para que seja julgada improcedente a demanda, uma vez que o direito ao anuênio não foi demonstrado. Por fim, na hipótese de ser reconhecido o direito ao adicional, solicita a contagem exata do tempo de efetivo exercício, devidamente comprovado pelo servidor.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Em suas contrarrazões (Id. 15372755), o Apelado sustenta, em síntese, que a sentença deve ser mantida, pois o adicional por anuênio está previsto na Lei Municipal nº 10/1994 e foi implementado pelo Município de Barro/CE com a incidência de alíquota de apenas 1% sobre o salário do servidor, quando deveria ser de 11%. Argumenta que o Município foi revel no processo e não apresentou provas de qualquer fato impeditivo ao direito alegado, sendo, portanto, responsável pela implementação e pelo pagamento retroativo das diferenças devidas ao Apelado nos últimos cinco anos, conforme reconhecido na sentença. Alega ainda que os argumentos recursais do Município carecem de fundamento, visto que a prescrição quinquenal foi devidamente aplicada e não há ausência de interesse processual, uma vez que a Administração foi informada sobre o pleito antes da propositura da ação. Assim, requer a manutenção da sentença e a aplicação de multa por litigância de má-fé, considerando o recurso protelatório interposto pelo Município.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

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	baseline; white-space: pre-wrap;">Instado a se manifestar, o Parquet deixou de se manifestar sobre o mérito da demanda, por inexistir interesse público apto a ser amparado (Id. 15556080).</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> É o relatório, no essencial.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Inicialmente, compete-me examinar as preliminares suscitadas de ausência de interesse processual e de possível prescrição quinquenal dos valores cobrados, de modo que o direito se limite às quantias devidas nos últimos cinco anos, contados a partir do ajuizamento da ação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Em relação a preliminar de ausência de interesse processual, o Apelante sustenta que não houve resistência à pretensão autoral, porquanto a promovente não postulou o direito reclamado na via administrativa, o que, a seu ver, importa em falta de interesse de agir, resultando no indeferimento da inicial.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É pacífico o entendimento de que não é necessário o exaurimento da via administrativa para legitimar o ajuizamento da demanda judicial, sob pena de mácula ao princípio da inafastabilidade da jurisdição insculpido no artigo 5º, inciso XXXV, da Constituição Federal de 1988.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> A jurisprudência, nesse sentido, é ordeira, consoante o aresto exemplificativo a seguir destacado:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">ADMINISTRATIVO. SERVIDOR MUNICIPAL. AÇÃO DE COBRANÇA. DEVOLUÇÃO DE VALORES DESCONTADOS INDEVIDAMENTE. INTERESSE DE AGIR. EXAURIMENTO DA VIA ADMINISTRATIVA. DESNECESSIDADE. PRETENSÃO RESISTIDA. HONORÁRIOS ADVOCATÍCIOS. CONDENAÇÃO. PRINCÍPIO DA CAUSALIDADE. SÚMULA

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	7/STJ. 1. O aresto recorrido não destoa da jurisprudência deste Superior Tribunal assente no sentido de que "o esgotamento da instância administrativa não é condição para o ingresso na via judicial" (AgRg no AREsp 217.998/RJ, Rel. Ministro Napoleão Nunes Maia Filho, Primeira Turma, julgado em 18/09/2012, DJe 24/09/2012). 2. Configurado o interesse de agir e julgado procedente o pedido do autor, cabível a condenação da parte vencida ao pagamento dos ônus sucumbenciais. Ademais, a alteração das conclusões adotadas pela Corte de origem acerca da aplicação do princípio da causalidade, tal como colocada a questão nas razões recursais, demandaria, necessariamente, novo exame do acervo fático-probatório constante dos autos, providência vedada em recurso especial, conforme o óbice previsto na Súmula 7/STJ. 3. Agravo regimental a que se nega provimento. (STJ - AgRg no AREsp 622.282/RJ, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA TURMA, julgado em 17/03/2016, DJe 01/04/2016) (destaca-se)</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Pelos fundamentos esposados, REJEITA-SE a preliminar de ausência de interesse processual arguida pelo ente público recorrente.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No que tange à possível prescrição quinquenal dos valores cobrados, sustenta o Município que a prescrição prevista no art. 1º do Decreto Municipal nº 20.910/32 alcança as verbas salariais reivindicadas pelo autor.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Ocorre que a prescrição quinquenal, ora requestada, já foi devidamente reconhecida pelo juízo a quo na sentença de Id. 15372745. Senão, observe-se:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No que concerne à prescrição, cuidando-se de direito a ser incorporado, não há falar-se em prescrição de fundo de direito, mas tão somente em eventual prescrição das parcelas/diferenças devidas mês a mês, por se tratar de prestação continuada e, pois, de trato sucessivo, cujo lapso prescricional corresponde a um quinquênio, conforme previsto na norma especial do artigo 1º, do Decreto nº. 20.910/32 e no entendimento do C. STJ, consagrado na Súmula de verbete n. 85: “Nas relações de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação”.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Nesse diapasão, aplica-se ao caso o prazo quinquenal e, considerando que não foi demonstrada a formulação de requerimento administrativo pelo ajuizamento desta demanda, de sorte que o retroativo limitar-se-á aos 05 anos anteriores ao ajuizamento da presente ação.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Aliás, a parte promovente já limita o pedido ao quinquênio anterior ao ajuizamento da ação.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;"

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	dir="ltr"> Esclareço que tal prescrição se limita aos efeitos financeiros, o que não impede a contagem de todo o tempo de serviço prestado para alcance do percentual da gratificação do anuênio, pois, repita-se, não há que se falar na prescrição do fundo de direito, mas apenas dos valores correspondentes às parcelas anteriores ao quinquênio .</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Note-se que, ao mencionar a Súmula nº 85 do Superior Tribunal de Justiça , o&#160; julgador sentenciante deixou patente que não ocorreu a prescrição do fundo de direito (integralidade dos anuênios), mas tão somente das parcelas anteriores ao quinquênio que antecedeu ao ajuizamento da demanda.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> De todo o julgado, extrai-se facilmente a compreensão de que, embora prescritas as parcelas vencidas antes dos 05 (cinco) anos que precedem a propositura da ação, a parte autora possui direito à implantação integral do percentual relativo ao anuênio.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Assim, ao considerar que a prescrição aplicável foi claramente acolhida na decisão hostilizada, entende-se que carece ao ente federado o necessário interesse para recorrer.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por não preencher o destacado requisito de admissibilidade recursal, imperioso o não conhecimento do apelo nesse ponto, o que se faz com arrimo no art. 932, III, do Código de Processo Civil de 2015.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Mantido o afastamento da preliminar, passo ao exame do mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Na espécie, a discussão principal gira em torno do direito do autor ao recebimento da gratificação de anuênio por tempo de serviço em porcentagem coincidente com o número de anos em serviço como servidor da rede municipal de Barro.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Como relatado, o ente municipal apelante visa reformar a sentença que julgou procedente o pedido autoral, alegando, em suas razões recursais, não haver prova do efetivo exercício no serviço público municipal pelo Apelado, assim não havendo de ser reconhecido seu direito ao anuênio, pois não seria possível mensurar os períodos em que o servidor esteve afastado para o cálculo do valor devido a este.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Com efeito, os arts. 3º, XVIII, da Lei Municipal nº 10/1994, que dispõe sobre o

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	Estatuto dos Servidores do Município de Barro Lei Geral, assegura ao servidor público municipal o adicional por tempo de serviço, ou “anuênio”, com a seguinte redação,in verbis:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Art. 3º São direitos assegurados aos servidores municipais da administração pública direta, autárquica e funcional:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> […]&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> XVIII o adicional de 1% (um por cento) por anuência do tempo de serviço;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> […]&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Da leitura do dispositivo legal supramencionado, extrai-se que, aos servidores públicos municipais em geral, é assegurado o adicional por tempo de serviço, denominado “anuênio”, à razão de 1% (um por cento) por ano de efetivo serviço público, incidente sobre o vencimento do servidor.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Percebe-se, ainda, que a Lei Municipal nº 10/94 já especifica o percentual aplicável a título de adicional de “anuênio”, a incidir sobre o vencimento do servidor público do Município de Barro. Dessa forma, a norma dispensa uma lei posterior para regulamentar o adicional em questão, bastando a própria Lei Municipal nº 10/94.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Analisando os dispositivos legais sob enfoque, conclui-se que, porquanto as normas prevejam percepção de gratificação por tempo de serviço devidas aos servidores públicos do Município de Barro, no presente caso, o autor/apelado é servidor da rede pública municipal de Barro, portanto, as regras a ela aplicáveis, pelo critério da especialidade, são aquelas contidas no Estatuto do Servidor Público do Município de Barro.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Nesse ínterim, é pacífico neste Tribunal e nos Tribunais Pátrios o entendimento de que, na Ação de Cobrança de vencimentos movida em face da Fazenda Pública, cabe ao autor comprovar o vínculo funcional, segundo o estabelecido no art. 373, I, do CPC/15, e à Fazenda Pública comprovar a realização dos pagamentos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No presente caso, da documentação juntada pelo demandante, verifica-se que restou comprovado o vínculo funcional do autor com o Município de Barro, o tempo de serviço público, bem como o pagamento a menor a título de anuênios, uma vez que o

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	percentual da gratificação considerou apenas o ano de 2017 como referência, e não o tempo efetivo de serviço público municipal da parte promovente (Id. 15372584/15372586). Dessa forma, está satisfeito o disposto no art. 373, I, do CPC/15, que atribui à parte autora o ônus de provar o fato constitutivo de seu direito.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É cediço que, conforme dispõe o art. 373, II, do CPC/15, o ônus da prova cabe ao réu quando alega fato impeditivo, modificativo ou extintivo do direito do autor. Contudo, a municipalidade não logrou êxito em rechaçar a pretensão autoral, pois não demonstrou nos autos qualquer contraposição ao direito à percepção da gratificação de anuênio, limitando-se a alegar que o adicional não seria devido por falta de comprovação do efetivo exercício no serviço público municipal pelo Apelado. Dessa forma, o ente municipal apelante não se desincumbiu do ônus de provar fato impeditivo, modificativo ou extintivo do direito do autor.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Comprovada a condição de servidor do Município de Barro pelo promovente, conforme documentos acostados aos autos, impõe-se reconhecer o direito ao recebimento do adicional de 1% por cada ano de serviço público efetivo, conforme disposição do art. 3º, XVIII, da Lei nº 10/94, que disciplina o Estatuto do Servidor Público do Município de Barro, respeitando-se a prescrição quinquenal aplicável à cobrança das diferenças em atraso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Destarte, diante do pagamento a menor do adicional referente ao tempo de serviço do apelado, conforme se constata nas fichas financeiras acostadas aos autos (Id. 15372586), impõe-se a adequação do seu percentual aos parâmetros definidos na lei municipal. Entendimento consoante o da sentença a quo, que julgou procedente o pedido inicial, não merecendo guarida sua reforça.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Desse modo, foi corretamente reconhecido o direito do autor ao recebimento do valor dos anuênios incidentes sobre o seu vencimento, em conformidade com o que dispõe o art. 3º, XVIII, da Lei nº 10/94, bem como o pagamento dos valores atrasados, respeitada a prescrição das parcelas que antecedem o quinquênio anterior à propositura da ação, não se demonstrando qualquer equívoco na sentença de origem a ser sanado, também, nesse sentido.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Nesse diapasão, é a jurisprudência desta Corte Estadual, que firmou entendimento acerca do direito perseguido, in verbis:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ADMINISTRATIVO E PROCESSO CIVIL. APELAÇÃO. SERVIDORA PÚBLICA DO MUNICÍPIO DE BARRO. ADICIONAL POR TEMPO DE SERVIÇO. PREVISÃO NO ART. 3º, XVIII, DO ESTATUTO DOS SERVIDORES DO MUNICÍPIO (LEI Nº 010/94). NORMA AUTOAPLICÁVEL. REQUISITOS PREENCHIDOS. BENEFÍCIO EFETIVAMENTE DEVIDO. IMPACTO NAS FINANÇAS DO MUNICÍPIO. NÃO

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	COMPROVADO. PRECEDENTES DO TJCE. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da discussão jurídica ora em apreço cinge-se em apreciar se a autora, servidora pública no Município de Barro, possui direito ao pagamento do adicional por tempo de serviço, previsto na Lei municipal nº 010/1994, que instituiu o regime estatutário dos servidores públicos municipais. 2. No caso, prevê a Lei nº 010/1994, em seu art. 3º, inciso XVIII, que o adicional por tempo de serviço é devido à razão de 1% (um por cento) por ano de serviço público efetivo. Trata-se de norma autoaplicável, pois contém elementos suficientes para a sua concessão, sem necessidade de regulamentação, consubstanciando-se como verdadeira norma jurídica de aplicabilidade direta e imediata, a partir da admissão do servidor, observando-se, no caso, a prescrição quinquenal. 3. Outrossim, convém anotar, na trilha da jurisprudência do Superior Tribunal de Justiça, que empecilhos de ordem financeira ou orçamentária não podem ser utilizados com vistas a afastar o direito dos servidores públicos quanto à percepção de vantagem legitimamente assegurada por lei. Além disso, não comprova o apelante, de forma aritmética e clara, o potencial colapso financeiro capaz de inviabilizar a consecução do interesse público primário e, consequentemente, gerar grave lesão à economia pública municipal. 4. Recurso de apelação conhecido e desprovido. Sentença mantida. (Apelação Cível - 0050248-55.2021.8.06.0045, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento:&#160; 01/02/2023, data da publicação:&#160; 01/02/2023)</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Processo: 0003966-66.2015.8.06.0045 - Apelação / Remessa Necessária Apelante: Município de Barro Remetente: Juiz de Direito da Vara Única da Comarca de Barro Apelado: Marinete de Lima Pereira EMENTA: PROCESSUAL CIVIL. DIREITO ADMINISTRATIVO. APELAÇÃO CÍVEL. REMESSA NECESSÁRIA. AÇÃO ORDINÁRIA. SERVIDORA DA REDE PÚBLICA MUNICIPAL. PRETENSÃO DE RECEBER IMPLEMENTAÇÃO DO ADICIONAL POR TEMPO DE SERVIÇO (ANUÊNIO) PREVISTO NOS ARTS. 3º, XVIII DO ESTATUTO DOS SERVIDORES DO MUNICÍPIO DE BARRO (LEI Nº 10/94). POSSIBILIDADE. AUSÊNCIA DE CUMULAÇÃO DA GRATIFICAÇÃO ALMEJADA COM OUTRA VANTAGEM DE MESMA NATUREZA. AUSÊNCIA DE PAGAMENTO DO ANUÊNIO. PRESCRIÇÃO. RELAÇÃO DE TRATO SUCESSIVO. SÚMULA 85/STJ. REMESSA E APELAÇÃO CONHECIDAS. DESPROVIDO O APELO E PROVIDA EM PARTE A REMESSA. 1. Trata-se de Remessa Necessária e Apelação Cível interposta pelo Município de Barro, visando reformar sentença que julgou procedente o pedido autoral nos autos da Ação Ordinária com pedido de antecipação de tutela. 2. Servidora do Município de Barro alegam que a edilidade não vem oferecendo o benefício – anuênio – no percentual devido, pugnando, assim, pela implementação dos valores e pagamento de atrasados. 3. Nas razões recursais, o requerente alega incompatibilidade entre o Estatuto dos Servidores do Município de Barro e o Regime Geral de Previdência Social, bem como a impossibilidade de concessão do adicional prevista pela Lei de Responsabilidade Fiscal. Ao fim, requer provimento, com a consequente reforma da sentença. 4. O art. 3º, XVIII, da Lei Municipal nº 10/1994, que dispõe sobre o Estatuto dos Servidores do Município de Barro, assegura ao servidor público municipal o adicional por tempo de serviço, ou "anuênio", com a seguinte redação: "São direitos assegurados aos servidores municipais da administração pública direta, autárquica e funcional: XVIII – o adicional de 1% (um por cento) por anuência do tempo de serviço." 5. Analisando os dispositivos legais sob enfoque, conclui-se que, porquanto as normas prevejam percepção de gratificação por tempo de serviço devidas aos servidores públicos do Município de Barro, no presente caso, a autora/apelada é servidora da rede pública municipal de Barro, portanto, as regras a ela aplicáveis, pelo critério da especialidade, são aquelas contidas no Estatuto do Servidor Público do Município de Barro. 6. No presente caso, da documentação juntada pela demandante, verifica-se que resta comprovado o vínculo funcional da autora com o Município de Fortaleza, o tempo de serviço público, bem como o percentual pago, a título de anuênios, satisfazendo, portanto, o disposto no art. 373, I do CPC/15, o qual atribui à parte autora o ônus de provar o fato constitutivo de seu direito. 7. No que concerne à tese defensiva do ente municipal apelante de indisponibilidade financeira e orçamentária para o pagamento do adicional, nos termos da legislação de regência, haja vista a ausência de prévia dotação orçamentária, impende ressaltar que não logrou comprovar com dados concretos referida alegação. Convém por em relevo que, ainda que assim não fora, tratando-se de obrigação legal, incumbia à Administração Pública zelar pela boa aplicação dos recursos públicos, com vistas ao respeito do direito ora salvaguardado. 8. Impende destacar que a matéria discutida nos autos trata de obrigação de trato sucessivo, ou seja, de parcelas vencimentais, que não são atingidas pela prescrição do fundo de direito, mas, tão somente, pela prescrição quinquenal, salvo se ocorrer indeferimento na via administrativa, o que não aconteceu na espécie, porquanto não noticiado nos autos. 9. Contudo, a sentença merece reparo em sede de reexame necessário no que diz respeito aos honorários advocatícios de sucumbência, porquanto

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	referida decisão é ilíquida, de maneira que a fixação dessa verba somente ocorrerá na fase de liquidação, nos moldes preconizados no art. 85, § 4º, II, do CPC. 10. Remessa e Apelo conhecidos. Desprovido o apelo e provida em parte a Remessa. (Apelação / Remessa Necessária - 0003966-66.2015.8.06.0045, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento:&#160; 16/09/2020, data da publicação:&#160; 16/09/2020)</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> CONSTITUCIONAL. ADMINISTRATIVO. SERVIDOR PÚBLICO MUNICIPAL. PARCELA REMUNERATÓRIA CALCULADA COM BASE NO TEMPO DE SERVIÇO. ANUÊNIO. PREVISÃO NO ESTATUTO DOS SERVIDORES PÚBLICOS DO MUNICÍPIO DE BARRO. JUROS MORATÓRIOS E CORREÇÃO MONETÁRIA. SENTENÇA MODIFICADA EM PARTE. - Trata o caso de reexame necessário e apelação cível em ação de cobrança por meio da qual os autores requerem a condenação do Município de Barro à implementação e respectivo pagamento de adicional por tempo de serviço (anuênio) previsto na Lei Municipal nº 10/1994. - Nos termos do art. 3º, inciso XVIII do Estatuto dos Servidores Públicos do Município de Barro, o direito ao recebimento do adicional surge a partir do momento em que o servidor completar cada ano de serviço público. Referida norma afigura-se plenamente aplicável, prescindindo da edição de qualquer outro diploma normativo para que possa produzir seus efeitos. - Juros moratórios e correção monetária incidentes em casos de condenações impostas à Fazenda Pública. Matéria que envolve direito de servidor público. Tese firmada pelo STJ (tema 905) sob a sistemática dos recursos repetitivos. Incidência à hipótese dos autos. - Apelação conhecida e não provida. - Reexame Necessário conhecido. - Sentença reformada em parte, tão somente para fixar os juros moratórios e o índice de correção monetária. (Apelação / Remessa Necessária - 0003722-40.2015.8.06.0045, Rel. Desembargador(a) ROSILENE FERREIRA FACUNDO - PORT. 1392/2018, 3ª Câmara Direito Público, data do julgamento:&#160; 20/08/2018, data da publicação:&#160; 20/08/2018)</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No tocante aos honorários, escorreita a sentença pois, em razão da sua iliquidez, a fixação da verba honorária deve ser realizada na fase de liquidação, nos termos do art. 85, § 4º, inciso II, do CPC, observando-se, ainda, o disposto na Súmula nº 111 do STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Diante de todo o exposto, na linha do entendimento jurisprudencial sobre a matéria, CONHEÇO da presente Apelação Cível para NEGAR-LHE provimento, mantendo incólume a sentença combatida, nos exatos termos desta manifestação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Enfatizo, ainda, que o fato de a parte sucumbente ter insistido em sua pretensão, sem êxito, deve ser considerado pelo Juízo da liquidação no momento em que for definir o percentual da verba honorária (art. 85, §11, do CPC).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo&#160;</p><p>&#160;</p><p><strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

Processo	3000028-94.2024.8.06.0045
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	35
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Leito de enfermaria / leito oncológico
Polo ativo	ANTONIA LENIR DE OLIVEIRA TAVARES MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo ativo	Não informado
Polo passivo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM ESTADO DO CEARA ANTONIA LENIR DE OLIVEIRA TAVARES
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0269094-06.2023.8.06.0001
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr">ESTADO DO CEARÁ</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr">PODER JUDICIÁRIO</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr">TRIBUNAL DE JUSTIÇA</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr">GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-90f1c447-7fff-767f-dd41-6875e0766fbc" style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Processo: 0269094-06.2023.8.06.0001 – Apelação cível</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Apelante(s): DEFENSORIA PÚBLICA ESTADUAL e MUNICÍPIO DE FORTALEZA</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Apelado(s): ESTADO DO CEARÁ, MUNICÍPIO DE FORTALEZA e DEFENSORIA PÚBLICA ESTADUAL</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Ementa: Processo civil. Saúde. Apelação

Processo	0269094-06.2023.8.06.0001
	cível. Ação de obrigação de fazer. Honorários. Fixação por equidade. Recurso da defensoria parcialmente provido. Recurso do município de fortaleza provido. Sentença parcialmente reformada.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 1. Trata-se de apelação cível interposta pela Defensoria Pública Estadual e pelo Município de Fortaleza contra sentença que, em Ação de Obrigação de Fazer c/c Pedido de Tutela de Urgência, determinou a fixação de honorários sucumbenciais a serem apurados em cumprimento de sentença. O recurso da Defensoria Pública caminha para que haja a fixação dos honorários em percentual sobre o valor da causa, enquanto que o recurso do Município pleiteia pela aplicação de critério equitativo, dado o proveito econômico inestimável da demanda.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 2. Há duas questões em discussão: (i) saber se é cabível a alteração do momento da fixação dos honorários; e (ii) saber se a fixação dos honorários sucumbenciais deve ocorrer de forma equitativa, conforme o art. 85, §8º, do CPC/15, em razão do proveito econômico inestimável.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 3. A jurisprudência consolidada deste Tribunal, assim como o entendimento do STJ, orienta que, em casos que envolvem o direito à saúde, cujo proveito econômico é inestimável, a fixação da verba sucumbencial deve ser feita de forma equitativa, conforme previsto no §8º do Art. 85 do CPC/15.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 4. Desse modo, não há que se falar em fixação dos honorários em percentual, tal como requer a Defensoria Pública do Estado do Ceará, ou, em apuração dos honorários em liquidação de sentença.&#160;</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> 5. Recurso da Defensoria Pública parcialmente provido. Recurso do Município de Fortaleza provido. Sentença parcialmente reformada.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ________________</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"><span style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-color:transparent;font-weight:400;font-

Processo	0269094-06.2023.8.06.0001
	style:italic;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">Dispositivos relevantes citados: CPC/15, arts. 85, §§ 2º, 4º, 8º e 11.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Jurisprudência relevante citada: STF, RE nº 1.140.005, Tema 1.002, Rel. Min. Dias Toffoli, Plenário, j. 23.06.2023; e TJCE – Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador José Tarcílio Souza da Silva, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em conhecer da apelação cível interposta pela Defensoria Pública Estadual e pelo Município de Fortaleza para dar parcial provimento ao apelo da Defensoria e dar provimento ao recurso da municipalidade, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> &#160; Relatora &#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:6pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pela DEFENSORIA PÚBLICA ESTADUAL e pelo MUNICÍPIO DE FORTALEZA contra a sentença proferida pelo Juízo da 15ª Vara da Fazenda Pública da Comarca de Fortaleza, que, em Ação de Obrigação de Fazer c/c Pedido de Tutela de Urgência com Preceito Cominatório, ajuizada por ANTÔNIA LENIR DE OLIVEIRA TAVARES em face do ESTADO DO CEARÁ e do MUNICÍPIO DE FORTALEZA, julgou procedente o pleito autoral.

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	Honorários advocatícios a serem apurados em cumprimento de sentença.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Em suas razões recursais, a Defensoria Pública do Estado do Ceará defende, em suma, a fixação dos honorários. Por fim, pugna pelo provimento do recurso para reformar a sentença de 1º grau no sentido de estabelecer a fixação dos honorários advocatícios no percentual de 10% sobre o valor atualizado da causa (R$ 84.725,00), nos termos do § 2° do art. 85 do CPC/15.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Inconformado com a decisão de 1º grau, o Município de Fortaleza interpôs recurso de apelação, sob o argumento de que o bem da vida perseguido na presente demanda é a cura da enfermidade que assola a parte autora e, portanto, o proveito econômico possui natureza inestimável. Nesse sentido, pleiteia a fixação dos honorários nos moldes do § 8º do art. 85 do CPC/15, a partir do critério da equidade, ao que roga pelo provimento do recurso.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Contrarrazões recursais do Estado do Ceará (ID nº 15594213).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Contrarrazões recursais da Defensoria Pública Estadual (ID nº 15594217).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É o relatório.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> De início, deixo de abrir vista dos autos à Procuradoria-Geral de Justiça, uma vez que o mérito recursal se restringe exclusivamente à discussão acerca de honorários sucumbenciais, matéria de cunho patrimonial e disponível, não havendo interesse público primário que justifique a intervenção ministerial, conforme já reconhecido pela própria Procuradoria-Geral de Justiça através de pareceres emitidos em processos análogos que tramitam sob o crivo desta Relatoria (Apelação cível – 0056616-49.2016.8.06.0112; Apelação cível – 0287997-26.2022.8.06.0001; e Apelação cível – 3001625-13.2023.8.06.0117).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Preenchidos os requisitos de admissibilidade, conheço da apelação cível da Defensoria Pública Estadual e do Município de Fortaleza, passando, a seguir, ao exame da matéria discutida nos autos.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> A controvérsia cinge-se em averiguar aspectos relacionados a <span style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-color:#ffffff;font-weight:400;font-style:normal;font-

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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">o momento de fixação dos honorários sucumbenciais.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Pois bem.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Da análise aos autos, verifica-se que o Juízo de 1º grau condenou o Estado do Ceará e o Município de Fortaleza ao pagamento de honorários advocatícios sucumbenciais em porcentagem a incidir sobre o proveito econômico, tudo a ser definido em liquidação de sentença, conforme o inciso II do § 4º do art. 85 do CPC/15.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Tal determinação, entretanto, contraria os julgados deste egrégio Tribunal de Justiça, cuja orientação é no sentido de que as prestações de saúde têm proveito econômico inestimável, devendo o ônus da sucumbência ser fixado por apreciação equitativa, na forma do Art. 85, §§ 2º e 8º, do CPC/15. Vejamos:</p><p style="line-height:1.7999999999999998;margin-left: 142pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">CONSTITUCIONAL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL INTERPOSTA PELA DEFENSORIA PÚBLICA. AÇÃO DE OBRIGAÇÃO DE FAZER C/C PEDIDO DE TUTELA DE URGÊNCIA (ALIMENTOS, INSUMOS E FRALDAS). AVOCAÇÃO DO FEITO EM REMESSA NECESSÁRIA. DIREITO À SAÚDE. ARTS. 5º, §1º, 6º, CAPUT, 23, II, 196 E 197 DA CF. TEMA 793 DO STF E SÚMULA 45 DO TJCE. COMPROVAÇÃO DA HIPOSSUFICIÊNCIA DA PARTE AUTORA E DA NECESSIDADE DA ALIMENTAÇÃO ESPECIAL, DOS INSUMOS E DAS FRALDAS. MANUTENÇÃO DA CONDENAÇÃO DO ESTADO. RECURSO DE APELAÇÃO. HONORÁRIOS EM FAVOR DA DEFENSORIA PÚBLICA. MUDANÇA DE ENTENDIMENTO. JULGAMENTO DO RE 1140005 PELO STF, EM SEDE DE REPERCUSSÃO GERAL. TEMA 1.002. TESE QUE IMPÕE A CONDENAÇÃO A QUALQUER ENTE PÚBLICO A PAGAR VERBA HONORÁRIA SUCUMBENCIAL EM FAVOR DA DEFENSORIA PÚBLICA, INCLUINDO-SE O ESTADO AO QUAL A INSTITUIÇÃO SE VINCULA. FORÇA VINCULANTE DOS PRECEDENTES. ART. 927, III DO CPC. REMESSA NECESSÁRIA AVOCADA E DESPROVIDA. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. SENTENÇA PARCIALMENTE REFORMADA. 1. Busca a Defensoria Pública em seu apelo a reforma parcial da sentença, objetivando a condenação do Estado do Ceará ao pagamento de honorários advocatícios em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. (…) 8. A respeito da questão discutida no recurso voluntário, impende esclarecer que, até bem pouco tempo, o entendimento jurisprudencial unânime nesta Corte de Justiça, em consonância com o enunciado sumular nº 421 do STJ, era no sentido da impossibilidade jurídica de condenação do Estado do Ceará em honorários em favor da Defensoria Pública, em virtude de ser a instituição vinculada ao ente federado em alusão. 9. Todavia, em data recente (23.06.2023), o STF julgou o RE 114005, em sede de Repercussão Geral (Tema 1.002), no qual firmou a seguinte tese: "1. É devido o pagamento de honorários sucumbenciais à Defensoria Pública, quando representa parte vencedora em demanda ajuizada contra qualquer ente público, inclusive aquele que integra; 2. O valor recebido a título de honorários sucumbenciais deve ser destinado, exclusivamente, ao aparelhamento das Defensorias Públicas, vedado o seu rateio entre os membros da instituição". 10. Com o mencionado julgado, encerra-se a discussão acerca da possibilidade, ou não, de a pessoa jurídica, à qual se encontra vinculada a Defensoria Pública ser condenada em honorários advocatícios de sucumbência em prol do mencionado órgão, isso em decorrência da força vinculante dos precedentes, com previsão no art. 927, III, do

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	CPC/2015. 11. Em consequência, devem ser fixados na hipótese honorários sucumbenciais, em atendimento aos parâmetros estabelecidos no artigo 85, §§ 2º e 3º, do CPC/2015. 12. Na hipótese, como se trata de causa de valor que não se pode estimar, envolvendo direito à saúde, constitucionalmente garantido e inserido no conceito de mínimo existencial, a fixação dos honorários deve ocorrer por apreciação equitativa, nos termos do art. 85, § 8º, do CPC, mostrando-se cabível a fixação do valor de R$ 1.000,00 (mil reais) a título de honorários sucumbenciais, a serem pagos pelo Estado do Ceará em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. 13. Remessa necessária avocada e desprovida. Recurso de apelação conhecido e provido. Sentença parcialmente reformada. ACÓRDÃO – Vistos, relatados e discutidos os presentes autos, nesta Comarca de Fortaleza, em que figuram as partes indicadas. ACORDAM os membros integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em AVOCAR o feito em remessa necessária, para NEGAR-LHE PROVIMENTO, e em CONHECER do recurso de apelação interposto, para DAR-LHE PROVIMENTO, reformando parcialmente a sentença, nos termos do voto do Relator. Fortaleza, 30 de outubro de 2023. Des. José Tarcílio Souza da Silva Relator (Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023). (Destaque-se).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Assim também passaram a decidir os membros deste Órgão Julgador: Apelação Cível – 0050394-75.2021.8.06.0052, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 12/08/2024, data da publicação: 12/08/2024; Apelação / Remessa Necessária – 0113491-47.2017.8.06.0001, Rel. Desembargador(a) DURVAL AIRES FILHO, 1ª Câmara Direito Público, data do julgamento: 05/08/2024, data da publicação: 08/08/2024; Apelação Cível – 0057307-72.2021.8.06.0117, Rel. Desembargadora MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 23/03/2022, data da publicação: 23/03/2022.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> E nem poderia ser diferente, pois, considerando que no presente caso o proveito econômico obtido pelo vencedor da ação é inestimável (direito à saúde), o arbitramento de honorários advocatícios em sede de cumprimento de sentença, nos termos do inciso II do § 4º do art. 85 do CPC, se mostra inadequado, conforme orientação do Tema 1076 do STJ:</p><p style="line-height:1.7999999999999998;margin-left: 142pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:10pt;font-family:'Times New

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	Roman',serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">Questão submetida a julgamento :</p><p style="line-height:1.7999999999999998;margin-left: 142pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Definição do alcance da norma inserta no §8º do artigo 85 do Código de Processo Civil nas causas em que o valor da causa ou o proveito econômico da demanda forem elevados.</p><p style="line-height:1.7999999999999998;margin-left: 142pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tese Firmada :</p><p style="line-height:1.7999999999999998;margin-left: 142pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> I) A fixação dos honorários por apreciação equitativa não é permitida quando os valores da condenação, da causa ou o proveito econômico da demanda forem elevados. É obrigatória nesses casos a observância dos percentuais previstos nos §§ 2º ou 3º do artigo 85 do CPC – a depender da presença da Fazenda Pública na lide –, os quais serão subsequentemente calculados sobre o valor: (a) da condenação; ou (b) do proveito econômico obtido; ou (c) do valor atualizado da causa.</p><p style="line-height:1.7999999999999998;margin-left: 142pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">II) Apenas se admite arbitramento de honorários por equidade quando, havendo ou não condenação: (a) o proveito econômico obtido pelo vencedor for inestimável ou irrisório; ou (b) o valor da causa for muito baixo. (Destaque-se).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Nesse contexto, com base no que já foi anteriormente exposto, entendo que a determinação judicial para que os honorários sucumbenciais sejam definidos em liquidação de sentença deve ser afastada, conforme precedentes deste egrégio Tribunal de Justiça e orientação do Tema 1076 do STJ.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Assim sendo, observados os parâmetros do §2º do Art. 85 do CPC/15, hei por bem alterar o momento de fixação dos honorários sucumbenciais e,

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	por conseguinte, condenar os promovidos em R$ 1.000,00 (um mil reais), conforme §8º do Art. 85 do CPC/15 (apreciação equitativa), devendo cada ente público demandado ficar responsável pelo pagamento da importância de R$ 500,00 (quinhentos reais), como forma de atender o que preconiza o §1º do Art. 87 do CPC/15.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Tal quantia se justifica em razão do menor grau de complexidade da causa, do cenário jurídico já sedimentado sobre o tema e, por fim, do trabalho e zelo profissional desenvolvido pelo(a) Defensor(a) Público(a) no processo, atendendo, assim, aos princípios da razoabilidade e da proporcionalidade, além de seguir o montante adotado por este Órgão Julgador para casos análogos.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Registre-se, outrossim, que o referido montante deverá ser destinado, exclusivamente, ao Fundo de Apoio e Aparelhamento da Defensoria Pública do Estado do Ceará – FAADEP, sendo vedado o seu rateio entre os membros da instituição.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> O valor da condenação em honorários deverá sofrer incidência de juros de mora e correção monetária na forma do art. 3º, da Emenda Constitucional nº 113/2021.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">Pelo exposto, CONHEÇO da apelação cível interposta pela Defensoria Pública Estadual e pelo Município de Fortaleza para, modificando em parte o julgamento de 1º grau, DAR parcial provimento ao apelo da Defensoria e DAR provimento ao recurso do Município de Fortaleza, alterando, assim, o momento de fixação dos honorários sucumbenciais, conforme acima delineado.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Sem majoração da verba honorária prevista no art. 85, §11, do CPC/15.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">&#160;</p><p style="line-

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	height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">&#160;DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> &#160; Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	36
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Compulsória
Polo ativo	SARA ARAUJO CHAVES
Advogado(s) - Polo ativo	JOSE GERARDO FROTA PARENTE NETO - (CE27339)
Polo passivo	MUNICIPIO DE CAUCAIA INSTITUTO DE PREVIDENCIA DO MUNICIPIO DE CAUCAIA - IPMC
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Processo: 3001335-24.2024.8.06.0000 - Agravo de Instrumento</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravante: Sara Araújo Chaves</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravado: Município de Caucaia e Instituto de Previdência do Município de Caucaia - IPMC</p><p style="line-height: 2.16; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 2.16; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ementa: Direito administrativo. Agravo de instrumento em ação anulatória. Aposentadoria por invalidez compulsória. Servidora do magistério do Município de Caucaia. Perícia médica realizada pelo Instituto de Previdência Municipal. Servidora aposentada por doença incapacitante. Ausência de elementos aptos a afastar a presunção de legalidade e veracidade dos atos administrativos. Recurso

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	desprovido.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 1. Agravo de Instrumento interposto contra decisão interlocutória que indeferiu o pedido de tutela de urgência requerido pela parte autora, a qual busca o regresso às atividades laborais, com o consequente restabelecimento da remuneração de forma integral.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 2. Verificar a existência de elementos que evidenciem a probabilidade do direito e o perigo de dano ou risco ao resultado útil do processo, consoante previsto no art. 300 do CPC, para conceder a tutela pretendida.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">3. Dos documentos juntados aos autos da ação originária, é possível observar que a perícia médica realizada pelo Instituto de Previdência do Município de Caucaia concluiu pela incapacidade da agravante para o trabalho, determinando, ainda, a aposentadoria da servidora por doença incapacitante, em virtude do quadro clínico crônico de Transtorno Afetivo Bipolar associado a Transtorno Obsessivo Compulsivo (CID F31 e F42).</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4. Embora se encontrasse em período de readaptação temporária, não se verifica, em cognição sumária, qualquer impedimento legal que obstasse a realização de perícia médica revisional durante o intervalo de readaptação.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">5. De mais a mais, na particularidade do caso concreto, tem-se que a parte agravante experienciou de outros períodos de readaptação, bem como de diversos afastamentos por licença médica, de modo que o lastro probatório não se mostra suficiente para infirmar as conclusões adotadas pela perícia médica administrativa.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">6. Com efeito, o art. 28 da Lei Municipal nº 1.414/2001

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	prevê que “A aposentadoria por invalidez será devida ao segurado que for considerado incapaz de readaptação e ser-lhe-á paga enquanto permanecer nessa condição”.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 7. Assim, considerando que a condição de saúde da servidora é questão controversa, ainda em trâmite no primeiro grau de jurisdição, no qual foi determinada a realização de perícia médica judicial, e que a aposentadoria por invalidez compulsória da agravante precedeu de perícia médica administrativa, nos termos da legislação municipal, não se observa, neste momento processual, prova robusta e cabal apta a afastar a presunção de veracidade e legitimidade do ato administrativo.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 8. Agravo de Instrumento desprovido.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Dispositivos relevantes citados: Lei Municipal n.º 1.141/2001, art. 28.&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do Agravo de Instrumento para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160; &#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr">

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	Relatora&#160; &#160;</p><hr /><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Trata-se de AGRAVO DE INSTRUMENTO interposto por SARAH ARAÚJO CHAVES contra decisão interlocutória proferida pelo Juízo da 3ª Vara Cível da Comarca de Caucaia/CE que, nos autos da Ação Anulatória de Aposentadoria ajuizada pela agravante em desfavor do MUNICÍPIO DE CAUCAIA e do INSTITUTO DE PREVIDÊNCIA DO MUNICÍPIO DE CAUCAIA, indeferiu o pedido liminar da agravante, nos termos do dispositivo abaixo transcrito (id. 11694107):&#160;</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr">Ante o exposto, indefiro o pedido de tutela antecipada e determino a realização de perícia judicial nos termos do CPC/2015.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> Nomeio o Dr. Kelnner Portela Luz para atuar como perito judicial neste feito. Intimem-se as partes para apresentarem quesitos e indicarem assistentes técnicos (art. 465, § 1º, CPC), no prazo de 15 dias, podendo apresentar nova documentação relativa a exames, atestados médicos e a procedimentos administrativos.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> Após, intime-se o perito nomeado por via do seu endereço eletrônico, encaminhando a cópia em formato pdf de todos os documentos juntados pelas partes relativos aos procedimentos médicos em um único arquivo, com seus quesitos e, em outro, cópia integral do processo, para que dele possa ter uma visão geral.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> &#160;O laudo pericial deverá ser

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	apresentado no prazo de 120 dias corridos da intimação do perito (art. 465, CPC), encaminhando o perito ao e-mail caucaia.3civel@tjce.Jus.br.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr"> Fixo os honorários periciais no valor de R$ 800,00, a serem pagos após a conclusão dos trabalhos (Res. Órgão Especial n. 14/2022), com as eventuais correções previstas no art. 35, § 1º, a contar desde a edição da referida resolução.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 61.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Em suas razões recursais (id. 11694103), a agravante argumenta, em suma, que (i) se encontrava em período de readaptação, não podendo ser aposentada de forma compulsória enquanto perdurasse o seu já aprovado período de readaptação até 31/01/2023; (ii) sempre se encontrou plenamente capacitada e apta a exercer suas atividades laborais de forma readaptada, como restou comprovado pela própria perícia médica do IPM. Ao final, pugna pela reforma da decisão do juízo a quo para deferir a tutela antecipada, de modo a suspender a concessão da aposentadoria por invalidez até a decisão final de mérito, bem como a autorizar o regresso imediato da servidora à sua atividade rotineira readaptada e a restabelecer o salário de forma integral.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em sede de contrarrazões (id. 12786680 e id. 12831418), os agravados sustentam, em suma, a legalidade do ato administrativo que resultou na aposentadoria por invalidez da servidora, porquanto fundamentado em perícia médica que atestou a incapacidade laboral da agravante, em procedimento administrativo instaurado para o caso.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Instada a manifestar-se, a Procuradoria-Geral de Justiça apresentou parecer (id. 14636707) opinando pelo conhecimento e provimento do recurso, em razão da presença da probabilidade do direito e do perigo de dano ou risco ao resultado útil do processo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> É o relatório, no essencial.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço o Agravo de Instrumento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal;

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	font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Cinge-se a controvérsia em aferir o direito da autora à tutela antecipada recursal, a qual objetiva a suspensão dos efeitos do ato administrativo que determinou a aposentadoria por invalidez compulsória da agravante, autorizando o regresso imediato da servidora à atividade rotineira readaptada e o restabelecimento de seu salário de forma integral.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> De início, em atenção ao efeito devolutivo inerente ao Agravo de Instrumento, pontuo que compete a esta relatoria apenas se debruçar sobre a decisão atacada propriamente dita, não cabendo adentrar profundamente na apreciação de questões inerentes ao mérito da ação principal, ainda em trâmite no primeiro grau de jurisdição.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Analisando o contexto fático e probatório dos autos, e em atenção aos requisitos necessários à concessão da tutela requerida contidos no art. 300, do Código de Processo Civil — quais sejam, a probabilidade do direito e o perigo de dano ou o risco ao resultado útil do processo — &#160;tenho que a decisão agravada prescinde de reforma.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Dos documentos juntados aos autos da ação originária, é possível observar que a perícia médica do Instituto de Previdência do Município de Caucaia concluiu, em 18/04/2022, pela incapacidade da agravante para o trabalho, determinando, ainda, a aposentadoria da servidora por doença incapacitante, em virtude do quadro clínico crônico de Transtorno Afetivo Bipolar associado a Transtorno Obsessivo Compulsivo (CID F31 e F42) (id. 57267602 daqueles autos).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Embora se encontrasse em período de readaptação temporária — o qual foi reconhecido de 01/02/2022 a 31/01/2023 (id. 42107126 daqueles autos) —, não se verifica, em cognição sumária, qualquer impedimento legal que obstasse a realização de perícia médica revisional durante o intervalo de readaptação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> De mais a mais, na particularidade do caso concreto, tem-se que a parte agravante experienciou de outros períodos de readaptação, bem como de diversos afastamentos por licença médica (id. 42103472 e id. 57267602), de modo que o lastro probatório não se mostra suficiente para afastar as conclusões firmadas pela perícia médica administrativa.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">Com efeito, o art. 28 da Lei Municipal nº 1.414/2001 prevê que “ A aposentadoria por invalidez será devida ao segurado que for considerado incapaz de readaptação e ser-lhe-á paga enquanto permanecer nessa condição”.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Desse modo, uma vez que foi constatada modificação das condições de saúde da servidora que alteraram a sua capacidade para o trabalho, mediante exame médico-pericial do órgão competente, não é possível concluir, em sede de cognição sumária, pela existência de manifesta ilegalidade no ato administrativo que determinou a aposentadoria por invalidez compulsória da servidora.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Outrossim, tenho que o laudo médico que concluiu pela renovação da licença médica da parte agravante (id. 57267602, pág. 06) não é suficiente para atestar a presunção da capacidade laboral da autora, porquanto o mesmo médico perito constatou, na mesma data, a incapacidade por doença da servidora (id. 57267602, pág. 07).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Assim, considerando que a condição de saúde da servidora é questão controversa, ainda em trâmite no primeiro grau de jurisdição, e que a aposentadoria por invalidez compulsória da agravante precedeu de perícia médica administrativa, não se observa, no presente momento processual, prova robusta e cabal apta a afastar a presunção de veracidade e legitimidade do ato administrativo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> A fim de corroborar, trago à baila precedentes dos tribunais pátrios:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"><span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">ADMINISTRATIVO. PROCESSO CIVIL. APELAÇÃO. AÇÃO ANULATÓRIA DE APOSENTADORIA. ILEGITIMIDADE PASSIVA. NÃO CONFIGURAÇÃO. SERVIDORES DA SEE/DF AINDA NÃO CONTEMPLADOS NO CRONOGRAMA DE ASSUNÇÃO DA CONCESSÃO, MANUTENÇÃO, REVISÃO E CASSAÇÃO DOS BENEFÍCIOS PREVIDENCIÁRIOS PELO IPREV/DF. CERCEAMENTO DE DEFESA. NÃO OCORRÊNCIA. PRELIMINARES REJEITADAS. DO MÉRITO. AUSÊNCIA DE INCAPACIDADE QUE ENSEJOU A APOSENTADORIA NÃO DEMONSTRADA. ÔNUS DA PROVA. ART. 373, I, DO CPC. O PODER INSTRUTÓRIO DO JUIZ NÃO PODE SUBSTITUIR O ÔNUS DA PROVA ATRIBUÍDO ÀS PARTES. PERÍCIA MÉDICA OFICIAL. ATO ADMINISTRATIVO. PRESUNÇÃO DE LEGALIDADE, VERACIDADE E LEGITIMIDADE. SUA IMPUGNAÇÃO ENSEJA INVERSÃO DO ÔNUS PROBATÓRIO EM DESFAVOR DO ADMINISTRADO. RELATÓRIOS MÉDICOS PARTICULARES. PROVA UNILATERALMENTE PRODUZIDA E SEM EXERCÍCIO DO CONTRADITÓRIO. SÚMULA 598/STJ. INAPLICABILIDADE. SITUAÇÃO DIVERSA DA ABRANGIDA PELO ENUNCIADO. SEGURADO INCAPAZ DE READAPTAÇÃO PARA O EXERCÍCIO DAS ATRIBUIÇÕES DO CARGO. 1. Consoante Lei Complementar Distrital nº 769/2008 c/c Decreto Distrital nº 38.649/2017 e Portarias nº 80/2017, nº 46/2018 e nº 131/2018 do Instituto de Previdência dos Servidores do Distrito Federal - IPREV/DF, referido Instituto passou a realizar a centralização das atividades de concessão, manutenção, revisão e cessação dos benefícios previdenciários de aposentadoria e pensão dos beneficiários vinculados a entidades da Administração Direta e Indireta do Distrito Federal, exceto dos servidores da Secretaria de Estado de Educação - SEE/DF e Secretaria de Estado de Saúde - SES/DF, pois ainda não contemplados em cronograma a ser estabelecido por Portaria, e da Defensoria Pública, Polícia Militar, Polícia Civil e Corpo de Bombeiros do

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	Distrito Federal, por possuírem regramento próprio. 1.1. Considerando que o ato impugnado foi praticado pelo próprio Distrito Federal, em observância ao art. 40 da CF, não há que se falar em sua ilegitimidade passiva. Preliminar rejeitada. 2. Conquanto a regra disposta no art. 98, § 6º, do CPC, atinente ao parcelamento de despesas processuais, seja aplicável aos beneficiários da justiça gratuita, não há óbice à sua aplicação extensiva àqueles que não foram agraciados com o benefício citado, quando, consideradas as peculiaridades do caso e observados nos autos os elementos ou inícios que demonstrem a capacidade financeira do postulante, o parcelamento de despesas processuais, como os honorários periciais, mostre-se admissível, desde que pleiteado pelo interessado. 2.1. Não se verificando qualquer pedido no sentido de parcelamento do pagamento dos honorários periciais e tendo o interessado na produção da prova optado por sua desistência, a preliminar de cerceamento de defesa não merece amparo. 3. Tendo em vista que o autor tinha por objetivo a anulação do ato de sua aposentadoria em razão de invalidez, ao argumento de que apenas não reunia, temporariamente, condições de saúde para exercer suas atividades laborais, cabia a ele o ônus de demonstrar as suas alegações com o fito de refutar o laudo médico da Junta Médica Oficial, em observância ao art. 373, I, do CPC. 4. Embora o art. 370 do CPC admita o poder instrutório do juiz, ao qual caberá, de ofício ou a requerimento da parte, determinar as provas necessárias ao julgamento do mérito, não se pode perder de vista que tal atividade deve ser realizada em conjunto com as partes, e não em substituição a elas, quanto ao ônus probatório que lhes é atribuído. 5. De acordo com o art. 2º, VI, do Decreto Distrital nº 34.023/2012, perícia médica oficial pode ser conceituada como o ato administrativo que consiste na avaliação técnica de questões relacionadas à saúde e à capacidade laboral, realizada na presença do servidor, por médico formalmente designado e que produz informações a fim de fundamentar as decisões da administração no tocante ao disposto na LC nº 840/2011. 5.1.Os atos administrativos, como por exemplo a perícia médica oficial, gozam de presunção de legalidade, veracidade e de legitimidade, e sua impugnação importa inversão do ônus da prova em desfavor do administrado. 5.2. Por meio do deferimento da referida prova pericial, foi oportunizada ao autor a comprovação da alegada ausência de incapacidade laboral que ensejou a sua aposentadoria. No entanto, a parte em questão desistiu da sua produção, não se desincumbindo do ônus probatório disposto no art. 373, I, do CPC. 5.3. Relatórios médicos particulares não têm o condão de afastar a presunção de legalidade, veracidade e de legitimidade atribuída ao laudo médico elaborado pela Junta Médica oficial, pois produzidos unilateralmente e sem o exercício do contraditório. 6. Inaplicável ao caso a Súmula 598/STJ, pois destinada a outro contexto jurídico. Enquanto a citada Súmula consigna que a comprovação da moléstia grave para fins de isenção de imposto de renda não precisa ser comprovada mediante laudo médico oficial, podendo o magistrado valer-se de outras provas produzidas nos autos, para o caso em análise, além de não tratar de hipótese de isenção de imposto de renda, existe exigência legal de submissão à perícia médica do servidor que, após 24 (vinte e quatro) meses, se encontre em licença para tratamento de saúde (art. 273, § 1º, da LC nº 840/2011). 7. O art. 18 da LC nº 769/2008 estabelece ?a aposentadoria por invalidez é devida ao segurado que for considerado incapaz de readaptação para o exercício das atribuições do cargo, de forma compatível com a limitação que tenha sofrido, e deve ser paga, com base na legislação vigente, a partir da data da publicação do respectivo ato e enquanto o servidor permanecer nessa condição?. 7.1. Considera-se invalidez a incapacidade laborativa total, permanente, insuscetível de recuperação ou readaptação profissional, em consequência de doença ou acidente. A incapacidade permanente ou invalidez acarreta a aposentaria, por tornar o servidor incapaz de realizar a atividade laboral para qual foi admitido por intermédio de concurso público (art. 2º, VII, Decreto nº 34.023/2012). 7.2. Segundo o art. 273, § 1º, da LC nº 840/2011, ?após 24 meses consecutivos de licença para tratamento de saúde, ou 24 meses cumulativos ao longo do tempo de serviço prestado ao Distrito Federal, em cargo efetivo, em razão da mesma doença, o servidor deve ser submetido à perícia médica, que

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	opinará pela possibilidade de retorno ao serviço, pela readaptação ou pela aposentadoria por invalidez?. É verdade que antes da aposentadoria por invalidez, a Lei Complementar 840/2011, em seu art. 277, propõe a possibilidade de readaptação do servidor. 7.3. Atestado pela Junta Médica oficial que o autor é portador de incapacidade laborativa total e permanente, não suscetível de readaptação funcional, decorrente de transtorno do disco cervical, com radiculopatia, CID 10:M 50.1 e que, conforme relatório médico por ela elaborado, já havia sido tentada a readaptação do servidor, com seu retorno às atividades com restrição, porém, sem êxito, além de estar afastado do trabalho há 740 (setecentos e quarenta) dias em razão da mesma enfermidade, não há motivo para afastar a conclusão a que chegou a perícia oficial. 8. Não demonstrada qualquer irregularidade ou vício no laudo médico elaborado pela Junta Médica oficial e não demonstrada a ausência de incapacidade que ensejou a aposentadoria do autor, a apelação interposta não merece amparo. 9. Apelação desprovida. (TJ-DF 07052187820198070018 DF 0705218-78.2019.8.07.0018, Relator: ALFEU MACHADO, Data de Julgamento: 02/09/2020, 6ª Turma Cível, Data de Publicação: Publicado no PJe : 17/09/2020 . Pág.: Sem Página Cadastrada.) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">AGRAVO DE INSTRUMENTO. ADMINISTRATIVO. APOSENTADORIA POR INVALIDEZ COM PROVENTOS PROPORCIONAIS. REVERSÃO. PROVENTOS INTEGRAIS. TUTELA DE URGÊNCIA. REQUISITOS DO ART. 300 NÃO VERIFICADOS. RECURSO CONHECIDO E DESPROVIDO. 1. O art. 300 do Código de Processo Civil somente autoriza a concessão de tutela de urgência se presentes os pressupostos que elenca: Probabilidade do direito e perigo de dano ou risco ao resultado útil do processo. 2. Trata-se, originariamente, de ação de anulação de ato administrativo c/c cobrança, com pedido de antecipação dos efeitos da tutela, na qual requereu o Autor, policial civil aposentado, seja o Estado do Rio de Janeiro condenado a reverter o autor ao serviço ativo, no mesmo cargo que ocupava antes de sua aposentadoria por invalidez, com todos direitos inerentes ao exercício do seu cargo desde o dia 28 de junho de 2019, com o pagamento dos valores devidos em atraso e a contagem de tempo para todos os fins na forma da fundamentação, com juros e correção monetária, ao argumento de que a incapacidade laborativa total e permanente cessou, sendo equivocada a decisão da junta médica oficial. 3. Relatórios médicos particulares não possuem o condão de infirmar, de plano, parecer exarado por junta médica oficial, o qual goza de presunção de legitimidade e somente pode ser desconstituído caso haja prova em sentido contrário, o que importa em análise fático-probatória aprofundada, sequer tendo sido carreado aos autos da ação de conhecimento a íntegra do processo administrativo em que se concluiu pela invalidez do agravante, sendo razoável manter a decisão recorrida em prestígio ao necessário contraditório. 6. Ausente o requisito da probabilidade do direito vindicado, não há que se falar em reforma da decisão que indeferiu a antecipação dos efeitos da tutela requerida na inicial. RECURSO CONHECIDO E NÃO PROVIDO. (TJ-RJ - AI: 00326133920218190000, Relator: Des(a). CARLOS AZEREDO DE ARAÚJO, Data de Julgamento: 17/08/2021, NONA CÂMARA CÍVEL, Data de Publicação: 20/08/2021) (destaca-se)</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

Processo	3001335-24.2024.8.06.0000
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Destarte, nos limites da análise perfunctória inerente a este momento procssual, não se observa a probabilidade do direito. Sendo cumulativos os requisitos, é despiciendo discorrer sobre o perigo de demora.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ante o exposto, conheço do Agravo de Instrumento para negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160; É como voto.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160; Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 14pt; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; margin-left: 14pt; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	37
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Tratamento médico-hospitalar
Polo ativo	JOSE RIBAMAR MOREIRA
Advogado(s) - Polo ativo	Não informado
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA LUIS EDUARDO DE SOUSA

Processo	0206293-51.2023.8.06.0293
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 1pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 1pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 1pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 1pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 1pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-054a865c-7fff-47f6-1c8f-97972985172c" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Processo: 0206293-51.2023.8.06.0293 – Remessa necessária</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Autor: JOSÉ RIBAMAR MOREIRA</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Réu: ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Constitucional. Saúde. Processo civil. Remessa necessária. Ação de obrigação de fazer. Leito especializado. Sentença nula em decorrência de julgamento extra petita. Honorários fixados por apreciação equitativa. Remessa provida. Sentença reformada.</p><p style="line-

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	height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1.Trata-se de Remessa Necessária em Ação de Obrigação de Fazer julgada procedente, com a condenação do ente público promovido a fornecer leito de UTI ao autor.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A despeito do julgamento, há duas questões em discussão: (i) saber se o Juízo de 1º grau prolatou sentença de natureza diversa da pretendida; e (ii) saber se o ente público promovido tem a obrigação de garantir o direito à saúde da parte autora.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. Da análise dos autos, é possível observar que a sentença proferida violou o princípio da adstrição, congruência ou vinculação da sentença ao pedido inicial, ao conceder pedido de natureza diversa do pretendido, uma vez que o autor pleiteou a transferência para leito de enfermaria, e não para UTI, devendo, assim, a decisão de 1º grau ser anulada, em decorrência de vício de julgamento extra petita.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Privilegiando os princípios da razoável duração do processo, da celeridade e da economia processual, impõe-se a aplicação da teoria da causa madura, com fundamento no Art. 1.013, §3º, inciso II, do CPC/15.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Com base nos artigos 6º e 196 da CF/1988, é dever incontestável do Estado garantir o direito à saúde de todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. No caso dos autos, a documentação acostada, em especial o relatório médico, é suficiente para, no caso concreto, demonstrar a necessidade de internação da parte promovente no leito requerido judicialmente.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Tratando-se de matéria envolvendo o direito à saúde, cujo proveito econômico é inestimável, a fixação da sucumbência deve ser realizada de forma equitativa, conforme disposição do Art. 85, §8º, do CPC/15.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify;

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	margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 8. Remessa provida. Sentença reformada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> _________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: arts. 492 e 1.013, § 3º, II, CPC/2015; arts. 6º, 196 e 23, II, CF/1988; Súmula nº 45, TJCE.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: TJCE, Apelação Cível 0029156-87.2018.8.06.0154, Rel. Desembargador Washington Luís Bezerra de Araújo, 3ª Câmara de Direito Público, j. 23/08/2021; e Remessa Necessária Cível 0201469-86.2022.8.06.0001, Rel. Desembargador José Tarcílio Souza da Silva, 1ª Câmara de Direito Público, j. 19/09/2022.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da remessa para dar-lhe provimento, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora informados pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de REMESSA NECESSÁRIA em Ação de Obrigação de Fazer cumulada com Pedido de Tutela de Urgência Liminar com Preceito Cominatório, movida por JOSÉ RIBAMAR MOREIRA em face do ESTADO DO CEARÁ, cuja sentença proferida pelo Juízo da 1ª

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	Vara Cível da Comarca de Russas, julgou procedente a pretensão autoral, para condenar o ente público demandado a disponibilizar, em favor da parte autora, leito de UTI. Honorários sucumbenciais fixados em R$ 500,00 (quinhentos reais).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Do julgado não se insurgiram as partes.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Parecer da Procuradoria-Geral de Justiça, opinando pelo conhecimento e desprovimento da remessa (ID nº 15680251).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Tratando-se de sentença oposta à Fazenda Pública, e não sendo o caso de aplicação das ressalvas previstas nos §§3º e 4º do Art. 496 do CPC/15, hei por bem conhecer da remessa necessária, passando, a seguir, ao exame da matéria jurídica discutida nos autos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Pois bem.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Nos termos do CPC/15, o juiz estará adstrito aos limites do pedido e da causa de pedir expostos na inicial, não se admitindo, em regra, a prolação de sentença de natureza diversa da pretendida, bem como a condenação da parte em quantidade superior ou em objeto diverso do que lhe foi demandado. Vejamos:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Art. 141. O juiz decidirá o mérito nos limites propostos pelas partes, sendo-lhe vedado conhecer de questões não suscitadas a cujo respeito a lei exige iniciativa da parte.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (…)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Art. 492. É vedado ao juiz proferir decisão de natureza diversa da pedida, bem como condenar a parte em quantidade superior ou em objeto diverso do que lhe foi demandado.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Parágrafo único. A decisão deve ser certa, ainda que resolva relação jurídica condicional.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">

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	Trata-se, pois, do princípio da congruência, também conhecido como princípio da correlação ou da adstrição, que decorre da observância à inércia da jurisdição e do devido contraditório.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Cotejando os fólios, infere-se que a parte autora pleiteou, na inicial, a transferência para leito de enfermaria em hospital terciário com suporte em cirurgia vascular por tempo indeterminado, tendo em vista que, conforme relatório médico anexado aos autos, apresenta hemorragia digestiva alta, necessitando de avaliação de implante de filtro de veia cava.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Por outro lado, depreende-se que o juízo de primeiro grau, ao sentenciar o feito, julgou procedente o pedido da exordial para condenar o promovido a transferir o autor para hospital de rede pública, para fins de fornecer internação em leito de UTI.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Verifica-se, assim, que o juízo a quo, ao conceder o pedido nesses termos, exarou provimento jurisdicional que entregou à parte promovente objeto diverso do que fora postulado na exordial, em manifesta afronta ao princípio da adstrição, congruência ou vinculação da sentença ao pedido inicial, o que evidencia a existência de erro hábil a emergir na sua nulidade, decorrente do vício de julgamento extra petita.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Nesse ínterim, privilegiando os princípios da razoável duração do processo, da celeridade e da economia processual, filio-me à aplicação ao caso da teoria da causa madura, com fundamento no Art. 1.013, §3º, inciso II, do CPC/15, não sendo necessário o retorno dos autos para o juízo de primeiro grau, passo, assim, a analisar a contenda.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Sabe-se que a saúde é um direito do ser humano, competindo ao Estado sua proteção, nos termos do Art. 196 da CF/88. Vejamos:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Art. 196. A saúde é direito de todos e dever do Estado,

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	garantido mediante políticas sociais e econômicas que visem à redução do risco de doença e de outros agravos e ao acesso universal e igualitário às ações e serviços para sua promoção, proteção e recuperação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De acordo com a regra constitucional acima mencionada, cabe ao Estado, expressão que abarca a União, os Estados-membros, o Distrito Federal e os Municípios, implementar políticas sociais e econômicas a fim de garantir a todos os cidadãos o acesso universal e igualitário à saúde. Nesse prisma, é de ser reconhecida a obrigação de todos os entes públicos quanto à responsabilidade pela proteção e conservação da saúde, na forma do Art. 23, inciso II da CF/88. Vejamos:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Art. 23. É competência comum da União, dos Estados, do Distrito Federal e dos Municípios:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (…)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> II – cuidar da saúde e assistência pública, da proteção e garantia das pessoas portadoras de deficiência;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Aliás, acerca do tema, o Supremo Tribunal Federal – STF, ao interpretar o Art. 23, inciso II da CF/88, por ocasião do julgamento do RE 855.178/SE, em sede de repercussão geral, reafirmou a solidariedade dos entes públicos nas prestações relativas ao direito humano à saúde, tendo firmando a seguinte tese (Tema 793):</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Os entes da Federação, em decorrência da competência comum, são solidariamente responsáveis nas demandas prestacionais na área da saúde e, diante dos critérios constitucionais de descentralização e hierarquização, compete à autoridade judicial direcionar o cumprimento conforme as regras de repartição de competências e determinar o ressarcimento a quem suportou o ônus financeiro.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, o direito constitucional à saúde também encontra previsão no Art. 6º da CF/88, sendo nessa regra enquadrado como um direito social e fundamental que, atrelado ao princípio fundamental do direito à vida digna, fundamento da República Federativa do Brasil (Art. 1º, inciso I da CF/88), assegura a todos atendimento necessário na área da saúde, estando inclusos os serviços de assistência médica, farmacêutica e hospitalar.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Quadra registrar, outrossim, que, na qualidade de direito fundamental, não há que se falar em sua inaplicabilidade, pois, conforme o § 1º do Art. 5º da CF/88, as normas protetivas do direito à saúde possuem aplicabilidade imediata.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Com base em tais premissas, é dever incontestável do Estado garantir o direito à saúde de todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo, especialmente

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	quando o que se tem não é exatamente o exercício de uma política pública de saúde, mas a sua completa ausência ou cumprimento insuficiente. Não é o caso, pois, de invasão do Poder Judiciário na seara administrativa, mas apenas e tão somente, de garantir direito que a Constituição Federal assegura.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Registre-se, ainda, que este egrégio Tribunal de Justiça, ao editar a Súmula 45, firmou entendimento no sentido de responsabilizar o Poder Público em garantir a pacientes o fornecimento de tratamento médico necessário ou medicamento, devidamente registrado no órgão de vigilância sanitária, não disponíveis na rede pública de saúde. Vejamos:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Súmula 45 do TJCE – Ao Poder Público compete fornecer a pacientes tratamento ou medicamento registrado no órgão de vigilância sanitária competente, não disponibilizados no sistema de saúde. (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> No caso dos autos, a parte autora necessita, em caráter de urgência, de leito especializado em hospital terciário para realização do procedimento de cirurgia vascular, para avaliação de implante de filtro de veia cava.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> A documentação trazida aos autos, em especial o relatório médico, é suficiente para, no caso concreto, demonstrar a necessidade de internação da parte promovente no leito ora requerido judicialmente.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Acrescente-se, ainda, que o relatório médico, gozando de presunção de idoneidade técnica e veracidade sobre a necessidade do paciente quanto ao leito requerido, não foi objeto de impugnação pelo promovido no curso da ação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Outrossim, resta incontroverso nos autos que a parte requerente é pessoa hipossuficiente, o que também não foi impugnado pelo ente público demandado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Nessa linha é o entendimento jurisprudencial deste Tribunal de Justiça: <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">PROCESSO CIVIL. APELAÇÃO. AÇÃO ORDINÁRIA. OBRIGAÇÃO DE FAZER. SAÚDE. INOCORRÊNCIA DE AUDIÊNCIA DE CONCILIAÇÃO. INOBSERVÂNCIA DE

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	PREJUÍZO. NULIDADE NÃO CONFIGURADA. NECESSIDADE DE LEITO ESPECIALIZADO CARDIOVASCULAR. RECONHECIMENTO DO DIREITO À VIDA. RECURSO CONHECIDO E DESPROVIDO. 1. De fato, no caso em tela não houve a realização da audiência de conciliação, sem haver a justificação exigida no art. 334, § 4º, do CPC. No entanto, não há que se falar em reconhecimento de nulidade, pois não é possível vislumbrar a ocorrência de prejuízo advindo da falta de realização da audiência. 2. Ademais, registra-se que a possibilidade de apresentação de proposta de conciliação não se resume à mencionada audiência, pois, conforme o art. 3º, §§ 2º e 3º, do CPC, a atividade jurisdicional deve sempre estimular a satisfação do objeto pretendido com a utilização dos meios alternativos de resolução dos conflitos. Dessa maneira, especialmente observando que mesmo citado (fl. 68), o Município quedou-se inerte, não merece prosperar a nulidade ventilada pela municipalidade. 3. Com relação à procedência do pedido de transferência e internação do autor em leito do Hospital do Coração de Messejana para avaliação do seu quadro clínica, verifica-se que o Estado do Ceará e o Município de Quixeramobim não podem se furtar ao cumprimento da sua obrigação constitucional. 4. Ademais, reitera-se que somente é possível invocar o princípio da reserva do possível se houver a comprovação fática da impossibilidade de custeio, o que não foi o caso dos autos. 5. Recurso conhecido e desprovido. ACÓRDÃO Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer da apelação, mas para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO Relator (Apelação Cível – 0029156-87.2018.8.06.0154, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento: 23/08/2021, data da publicação: 23/08/2021). (Destaque-se).</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">CONSTITUCIONAL. PROCESSO CIVIL. REMESSA NECESSÁRIA. AÇÃO DE OBRIGAÇÃO DE FAZER. DIREITO À VIDA E A SAÚDE. GARANTIA CONSTITUCIONAL. RESPONSABILIDADE SOLIDÁRIA DOS ENTES FEDERATIVOS. INTERPRETAÇÃO TELEOLÓGICA E SISTEMÁTICA DOS ARTS. 5º, 6°, 23, 196 E 197 DA CONSTITUIÇÃO FEDERAL. INTERNAÇÃO EM LEITO HOSPITALAR. NECESSIDADE DE TRATAMENTO ESPECIALIZADO. IMPRESCINDIBILIDADE E URGÊNCIA DA MEDIDA. RESPONSABILIDADE DO ESTADO DO CEARÁ E DA PREFEITURA DE FORTALEZA. REEXAME NECESSÁRIO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. 1.A Constituição Federal, em seus arts. 5º, 6°, 23, 196 e 197, garante o direito fundamental à saúde e à vida, como decorrência do princípio da dignidade da pessoa humana, um dos fundamentos da República Federativa do Brasil (art. 1º), sendo dever do ente público, nas três esferas, assegurar o acesso ao tratamento médico que se fizer necessário ao restabelecimento e promoção desses direitos. 2.Na hipótese, comprovada a imprescindibilidade da disponibilização, em caráter de urgência, de leito hospitalar com

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	recursos para tratamento especializado, sob o risco de piora no quadro do paciente/autor e até evoluir para morte, é dever e responsabilidade do Estado do Ceará e da Prefeitura de Fortaleza providenciarem a transferência e o tratamento adequado, conforme recomendação médica, considerando a importância da proteção à vida e à saúde. 3.Reexame necessário conhecido e desprovido. Sentença ratificada. ACÓRDÃO Vistos, relatados e discutidos os presentes autos em que figuram as partes indicadas, ACORDA a 1ª Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da remessa necessária, mas para negar-lhe provimento, nos termos do voto do relator. Fortaleza, 19 de setembro de 2022. DES. JOSÉ TARCÍLIO SOUZA DA SILVA Relator (Remessa Necessária Cível – 0201469-86.2022.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 19/09/2022, data da publicação: 19/09/2022). (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">E de minha relatoria:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">DIREITO CONSTITUCIONAL. REMESSA NECESSÁRIA. OBRIGAÇÃO DE FAZER. SAÚDE. DEVER DO PODER PÚBLICO. INTELIGÊNCIA DOS ARTS. 6º E 196 DA CF/88. RESPONSABILIDADE SOLIDÁRIA DOS ENTES DA FEDERAÇÃO. ART. 23, INCISO II DA CF/88. TEMA 793 DO STF. INTERNAÇÃO DA PARTE AUTORA EM LEITO DE HOSPITAL TERCIÁRIO. INCIDÊNCIA DA SÚMULA 421 DO STJ. 1. Sabe-se que a saúde é um direito do ser humano, competindo ao Estado sua proteção, nos termos do Art. 196 da CF/88. 2. É de ser reconhecida a obrigação de todos os entes públicos quanto à responsabilidade pela proteção e conservação da saúde. 3. O Supremo Tribunal Federal – STF, ao interpretar o Art. 23, inciso II da CF/88, por ocasião do julgamento do RE 855.178/SE, em sede de repercussão geral, reafirmou a solidariedade dos entes públicos nas prestações relativas ao direito humano à saúde (Tema 793). 4. No caso dos autos, a parte autora, com quadro de CETOACIDOSE DIABÉTICA (CID10: E101), encontra-se internada na Unidade de Pronto Atendimento – UPA do Canindezinho, necessitando, em caráter de urgência, de internação em leito de hospital terciário. 5. A documentação trazida aos autos, em especial o Relatório Médico de fls. 34, é suficiente para, no caso concreto, demonstrar a necessidade de internação da parte autora no leito ora requerido judicialmente. 6. Por fim, sendo a parte autora assistida pela Defensoria Pública e tendo a demanda sido proposta contra o Estado do Ceará, correta a sentença do Juízo da 15ª Vara da Fazenda Pública da Comarca de Fortaleza, que, observando o disposto na Súmula 421 do STJ, deixou de condenar o promovido ao pagamento de honorários sucumbenciais. 7. Remessa Necessária conhecida e desprovida. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em conhecer da Remessa Necessária, mas para negar-lhe provimento, confirmando a sentença do juízo a quo, tudo nos termos do voto da relatora, parte integrante deste. Fortaleza, data e hora indicadas pelo sistema. MARIA IRACEMA MARTINS DO VALE Presidente do Órgão Julgador DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO Relatora (Remessa Necessária Cível – 0276941-30.2021.8.06.0001, Rel. Desembargador(a) JORIZA MAGALHÃES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 22/08/2022, data da publicação: 23/08/2022). (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

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	baseline; white-space: pre-wrap;">Quanto aos honorários, tratando-se de novo julgamento e de matéria envolvendo o direito à saúde, cujo o proveito econômico é inestimável, entendo que a fixação da sucumbência deve ser realizada de forma equitativa, conforme disposição do Art. 85, §8º, do CPC/15. Vejamos:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">CONSTITUCIONAL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL INTERPOSTA PELA DEFENSORIA PÚBLICA. AÇÃO DE OBRIGAÇÃO DE FAZER C/C PEDIDO DE TUTELA DE URGÊNCIA (ALIMENTOS, INSUMOS E FRALDAS). AVOCAÇÃO DO FEITO EM REMESSA NECESSÁRIA. DIREITO À SAÚDE. ARTS. 5º, §1º, 6º, CAPUT, 23, II, 196 E 197 DA CF. TEMA 793 DO STF E SÚMULA 45 DO TJCE. COMPROVAÇÃO DA HIPOSSUFICIÊNCIA DA PARTE AUTORA E DA NECESSIDADE DA ALIMENTAÇÃO ESPECIAL, DOS INSUMOS E DAS FRALDAS. MANUTENÇÃO DA CONDENAÇÃO DO ESTADO. RECURSO DE APELAÇÃO. HONORÁRIOS EM FAVOR DA DEFENSORIA PÚBLICA. MUDANÇA DE ENTENDIMENTO. JULGAMENTO DO RE 1140005 PELO STF, EM SEDE DE REPERCUSSÃO GERAL. TEMA 1.002. TESE QUE IMPÕE A CONDENAÇÃO A QUALQUER ENTRE PÚBLICO A PAGAR VERBA HONORÁRIA SUCUMBENCIAL EM FAVOR DA DEFENSORIA PÚBLICA, INCLUINDO-SE O ESTADO AO QUAL A INSTITUIÇÃO SE VINCULA. FORÇA VINCULANTE DOS PRECEDENTES. ART. 927, III DO CPC. REMESSA NECESSÁRIA AVOCADA E DESPROVIDA. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. SENTENÇA PARCIALMENTE REFORMADA. 1. Busca a Defensoria Pública em seu apelo a reforma parcial da sentença, objetivando a condenação do Estado do Ceará ao pagamento de honorários advocatícios em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. (…) 8. A respeito da questão discutida no recurso voluntário, impende esclarecer que, até bem pouco tempo, o entendimento jurisprudencial unânime nesta Corte de Justiça, em consonância com o enunciado sumular nº 421 do STJ, era no sentido da impossibilidade jurídica de condenação do Estado do Ceará em honorários em favor da Defensoria Pública, em virtude de ser a instituição vinculada ao ente federado em alusão. 9. Todavia, em data recente (23.06.2023), o STF julgou o RE 114005, em sede de Repercussão Geral (Tema 1.002), no qual firmou a seguinte tese: "1. É devido o pagamento de honorários sucumbenciais à Defensoria Pública, quando representa parte vencedora em demanda ajuizada contra qualquer ente público, inclusive aquele que integra; 2. O valor recebido a título de honorários sucumbenciais deve ser destinado, exclusivamente, ao aparelhamento das Defensorias Públicas, vedado o seu rateio entre os membros da instituição". 10. Com o mencionado julgado, encerra-se a discussão acerca da possibilidade, ou não, de a pessoa jurídica, à qual se encontra vinculada a Defensoria Pública ser condenada em honorários advocatícios de sucumbência em prol do mencionado órgão, isso em decorrência da força vinculante dos precedentes, com previsão no art. 927, III, do CPC/2015. 11. Em consequência, devem ser fixados na hipótese honorários sucumbenciais, em atendimento aos parâmetros estabelecidos no artigo 85, §§ 2º e 3º, do CPC/2015. 12. Na hipótese, como se trata de causa de valor que não se pode estimar, envolvendo direito à saúde, constitucionalmente garantido e inserido no conceito de mínimo existencial, a fixação dos honorários deve ocorrer por apreciação equitativa, nos termos do art. 85, § 8º, do CPC, mostrando-se cabível a fixação do valor de R$ 1.000,00 (mil reais) a título de honorários sucumbenciais, a serem pagos pelo Estado do Ceará em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. 13. Remessa necessária avocada e desprovida. Recurso de apelação conhecido e provido. Sentença parcialmente reformada. ACÓRDÃO – Vistos, relatados e discutidos os presentes autos, nesta Comarca de Fortaleza, em que figuram as partes indicadas. ACORDAM os membros integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em AVOCAR o feito em remessa necessária, para NEGAR-LHE PROVIMENTO, e em CONHECER do recurso de apelação interposto, para DAR-LHE PROVIMENTO, reformando parcialmente a sentença, nos termos do voto do Relator. Fortaleza, 30 de outubro de 2023. Des. José Tarcílio Souza da Silva Relator <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">(Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023). (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Nesse sentido: Apelação Cível – 0050394-75.2021.8.06.0052, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 12/08/2024, data da publicação: 12/08/2024; Apelação / Remessa Necessária – 0113491-47.2017.8.06.0001, Rel. Desembargador(a) DURVAL AIRES FILHO, 1ª Câmara Direito Público, data do julgamento: 05/08/2024, data da publicação: 08/08/2024; Apelação Cível – 0057307-72.2021.8.06.0117, Rel. Desembargadora MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 23/03/2022, data da publicação: 23/03/2022.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Assim sendo, observados os parâmetros do §2º do Art. 85 do CPC/15, hei por bem condenar a parte promovida (Estado do Ceará) em R$ 1.000,00 (um mil reais), conforme §8º do referido dispositivo processual.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Tal quantia se justifica em razão do menor grau de complexidade da causa, do cenário jurídico já sedimentado sobre o tema e, por fim, do trabalho e zelo profissional desenvolvido pelo(a) Defensor(a) Público(a) no processo, atendendo, assim, aos princípios da razoabilidade e da proporcionalidade, além de seguir o montante adotado por este Órgão Julgador para casos análogos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Registre-se, outrossim, que o referido montante deverá ser destinado, exclusivamente, ao Fundo de Apoio e Aparelhamento da Defensoria Pública do Estado do Ceará – FAADEP, sendo vedado o seu rateio entre os membros da instituição.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> O valor da condenação em honorários deverá sofrer incidência de juros de mora e correção monetária na forma do art. 3º, da Emenda Constitucional nº 113/2021.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Pelo exposto, <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">CONHEÇO da remessa e DOU-LHE provimento para, ANULANDO o julgamento de 1º grau e, procedendo ao exame de mérito, nos termos do Art. 1.013, §3º, inciso II, do CPC/15, julgar PROCEDENTE o pedido contido na inicial, determinando que o Estado do Ceará, ora promovido, efetue a transferência da parte autora para hospital da rede pública de saúde que forneça internação em leito de enfermaria especializado para fins de realização de cirurgia vascular, bem como adequado transporte do local em que se encontra para unidade hospitalar requerida.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Honorários conforme acima estabelecido.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	38
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Anulação de Débito Fiscal
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIMODAS CALCADOS LTDA
Advogado(s) - Polo passivo	PEDRO MOREIRA TAVORA LOPES - (CE22673-A)
Terceiros	Não informado

Processo	0002251-78.2005.8.06.0064
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="text-align: center;"> <br /> </p><p>   PROCESSO:&#160;0002251-78.2005.8.06.0064 -&#160;APELAÇÃO CÍVEL (198) </p><p> APELANTE: ESTADO DO CEARA </p><p> APELADO: MARIMODAS CALCADOS LTDA </p><p> S2 </p><p style="text-align: justify;">&#160;</p><p style="margin-left: 4.0cm; text-align: justify; line-height: 200%; background: white;">   EMENTA: DIREITO TRIBUTÁRIO E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA. ADESÃO AO REFIS/2015. QUITAÇÃO DO DÉBITO. PERDA SUPERVENIENTE DO OBJETO. SENTENÇA DE EXTINÇÃO SEM RESOLUÇÃO DO MÉRITO. HONORÁRIOS ADVOCATÍCIOS. POSSIBILIDADE. PRINCÍPIO DA CAUSALIDADE. ARTS. 90 E 85, §

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	10º DO CPC. INAPLICABILIDADE DO ART. 8º DA LEI ESTADUAL N° 15.384/2013. EXISTÊNCIA DE PROVEITO ECONÔMICO. NECESSIDADE DE APLICAÇÃO DO ESCALONAMENTO PREVISTO NO § 5º DO ART. 85 DO CPC. PRECEDENTES DO STJ E DO TJCE. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. </p><p style="margin-left: 4.0cm; text-align: justify; line-height: 200%; background: white;"> <br /> </p><p style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> ACÓRDÃO : Vistos, relatados e discutidos estes autos, acordam os integrantes da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e prover o Recurso de Apelação, nos termos do voto do relator. </p><p style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> &#160; Fortaleza, data e hora indicadas pelo sistema.</p><p style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> <br /> </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> &#160;Relator </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> <br /> </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> <br /> </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> RELATÓRIO </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> <br /> </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%; background: white;"> Trata-se de Apelação Cível interposta pelo ESTADO DO CEARÁ objetivando a reforma da sentença Id. 15190908/15190935, proferida pelo Juízo de Direito da 1ª Vara de Execuções Fiscais da Comarca de Fortaleza, nos autos da Ação Anulatória proposta por MARIMODAS CALÇADOS LTDA. em face do ora apelante. </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%; background: white;"> Sentença (Id.15190908/15190935) : extinção do feito em decorrência da adesão ao REFIS/2015 regulado pela Lei nº 15.826/2015 e da quitação do débito. Contudo, o juízo a quo não fixou honorários em desfavor da parte autora. </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%; background: white;"> Razões recursais (Id.15190938) : com fundamento no princípio da causalidade e no art. 90 do CPC, o ente estatal interpôs o presente recurso objetivando a condenação da parte adversa ao pagamento de honorários advocatícios. </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%; background: white;"> Sem contrarrazões, apesar de devidamente intimada a parte adversa, conforme despacho Id. 15190939. </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Sem manifestação do Parquet por inexistir interesse público primário. </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> É o relatório. </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> <br /> </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> &#160;</p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> <br /> </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> VOTO </p><p

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	style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> <br /> &#160; Presentes os pressupostos de admissibilidade, conheço do apelo. O pleito recursal consiste, em síntese, na imposição de honorários de sucumbência em razão da extinção da ação anulatória fiscal, que se deu após o adimplemento do débito fiscal discutido em juízo, através de adesão aos benefícios da Lei Estadual nº 15.826/2015, referente ao REFIS estabelecido pela Lei Estadual nº 15.384/2013. Preceituam os arts. 6º, caput, e 8º do aludido diploma legal: A rt. 6º O sujeito passivo que possuir ação judicial em curso que tenha por objeto o débito incluído no parcelamento, deverá como condição para se valer dos benefícios fiscais previstos no art. 2º e seu incisos, desistir da respectiva ação judicial e renunciar a qualquer alegação de direito sobre a qual se funda a referida ação, protocolizando requerimento de extinção do processo com resolução do mérito, nos termos do inciso V do caput do art. 269 da Lei nº 5.869, de 11 de janeiro de 1973 – Código de Processo Civil, e apresentando à Procuradoria-Geral do Estado o respectivo comprovante de protocolo, até o dia 30 de dezembro de2015. Art. 8º O contribuinte que aderir à sistemática nesta Lei, fica dispensado do pagamento do encargo legal pela inscrição em Dívida Ativa previsto no art. 6º da Lei Complementar nº 70, de 10 de novembro de 2008, e dos honorários advocatícios relativos à execução fiscal e aos respectivos embargos do devedor. &#160; Extrai-se dos referidos dispositivos que, para obter os benefícios instituídos pela Lei Estadual n° 15.384/2013, o contribuinte deverá desistir da demanda judicial, sendo dispensado de arcar com os honorários advocatícios apenas em casos relativos à execução fiscal e aos embargos do devedor, o que não se enquadra no caso em análise, haja vista tratar-se de ação anulatória. Nesse sentido, o Superior Tribunal de Justiça, analisando situação semelhante a esta contenda, assentou compreensão de que, por se tratar de norma excepcional em nosso sistema processual civil, a dispensa do pagamento de honorários advocatícios, nos casos encerrados por desistência ou renúncia, deve ser interpretada restritivamente. Vejamos: TRIBU TÁRIO. PROCESSUAL CIVIL. EXECUÇÃO FISCAL. ADESÃO APROGRAMA DE PARCELAMENTO. REFIS. PAGAMENTO. HONORÁRIOS ADVOCATÍCIOS. RECURSO REPETITIVO. AUSÊNCIA DE OMISSÃO. ART.535, II, DO CPC. 1. A recorrente sustenta que o art. 535, II, do CPC foi violado, mas deixa de apontar, de forma clara, o vício em que teria incorrido o acórdão impugnado. Assim, é inviável o conhecimento do Recurso Especial nesse ponto, ante o óbice da Súmula 284/STF. 2. O STJ não pode apreciar ofensa aos artigos da Carta Magna, uma vez que compete exclusivamente ao Supremo Tribunal Federal o exame de violação a dispositivo da Constituição da República, nos termos do seu art. 102, III, "a". 3. A renúncia ao direito sobre o qual se funda a ação, para fins de adesão a parcelamento, não tem como efeito necessário a dispensa dos honorários. Há que analisar, in casu, se existe subsunção ao disposto no art. 6°, § 1°, da Lei11.941/2009. 4. A exoneração dos honorários é condicionada à extinção da ação na forma deste artigo, ou seja, ocorre quando a desistência ou a renúncia der causa à extinção do processo com resolução de mérito, em demanda na qual o sujeito passivo requer o restabelecimento de sua opção ou a sua reinclusão em outros parcelamentos, o que não é o caso dos autos. 5. A norma é excepcional em nosso sistema processual civil, que impõe os ônus sucumbenciais, nos processos encerrados por

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	desistência ou renúncia, à parte que desistiu ou reconheceu (art. 26 do CPC). Por conseguinte, deve sofrer interpretação estrita, conforme decidido pela Primeira Seção do STJ, no julgamento do REsp 1.353.826/SP, sob o rito dos Recursos Repetitivos, de minha relatoria, publicado no DJe17.10.2013. 6. Recurso Especial, parcialmente conhecido e, nessa parte, não provido. (REsp n. 1.582.691/SP, relator Ministro Herman Benjamin, Segunda Turma, julgado em 17/3/2016, DJe de 24/5/2016) Na mesma toada é o entendimento desta Colenda Câmara Julgadora, senão vejamos: P ROCESSUAL CIVIL E TRIBUTÁRIO. APELAÇÃO CÍVEL. AÇÃOANULATÓRIA DE DÉBITO TRIBUTÁRIO. PEDIDO DE DESISTÊNCIA DAAÇÃO. ADESÃO AO REFIS/2017 - LEI ESTADUAL Nº 16.259/2017.CONDENAÇÃO EM HONORÁRIOS ADVOCATÍCIOS. PRINCÍPIO DACAUSALIDADE. POSSIBILIDADE. PRECEDENTES STJ E TJCE. APELOCONHECIDO E IMPROVIDO. SENTENÇA MANTIDA. Cinge-se o mérito recursal quanto a possibilidade ou não de fixação de honorários advocatícios na sentença que homologou o pedido de desistência da autora, para fins de adesão ao REFIS 2017, nos termos da Lei Estadual nº 16.259/17. Conforme se observa pela redação do art.13 da Lei 16.259/2017, a norma desobrigou o pagamento dos honorários advocatícios, apenas, nas execuções fiscais e nos embargos do devedor, que não é a situação dos autos que se trata de Ação Anulatória de Débito Tributário. Outrossim, a opção do contribuinte pelo parcelamento do débito tributário por meio da inscrição no Programa de Recuperação Fiscal -REFIS, condicionada à renúncia ao direito sobre o qual se funda a ação e à desistência dos recursos interpostos, não desobriga o contribuinte do pagamento da verba honorária. Precedentes do STJ e das três Câmaras de Direito Público deste e. TJCE. Recurso conhecido e improvido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Recurso de Apelação, todavia para negar-lhes provimento, nos termos do voto do Relator. Fortaleza, 1º de março de 2022 MARIA IRACEMA MARTINS DO VALE Presidente do Órgão Julgador DESEMBARGADOR FRANCISCO LUCIANOLIMA RODRIGUES Relator (Apelação Cível - 0834739-33.2014.8.06.0001, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 14/03/2022, data da publicação: 15/03/2022) <span style="font-size: small;"> <span style="line-height: 200%; color: black;">PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DEDÉBITO FISCAL. ADESÃO AO PROGRAMA DE REFINANCIAMENTO –REFIS 2017. LEI ESTADUAL Nº 16.259/2017. RENÚNCIA. EXTINÇÃO DOPROCESSO COM RESOLUÇÃO DE MÉRITO. PLEITO DE CONDENAÇÃOEM HONORÁRIOS ADVOCATÍCIOS. POSSIBILIDADE. FIXAÇÃO EMCONFORMIDADE COM O DISPOSTO NO ART. 85, § 8º E ART. 90, AMBOSDO CPC. RECURSO PROVIDO. SENTENÇA REFORMADA EM PARTE. 1.Trata o caso de apelação cível por meio da qual o Estado do Ceará pugna pela reforma da sentença de primeiro grau no que concerne à fixação de honorários sucumbenciais. 2. Considerando a adesão da empresa autora ao Programa de Refinanciamento Fiscal instituído pela Lei Estadual nº 16.259/2017, a anistia nela prevista deve ser interpretada de forma restrita, limitando-se às hipóteses legalmente previstas, quais sejam, os honorários advocatícios relativos às execuções fiscais e aos respectivos embargos do devedor, espécies processuais distintas da demanda ora em análise, que se consubstancia em ação anulatória de débito fiscal. Condenação devida. Precedentes desta egrégia Corte de Justiça. 3. Reforma da sentença para condenar a parte renunciante ao pagamento de honorários advocatícios no valor de R$ 1.000,00 (mil reais), conforme art. 85, §8º e art. 90, ambos do CPC, por representar quantia que ostenta a necessária aptidão para bem remunerar o trabalho desenvolvido pela Procuradoria Estadual, em atenção à equidade e às disposições legais que regem a matéria, tendo como base a ausência de proveito econômico. - Apelação conhecida e provida. -Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0147063-28.2016.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação interposta, para dar-lhe provimento, reformando em parte a sentença recorrida, nos termos do voto da Relatora. Fortaleza, 08 de novembro de 2021.DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora (Apelação Cível – 0147063-28.2016.8.06.0001, Rel. Desembargador(a) MARIAIRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:08/11/2021, data da publicação: 08/11/2021) &#160; Destaca-se, ain <span

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	style="color: black;">da, que o valor destinado a honorários de adesão, nos termos do art. 7º <!--[if !supportFootnotes]--> [1] <!--[endif]--> , da Lei Estadual n° 15.384/20131, constitui regra de destinação de receita pelo poder público ao seu órgão de representação judicial. Tanto é assim que o próprio dispositivo legal enfatiza que o percentual de 5% (cinco por cento) será calculado sobre o valor efetivamente recolhido por força da aplicação da Lei. Ou seja, o montante somente é apurado após o recolhimento dos valores adimplidos nos termos do diploma legal. Dessa forma, vislumbra-se que o referido montante não é suportado pela parte devedora diretamente nem se confunde com os honorários sucumbenciais estabelecidos pelo Código de Processo Civil. Além disso, não há nenhuma prova nos autos que demonstre a inserção de honorários advocatícios no montante adimplido administrativamente pela parte apelante, razão pela qual não há que se falar em bis in idem. Com esteio nessas premissas, torna-se necessária a reforma da sentença para estabelecer honorários sucumbenciais em desfavor da parte autora, com esteio no art. 85, §10, do CPC <!--[if !supportFootnotes]--> [2] <!--[endif]--> . Quanto à fixação, o art. 85 do CPC tornou mais objetivo o processo de arbitramento dos honorários advocatícios, estabelecendo, em seus §§3º e 4º, inciso III, como regra, que estes deverão ser fixados em percentual sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa. Por sua vez, com caráter subsidiário, o § 8º dispõe que nas demandas em que for inestimável ou irrisório o proveito econômico, ou quando o valor da causa for muito baixo, os honorários devem ser apurados por apreciação equitativa do Juiz, atendidos os critérios do§2º e os parâmetros definidos no §8º-A, do mesmo dispositivo legal. Na hipótese vertente, é possível constatar o proveito econômico, qual seja, o montante pago pela parte apelada por meio do REFIS, sendo vedada a fixação sobre o valor da causa quando possível mensurar o proveito econômico obtido. Nesse sentido, tem decidido esta egrégia Corte de Justiça em caso similar (com destaques): E MBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO FISCAL MOVIDA EM FACE DO ESTADO DO CEARÁ.&#160; PEDIDO DE DESISTÊNCIA FORMULADO PELA PARTE AUTORA POR TER ADERIDO AO PROGRAMA DE CONCESSÃO DE ANISTIA E REMISSÃO OBJETO DA LEI ESTADUAL Nº 16.902/19 E DECRETO Nº 33.135/19. SENTENÇA QUE EXTINGUIU O FEITO SEM RESOLUÇÃO DO MÉRITO COM FUNDAMENTO NA DESISTÊNCIA E CONDENOU A PROMOVENTE AO PAGAMENTO DE HONORÁRIOS ADVOCATÍCIOS NO PERCENTUAL DE DEZ POR CENTO SOBRE O PROVEITO ECONÔMICO NA FORMA DO INCISO I DO PARÁGRAFO 3º DO ART. 85 DO CPC. &#160;INCONFORMISMO DO RÉU. APELO DO ENTE PÚBLICO CIRCUNSCRITO TÃO SOMENTE À BASE DE CÁLCULO DA VERBA HONORÁRIA, PLEITEANDO QUE INCIDA SOBRE O VALOR ATUALIZADO DA CAUSA E

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	NÃO SOBRE O PROVEITO ECONÔMICO. RECURSO ADESIVO MANEJADO PELA AUTORA SE INSURGINDO CONTRA A CONDENAÇÃO EM HONORÁRIOS. ACÓRDÃO QUE NEGOU PROVIMENTO AO APELO ESTATAL E DEU PROVIMENTO AO RECURSO ADESIVO AFASTANDO A CONDENAÇÃO EM HONORÁRIOS. IRRESIGNAÇÃO DA FAZENDA PÚBLICA ESTADUAL QUE OPÔS EMBARGOS DE DECLARAÇÃO EM FACE DO DECISUM. ACLARATÓRIOS IMPROVIDOS COM BASE NA SÚMULA 18 DESTE PRETÓRIO. INTERPOSIÇÃO DE RECURSO ESPECIAL. O EGRÉGIO STJ DEU PROVIMENTO AO RESP E ANULOU O ACÓRDÃO QUE JULGOU OS ACLARATÓRIOS POR ENTENDER QUE HOUVE NEGATIVA DE PRESTAÇÃO JURISDICIONAL UMA VEZ QUE ESTE ÓRGÃO JUDICANTE NÃO ENFRENTOU O ARRAZOADO INVOCADO PELO ESTADO DO CEARÁ/EMBARGANTE. RETORNO DOS AUTOS PARA NOVO JULGAMENTO DOS EMBARGOS DE DECLARAÇÃO. 1 - No caso em liça, o embargante opôs os aclaratórios sustentando existir obscuridade e omissões no acórdão embargado. No tocante à obscuridade, defende o recorrente que a extinção da demanda não decorreu de transação entre as partes (como erroneamente defendeu a parte autora/embargada), mas sim de desistência manifestada pela promovente. (...) Diante da desistência, o Código de Processo Civil estabelece de forma indubitável que a parte que desistiu deve suportar o pagamento dos honorários advocatícios. Outrossim, o arrazoado recursal invocado pelo embargante encontra guarida na medida em que o Estado do Ceará defendeu nos presentes embargos a existência de obscuridade ao ter o acórdão recorrido considerado que as partes transigiram quando, na realidade, não houve transação mas sim desistência. (...) 5 - Destarte, outro não poderia ser o deslinde dos embargos sub oculis senão o seu provimento, com efeito infringente, para reformar o acórdão embargado suprindo a obscuridade e as omissões existentes o que resulta, inexoravelmente, na modificação da conclusão do julgamento da apelação cível manejada pelo Estado do Ceará e do Recurso Adesivo interposto pela Petrobrás S/A, devendo ser improvidas ambas as irresignações. 6 ¿ Embargos de declaração conhecidos e providos com efeito infringente. Acórdão reformado. Apelação cível interposta pelo Estado do Ceará, ora embargante, e recurso adesivo manejado pela Petrobrás S/A. improvidos.&#160; Sentença restabelecida na sua integralidade (condenação em honorários advocatícios mantidas nos exatos termos fixados pelo juízo a quo) . ACÓRDÃO: Vistos, relatados e discutidos estes autos em que são partes as acima indicadas, acordam os desembargadores integrantes da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso para dar-lhe provimento com efeito infringente, nos termos do relatório e do voto da Relatora, que passam a fazer parte integrante do presente acórdão. Fortaleza (CE), 27 de maio de 2024. MARIA DO LIVRAMENTO ALVES MAGALHÃES Desembargadora Relatora (Apelação Cível - 0671731-45.2012.8.06.0001, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 3ª Câmara Direito Público, data do julgamento:&#160; 27/05/2024, data da publicação:&#160; 27/05/2024). </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Assim, na s causas em que a Fazenda Pública for parte,&#160; independentemente do resultado, devem ser aplicados os percentuais de honorários previstos nos incisos do §3º do art. 85 do CPC, transcritos acima. Ademais, como houve proveito econômico, no caso em comento, em valor acima do previsto no inciso I do §3º, a fixação do percentual de honorários não pode ter como base os percentuais do §3º de forma isolada, devendo observar o escalonamento previsto no §5º do mesmo artigo. </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Isso posto, conheço da presente Apelação Cível para provê-la, oportunidade em que condeno a parte apelada/autora ao pagamento de honorários advocatícios a serem fixados sobre o&#160;proveito econômico obtido, obedecendo aos percentuais mínimos previstos no escalonamento disposto no § 5º do art. 85 do CPC. </p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> É como voto.</p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Fortaleza, data e hora indicadas pelo sistema.</p><p style="margin: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;">&#160;</p><p style="margin: 0cm; text-indent: 70.9pt; line-height: 200%;"> <strong style="text-indent: 70.9pt; font-size: medium; text-align: center;"> &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;&#160; <strong style="font-size: medium; text-align: center;">DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> &#160;Relator </p><p style="margin: 0cm; text-align: center; line-height: 200%;" align="center"> <br /> </p><div

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	style="mso-element: footnote-list;"> <hr size="1" /><!--[endif]--> <div id="ftn1" style="mso-element: footnote;"> <p class="MsoFootnoteText"> <!--[if !supportFootnotes]--> [1] <!--[endif]--> Art. 7º O Poder Executivo deverá destinar 5% (cinco por cento) do valor arrecadado, calculado sobre o valor dos débitos efetivamente recolhidos por força da aplicação desta Lei, a título de honorários de adesão, na forma disciplinada nos arts. 44 e 45 da Lei Complementar nº 134, de 7 de abril de 2014.</p> </div> <div id="ftn2" style="mso-element: footnote;"> <p class="MsoFootnoteText"> <!--[if !supportFootnotes]--> [2] <!--[endif]--> Art. 85. § 10. Nos casos de perda do objeto, os honorários serão devidos por quem deu causa ao</p> </div></div><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	39
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Multas e demais Sanções
Polo ativo	ASSURANT SEGURADORA S.A.
Advogado(s) - Polo ativo	ANTONIO ARY FRANCO CESAR - (SP123514-A)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo 0270037-28.2020.8.06.0001

Acordão

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alt="" /> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; PROCESSO:&#160;0270037-28.2020.8.06.0001 -&#160;APELAÇÃO CÍVEL (198) APELANTE: ASSURANT SEGURADORA S.A. APELADO: ESTADO DO CEARA EP2/A1 <br /> &#160; EMENTA:&#160; Administrativo. Consumidor. Apelação cível. E mbargos à execução fiscal . Multa aplicada pelo DECON/PROCON <span style="font-variant-numeric: normal;

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	font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal;"> . Infração à legislação consumerista. Competência do órgão de proteção e defesa do consumidor. Não apreciação do mérito administrativo. Respeito aos princípios da legalidade, devido processo legal e contraditório. Cerceamento de defesa não configurado. Multas fixadas segundo os parâmetros legais e principiológicos da razoabilidade e proporcionalidade. A parte autora não logrou êxito em comprovar o fato constitutivo de seu direito. Recurso de apelação conhecido e parcialmente provido. Sentença reformada no tocante à cobrança da CDA n° 2018.95096180-2, considerando que houve o pagamento da referida multa administrativa nos autos de Ação Anulatória. I. Caso em exame 1. Trata-se de Apelação interposta pela Assurant Seguradora S/A em face de sentença prolatada pelo Juízo da 4ª Vara de Execuções Fiscais da Comarca de Fortaleza que julgou totalmente improcedentes os Embargos à Execução Fiscal, mantendo incólumes as CDA's combatidas na Execução Fiscal referida. II. Questão em discussão 2. A questão em discussão consiste em analisar a possibilidade de desconstituição dos créditos que geraram as CDA's nº 2017.96425-5, 2018.95096180-2 e 2019.95000766-2, sob o fundamento, em resumo, da existência de nulidades nos respectivos processos administrativos do DECON/PROCON, que geraram a referida multa. III. Razões de decidir 3. Os atos da Administração Pública, desde que respeitem o princípio da legalidade, gozam de presunção de legitimidade e veracidade, somente podendo ser objeto de revisão mediante prova de que foram praticados em desacordo com as leis ou princípios constitucionais. 4. Quanto ao controle de legalidade dos atos administrativos realizado pelo Poder Judiciário, esse deve se limitar à verificação da regularidade do procedimento e à legalidade do ato, não sendo possível análise do mérito a fim de aferir o grau de conveniência e oportunidade determinadas pela autoridade competente. 5. In casu , não há vício capaz de macular a regularidade do processo administrativo, na medida em que foi devidamente assegurado às partes integrantes do procedimento o devido processo legal, o contraditório e a ampla defesa. Ademais, os valores das multas aplicadas, consideradas as peculiaridades do caso concreto, atende aos princípios da proporcionalidade e razoabilidade, assim como a adequada fundamentação do ato administrativo que avaliou todas as circunstâncias com a finalidade de bem aplicar a sanção. 6. A sentença merece ser reformada somente no tocante à CDA nº 2018.95096180-2, posto que houve o pagamento da referida multa administrativa nos autos da Ação Anulatória nº 0124650-16.2019.8.06.0001 que tramitou perante a 14ª Vara da Fazenda Pública da Comarca de Fortaleza. IV. Dispositivo e tese 7. Recurso de Apelação conhecido e parcialmente provido. Sentença <span style="color:

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	#000000;">reformada somente no tocante à cobrança da CDA nº 2018.95096180-2, considerando o seu pagamento junto a Ação Anulatória nº 0124650-16.2019.8.06.0001, que tramitou perante a 14ª Vara da Fazenda Pública da Comarca de Fortaleza.</p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> <br /> </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> Tese de julgamento: “ O controle jurisdicional do processo administrativo deve se limitar à verificação da regularidade do procedimento, à legalidade do ato, podendo o Judiciário observar se os motivos que determinaram a prática do ato pela Administração são, de fato, verídicos e válidos, sem que isso implique violação ao princípio da separação dos poderes (“Teoria dos Motivos Determinantes”). No caso em tela, o DECON/PROCON agiu dentro dos limites do devido processo legal, respeitando os princípios do contraditório e da ampla defesa, aplicando ao final, em decisão fundamentada, multas estipuladas em valores razoáveis e proporcionais à infração à legislação consumerista e à capacidade econômica do agente, atingindo a finalidade punitiva e pedagógica inerente à sanção, não logrando a parte autora em demonstrar nulidade no procedimento administrativo”.</p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> <br /> </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> _________ </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> Dispositivos relevantes citados: Art. 2º, da CF/88; Art. 5º, inciso XXXV, da CF/88, A rts. 55, 56 e 57, do CDC; A rt. 4º, inciso II, da Lei Complementar Estadual nº 30/2002. </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> <br /> </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> Jurisprudência relevante citada: STF, RE 1103448 AgR/PB, Relator Min. Edson Fachin, Julgamento: 11/10/2019, Órgão Julgador Segunda Turma, Publicação: PROCESSO ELETRÔNICO, Dje-230 DIVULG22-10-2019 PUBLIC 23-10-2019; STJ, Súmula 665; STJ, AgInt no REsp n. 1.983.070/CE, relator Ministro Mauro Campbell Marques, Segunda Turma, julgado em 27/6/2022, DJe de 30/6/2022; STJ, RMS 47.595/RJ, Rel. Ministro Og Fernandes, Segunda Turma, DJe de 05/10/2015; STJ, 1ª Turma, AgInt no REsp 1271057/PR, Rel. Min. Napoleão Nunes Maia Filho, julgado em 18/05/2017; STJ, Súmula 665; STJ, AgRg no Resp 1280729/RJ, Rel. Ministro Humberto Martins, Segunda Turma, julgado em 10/04/2012, DJe 19/04/2012. </p><p style="text-align: justify;"> <br /> </p><p style="text-align: justify;"> <br /> </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Recurso de Apelação para dar-lhe parcial provimento, nos termos do voto do Relator.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify"> &#160; F ortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify"> Trata-se de Apelação interposta pela Assurant Seguradora S/A em face de sentença prolatada pelo Juízo da 4ª Vara de Execuções Fiscais da Comarca de Fortaleza. </p><p style="line-

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	height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify"> Ação (Id. 14962004): E mbargos à Execução Fiscal apresentado por Assurant Seguradora S/A, em face do Estado do Ceará, após garantido o crédito fazendário através de penhora no valor de R$ 48.228,00 nos autos da execução fiscal respectiva, com o objetivo de ver declarada a nulidade do processo administrativo que originou a dívida excutida nos autos da execução fiscal em apenso (nº 0407813-07.2019.8.06.0001), sustentando a existência de vícios que nulificam o nascedouro das Certidões de Dívida Ativa que aparelham a execução fiscal. Afirma que a multa aplicada teve como origem reclamação feita por adquirente de produto oferecido pela embargante (seguro de aparelho telefônico) junto ao PROCON, por suposta prática abusiva e negativa de cobertura contratual, e que, após regular procedimento administrativo, teve, a seu ver, decisões injustas de aplicação de penalidades, eis que, consoante alega, o sinistro verificado não se encontra abrangido pela cobertura contratada e que foram prestadas todas as informações necessárias acerca dos riscos que não estariam cobertos. Assevera que não há comprovação da conduta da embargante hábil a ensejar imputação de responsabilidade ou a aplicação de sanção, inexistindo violação a direito consumerista. Alega ainda inépcia da inicial por ausência de requisito essencial do título executivo (fundamentação legal), vez que há apenas indicação genérica dos dispositivos legais. Pugna ainda pela anulação das multas aplicadas por estas não atenderem à razoabilidade e à proporcionalidade. Sentença (Id. 14962320): proferida nos seguintes termos: “julgo totalmente IMPROCEDENTES os embargos à execução fiscal ora manejados, mantendo incólumes as CDA’s guerreadas na execução fiscal em apenso, originária de multa aplicada pelo órgão competente, com processo administrativo devidamente instaurado e fundamentado, sem demonstração por parte de quem detém o ônus probatório, de qualquer mácula a seu respeito. Converto em renda, em favor da parte embargada, Estado do Ceará, os valores penhorados que garantiram o crédito, após o trânsito em julgado. Condeno a parte autora ao pagamento de honorários advocatícios, que fixo em 10% do valor da causa. Custas já recolhidas ”. Razões recursais (Id. 14962324): requer a reforma integral da sentença para anular a penalidade de multa e, consequentemente, declarar a inexigibilidade da multa imposta, extinguindo a ação de Execução Fiscal, principalmente no tocante à CDA nº 2018.95096180-2, que já foi paga diretamente ao Estado do Ceará em Ação Anulatória, condenando-se a parte apelada ao pagamento da totalidade das verbas de sucumbenciais, e, alternativamente, que essa seja reduzida a valor proporcional ao objeto que gerou a reclamação. Contrarrazões (Id. 14962340): requer a total improcedência do recurso de apelação, com a manutenção da sentença a quo e a condenação da apelante nas verbas de sucumbência e honorários advocatícios. &#160; Parecer da Procuradoria Geral de Justiça (Id. 15127078): opinando pelo conhecimento do presente recurso, sem se manifestar em relação ao seu mérito, por entender ausente o interesse público primário na matéria. É o relatório. &#160; &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO &#160; Presentes os pressupostos de admissibilidade, conheço do recurso. Cinge-se a controvérsia em analisar a possibilidade de desconstituição dos créditos que geraram as CDA’s nº 2017.96425-5, 2018.95096180-2 e 2019.95000766-2, sob o fundamento, em resumo, da existência de nulidades nos respectivos processos administrativos do DECON/PROCON, que geraram a referida multa. Ressalto que as autuações se deram em face do descumprimento da

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	legislação consumerista. In casu , a parte embargante pleiteia o controle judicial de supostas ilegalidades perpetradas no curso de processos administrativos do DECON/PROCON com vistas à aplicação de multas, as quais entende por eivadas de nulidades e desproporções quanto ao seu montante. Inicialmente, conforme cognição dos arts. 55, 56 e 57, do CDC, pontuo que os órgãos de defesa do consumidor têm como atribuição legal a aplicação de multas aos fornecedores de produtos ou serviços sempre que, porventura, venham a infringir normas consumeristas, observada a proporcionalidade e a razoabilidade, mediante ponderação sobre a gravidade da infração, vantagem auferida e condição econômica do fornecedor. No que tange ao Programa Estadual de Proteção e Defesa do Consumidor – DECON/PROCON, trata-se de um órgão oficial vinculado ao Ministério Público do Estado do Ceará, sendo responsável pela defesa e proteção dos direitos e interesses dos consumidores. Consoante dispõe o art. 4º, inciso II, da Lei Complementar Estadual nº 30/2002, dentre as atribuições do DECON está prevista a fiscalização e a aplicação de sanções administrativas, senão vejamos: <br /> Art. 4º Ao Programa Estadual de Proteção e Defesa do Consumidor - DECON, no âmbito do Estado do Ceará, compete exercer as atribuições previstas nos artigos 3º e 4º do decreto nº 2.181/97: (...) II - fiscalizar as relações de consumo, aplicando as sanções administrativas previstas na Lei nº 8.078, de 1990, e em outras normas pertinentes à Defesa do Consumidor. (Grifei) &#160; Nesse sentido, o DECON/PROCON detém competência, no exercício regular do poder de polícia, para impor sanções administrativas relacionadas às transgressões dos preceitos estabelecidos pelo Código de Defesa do Consumidor. Confira-se precedente do STJ: <br /> PROCESSO CIVIL. ADMINISTRATIVO. PODER DE POLÍCIA. PROCESSO ADMINISTRATIVO. INFRAÇÃO À LEGISLAÇÃO CONSUMERISTA. COMPETÊNCIA DO ÓRGÃO DE DEFESA DO CONSUMIDOR. ATUAÇÃO DA AGÊNCIA REGULADORA. COMPATIBILIDADE. ACÓRDÃO DO TRIBUNAL EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ. SÚMULA 568/STJ. MULTA. MÉRITO ADMINISTRATIVO. NÃO APRECIAÇÃO DAS PROVAS PELO PODER JUDICIÁRIO. AUSÊNCIA DE PREQUESTIONAMENTO. SÚMULA 211/STJ. RAZÕES DISSOCIADAS. INCIDÊNCIA DAS SÚMULAS 284 E 283/STF. REEXAME DE FATOS E PROVAS. SÚMULA 7/STJ. CRITÉRIOS DO ART. 57 DO CDC. REDUÇÃO DO VALOR DA PENALIDADE. RAZOABILIDADE E PROPORCIONALIDADE. NECESSIDADE DE REVOLVIMENTO DE FATOS E PROVAS. SÚMULA 7/STJ. AGRAVO DESPROVIDO. 1. O órgão de proteção do consumidor é competente para aplicar sanções administrativas quando as condutas praticadas no mercado de consumo atingirem diretamente o interesse de consumidores , o que não se confunde com o exercício da atividade regulatória setorial realizada pelas agências reguladoras. Precedentes.2. Para obter êxito na aplicação do art. 1.025 do CPC não basta a simples interposição de embargos de declaração, é necessária a alegação de violação ao art. 1.022 do CPC nas razões do recurso especial e o reconhecimento por esta Corte da existência de qualquer dos vícios embargáveis pelos aclaratórios; o que não ocorreu no presente caso.3. A recorrente, ora agravante, não rebateu os argumentos que o Tribunal

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	de origem utilizou como fundamento para decidir a lide, bem como apresentou no recurso especial razões dissociadas do acórdão do Tribunal de origem.4. Rever a decisão do Tribunal de origem, a fim de acolher a pretensão da recorrente - no sentido de que a Concessionária não incorreu em qualquer ato ilícito, pois o rompimento da tubulação não decorreu de qualquer omissão ou causa atribuível à manutenção da CAGECE, sendo indevida multa aplicada - enseja necessariamente a revisão do acervo fático-probatório, o que encontra óbice na Súmula 7/STJ.5. Para modificar as conclusões a que chegou o Tribunal de origem, a fim de avaliar a aplicação no caso concreto dos critérios do art. 57 do CDC na fixação da sanção, bem como mensurar a razoabilidade e proporcionalidade do valor fixado a título de multa administrativa, seria necessário o revolvimento fático-probatório, hipótese claramente vedada pela Súmula 7/STJ.6. Agravo interno não provido.(AgInt no REsp n. 1.983.070/CE, relator Ministro Mauro Campbell Marques, Segunda Turma, julgado em 27/6/2022, DJe de 30/6/2022.) (grifei) <br /> Ademais, é assente o entendimento de que os atos da Administração Pública, desde que respeitem o princípio da legalidade, gozam de presunção de legitimidade e veracidade, somente podendo ser objeto de revisão mediante prova de que foram praticados em desacordo com as leis ou princípios constitucionais, consoante a Súmula 665 do STJ. Segundo a jurisprudência pátria, “O controle de legalidade exercido pelo Poder Judiciário sobre os atos administrativos diz respeito ao seu amplo aspecto de obediência aos postulados formais e materiais presentes na Carta Magna, sem, contudo, adentrar o mérito administrativo. Para tanto, a parte dita prejudicada deve demonstrar, de forma concreta, ofensa aos princípios da proporcionalidade, da razoabilidade, do contraditório, da ampla defesa e do devido processo legal” (STJ, RMS 47.595/RJ, Rel. Ministro Og Fernandes, Segunda Turma, DJe de 05/10/2015; STJ. 1ª Turma. AgInt no REsp 1271057/PR, Rel. Min. Napoleão Nunes Maia Filho, julgado em 18/05/2017). Desse modo, o controle jurisdicional do processo administrativo deve se limitar à verificação da regularidade do procedimento, à legalidade do ato, podendo o Judiciário observar se os motivos que determinaram a prática do ato pela Administração são, de fato, verídicos e válidos, sem que isso implique violação ao princípio da separação dos poderes. Trata-se da aplicação, in concreto , da “Teoria dos Motivos Determinantes”, segundo a qual a higidez do ato administrativo está diretamente condicionada à veracidade e à validade dos motivos elencados pela Administração ao praticá-lo, pouco importando sua natureza, se vinculado ou se discricionário. Veja-se julgado do STJ: <br /> ADMINISTRATIVO. ATO ADMINISTRATIVO. VINCULAÇÃO AOS MOTIVOS DETERMINANTES. INCONGRUÊNCIA. ANÁLISE PELO JUDICIÁRIO. POSSIBILIDADE. DANO MORAL. SÚMULA 7/STJ. 1. Os atos discricionários da Administração Pública estão sujeitos ao controle pelo Judiciário quanto à legalidade formal e substancial, cabendo observar que os motivos embasadores dos atos administrativos vinculam a Administração, conferindo-lhes legitimidade e validade. 2. "Consoante a teoria dos motivos determinantes, o administrador vincula-se aos motivos elencados para a prática do ato administrativo. Nesse contexto, há vício de legalidade não apenas quando inexistentes ou inverídicos os motivos suscitados pela administração, mas também quando verificada a falta de congruência entre as razões explicitadas no ato e o resultado nele contido" (MS 15.290/DF, Rel. Min. Castro Meira, Primeira Seção, julgado em 26.10.2011, DJe 14.11.2011). 3. No caso em apreço, se o ato administrativo de avaliação de desempenho confeccionado apresenta incongruência entre parâmetros e critérios estabelecidos e seus motivos determinantes, a atuação jurisdicional acaba por não invadir a seara do mérito administrativo, porquanto limita-se a extirpar ato eivado de ilegalidade. 4. A ilegalidade ou inconstitucionalidade dos atos administrativos podem e devem ser apreciados pelo Poder Judiciário, de modo a evitar que a discricionariedade transfigure-se em arbitrariedade, conduta ilegítima e suscetível de controle de legalidade. 5. "Assim como ao Judiciário compete fulminar todo o comportamento ilegítimo da Administração que apareça como frontal violação da ordem jurídica, compete-lhe, igualmente, fulminar qualquer comportamento administrativo que, a pretexto de exercer apreciação ou decisão discricionária, ultrapassar as fronteiras dela, isto é, desbordar dos limites de liberdade que lhe assistiam, violando, por tal modo, os

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	ditames normativos que assinalam os confins da liberdade discricionária." (Celso Antônio Bandeira de Mello, in Curso de Direito Administrativo, Editora Malheiros, 15ª Edição.) (…). Agravo regimental improvido. (STJ, AgRg no Resp 1280729/RJ, Rel. Ministro HUMBERTO MARTINS, SEGUNDA TURMA, julgado em 10/04/2012, DJe 19/04/2012) (grifei) <br /> No que concerne à verificação da razoabilidade do valor da multa, trata-se de controle também possível ao Judiciário, por ser considerado modalidade de sindicância da legalidade do ato, vejamos: <br /> “ (…) Quanto à alegação de ofensa ao art. 2º da Constituição Federal, esta Corte tem decidido que o controle jurisdicional do ato administrativo considerado ilegal ou abusivo não viola o princípio da separação dos Poderes, sendo permitido, inclusive, ao Judiciário sindicar os aspectos relacionados à proporcionalidade e à razoabilidade (...)” - (RE 1103448 AgR / PB PARAÍBA AG.REG. NO RECURSO EXTRAORDINÁRIO. Relator(a): Min. EDSON FACHIN. Julgamento: 11/10/2019. Órgão Julgador Segunda Turma. Publicação: PROCESSO ELETRÔNICO. Dje-230 DIVULG22-10-2019 PUBLIC 23-10-2019) (grifei) &#160; No caso ora em análise, conforme se observa da documentação acostada à peça inicial (Id. 14962011 ao Id. 14962299), e corretamente consignado pelo Magistrado de origem, não há vício capaz de macular a regularidade do processo administrativo, na medida em que foi devidamente assegurado às partes integrantes do procedimento o devido processo legal, o contraditório e a ampla defesa, tendo a empresa Assurant Seguradora S.A sido regularmente notificada e apresentado defesa e recurso contra a decisão administrativa (Id. 14962299). No que tange à alegação de cerceamento da defesa, verifico que não há ausência de fundamentação legal nas respectivas CDA’s, pois estas detalham a origem da dívida, com indicação dos dispositivos legais violados que deram ensejo à aplicação da multa e ainda citam os números dos processos administrativos em que tais penalidades foram aplicadas (Processos nº 0112.017.280-9; nº 23.001.001.17.000.8910 e nº 23.001.001.17-0005530 - Id. 14962028). Ressalto que não há exigência legal de descrição fática e jurídica detalhada dos fatos que motivaram a autuação no corpo da Certidão de Dívida Ativa. Requer-se apenas a indicação dos dispositivos legais infringidos, conforme estabelece o inciso III do § 5º do art. 2º da Lei de Execução Fiscal. Os detalhes e circunstâncias relevantes já estão documentados no processo administrativo de imposição da multa, cujo número também é mencionado na CDA. Assim, foram informadas a origem, natureza e fundamentação legal da dívida em questão, não havendo qualquer prejuízo à defesa do autuado/executado, que dispôs de todos os meios suficientes para o exercício de seu direito de oposição de embargos. Outrossim, no caso em exame, a parte autora não colacionou aos autos prova qualquer de que houve desrespeito às normas do devido processo legal, capaz de eivar de vício o processo administrativo e, por conseguinte, de fundamentar a declaração judicial da nulidade da sanção pecuniária, pois não logrou demonstrar cerceamento de defesa, ou aplicação desproporcional e desarrazoada de sanção administrativa. O ônus da prova cabe a quem alega o dano (art. 373, I, do CPC), e, no caso dos autos, a parte autora não se desvencilhou de sua obrigação de demonstrar que foi prejudicada durante o trâmite processual administrativo, nem que a sanção aplicada é desproporcional à sua condição econômica. Entendo, pois, que os valores das multas aplicadas, de R$ 13.263,67 (CDA nº 2017.00096425-5) e R$ 12.907,51 (CDA nº 2019.95000766-2), consideradas as peculiaridades do caso concreto, atendem aos princípios da proporcionalidade e razoabilidade, assim como a adequada fundamentação do ato administrativo que avaliou todas as circunstâncias com a finalidade de aplicar as sanções. Por tudo que foi exposto, conclui-se que o DECON/PROCON agiu dentro dos limites do devido processo legal,

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	respeitando os princípios do contraditório e da ampla defesa, aplicando ao final, em decisão fundamentada, multas estipuladas em valores razoáveis e proporcionais à infração à legislação consumerista e à capacidade econômica do agente, atingindo a finalidade punitiva e pedagógica inerente à sanção, não logrando a parte autora em demonstrar nulidade no procedimento administrativo. Nesse sentido, seguem julgados proferidos pelas Câmaras de Direito Público deste Tribunal de Justiça, in verbis : &#160; DIREITO ADMINISTRATIVO, DIREITO DO CONSUMIDOR E PROCESSUAL CIVIL. RECURSO DE APELAÇÃO. EXECUÇÃO FISCAL DE MULTA ADMINISTRATIVA APLICADA PELO PROCON. INFRAÇÕES AO CÓDIGO DE DEFESA DO CONSUMIDOR. EMBARGOS À EXECUÇÃO FISCAL JULGADOS PARCIALMENTE PROCEDENTES. MULTA REDUZIDA EM SEDE DE RECURSO ADMINISTRATIVO INTERPOSTO POR UM DOS LITISCONSORTES. EXTENSÃO DOS EFEITOS AO LITISCONSORTE QUE NÃO RECORREU. POSSIBILIDADE. ART. 1005 DO CPC. SANÇÃO PECUNIÁRIA DEVIDAMENTE MOTIVADA E PROPORCIONAL À GRAVIDADE DA CONDUTA E AO DANO CAUSADO. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. Trata-se de recurso de apelação interposto em face de sentença que julgou parcialmente procedentes os Embargos à Execução Fiscal de multa administrativa aplicada em face do descumprimento da legislação consumerista, reduzindo-a para 20.000 (vinte mil) Unidades Fiscais de Referência do Estado do Ceará (UFIR's-CE), considerando o valor da UFIRCE praticado na sentença administrativa, monetariamente atualizada até a data da emissão da nova certidão da dívida ativa (CDA). 2. Nos termos do disposto no art. 1005 do CPC, o recurso interposto por um dos litisconsortes a todos aproveita, salvo se distintos ou opostos os seus interesses. 3. In casu, não há dúvida de que a redução da multa, obtida pela litisconsorte solidária da apelada no âmbito do procedimento administrativo, estende-se à mesma, especialmente ante a solidariedade passiva e a similitude de defesas apresentadas em face do credor. 4. O controle jurisdicional da legalidade das sanções aplicadas por infração à legislação consumerista não se restringe ao exame dos aspectos formais, podendo ser averiguada a consonância da sanção aplicada com o direito material, aspecto atinente ao mérito do ato administrativo, desde que seja analisado sob o seu aspecto jurídico, e para que sejam observados, além da legalidade em sentido amplo do ato, também os princípios e mandamentos constitucionais. 5. No que tange o quantum da multa final, aplicada a título de sanção pecuniária, constata-se, da análise da decisão administrativa, que o cálculo da pena foi realizado em conformidade com os ditames legais, encontrando-se devidamente fundamentada, proporcional e condizente com o valor do automóvel vendido, a inexistência do ressarcimento integral e atualizado dos danos noticiados, o presumido proveito resultante da conduta, a capacidade econômico-financeira das infratoras e as circunstâncias agravantes observadas no caso, atendendo perfeitamente ao seu caráter didático de evitar novas infrações à Lei Consumerista. 6. Recurso de Apelação conhecido e desprovido. Sentença mantida. ACÓRDÃO: Acordam os integrantes da Primeira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer da apelação, para NEGAR-LHE provimento, nos termos do voto do relator. Fortaleza, 22 de maio de 2023. DES. JOSÉ TARCÍLIO SOUZA DA SILVA Relator (Apelação Cível - 0210283-05.2013.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 22/05/2023, data da publicação: 22/05/2023) <br /> APELAÇÃO CÍVEL. ADMINISTRATIVO. AÇÃO ANULATÓRIA DE MULTA ADMINISTRATIVA. PRETENSÃO AUTORAL DE EXTINÇÃO DE SANÇÃO IMPOSTA PELO PROCON. SENTENÇA DE

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	IMPROCEDÊNCIA. ILEGALIDADE DO PROCEDIMENTO ADMINISTRATIVO. NÃO COMPROVAÇÃO. ANÁLISE DO MÉRITO ADMINISTRATIVO. IMPOSSIBILIDADE. RAZOABILIDADE NO VALOR DA CONDENAÇÃO ADMINISTRATIVA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA . 1. Cuida-se de Apelação Cível interposta pelo TIM CELULAR S/A, contra a sentença proferida pelo Juízo de Direito da 12ª Vara da Fazenda Pública da Comarca de Fortaleza, nos autos da Ação Anulatória, que julgou improcedente o pedido de anulação de multa aplicada pelo DECON, no valor correspondente a 15.000 (quinze mil) UFIRs. 2. Refuta a apelante contra sentença de improcedência do pedido autoral voltado à anulação de multa do DECON, alegando que o ato administrativo sancionatório seria nulo, pois, segundo afirma, não teria havido ofensa à legislação consumerista, estando assim, equivocada a decisão da Promotoria de Justiça que vislumbrou, na atitude da empresa ora demandante, o reconhecimento de culpa ou dolo na suposta transgressão do direito à portabilidade, que fora objeto do processo administrativo nº 0112-007.833-6. 3. Nesse sentido, entende iterativamente o Superior Tribunal de Justiça que "o controle de legalidade exercido pelo Poder Judiciário sobre os atos administrativos diz respeito ao seu amplo aspecto de obediência aos postulados formais e materiais presentes na Carta Magna, sem, contudo, adentrar ao mérito administrativo. Para tanto, a parte dita prejudicada deve demonstrar, de forma concreta, a mencionada ofensa aos referidos princípios" (STJ; AgInt no RMS 58.391/SP, Rel. Ministro FRANCISCO FALCÃO, SEGUNDA TURMA, julgado em 24/08/2020, DJe 28/08/2020). 4. Cumpre ressaltar que a multa aplicada pelo DECON está em harmonia com os princípios do devido processo legal, do contraditório e da ampla defesa, observados quando da incidência da sanção pecuniária, e da razoabilidade e proporcionalidade referentes tanto ao valor da multa, quanto à interpretação e aplicação do direito, o valor da sanção imposta, no importe equivalente a 15.000 UFIRs . 5. Apelação Cível conhecida e desprovida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Recurso Apelação, para desprovê-lo, nos termos do voto da Desembargadora Relatora. Fortaleza, na data informada pelo sistema. Desembargadora MARIA IRANEIDE MOURA SILVA Presidente do Órgão Julgador e Relatora (Apelação Cível - 0860841-92.2014.8.06.0001, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 30/11/2022, data da publicação: 30/11/2022)</p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> <br /> </p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR. DIREITO ADMINISTRATIVO. DESCUMPRIMENTO DA LEI Nº 8.078/90. MULTA APLICADA PELO DECON/CE. AÇÃO ANULATÓRIA DO ATO ADMINISTRATIVO. PROCEDIMENTO REGULAR. RESPEITADOS O CONTRADITÓRIO E A AMPLA DEFESA. QUANTUM DENTRO DOS PRINCÍPIOS CONSTITUCIONAIS DA RAZOABILIDADE E PROPORCIONALIDADE. RECURSO CONHECIDO, MAS DESPROVIDO. SENTENÇA MANTIDA. 1. A multa aplicada pelo DECON em desfavor da parte apelante, no valor de 4.000 UFIRCE, por iniciar atividade empresarial sem o Certificado de Conformidade do Corpo de Bombeiros, é adequada, tendo em vista que, apesar de a extensão do dano causado aos consumidores não ser significativa, considerando que não se tem notícia de incidentes dentro do estabelecimento, é indiscutível que a gravidade da prática infrativa é considerável, diante dos riscos potenciais à incolumidade das pessoas localizadas dentro e fora do prédio. 2. Lado outro, a vantagem auferida com o ato infrativo é relevante, pois a parte apelante pode empreender e faturar, mesmo sem o aval do órgão competente para garantir a eliminação ou minimização dos riscos de incêndio ou de danos estruturais, ao passo que a condição econômica do infrator também é importante, por se tratar de consolidada rede de lojas da região. 3. Embora a requerente cite jurisprudência judicial e administrativa no sentido de que a multa deveria ser fixada em valor inferior, não é possível extrair de seu arrazoado elementos de semelhança entre a situação dos estabelecimentos envolvidos nestes julgados e aquele da recorrente. Ademais, a jurisprudência desta 3ª Câmara de Direito Público, inclusive sobre caso versando sobre unidade da parte recorrente, entende razoável a fixação de multa no patamar de 6.000 UFIRCE em casos análogos. 4. Apelo conhecido, mas desprovido. ACÓRDÃO Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, mas para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO Relator (Apelação Cível - 0005588-02.2017.8.06.0114, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 24/07/2023, data da publicação: 25/07/2023)</p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> <br /> </p><p

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	style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify"> E desta Relatoria: Apelação Cível nº 0111406-54.2018.8.06.0001 , data do julgamento: 13/11/2023, data da publicação: 13/12/2023 (PJE); Apelação Cível nº 0181827-35.2019.8.06.0001 , data do julgamento: 05/04/2024, data da publicação: 05/04/2024 (PJE); Apelação Cível nº 0112719-84.2017.8.06.0001 , data do julgamento: 29/06/2024, data da publicação: 29/06/2024 (PJE).</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify"> No entanto, a sentença merece ser reformada no tocante à CDA nº 2018.95096180-2, posto que houve o pagamento da referida multa administrativa nos autos da Ação Anulatória nº 0124650-16.2019.8.06.0001 que tramitou perante a 14ª Vara da Fazenda Pública da Comarca de Fortaleza.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify"> Diante do exposto, conheço do recurso para DAR-LHE PARCIAL PROVIMENTO , a fim de reformar a sentença tão somente no tocante à cobrança da CDA nº 2018.95096180-2, considerando o seu pagamento pela parte autora no bojo da Ação Anulatória nº 0124650-16.2019.8.06.0001, que tramitou perante a 14ª Vara da Fazenda Pública da Comarca de Fortaleza.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> É como voto. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	40
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Licença Prêmio
Polo ativo	MUNICIPIO DE MAURITI
Advogado(s) - Polo ativo	Não informado
Polo passivo	FRANCISCA CAZUZA PEREIRA RODRIGUES
Advogado(s) - Polo passivo	MARCOS ANTONIO INACIO DA SILVA - (CE20417-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9p9pW0tx/Xv+9+4DdYumSZ9nnnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fNy6uHgF/Pfs6Sjy6EWa6nTBD+8H1Ez+Eg5Wd3Kq8BERGMrUESGG4xXYkQGd1WzBqhzDb14VQnHGROnF7Zg8kQqWhe1HlN1hXRG+FASMD2tcbVbpmAICoJnnECNrDtrTtqV+oQkDMq2lLKAHZ/hYgIbUK+tuVOtYSJ3gLsZSSBjYVbNvSSzpjpoOHKEqwMH3aIb8CWUhsqovvqUhiY8z8cX3W7ZfDb4cD2TBnN3d/1pxymXugZtn+PumBxBkG8Fr+jmjewqAvLiJiiGpP/SRapMIKuPspfTrW3QwDsPJo62x9MCSkcvEUQYBTGQAXT5fdwzrfn28DWsuq5Mw8fPeGhhU6IXfZqEkzTkdvSi85ywBZQ/tu0OFB0Rs0BXjXQJr5u80o5L8/jJJ1Ks9Unb4nubzzqidMoCR3KA7Sp3zVSfRGIcB5KiemFS8y4FYY3OBP73ZJ8bMqGyeEnHUQtEOnrb6T0gt8yYTwv+vY/fYLCyjV6vzvhvwDS8rzyJEdEExqM9fiGmpNGMbtymZlIzNBDzwLJbG6m6LRGVj4xWWQJUtAFF1YnG7oMftHagz4vd+FvlVNoCmoaXzOnmL68PbBYydORDP1t7cJJFO4/V36gZF4I6tRPBU4p1UAaFbL6/6uLXEECa34ltY/P4cu4bZYzjZfwyaNJSQOKuNvCXrIzgJlxu4s8oqrypzTiZUcmGxfJRC9ncdFd6/gQDqxkhZPfArz9Fg45pGTw8UZ5AZWQ7yNk4OnjIE8/T6VRmHakAIkCs6dMRMXJkwDvbKwt/+TVRuu2jTodMZd+gsUUD2bPFx7OHyudPW3+WSOV2e2DcVlnMqtyMLUlgPhKAgeR0+3kfahD0MtPeA9HjB/YsgLX9Fdf3m0ibQbOW0fo4Hzw80hdtgHn2Zv5zm73m1Vy8+EtvTEYf1lo7YMSnHe+9fBwtthpKbH2jzDG8xD4JjB48i/o+TKkvoHpRdy/NW+hmDMNr0hqI+/l/8/+rCe+/g7YbnHq1ELKC0/lRbIFB0VJk01Nzv9+Xw0cfB0ye6F8l9Zxz3UvjdlDnnycN3nRQGCrMzd+n/N+Ed72+I+XKSNUR2/5Fc0jnymu3DD+Af4KrmfU62/6TzW5n6twr8+Lt9zKG+eWoYVzCdV0JOTb54y/e1NqyeIkKEwFRIMPmfPfX2zwJIsfpzFlIy/2GDiFFpH0fXxFi1gpqwQ9Ok5lyRgugx0qzO+a2ujpffkJXGC/UfMjPCZ6WyLMbYJSNh0FJ+xfhlbt6Jvw6enb86Oru8q9MwwRbJXm1AL4tZ/K9hpgHxFU3Wm+tRP/fYOYxkkMIZ5mEaBsbmOexsxjIpV1ZO39rEy7fTj+HzfBKhIJ9PeKbEjs4Ewpl7B+6Asv+zEavr+IEDBRtGQ6ONMTfMPHOwkvK7ihe5dZ/XYAhfsp/6HtoaK6UX2/9qxcxvw2P2vq7SFWfCzkspn4lgW1oC7BKrJNlYW3fSNMydqDOQ5mtbcYp/NFSG9svYqAmyt4zgYjpYo1+TZSqqmrzuEujtW1QOebMIRgtITY4HijtEr3yKOxwD//KSaq9GQTyw1gWlcKpU6zq5Uhr4lf/pM5nMsr7BCZtenkz3vamhq4mAsjtjHbgVVD+VN3T1tbIeRXOvPj/aRRTEVMfL9qx+sYnK/7gg8aVz1nnbMOTapeIBuiehgBP5sqUt8/rHd3i5+eJhz+/t3aT7W0Hk5/aUzQ2cftEDrNG8iDWYH5m+S/5DmWiocbrA8Ty3JWc4Ex/NqxjqHlazhYm/nXs4bc5dtUezzDFLX5yB2BkSFRSzhRMKpm/1r5r2Nh+pHrZWNK8Iif5IHx2/FQF+mxi0NNVV82x8RY+TR6LA5fptZwb1tVtqIj64f7jOHKCT7F26EOeuLojs8XSUDUxYDObHRaN84cJj8PVLDSxzlkbT

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	8UYpJ3iRVPfSrR2y+FyfZwu6bpd/fe/hB+3X2e/XN13UcjdZ/qw19nYvhWyy4aSLN3IeFyGkT0m1P/vE3NiKO7Uyuf1JeQkykmravc13/dnMbqqKA5+LUCBSkGQoj1TzwwAP/WdTj6ikRIaQoR0SxH8MxbKfZ4Grcf1wbKcgRUaQg/v6PZK9TPX1DUaQgyiDDcqca8x95jfLoquuv/v8y6HRP/99Ri/0v+MTumTb4YCQAAAAASUVORK5CYII=" alt="" /> &#160; ESTADO DO CEARÁ PODER JUDICIÁRIO &#160; TRIBUNAL DE JUSTIÇA &#160; <br /> &#160; &#160; Nº PROCESSO:&#160;3000504-32.2023.8.06.0122 CLASSE:&#160;APELAÇÃO CÍVEL &#160; &#160; &#160; EMENTA: &#160; ACÓRDÃO: O Colegiado, por unanimidade, acordou em conhecer do recurso para dar-lhe parcial provimento, nos termos do voto do(a) eminente Relator(a). &#160; RELATÓRIO: &#160; VOTO: <img 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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;3000504-32.2023.8.06.0122 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE MAURITI</p><p> APELADO: FRANCISCA CAZUZA PEREIRA RODRIGUES</p><p> A4</p><p style="text-align: center;">&#160;</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> EMENTA: APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. PRELIMINAR DE INADEQUAÇÃO DA VIA ELEITA REJEITADA. SERVIDORA PÚBLICA APOSENTADA DO MUNICÍPIO DE MAURITI/CE. LICENÇA-PRÊMIO. CONVERSÃO EM PECÚNIA DOS PERÍODOS NÃO GOZADOS. CARÁTER INDENIZATÓRIO. RETROATIVIDADE. IMPOSSIBILIDADE. BENEFÍCIO DEVIDO DESDE A ENTRADA EM VIGOR DA LEI QUE O INSTITUIU. RECONHECIMENTO DE ERRO MATERIAL. RECURSO DE APELAÇÃO CONHECIDO E PARCIALMENTE PROVIDO.   SENTENÇA ALTERADA, DE

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	OFÍCIO.</p><p class="EmentadoAcrdo" style="text-indent: 1.0cm; line-height: 150%;"> &#160; </p><p class="EmentadoAcrdo" style="line-height: 150%;"> I. CASO EM EXAME </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 01. Cuida-se de Apelação interposta pelo Município de Mauriti contra sentença prolatada pelo Juízo da Vara Única da Comarca de Mauriti, nos autos da Ação de cobrança, em que a servidora aposentada requerer a conversão em pecúnia das licenças-prêmio não gozadas, previstas na Lei Municipal nº 837/2008, somando-se três períodos de licença-prêmio.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> II. QUESTÕES EM DISCUSSÃO </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> 02. Consiste em verificar se a parte autora, servidora pública aposentada do Município de Mauriti, faz jus à conversão em pecúnia de licença-prêmio por ela não usufruída quando em atividade, tampouco averbadas para fins de aposentadoria, como também em aferir o período devido. </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 03. No que diz respeito ao não conhecimento do recurso por inadequação do meio de insurgência recursal, cumpre apontar que embora a classe processual esteja cadastrada como “Procedimento do Juizado Especial da Fazenda Pública”, a ação tramitou sob o rito comum cível, regido pelas disposições contidas no Código de Processo Civil, e não pelo procedimento especial previsto na Lei n.º 12.153/2009, não havendo que se falar, pois, em recurso inominado contra a sentença proferida. Preliminar rejeitada.</p><p class="MsoNormal" style="margin-bottom: 7.95pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.1. Reconheço ainda a ocorrência de erro material no dispositivo da sentença em relação aos honorários arbitrados em 10% (vinte por cento) do valor da condenação, quando, na verdade, deveria ter sido estipulado o montante de 10% (dez por cento). </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.2. A jurisprudência do Superior Tribunal de Justiça é coesa no sentido de ser possível a conversão em pecúnia da licença-prêmio não gozada ou não contada para aposentadoria, sob pena de enriquecimento ilícito da administração pública. Precedentes deste Tribunal. Súmula nº 51 do TJCE.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.3. No entanto, embora a sentença tenha considerado, para fins de concessão do benefício, todo o período pleiteado pela parte autora, dada a irretroatividade da legislação de regência, as licenças-prêmio devem ser contadas a partir da data que entrou em vigor a Lei Municipal nº 837/2008.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.4. Em se tratando de sentença ilíquida, a verba honorária sucumbencial deve ser apurada apenas na fase de liquidação do julgado, nos termos do art. 85, §4º, II do CPC, como também há ser observado, não somente o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 mas também, após, o art. 3º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação, em 09/12/2021.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 115%;"> IV. DISPOSITIVO E TESE </p><p class="EmentadoAcrdo" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: 5.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 04. Apelação conhecida e parcialmente provida. Sentença alterada de ofício para postergar a fixação da verba honorária sucumbencial e ajustar os consectários legais.&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph;"> Dispositivos relevantes citados : CPC, art. 85, §4º, II; Lei n.º 12.153/2009; Lei Municipal nº 837/2008; 3º da Emenda Constitucional nº 113/2021.</p><p class="EmentadoAcrdo" style="margin-top: 3.75pt; margin-right: 0cm; margin-bottom: 3.75pt; margin-left: 0cm; text-align: justify; text-justify:

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	inter-ideograph; line-height: 150%;"> Jurisprudência relevante citada: STF, RE nº 590.829/MG; STJ, Tema nº 905 (REsp 1495146/MG), AgInt no REsp 1.826.302/AL, Rel. Ministro Sérgio Kukina, Primeira Turma, DJe 18/11/2019). 4. Agravo interno não provido. (AgInt no REsp n. 1.936.519/AM, relator Benedito Gonçalves, Primeira Turma, DJe de 30/3/2022; TJCE, Súmula nº 51, Agravo Interno Cível - 0000470-81.2019.8.06.0144, Rel. Desembargador(a) TEODORO SILVA SANTOS, 1ª Câmara Direito Público, data do julgamento: 23/05/2022, data da publicação: 23/05/2022, APL: 00004785820198060144 Pentecoste, Relator: RAIMUNDO NONATO SILVA SANTOS, Data de Julgamento: 18/05/2022, 2ª Câmara Direito Público, Data de Publicação: 18/05/2022; Apelação Cível - 0200279-66.2022.8.06.0170, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 3ª Câmara Direito Público, data do julgamento: 26/08/2024, data da publicação: 0909/2024.</p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>MERGEFIELD &quot;&Oacute;rg&atilde;o Julgador#Retorna o nome da vara onde est&aacute; o processo=8@PROC&quot;<![endif]--> 3ª Câmara Direito Público<!--[if supportFields]><![endif]--> do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação, para dar-lhe parcial provimento, nos termos do voto do Relator.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> &#160;</p><p class="EmentadoAcrdo" style="text-align: center; line-height: 150%;" align="center"> &#160;Fortaleza/CE, data e hora informadas pelo sistema.</p><p class="EmentadoAcrdo" style="line-height: 150%;"> &#160;</p><p class="EmentadoAcrdo" style="text-align: center; line-height: 150%;" align="center"> &#160;</p><p class="EmentadoAcrdo" style="text-align: center; line-height: 150%;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;<![endif]--> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES<!--[if supportFields]><![endif]--> </p><p class="EmentadoAcrdo" style="text-align: center; line-height: 150%;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC&quot;<![endif]--> Relator <!--[if supportFields]><![endif]--> &#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p class="Standard" style="text-align: center;" align="center"> RELATÓRIO </p><p class="Standard" style="text-align: center;" align="center"> <br /> </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Trata-se de Apelação interposta pelo Município de Mauriti contra sentença prolatada pelo Juízo da Vara Única da Comarca de Mauriti, nos autos da Ação de cobrança.</p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Ação:&#160;alega a promovente, em síntese, que foi servidora pública

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	efetiva do Município réu entre o período de 18 de março de 2002 a 23 de abril de 2020, estando atualmente inativa, em razão da concessão de aposentadoria, e que, embora previsto na lei municipal, não gozou do direito a licença-prêmio durante sua atividade, razão pela qual requer a sua conversão em pecúnia indenizável de três períodos. &#160;</p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Sentença&#160; (Id 15566181): &#160;após regular trâmite, o juízo a quo julgou a ação nos seguintes termos:&#160;“ Ante o exposto, JULGO PROCEDENTE a pretensão inaugural, com análise do mérito, na forma do art. 487, I, do CPC, para o fim de condenar a municipalidade requerida ao adimplemento dos valores resultados da conversão de licença prêmio em pecúnia, com correção monetária pelo IPCA-E a contra do ato de aposentação e com juros de mora pelos índices da poupança, a contar da citação, conforme orientação jurisprudencial do STJ, firmada sob o rito dos recursos repetitivos (tema 905). Condeno a parte requerida ao pagamento dos honorários advocatícios sucumbenciais à contraparte, no importe de 10% (vinte por cento) do valor da condenação, nos termos do art. 85, §2º do CPC. Deixo de condenar o demandado ao pagamento de custas processuais ante a isenção legal do ente público concedida no art. 5º, I, da Lei estadual nº. 16.132/2016. ”.</p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Razões recursais&#160; (Id 15566185): &#160;inconformado, o Município interpôs recurso no qual requer que a apelação seja conhecida e provida para reconhecer a irretroatividade da Lei nº 837 de 8 de setembro de 2008, reformando a sentença para excluir o período anterior à vigência dessa norma e fixando honorários em favor da Procuradoria-Geral do Município de Mauriti, conforme o art. 85 do CPC. Solicita também a correção do valor dos honorários para 10%, devido a erro material. Caso o apelo seja provido, ainda que parcialmente, pede que seja observado o Tema Repetitivo nº 1.059 do STJ, que impede a majoração de honorários sucumbenciais em casos de provimento do recurso.&#160; &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Contrarrazões&#160; junto ao Id 15566189 em que a parte apelada requer o não conhecimento do recurso, alegando, preliminarmente, a inadequação da via eleita. No mérito, refuta as teses recursais e defende a manutenção da sentença vergastada </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Parecer d a Procuradoria de Justiça (Id 15658845) pelo conhecimento e não provimento do recurso. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> É o relatório. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;">&#160;</p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: center; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> VOTO </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: center; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> <br /> </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Co nheço da Apelação, pois preenchidos os requisitos de admissibilidade. </p><p class="MsoNormal" style="margin-bottom: 7.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> De início, no que diz respeito ao não conhecimento do recurso por inadequação do meio de insurgência recursal, cumpre apontar que embora a classe processual esteja cadastrada como “Procedimento do Juizado Especial da Fazenda Pública”, a ação tramitou sob o rito comum cível, regido pelas disposições contidas no Código de Processo Civil, e não pelo procedimento especial previsto na Lei n.º

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	12.153/2009, não havendo que se falar, pois, em recurso inominado contra a sentença proferida, motivo pelo qual refuto referida preliminar. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> O caso, já adianto, é de provimento parcial do recurso , corrigindo-a, ainda, de ofício, quanto aos honorários de sucumbência e consectários legais. </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> No presente caso, cinge-se a controvérsia recursal em torno da questão se a parte autora, servidora pública aposentada do Município de Itapipoca, faz jus à conversão em pecúnia de licença-prêmio por ela não usufruída quando em atividade, tampouco averbadas para fins de aposentadoria, como também em aferir o período devido. </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> No tocante à possibilidade de conversão da licença prêmio em pecúnia, a Lei Municipal nº 837, de 08 de setembro de 2008 regulamentou o art. 171 da Lei Orgânica Municipal, nos termos abaixo colacionados e Id 15566162: </p><p class="western" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 113.1pt; text-align: justify; text-justify: inter-ideograph; text-indent: .3pt;"> Art. 2º - O servidor público municipal terá direito, como prêmio de assiduidade, a 90 (noventa) dias de licença em cada período de 5 (cinco) anos de exercício ininterrupto, conforme faculta o Art. 141 da Lei Orgânica do Município. &#160;</p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> No caso dos autos, é incontroverso que a suplicante foi admitida como auxiliar de enfermagem pela municipalidade ré em 18/03/2002, tendo se aposentado em 23/04/2020, conforme documentação acostada (Id 15566160 e 15566163). </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> O ente público, por sua vez, não teve êxito em acostar documentação apta a comprovar fato que modificasse, impedisse ou extinguisse o direito vindicado (art. 373, II, CPC). &#160; </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Ao compulsar dos autos, verifica-se que o Município não apresentou documentos ou meios probatórios idôneos que poderiam fazer prova contrária ao alegado na inicial, não provando sequer a existência de ao menos um dos critérios negativos presentes na legislação de regência, que autorize a improcedência do pedido autoral. &#160; </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> A jurisprudência do Superior Tribunal de Justiça consolidou-se no sentido da possibilidade de conversão em pecúnia da licença-prêmio não gozada e não utilizada para a contagem do tempo de serviço quando da aposentadoria do servidor, sob pena de enriquecimento ilícito da Administração Pública, in verbis (com destaques): </p><p class="western" style="margin-left: 113.1pt; text-align: justify; text-justify: inter-ideograph;"> PROCESSUAL CIVIL E ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO ESPECIAL. POLICIAL MILITAR ESTADUAL. VIOLAÇÃO DO ART. 24 DO DECRETO-LEI N. 667/1969. AUSÊNCIA DE PREQUESTIONAMENTO. SÚMULA 211/STJ. LICENÇA ESPECIAL E FÉRIAS NÃO USUFRUÍDAS. CONVERSÃO EM PECÚNIA. POSSIBILIDADE. 1. Tendo o recurso sido interposto contra acórdão publicado na vigência do CPC/2015, devem ser exigidos os requisitos de admissibilidade na forma nele previsto, conforme Enunciado Administrativo n. 3/2016/STJ. 2. A falta de prequestionamento da matéria suscitada no recurso especial, a despeito da oposição de embargos de declaração, impede o seu conhecimento, a teor da Súmula 211/STJ. 3. O acórdão recorrido encontra-se em consonância com o entendimento adotado nesta Corte, " firme no sentido de ser possível a conversão em pecúnia da licença-prêmio não gozada ou não contada em dobro para aposentadoria, sob pena de enriquecimento

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	ilícito da administração pública" (AgInt no REsp 1.826.302/AL, Rel. Ministro Sérgio Kukina, Primeira Turma, DJe 18/11/2019). 4. Agravo interno não provido. (AgInt no REsp n. 1.936.519/AM, relator Benedito Gonçalves, Primeira Turma, DJe de 30/3/2022.) </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> No mesmo sentido, proclama essa Corte de Justiça, por meio da Súmula nº 51, que diz: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 113.2pt; text-align: justify; text-justify: inter-ideograph; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 113.2pt; text-align: justify; text-justify: inter-ideograph; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Súmula nº 51 – TJ/CE: É devida ao servidor público aposentado a conversão em pecúnia da licença-prêmio não gozada, sob pena de enriquecimento ilícito do Poder Público. &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Desse modo, configurada a ausência de fruição do benefício pela servidora, as licenças-prêmio adquiridas e não usufruídas quando em atividade devem ser convertida em pecúnia, porém, devem ser contadas desde que entrou em vigor a Lei Municipal nº 837/2008 e não desde que a autora ingressou no serviço público, dada a irretroatividade da lei . </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Com efeito, para a concessão de tal vantagem, não é possível a contagem do tempo de serviço prestado antes da entrada em vigor de referida lei, dada a inexistência, até então, de regulamentação válida em âmbito local. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> É verdade que o art. 2º da referida lei assegura o benefício da licença-prêmio, contudo, não há qualquer previsão, em seu bojo, sobre a aplicação da retroatividade de seus efeitos. Assim, considerando que a retroatividade da lei não se presume e, portanto, deve constar de forma expressa, não é possível a contagem de tempo de serviço prestado anteriormente a entrada em vigor da norma (Lei Municipal nº 837, de 08 de setembro de 2008) para fins de concessão do direito à licença-prêmio. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Não menos importante, a previsão genérica de referido benefício na lei orgânica do Município não tem o condão de lhe conferir efetividade, visto que se trata de norma de eficácia limitada, demandando a edição de normas específicas para a categoria.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> A propósito, o Supremo Tribunal Federal, em sede de repercussão geral, sedimentou a tese de que " é inconstitucional, por afrontar a iniciativa privativa do Chefe do Poder Executivo, a normatização de direitos dos servidores públicos em Lei Orgânica do Município." (RE nº 590.829/MG). </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> A respeito da matéria, colaciono precedentes das Câmaras de Direito Público deste Tribunal de Justiça, com os devidos destaques: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 113.2pt; text-align: justify; text-justify: inter-ideograph; line-

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	height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin: 0cm 0cm 5pt 113.2pt; text-align: justify; line-height: normal; background-image: initial; background-position: initial; background-size: initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;"> <em> <span style="letter-spacing: 0.1pt;"> <span style="font-size: x-small;">AGRAVO INTERNO EM APELAÇÃO CÍVEL. ADMINISTRATIVO. SERVIDORES PÚBLICOS. LICENÇA-PRÊMIO. NÃO CONCESSÃO. NÃO É POSSÍVEL CONTAGEM DO TEMPO DE SERVIÇO PRESTADO ANTES DA REGULAMENTAÇÃO EM ÂMBITO LOCAL. PRINCÍPIO DA IRRETROATIVIDADE DAS NORMAS. AGRAVO INTERNO CONHECIDO E DESPROVIDO. 1. O magistrado de primeiro grau reconheceu o direito dos servidores públicos do Município de Pentecoste/CE à fruição da licença prêmio, com fulcro no art. 81-A da Lei nº 807/2017, sem observar que ainda não decorrido o tempo necessário para tanto. Para a concessão de tal vantagem, não é possível a contagem do tempo de serviço prestado antes da entrada em vigor de referida lei, dada a inexistência, até então, de regulamentação válida em âmbito local. O princípio da irretroatividade das normas determina que as leis, em regra, somente dispõem para o futuro sendo a retroatividade exceção que, como tal, não se presume, devendo, ao contrário, resultar de determinação expressa e inequívoca. 2. Para que pudesse produzir efeitos sobre fatos anteriores à sua vigência (07/03/2017), era preciso que a Lei 809/2017 tivesse sido clara em relação à sua retroatividade, o que, porém, não aconteceu. Diante disso, é possível concluir, então, que nenhum dos servidores públicos, na data da propositura da ação (08/03/2019), tinha adquirido direito à fruição de licença-prêmio, o que só ocorrerá em 07/03/2022, ou seja, 05 (cinco) anos depois da entrada em vigor da Lei nº 809/2017. 3. Oportuno destacar, ademais, que esta decisão não impede os autores/apelados de, no futuro, após cumpridos os requisitos previstos na Lei 809/2017, buscarem novamente, em juízo, o direito de gozo/conversão de licença prêmio, ante eventual omissão ilegal e arbitrária da Administração. 4. Agravo Interno conhecido e desprovido ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Agravo Interno, para negar-lhe provimento, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data da assinatura eletrônica. DESEMBARGADOR TEODORO SILVA SANTOS Relator (Agravo Interno Cível - 0000470-81.2019.8.06.0144, Rel. Desembargador(a) TEODORO SILVA SANTOS, 1ª Câmara Direito Público , data do julgamento: 23/05/2022, data da publicação: 23/05/2022) &#160; </p><p class="MsoNormal" style="margin: 0cm 0cm 5pt 113.2pt; text-align: justify; line-height: normal; background-image: initial; background-position: initial; background-size: initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;"> <em> APELAÇÃO CÍVEL. REMESSA NECESSÁRIA. CONSTITUCIONAL E ADMINISTRATIVO. SERVIDORES PÚBLICOS MUNICIPAIS. CONCESSÃO DE LICENÇA PRÊMIO PREVISTA NA LEI ORGÂNICA. INCONSTITUCIONALIDADE POR VÍCIO DE INICIATIVA. BENEFÍCIO VÁLIDO APENAS APÓS A ENTRADA EM VIGOR DA LEI Nº 809/2017. IMPOSSIBILIDADE DE CONTAGEM DE TEMPO ANTERIOR. PRINCÍPIO DA IRRETROATIVIDADE DAS NORMAS. INEXISTÊNCIA DE DIREITO ADQUIRIDO. PRECEDENTES. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. Trata-se de remessa necessária e apelação cível e interposta por MUNICÍPIO DE PENTECOSTE em face de sentença proferida pelo Juízo da Vara Única da Comarca de Pentecoste/CE, requerendo a reforma da sentença que julgou parcialmente procedente a Ação Ordinária. 2. Os autores ingressaram em juízo em março de 2019, requerendo a concessão de licença prêmio referente aos períodos laborados, utilizando como base o art. 119, XIII da Lei Orgânica do Município de Pentecoste, a qual prevê que, é direito do servidor público municipal o usufruto de licença de 3 (três) meses após 5 (cinco) anos de efetivo exercício. 3. Acontece que, conforme dispõe o art. 61, § 1º, II, 'c', da CF/88, é de iniciativa privativa do Chefe do Executivo leis que disponham sobre os servidores públicos. Desse modo, a Lei Orgânica, que é de iniciativa do Poder Legislativo, ao legislar sobre o direito ao recebimento do benefício pelos servidores violou o princípio da iniciativa disposto na Constituição Federal, sendo, portanto, inconstitucional quanto a esse ponto. 4. A propósito, o Supremo Tribunal Federal, em sede de repercussão geral, sedimentou a tese de que " é inconstitucional, por afrontar a iniciativa privativa do Chefe do Poder Executivo, a normatização de direitos dos servidores públicos em Lei Orgânica do Município." (RE nº 590.829/MG). 5. A Lei Orgânica Municipal, no artigo utilizado como base do pedido, é de eficácia limitada, necessitando de complementação, direito este somente regulamentado pelo Estatuto dos Servidores Públicos do Município de Pentecoste, Lei Complementar nº 809/2017. 6. Nesse contexto, extrai-se do art. 81 da Lei Complementar nº. 809/2017 que, após cada quinquênio de efetivo exercício, o servidor fará jus a 3 (três) meses de licença, sem prejuízo de sua

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	remuneração, a título de prêmio por assiduidade e eficiência, reconhecido, portanto, o direito dos servidores municipais à fruição da licença prêmio. 7. Não há amparo legal ao suposto direito almejado pelos autores, considerando que a norma de regência da licença prêmio somente fora implementada com a entrada em vigor da Lei Complementar Nº 809/2017 de 07.03.2017, termo inicial para a concessão da licença em alusão. 8. Recurso de Apelação e Remessa Necessária conhecidos e providos. Sentença reformada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Remessa Necessária e da Apelação para dar-lhes provimento, nos termos no voto do Relator. Fortaleza, 18 de maio de 2022. MARIA IRANEIDE MOURA SILVA Presidente do Órgão Julgador DESEMBARGADOR RAIMUNDO NONATO SILVA SANTOS Relator (TJ-CE - APL: 00004785820198060144 Pentecoste, Relator: RAIMUNDO NONATO SILVA SANTOS, Data de Julgamento: 18/05/2022, 2ª Câmara Direito Público , Data de Publicação: 18/05/2022) </p><p class="MsoNormal" style="margin: 0cm 0cm 5pt 113.2pt; text-align: justify; line-height: normal; background-image: initial; background-position: initial; background-size: initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;"> <em> <span style="letter-spacing: 0.1pt;"> <span style="font-size: small;"> <span style="font-size: x-small;">APELAÇÃO CÍVEL. DIREITO ADMINISTRATIVO E CONSTITUCIONAL. AÇÃO DE COBRANÇA DE LICENÇA-PRÊMIO. PROCEDÊNCIA DO PEDIDO INICIAL. IRRESIGNAÇÃO DO MUNICÍPIO. INEXISTÊNCIA DE OFENSA AO PRINCÍPIO DA DIALETICIDADE. PRELIMINAR CONTRARRECURSAL AFASTADA. HIPÓTESE QUE DISPENSA O REEXAME OBRIGATÓRIO. ART. 496, § 3º, INCISO II, DO CPC. PRESCRIÇÃO. INOCORRÊNCIA. TEMA 516 DO STJ. SERVIDOR PÚBLICO MUNICIPAL APOSENTADO. LICENÇA-PRÊMIO NÃO GOZADA. CONVERSÃO EM PECÚNIA. POSSIBILIDADE. SÚMULA 51 DO TJCE. VEDAÇÃO AO ENRIQUECIMENTO ILÍCITO DA ADMINISTRAÇÃO. MARCO TEMPORAL INICIAL DE CONTAGEM DOS PERÍODOS AQUISITIVOS PARA IMPLEMENTAÇÃO DO PAGAMENTO DO BENEFÍCIO. DATA DA ENTRADA EM VIGOR DA LEI MUNICIPAL Nº 052/1998. IRRETROATIVIDADE DA NORMA. NECESSIDADE DE APLICAÇÃO DA TAXA SELIC A PARTIR DE 09/12/2021, NOS TERMOS DO ART. 3º DA EMENDA CONSTITUCIONAL Nº 113/2021. DEFINIÇÃO DO PERCENTUAL DOS HONORÁRIOS POSTERGADA PARA A FASE DE LIQUIDAÇÃO DO JULGADO. RECURSO DE APELAÇÃO CONHECIDO E PARCIALMENTE PROVIDO. 1. Cinge-se a controvérsia em analisar o direito do promovente, servidor público aposentado do Município de Tamboril, à conversão em pecúnia dos períodos de licenças-prêmio não gozadas, assim como o marco inicial dos períodos aquisitivos para implementação de tal vantagem. 2. Ressalte-se, inicialmente, que não merece prosperar a preliminar de ausência de impugnação específica aos fundamentos da decisão, eis que a fundamentação recursal ataca as razões de fato e de direito do decisum, explicando de forma suficiente a insatisfação do recorrente, em respeito ao princípio da dialeticidade. 3. Não obstante as razões do apelante, a demanda não alcança o valor de alçada para reexame obrigatório que, na situação dos autos, é de no mínimo 100 salários-mínimos, uma vez que consta no polo passivo da ação o Município. 4. Quanto à alegação da ocorrência de prescrição, esta não deve prosperar, pois, conforme entendimento consolidado pelo STJ no julgamento do REsp n. 1.254.456/PE (Tema nº 516), a contagem da prescrição quinquenal relativa à conversão em pecúnia de licença-prêmio não gozada e nem utilizada como lapso temporal para a aposentadoria tem como termo inicial a data em que ocorreu a aposentadoria do servidor público. 5. Analisando-se os autos, resta incontroverso que o servidor, de fato, laborou por todo o período informado, a saber, entre 02 de janeiro de 1998 e 04 de junho de 2021, data em que passou para a inatividade em virtude do requerimento de aposentadoria. Outrossim, restou demonstrado que o autor foi admitido no serviço público inicialmente no regime celetista, passando à condição de estatutário com o advento da Lei Municipal nº 052/98, que instituiu o Regime Jurídico Único dos Servidores do Município de Tamboril. 6. A respeito da matéria, é pacífico na jurisprudência deste Egrégio Tribunal de Justiça o entendimento de que as licenças-prêmio não gozadas ou não usufruídas para fins de contagem de tempo de serviço poderão ser convertidas em pecúnia. 7. Em relação ao marco inicial dos períodos aquisitivos para conversão em pecúnia das licenças-prêmio não gozadas, não se pode negar que é cabível a contagem do tempo de serviço prestado pelo servidor público admitido sob o extinto regime celetista, anteriormente a sua migração para o regime estatutário, para fins de percepção de licença-prêmio, conforme precedente do STJ. Contudo, apesar de o autor ter ingressado no serviço público em 02.01.1998, o Estatuto dos Servidores do Município de Tamboril teve iniciada sua vigência somente em 07.11.1998 com a previsão do instituto da licença-prêmio, de forma que apenas é possível a contagem dos períodos aquisitivos posteriores a esta data, tendo em vista que vigora no ordenamento jurídico brasileiro o princípio da irretroatividade das normas. Logo, no caso em específico, não se trata de discutir o direito de inclusão do período celetista no cômputo do tempo para fins de recebimento do benefício, já que no referido período esse direito sequer existia, pois anteriormente a edição da Lei Municipal

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	nº 052/1998 não havia previsão em âmbito local da licença-prêmio por assiduidade, merecendo reforma a sentença quanto a esse ponto. 8. Em relação aos índices de atualização dos valores devidos, há de ser observado, in casu, o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação, em 09/12/2021, devendo, pois, ser aplicada, após essa data, a taxa Selic. 9. Recurso de apelação conhecido e parcialmente provido. Sentença reformada em parte. ACÓRDÃO: Vistos, relatados e discutidos estes autos em que são partes as acima indicadas, acordam os desembargadores integrantes da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso para dar-lhe parcial provimento, nos termos do relatório e do voto da Relatora, que passam a fazer parte integrante do presente acórdão. Fortaleza (CE), data da inserção no sistema. MARIA DO LIVRAMENTO ALVES MAGALHÃES Desembargadora Relatora (Apelação Cível - 0200279-66.2022.8.06.0170, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 3ª Câmara Direito Público , data do julgamento: 26/08/2024, data da publicação: 0909/2024) &#160; </p><p class="MsoNormal" style="margin-bottom: 7.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> E de minha relatoria: AC 00057702420198060144, data de julgamento: 14/03/2022, data de publicação: 15/03/2022. </p><p class="MsoNormal" style="margin-bottom: 7.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Reconheço ainda a ocorrência de erro material no dispositivo da sentença em relação aos honorários arbitrados em 10% (vinte por cento) do valor da condenação, quando, na verdade, deveria ter sido estipulado o montante de 10% (dez por cento). </p><p class="MsoNormal" style="margin-bottom: 7.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> No que se refere aos índices de atualização dos valores devidos, por se tratarem de matéria de ordem pública, há ser observado, não somente o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 mas também, após, o art. 3º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação, em 09/12/2021, sem que implique reformatio in pejus. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Por fim, deve ser corrigido ainda o decisum, pois, em se tratando de sentença ilíquida, estabelece o artigo 85, § 4º, inciso II, do CPC, que, nesse caso, a definição do percentual dos honorários advocatícios sucumbenciais somente dever ocorrer quando da liquidação da decisão, merecendo ser reformado o decisum neste ponto, mediante a postergação da fixação de honorários advocatícios para a fase de liquidação. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Isso posto, conheço do recurso de apelação para DAR-LHE PARCIAL PROVIMENTO, a fim de excluir a condenação ao pagamento de licença-prêmio referente ao período que antecede a Lei nº 837/2008, bem como para reconhecer o erro material no dispositivo da sentença, nos termos acima indicados, reformando, ainda, a sentença recorrida, de ofício, para determinar que, sobre o valor da condenação, incidirá correção monetária e juros de mora pela SELIC em conformidade com o teor do art. 3º, da EC nº. 113/2021, a partir de 09/12/2021, e em relação aos honorários advocatícios sucumbenciais, conforme acima disposto, mantendo íntegros os demais termos da sentença ora impugnada. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> É como voto. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;Fortaleza, data e hora informadas pelo sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br />

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	 </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	41
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Voluntária
Polo ativo	FRANCISCO EDMAR GOMES DE CARVALHO
Advogado(s) - Polo ativo	BRUNO QUEIROZ DE FREITAS - (CE23151-A)
Polo passivo	Orientador da Célula de Concessão de Aposentadoria, Sr. Sérgio Bastos de Castro PROCURADORIA GERAL DO ESTADO Secretário da Fazendo do Estado do Ceará, Sr. João Marcos Maia ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;0182559-50.2018.8.06.0001 -&#160;REMESSA NECESSÁRIA CÍVEL (199)</p><p> AUTOR: FRANCISCO EDMAR GOMES DE CARVALHO</p><p> RECORRIDO: ORIENTADOR DA CÉLULA DE CONCESSÃO DE APOSENTADORIA, SR. SÉRGIO BASTOS DE CASTRO, PROCURADORIA GERAL DO ESTADO, SECRETÁRIO DA FAZENDA DO ESTADO DO CEARÁ, SR. JOÃO MARCOS MAIA, ESTADO DO CEARA</p><p> EP2/A1</p><p>   <br /> </p><p style="text-align: center;">&#160;</p><p style="text-align: justify;">   EMENTA:&#160;   <span style="font-variant-caps: small-

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	caps;">Constitucional. Administrativo. Remessa necessária em Mandado de Segurança. Servidor efetivo. Demissão ilegal. Impossibilidade. Direito à reintegração reconhecido em decisão judicial transitada em julgado. Direito ao cômputo do tempo de serviço durante o período em que esteve ilegalmente afastado, independentemente do recolhimento de contribuição previdenciária. Resta assegurado ao Impetrante o direito a requerer sua aposentadoria por tempo de serviço. Mandado de Segurança não é via adequada para pleitear o pagamento do abono permanência. Súmulas nº 269 e 271 do STF. Remessa necessária conhecida e desprovida. Sentença mantida. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%; margin-bottom: 0cm;" align="justify"> I. Caso em exame </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> 1. Trata-se de Remessa Necessária em face de sentença que concedeu parcialmente segurança, reconhecendo o direito autoral ao cômputo do tempo de serviço durante o período em que esteve ilegalmente afastado, independentemente do recolhimento de contribuição previdenciária, assegurando ao Impetrante o direito a requerer sua aposentadoria por tempo de serviço, indeferindo, por outro lado, o pedido de recebimento do abono de permanência. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%; margin-bottom: 0cm;" align="justify"> II. Questão em discussão </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> 2. A questão em discussão consiste na análise acerca do direito do autor de aposentar-se, uma vez já completado o tempo de serviço, o qual vem sendo negado, por entender a Secretaria da Fazenda (SEFAZ) que este apenas poderia ser pleiteado quando da execução dos valores atrasados, sendo recolhida a contribuição previdenciária. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%; margin-bottom: 0cm;" align="justify"> III. Razões de decidir </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> 3. In casu, o impetrante fora admitido no serviço público em 19/08/1991 e ilegalmente demitido em 2006 do cargo de Auditor Fiscal Adjunto da Receita Estadual, por meio do Processo Administrativo Disciplinar nº 01/2004, sendo cancelado o ato de demissão por meio de decisão deste Tribunal de Justiça, confirmada pelo Supremo Tribunal Federal, sendo posteriormente reintegrado no cargo. </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> 4. A decisão que declara a nulidade de ato de demissão e determina a reintegração de servidor público ao cargo de origem opera efeitos ex tunc , isto é, restabelece o status quo ante , de modo a garantir o pagamento integral das vantagens pecuniárias que seriam pagas no período do indevido desligamento do serviço público. </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> 5. O próprio ente público reconhece a incorporação do tempo de serviço do autor para fins de contagem de tempo de serviço, decorrente da nulidade de demissão reconhecida judicialmente. Todavia, o Estado do Ceará nega a concessão da aposentadoria do impetrante com base na Emenda Constitucional nº 20/98, que veda qualquer tipo de contagem de tempo de contribuição fictício, exigindo-se o regular pagamento das contribuições previdenciárias. </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> 6. Admitir-se que o impetrante não poderia se aposentar por não ter ainda recolhido as contribuições do período em que esteve afastado implicaria beneficiar o ente público por sua própria torpeza, uma vez que a Administração deu causa ao afastamento indevido e é ele quem, afinal, deverá pagar as contribuições previdenciárias referentes ao período de não exercício funcional. </p><p style="line-height: 200%; margin-bottom: 0cm" align="justify"> 7. Por fim, mandado de segurança é via inadequada para pleitear o pagamento do abono permanência, nos termos das Súmulas nº 269 e nº 271, ambas do STF. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps;

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	font-variant-alternates: normal; font-variant-position: normal; line-height: 200%; margin-bottom: 0cm;" align="justify"> IV. Dispositivo e tese 8. Remessa necessária conhecida e desprovida. Tese de julgamento: "A reintegração do servidor em cargo público restabelece o status quo ante , de modo a garantir a recomposição integral de todos os direitos do servidor ilegalmente demitido do serviço público, inclusive no que tange às contribuições previdenciárias referentes ao período de não exercício funcional, assegurando o cômputo do tempo de serviço para fins de aposentadoria". <br /> _________ Dispositivos relevantes citados: A rts. 1° e 14, § 1º, da Lei nº 12.016/2009; Art. 5º, inciso LXIX, da CRFB/88; art. 41, § 2º, da CF/88. <br /> Jurisprudência relevante citada: Súmula nº 269, STF; Súmula nº 271, STF; STJ, EDcl no RMS 42.084/PR, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 19/02/2019, REPDJe 26/02/2019, DJe 25/02/2019; TJCE, Apelação / Remessa Necessária - 0001750-89.2013.8.06.0179, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 24/10/2022, data da publicação: 24/10/2022; TJCE, Remessa Necessária Cível - 0000212-47.2017.8.06.0207, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 13/06/2022, data da publicação: 13/06/2022. <br /> <br /> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Remessa Necessária para negar-lhe provimento, nos termos do voto do relator. <br /> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; &#160; <br /> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <strong style="font-size: small;"> Relator &#160; &#160; &#160; &#160; RELATÓRIO <br /> Trata-se de Remessa Necessária em face de sentença prolatada pelo&#160;Juízo da 3ª Vara da Fazenda Pública da Comarca de Fortaleza. <span style="font-size:

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	medium;"> Ação&#160;(Id. 15359591): M andado de Segurança&#160; com Pedido Liminar impetrado por Francisco Edmar Gomes de Carvalho inicialmente em face do Secretário da Fazenda do Estado do Ceará e do Orientador da Célula de Concessão de Aposentadoria, objetivando a concessão de ordem judicial destinada a considerar o tempo de serviço do Impetrante durante o período em que restou afastado, independentemente do recolhimento da contribuição previdenciária; ou no caso da imprescindibilidade do recolhimento, que esse seja feito de forma imediata por parte da SEFAZ/CE, para posterior desconto quando do pagamento do precatório. Pleiteia, ainda, o direito de requerer a sua aposentadoria por tempo de serviço, bem como o pagamento de abono de permanência durante o período em que preencheu os requisitos para a sua aposentadoria e a sua efetiva concessão. Intimado a se manifestar acerca de potencial declínio para este Tribunal de Justiça, por se tratar de Mandado de Segurança contra ato de Secretário de Estado, o Impetrante requereu a exclusão do Secretário Estadual da Fazenda do polo passivo do presente&#160; mandamus&#160; (Id. 15359618). Manifestação do Estado do Ceará no Id. 15359642. Decisão interlocutória de Id. 15359659, deferindo o pleito liminar. Sentença&#160;(Id. 15359681):&#160; proferida nos seguintes termos: " CONCEDO PARCIALMENTE&#160; a segurança, para&#160; determinar&#160; à autoridade indigitada coatora que adote as providências necessárias ao cômputo do período de afastamento de&#160; FRANCISCO EDMAR GOMES DE CARVALHO como tempo de serviço, independente do recolhimento da contribuição previdenciária correspondente, o qual será realizado por ocasião do pagamento do Precatório, e assegurar ao impetrante o direito de requerer sua aposentadoria por tempo de serviço.&#160; Com proveito, em relação aos Embargos de Declaração opostos pelo Estado do Ceará em face da decisão prolatada no Id 38065966, por alegada omissão quanto à tese de ilegitimidade passiva da autoridade apontada como coatora, esta fora devidamente apreciada e rejeitada no momento de análise da referida prejudicial, de modo que superada a questão, restando esvaziado o objeto dos declaratórios.&#160; Sujeita ao reexame necessário (Art. 14, §1º, da Lei nº 12.016/2009). Sem custas. Sem honorários (Art. 25 da Lei nº 12.016/2009, Súmula nº 105 do STJ, e Súmula nº 512 do STF). " Certificado o decurso de prazo sem a interposição de recurso voluntário pelas partes (Id. 15359694), a remessa necessária foi encaminhada a este Tribunal. Parecer da Procuradoria Geral de Justiça &#160;(Id. 15493892): opinando pelo conhecimento da Remessa Necessária e pela manutenção da sentença. É o relatório. &#160; &#160; &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO &#160; Por se tratar de mandado de segurança, a sentença se sujeita ao duplo grau de jurisdição obrigatório, por força do art. 14, § 1º, da Lei nº 12.016/2009, motivo pelo qual conheço da remessa necessária. Cumpre registrar que o mandado de segurança é instrumento destinado à proteção de direito líquido e certo sempre que alguém, ilegalmente ou com abuso de

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	poder, sofrer violação ou houver justo receio de sofrê-la, por parte de autoridade pública ou agente de pessoa jurídica no exercício de atribuições do Poder Público, nos termos do art. 5º, inciso LXIX, da CRFB/88 e art. 1º, caput , da Lei nº. 12.016/2009, a seguir colacionados: <br /> CF/88 Art. 5º. Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes: (…) XIX - conceder-se-á mandado de segurança para proteger direito líquido e certo, não amparado por habeas corpus ou habeas data, quando o responsável pela ilegalidade ou abuso de poder for autoridade pública ou agente de pessoa jurídica no exercício de atribuições do Poder Público; <br /> Lei nº. 12.016/2009 Art. 1º. Conceder-se-á mandado de segurança para proteger direito líquido e certo, não amparado por habeas corpus ou habeas data, sempre que, ilegalmente ou com abuso de poder, qualquer pessoa física ou jurídica sofrer violação ou houver justo receio de sofrê-la por parte de autoridade, seja de que categoria for e sejam quais forem as funções que exerça. &#160; Analisando o feito, verifica-se que, no presente caso, não se faz necessária a dilação probatória, tendo em vista que o impetrante já instruiu a contenda com arcabouço probatório necessário ao julgamento da lide. Registrado esse ponto, passo à análise da matéria jurídica discutida nos autos. Conforme brevemente relatado, cinge-se a controvérsia à análise do direito do autor de se aposentar, uma vez já completado o tempo de serviço, o qual vem sendo negado, por entender a Secretaria da Fazenda (SEFAZ) que este apenas poderia ser pleiteado quando da execução dos valores atrasados, sendo recolhida a contribuição previdenciária. Ademais, cumpre consignar o fato de o impetrante também estar impossibilitado de requerer o pagamento do abono permanência. Compulsando os autos, observa-se que o impetrante fora admitido no serviço público em 19/08/1991 e ilegalmente demitido em 2006 do cargo de Auditor Fiscal Adjunto da Receita Estadual, por meio do Processo Administrativo Disciplinar nº 01/2004, sendo cancelado o ato de demissão por meio de decisão deste Tribunal de Justiça, confirmada pelo Supremo Tribunal Federal, fazendo jus à reintegração. Como é cediço, a reintegração é uma forma de provimento derivado expressamente prevista no art. 41, § 2º da CF/88, ocorrendo quando o servidor estável, anteriormente demitido, tem invalidada a sua demissão por decisão administrativa ou judicial, retornando ao cargo de origem, com ressarcimento de todas as vantagens a que teria feito jus durante o período de seu desligamento ilegal, situação que se amolda ao presente caso. Logo, a decisão que declara a nulidade de ato de demissão e determina a reintegração de servidor público ao cargo de origem, que é a hipótese vertente, opera efeitos “ex tunc” , isto é, restabelece

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	o “status quo ante” , de modo a garantir o pagamento integral das vantagens pecuniárias que seriam pagas no período do indevido desligamento do serviço público. Nesse contexto, a recomposição integral de todos os direitos do servidor ilegalmente demitido do serviço público encontra eco na jurisprudência pacífica. Sobre a temática, colho precedente do Superior Tribunal de Justiça: &#160; ADMINISTRATIVO. EMBARGOS DE DECLARAÇÃO NO RECURSO ORDINÁRIO EM MANDADO DE SEGURANÇA. PROCESSO ADMINISTRATIVO DISCIPLINAR. POLICIAL CIVIL DO ESTADO DO PARANÁ. PARTICIPAÇÃO DE MEMBRO DO MINISTÉRIO PÚBLICO ESTADUAL NO CONSELHO DA POLÍCIA CIVIL. VEDAÇÃO. PAD DECLARADO NULO INCIDENTALMENTE. ORDEM CONCEDIDA. OMISSÃO QUANTO AOS EFEITOS DA CONCESSÃO DA SEGURANÇA. EMBARGOS DE DECLARAÇÃO DO SERVIDOR ACOLHIDOS, SEM EFEITOS INFRINGENTES, PARA DETERMINAR O PAGAMENTO DAS PARCELAS VENCIDAS, DESDE A EXCLUSÃO DO IMPETRANTE ATÉ A SUA REINTEGRAÇÃO, GARANTIDA A CONTAGEM DE TEMPO DE SERVIÇO PARA TODOS OS EFEITOS. 1. Os Embargos de Declaração destinam-se a suprir omissão, afastar obscuridade ou eliminar contradição existente no julgado. No caso dos autos, constata-se omissão acerca do termo inicial dos efeitos financeiros da decisão que determinou a reintegração do Servidor no cargo. 2. A orientação tradicional era a de que os efeitos financeiros da ordem de segurança concedida tinham por termo inicial a data da impetração do pedido mandamental. Sobre o tema, o colendo STF emitiu a Súmula 269, remetendo-se o pleito de valores anteriores às vias ordinárias. Entretanto, não há mais razão jurídica e nem moral nesta alternativa, quando já se tem uma decisão judicial mandamental favorável ao direito da parte. Isso significaria protelar para as calendas gregas a fruição do direito pelo impetrante, congestionar as instâncias judiciais, em situação de desnecessidade, expor-se a União ao pagamento de honorários, porque a Ação de Cobrança lhe seria, fatalmente, desfavorável e, além disso, amesquinhar o préstimo do Mandado de Segurança, encurtando o alcance de sua eficácia. Essa diretriz é acolhida em vários precedentes judiciais desta Corte: MS 13.120/DF, Rel. Min. NEFI CORDEIRO, DJe 8.9.2015; AgRg no REsp. 717.406/MG, Rel. Min. ALDERITA RAMOS DE OLIVEIRA, DJe 1o.7.2013; REsp. 1.164.514/AM, Rel. Min. JORGE MUSSI, DJe 24.10.2011; AgRg no REsp. 965.478/DF, Rel. Min. OG FERNANDES, DJe 29.8.2012; REsp. 933.837/PE, Rel. Min. LAURITA VAZ, DJe 3.11.2008; MS12.397/DF, Rel. Min. ARNALDO ESTEVES LIMA, DJe 16.6.2008; EDcl no RMS 11.422/MG, Rel. Min. MARIA THEREZA DE ASSIS MOURA, DJU 3.9.2007; e RMS 24.175/RS, Rel. Min. ARNALDO ESTEVES LIMA, DJe 17.11.2008. 3. Concedida a Segurança para determinar a reintegração do Servidor, impõe-se o pagamento das parcelas vencidas, desde a sua exclusão até a sua reintegração, garantida a contagem de tempo de serviço para todos os efeitos, conforme orienta a jurisprudência desta Corte Superior. 4. Embargos de Declaração do Servidor acolhidos, sem efeitos infringentes, para esclarecer os efeitos decorrentes da concessão da ordem de reintegração. (EDcl no RMS 42.084/PR, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 19/02/2019, REPDJe 26/02/2019, DJe 25/02/2019). (Grifei) <br /> Perfilhando o mesmo entendimento, colaciono precedentes desta 3ª Câmara de Direito Público: <br /> REMESSA NECESSÁRIA. APELAÇÃO CÍVEL. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO DE COBRANÇA. SERVIDORES PÚBLICOS DO MUNICÍPIO DE URUOCA. DIREITO À REINTEGRAÇÃO RECONHECIDO EM DECISÃO JUDICIAL TRANSITADA EM JULGADO. PRESCRIÇÃO DO FUNDO DE DIREITO. NÃO OCORRÊNCIA. DIREITO À PERCEPÇÃO DAS VERBAS SALARIAIS REFERENTES AO PERÍODO DE AFASTAMENTO ILEGAL E CÔMPUTO DO TEMPO DE SERVIÇO. REMESSA CONHECIDA E DESPROVIDA. APELAÇÃO

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	CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA. 1. O cerne da questão sub examine consiste em analisar o direito dos autores a receber os vencimentos e vantagens referentes ao período em que permaneceram ilegalmente afastados do serviço público, bem como a terem computado tal período como tempo de serviço. 2. A contagem do prazo prescricional inicia-se com o surgimento do direito do servidor público, que se verifica com o trânsito em julgado da decisão judicial que reconheceu a nulidade do ato de demissão e determinou a sua reintegração ao cargo público. Prescrição de fundo de direito não verificada in casu. 3. Reconhecida a ilegalidade do afastamento de servidor público e efetuada a sua reintegração ao cargo efetivo, deve ser restabelecido o status quo ante . Precedentes do STJ e do TJCE. 4. Remessa Necessária e Apelação conhecidas e desprovidas. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer da Remessa Necessária e da Apelação, para negar-lhes provimento, nos termos do voto da relatora, parte integrante deste. Fortaleza, data e hora informadas pelo sistema. MARIA IRACEMA MARTINS DO VALE Presidente do Órgão Julgador DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO Relatora (Apelação / Remessa Necessária - 0001750-89.2013.8.06.0179, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 24/10/2022, data da publicação: 24/10/2022) (Grifei) <br /> CONSTITUCIONAL. ADMINISTRATIVO. REMESSA NECESSÁRIA EM AÇÃO ORDINÁRIA. SERVIDOR EFETIVO MUNICIPAL. DEMISSÃO ILEGAL. IMPOSSIBILIDADE. DIREITO À REINTEGRAÇÃO E À PERCEPÇÃO DAS VERBAS SALARIAIS NÃO RECEBIDAS DURANTE O PERÍODO DE AFASTAMENTO. INEXISTÊNCIA DE ENRIQUECIMENTO SEM CAUSA. PRECEDENTES DESTA CORTE E DO STJ. SENTENÇA ILÍQUIDA. POSTERGADA A FIXAÇÃO DA VERBA HONORÁRIA. REMESSA NECESSÁRIA CONHECIDA E PARCIALMENTE PROVIDA. 1. É obrigatório o reexame da sentença ilíquida proferida contra a União, os Estados, o Distrito Federal, os Municípios e as respectivas autarquias e fundações de direito público. 2. O cerne da questão está centrado na legalidade do ressarcimento pelo ente municipal da quantia referente à remuneração durante o período em que o autor, servidor, esteve afastado ilegalmente, conforme decisão transitada em julgado. 3. Conforme pacífica jurisprudência, a decisão que declara a nulidade de ato de demissão e determina a reintegração de servidor público ao cargo de origem possui efeitos ex tunc , restabelecendo o status quo ante , de sorte a assegurar o pagamento integral das vantagens pecuniárias que seriam pagas no período do ilegal afastamento. 4. No caso, o autor foi exonerado do serviço público do Município de Penaforte por ato do Chefe do Executivo declarado nulo em sede de ação mandamental, por sentença transitada em julgado, em que se reconheceu a abusividade da dispensa realizada em afronta ao contraditório e à ampla defesa e se determinou a reintegração do servidor aos quadros do serviço público municipal. 5. Acertada, pois, a condenação do ente público ao pagamento das verbas remuneratórias referentes ao período do indevido afastamento, atualizadas. 6. Já com relação aos honorários sucumbenciais, reza o art. 85, § 4º, inciso II, do CPC/2015 que, não sendo líquida a sentença, a definição do percentual dos honorários advocatícios somente deverá ocorrer posteriormente, quando da liquidação do julgado. 7. Reexame conhecido e parcialmente provido para postergar a fixação da verba honorária. (Remessa Necessária Cível - 0000212-47.2017.8.06.0207, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 13/06/2022, data da publicação: 13/06/2022) (grifei) <br /> In casu , o próprio Estado do Ceará reconhece a incorporação do tempo de serviço do autor para fins

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	de contagem de tempo de serviço, decorrente da nulidade de demissão reconhecida judicialmente. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Todavia, o ente público nega a concessão da aposentadoria do impetrante com base na Emenda Constitucional nº 20/98, que veda qualquer tipo contagem de tempo de contribuição fictício , exigindo-se o regular pagamento das contribuições previdenciárias.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Ora, admitir-se que o impetrante não poderia se aposentar por não ter ainda recolhido as contribuições do período em que esteve afastado implicaria beneficiar o ente público por sua própria torpeza, uma vez que a Administração deu causa ao afastamento indevido e é quem, afinal, deverá pagar as contribuições previdenciárias referentes ao período de não exercício funcional.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Por fim, quanto ao pedido de pagamento do abono permanência, o mandado de segurança não é a via adequada para postular tal demanda. Nesse sentido, irreparável é a sentença a quo ao afirmar que “ o mandado de segurança não é substitutivo de ação de cobrança (Súmula nº 269, STF), além do que a concessão de mandado de segurança não produz efeitos patrimoniais em relação a período pretérito, os quais devem ser reclamados administrativamente ou pela via judicial própria (Súmula nº 271, STF), restando inviabilizado o acolhimento da súplica”.</p><p style="line-height: 200%; orphans: 0; widows: 0; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Portanto, à luz dos fundamentos ora expendidos, não merece reforma a sentença de primeiro grau, que concedeu parcialmente a segurança, reconhecendo o direito autoral ao cômputo do tempo de serviço durante o período em que esteve ilegalmente afastado, independentemente do recolhimento de contribuição previdenciária, assegurando ao Impetrante o direito a requerer sua aposentadoria por tempo de serviço, indeferindo, por outro lado, o pedido de abono de permanência.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Diante do exposto, conheço da remessa necessária para NEGAR-LHE PROVIMENTO , mantendo a sentença nos seus exatos termos.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Sem custas, em face de isenção legal, conforme art. 25 da Lei 12.016/2009.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Sem condenação em honorários advocatícios, conforme Súmula 512 do STF e Súmula 105 do STJ.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> É como voto. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	0633317-58.2024.8.06.0000
Número de ordem	42
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	COTA PARA INGRESSO - AÇÕES AFIRMATIVAS

Processo	0633317-58.2024.8.06.0000
Polo ativo	GABRIEL SOUZA DOS SANTOS
Advogado(s) - Polo ativo	JOSE ITAMAR DA SILVA - (CE40694-A)
Polo passivo	FUNDACAO UNIVERSIDADE ESTADUAL DO CEARA FUNECE
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0633317-58.2024.8.06.0000
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-5cd98a47-7fff-706b-4931-22c0ac7e7f66" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 7.0866141732283445pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 0633317-58.2024.8.06.0000 - Agravo de Instrumento</p><p style="line-height: 1.2; margin-left: 7.0866141732283445pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Agravante: Gabriel Souza dos Santos</p><p style="line-height: 1.2; margin-left: 7.0866141732283445pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Agravado: Fundação Universidade Estadual do Ceará - FUNECE</p><p> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito constitucional e processual civil. Agravo de instrumento. Mandado de Segurança. Vestibular. Procedimento de heteroidentificação. Legalidade. Ausência dos requisitos para concessão da tutela. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> i. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Agravo de instrumento interposto em face da decisão interlocutória que indeferiu a tutela de urgência, por meio da qual o autor almejava a anulação do ato administrativo que o eliminou do vestibular para o curso de medicina, em razão de sua autodeclaração não ter sido ratificada pela comissão de

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	heteroidentificação.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Há duas questões em discussão: (i) definir se o ato administrativo que eliminou o candidato é legítimo; (ii) verificar se estão presentes os requisitos para a concessão da tutela de urgência.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. Os atos administrativos gozam de presunção de legalidade e veracidade, incumbindo à parte provar a ilegitimidade do ato que a eliminou no procedimento de heteroidentificação.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A justificativa utilizada pela banca examinadora, embora concisa, se encontra devidamente motivada, sendo possível identificar os critérios objetivos que a subsidiaram. A análise da comissão avaliadora encontra amparo no edital e na jurisprudência do STF, que admite o uso de critérios subsidiários além da autodeclaração, desde que garantidos o contraditório e a ampla defesa. Precedentes.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">5. A concessão de tutela de urgência depende da comprovação da probabilidade do direito e do perigo de dano ou risco ao resultado útil do processo, sendo vedada, ainda, quando há risco de irreversibilidade dos efeitos da decisão.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: <span style="font-size: 12pt; font-family: 'Times New

Processo	0633317-58.2024.8.06.0000
	Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">CPC/2015, art. 300; Lei Federal nº 12.016/2009, art. 7º, III; Lei Federal nº 9.784/99, art. 50, III, “d”.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STF, ADC nº 41, Rel Min. Luís Roberto Barroso, Tribunal Pleno, j. 08/06/2017; STJ, RMS nº 58.785/MS, Rel. Min. Sérgio Kukina, Primeira Turma, j. 23/8/2022; TJCE, AI nº 3000791-70.2023.8.06.0000, Rel Desa. Maria Vilauba Fausto Lopes, 3ª Câmara Direito Público, j. 20/11/2023; TJSP, AC nº 1066066-19.2019.8.26.0053, Rel. Des. Aliende Ribeiro, 1ª Câmara de Direito Público, j. 07/10/2022.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.&#160;</p><p style="line-height: 1.2; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr">&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Fortaleza, data e hora informadas pelo sistema.&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora&#160;</p><p> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><hr /><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Cuida-se de AGRAVO DE INSTRUMENTO COM PEDIDO LIMINAR interposto por GABRIEL SOUZA DOS SANTOS, contra decisão interlocutória proferida pelo Juízo da

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	13ª Vara da Fazenda Pública da Comarca de Fortaleza que, em sede de Mandado de Segurança (processo nº 0247315-58.2024.8.06.0001) por ele impetrado em face de ato ilegal e abusivo atribuído ao PRESIDENTE DA COMISSÃO EXECUTIVA DO VESTIBULAR DA UNIVERSIDADE ESTADUAL DO CEARÁ (FUNECE), indeferiu a liminar requerida, por meio da qual objetivava anular os "atos administrativos da Comissão Executiva de Vestibular da Universidade Estadual do Ceará (Comunicado n. 65/2024-CEV/UECE, Doc. 03 e Comunicado n. 70/2024-CEV/UECE, Doc. 05) e determinar a sua inserção na lista de aprovados do curso de Bacharelado em Medicina, diurno, campus Crateús, da Universidade Estadual do Ceará – UECE para o 2º período letivo de 2024, na colocação equivalente às notas obtidas, dentro do sistema de cotas."&#160; (ID nº 89239379).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões recursais (ID nº 14346963), o agravante alega a possibilidade de controle judicial do ato administrativo em análise. Narra que se inscreveu no certame para habilitação de candidatos ao curso de Bacharelado em Medicina, diurno, campus Crateús, da Universidade Estadual do Ceará – UECE, para o 2º período letivo de 2024, tendo se autodeclarado negro (pardo) para fins de enquadramento no sistema de cotas. Todavia, afirma que, apesar de ter obtido notas expressivas, foi eliminado do certame por não ter tido sua condição de cotista reconhecida, com base em parecer da Comissão de Heteroidentificação. Alega que a decisão administrativa carece de fundamentação idônea, porquanto genérica, além de ter adotado fatos inverídicos para indeferimento. Prossegue defendendo que possui características de pessoa parda, conforme fotografias, tendo ascendência negra. Por fim, requer a concessão da medida liminar&#160; nos moldes requeridos em primeiro grau e, no mérito, pelo provimento do recurso com a reforma da decisão agravada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em anexo, documentação (ID nº 14346964/14346977).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Decisão interlocutória de minha lavra, indeferindo a tutela requerida (ID nº 14346949).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em sede de contrarrazões (ID nº 14346960), a parte adversa rechaça as teses recursais, requerendo o desprovimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Instada a manifestar-se, a Procuradoria-Geral de Justiça opinou pelo conhecimento e desprovimento do recurso (ID nº 15556062).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p

Processo	0633317-58.2024.8.06.0000
	style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">O cerne da controvérsia cinge-se a avaliar a higidez da decisão interlocutória que indeferiu a tutela requerida pelo ora agravante, por meio da qual almejava, pela via mandamental, anular os "atos administrativos da Comissão Executiva de Vestibular da Universidade Estadual do Ceará (Comunicado n. 65/2024-CEV/UECE, Doc. 03 e Comunicado n. 70/2024-CEV/UECE, Doc. 05) e determinar a sua inserção na lista de aprovados do curso de Bacharelado em Medicina, diurno, campus Crateús, da Universidade Estadual do Ceará – UECE para o 2º período letivo de 2024, na colocação equivalente às notas obtidas, dentro do sistema de cotas."&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">De início, em atenção ao efeito devolutivo inerente ao Agravo de Instrumento, pontuo que compete a esta relatoria apenas se debruçar sobre a decisão atacada propriamente dita – ressalvadas, claro, as matérias cognoscíveis de ofício –, não cabendo adentrar profundamente na apreciação de questões inerentes ao mérito da ação principal, ainda em trâmite no primeiro grau de jurisdição. Consigna-se, ainda, que a via eleita na origem é a mandamental, que visa resguardar direito líquido e certo.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Consoante o art. 300, do CPC, "a tutela de urgência será concedida quando houver elementos que evidenciem a probabilidade do direito e o perigo de dano ou o risco ao resultado útil do processo." Os requisitos cumulativos, cuja presença deve ser claramente demonstrada por parte do requerente. Em se tratando de mandamus, a medida encontra amparo no art. 7º, inciso III, da Lei nº 12.016/2009.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Analisando o contexto fático e probatório dos autos, e em atenção aos requisitos necessários à concessão da tutela de urgência, tenho que a pretensão recursal não encontra amparo, senão vejamos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Conforme relatado, o recorrente impugna o ato administrativo que o eliminou do vestibular para o curso de Bacharelado em Medicina, diurno, campus Crateús, da Universidade Estadual do Ceará – UECE, regido pelo Edital nº 02/2024, para o 2º período letivo de 2024, nas vagas destinadas aos cotistas. Para tanto, além de sustentar que possui características de pessoa parda, afirma que a decisão administrativa foi genérica e inverídica.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Como se sabe, a instituição do sistema de cotas nas instituições de ensino superior do Estado do Ceará foi determinada pela Lei Estadual nº 16.197/2017. O texto normativo estabelece como requisito para concorrer às vagas reservadas a autodeclaração do candidato como preto ou pardo, segundo o Instituto Brasileiro de Geografia e Estatística – IBGE, tendo, o Edital nº 02/2024-CEV/UECE, previsto a verificação das características fenotípicas pela comissão de heteroidentificação do certame (ID nº 14346965, capítulo III - págs. 08 e seguintes.) Vejamos alguns trechos das previsões editalícias:</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">12.6. Considera-se como procedimento de validação da autodeclaração a verificação das características fenotípicas dos candidatos aprovados e autodeclarados negros (pretos e pardos).&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> 12.7. A Comissão de Heteroidentificação da UECE, nos processos de verificação e de validação de que trata esta Resolução, considerará:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> I. o teor da autodeclaração assinada e entregue pelo candidato por ocasião de sua inscrição;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> II. a análise de documentos complementares solicitados pela CHET/UECE, se for o caso;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">III. as características fenotípicas do candidato, observadas durante procedimentos conduzidos e registrados pela Comissão de Heteroidentificação.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> 12.7.1. O critério de ancestralidade/ascendência não será considerado em nenhuma das situações expressas

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	nos incisos I, II e III do subitem anterior.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">12.7.2. Considera-se por fenótipo o conjunto de características visíveis do indivíduo, predominantemente, a cor da pele, a textura do cabelo e o formato do rosto, sobretudo do nariz e dos lábios, as quais, combinadas ou não, permitirão validar ou invalidar a condição étnico-racial afirmada pelo candidato autodeclarado negro (preto ou pardo), para fins de matrícula em cursos de graduação da UECE.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> 12.7.3. Não serão considerados, para os fins de heteroidentificação do candidato autodeclarado negro (preto ou pardo), concorrendo às vagas de cursos de graduação da UECE, quaisquer registros ou documentos pretéritos eventualmente apresentados, inclusive imagens e certidões referentes à confirmação em procedimentos realizados em concursos públicos federais, estaduais, distritais e municipais ou em processos seletivos de qualquer natureza. (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">O Supremo Tribunal Federal, no julgamento do ADC nº 41/DF, acerca da temática, firmou o entendimento de que "é legítima a utilização, além da autodeclaração, de critérios subsidiários de heteroidentificação, desde que respeitada a dignidade da pessoa humana e garantidos o contraditório e a ampla defesa".</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">No caso&#160; dos autos, em análise perfunctória, vê-se que a comissão avaliadora, de forma unânime, em duas oportunidades e com composições distintas em cada uma delas, classificou o candidato como não cotista, por considerar que ele não apresentava a predominância de traços negróides, tais como textura do cabelo, formato do nariz e boca, bem como a cor da pele, consignando que suas características fenotípicas não o fazem alvo de racismo de marca e, portanto, ele não se encaixava no perfil de uma pessoa negro-parda, alvo de política de cotas raciais (vide ID’s nº 14346967 e 14346969).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A justificativa utilizada pela banca examinadora, embora concisa, se encontra motivada, sendo possível identificar os critérios objetivos que a subsidiaram. Além do mais, restou

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	devidamente garantido ao agravante o contraditório e ampla defesa na via administrativa, porquanto nada é argumentado em sentido oposto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Dessa forma, na esteira do que restou assentado pelo magistrado a quo, o ato administrativo impugnado obedeceu à Lei nº 9.784/99 que, em seu art. 50, III, d, preceitua que “os atos administrativos deverão ser motivados, com indicação dos fatos e dos fundamentos jurídicos, quando decidam processos administrativos de concurso ou seleção pública”.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Sobre a temática, o Superior Tribunal de Justiça possui julgado no sentido de que “ o parecer emitido pela Comissão examinadora, quanto ao fenótipo do candidato, ostenta, em princípio, natureza de declaração oficial, por isso dotada de fé pública, razão pela qual não pode ser infirmada senão mediante qualificada e robusta contraprova. Na espécie, os elementos probatórios trazidos com a exordial não se revelam aptos a desautorizar, de plano, a desfavorável conclusão a que chegaram os três componentes da Comissão, no que averbaram a condição não parda do candidato autor. Outrossim, a dilação probatória é providência sabidamente incompatível com a angusta via do mandado de segurança, o que inibe a pretensão autoral de desconstituir, dentro do próprio writ, a conclusão a que chegaram os avaliadores.” (RMS n. 58.785/MS, relator Ministro Sérgio Kukina, Primeira Turma, julgado em 23/8/2022, DJe de 31/8/2022.)</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">A corroborar com o aqui exposto, colaciono precedentes deste e de outros Tribunais de Justiça em casos análogos:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">EMENTA: DIREITO PROCESSUAL CIVIL E DIREITO ADMINISTRATIVO. AGRAVO DE INSTRUMENTO EM MANDADO DE SEGURANÇA. VESTIBULAR UECE 2023.2. COTA RACIAL. CANDIDATO. AUTODECLARAÇÃO PARDO. NOVO PROCEDIMENTO DE HETEROIDENTIFICAÇÃO QUE CONCLUIU PELA AUSÊNCIA DE ELEMENTOS FENOTÍPICOS. DECISÃO FUNDAMENTADA. MÉRITO ADMINISTRATIVO. INGERÊNCIA DO PODER JUDICIÁRIO. IMPOSSIBILIDADE. PRECEDENTES DO TJCE. <span style="font-size: 10pt; font-

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	family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">RECURSO CONHECIDO E IMPROVIDO. DECISÃO MANTIDA. 1. Não se verifica, na fundamentação do agravo, motivo suficiente para invalidar as razões deduzidas na decisão agravada, haja vista o agravante não ter demonstrado, em suas razões recursais, a plausibilidade do direito. 2. Ressalte-se que o critério de autodeclaração, de acordo com a Lei nº 17.432/2021, não é o único parâmetro a ser utilizado para enquadramento do candidato como negro ou pardo, tendo em vista que o edital do concurso público previu a verificação das características fenotípicas pela comissão de heteroidentificação do certame. 3. A avaliação realizada pela banca do concurso público acerca das características fenotípicas dos candidatos (heteroidentificação), em relação às vagas destinadas a negros e pardos, encontra amparo constitucional, nos termos do entendimento do Supremo Tribunal Federal no julgamento da ADC 41/DF. 4. Observa-se que a comissão avaliadora classificou o candidato como não cotista, por não atender às exigências estabelecidas pelo edital de abertura em relação à cor da pele, textura dos cabelos e fisionomia, o que afasta, neste momento, a alegação de ausência de fundamentação do ato administrativo. Ademais, a conclusão da banca foi mantida mesmo após nova realização do procedimento de heteroidentificação. Em análise dos fólios processuais, restou garantido ao agravante o contraditório e ampla defesa. 5. Assim, inexiste ilegalidade na eliminação do agravante do concurso público, devendo-se lembrar que o mérito administrativo dos atos emanados da banca organizadora do certame, em regra, não deve ser objeto de ingerência do Poder Judiciário, especialmente diante da presunção de legalidade dos atos administrativos. 6. Agravo de instrumento conhecido e desprovido. (Agravo de Instrumento - 3000791-70.2023.8.06.0000, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 20/11/2023) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Mandado de Segurança – Nulidade do ato administrativo que determinou a exclusão do Concurso Público realizado pelo Departamento Estadual de Trânsito de São Paulo (Edital nº 01/2019)– Comissão de Heteroidentificação que não reconheceu como válida a autodeclaração feita pelo impetrante na condição de pessoa parda – Ausência de comprovação de ilegalidade ou irregularidade no procedimento adotado pela Comissão de Heteroidentificação que mediante decisão fundamentada concluiu que o candidato não "não possui nenhuma característica negroide esperada, quanto à cor da pele, cabelo e traços faciais, para ser destinatário do sistema de pontuação diferenciada para a população negra" – Precedente desta C. 1ª Câmara de Direito Público – Demonstração de que não houve má-fé na autodeclaração a ensejar a exclusão do impetrante do concurso – Acolhimento do pedido subsidiário para afastar sua exclusão do certame e determinar sua reintegração ao concurso no sistema de concorrência livre, ou seja, sem os benefícios da pontuação diferenciada – Recurso parcialmente provido. (TJ-SP - AC: 10660661920198260053 SP 1066066-19.2019.8.26.0053, Relator: Aliende Ribeiro, Data de Julgamento: 04/10/2022, 1ª Câmara de Direito Público, Data de Publicação: 07/10/2022) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Não se olvida que o mérito administrativo dos atos advindos da organizadora do certame, via de regra, não deve ser objeto de ingerência por parte do Poder Judiciário, notadamente diante da presunção de legalidade e legitimidade que ostentam - e tal presunção, embora relativa, não foi ilidida no presente caso.</p><p style="line-height: 1.7999999999999998;

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	text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Nesse contexto, considerando os elementos de convicção até então colhidos, deve ser mantida a decisão combatida.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, em consonância com o Parecer Ministerial, conheço do Agravo de Instrumento, para negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 2.38464; text-indent: 56pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 2.38464; text-align: center; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 2.38464; text-align: center; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	43
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MARIA SOCORRO MARTINS
Advogado(s) - Polo ativo	DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A) ANTONIO FERREIRA BEZERRA - (CE26246-A)
Polo passivo	MUNICIPIO DE ACOPIARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003283-98.2024.8.06.0000
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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;3003283-98.2024.8.06.0000 -&#160;AGRAVO DE INSTRUMENTO (202)</p><p> AGRAVANTE: MARIA SOCORRO MARTINS</p><p> AGRAVADO: MUNICIPIO DE ACOPIARA</p><p>   <br /> </p><p style="text-align: center;">&#160;</p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%;" align="justify">   Ementa   : processual civil.   Administrativo   <span style="color:

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	#000000;"> . Agravo de instrumento. Cumprimento de sentença. Liquidação e execução individual de sentença coletiva. Título executivo judicial. Meros cálculos aritméticos. Tema 1.169/stj. Sentença genérica. Inaplicabilidade no caso. Precedentes . Recurso conhecido e provido. Decisão modificada. I. Caso em exame 1. Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça. II. Questão em discussão 2. Analisar a higidez da decisão proferida em sede de Cumprimento Individual de Sentença que determinou a suspensão do feito até o julgamento do Tema Repetitivo n.º 1169 pelo C. Superior Tribunal de Justiça. III. Razões

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	de decidir </p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> 3. Compulsando-se os autos, observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. </p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> 4. Nesse contexto, é evidente que o caso em análise se refere ao cumprimento de uma sentença condenatória perfeitamente liquidável por meio de simples cálculos aritméticos, e não de uma sentença condenatória genérica, desse modo, não se enquadrando, na discussão abordada pelo Tema 1.169 do STJ. </p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> 5. Conforme o art. 509, § 2º, do CPC/15, quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover desde logo o cumprimento de sentença. </p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%;" align="justify"> IV. Dispositivo e tese </p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> 6. Agravo de Instrumento conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva. </p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> Tese de julgamento : Deve ser reformada a decisão recorrida, determinando o prosseguimento do cumprimento individual da sentença coletiva. </p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> ____________________________ </p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> Dispositivos relevantes citados: CPC, art. 509, §2º. </p><p style="text-align: justify;">&#160;</p><p style="margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%;" align="justify"> Jurisprudência relevante citada: TJ-CE Agravo de Instrumento nº 30031999720248060000, Relator: Des. WASHINGTON LUIS BEZERRA DE ARAUJO, Data de Julgamento: 21/10/2024, 3ª Câmara de Direito Público, Data de Publicação: 23/10/2024; AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024; AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024. </p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em conhecer e prover o recurso, nos termos do voto do relator. </p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align:

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	center;">&#160; RELATÓRIO &#160; <br /> &#160; Trata-se de&#160; A gravo de&#160; I nstrumento&#160;interposto por&#160;Maria Socorro Martins, contra&#160;Decisão&#160;Interlocutória –&#160;Id 87875117&#160;proferida pelo juízo da 1ª Vara Cível Da Comarca De Acopiara que determinou a suspensão do feito até a decisão sobre o&#160;Tema nº 1169 pelo Superior Tribunal De Justiça. Ação:&#160;Maria Socorro Martins ajuizou Ação de Execução (processo n.º 3000549-87.2024.8.06.0029) referente ao cumprimento da sentença proferida nos autos da ação coletiva nº 0004059-72.2018.8.06.0029, por meio da qual o Município de Acopiara foi condenado a pagar aos professores da rede básica de ensino as diferenças em relação ao 1/3 de férias a ser calculado sobre os 45 (quarenta e cinco) dias de férias a que têm direito, relativamente aos anos de 2013, 2014, 2015, 2016, 2017 e as que se vencerem no decorrer do andamento do feito. Decisão agravada:&#160;Distribuído o Cumprimento de Sentença, o juízo de origem decidiu pela suspensão dos autos, até que proferida decisão sobre o tema 1.169 pelo C. Superior Tribunal de Justiça (Id 87875117 dos autos de origem). Razões recursais:&#160;Irresignada, a recorrente interpôs o presente Agravo de Instrumento de Id 13454387, aduzindo, em síntese, “ que o Ilmo. Magistrado tem aplicado o tema de forma equivocada, uma vez que o referido tema somente se aplica aos casos de sentenças genéricas, o que não é o caso do presente processo”. Ao final, pugna pelo conhecimento e provimento do recurso, reformando a decisão do juízo a quo que suspendeu o feito, para determinar que se mantenha o trâmite processual do cumprimento individual de sentença coletiva. &#160; <strong style="font-size: medium; background-color: transparent; text-indent: 2.5cm;">Sem contrarrazões , não obstante a parte agravada tenha sido devidamente intimada (Id 13497113). &#160; Embora instada (Id 14472083), a Procuradoria Geral de Justiça, nada apresentou. &#160; É o relatório. &#160; &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO &#160; Presentes os requisitos de admissibilidade, conheço do recurso interposto. Compulsando-se os autos, cuida-se na origem de Cumprimento de Sentença de forma individualizada de ação coletiva ajuizada pela Associação dos Professores da Rede Municipal de Acopiara em face do Município de Acopiara/CE na qual a parte autora aduz que, enquanto ocupante do cargo de professora da rede municipal de ensino, tem direito a gozar de 45 (quarenta e cinco) dias de férias e a receber o adicional respectivo calculado sobre todo o período, situação que não estaria sendo respeitada pelo Ente Municipal, ao limitar o respectivo terço ao período de apenas 30 (trinta) dias. No aludido processo coletivo foi proferida Sentença que condenou o Município ao <span

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	style="color: #000000;"> “pagamento das diferenças observadas em relação ao adicional de 1/3 de férias dos professores da rede pública municipal que tenham, de fato, gozado o período de 45 (quarenta e cinco) dias de férias nos anos respectivos, relativamente aos anos de 2013, 2014, 2015, 2016, 2017 e as que vencerem no decorrer do andamento deste processo, devendo o referido adicional ser calculado sobre todo o período de férias.” A decisão de primeiro grau foi confirmada por esta Corte de Justiça, tendo ocorrido o trânsito em julgado. Assim, por força do título executivo judicial mencionado foi necessária a promoção de cumprimento individual de sentença coletiva. Após distribuído, o juízo a quo decidiu pela “suspensão dos presentes autos até decisão sobre o tema 1169 pelo C. Superior Tribunal de Justiça – STJ” (Id. 87875117). No presente recurso, a Agravante busca a reforma do mencionado decisum para que seja dado prosseguimento ao feito. Dessa forma, cinge-se a controvérsia em aferir a higidez da decisão proferida em sede de Cumprimento Individual de Sentença que determinou a suspensão do feito até o julgamento do Tema Repetitivo n.º 1169 pelo C. Superior Tribunal de Justiça. Já adianto que assiste razão à parte Agravante. Verifica-se que no Tema 1.169/STJ houve a determinação de suspensão do processamento das execuções. A questão submetida a julgamento se refere a "Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento da ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos nos autos". Ocorre que a hipótese dos autos não se amolda à matéria analisada no âmbito do referido precedente qualificado. Isso porque o título judicial que deu ensejo ao presente Cumprimento de Sentença apresenta todos os parâmetros necessários para a elaboração dos cálculos do valor a ser executado, não constituindo, assim, sentença genérica. Ressalta-se que o título coletivo indicou precisamente a correção monetária e os juros de mora incidentes sobre o valor devido. (Id. <span style="color:

Processo	3003283-98.2024.8.06.0000
	#000000;"> 84009618 dos autos originários) Nesse contexto, é evidente que o caso em análise se refere ao cumprimento de uma sentença condenatória perfeitamente liquidável por meio de simples cálculos aritméticos, e não de uma sentença condenatória genérica, desse modo, não se enquadrando, na discussão abordada pelo Tema 1.169 do STJ. Conforme o art. 509, § 2º, do CPC/15, quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover desde logo o cumprimento de sentença. Portanto, não há falar em sobrestamento do feito, pois inaplicável ao caso o Tema 1.169/STJ. A propósito, esse é o posicionamento que vem sendo adotado pela 3ª Câmara de Direito Público do presente Tribunal, com destaques: Ementa: Direito processual civil. Agravo de instrumento em cumprimento individual de sentença coletiva. Liquidação. Título executivo judicial. Cálculos aritméticos. Tema repetitivo 1.169/STJ. Inaplicabilidade. Agravo provido. I. Caso em exame 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos para a realização dos cálculos. II. Questão em discussão 2. A questão central é definir se o Tema 1.169/STJ é aplicável ao caso, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos. III. Razões de decidir 3. O Tema 1.169/STJ não se aplica ao caso, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos. &#160;IV. Dispositivo 4. Recurso conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva. (TJ-CE Agravo de Instrumento nº 30031999720248060000, Relator: Des. WASHINGTON LUIS BEZERRA DE ARAUJO, Data de Julgamento: 21/10/2024, 3ª Câmara de Direito Público, Data de Publicação: 23/10/2024) Tema Repetitivo 1.169 do STJ. Simples Cálculos Aritméticos. Decisão Reformada. Recurso Conhecido e Provido. I. Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça.&#160;II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado.&#160; III. Razões De Decidir: III.1. Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça . (AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024)

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	</p><p style="margin-left: 4cm; margin-top: 0.49cm; margin-bottom: 0.49cm; line-height: 200%" align="justify"> DECISÃO QUE DETERMINOU O SOBRESTAMENTO DO FEITO ATÉ O JULGAMENTO DO TEMA 1169/STJ. NÃO CABIMENTO. TÍTULO EXECUTIVO JUDICIAL QUE DEPENDE DE MEROS CÁLCULOS ARITMÉTICOS. POSSIBILIDADE DE SEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. DECISÃO REFORMADA.&#160; (AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024, data de publicação: 22/10/2024) </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent" align="justify"> Assim, considerando que, no caso dos autos, o título executivo judicial já especificou todos os elementos necessários para a apuração dos valores devidos de forma detalhada, sendo necessário apenas cálculos aritméticos simples para individualizar o crédito e definir o valor a ser recebido, entendo que a determinação de prosseguimento do feito na origem é medida cabível, não havendo justificativa para sobrestamento do processo com base no Tema 1169 do STJ. </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 200%; background: transparent" align="justify"> Por conseguinte, impõe-se a reforma da decisão agravada. </p><p style="text-indent: 8%; text-align: justify;"> Isso posto, conheço do agravo de instrumento para dar-lhe provimento, reformando a decisão interlocutória adversada para determinar o prosseguimento do feito. </p><p style="text-indent: 8%; text-align: justify;"> &#160;É como voto.</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	44
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Gratificações Municipais Específicas
Polo ativo	MUNICIPIO DE DEPUTADO IRAPUAN PINHEIRO
Advogado(s) - Polo ativo	HERBSTHER LIMA BEZERRA - (CE36621-A)
Polo passivo	ANTONIO ILVANCELIO GUEDES
Advogado(s) - Polo passivo	DOGLAS NOGUEIRA DE OLIVEIRA - (CE32141-A) RENAN LAVOR DE LIMA - (CE32157-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0050492-03.2021.8.06.0168
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-578f09bb-7fff-9ee7-c7ab-37b0fb081c38" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 0050492-03.2021.8.06.0168</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelação Cível</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Município de Deputado Irapuan Pinheiro-CE</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: Antonio Ilvancelio Guedes</p><p> <strong style="font-weight: normal;"> <br /> Ementa: Direito administrativo. Apelação cível. Adicional por tempo de serviço (anuênio). Lei municipal autoaplicável. Implementação de anuênio de 1% ao ano. Recurso Desprovido.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Apelação cível interposta pelo Município de Deputado

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	Irapuan Pinheiro-CE contra sentença que julgou procedente pedido para implementação do adicional por tempo de serviço, no percentual de 1% ao ano, em favor de servidor municipal.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A controvérsia envolve a aplicabilidade direta da Lei Municipal nº 001/1993, que prevê o adicional por tempo de serviço, e a possibilidade de sua implementação sem regulamentação adicional, bem como a alegação de falta de dotação orçamentária para o cumprimento da obrigação.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A Lei Municipal nº 001/1993, ao prever expressamente o adicional por tempo de serviço, é considerada autoaplicável e produz efeitos sem necessidade de regulamentação específica.&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A alegação de ausência de dotação orçamentária não afasta o direito do servidor, pois trata-se de obrigação legal do ente público.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Recurso desprovido.</p><p style="line-height: 1.656; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> _________________&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: Lei Municipal nº 001/1993, art. 68; Lei Municipal nº 188/2012, art. 186; Decreto-Lei nº 4.657/1942, Art. 2º, §1º; CPC, art. 373, inciso II.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 12pt;

Processo	0050492-03.2021.8.06.0168
	font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Jurisprudência relevante citada: STJ, Súmula nº 85; TJCE, Apelação / Remessa Necessária - 0051171-03.2021.8.06.0168, Rel. Des. Joriza Magalhães Pinheiro, 3ª Câmara Direito Público, j. 10.10.2022.</p><p style="line-height: 1.44; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.44; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.44; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p> <strong style="font-weight: normal;"> <br /> </p><hr /><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE DEPUTADO IRAPUAN PINHEIRO, em face de sentença proferida pelo Juízo da Vara Única da Comarca de Solonópole-CE, que, nos autos da AÇÃO ORDINÁRIA DE OBRIGAÇÃO DE FAZER C/C COBRANÇA DE VALORES C/C PEDIDO DE TUTELA DE EVIDÊNCIA proposta por ANTONIO ILVANCELIO GUEDES, julgou procedente a demanda, nos termos do dispositivo abaixo transcrito (Id. 15531980):</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Ante o exposto , JULGO PROCEDENTES os pedidos veiculados pela parte autora e extingo o feito, com resolução do mérito, nos termos do artigo 487, I, do Código de Processo Civil, para o fim de:&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">a) determinar que o município de Deputado Irapuan Pinheiro implemente o adicional por tempo de serviço à

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	razão de 1% por ano de serviço público efetivo no serviço público, desde a assunção no cargo que ocupam atualmente, ou, se o ingresso foi anterior à Lei Municipal 001/1993, a partir da edição de tal norma;&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> b) condenar o município ao pagamento das prestações vencidas até a data da efetiva implantação do benefício, com reflexos no décimo terceiro e terço de férias, observada a prescrição de todas as prestações correspondentes ao cinco anos anteriores ao ajuizamento da ação.&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Os valores devidos à parte autora, apurados em liquidação de sentença, deverão ser corrigidos monetariamente pelo IPCA-E, desde a data em que deveriam as prestações ter sido pagas, e de juros de mora a partir da citação, de acordo com a remuneração oficial da caderneta de poupança.&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">Tratando-se de sentença ilíquida, e vencida a Fazenda Pública, a definição do percentual dos honorários advocatícios ocorrerá na liquidação do julgado (art. 85, § 4º, II, CPC/2015.)&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Sem custas.&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Sentença sujeita ao reexame necessário.&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> P. R. I.</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Em suas razões (Id. 15531986), a Apelante sustenta, em síntese, que a sentença recorrida deve ser reformada, pois, embora o Estatuto dos Servidores preveja o adicional por tempo de serviço, não há regulamentação específica para sua aplicação e concessão, nem existe uma Lei Municipal que trate do assunto. Argumenta que a falta de dotação orçamentária inviabiliza a concessão da vantagem e que manter a condenação imporia um ônus desproporcional ao erário, comprometendo serviços essenciais e infringindo a Constituição Federal e a Lei de Responsabilidade Fiscal (LC 101/2000). Assim, requer a reforma da sentença para julgar improcedente a ação e o consequente provimento do recurso. Caso a decisão não seja reformada, solicita que as teses apresentadas, especialmente sobre a Lei de Responsabilidade Fiscal e o impacto financeiro, sejam devidamente prequestionadas para eventual interposição de recursos às instâncias superiores. Subsidiariamente, pleiteia a redução dos honorários advocatícios para o percentual mínimo, alegando que a condenação é excessiva e desproporcional, considerando a simplicidade da demanda e o tempo de tramitação.</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New

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	Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Em suas contrarrazões (Id. 15531988), o Apelado argumenta, em síntese, que o recurso de apelação não deve ser provido, uma vez que o adicional por tempo de serviço está previsto no Estatuto dos Servidores e não necessita de regulamentação adicional para sua aplicação. Sustenta que a Lei Municipal nº 001/1993 c/c Lei Municipal nº 188/2012, garante expressamente o direito ao referido adicional, sendo este autoaplicável. O Apelado também refuta o argumento de impacto financeiro, afirmando que a concessão da vantagem remuneratória é obrigação do ente público, e que eventuais dificuldades orçamentárias não podem obstruir o cumprimento de direito assegurado em lei. Assim, requer o desprovimento da apelação e a majoração dos honorários de sucumbência, com fundamento no art. 85, § 11, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr">Instado a se manifestar, o Parquet deixou de se manifestar sobre o mérito da demanda, por inexistir interesse público apto a ser amparado (Id. 15576437).</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> É o relatório, no essencial.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da Apelação.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O cerne da questão consiste em analisar se o autor, servidor público do Município de Deputado Irapuan Pinheiro, tem direito à implantação do adicional por tempo de serviço na proporção de 1% (um por cento) por ano de serviço, nos termos da legislação municipal; bem como à percepção das prestações correspondentes aos cinco anos que antecederam o ajuizamento da ação.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Importante registrar que a Lei Municipal nº 001/1993 instituiu o regime jurídico único para os servidores públicos do Município demandado e veio a ser posteriormente alterada pela Lei Municipal nº 188/2012. Por relevante, confira-se a redação dos dispositivos legais regentes da matéria:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Lei Municipal nº 001/1993</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Art. 47 - Remuneração é o vencimento de cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em Lei.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 62 – Além do vencimento e das vantagens previstas nesta lei, serão deferidas aos servidores as seguintes gratificações e adicionais:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III – Adicional por tempo de serviço;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 68 - O adicional por tempo de serviço é devido a razão de 1% (um por cento) por ano de serviço público efetivo, incidente sobre o vencimento de que trata o art. 47. Parágrafo único – O servidor fará jus ao adicional a partir do mês em que completar o anuênio.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Lei Municipal nº 188/2012</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 59 - Além do vencimento e das vantagens previstas nesta lei, serão deferidas aos servidores as seguintes gratificações e adicionais:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III – Adicional por tempo de serviço;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Vislumbra-se que o art. 68 da Lei Municipal nº 001/1993 prevê de forma clara os critérios para a concessão do adicional por tempo de serviço, razão pela qual tem aptidão para produzir todos os efeitos relativamente aos interesses e situações que o legislador quis regular, de sorte que se afigura prescindível lei específica para regularizar a sua incidência, sendo norma

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	autoaplicável.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Dentro dessa perspectiva, tem-se que, uma vez preenchidas as condições para a incorporação da vantagem, exsurge o direito subjetivo ao recebimento do percentual previsto nas normas de regência, não sendo facultado ao administrador proceder de modo diverso, sob pena de malferimento ao princípio da legalidade.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por sua vez, no tocante à Lei Municipal nº 188/2012, em que pese a ausência de previsão equivalente à redação do art. 68 da Lei Municipal nº 001/1993, também não se verifica a imprescindibilidade de regulamentação específica para a concessão do adicional de serviço, porquanto a disposição do art. 68 continua produzindo seus efeitos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Nesse sentido, imperioso registrar que a Lei Municipal nº 188/2012 não revogou a Lei Municipal nº 001/1993, tanto que menciona, logo de início, tratar-se de uma alteração dessa Lei Complementar. Corroborando com esse entendimento, o art. 186 daquela lei revoga de forma expressa apenas as disposições em sentido contrário, veja-se:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Lei Municipal nº 188/2012&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Art. 186 - Essa lei entra em vigor na data da sua publicação revogada as disposições ao contrário.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Destaca-se que assim dispõe a Lei de Introdução às Normas do Direito Brasileiro (Decreto-Lei nº 4.657/1942):&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Art. 2º Não se destinando à vigência temporária, a lei terá vigor até que outra a modifique ou revogue.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> § 1º A lei posterior revoga a anterior quando expressamente o declare, quando seja com ela incompatível ou quando regule inteiramente a matéria de que tratava a lei anterior. (destaca-se)&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Depreende-se, portanto, que a Lei Municipal nº 188/2012 não revogou a legislação anterior quanto aos requisitos para a concessão do adicional de serviço nem estabeleceu disposição com eles incompatível, mas ratificou a norma anterior, mantendo expressamente a previsão do direito dos servidores públicos ao referido adicional.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top:

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	12pt; margin-bottom: 6pt;" dir="ltr"> No caso dos autos, o suplicante comprovou a existência de vínculo efetivo com a municipalidade ré desde 01/08/2007 (Id. 15531942), exercendo atualmente o cargo de "Fiscal de Tributos". Igualmente demonstrou que não recebe o adicional do anuênio, já que não consta nas fichas financeiras anexadas (Id.15531943/15531944) qualquer referência nesse sentido, não se tendo notícias, ainda, de eventual término do seu vínculo funcional.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O ente público, por sua vez, não se desincumbiu do seu ônus (art. 373, II, do CPC), não acostando aos fólios qualquer documento capaz de provar fato que modificasse, impedisse ou mesmo extinguisse o direito autoral.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Nessa toada, é lídima a conclusão de que a promovente faz jus à implantação do adicional por tempo de serviço, à razão de 1% (um por cento) para cada ano trabalhado, bem como ao pagamento das verbas vencidas não pagas, inclusive dos reflexos financeiros produzidos pela implantação, não atingidas pela prescrição quinquenal estampada na Súmula nº 85 do STJ .&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">A propósito, faz-se oportuna a colação de julgados desta Câmara de Direito Público em que restou consignado o entendimento acima explanado quando da análise de questão similar, in verbis:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">APELAÇÃO CÍVEL E REMESSA NECESSÁRIA. DIREITO ADMINISTRATIVO. AÇÃO DE OBRIGAÇÃO DE FAZER. SERVIDORA PÚBLICA DO MUNICÍPIO DE DEPUTADO IRAPUAN PINHEIRO. ADICIONAL POR TEMPO DE SERVIÇO. PREVISÃO NA LEI MUNICIPAL Nº 001/1993. NORMA AUTOAPLICÁVEL. DIREITO POSTERIORMENTE CONFIRMADO PELA LEI MUNICIPAL Nº 188/2012. AUSÊNCIA DE REVOGAÇÃO DA NORMA INSTITUIDORA DO DIREITO AO ANUÊNIO. DESNECESSIDADE DE REGULAMENTAÇÃO ESPECÍFICA. PRECEDENTES DO TJCE. HONORÁRIOS ADVOCATÍCIOS. FIXAÇÃO POSTERGADA PARA MOMENTO POSTERIOR À LIQUIDAÇÃO DO MONTANTE. ART. 85, §4º, II, DO CPC. VALOR DA CONDENAÇÃO OU DO PROVEITO ECONÔMICO INFERIOR AO LIMITE DO ART. 496, §3º, INCISO III, DO CPC. REMESSA NECESSÁRIA NÃO CONHECIDA. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA PARCIALMENTE MODIFICADA DE OFÍCIO. 1. Constata-se que os cálculos aritméticos não alcançam o montante equivalente a 100 (cem) salários-mínimos, o que dispensa a submissão da sentença ao duplo grau de jurisdição obrigatório, a teor do art. 496, §3º, inciso III, do CPC. 2. O cerne da questão consiste em analisar se a autora, servidora pública do Município de Deputado Irapuan Pinheiro, tem direito à implantação do adicional por tempo de serviço na proporção de 1% (um por cento) por ano de serviço, nos termos da legislação municipal. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-

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	space: pre-wrap;">3. A Lei Municipal nº 001/1993 instituiu o regime jurídico único para os servidores públicos do Município de Deputado Irapuan Pinheiro e veio a ser posteriormente alterada pela Lei Municipal nº 188/2012. 4. O art. 68 da Lei Municipal nº 001/1993 prevê de forma clara os critérios para a concessão do adicional por tempo de serviço, razão pela qual tem aptidão para produzir todos os efeitos relativamente aos interesses e situações que o legislador quis regular, de sorte que se afigura prescindível lei específica para regularizar a sua incidência, sendo norma autoaplicável. 5. A Lei Municipal nº 188/2012 não revogou a regulamentação anterior acerca dos requisitos para a concessão do adicional de serviço nem estabeleceu disposição com eles incompatível, mas ratificou a norma precedente, mantendo expressamente a previsão do direito dos servidores públicos ao referido adicional. 6. No caso dos autos, a suplicante comprovou a existência de vínculo efetivo com a municipalidade ré e demonstrou que não recebe o adicional do anuênio, já que não consta nos extratos anexados qualquer referência nesse sentido. O ente público, por sua vez, não se desincumbiu do seu ônus probatório (art. 373, II, do CPC). 7. É lídima a conclusão de que a promovente faz jus à implantação do adicional por tempo de serviço, à razão de 1% (um por cento) para cada ano trabalhado, bem como ao pagamento das verbas vencidas não pagas, inclusive dos reflexos financeiros produzidos pela implantação, não atingidas pela prescrição quinquenal. Súmula nº 85 do STJ. Precedentes do TJCE. 8. Merece reparo a sentença em relação aos honorários sucumbenciais advocatícios, pois em se tratando de sentença ilíquida, tal verba deve ser apurada apenas na fase de liquidação do julgado, nos termos do art. 85, §4º, inciso II, do CPC. 9. Remessa Necessária não conhecida. Apelação conhecida e desprovida. Sentença parcialmente modificada de ofício. (Apelação / Remessa Necessária - 0051171-03.2021.8.06.0168, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160; 10/10/2022, data da publicação:&#160; 11/10/2022) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">ADMINISTRATIVO. APELAÇÃO CÍVEL. SERVIDOR PÚBLICO MUNICIPAL. ADICIONAL POR TEMPO DE SERVIÇO PAGO SOB A FORMA DE ANUÊNIO (1% POR ANO DE SERVIÇO EFETIVO). REGULAMENTAÇÃO EM LEI MUNICIPAL AUTOAPLICÁVEL. DIREITO A IMPLANTAÇÃO E PAGAMENTO, OBSERVANDO-SE, CONTUDO, A PRESCRIÇÃO QUINQUENAL. PRECEDENTES DO TJCE. REMESSA NÃO CONHECIDA. RECURSO CONHECIDO, MAS DESPROVIDO. 1. Remessa oficial não conhecida por não alcançar a condenação o montante de 100 (cem) salários-mínimos, a teor do art. 496, §3º, inciso III, do Código de Processo Civil/2015. 2. Por se tratar de direito de servidor público, é necessário, para o deslinde da causa, identificar a existência de legislação vigente à época dos fatos (tempus regit actum), de iniciativa do Chefe do Poder Executivo, além, por óbvio, de verificar se a servidora se encontrava em efetivo exercício no período e se preenchia os requisitos exigidos na norma regulamentadora. 3. A municipalidade Ré não se desincumbiu do ônus de demonstrar fato impeditivo, modificativo ou extintivo do direito da parte Autora, nos termos do inciso II do art. 373 do NCPC; como a lei é autoaplicável e não impôs condições especiais ou subjetivas aos seus destinatários, a parte Autora tem direito à implementação da vantagem prevista na LC nº 1/1993 ratificada pela Lei nº 188/2012, observada a prescrição quinquenal. 4. Com relação a alegada restrição orçamentária, tenho que essa tese, desacompanhada de prova de medidas administrativas que visem equilibrar as contas públicas, é insuficiente a repelir direito subjetivo da servidora pública, aplicando-se o mesmo ao óbice decorrente do princípio da reserva do possível. 5. A sentença merece reforma, tão somente, para excluir da condenação o percentual arbitrado a título de honorários advocatícios, o qual deverá ser definido, a posteriori, em liquidação. 6. Remessa oficial não conhecida. Recurso conhecido, mas desprovido. (Apelação / Remessa Necessária - 0051004-83.2021.8.06.0168, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 18/07/2022, data da publicação: 18/07/2022) (destaca-se)&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. CONSTITUCIONAL. ADMINISTRATIVO.

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	SERVIDOR PÚBLICO MUNICIPAL. PARCELA REMUNERATÓRIA CALCULADA COM BASE NO TEMPO DE SERVIÇO. ANUÊNIO. PREVISÃO NO ESTATUTO DOS SERVIDORES PÚBLICOS DO MUNICÍPIO DE DEPUTADO IRAPUAN PINHEIRO. FIXAÇÃO DA NORMA NO ÁTRIO DA PREFEITURA. VALIDADE. SENTENÇA REFORMADA EM PARTE. 1. Trata o caso de reexame necessário e apelação cível em ação de cobrança por meio da qual o autor requer a condenação do Município de Deputado Irapuan Pinheiro à implementação e respectivo pagamento de adicional por tempo de serviço (anuênio) previsto na Lei Municipal nº 188/2012. 2. Inicialmente, a despeito de não ser cabível ao Poder Judiciário adentrar no mérito das decisões administrativas, importa mencionar que incumbe a este poder a análise da legalidade e da constitucionalidade dos atos dos três Poderes Constitucionais, sendo de sua competência o reexame de decisão administrativa que macule direitos e garantias individuais. 3. Nos termos do art. 68 do Estatuto dos Servidores Públicos do Município de Deputado Irapuan Pinheiro, o direito ao recebimento do adicional surge a partir do mês subsequente àquele em que o servidor completar cada ano de serviço público. Referida norma afigura-se plenamente aplicável, prescindindo da edição de qualquer outro diploma normativo para que possa produzir seus efeitos. 4. Com relação aos honorários advocatícios, notese que com a vigência do Código de Processo Civil/2015, restou estabelecido que, nas condenações contra a Fazenda Pública, não sendo líquida a sentença, a definição do percentual, nos termos previstos nos incisos I a V do art. 85, § 3º, somente ocorrerá quando liquidado o julgado, vide art. 85, § 4º, II, do CPC. Portanto, não sendo líquida a decisão judicial é impossível fixar neste momento processual a porcentagem devida de honorários sucumbenciais. 5. Ademais, os índices de correção monetária e juros de mora deverão observar o tema 905 do STJ e o art. 3º da EC 113/2021. - Reexame Necessário conhecido. - Apelação conhecida e não provida. - Sentença reformada apenas no tocante aos honorários advocatícios. (Apelação / Remessa Necessária - 0051005-68.2021.8.06.0168, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 27/06/2022, data da publicação: 27/06/2022) (destaca-se)&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">E ainda: Apelação/Remessa Necessária - 0050493-85.2021.8.06.0168, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160; 22/08/2022, data da publicação:&#160; 23/08/2022; Apelação/Remessa Necessária - 0050004-48.2021.8.06.0168, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160; 22/08/2022, data da publicação:&#160; 23/08/2022.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No que concerne à tese defensiva do ente municipal apelante de indisponibilidade financeira e orçamentária para o pagamento do adicional, nos termos da legislação de regência, haja vista a ausência de prévia dotação orçamentária, impende ressaltar que não logrou comprovar com dados concretos referida alegação. Convém por em relevo que, ainda que assim não fora, tratando-se de obrigação legal, incumbia à

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	Administração Pública zelar pela boa aplicação dos recursos públicos, com vistas ao respeito do direito ora salvaguardado.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Ademais, não há que se falar em inviabilização do pagamento por força de questões orçamentárias, porquanto se afigurava imperioso o escorreito provisionamento público para a despesa obrigatória em alusão.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Conclui-se, portanto, ser notória a violação ao direito de recebimento do adicional pleiteado, sobressaindo de modo clarividente que a apelada faz jus à sua implementação e ao recebimento dos valores das parcelas vencidas, oriundas da latente inobservância da Lei Municipal nº 001/1993, alterada pela Lei Municipal nº 188/2012, impondo-se a ratificação da sentença nesse aspecto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No tocante aos honorários, escorreita a sentença pois, em razão da sua iliquidez, a fixação da verba honorária deve ser realizada na fase de liquidação, nos termos do art. 85, § 4º, inciso II, do CPC, observando-se, ainda, o disposto na Súmula nº 111 do STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Diante de todo o exposto, na linha do entendimento jurisprudencial sobre a matéria, CONHEÇO da presente Apelação Cível para NEGAR-LHE provimento, mantendo incólume a sentença combatida, nos exatos termos desta manifestação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Enfatizo, ainda, que o fato de a parte sucumbente ter insistido em sua pretensão, sem êxito, deve ser considerado pelo Juízo da liquidação no momento em que for definir o percentual da verba honorária (art. 85, §11, do CPC).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo&#160;</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	45
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES

Processo	0050744-12.2021.8.06.0069
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização Trabalhista
Polo ativo	MUNICIPIO DE COREAU
Advogado(s) - Polo ativo	Não informado
Polo passivo	ALDA TELES DE MENEZES ALBUQUERQUE
Advogado(s) - Polo passivo	HELANO CORDEIRO COSTA PONTES - (CE24848-A) KARINA XIMENES ALBUQUERQUE - (CE40514-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0050744-12.2021.8.06.0069
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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;0050744-12.2021.8.06.0069 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE COREAU</p><p> APELADO: ALDA TELES DE MENEZES ALBUQUERQUE</p><p> A1</p><p> <br /> </p><p style="text-align: center;">&#160;</p><p style="text-align: justify;">   EMENTA:&#160;   CONSTITUCIONAL. ADMINISTRATIVO. PROCESSUAL CIVIL. APELAÇÃO CÍVEL. RECLAMAÇÃO TRABALHISTA CONTRA O MUNICÍPIO DE COREAÚ. PRELIMINAR DE NULIDADE DA SENTENÇA POR CERCEAMENTO DE DEFESA. ACOLHIDA. ENCERRAMENTO ABRUPTO DA FASE DE INSTRUÇÃO PROCESSUAL.

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	PROLAÇÃO DE SENTENÇA DE PROCEDÊNCIA SEM MANIFESTAÇÃO SOBRE OS DOCUMENTOS ACOSTADOS PELO ENTE PÚBLICO. ERROR IN PROCEDENDO. EVIDENTE PREJUÍZO AO RÉU. APELAÇÃO CÍVEL CONHECIDA E PARCIALMENTE PROVIDA. SENTENÇA ANULADA.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I. Caso em exame </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 1. Apelação cível interposta pelo Município de Coreaú em face de sentença prolatada pelo Juízo da Vara Única da Comarca de Coreaú, que julgou procedente reclamação trabalhista ajuizada por Alda Teles de Menezes Albuquerque contra o ente público apelante, condenando-o ao pagamento de férias vencidas integrais e proporcionais, com o terço constitucional, e 13º salário referentes ao período laborado. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II. Questão em discussão </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 2. A questão em discussão consiste em analisar se houve cerceamento de defesa do Município.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> III. Razões de decidir </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 3. Alega o ente municipal, em seu apelo, a preliminar de nulidade da sentença por cerceamento de defesa, sustentando que houve encerramento abrupto da fase instrutória, e que o magistrado, ao julgar antecipadamente uma demanda, deverá fundamentar o seu convencimento nas provas previamente apresentadas nos autos.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 4. Com efeito, na peça contestatória, o ente público recorrente afirmou que, no lapso temporal de agosto de 2017 a novembro de 2020, a autora laborou para a Administração municipal não apenas em cargos comissionados, como mencionado na petição inicial, mas também por meio de contratos temporários, conforme documentos acostados pelo ora recorrente.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 5. A parte autora teve oportunidade de se manifestar acerca desses documentos, referentes aos contratos temporários, em sua réplica, porém, nada afirmou sobre esse ponto, insistindo em declarar o exercício apenas de cargos em comissão durante todo o período.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 6. Ocorre que, ao julgar a demanda, o Juízo a quo deixou de apreciar as provas acostadas pelo ente municipal, limitando-se às alegações autorais de exercício somente de cargos comissionados, declarando, ainda, que o ente público não comprovou o adimplemento das verbas.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 7. É certo que a simples ausência de prévio anúncio de julgamento antecipado da lide não invalida automaticamente a sentença, pois, sendo o Juiz o destinatário da prova, cabe a ele valorar o acervo probatório do processo e inclusive indeferir pedidos de produção de prova inúteis, desnecessárias ou protelatórias (arts. 370, parágrafo único, e 371, ambos do CPC), além do que, para a anulação da sentença, deve restar comprovado o prejuízo à defesa de alguma das partes.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 8. Entretanto, no caso em tela, observa-se que a falta de um exame acurado das provas colacionadas pela parte ré trouxe-lhe evidente prejuízo, comprometendo a constatação de questões fundamentais do processo, considerando que há nítida distinção entre o exercício de cargo em comissão (plenamente válido) e o de contratação temporária (que merece análise caso a caso para aferir sua legalidade e, a partir disso, as verbas eventualmente devidas ao contratado).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 9. Nesse contexto, revela-se incorreto o posicionamento do Juízo de obstar a instrução processual para, em sentença, concluir pela falta de apresentação de provas pelo Município, acolhendo tão somente os documentos acostados pelo autor.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 10. Nesse ponto, cumpre ressaltar que a decretação de nulidade por cerceamento de defesa se revela incompatível com a aplicação da teoria da causa madura e o julgamento da lide diretamente por este Tribunal, nos moldes do art. 1.013, § 3º, IV, CPC, pois, diante da necessidade de continuação da instrução processual, constata-se que a demanda não está pronta para imediato julgamento.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;">

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	 IV. Dispositivo e tese </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 11. Apelação cível conhecida e parcialmente provida. Sentença anulada.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Tese de julgamento: “ É certo que a simples ausência de prévio anúncio de julgamento antecipado da lide não invalida automaticamente a sentença, cabendo ao Juiz valorar as provas e indeferir pedidos protelatórios. No caso em tela, entretanto, revela-se incorreto o posicionamento do Juízo de encerrar a instrução processual para, em sentença, concluir pela falta de apresentação de provas pelo Município, acolhendo tão somente os documentos acostados pelo autor, o que configura cerceamento de defesa, em evidente prejuízo à parte ré, motivo pelo qual deve ser anulada a sentença”. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Dispositivos relevantes citados: art. 355, I, CPC; art. 1.013, § 3º, IV, CPC. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Jurisprudência relevante citada: Apelação Cível&#160;- 0052855-53.2020.8.06.0117, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 06/11/2024, data da publicação:&#160; 06/11/2024; Apelação Cível&#160;- 0238052-07.2021.8.06.0001, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento:&#160; 12/11/2024, data da publicação:&#160; 12/11/2024; Apelação Cível&#160;- 0200222-50.2023.8.06.0158, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento:&#160; 13/11/2024, data da publicação:&#160; 13/11/2024. &#160; </p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160;em&#160;conhecer da apelação cível para dar-lhe parcial provimento, a fim de decretar a nulidade da sentença, determinando o retorno dos autos à origem para o regular prosseguimento da instrução processual e posterior prolação de novo julgamento,&#160;nos termos do voto do relator.</p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p class="TextbodyWW" style="margin-top: .05pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Trata-se de apelação cível interposta pelo Município de Coreaú em face de sentença prolatada pelo Juízo da Vara Única da Comarca de Coreaú.</p><p class="TextbodyWW" style="margin-top: .15pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ação (Id. 15521363): reclamação trabalhista ajuizada por Alda Teles de

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	Menezes Albuquerque contra o Município de Coreaú, objetivando a condenação do ente público ao pagamento de férias vencidas integrais e proporcionais, referentes ao período aquisitivo de 01/03/2017 a 20/11/2020, além de 13º salários.</p><p class="TextbodyWW" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Sentença (Id. 15521549): proferida nos seguintes termos: “julgo procedente a lide para condenar o município de Coreaú, nos seguintes moldes: 1 – A adimplir as verbas remuneratórias referente às férias, acrescidas do terço Constitucional e 13º salário, do período de março de 2017 a maio de 2020. 2 – Juros de mora são devidos desde a citação, cujos índices serão aqueles aplicáveis à caderneta de poupança, na forma do art. 1º-F da Lei nº 9.494/1997. 3 – Devido correção monetária, calculada com base no IPCA-E. 4 – Imponho, a título de ônus sucumbenciais, honorários advocatícios em favor do patrono judicial da parte autora, no limite de 10% sobre o valor da condenação. 5- julgo improcedente o pedido de prescrição 6 – Sem reexame necessário”.</p><p class="TextbodyWW" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Razões recursais (Id. 15521567): o ente público alega a preliminar de nulidade da sentença por cerceamento de defesa, pelo fato de o Juízo a quo ter julgado antecipadamente a lide de forma indevida, indeferindo de forma tácita o pedido de produção de prova. No mérito, aduz que as verbas previstas na CLT não se estendem aos ocupantes de cargos comissionados, por se tratar de relação com a Administração Municipal, com vínculo administrativo e não celetista. Ao final, requer a anulação da sentença ou a sua reforma da sentença, com o julgamento improcedente dos pedidos da inicial.</p><p class="StandardWW" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Contrarrazões (Id. 15521569): requer o desprovimento do apelo.</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p class="StandardWW" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Parecer da Procuradoria Geral de Justiça (Id. 15665703): opinou pelo conhecimento e desprovimento do recurso.</p><p class="StandardWW" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;">&#160;</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Presentes os requisitos de admissibilidade, conheço do recurso de apelação.</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> De início, alega o ente municipal, em seu apelo, a preliminar de nulidade da sentença por cerceamento de defesa, sustentando que houve encerramento abrupto da fase instrutória, e que “o magistrado, ao julgar antecipadamente uma demanda, deverá fundamentar o seu convencimento nas provas previamente apresentadas nos autos, não sendo coerente que entenda desnecessária a instrução processual” (Id. 15521567).</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> A preliminar deve ser acolhida.</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Com efeito, na peça contestatória (Id. 15521389), o ente público recorrente afirmou que, no lapso temporal de agosto de 2017 a novembro de 2020, a autora laborou para a Administração municipal não apenas em cargos comissionados (Id. 15521385/ 15521386), como mencionado na petição inicial, mas também por meio de contratos temporários, conforme documentos acostados pelo ora recorrente no Id. 15521390/ 15521541.</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> A parte autora teve oportunidade de se manifestar acerca desses documentos, referentes aos contratos temporários, em sua réplica (Id. 15521543), porém, nada afirmou sobre esse ponto, insistindo em declarar o exercício apenas de cargos em comissão durante todo o período (agosto de 2017 a novembro de 2020).</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ocorre que, ao julgar a demanda, o Juízo a quo deixou de apreciar as provas acostadas pelo ente municipal, limitando-se às alegações autorais de exercício somente de cargos comissionados, declarando, ainda, que, das “fichas financeiras juntadas aos autos (f. 53 a 57), vejo que não foram adimplidos o 13º salário da parte

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	autora e nem há prova de que lhe fora concedido férias, com a respectiva remuneração de um terço”.</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Vale ressaltar que no relatório da sentença, no parágrafo em que indica o conteúdo da contestação, não foi sequer mencionado que o Município havia alegado o exercício de contratos temporários. Veja-se trecho da sentença (p. 01 do Id. 15521549):</p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; </p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> “O Município de Coreaú ofertou contestação, tendo arguido: I - Defendeu que a lei local não prevê o pagamento de férias e 13º aos ocupantes de cargo em comissão, bem como que a CLT não se aplica ao caso. Defende inexistir direito ao FGTS”.</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> É certo que a simples ausência de prévio anúncio de julgamento antecipado da lide não invalida automaticamente a sentença, pois, sendo o Juiz o destinatário da prova, cabe a ele valorar o acervo probatório do processo e inclusive indeferir pedidos de produção de prova inúteis, desnecessárias ou protelatórias (arts. 370, parágrafo único, e 371, ambos do CPC), além do que, para a anulação da sentença, deve restar comprovado o prejuízo à defesa de alguma das partes. Nesse sentido, o seguinte precedente desta Corte Estadual:</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">PROCESSO CIVIL. APELAÇÃO CÍVEL. AÇÃO DE REPARAÇÃO DE DANOS MATERIAIS. CONTRATO DE PRODUÇÃO DE CADEIRAS MEDIANTE ENTREGA DE MATÉRIA-PRIMA. SENTENÇA DE PARCIAL PROCEDÊNCIA. PRELIMINAR DE CERCEAMENTO DE DEFESA. AUSÊNCIA DE DESPACHO SANEADOR. JULGAMENTO ANTECIPADO DE MÉRITO SEM PRÉVIO ANÚNCIO. PREJUÍZO À PARTE RÉ CONSTATADO. SENTENÇA NULA. RECURSO CONHECIDO E PROVIDO. I. Recurso de apelação interposto pela requerida, objetivando a reforma da sentença prolatada às fls. 318/322, que, nos autos da Ação de Reparação por Danos Materiais, julgou parcialmente procedentes os pedidos autorais, condenando os réus a ressarcirem o valor da matéria prima e acessórios disponibilizados, além de restituir os moldes recebidos. II. A questão a ser decidida consiste em determinar se houve cerceamento de defesa pela não realização de audiência de instrução e julgamento e produção de prova pericial. III. (i) Vale registrar que não há como se afastar o caráter relativamente complexo da demanda, que não é eminentemente de direito, mormente se levarmos em conta que o ponto nodal da controvérsia é saber se houve sobra de matéria-prima e se os produtos foram ou não entregues. Nessa toada, não há como se atestar, de pronto, a desnecessidade de outras provas. (ii) diante disso, deve ser oportunizado às partes demonstrar a utilidade da produção probatória e, caso se entenda pela efetiva dispensa, após a escorreita observância do contraditório, poderá o d. Juízo a quo fundamentar seu posicionamento de forma adequada. Tal medida visa a assegurar a efetividade processual, porquanto voltada a prevenir alegação de nulidade em outras instâncias, sob fundamento de violação de direito material; (iii) assim, a ausência de manifestação do juízo sobre o pedido de produção de provas é inegavelmente prejudicial ao exercício do direito à ampla defesa, sobretudo quando o julgamento for desfavorável à parte postulante. Há de se considerar que a condução do processo deve guardar observância aos princípios da boa-fé e da cooperação, no intuito de se alcançar uma prestação jurisdicional efetiva e justa. IV. Recurso conhecido e provido. Sentença cassada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e dar provimento ao recurso de apelação, anulando a sentença recorrida, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (Apelação Cível&#160;- 0052855-53.2020.8.06.0117, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 06/11/2024, data da publicação:&#160; 06/11/2024)</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Entretanto, no caso em tela, observa-se que a falta de um exame acurado das provas colacionadas pela parte ré trouxe-lhe

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	evidente prejuízo, comprometendo a constatação de questões fundamentais do processo, considerando que há nítida distinção entre o exercício de cargo em comissão (plenamente válido) e o de contratação temporária (que merece análise caso a caso para aferir sua legalidade e, a partir disso, as verbas eventualmente devidas ao contratado).</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Nesse contexto, vislumbra-se que o feito foi julgado no estado em que se encontrava (art. 355, I, do CPC), por entender o Magistrado a quo desnecessária a produção de outras provas além das já carreadas aos autos, sem, no entanto, ter intimado previamente a parte ré do julgamento antecipado da lide, caracterizando decisão surpresa, vedado pela legislação processual civil, e cerceando o direito de defesa.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;Ademais, revela-se incorreto o posicionamento do Juízo de obstar a instrução processual para, em sentença, concluir pela falta de apresentação de provas pelo Município, acolhendo tão somente os documentos acostados pelo autor. A propósito, os seguintes julgados deste TJCE: &#160; </p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">PROCESSUAL CIVIL. APELAÇÃO CÍVEL. PRELIMINAR DE CERCEAMENTO DE DEFESA. NECESSIDADE DE INSTRUÇÃO PROBATÓRIA PARA APURAR OS PEDIDOS AUTORAIS. SENTENÇA DE IMPROCEDÊNCIA POR FALTA DE PROVA. NULIDADE. CERCEAMENTO DE DEFESA. NECESSIDADE DE PRODUÇÃO DE PROVA TESTEMUNHAL EXPRESSAMENTE REQUERIDA E JUSTIFICADA PARA COMPROVAR OS FATOS CONTROVERSOS NOS AUTOS. PRELIMINAR ACOLHIDA. RECURSO PREJUDICADO.DETERMINAÇÃO DE intransferibilidade do imóvel objeto da lide até ulterior deliberação em segunda Instância. PODER GERAL DE CAUTELA. ART. 297 DO CPC. POSSIBILIDADE. I. Caso em Exame Trata-se de apelação cível, interposta por CÍNTIA FERREIRA SANTOS, contra sentença proferida às fls. 303/310, pelo Juízo da 15ª Vara Cível da Comarca de Fortaleza, nos autos de ação de rescisão contratual c/c danos morais c/c pedido de tutela de urgência, tendo como parte apelada GLEIDSON SERPA SOUTO MATHIAS. II. Questão em Discussão DA PRELIMINAR DE CERCEAMENTO DE DEFESA. A questão central é a análise da existência de cerceamento de defesa, considerando a omissão do juízo em permitir a produção de provas que a apelante alegou ser essencial para comprovar seu direito, em desacordo com os princípios constitucionais do contraditório e da ampla defesa. III. Razões de Decidir O reconhecimento de cerceamento de defesa é respaldado pelo entendimento de que o juiz deve permitir a produção de provas para não violar o direito ao contraditório, conforme art. 5.º, inc. LV da CF/88. A ausência de prova não pode ser utilizada como fundamento para a improcedência do pedido, se a parte não teve oportunidade de se desincumbir de seu ônus probatório. Veja-se que, no caso em apreço, houve a apresentação do rol de testemunhas por ambas as partes, fls. 257/260 e 261, havendo em um primeiro momento a suspensão da audiência e empós, o anuncio do julgamento antecipado da lide(fls. 279/991). Assim, o magistrado de piso deixou de oportunizar às partes o direito de produção de prova. Isso porque, não se pode julgar o feito com base na ausência de prova se não foi oportunizado ao autor a sua produção a fim de possibilitá-lo se desincumbir do ônus que lhe é imposto pelo art. 373, inciso I, do CPC/15. IV. Dispositivo e Tese Declaro a nulidade da sentença de ofício por cerceamento do devido processo legal, determinando a reabertura da fase instrutória, em razão da violação dos princípios do contraditório e da ampla defesa. Assim, o recurso é prejudicado e os autos devem retornar à origem para prosseguimento da instrução processual. Ademais, determina-se a intransferibilidade do imóvel objeto da lide, até ulterior deliberação em segunda Instância. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, em que figuram as partes acima referidas, ACORDAM os Senhores Desembargadores da Quarta Câmara de Direito Privado, do Tribunal de Justiça do Estado do Ceará, a unanimidade, em acolher da preliminar arguida e julgar prejudicado o recurso interposto, bem como determinar a intransferibilidade do imóvel objeto da lide, tudo nos termos do voto do Desembargador Relator Fortaleza/CE, data da assinatura eletrônica DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator <br /> (Apelação Cível&#160;- 0238052-07.2021.8.06.0001, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento:&#160; 12/11/2024, data da publicação:&#160; 12/11/2024)</p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-

Processo	0050744-12.2021.8.06.0069
	serif;">DIREITO PROCESSUAL CIVIL. RECURSO DE APELAÇÃO CÍVEL. AÇÃO DE RENEGOCIAÇÃO DE DÍVIDAS. SENTENÇA DE IMPROCEDÊNCIA. INSUFICIÊNCIA PROBATÓRIA. DECISÃO PROFERIDA SEM INTIMAÇÃO DAS PARTES PARA ESPECIFICAR AS PROVAS. AUSÊNCIA DE PRÉVIO ANÚNCIO DO JULGAMENTO ANTECIPADO DO MÉRITO. OFENSA AOS PRINCÍPIOS DA VEDAÇÃO DA DECISÃO SURPRESA E DA COOPERAÇÃO. CERCEAMENTO DE DEFESA CONFIGURADO. ERROR IN PROCEDENDO. SENTENÇA DESCONSTITUÍDA DE OFÍCIO. RECURSO DE APELAÇÃO PREJUDICADO. 1. Trata-se de recurso de apelação interposto em face da sentença que julgou improcedente a demanda de origem. 2. Irresignada, a promovente interpôs recurso de apelação, no qual requer, em síntese, a revisão das condições contratuais, destacando as dificuldades financeiras que enfrenta no atual momento. 3. Como é cediço, a presença dos pressupostos de admissibilidade reveste-se da natureza de matéria de ordem pública, podendo, desta forma, o julgador atuar ex officio. 4. Com base nessa premissa, verifico que a sentença padece de error in procedendo e nulidade decorrente do cerceamento de defesa. 5. Com efeito, ao compulsar detidamente os autos, observa-se que a sentença recorrida julgou improcedentes os pedidos formulados, ao argumento de que não estaria caracterizada a onerosidade excessiva superveniente, destacando a insuficiência probatória da pretensão autoral ao pontuar que ¿a demandante trouxe aos autos escassa prova sobre suas alegações, notadamente o fato de os netos dependerem economicamente dela ou de não possuírem outros meios de deslocamento.¿ (fls. 212). 6. Veja-se, contudo, que, após apresentada réplica à contestação, foi imediatamente exarada sentença de improcedência da demanda de origem, não tendo o juízo concedido prazo às partes para indicar as provas que pretendiam produzir, tampouco anunciado previamente o julgamento antecipado do mérito, o que configura violação clara aos princípios do contraditório e da ampla defesa, conforme prevê o art. 5°, inciso LV, da Constituição Federal 7. O artigo 355, inciso I, do Código de Processo Civil, estabelece que o juiz poderá julgar antecipadamente o mérito ¿quando a questão de mérito for unicamente de direito, ou, sendo de direito e de fato, não houver necessidade de produzir prova em audiência;¿. 8. Note-se que, em que pese o fato de o julgador ter a faculdade de julgar antecipadamente a lide, nos termos do art. 355 do Código de Processo Civil, quando considerar desnecessária a produção de outras provas, tal faculdade não tem o condão de elidir o exercício do contraditório e da ampla defesa pelas partes envolvidas. 9. Ou seja, há evidente equívoco em não oportunizar a produção probatória das partes e, ao mesmo tempo, utilizar a insuficiência probatória como fundamento para julgar improcedente a demanda de origem. 10. O direito de produzir prova engloba o direito à adequada oportunidade de requerer a sua produção, o direito de participar da sua realização e o direito de falar sobre os seus resultados. 11. Dessa forma, o julgamento antecipado do mérito sem prévio anúncio e a ausência de intimação para especificação de provas ensejam o error in procedendo e o cerceamento de defesa do demandante, impondo-se a desconstituição ex officio da sentença e o retorno dos autos à origem para o regular processamento. 12. Sentença anulada de ofício. Recurso de apelação prejudicado. ACÓRDÃO ACORDAM os Desembargadores integrantes da Segunda Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, unanimemente, em cassar, de ofício, a sentença, deixando de conhecer do recurso de apelação interposto, por prejudicado, nos termos do voto da Relatora. <br /> (Apelação Cível&#160;- 0200222-50.2023.8.06.0158, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento:&#160; 13/11/2024, data da publicação:&#160; 13/11/2024)</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Evidencia-se, portanto, a nulidade da sentença por falta de fundamentação, uma vez que o Juiz, ao julgar a lide, simplesmente deixou de considerar o teor das provas apresentadas pelo ente público, além de cerceamento de defesa, por ter encerrado a instrução de forma abrupta, sem fixar os pontos controvertidos, que é seu dever.</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Destarte, acolho a preliminar suscitada pelo apelante e decreto a nulidade da sentença.</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Nesse ponto, cumpre ressaltar que a decretação de nulidade por cerceamento de defesa se revela incompatível com a aplicação da teoria da causa madura e o julgamento da lide diretamente por este Tribunal, nos moldes do art. 1.013, § 3º, IV, CPC, pois, diante da necessidade de continuação da instrução processual, constata-se que a demanda não está pronta para imediato julgamento.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-hyphenate: auto;"> Diante do exposto, conheço da apelação cível para dar-lhe parcial provimento, a fim de decretar a nulidade da sentença, determinando o retorno dos autos à origem para o regular prosseguimento da instrução processual e posterior prolação de novo julgamento.</p><p class="MsoNormal"

Processo	0050744-12.2021.8.06.0069
	style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-hyphenate: auto;"> &#160; É como voto.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-hyphenate: auto;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3003597-44.2024.8.06.0000
Número de ordem	46
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Acidente de Trânsito
Polo ativo	GLAUCO VIANA DE SOUSA JUNIOR
Advogado(s) - Polo ativo	ANDERSON BARROSO DE FARIAS - (CE19623-A)
Polo passivo	MUNICIPIO DE ITAPIPOCA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003597-44.2024.8.06.0000
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

Processo	3003597-44.2024.8.06.0000

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	01 . Verifica-se que o agente envolvido no acidente, de fato, é preposto da empresa requerida, que é pessoa jurídica de direito privado, prestadora de serviço público (coleta de lixo), e não preposto do poder público municipal. 02 . Resta afastada a legitimidade passiva do Município de Itapipoca para a presente demanda, visto que todos os atos narrados na peça contestatória da requerida Mark – Terceirização, Coleta e Locação Eireli, dizem respeito apenas ao seu preposto e ao seu veículo, não sendo mencionado em nenhum momento qualquer ato praticado por algum preposto da municipalidade. 03 . Para que se confirme a responsabilidade subsidiária da Administração Pública, em sentido amplo, ocorrerá quando restar comprovado que a concessionária não tem como arcar com a reparação devida. Nesses casos, o poder público assume a obrigação principal de indenizar ou reparar o dano. 04 . Agravo de Instrumento conhecido e improvido. Decisão agravada mantida na integra.</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em conhecer do Agravo de Instrumento para NEGAR-LHE PROVIMENTO e manter integralmente a decisão recorrida, nos termos do voto do relator.</p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 150%; text-indent: 1.9cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A priori , a ntes de adentrar no mérito, convém analisar os pressupostos de admissibilidade do recurso.</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Conforme relatado, a decisão interlocutória de id 13674914, além do reconhecimento da ilegitimidade passiva do município, extinguiu o feito sem resolução do mérito em relação a este.</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Nesse sentindo, de acordo com o art . 203, § 1º do CPC/2015, o julgador põe fim a cognição processual através de sentença. Vejamos:</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; break-before: auto;" align="justify"> Art. 203. Os pronunciamentos do juiz consistirão em sentenças, decisões interlocutórias e despachos. </p><p style="line-height: 150%; margin-left: 4cm; margin-

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	bottom: 0cm; background: transparent;" align="justify"> § 1º Ressalvadas as disposições expressas dos procedimentos especiais, sentença é o pronunciamento por meio do qual o juiz, com fundamento nos arts. 485 e 487, põe fim à fase cognitiva do procedimento comum, bem como extingue a execução. <br /> O art. 485 do CPC/2015, no inciso VI, dispõe que o juiz não resolverá o mérito quando “ verificar ausência de legitimidade ou de interesse processual ;” Desse modo, tendo em vista que a decisão recorrida colocou fim a fase cognitiva em relação ao município, em tese, o recurso cabível para o presente caso, seria a apelação, em consonância com o art. 1.009 do CPC/2015. Todavia, o inc. VII do art. 1.015, CPC/2015, prevê expressamente, que é cabível a interposição do Agravo de Instrumento das decisões interlocutórias que excluírem litisconsorte . Além disso, o Superior Tribunal de Justiça tem se manifestado no sentido de que é cabível o recurso supracitado nos casos em que o litisconsorte é excluído, em razão do reconhecimento da ilegitimidade passiva, com extinção parcial do processo: &#160; PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DE EXECUÇÃO. EXCLUSÃO DE COEXECUTADOS NO POLO PASSIVO. PROSSEGUIMENTO DA EXECUÇÃO. RECURSO CABÍVEL. AGRAVO DE INSTRUMENTO. ENTENDIMENTO DO TRIBUNAL ESTADUAL EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ . SÚMULA Nº 83 DO STJ. AGRAVO INTERNO NÃO PROVIDO. 1. O entendimento adotado pelo acórdão recorrido se coaduna com a jurisprudência desta Corte, no sentido de que " é cabível agravo de instrumento - e não apelação - contra decisão que exclui litisconsorte passivo da lide, com extinção parcial do processo " (AgInt no AREsp n. 1.632.625/PR, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 8/3/2021, DJe 12/3/2021). 2. Não sendo a linha argumentativa apresentada capaz de evidenciar a inadequação dos fundamentos invocados pela decisão agravada, o presente agravo não se revela apto a alterar o conteúdo do julgado impugnado, devendo ele ser integralmente mantido em seus próprios termos. 3. Agravo interno não provido. <br /> (AgInt no AREsp n. 2.561.867/SP,

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	relator Ministro Moura Ribeiro, Terceira Turma, julgado em 2/9/2024, DJe de 4/9/2024.) &#160; Ante o exposto, p resentes os requisitos de admissibilidade, conheço do recurso. Conforme relatado, o cerne da controvérsia diz respeito à legitimidade do Município de Itapipoca/CE para compor a presente Ação de Danos Morais, dada a possibilidade de responsabilização do ente público no acidente de trânsito que o autor ora agravante se envolveu, em que colidiu com o caminhão de coleta de lixo, pertencente à empresa MARK – Terceirização, Coleta e Locação EIRELI, segunda requerida. Na decisão interlocutória de id 13674914, o juízo a quo acolheu a preliminar de ilegitimidade passiva do município, extinguindo o feito sem resolução de mérito em relação a este requerido, por entender que, de acordo com o entendimento do Superior Tribunal de Justiça, a responsabilidade do ente público cedente na concessão de execução de serviços públicos é subsidiária, em caso de dano causado pelo concessionário de serviço público, razão pela qual, o autor interpôs o presente Agravo de Instrumento. In casu , conforme pode ser visto no id. 58419612, pág. 02 (autos do 1º grau), em sede de contestação, a empresa Mark – Terceirização, Coleta e Locação Eireli, segunda requerida, confessa que “ Em verdade, ocorreu o acidente envolvendo o autor e o veículo desta contestante ”, além disso, presta informações sobre o condutor do veículo no momento do acidente, informando que “ o motorista do caminhão, Antônio Lúcio Carlos de Araújo, habilitado desde 2005, conforme CNH em anexo, tem carteira com categoria que lhe permite conduzir o veículo envolvido no acidente provocado pelo autor, e nunca se envolveu em acidente de trânsito .”, anexando, inclusive, a CNH do motorista ao id. 58419619 (autos do 1º grau). Desse modo, verifica-se que o agente envolvido no acidente, de fato, é preposto da empresa supracita, que é pessoa jurídica de direito privado prestadora de serviço público (coleta de lixo), e não preposto do poder público municipal. Diante de tal circunstância, resta afastada, portanto, a legitimidade passiva do Município de Itapipoca para a presente demanda, visto que todos os atos narrados na peça contestatória da requerida Mark – Terceirização, Coleta e Locação Eireli, dizem respeito apenas ao seu preposto e ao seu veículo, não sendo mencionado em nenhum momento qualquer ato praticado por algum preposto da municipalidade. Nesse sentido segue o art. 932, III do Código Civil, in verbis : &#160; Art. 932. São também responsáveis pela reparação civil: <span style="font-size:

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	11pt;">[...] III - o empregador ou comitente, por seus empregados, serviçais e prepostos, no exercício do trabalho que lhes competir, ou em razão dele; &#160; Outrossim, ao apreciar o REsp n. 287.599, o STJ definiu que: &#160; [...] ainda que exerça atividade concedida pelo Estado, responde em nome próprio pelos seus atos, devendo reparar os danos ou lesões causadas a terceiros. De efeito, a existência da concessão feita pelo Estado, por si, não o aprisiona diretamente nas obrigações de direito privado, uma vez que a atividade cedida é desempenhada livremente e sob a responsabilidade da empresa concessionária . &#160; Ademais, para que se confirme a responsabilidade subsidiária da Administração Pública, em sentido amplo, ocorrerá quando restar comprovado que a concessionária não tem como arcar com a reparação devida. Nesses casos, o poder público assume a obrigação principal de indenizar ou reparar o dano. Vejamos: &#160; ADMINISTRATIVO E PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ESPECIAL. AÇÃO INDENIZATÓRIA. CUMPRIMENTO DE SENTENÇA. INCLUSÃO DO PODER CONCEDENTE NO POLO PASSIVO. RESPONSABILIDADE SUBSIDIÁRIA. ACÓRDÃO RECORRIDO EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO SUPERIOR TRIBUNAL DE JUSTIÇA. 1. O Superior Tribunal de Justiça tem entendimento de que "a responsabilidade do Poder Concedente é subsidiária, nas hipóteses em que o concessionário ou permissionário não detiver meios de arcar com a indenizações pelos prejuízos a que deu causa." (REsp 1820097/RJ, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 07/11/2019, DJe 19/12/2019). 2. Caso em que o acórdão recorrido consignou que não houve demonstração do exaurimento do patrimônio da parte executada, razão pela qual não se viabiliza a inclusão do poder concedente no polo passivo da execução. Assim, a alteração dessa conclusão ensejaria o reexame de matéria fática, o que é vedado no âmbito do recurso especial, nos termos da Súmula 7/STJ . 3. Agravo interno não provido. (STJ, AgInt no REsp 1934661/RJ, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA TURMA, julgado em 16/08/2021, DJe 18/08/2021) &#160; No mesmo sentido segue o entendimento deste Tribunal de Justiça, inclusive, em decisões da minha relatoria: &#160; ADMINISTRATIVO E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS EM DECORRÊNCIA DE ACIDENTE. RESPONSABILIDADE CIVIL OBJETIVA DA CONCESSIONÁRIA PRESTADORA DE SERVIÇOS PÚBLICOS. ILEGITIMIDADE PASSIVA DA MUNICIPALIDADE. NÃO COMPROVAÇÃO DE ATUAÇÃO QUE JUSTIFIQUE A PRESENÇA DO MUNICÍPIO NA DEMANDA. PRECEDENTES DO STJ E TJCE. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA . ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data e hora indicadas pelo sistema. DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES Relator. (Apelação Cível - 0089256-94.2009.8.06.0001, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES , 3ª Câmara Direito Público, data do julgamento: 06/03/2023, data da publicação:

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	07/03/2023). &#160; PROCESSUAL CIVIL. CIVIL. APELAÇÕES CÍVEIS E RECURSO ADESIVO. ACIDENTE DE TRÂNSITO. PRELIMINAR DE ILEGITIMIDADE PASSIVA AGITADA PELA MUNICIPALIDADE. RESPONSABILIDADE CIVIL OBJETIVA DA CONCESSIONÁRIA PRESTADORA DE SERVIÇOS PÚBLICOS. NÃO COMPROVAÇÃO DE COMPROMETIMENTO FINANCEIRO OU INSUFICIÊNCIA DA PESSOA JURÍDICA DE DIREITO PRIVADO QUE JUSTIFICASSE A ATUAÇÃO DO MUNICÍPIO NA DEMANDA. PRECEDENTES STJ. <span style="font-family: Arial, serif;"> <span style="font-size: 11pt;">APELO ACOLHIDO. PRELIMINAR DE PRESCRIÇÃO SUSCITADA PELA EMPRESA DEMANDADA. PRAZO QUINQUENAL CONFORME PREVÊ ART. 27 DO CDC E ART. 1º DO DL 20.910/32. PRESTADORA DE SERVIÇO PÚBLICO QUE SE SUBMETE AO PRAZO ELENCADO E NÃO Á NORMA GERAL DE DIREITO CIVIL. PRECEDENTES STJ E TJCE. PRELIMINAR AFASTADA. ERRO MATERIAL EVIDENCIADO NO DECISUM QUANTO A NÃO CONFIRMAÇÃO DO DIREITO DE UM DOS FILHOS. ATUAÇÃO DESDE À EXORDIAL. EQUÍVOCO CORRIGIDO. MÉRITO. NEXO DE CAUSALIDADE EVIDENCIADO. CONDUTOR DO ÔNIBUS QUE REALIZOU MANOBRA INDEVIDA E ATROPELOU A BICICLETA DO PAI E ESPOSO DOS AUTORES. ÓBITO. AUSÊNCIA DE COMPROVAÇÃO DE CULPA EXCLUSIVA OU CONCORRENTE. LAUDO OFICIAL TAXATIVO AO CONFIRMAR O ERRO DO MOTORISTA. INDENIZAÇÃO DEVIDA. VALOR FIXADO CONDIZENTE COM PROPORCIONALIDADE E RAZOABILIDADE QUE NÃO JUSTIFICA ACRÉSCIMO OU DECRÉSCIMO. FAMÍLIA DE BAIXA RENDA. DANOS MATERIAIS (PENSIONAMENTO) DEVIDO. PRECEDENTES STJ. FIXAÇÃO EM 2/3 DO SALÁRIO MÍNIMO A SER PAGO ATÉ 25 ANOS DOS FILHOS E, PARA A ESPOSA, ATÉ QUE O DE CUJUS COMPLETASSE 65 (SESSENTA E CINCO) ANOS DE IDADE. NECESSIDADE DE DESCONTO DO SEGURO DPVAT. CONSECTÁRIOS LÓGICOS EM OBEDIÊNCIA AO TEMA N. 905 DO STJ. HONORÁRIOS ADEQUADOS A SEREM PAGOS APENAS PELA EMPRESA DEMANDADA, NOS MOLDES DO ESTIPULADO EM SENTENÇA. RECURSOS CONHECIDOS. APELO DA MUNICIPALIDADE PROVIDO. DEMANDA EXTINTA EM RELAÇÃO AO MUNICÍPIO. INCONFORMISMOS DA EMPRESA E DOS AUTORES PARCIALMENTE PROVIDOS. SENTENÇA REFORMADA EM PARTE. 1. O cerne da questão cinge-se em averiguar a higidez da sentença promanada pelo douto Juízo de primeiro grau que julgou parcialmente procedentes os pedidos exordiais para afastar o dano material, contudo, condenar a Empresa Concessionária e a Municipalidade ao pagamento de R$60.000,00 (sessenta mil reais) para cada um dos filhos ali elencados e R$65.000,00 (sessenta e cinco mil reais), para a esposa do de cujus. 2. De pronto, ao apreciar o Apelo da Municipalidade, verifico assistir razão aos seus argumentos, notadamente a sua ilegitimidade passiva, eis que, para que houvesse justificação de seu ingresso na querela, necessariamente deveria haver comprovação da insuficiência financeira da Empresa Demandada em arcar com os prejuízos suportados ou patente equívoco em sua fiscalização, situação que não ocorreu nos autos. 3. Desse modo, em obediência a entendimento consolidado pelo Colendo STJ, não se justifica a continuidade da querela em desfavor do Município, ainda que de forma subsidiária, eis que a referida responsabilidade só acontecerá em impossibilidade de pagamento da indenização pela Concessionária, oportunidade em que poderá ser chamado ao feito, mas, não responsabilizado pela atividade propriamente dita da Empresa demandada. Preliminar acolhida, demanda extinta em relação ao Município. 4. Por conseguinte, ao analisar a preliminar de prescrição suscitada pela Empresa Requerida, entendo não assistir razão, haja vista que se trata de pessoa jurídica de direito privado prestadora de serviços públicos, portanto, se submetendo ao prazo prescricional quinquenal previsto no art. 27 do CDC e mesmo o que dispõe o DL n. 20.910/32, não havendo se falar em adoção da regra geral estabelecida no Código Civil. Precedentes TJCE. Preliminar rejeitada. 5. Ademais, quanto ao erro material suscitado pelos Autores, afirmo assistir razão, eis que, apesar de explicitamente condenar a parte Demandada ao pagamento de indenização em favor de todos os filhos e esposa, ao lhes enunciar, o Juízo de primeiro grau se esqueceu de um deles, razão pela qual deve ser corrigida a parte dispositiva para acrescentar o filho faltante, garantindo-lhe os mesmos direitos conferidos à todos. 6. Quanto ao mérito propriamente dito, notadamente os danos morais e materiais, afirmo que ambos os inconformismos merecem parcial provimento. Isso porque, apesar de inexistir nos autos comprovação de culpa exclusiva ou concorrente da vítima capaz de afastar o nexo de causalidade entre a conduta irregular do condutor do ônibus e o dano causado (óbito), bem assim o valor estar condizente com os parâmetros jurisprudenciais estabelecidos, não merecendo majoração ou minoração no quantum fixado, em relação ao Seguro DPVAT, este deverá ser descontado do valor indenizatório a ser pago em favor dos Requerentes. Precedentes TJCE. 7. Por seu turno, quanto aos danos materiais, notadamente, o pleito de pensionamento, verifico equívoco no Decisum hostilizado, pois, conforme entendimento firmado pelo Colendo Tribunal da Cidadania, tratando-se de família de baixa renda, a

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	dependência econômica é presumida, razão pela qual fazem jus ao percebimento de pensão, nesta oportunidade fixada em 2/3 (dois terços) do salário mínimo, a ser pago até os filhos completarem 25 (vinte e cinco) anos, e, em relação a esposa, até a data que o falecido atingisse a idade de 65 (sessenta e cinco) anos. Precedentes STJ e TJCE. 8. Por fim, quanto aos consectários lógicos, entendo não merecer reproche a sentença objurgada, eis que aplicou devidamente o que define o Tema n. 905 do STJ, oportunidade em que, por força da sucumbência mínima, corrijo os honorários outrora fixados, a serem pagos apenas pela Empresa Demandada, excluindo-se, consequentemente, a Municipalidade, ante a extinção do feito em seu desfavor, e os Autores, haja vista que alcançaram quase na totalidade os pleitos Exordiais, mantendo-se o percentual fixado nos moldes do Decisum hostilizado. 9. Recursos conhecidos. Apelo do Município provido e extinto o feito em sua relação. Inconformismos dos Autores e da Empresa parcialmente providos. Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos estes autos de Apelações Cíveis e Recurso Adesivo de nº. 0128242- 83.2010.8.06.0001, em que ACORDAM os Desembargadores membros da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer dos Recursos, para dar provimento ao Apelo da Municipalidade e parcial provimento aos inconformismos da Empresa Demandada e Autores, nos termos do voto da Relatora, parte integrante deste. Fortaleza/CE, 23 de maio de 2022. (TJ-CE - AC: 08672248620148060001 Fortaleza, Relator: LISETE DE SOUSA GADELHA, Data de Julgamento: 23/05/2022, 1ª Câmara Direito Público, Data de Publicação: 23/05/2022).</p><p style="line-height: 115%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Desse modo, coaduno com o entendimento de primeira instância. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Ante o exposto, conheço do Agravo de Instrumento interposto pela parte autora para, NEGAR-LHE PROVIMENTO , mantendo decisão agravada em todos os seus termos.</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Decorrido o prazo legal, nada sendo apresentado ou requerido, voltem os autos à instância de origem, com baixa na estatística deste gabinete, mediante certidão. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Expedientes necessários. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> É como voto. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	47
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Classificação e/ou Preterição
Polo ativo	JAMILLE DA SILVA RABELO
Advogado(s) - Polo ativo	MURILO FIGUEIREDO OLIVEIRA GONÇALVES - (CE27833-A)

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Polo passivo	INSTITUTO DE PLANEJAMENTO DE FORTALEZA INSTITUTO DE DESENVOLVIMENTO EDUCACIONAL, CULTURAL E ASSISTENCIAL NACIONAL SECRETARIA MUNICIPAL DE PLANEJAMENTO ORCAMENTO E GESTAO MUNICIPIO DE FORTALEZA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3U2VFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xfAZSatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1levGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYn+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	(MUNICÍPIO DE FORTALEZA). PRELIMINAR DE ILEGITIMIDADE PASSIVA DO SECRETÁRIO DO PLANEJAMENTO, ORÇAMENTO E GESTÃO DO MUNICÍPIO DE FORTALEZA, SUSCITADA PELO ENTE MUNICIPAL EM SUAS CONTRARRAZÕES DE AGRAVO. ACOLHIMENTO. EXCLUSÃO DA REFERIDA AUTORIDADE DO POLO PASSIVO DO <em style="font-family: Arial, sans-serif; font-size: 12pt; text-indent: 0cm;">WRIT. MÉRITO. CANDIDATA APROVADA NA FASE DISCURSIVA (2ª ETAPA), MAS NÃO CONVOCADA PARA A FASE DE TÍTULOS (3ª ETAPA). CLÁUSULA DE BARREIRA ESPECÍFICA PARA A FASE DE TÍTULOS. POSSIBILIDADE. PRECEDENTES. CUMPRIMENTO ESTRITO DAS CLÁUSULAS EDITALÍCIAS. INEXISTÊNCIA DE ILEGALIDADE OU ABUSIVIDADE. AUSÊNCIA DE PROBABILIDADE DE DIREITO. AGRAVO DE INSTRUMENTO CONHECIDO E DESPROVIDO.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> I. Caso em exame </p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;">1. Agravo de instrumento com pedido de tutela recursal interposto por Jamille da Silva Rabelo contra decisão interlocutória proferida pelo Juízo da 4ª Vara da Fazenda Pública da Comarca de Fortaleza, que indeferiu liminar no bojo do MS nº 3016771-20.2024.8.06.0001, requerida no sentido de convocar a impetrante para a prova de títulos, possibilitando sua participação no curso de formação do concurso do IPLANFOR.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> II. Questão em discussão </p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;">2. A questão em discussão consiste em analisar a decisão de primeiro grau que indeferiu liminar no bojo do mandado de segurança, a fim de aferir se a autora tem direito a ser convocada para a prova de títulos, com base nos critérios objetivos fixados no edital do certame.&#160;</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> III. Razões de decidir </p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;">3. Inicialmente, acolho a preliminar de ilegitimidade passiva do Secretário do Planejamento, Orçamento e Gestão do Município de Fortaleza, arguida pelo ente municipal em suas contrarrazões recursais, porquanto o concurso público em questão é executado pelo Instituto de Desenvolvimento Educacional, Cultural e Assistencial Nacional (IDECAN), para o qual devem ser dirigidos todos os recursos administrativos referentes a todas as etapas do certame, inclusive a fase de títulos.&#160;</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;">4. Tem-se, então, uma vez que o Secretário Municipal do Planejamento, Orçamento e Gestão é parte ilegítima para figurar no polo passivo da lide, consequentemente, resta indevida a presença do Município de Fortaleza na condição de representante do referido Secretário Municipal, por lhe faltar legitimatio para tanto, sendo sua exclusão medida que se impõe nesta oportunidade.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;">5. Em juízo de prelibação, tenho que o Magistrado de origem agiu com acerto ao indeferir a

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	liminar, em estrita observância ao Edital nº 01/2024, que regulamenta o concurso do IPLANFOR, sendo a lei do certame.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> 6. Para o cargo de Analista de Planejamento e Inovação – Área 08: Desenvolvimento Urbano (almejado pela autora), foram ofertadas 3 (três) vagas no total, sendo 2 (duas) de ampla concorrência, 1 (uma) para negros e nenhuma para PCDs (item. 2.3 do Edital). Consoante relatado, ela alcançou o 17º lugar na prova objetiva e o 10º lugar na fase subjetiva, porém não foi convocada para a prova de títulos.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> 7. Como bem observado pelo Juízo a quo, os itens 8.15.15.1 e 8.15.15.3 do edital tratam exclusivamente da possibilidade de&#160;corrigir a prova discursiva&#160;dos demais candidatos da listagem geral na hipótese de inexistência de candidatos com deficiência ou candidatos negros em número suficiente.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> 8. Já o item 9.2 dispõe especificamente sobre a fase de títulos, fazendo menção ao item 8.15.15 tão somente para utilizar o quantitativo de candidatos nele previsto.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> 9. Segundo interpretação da insurgente, “o item 9.2 do edital determinou que fossem convocados para a prova de títulos (terceira fase) 50% dos APROVADOS na prova discursiva (segunda fase), e não 50% dos que dela participaram”.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> 10. Ocorre que, como já mencionado, o item 9.2 estabeleceu a convocação de 50% do número da tabela do item 8.15.15, ou seja, deveriam ser convocados 8 (oito) dos 16 (dezesseis) candidatos de ampla concorrência e assim por diante. Como a agravante logrou o 10º lugar, não figurou na lista de convocação para a etapa de títulos.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> 11. Desse modo, não vejo como se estender à fase de títulos uma disposição editalícia específica de outra fase (prova discursiva), realizando verdadeira interpretação extensiva do edital para beneficiar a candidata, o que equivaleria a indevida incursão do Poder Judiciário no mérito Administrativo, em violação ao princípio da Separação dos Poderes.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> 12. Ademais, de acordo com o entendimento do Supremo Tribunal Federal, é constitucional a denominada cláusula de barreira (Tema 376), regra inserida no edital de concurso público com o intuito de selecionar apenas os candidatos com melhor classificação para prosseguir no certame.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> IV. Dispositivo e tese </p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> 13. Agravo de Instrumento conhecido e desprovido.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> Tese de julgamento: “O edital faz lei entre as partes e deve ser cumprido fielmente tanto pelo ente público quanto pelos cidadãos que a ele se submetem, salvo se houver previsão de cláusula ilegal ou inconstitucional, o que não é o caso dos autos, por ser possível limitar o acesso dos candidatos aprovados com base em critérios objetivos relacionados ao desempenho dos participantes, não tendo a autora satisfeito cumulativamente os requisitos necessários para ser aprovada na fase de títulos do concurso”.</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> Dispositivos relevantes citados: &#160;</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> <span style="font-family: Arial, sans-serif; background-image: initial; background-position: initial; background-size:

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	initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;">&#160;</p><p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> Jurisprudência relevante citada: STF, RMS 36544 AgR, Relator(a): LUIZ FUX, Primeira Turma, julgado em 03-04-2020, PROCESSO ELETRÔNICO DJe-097 DIVULG 22-04-2020 PUBLIC 23-04-2020; STJ, AgInt no RMS 39.031/ ES, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 15/03/2021, DJe 06/04/2021.</p><p>&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em conhecer do recurso para negar-lhe provimento , nos termos do voto do relator.</p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Cuida-se de Agravo de Instrumento com pedido de tutela recursal interposto por Jamille da Silva Rabelo contra decisão interlocutória proferida pelo Juízo da 4ª Vara da Fazenda Pública da Comarca de Fortaleza, no bojo do Mandado de Segurança nº 3016771-20.2024.8.06.0001, impetrado pela ora agravante contra o Superintendente do Instituto de Planejamento de Fortaleza (IPLANFOR), o Secretário Municipal de Planejamento, Orçamento e Gestão (SEPOG), autoridades vinculadas ao Município de Fortaleza, em litisconsórcio passivo com Instituto de Desenvolvimento Educacional, Cultural e Assistencial Nacional (IDECAN).</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Decisão impugnada &#160;(Id. 98963657 dos autos do PJE 1º Grau): proferida nos seguintes termos: “os itens 8.15.15.1 e 8.15.15.3 do edital trataram exclusivamente da possibilidade de&#160; corrigir a prova discursiva&#160;dos demais candidatos da listagem geral na hipótese de inexistência de candidatos com deficiência ou candidatos negros&#160;(sic,&#160;pois esse é o termo utilizado pelo edital, quando deveria ser pretos, nomenclatura mais adequada no contexto histórico a se evitar ofensa racial)&#160;aprovados na prova objetiva, e&#160;não&#160;possibilitaram a&#160;majoração&#160;a&#160;quantidade&#160;de candidatos a serem convocados&#160;para&#160;fase de&#160;análise de títulos. Desse modo,&#160;conforme tenho reiteradamente firmado em decisões nesta unidade jurisdicional,&#160;entendo que o&#160;edital é a lei do concurso&#160;e&#160;estabelece normas visando garantir a isonomia o tratamento e a igualdade de condições no ingresso no serviço público. Ademais,&#160;a exigência do administrador prevista no Edital não se encontra eivada de qualquer mácula de abuso ou ilegalidade, uma vez que&#160;a cláusula de barreira foi devidamente observada&#160;ao basear o cálculo da cláusula de barreira de acordo com a quantidade&#160;prevista nos itens 8.15.15 e 9.2. Por tais motivos,&#160;indefiro o pedido de tutela liminar antecipatória”.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Razões recursais &#160;(Id. 14004113): aduz a insurgente, em síntese, que se inscreveu no concurso para o cargo de Analista de Planejamento e Inovação – Área 08: Desenvolvimento Urbano, do IPLANFOR, restando aprovada na fase objetiva, sendo convocada para a prova discursiva em virtude do subitem 8.15.15.1 do Edital nº 01/2024,

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	que permitia que mais candidatos da ampla concorrência fossem chamados para a prova discursiva caso não fossem aprovados os candidatos cotistas e PCD’s no número delimitado no subitem 8.15.15 (ou seja, as vagas que “sobrassem” advindas das cotas seriam remanejadas para a ampla concorrência na segunda fase). Relata que, tendo alcançado o 10º lugar após a prova discursiva, acabou não sendo convocada para a fase de títulos (3ª etapa), pois para esta o edital previu, no item 9.2, que participariam apenas metade do número de candidatos definidos no item 8.15.15. (no caso do cargo de Analista Área 8, seriam convocados apenas 8 candidatos da ampla concorrência para a prova de títulos). Assim, sustenta a tese de que, como houve redistribuição dos quantitativos originalmente fixados no item 8.15.15 do edital, por conta do item 8.15.15.1, impunha-se que houvesse repercussão também no número de convocáveis para a prova de títulos (50% dos que nela foram aprovados, consideradas as vagas acrescidas, e não apenas aquelas originalmente previstas).</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Por fim, requer a concessão de tutela antecipada recursal para “reformar a decisão agravada no sentido de ser deferida tutela de urgência liminarmente para a convocação da impetrante/agravante para a prova de títulos, com abertura de novo prazo para envio de documentação pertinente e possibilitar ainda a sua participação no curso de formação”.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Na decisão interlocutória de Id. 14032063, foi indeferida a tutela recursal pleiteada.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Contrarrazões do Município de Fortaleza (Id. 14919832): suscitou a preliminar de ilegitimidade passiva do ente público e do Secretário Municipal do Planejamento, Orçamento e Gestão; no mérito, requer o desprovimento recursal.&#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> O IDECAN juntou sua contestação apresentada nos autos de origem (Id. 15254441).</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Parecer da Procuradoria Geral de Justiça&#160; (Id. 15493915): manifestou-se pelo conhecimento e desprovimento do recurso.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;">&#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;">Conforme relatado, trata-se de agravo de instrumento com pedido de tutela recursal interposto por Jamille da Silva Rabelo contra decisão interlocutória proferida pelo Juízo da 4ª Vara da Fazenda Pública da Comarca de Fortaleza, que indeferiu liminar no bojo do MS nº 3016771-20.2024.8.06.0001, requerida no sentido de convocar a impetrante para a prova de títulos, possibilitando sua participação no curso de formação do concurso do IPLANFOR.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> De logo, deve ser enfrentada a preliminar de ilegitimidade passiva do Secretário do Planejamento, Orçamento e Gestão do Município de Fortaleza, arguida pelo ente municipal em suas contrarrazões recursais, sob o fundamento de que o concurso público em questão é regido pelo Instituto de Desenvolvimento Educacional, Cultural e Assistencial Nacional (IDECAN).</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Nesse contexto, a Lei nº 12.016/2009, que regula o mandado de segurança, estabelece quem deve ser considerada autoridade coatora, para os fins de impugnação por tal via processual da conduta que lhe se atribui. Veja-se:</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%;

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	text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> Art. 6º. [...]</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> § 3º. Considera-se autoridade coatora aquela que tenha praticado o ato impugnado ou da qual emane a ordem para a sua prática. Como resulta da literalidade da norma de regência, autoridade coatora é a que determina ou ordena, concreta e especificamente, a prática do ato, ou aquela que o pratica diretamente, ou está na iminência de fazê-lo.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Dito isso, cumpre reiterar a pacífica jurisprudência do STJ sobre o tema, in verbis:</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> ADMINISTRATIVO. MANDADO DE SEGURANÇA. CONCURSO PÚBLICO. ILEGITIMIDADE PASSIVA. AUTORIDADE COATORA.1. A autoridade coatora, para fins de impetração de mandado de segurança, é aquela que pratica ou ordena, de forma concreta e específica, o ato ilegal, ou, ainda, aquela que detém competência para corrigir a suposta ilegalidade. Precedentes. 2. No caso, o ato que ensejou a desclassificação da autora da lista dos candidatos com deficiência foi praticado pela banca organizadora do certame (CESPE/ UNB), que ostentava a legitimidade para desfazer eventual ilegalidade.3. Agravo interno não provido. (AgInt no RMS 39.031/ ES, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 15/03/2021, DJe 06/04/2021. Grifei)</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Estabelecidas essas premissas, constitui objeto desta ação a possibilidade de o Poder Judiciário imiscuir-se em suposta ilegalidade na correção de prova didática, na segunda fase do certame, efetivada pela banca examinadora, possibilitando, assim, a continuidade da impetrante no concurso público para provimento do cargo de Professor Pedagogo do Município de Fortaleza.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> No caso em tela, tem-se que o item 1.3 do Edital nº 01/2024 prevê que a execução do certame será realizada pelo IDECAN, isto é, este será responsável por executar todas as quatro fases, incluindo a prova de títulos (3ª) (p. 01 do Id.894000956).</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Mais adiante, tem-se no item 12 do Edital nº 01/2024, referente aos recursos administrativos, a previsão de que todos os recursos deverão ser dirigidos à banca IDECAN, formalizados por meio de processo administrativo, e devidamente fundamentados.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Isto posto, percebe-se que errônea a indicação do Secretário Municipal do Planejamento, Orçamento e Gestão na hipótese deste writ, para impugnação de ato de competência exclusiva da banca organizadora, já que, no caso examinado, não se pode atribuir ao Secretário nenhum ato concreto que tenha ferido o alegado direito líquido e certo da impetrante, não possuindo ingerência quanto à convocação para a prova de títulos, objeto da lide.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Neste sentido são os precedentes deste Tribunal por seu Órgão Especial:</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> DIREITO CIVIL E ADMINISTRATIVO. MANDADO DE SEGURANÇA. CONCURSO PÚBLICO (EDITAL Nº 001/2017-SEJUS). CANDIDATO ELIMINADO DO CERTAME. SOLICITAÇÃO DE ANULAÇÃO DE QUESTÃO POR SUPOSTO "ERRO GROSSEIRO". INDEFERIMENTO DO PEDIDO NA VIA ADMINISTRATIVA. MANDAMUS IMPETRADO CONTRA O SECRETÁRIO DE ESTADO E O DIRETOR DA BANCA ORGANIZADORA. ILEGITIMIDADE DO SECRETÁRIO. PRECEDENTE DESTE ÓRGÃO JULGADOR.

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	IMPOSSIBILIDADE DE ANÁLISE MERITÓRIA POR ESTE SODALÍCIO. REMESSA DOS AUTOS PARA UMA DAS VARAS DA FAZENDA PÚBLICA. I - Constata-se que o Secretário de Justiça e Cidadania do Estado do Ceará não é o responsável pelo ato apontado pelo autor como ilegal e/ ou abusivo, vez que o próprio edital, que faz lei entre os que o aderem, foi claro ao estabelecer quem era a autoridade responsável pela análise de recursos de questões. II - Assim, reconhecendo a ilegitimidade do Ilmo. Sr. Secretário de Justiça e Cidadania do Estado do Ceará para compor o polo passivo do presente madamus, impossível é a apreciação meritória por este Tribunal de Justiça, bem como por este Órgão Julgador, devendo os autos serem remetidos para o 1º Grau de Jurisdição e distribuídos, por sorteio, para umas das Unidades Jurisdicionais. III – Ilegitimidade do Tribunal de Justiça do Estado do Ceará. Remessa dos autos para o primeiro grau de jurisdição. ACÓRDÃO Vistos, relatados e discutidos o Mandado de Segurança de nº 0620559-57.2018.8.06.0001, acorda o ÓRGÃO ESPECIAL, do Egrégio Tribunal de Justiça do Ceará, a unanimidade, declarar a incompetência deste Sodalício para processar e julgar o presente writ, bem como determinar a remessa dos autos para o 1º Grau de Jurisdição, tudo em conformidade com o voto da relatora. MARIA VILAUBA FAUSTO LOPES Desembargadora Relatora(Mandado de Segurança Cível - 0620559-57.2018.8.06.0000, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, Órgão Especial, data do julgamento: 28/03/2019, data da publicação: 28/03/2019)</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> No mesmo sentido: Mandado de Segurança Cível - 0002789-27.2023.8.06.0000, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, Órgão Especial, data do julgamento: 24/08/2023, data da publicação: 24/08/2023; Mandado de Segurança Cível - 0004227-88.2023.8.06.0000, Rel. Desembargador(a) FRANCISCO EDUARDO TORQUATO SCORSAFAVA, Órgão Especial, data do julgamento: 16/11/2023, data da publicação: 16/11/2023; Mandado de Segurança Cível nº 0620231-88.2022.8.06.0000, Rel. Desembargador(a) DURVAL AIRES FILHO, Órgão Especial, data do julgamento: 26/05/2022, data da publicação: 26/05/202.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> E sob a minha Relatoria também no Órgão Especial: Mandado de Segurança Cível - 0219185-92.2023.8.06.0001, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, Órgão Especial, data do julgamento: 01/02/2024, data da publicação: 02/02/2024.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Tem-se, então, uma vez que o Secretário Municipal do Planejamento, Orçamento e Gestão é parte ilegítima para figurar no polo passivo da lide, consequentemente, resta indevida a presença do Município de Fortaleza na condição de representante do referido Secretário Municipal, por lhe faltar legitimatio para tanto, sendo sua exclusão medida que se impõe nesta oportunidade.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Sendo assim, acolho a preliminar de ilegitimidade passiva do Secretário de Município de Fortaleza, excluindo-o do polo passivo do writ.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Quanto ao exame do mérito deste agravo, cumpre apenas, neste momento processual, verificar o acerto ou desacerto da decisão adversada.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Em juízo de prelibação, tenho que o Magistrado de origem agiu com acerto ao indeferir a liminar, em estrita observância ao Edital nº 01/2024, que regulamenta o concurso do IPLANFOR, sendo a lei do certame (Id. 89400956 dos autos principais).</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Para o cargo de Analista de Planejamento e Inovação – Área 08: Desenvolvimento Urbano (almejado pela autora), foram ofertadas 3 (três) vagas no total, sendo 2 (duas) de ampla concorrência, 1 (uma) para negros e nenhuma para PCDs (item. 2.3 do Edital).</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Consoante relatado, ela alcançou o 17º lugar na prova objetiva e o 10º lugar na fase subjetiva, porém não foi convocada para a prova de títulos.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Como bem observado pelo Juízo a quo, os itens 8.15.15.1 e 8.15.15.3 do edital tratam exclusivamente da possibilidade de&#160;corrigir a prova discursiva&#160;dos demais candidatos da listagem geral na

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	hipótese de inexistência de candidatos com deficiência ou candidatos negros em número suficiente.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> A seguir, colaciono os itens citados:</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> 8.15. DA PROVA DISCURSIVA</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> [...]</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> 8.15.15. Para cada cargo/área, será corrigida a prova discursiva dos candidatos mais bem classificados nas provas objetivas, de acordo com os quantitativos especificados no quadro a seguir, respeitados os empates na última posição:</p><table class="MsoTableGrid" style="width: 425px; margin-left: 4cm; border-collapse: collapse; border: none; text-align: justify;" border="1" cellspacing="0" cellpadding="0"> <tbody> <tr> <td style="width: 96.4pt; border: solid windowtext 1.0pt; mso-border-alt: solid windowtext .5pt; padding: 0cm 5.4pt 0cm 5.4pt;" width="129" valign="top"> <p class="MsoNormal" style="text-align: center; text-indent: 0cm; line-height: 200%;" align="center"> CARGO </p> </td> <td style="width: 87.9pt; border: solid windowtext 1.0pt; border-left: none; mso-border-left-alt: solid windowtext .5pt; mso-border-alt: solid windowtext .5pt; padding: 0cm 5.4pt 0cm 5.4pt;" width="117" valign="top"> <p class="MsoNormal" style="text-align: center; text-indent: 0cm; line-height: 200%;" align="center"> AMPLA CONCORRÊNCIA </p> </td> <td style="width: 71.4pt; border: solid windowtext 1.0pt; border-left: none; mso-border-left-alt: solid windowtext .5pt; mso-border-alt: solid windowtext .5pt; padding: 0cm 5.4pt 0cm 5.4pt;" width="95" valign="top"> <p class="MsoNormal" style="text-align: center; text-indent: 0cm; line-height: 200%;" align="center"> CANDIDATOS COM DEFICIÊNCIA </p> </td> <td style="width: 63.0pt; border: solid windowtext 1.0pt; border-left: none; mso-border-left-alt: solid windowtext .5pt; mso-border-alt: solid windowtext .5pt; padding: 0cm 5.4pt 0cm 5.4pt;" width="84" valign="top"> <p class="MsoNormal" style="text-align: center; text-indent: 0cm; line-height: 200%;" align="center"> PESSOAS NEGRAS* </p> </td> </tr> <tr> <td style="width: 96.4pt; border: solid windowtext 1.0pt; border-top: none; mso-border-top-alt: solid windowtext .5pt; mso-border-alt: solid windowtext .5pt; padding: 0cm 5.4pt 0cm 5.4pt;" width="129" valign="top"> <p class="Default" style="text-align: center;" align="center"> ANALISTA DE PLANEJAMENTO E INOVAÇÃO – ÁREA 8: DESENVOLVIMENTO URBANO </p> <p class="MsoNormal" style="text-indent: 0cm; line-height: 200%;"> &#160; </p> </td> <td style="width: 87.9pt; border-top: none; border-left: none; border-bottom: solid windowtext 1.0pt; border-right: solid windowtext 1.0pt; mso-border-top-alt: solid windowtext .5pt; mso-border-left-alt: solid windowtext .5pt; mso-border-alt: solid windowtext .5pt; padding: 0cm 5.4pt 0cm 5.4pt;" width="117" valign="top"> <p class="MsoNormal" style="text-align: center; text-indent: 0cm; line-height: 200%;" align="center"> 16 </p> </td> <td style="width: 71.4pt; border-top: none; border-left: none; border-bottom: solid windowtext 1.0pt; border-right: solid windowtext 1.0pt; mso-border-top-alt: solid windowtext .5pt; mso-border-left-alt: solid windowtext .5pt; mso-border-alt: solid windowtext .5pt; padding: 0cm 5.4pt 0cm 5.4pt;" width="95" valign="top"> <p class="MsoNormal" style="text-align: center; text-indent: 0cm; line-height: 200%;" align="center"> 5 </p> </td> <td style="width: 63.0pt; border-top: none; border-left: none; border-bottom: solid windowtext 1.0pt; border-right: solid windowtext 1.0pt; mso-border-top-alt: solid windowtext .5pt; mso-border-left-alt: solid windowtext .5pt; mso-border-alt: solid windowtext .5pt; padding: 0cm 5.4pt 0cm 5.4pt;" width="84" valign="top"> <p class="MsoNormal" style="text-align: center; text-indent: 0cm; line-height: 200%;" align="center"> 16 </p> </td> </tr> </tbody></table><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> <span style="font-size:

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	10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">&#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> 8.15.15.1. Caso o número de candidatos que tenham se declarado pessoa com deficiência ou se autodeclarado negro, aprovados nas provas objetivas, seja inferior ao quantitativo estabelecido no subitem 8.15.15 deste edital, será corrigida a prova discursiva dos candidatos da ampla concorrência posicionados nas provas objetivas até os limites de correções por cargo/área estabelecidos no referido subitem, respeitados os empates na última colocação.</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> [...]</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> 8.15.15.3. Não havendo candidatos que se declararam pessoas com deficiência ou candidatos negros aprovados na prova objetiva, em quantidade suficiente para suprir os quantitativos previstos no subitem 8.15.15 deste edital, serão corrigidas a prova discursiva dos demais candidatos da listagem geral de aprovados e classificados na prova objetiva, até o limite de correções de que trata referido subitem 8.15.15., respeitados os empates na última colocação.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Já o item 9.2 dispõe especificamente sobre a fase de títulos, fazendo menção ao item 8.15.15 tão somente para utilizar o quantitativo de candidatos nele previsto. Veja-se:</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> 9. DA PROVA DE TÍTULOS</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> [...]</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> 9.2. Serão convocados para participar da Prova de Títulos os candidatos que obtiverem a aprovação na prova discursiva e estiverem classificados dentro do quantitativo equivalente a 50% (cinquenta por cento) dos quantitativos previstos no subitem 8.15.15 deste edital, por cargo/área e modalidade de concorrência.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Segundo interpretação da insurgente, “o item 9.2 do edital determinou que fossem convocados para a prova de títulos (terceira fase) 50% dos APROVADOS na prova discursiva (segunda fase), e não 50% dos que dela participaram. Não existe lógica o remanejamento das vagas sobressalentes dos candidatos pretos e PCDs para a ampla concorrência na primeira fase do concurso, se depois seria retomada a quantidade de vagas originalmente ofertadas”.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Ocorre que, como já mencionado, o item 9.2 estabeleceu a convocação de 50% do número da tabela do item 8.15.15, ou seja, deveriam ser convocados 8 (oito) dos 16 (dezesseis) candidatos de ampla concorrência e assim por diante. Como a agravante logrou o 10º lugar, não figurou na lista de convocação para a etapa de títulos.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Desse modo, não vejo como se estender à fase de títulos uma disposição editalícia específica de outra fase (prova discursiva), realizando verdadeira interpretação extensiva do edital para beneficiar a candidata, o que equivaleria a indevida incursão do Poder Judiciário no mérito Administrativo, em violação ao princípio da Separação dos Poderes.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Ademais, de acordo com o entendimento do Supremo Tribunal Federal, é constitucional a denominada cláusula de barreira (Tema 376), regra inserida no edital de concurso público com o intuito de selecionar apenas os

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	candidatos com melhor classificação para prosseguir no certame.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Confira-se precedente do STF:</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> AGRAVO INTERNO EM RECURSO ORDINÁRIO EM MANDADO DE SEGURANÇA. DIREITO ADMINISTRATIVO. CONCURSO PÚBLICO. CLÁUSULA DE BARREIRA. CORREÇÃO DE PROVA DISCURSIVA. CANDIDATO EXCEDENTE. ELIMINAÇÃO. ALEGAÇÃO DE PRETERIÇÃO. INEXISTÊNCIA. AUSÊNCIA DE DIREITO LÍQUIDO E CERTO. REAVALIAÇÃO DAS PROVAS PRODUZIDAS. PRETENSÃO QUE EXTRAPOLA A VIA MANDAMENTAL. AGRAVO INTERNO DESPROVIDO. 1. As cláusulas de barreira em concurso público, para seleção dos candidatos mais bem classificados para prosseguir no certame, têm amparo constitucional, consoante a tese de repercussão geral fixada pelo Plenário do Supremo Tribunal Federal no julgamento do Recurso Extraordinário 635.739 (Rel. Min. Gilmar Mendes, DJe de 3/10/2014, Tema 376). 2. O surgimento, a posteriori, de cargos efetivos durante o prazo de validade do concurso público não gera direito subjetivo à correção da prova discursiva de candidato desclassificado do certame em virtude de cláusula de barreira. 3. O Superior Tribunal de Justiça negou seguimento ao writ originário sob o fundamento de que a nomeação de candidatos aprovados fora do número de vagas não gera direito subjetivo à correção de prova discursiva de candidato desclassificado, posto inexistente qualquer preterição. 4. In casu, a agravante (i) não alcançou a nota mínima, estabelecida em edital, necessária à correção de prova discursiva para sua continuidade no concurso público e (ii) não integra a lista de cadastro de reserva do certame. Ausente, portanto, qualquer preterição ou ilegalidade praticada pela autoridade administrativa. 5. Agravo interno DESPROVIDO. (RMS 36544 AgR, Relator(a): LUIZ FUX, Primeira Turma, julgado em 03-04-2020, PROCESSO ELETRÔNICO DJe-097 DIVULG 22-04-2020 PUBLIC 23-04-2020. Destaquei)</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> E desta Corte Estadual:</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; line-height: 200%; text-align: justify;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">CONCURSO PÚBLICO. CONVOCAÇÃO PARA ANÁLISE DE TÍTULOS. CLÁUSULA DE BARREIRA. PREVISÃO EDITALÍCIA. INEXISTÊNCIA DE DIREITO LÍQUIDO E CERTO. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA CONFIRMADA. MANUTENÇÃO DA DENEGAÇÃO DA ORDEM PLEITEADA NO WRIT. 1. Trata-se, in casu, de apelação cível em mandado de segurança, por meio da qual o impetrante busca reformar sentença proferida pelo Juízo da 3ª Vara da Fazenda Pública de Fortaleza, que denegou a segurança requestada, objetivando prosseguir no concurso público da Fundação Regional de Saúde - FUNSAÚDE, regulado pelo Edital nº 01/2021, no qual concorre ao cargo de Cirurgião Dentista – Odontologia Hospitalar, e, assim, lograr participação na fase de avaliação de títulos.&#160; 2. Ora, a Administração, no exercício do seu poder discricionário, tem a prerrogativa de instituir as chamadas "cláusulas de barreira" em concurso público, limitando, com fundamento em critérios objetivos, o número de candidatos que participarão de suas fases seguintes. 3. Todavia, não se pode olvidar que o princípio da legalidade deve nortear a atuação da Administração, sendo, excepcionalmente, admitida a intervenção do Judiciário, nos casos de inobservância de tal baliza. 4. Na hipótese, foram anunciadas pela FUNSAÚDE, no total, 14 (quatorze) vagas para candidatos ao cargo de Cirurgião Dentista – Odontologia Hospitalar, sendo 10 (dez) vagas para a ampla concorrência, 1 (uma) vaga reservada para PCD e 3 (três) vagas para negros (item 3.1 – fls. 18 – ID 7510906), tendo o impetrante concorrido nas vagas destinadas a candidatos negros e a pessoas com deficiência. 5. Consoante o item 12.1 do Edital nº 01/2021, os candidatos aprovados até o limite de 3 (três) vezes o número de vagas ofertadas em cada lista de classificação teriam seus títulos avaliados. 6. Ocorre que, de acordo com o resultado definitivo da prova objetiva para o cargo de Cirurgião Dentista – Odontologia Hospitalar, o impetrante restou classificado em 9º lugar na categoria pessoas com deficiência (PCD), e em 28º lugar na categoria candidatos negros, confirmado pelo próprio impetrante em suas razões recursais. 7. Desta forma, não há nenhum ato ilegal a ser afastado, uma vez que o impetrante encontra-se fora do limite (cláusula de barreira) dos candidatos aptos a terem seus títulos avaliados. 8. Consequentemente, se não há direito líquido e certo devidamente comprovado nos autos pelo impetrante, inviabiliza-se sua pretensão mandamental. -

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	Precedentes.&#160; - Apelação conhecida e não provida. - Sentença confirmada. (TJCE. APELAÇÃO CÍVEL - 02188232720228060001, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 19/12/2023. Destaquei)</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Destarte, verifica-se que o próprio edital veiculou a regulamentação dos parâmetros objetivos que nortearam a realização de suas fases, não tendo a autora satisfeito cumulativamente os requisitos necessários para ser aprovada na fase de títulos do concurso.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Ademais, como é cediço, o edital faz lei entre as partes e deve ser cumprido fielmente tanto pelo ente público quanto pelos cidadãos que a ele se submetem, salvo se houver previsão de cláusula ilegal ou inconstitucional, o que não é o caso dos autos, por ser possível limitar o acesso dos candidatos aprovados com base em critérios objetivos relacionados ao desempenho dos participantes.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Diante do exposto, conheço do recurso para negar-lhe provimento, mantendo incólume a decisão de primeiro grau.</p><p class="MsoNormal" style="text-indent: 3.0cm; line-height: 200%;"> &#160; É como voto.</p><p class="MsoNormal" style="text-indent: 3.0cm; line-height: 200%;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	49
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Rescisão
Polo ativo	MUNICIPIO DE IGUATU - CAMARA MUNICIPAL
Advogado(s) - Polo ativo	JOSE MARQUES EVANGELISTA JUNIOR - (CE24048-A)
Polo passivo	NAYRON BRAGA SOCIEDADE INDIVIDUAL DE ADVOCACIA
Advogado(s) - Polo passivo	NAYRON BRAGA DA COSTA - (CE37525-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0628471-95.2024.8.06.0000
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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;0628471-95.2024.8.06.0000 -&#160;AGRAVO DE INSTRUMENTO (202)</p><p> AGRAVANTE: MUNICIPIO DE IGUATU - CAMARA MUNICIPAL</p><p> AGRAVADO: NAYRON BRAGA SOCIEDADE INDIVIDUAL DE ADVOCACIA</p><p> A4</p><p>   <br /> </p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> EMENTA: PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO EM AÇÃO ANULATÓRIA. DECISÃO AGRAVADA QUE CONCEDEU LIMINAR NO SENTIDO DE RESTABELECER OS EFEITOS LEGAIS DA ASSESSORIA JURÍDICA CONTRATADA PELO ENTE MUNICIPAL. EXISTÊNCIA DE PROCURADORIA. ATIVIDADES GENÉRICAS QUE NÃO APRESENTAM PECULIARIDADES OU COMPLEXIDADES INCOMUNS. PRECEDENTES. PREENCHIMENTO DOS REQUISITOS. RECURSO CONHECIDO E PROVIDO. DECISÃO

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	REFORMADA.</p><p class="EmentadoAcrdo" style="margin-top: 11.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> I. Caso em exame </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> 1. Tratam os autos&#160;de&#160; Agravo de Instrumento interposto pela Câmara Municipal de Iguatu, contra decisão proferida pelo Juízo da 2ª Vara Cível da Comarca de Iguatu nos autos da Ação Anulatória nº 3000864-26.2024.8.06.0091 ajuizada por Nayron Braga Sociedade Individual de Advocacia. </p><p class="EmentadoAcrdo" style="margin-top: 11.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> II. Questão em discussão </p><p class="EmentadoAcrdo" style="margin-top: 11.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 2. Necessário aferir o (des)acerto da decisão que determinou o restabelecimento de todos os efeitos legais do contrato administrativo nº 2023.03.13.01 – CAM/Iguatu – CE, inclusive, com os respectivos pagamentos, o qual teve como objeto a contratação de serviços de consultoria e assessoria jurídica em várias áreas do direito público.</p><p class="EmentadoAcrdo" style="margin-top: 11.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> III. Razões de decidir </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> 3.1. Sabe-se que a existência de quadro próprio de procuradoria municipal, por si só, não é fato impeditivo à contratação de auxílio externo de escritório de advocacia, desde que devidamente demonstrada sua necessidade. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> 3.2. No caso dos autos, verifica-se, no entanto, que não está satisfatoriamente evidenciada a pertinência da continuidade de tal contratação a ponto de justificar a interferência do Judiciário, mormente diante da existência de Procuradoria Jurídica no âmbito Câmara Municipal de Iguatu e de procedimento administrativo de rescisão unilateral do contrato n. 2023.03.13.01–CAM/Iguatu–CE, considerando ainda o trâmite da Ação Anulatória ajuizada pelo escritório de advocacia, que ainda se encontra em fase se instrução, demonstrando a probabilidade do direito invocado.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> 3.3. Por outro lado, o periculum in mora também se faz evidente, na medida em que a continuidade da decisão que determinou o imediato restabelecimento de todos os efeitos legais do referido contrato administrativo poderá acarretar danos irreparáveis ou de difícil reparação ao erário, decorrentes da continuidade de uma possível contratação indevida e, por consequência, da realização de despesas desnecessárias, por parte de ente público municipal.</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.4. Jurisprudência relevante foi citada para corroborar que somente vem sendo admitida a contratação de serviços de advocacia pela Administração Pública em casos excepcionais, o que não se vislumbra nos autos, pelo menos nessa estreita via recursal.</p><p class="EmentadoAcrdo" style="margin-top: 11.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> IV. Dispositivo e tese </p><p class="EmentadoAcrdo" style="margin-top: 11.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 4. Agravo de Instrumento conhecido e provido para suspender o restabelecimento de todos os efeitos legais do contrato administrativo nº 2023.03.13.01 – CAM/Iguatu – CE, até decisão final no processo de origem quanto à legalidade/necessidade de continuidade de contratação ora em debate. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Dispositivos relevantes citados: Constituição Federal, art. 2º; CPC - art. 300, § 3º.</p><p class="EmentadoAcrdo" style="margin-top: 13.9pt; margin-right: 0cm; margin-bottom: 13.9pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Jurisprudência relevante citada:&#160;STF - ARE 1028435 AgR, Relator(a): DIAS TOFFOLI, Segunda Turma, julgado em 30-06-2017, PROCESSO ELETRÔNICO DJe-178 DIVULG 14-08-2017 PUBLIC 15-08-2017; STJ- AgInt na SLS:

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	3277 SP 2023/0146889-2, Relator: Ministra MARIA THEREZA DE ASSIS MOURA, Data de Julgamento: 12/09/2023, CE - CORTE ESPECIAL, Data de Publicação: DJe 15/09/2023, STJ - Súmula nº 525, AgRg na SLS: 1880 PI 2014/0085079-0, Relator: Ministro FELIX FISCHER, Data de Julgamento: 21/05/2014, CE - CORTE ESPECIAL, Data de Publicação: DJe 29/05/2014; TJCE - Apelação Cível - 0003620-05.2019.8.06.0101, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento:&#160; 25/01/2023, data da publicação:&#160; 25/01/2023, Apelação Cível - 0000046-21.2017.8.06.0205, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 31/01/2022, data da publicação: 31/01/2022, Agravo de Instrumento - 0622444-43.2017.8.06.0000, Rel. Desembargador(a) ROSILENE FERREIRA FACUNDO - PORT. 1392/2018, 3ª Câmara Direito Público, data do julgamento:&#160; 25/10/2019, data da publicação: 25/10/2019.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>MERGEFIELD &quot;&Oacute;rg&atilde;o Julgador#Retorna o nome da vara onde est&aacute; o processo=8@PROC&quot;<![endif]--> 3ª Câmara Direito Público<!--[if supportFields]><![endif]--> do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Agravo de Instrumento para dar-lhe provimento, nos termos do voto do relator.</p><p class="EmentadoAcrdo" style="margin-top: 11.9pt; text-align: center; line-height: 150%;" align="center"> Fortaleza, data e hora indicadas pelo sistema.</p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 150%;" align="center"> &#160;</p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 150%;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;<![endif]--> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES<!--[if supportFields]><![endif]--> </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 150%;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC&quot;<![endif]--> Relator<!--[if supportFields]><![endif]--> </p><p class="MsoNormal" style="margin-top: 2.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 0cm; text-align: center; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> &#160; </p><p class="MsoNormal" style="margin-top: 2.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 0cm; text-align: center; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-

Processo	0628471-95.2024.8.06.0000
	align: none; text-autospace: none;"> Trata-se de Agravo de Instrumento interposto pela Câmara Municipal de Iguatu, contra decisão proferida pelo Juízo da 2ª Vara Cível da Comarca de Iguatu nos autos da Ação Anulatória nº 3000864-26.2024.8.06.0091 ajuizada por Nayron Braga Sociedade Individual de Advocacia. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;<strong style="font-size: small; text-indent: 70.9pt;">Decisão agravada (Id nº 85131029 – autos de origem): o Juízo a quo concedeu a tutela pleiteada, nos seguintes termos:</p><p class="western" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “DIANTE DO EXPOSTO, DEFIRO o pedido de tutela provisória de urgência, para o fim de determinar que a Câmara Municipal de Iguatu restabeleça todos os efeitos legais do contrato administrativo nº 2023.03.13.01 – CAM/Iguatu – CE, inclusive com os respectivos pagamentos, até o término normal do prazo de 12 (doze) meses, sob pena de multas diárias no valor de R$ 1.000,00 (mil reais) por dia de descumprimento, limitado ao valor de R$ 10.000,00 (dez mil reais) e sem prejuízo da responsabilidade pessoal do gestor.”. &#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Razões recursais (Id nº 13162564): em síntese, o pleito recursal consiste em pedido de efeito suspensivo ativo da mencionada decisão proferida pelo Juízo a quo, que concedeu a tutela de urgência requerida pelo agravado, determinando, assim, o imediato restabelecimento de todos os efeitos legais do contrato administrativo nº 2023.03.13.01 – CAM/Iguatu – CE, inclusive, com os respectivos pagamentos, o qual teve como objeto a contratação de serviços de consultoria e assessoria jurídica em várias áreas do direito público.</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Decisão inicial para imediata migração do presente recurso ao sistema "PJe 2G", com as respectivas baixas/cancelamentos no sistema SAJSG (Id nº 13162561).</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Após a migração, recurso recebido, em seu plano formal, sendo deferido o pleito de tutela recursal (Id 13312801). </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Contrarrazões junto ao Id 13562574.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Parecer da&#160; Procuradoria-Geral de Justiça pelo conhecimento do recurso, porém, sem se pronunciar sobre o mérito, por entender desnecessária a sua intervenção (Id 14108984).</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Nova manifestação da parte agravada (Id 15391822).</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> É o relatório, do necessário. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> &#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> VOTO &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-

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	ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;Presentes os requisitos de admissibilidade, conheço do recurso. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;Destaque-se que o foco da presente análise, dada a própria natureza do agravo de instrumento, e em observância aos princípios do contraditório, ampla defesa e devido processo legal, não abrange, neste momento processual, uma apreciação meritória definitiva acerca da questão discutida, que deve ficar restrita ao que foi decidido em interlocutória, a qual, pode, inclusive, ser reformada pelo juízo a quo em retratação. </p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> De início, reafirmo que embora se reconheça que a Câmara Municipal não possua personalidade jurídica própria, caracterizando-se como órgão pertencente à estrutura do Município, em determinadas hipóteses, o ordenamento jurídico e jurisprudência <!--[if !supportFootnotes]--> [1] <!--[endif]--> pátria têm atribuído a esses entes personalidade judiciária, possibilitando-lhes exercer a defesa em juízo das prerrogativas que justificam sua existência.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;Consoante já relatado, depreende-se dos autos que a ação de origem diz respeito à Ação Anulatória ajuizada por escritório de advocacia com intuito de anular a rescisão unilateral do contrato de advocacia celebrado entre as partes (Contrato nº 2023.03.13.01), sob o argumento de que as razões indicadas não condizem com a realidade, bem como porque a rescisão seria ilegal, arbitrária e maculadora da ampla defesa e do contraditório. </p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Analisando detidamente a decisão interlocutória combatida, observa-se que o Juízo&#160; a quo&#160;acatou o argumento do escritório de advocacia contratado e fundamentou o restabelecimento de todos os efeitos do contrato em apreço firmado com a Câmara Municipal de Iguatu, baseando-se nos seguintes pontos: (i) na plausibilidade da existência do direito invocado, cabendo ao juiz avaliar a existência de elementos que sustentem a conjuntura fática invocada pela parte, o que se evidencia pelos documentos trazidos pelo autor, nos quais demonstram que tentou obter acesso aos projetos de lei antes de serem submetidos ao processo legislativo, de acordo com os prints e imagens anexado; (ii) perigo de dano (art. 300, NCPC), pois, em sendo rescindido o contrato de forma arbitrária, o autor perderá vantagens financeiras e maculará sua imagem profissional por erros ora imputados aos quais, de forma preliminar, não cometera;&#160; (iii) por fim, no que pertine à ausência de irreversibilidade dos efeitos da decisão (art. 300, § 3º, NCPC), vê-se que tal requisito também está presente, haja vista que, caso a parte autora não seja vencedora na presente ação, a tutela antecipada a ser concedida nestes autos poderá facilmente ser revertida, voltando à situação anterior com a eventual cobrança dos valores porventura disponibilizados ao autor.</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Em contrapartida, a agravante aduz que a rescisão se deu por dois motivos: i) não cumprimento de cláusulas contratuais; e ii) interesse público e conveniência: criação da procuradoria jurídica da câmara municipal de Iguatu.</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Pois bem. Neste ato, reafirmo que identifiquei fundados indícios de equívoco na decisão prolatada.</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Ressalte-se que compete ao Poder Judiciário, consoante entendimento doutrinário e jurisprudencial, realizar controle de legalidade e constitucionalidade dos atos administrativos, sendo-lhe vedado se imiscuir nas opções políticas do administrador, substituindo-o e fazendo as escolhas que a lei faculta tão somente à Administração, não podendo reavaliar, via de regra, critérios de conveniência e oportunidade, denominado mérito administrativo, que são privativos do administrador público, uma vez que o julgamento sob aludido prisma do ato administrativo usurpa competência da

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	administração, além de malferir o princípio da separação dos poderes, constitucionalmente consagrado, art. 2º da CF/88.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Nesse trilhar, sabe-se que a existência de quadro próprio de procuradoria municipal, por si só, não é fato impeditivo à contratação de auxílio externo de escritório de advocacia, desde que devidamente demonstrada sua necessidade.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Todavia, diante da documentação carreada aos autos, verifica-se que não está satisfatoriamente evidenciada a pertinência da continuidade de tal contratação a ponto de justificar a interferência do Judiciário , mormente diante da existência de Procuradoria Jurídica no âmbito Câmara Municipal de Iguatu e de procedimento administrativo de rescisão unilateral do contrato n. 2023.03.13.01–CAM/Iguatu–CE, considerando ainda o trâmite da Ação Anulatória ajuizada pelo escritório de advocacia, que ainda se encontra em fase de instrução, demonstrando a probabilidade do direito invocado .</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Oportuno apontar que ao compulsar os autos, verifica-se a existência de uma explanação genérica para contratação, mediante acompanhamento de demandas jurídicas e elaboração de pareceres, da qual não se pode aferir sua efetiva e concreta necessidade/singularidade para a Câmara Municipal, em especial, a partir do momento em que foi instalada Procuradoria jurídica.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Sobre a necessidade de demonstração de situação específica e idônea para a contratação de advogados alheios aos quadros da Administração Pública, merecem destaque os ensinamentos de Marçal Justen Filho, in verbis: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> “A terceirização dos serviços advocatícios representa um grande risco para a atuação eficiente da Administração Pública. Portanto e como regra, a melhor solução é a manutenção de advogados contratados permanentemente, sob vínculo trabalhista ou estatutário (conforme o caso). A seleção desses profissionais deve fazer-se através de concurso. Dispondo dessa estrutura de prestação profissional, a Administração poderá recorrer eventualmente à contratação de profissionais alheios a seus quadros, em face de causas específicas ou litígios especializados. A natureza singular do serviço advocatício caracterizar-se-á em virtude da presença de requisitos de diferente natureza: a complexidade da questão, a especialidade da matéria, a sua relevância econômica, o local em que exercitará a atividade, o grau de jurisdição e assim por diante. Nada impede que a singularidade derive da complexidade do conjunto de atividades e tarefas: individualmente, cada atuação poderia ser considerada como normal e comum, mas existem centenas ou milhares de processos e a singularidade decorre dessa circunstância quantitativa. É difícil sistematizar todos os eventos que podem conduzir à inviabilidade de competição. A dificuldade é causada pela complexidade do mundo real, cuja riqueza é impossível de ser delimitada através de regras legais” (Comentários à lei de licitações e contratos administrativos. 14. ed. Rio de Janeiro: Dialética. p. 357 e ss). <strong style="text-indent: 70.85pt;"> &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Por outro lado, o periculum in mora também se faz evidente, na medida em que a continuidade da decisão que determinou o imediato restabelecimento de todos os efeitos legais do contrato administrativo nº 2023.03.13.01 – CAM/Iguatu – CE poderá acarretar danos irreparáveis ou de difícil reparação ao erário, decorrentes da continuidade de uma possível contratação indevida e, por consequência, da realização de despesas desnecessárias, por parte de ente público municipal. </p><p

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	class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> É cediço que não cabe ao Poder Judiciário, a pretexto de realizar o controle de atos legislativos, imiscuir-se nas atribuições&#160; interna corporis&#160;da Casa Legislativa, sob pena de violação ao princípio da separação dos Poderes, segundo pacífica jurisprudência no STF <!--[if !supportFootnotes]--> [2] <!--[endif]--> .</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Desse modo, em análise de referidas disposições em cotejo com o que existe nos autos, não se depreende, pelo menos nessa via estreita recursal , que o procedimento de rescisão padeceu de ilegalidade, o que será melhor analisado após a devida instrução processual nos autos da Ação Anulatória.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Outro não tem sido o entendimento das Câmaras de Direito Público do presente Tribunal, ao analisarem casos similares, mutatis mutandis: &#160;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> <em> <span style="font-size: x-small;">APELAÇÃO. CONSTITUCIONAL E ADMINISTRATIVO. AÇÃO CIVIL PÚBLICA. CONTRATAÇÃO DE ESCRITÓRIO DE ADVOCACIA. ANULAÇÃO DO CONTRATO DE PRESTAÇÃO DE SERVIÇOS ADVOCATÍCIOS. APELO CONHECIDO E DESPROVIDO. 1. Cuida-se de Apelação nos autos da Ação Civil Pública com pedido de tutela de urgência interposta pelo Ministério Público do Estado do Ceará em desfavor do Município de Itapipoca e Felisberto &amp; Tavares Advogados, em cujo feito restou julgado procedente o pedido, confirmando a tutela dantes concedida, no sentido de anular o contrato, objeto dos autos, determinando a abstenção do ente público de efetuar outra contratação de advogado ou escritório para prestar serviços de assessoria ou consultoria jurídica na Administração Pública. 2.A demanda aqui trazida versa sobre o contrato de prestação de serviços firmado entre o escritório Felisberto &amp; Tavares Advogados e o Município de Itapipoca voltado a prestação de serviços de assessoria e consultoria jurídica especializada junto à Secretaria de Governo e Articulação. O valor total da contratação era de R$ 114.000,00 (cento e quatorze mil reais) no prazo de 12 (doze) meses, podendo ser renovado. 3. Sem olvidar de que a contratação ocorrera mediante prévio procedimento licitatório, o certo é que o Município de Itapipoca é composto por membros que, mediante concurso público, ingressaram na carreira jurídica como determina a Constituição Federal. Ademais, o art. 2º, da Lei Municipal nº 06/1998, estabelece a competência da Procuradoria Geraldo Município que, dentre outras atribuições, envolve demanda judicial nas ações cíveis, trabalhistas, de acidentes de trabalho, falimentares, nos processos especiais, exercendo funções de consultoria jurídica do executivo e dos órgão da Administração Direta do Município. 4. Em outras palavras, os serviços contratados são inerentes às atividades desenvolvidas pela Procuradoria do Município de Itapipoca, circunstância que rechaça a necessidade de contratação de novos advogados. 5. Apelo conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do Apelo, mas para negar-lhe provimento, nos termos do voto da relatora. Fortaleza, dia e hora registrados no sistema. Desembargadora MARIA IRANEIDE MOURA SILVA Presidente do Órgão Julgador e Relatora (Apelação Cível - 0003620-05.2019.8.06.0101, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento:&#160; 25/01/2023, data da publicação:&#160; 25/01/2023) </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> <em> <span style="font-size: x-small;">APELAÇÃO CÍVEL. AÇÃO CIVIL PÚBLICA. REALIZAÇÃO DE LICITAÇÃO PARA CONTRATAÇÃO DE SERVIÇOS ADVOCATÍCIOS SEM A DEMONSTRAÇÃO DE SUA EFETIVA NECESSIDADE. VIOLAÇÃO PELO MUNICÍPIO DE PALHANO/CE DOS PRINCÍPIOS DA LEGALIDADE, MORALIDADE, PROPORCIONALIDADE E EFICIÊNCIA. DECRETAÇÃO DE NULIDADE DE TODO O PROCEDIMENTO PELO MAGISTRADO DE PRIMEIRO GRAU. POSSIBILIDADE. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA INTEGRALMENTE CONFIRMADA. 1. Trata-se, no presente caso, de Apelação Cível, buscando a reforma de sentença em que o magistrado de primeiro grau concluiu pela

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	procedência de ação civil pública. 2. Foi devolvida a este Tribunal a controvérsia em torno da legalidade da licitação instaurada pelo Município de Palhano/CE, para "contratação de serviços técnicos profissionais de advocacia consistentes na assessoria e consultoria jurídica no acompanhamento de processos e realização de defesas dos interesses municipais, junto aos Tribunais de 2ª Instância (TRT7, TJCE e TRF5), Tribunais Especiais (STJ e TST) e Supremo Tribunal Federal". 3. Ora, é verdade que a existência de quadro próprio de procuradores, por si só, não constitui fato impeditivo à contratação de auxílio externo de escritório de advocacia, desde que demonstrada sua efetiva necessidade. 4 . Ocorre que o Município de Palhano/CE, in casu, não se desincumbiu, satisfatoriamente, do seu ônus de demonstrar a pertinência da contratação, mormente sendo dotado de uma Procuradoria Jurídica estruturada em âmbito local, que poderia muito bem desempenhar os serviços licitados na Tomada de Preços nº 001/2017. 5. Com efeito, o termo de referência da contratação é bastante sucinto nesta parte, não se podendo inferir, a partir da motivação genérica apresentada pela Administração Pública, a efetiva necessidade dos serviços. 6. Assim, procedeu corretamente o magistrado de primeiro grau, quando decretou a nulidade da licitação (Tomada de Preços nº 001/2017), por violação aos princípios da legalidade, moralidade, proporcionalidade e eficiência, tão caros à Administração Pública, no exercício de seu mister. 7. Permanecem, portanto, inabalados os fundamentos da sentença, impondo-se sua confirmação neste azo. - Precedentes. - Apelação conhecida e não provida. - Sentença mantida. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0000046-21.2017.8.06.0205, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação interposta, para lhe negar provimento, mantendo inalterada a sentença, nos termos do voto da Relatora. Fortaleza, 31 de janeiro de 2022 DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora (Apelação Cível - 0000046-21.2017.8.06.0205, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 31/01/2022, data da publicação:&#160; 31/01/2022) </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> <em> <span style="font-size: x-small;">AGRAVO DE INSTRUMENTO. ADMINISTRATIVO. PROCESSUAL CIVIL. AÇÃO Civil Pública com pedido de tutela de urgência. Preliminar de inadmissibilidade do recurso por falta de documento obrigatório afastada. Mérito. suposta realização de licitação para contratação de serviços advocatícios sem a demonstração de sua efetiva necessidade. deferimento do provimento antecipatório pelo juiz de PRIMEIRO GRAU. suspensão do certame. Possibilidade. Preenchimento dos requisitos legais do art. 300 do CPC. recurso conhecido e desprovido. DECISÃO INTERLOCUTÓRIA mantida. 1. Tratam os autos de agravo de instrumento interposto pelo Município de Palhano, buscando a reforma de decisão interlocutória proferida pelo magistrado de primeiro grau que, em sede de ação civil pública proposta pelo Ministério Público, deferiu, liminarmente, a tutela antecipada requestada, suspendendo processo licitatório instaurado para a contratação de serviços de advocacia (Tomada de Preços nº 001/2017). 2. Afasto, de plano, a preliminar suscitada pelo Ministério Público de que o presente agravo de instrumento não poderia ser conhecido, por não ter sido instruído com documento obrigatório previsto no art. 1.017, I, do CPC, a saber: a contestação ou a declaração de sua inexistência. Isso porque, é facilmente constatado, a partir da leitura dos documentos que instruem os autos, que o Município de Palhano ainda não havia apresentado contestação quando da interposição do recurso. Assim, a meu ver, deve prevalecer o exame de mérito das suas razões em relação ao formalismo exacerbado, nos termos dos arts. 4º e 932, parágrafo único, do CPC. 3. Para a concessão da tutela provisória de urgência, deve ser observado o disposto no art. 300, caput, do Código de Processo Civil de 2015, isto é, a probabilidade do direito (fumus boni iuris), bem como o perigo de dano e/ou o risco ao resultado útil do processo (periculum in mora). 4. A probabilidade do direito invocado pelo autor/agravado se encontra demonstrada in casu, uma vez que, da análise preliminar da documentação carreada aos autos, há fortes indícios de que a realização da licitação ora questionada violaria os princípios da legalidade, moralidade, proporcionalidade e eficiência administrativa. Por outro lado, o periculum in mora também se faz evidente, na medida em que a demora na obtenção do provimento pleiteado na ação principal poderá acarretar danos irreparáveis ou de difícil reparação ao erário, decorrentes de uma possível contratação indevida e, por consequência, da realização de despesas desnecessárias, por parte de ente público municipal, que enfrenta situação de dificuldade financeira. 5. Diante de tal panorama, afigura-se perfeitamente possível e razoável, ainda que em sede de cognição sumária, a concessão de medida antecipatória da tutela de urgência, com ordem de imediata suspensão da Tomada de Preços nº 001/2017, até o deslinde da ação principal e decisão definitiva quanto à legalidade de referido certame licitatório pelo Poder Judiciário. 6. Permanecem, pois, inabalados os fundamentos da decisão interlocutória do Juízo a quo, impondo-se sua manutenção nesta oportunidade. - Decisão interlocutória mantida. Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 0622444-43.2017.8.06.0000, em que figuram as partes acima indicadas.

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	Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Agravo de Instrumento interposto, para afastar a preliminar suscitada e, no mérito, negar-lhe provimento, mantendo inalterada a decisão interlocutória proferida pelo magistrado de primeiro grau, nos termos do voto da Relatora. Fortaleza, 25 de outubro de 2019 JUÍZA CONVOCADA ROSILENE FERREIRA FACUNDO - PORT. 1392/2018 Relatora (Agravo de Instrumento - 0622444-43.2017.8.06.0000, Rel. Desembargador(a) ROSILENE FERREIRA FACUNDO - PORT. 1392/2018, 3ª Câmara Direito Público, data do julgamento:&#160; 25/10/2019, data da publicação:&#160; 25/10/2019) </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> AGRAVO INTERNO. SUSPENSÃO DE LIMINAR E DE SENTENÇA. GRAVE LESÃO À ORDEM E À ECONOMIA PÚBLICAS. AUSÊNCIA DE DEMONSTRAÇÃO. PROPOSIÇÃO COMO SUCEDÂNEO RECURSAL. INVIABILIDADE. INDEFERIMENTO DO PEDIDO. AGRAVO IMPROVIDO. 1. O deferimento do pedido de suspensão está condicionado à demonstração de que a manutenção da decisão impugnada causa efetiva e grave lesão à ordem, à saúde, à segurança ou à economia públicas. 2. Na espécie, não se demonstrou, concretamente, de que forma a decisão, que anulou contrato de prestação de serviços advocatícios realizado sem prévia licitação e fixou o prazo de 120 dias para que fossem tomadas as providências necessárias referentes às atividades objeto do contrato, teria o potencial de causar lesão à ordem e à economia públicas. 3. A suspensão de segurança é medida excepcional, que não tem natureza jurídica de recurso, razão pela qual não admite a devolução do conhecimento da matéria de mérito da controvérsia para o eventual reexame ou reforma. 4. Agravo interno improvido. (STJ - AgInt na SLS: 3277 SP 2023/0146889-2, Relator: Ministra MARIA THEREZA DE ASSIS MOURA, Data de Julgamento: 12/09/2023, CE - CORTE ESPECIAL, Data de Publicação: DJe 15/09/2023) </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> <em> <span style="font-size: small;"> <span style="font-size: x-small;">AGRAVO REGIMENTAL NA SUSPENSÃO DE LIMINAR E SENTENÇA. GRAVE LESÃO À ORDEM E À ECONOMIA PÚBLICAS. INEXISTÊNCIA. AUSÊNCIA DE COMPROVAÇÃO DO DANO ALEGADO. PEDIDO DE SUSPENSÃO INDEFERIDO. AGRAVO REGIMENTAL DESPROVIDO. I - O agravante não demonstrou, de modo preciso e cabal, a grave lesão à ordem ou à economia pública, sendo insuficiente a mera alegação de que a manutenção do r. decisum atacado teria o condão de acarretar danos para o para o Estado. II - A existência de 370 (trezentos e setenta) processos judiciais com prazos processuais em andamento e audiências para serem realizadas ainda no ano de 2013, bem como a essencialidade do serviço público oferecido não dispensam os contornos legais relacionados ao ônus da prova e à pacífica exigência jurisprudencial, de cabal e precisa demonstração de potencial ou grave lesão aos bens tutelados pelas leis de regência do pedido de suspensão. III - Ademais, é necessário que o grave dano seja diretamente decorrente do decisum que se busca suspender. No presente caso não se especifica nem se demonstra que a suspensão de contrato de assessoria jurídica prestado por escritório de advocacia atinge diretamente o fornecimento de água e a expansão das redes de água e esgoto pela Concessionária ora interessada. IV - Concordo, ademais, com o posicionamento proferido por esta Corte Especial, nos autos do AgRg na SLS n.1353/PI, da relatoria do em. Ministro Ari Pargendler, de que a "lesão que autoriza a suspensão de medida liminar é a lesão grave, iminente ou atual". V - Assim, a hipótese suscitada de eventual responsabilização subsidiária do Ente Federativo em suposto inadimplemento de obrigação contratual não tem o potencial de lesionar a ordem econômica, já que a responsabilização da Administração, no momento, não passa de mera possibilidade. VI - Por fim, em razão da excepcionalidade da presente medida e por visualizar a existência de outros meios (processual e administrativo), ao alcance do Estado, capazes de minorar os efeitos práticos gerados pelo decisum de origem, entendo que o presente pedido não prospera. Agravo regimental desprovido. (STJ - AgRg na SLS: 1880 PI 2014/0085079-0, Relator: Ministro FELIX FISCHER, Data de Julgamento: 21/05/2014, CE - CORTE ESPECIAL, Data de Publicação: DJe 29/05/2014) &#160;</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> E de minha relatoria: Agravo de Instrumento nº 3000736-85.2024.8.06.0000, data do julgamento: 24/06/2024, data da publicação: 04/07/2024. &#160;</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Reitere-se ainda que somente vem sendo admitida a contratação de serviços de advocacia pela Administração Pública em casos excepcionais, o que não se vislumbra nos autos, pelo menos nessa estreita via recursal, a exemplo do que decidiu recentemente o STF junto ao REs&#160;610.523 e 656.558.</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Registro, por oportuno, que a tese de eventual

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	inconstitucionalidade do ato de criação de cargos comissionados junto à Procuradoria de Iguatu não foi objeto de análise da decisão ora impugnada, motivo pelo qual não será apreciada no presente recurso, sob pena de supressão de instância.</p><p class="western" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Ante o exposto, conheço do recurso, para dar-lhe provimento, reformando a decisão agravada no sentido de suspender o restabelecimento de todos os efeitos legais do contrato administrativo nº 2023.03.13.01 – CAM/Iguatu – CE, até decisão final no processo de origem quanto à legalidade/necessidade de continuidade de referida contratação.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> É como voto. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Expedientes necessários. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Fortaleza, data e hora indicadas pelo sistema. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p class="MsoNormal" style="margin-bottom: 0.0001pt; text-indent: 70.85pt; line-height: 150%; text-align: center;"> &#160; <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><div><!--[if !supportFootnotes]--><br /> <hr size="1" /><!--[endif]--> <div id="ftn1"> <p class="MsoFootnoteText" style="text-align: justify; text-justify: inter-ideograph;"> <!--[if !supportFootnotes]--> [1] <!--[endif]--> S. 525, STJ: a Câmara de Vereadores não possui personalidade jurídica, apenas personalidade judiciária, somente podendo demandar em juízo para defender os seus direitos institucionais. </p></div><div id="ftn2"> <p class="MsoFootnoteText" style="text-align: justify; text-justify: inter-ideograph;"> <!--[if !supportFootnotes]--> [2] <!--[endif]--> ARE 1028435 AgR, Relator(a): DIAS TOFFOLI, Segunda Turma, julgado em 30-06-2017, PROCESSO ELETRÔNICO DJe-178 DIVULG 14-08-2017 PUBLIC 15-08-2017. </p></div></div><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> <br /> </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3003360-10.2024.8.06.0000
Número de ordem	50
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público

Processo	3003360-10.2024.8.06.0000
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Não padronizado
Polo ativo	MUNICIPIO DE ARACATI
Advogado(s) - Polo ativo	CRISTHIANE FRANCO DE OLIVEIRA - (CE21326-A)
Polo passivo	RITA VIEIRA DA SILVA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003360-10.2024.8.06.0000
Acordão	&#160; &#160; <div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);"> <img class="WACImage SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 89px; height: 120px; text-wrap-mode: nowrap !important;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAFkAAAB4CAIAAAAWmclrAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAACxMAAAsUAU/bCt8AAFFrSURBVHhevb0HgB1luTc+feb0sr1vNtmSHtJJSEJCCTUUQQgdFVAEFcu13U/RT6+9N6SoKAhESggkQAikkd77Znvvp9fp/98zuyD3Kv5v/K73ze7ZOXNm3vd9fk/7Pe/MnLC2bTP/RLNsm2NZm7FYm2Xwwxm6qus6Z3OMIsk8Z9nc3p1bu04ciUYj2dioaeXVTDoxNuIvn/KJL3+7tLIM4/7wC59W9E6324vuBFYyWW14zFx+w8eXXnIp5vTKU09uefExv9sjuoKSR+YFj8sfrqqsWXLVtcXFxThd1/K6YYkCx4iSxPHYg/kwHIve8GdinufS/kkscJKl5ZPZnJHND/Z2dfe0DXd3D7Q1501t3tLLlq26uKim+lsPfmRGVaKyslJWeNHllV3SmWOtZ4/3GJ6aG+7/0qSmpq/dt/aOm5aWVFXouikIAsvpG9a9EZh80VU33fT0Y48MH3ndxajLL1/kCSj5VFKD5Fltx96eFbd+ed6ipQf37nzzpefjfa1F1fWVkyaXVk0uq5tUFC5QFMXl85ssIzAA5dzauWNhmwzLWoz9+vMv7H3jGVYd83BqZVWoqsI3OJRM5z1FpSVv72g+b/X1p3bvvPGKysraUs20GFOEtPt2H2o/2aN45dYhpnLylFTfmbV3XhkoLrVNlkMTrB2vbT3RHHW53bGRzimloVQ6dvkNlwZCAVM3eJ7lGfXllw+o4XmRng6/Ndg4raqnuXX67NJsOtPbkxyJG2lDKa2bddenvhgsLGCAxjm2c8YCYnEMjz8/+MpDMws6G2YWsCymqfA8f/Rw+7HDsalzage6h4aGx9xu+fKrFxUUhCxBYGxB5uVUKtvX1+dSPOHisCjiDNkXLGLwCQ9DZzRD1VRVTybgUNlsdmQ45vWLpWUVDKtaps7Bhaz8sf1nDx9u9bnEyprqXN5IR4ZWXzvH53PZlmVbuVxae2Pr0DUP/qS6birHT0z4v9/+CbvAP7K/n339i02FzZPqwnnV4lhBkqR02hruGRI8YmlJSag4KHoUQ+UsmiVnMrxp6gKnCLxiQDLTZE3JZGzITBMAmizCji1KtiQqAmczPCfJHGuZmq5SNOERlgye5WQBg1upRHZ0aDQyHHX5lNJyn2Uxlq5xPM9xxltvDV75wE9q66dOzPZc2rnbhWUgPsE0Hv/ZT7zxNxctrrQpUPEkMwP18smMkctqmbSazehqOp/WdAxhGjpj2Jqlmjjb5jjbMngal7MQgDnsMsntWHxkchZHTkixmRNgPOhUYiVOtjnFJcuy6EHk8XFuj4ygKwoaojgrGJauwwcTkfTzm4Y/95M/+UJFwPZc2zlj4RxN8+7v7vrtV+5cPq8gkcmkk2Y2b+f0vKZpPAu5BE7QEd1ZAfYiYq6iIAuSybEyC+FYXeQk6sWyOBKWEzgePRq2CTw5S4A3ABkIqcOAMKJhWjqPXxUeZFisxpg6Y1Le4EX0KMtuFwBSCoNi31AmIsz/1De/zQJNmue5tXP3kYmEBbtkv/OVz+Zb3wwXu2zeRO4TRNEtUxQ0bZ5DnrHgFoymW4LNZnKWAYgsC3aBEeE5UDtjw6ctnheBILQq8jAS1jBg8oDGRJYERjAbxEy3S6EELtoiz0gUaETWzhuMYBgG0ouZMvKGbulc17Dw2V8+W1lVRRGNkuu5tXPHgsDAj4CXoeH+n33lM2VKV/UkdyKhxyP5rArhTR5gsDzULSlyYaG3vycRCMglIWHII8suQYbbyzYvICgILCMJ8r49J2omlVZUlOZxsqkDNs3WOd3Oa0Y+n+dt68TxroqyMD5KpXXIj1/AKHE27xKDfiEcciP47js4PO2iB267976JaZ57+2d8hB23DYqJTCoeee6xR/o6TqZ6W2Y0eUMhl9vr8vjccGy34uJso6NrdNf21ksumz51TpNBtgEpbUgBZgRoLOJJ/JZXdjXMqK2ZUmHkdRvGwekWIqGJQMLwghUZiz39x11NU0rmLpvEMqKW0UDqEghIaQ3bew52i6XTeZZZsPKaq268hdCdaOdMt/5JLBAvcR4CPfwcztJ6+sSGn3x67e1NasqGseagVg2hXd29s6OguNoX9p093lxWovCyYmm6lsGHliiLFDZZGxY/OprxehWXIuqmAVcwDU43NcUlgqTBSvqHk43Tpmv59EBf78L5k9wBnmNFt0sAY3F5pDMnuoeFS66/4yPYhn+CAdMMnVmeaztnLODJjghAgPIgYzIw3d/+8D+43tf8YTkR00ARIafPL5843r1s9WpO1pOjyfLa6m0bt6y5dr7sFs8e70PGmLegEfw5NhLtOdOfylscx5SUBSc1lHm8vs72rrbTPVNnT/IGlPVP71mwYlk8FgVtFUXf2xs2zZhZYahGLK0pMhf0SYpL2H9G/fqTG0P+oM2iJIA4CM/GP8G1ztmQkPKoAkHCI/OwENhi8UjP8c31jWU1k0rq6osDQWXV6qmXr5lTP3VSuDj06os7tm89hGhXXhYsryoNFQRFUeREzh3wpCPR00cHPFWTp8yaXTtzZiYnHt/fLkqcy+UBy0QCLS0pDBf63F739m271z+/w+Nhp06vWrG66fo7FtZNLiop8c2YXVk2KTyjVtj++iswBHJaAEHqhRefcztnLGBKxIrAuGwTXgpK/tbG9YtnB+qnFxWX+vI50z1B5NW+dOdWDjJDPJhEIS4sLkBeHBmKHdh3fveVwV9fIYOfwW6/u2vzq4frZs9vPnH38N0+u//MrPhwm+5965NVTR9tGRpKH97Xs3HJweCCWU7XSomKO03KZrGmxJ49293bHYJ6ptJZXhOqq8KILave/9jz8C+oxoSAUjQzl7HNt/MMPPzyx+d9rMApgAWNEiAMsyJF/+O6/V/m1jq5IV/vo0GBGM/R0PNfRMsKLnkDYf+JQa0lFqLQsnE2MNkyv8fq8U6ZVzJrXlEml/QWlY6OJOJt97eJ9hCPJkd6h+avXBGPptasnJa08zagpJgOOxPJTMury+bTHX1jjQ2TQLvHukZyub0VCybSeujg/HBnkQynh7pHfaUNlTV1hEOUBRVz+ccMM4ZC/BigyizkwYYZue2t7KtbxSW+TyKXFLkb5xRMmNO6YyZtbILE/Jkc9rZU61zz5vOiVLQw8xZMEVWBMXlRkDp6x4pKK44fORMJp5gwUw4kMd8ZXlRKOx2C1ww6GUFKxAOo9DPZBmvO3D2VFt1RXmw0Dt5irLkoum1NeGGpuKiYj9CJhJ4YZFr796OFVdea7E6yIUTO88Zi38QO53EOf4hsKYX7KPk4aQO8CXgYT/8wN3XLlF9hV41q+o6n8vlUgkD5cOxI30FFZXVkxu7unpqJ1Ud2L7fzMerJxXmwNBzOaARjWRmL1n6xqbtw72joNjoEb/LVszzh/x9HS0o8WF6gYALNV46JSy/YlVnR9+kmtLh3sG2s0dn

Processo	3003360-10.2024.8.06.0000

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SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:
transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 23px;

Processo	3003360-10.2024.8.06.0000
	font-family: Calibri, Calibri_EmbeddedFont, Calibri_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO <span class="EOP SCXW211395745 BCX8" style="-

Processo	3003360-10.2024.8.06.0000
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> Processo: 3003360-10.2024.8.06.0000– Agravo de Instrumento. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> Agravante: Município de Aracati. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	3003360-10.2024.8.06.0000
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> Agravada: Rita Maria Vieira da Silva. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> Custos Legis: Ministério Público Estadual. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ementa: Direito constitucional e processual civil. Agravo de Instrumento. Ação de obrigação de fazer. Fornecimento de dieta enteral e insumos. Recurso desprovido. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji:

Processo	3003360-10.2024.8.06.0000
	normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 1. Agravo de instrumento interposto p or ente municipal em face de decisão interlocutória que deferiu tutela de urgência antecipada postulada na petição inicial, no sentindo de &#160; compelir os entes públicos demandados à concessão de dieta enteral e insumos para sua instrumentalização. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> II. Questão em discussão <span class="EOP SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

Processo	3003360-10.2024.8.06.0000
	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 2. A questão em discussão consiste em saber se: (i) o polo passivo deve ser corrigido para a inclusão da União Federal; (ii) a probabilidade do direito da autora e o perigo de dano estão presentes ; (iii) o cumprimento da obrigação de fazer deve ser direcionada exclusivamente em desfavor do ente estatal; e, (iv) deve haver imposição de multa, bloqueio de verba ou demais penalidades ao ente público. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px

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	0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> III. Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 3. Da leitura dos arts . 23, inciso II, e 198, ambos da CF, e do Tema de RG nº 793, depreende-se que o funcionamento do SUS é de responsabilidade solidária da União, Estados-Membros, Distrito Federal e Municípios, de forma que quaisquer destes entes possuem legitimidade para figurar o polo passivo de demandas que pretendam garantir o acesso a tratamento médico para pessoas carentes de recursos financeiros , cabendo à parte escolher contra qual deseja litigar. Desse modo, não há que falar em inclusão obrigatória da União no polo passivo desta lide. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 4. Extrai-se

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	dos arts . 5º, §1º, 6º e 196, todos da CF, que é dever incontestável do Estado garantir o direito à saúde de todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo, especialmente quando o que se tem não é exatamente o exercício de uma política pública de saúde, mas a sua completa ausência ou cumprimento insuficiente. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 5. No caso dos autos, os relatórios médicos acostados apontam que a parte autora necessita de dieta enteral e insumos para sua instrumentalização. Os documentos mencionados, gozando de presunção de idoneidade técnica e veracidade sobre a necessidade do paciente, não foi objeto de impugnação pelo s promovido s . Outrossim, resta incontroverso nos autos que a postulante é pessoa hipossuficiente . &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 6. A responsabilidade pelo fornecimento da dieta enteral e dos insumos requeridos é do Município agravante, conforme disposição do art. 18, incisos IV, alínea “c”, e V, da Lei nº 8.080/90, de modo que este ente público deverá, <span class="TextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-

Processo	3003360-10.2024.8.06.0000
	numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> primeiramente , ser compelido a satisfazer a obrigação de fazer, e não o Estado do Ceará, a teor do disposto no Tema de Repercussão Geral nº 793. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 7 . Não há violação ao princípio da isonomia em decisão que visa conceder tratamento de saúde por meio de judicialização da demanda, vez que a intervenção do Judiciário, nos casos em que se verifica a insuficiência na prestação ao direito à saúde, se justifica diante da necessidade de implementar direito fundamental, resguardando a dignidade da pessoa humana. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 8. A simples alegação de insuficiência de recursos , sem a efetiva prova d <span class="NormalTextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text;">esta limitação material, &#160;não pode servir para legitimar a omissão do Município quanto ao dever de assegurar ao cidadão o mínimo existencial. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 9. O juiz pode determinar todas as medidas necessárias para assegurar o cumprimento de ordem judicial, incluindo-se a imposição de multa, bloqueio de verbas e demais penalidades para o caso de descumprimento da decisão, a teor do disposto no art. 139, inciso IV, do CPC. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 10. O&#160;estado em que se encontra a demandante (risco de piora do quadro clínico) caracteriza o perigo de dano real e irreparável ou de difícil reparação. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 11. Resta evidente a presença dos requisitos cumulativos necessários ao deferimento da tutela antecipatória em favor da parte autora (art. 300 , caput , do CPC) . &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;,

Processo	3003360-10.2024.8.06.0000
	&quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">IV. Dispositivo &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 1 2 . Recurso desprovido. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> __________ &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Dispositivos relevantes citados: <span class="NormalTextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">CF, arts . 1º, inciso I, 5º, §1º, 6º, 23, inciso II, 196 e 198; Lei nº 8.080/1990, art. 18, incisos IV, alínea “c” , e V ; CPC, arts . 300 , caput , e 139, inciso IV. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada: STF, RE nº 855.178/SE, Relator: Luiz Fux, Data de Julgamento: 23/05/2019, Tribunal Pleno, Data de Publicação: 16/04/2020. &#160;</p></div><div

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	class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer o recurso para negar-lhe provimento, nos termos do voto da Relatora, parte integrante deste. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data e hora informadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-

Processo	3003360-10.2024.8.06.0000
	indent: 75px;"> Cuida-se de AGRAVO DE INSTRUMENTO COM PEDIDO DE EFEITO SUSPENSIVO interposto pelo MUNICÍPIO DE ARACATI contra decisão interlocutória proferida pelo Juízo da 2ª Vara Cível da Comarca de Aracati que, nos autos de Ação de Obrigação de Fazer (Processo nº 3001072-81.2024.8.06.0035) proposta por RITA VIEIRA DA SILVA em desfavor do apelante e do ESTADO DO CEARÁ, deferiu a tutela de urgência pleiteada, nos seguintes termos (ID nº 89030263 – autos de origem): &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Por todo o exposto, CONCEDO A TUTELA DE URGÊNCIA pleiteada, visto que a presença do perigo de dano permeia a situação emergencial em análise e, por conseguinte, determino, inaudita altera parte, que os promovidos MUNICÍPIO DE ARACATI e ESTADO DO CEARÁ forneçam, às suas expensas, por tempo indeterminado, a depender das necessidades da autora, a alimentação especial detalhada no laudo nutricional de id 87823278 e os seus insumos, todos com fornecimento em periodicidade mensal, a serem entregues à representante da autora – Maria Concebida Vieira da Silva – , nos termos da prescrição médica acostada aos autos. <span class="LineBreakBlob BlobObject DragDrop SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height: 16px; font-family: WordVisiCarriageReturn_MSFontService, &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif;"> &#160; <br class="SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> Ressalte-se que os Entes Público podem reavaliar a condição da autora a qualquer tempo e, se porventura constatarem mudança no quadro de saúde da autora, podem requerer a revisão ou, até mesmo, revogação da tutela sumária concedida. &#160; <br class="SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> Efetivada as intimações, proceda a Secretaria pela citação dos requeridos, por meio de suas Procuradorias, para, querendo, apresentarem contestação no prazo de 30 (quinze) dias. &#160; <br class="SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> Determino a regular intimação dos promovidos, via portal eletrônico, para o fiel cumprimento da medida ora concedida, no prazo de 10 (dez) dias, sob pena de multa diária fixada em R$ 100,00 (cem reais), com limite de R$ 3.000,00 (três mil reais), em caso de descumprimento desta decisão. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais (ID nº 13505147), o ente municipal sustenta que, não obstante a pretensa solidariedade e legitimidade dos entes federativos, de fato, competência e maior aptidão para o seu cumprimento é do Estado do Ceará, uma vez que a arrecadação e a sua saúde financeira (orçamento) são infinitamente maiores que as suas. Aduz que a parte autora não demonstrou que o tratamento, insumos e medicamentos postulados estão inseridos no rol da atenção básica e/ou incluídos nas políticas públicas em geral, não sendo, portanto, o responsável para comprovar para fins de fornecimento. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Salienta que se faz necessária a correção do polo passivo da demanda, para direcionar à União, na condição de único legitimado ou, então, como litisconsorte passivo necessário, juntamente ao Estado do Ceará, com a conseguinte remessa dos autos à Justiça Federal, a quem competirá processar e julgar a causa. Pontua a existência de afronta ao princípio de isonomia. Defende a falta de provas da impossibilidade econômica da agravada para arcar com o tratamento de saúde. Ressalta a limitação de orçamento e de recursos materiais. Ao final, pugna pela concessão de efeito suspensivo ao recurso; e, no mais, requer o seu provimento, com consequente reforma da decisão vergastada. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Empós, através da Decisão de ID nº 13530014, indeferi o pedido de efeito suspensivo. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em sede de contrarrazões (ID nº 14380519), a agravada impugna as teses recursais e defende a manutenção do julgado recorrido. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Instada a manifestar-se, a Procuradoria-Geral de Justiça acosta Parecer ao ID nº 15587088, opinando pelo conhecimento e desprovimento do recurso. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório, no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-

Processo	3003360-10.2024.8.06.0000
	BR">VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 77px;"> Presentes os requisitos de admissibilidade, conheço o recurso. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> O cerne da controvérsia consiste em verificar a higidez da decisão interlocutória proferida pelo Juízo de origem, que deferiu a tutela de urgência antecipatória requerida na exordial, determinando que os demandados - Município de Aracati e Estado do Ceará – forneçam a alimentação especial e os insumos postulados pela autora. Pois bem. <span class="EOP SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, &quot;Times New

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	Roman_MSFontService&quot;, serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> De início, insta salientar que a Constituição Federal estabelece, em seu art. 196 1 , que a saúde é direito de todos e dever do Estado, sendo direito do cidadão, carente de recursos, receber o tratamento necessário à sua saúde, incumbindo ao poder público criar as políticas necessárias à concretização dos direitos sociais. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> Ademais, continuando na disciplina da temática, a Carta Constitucional, em seu art. 198 2 , preceitua que a assistência à saúde, provida pelo segmento público, é materializada através do Sistema Único de Saúde (SUS), o qual se organiza sob a forma de uma rede unificada, regionalizada e hierarquizada, mediante esforços conjuntos e descentralizados da União, Estados, Distrito Federal e Municípios e a complementação, quando necessária, do setor privado. <span class="EOP SCXW211395745 BCX8" style="-webkit-user-drag:

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	none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> A referida conjugação das esferas federal, estadual, distrital e municipal na assistência à saúde decorre do art. 23, inciso II 3 , da CF, que atribui aos entes federativos a competência comum para zelar pela proteção e conservação do direito à saúde. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> Nesse contexto, vige a compreensão jurisprudencial de que o funcionamento do SUS é de responsabilidade solidária da União, Estados-Membros, Distrito Federal e Municípios, de forma que quaisquer destes entes possuem legitimidade para figurar o polo passivo de demandas que pretendam garantir o acesso a tratamento médico para pessoas carentes de recursos financeiros. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> <span class="TextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-

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	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Assim, no julgamento dos Embargos de Declaração no Recurso Extraordinário RE nº 855.178 ED/SE, em 23 de maio de 2019, esse entendimento foi firmado definitivamente, sendo fixada a Tese de Repercussão Geral que compõe o Tema nº 793, de que “os entes da federação, em decorrência da competência comum, são solidariamente responsáveis nas demandas prestacionais na área da saúde, e diante dos critérios constitucionais de descentralização e hierarquização, compete à autoridade judicial direcionar o cumprimento conforme as regras de repartição de competências e determinar o ressarcimento a quem suportou o ônus financeiro” . &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> Seguindo esta intelecção, consolidou-se na jurisprudência pátria o entendimento de que o fornecimento de tratamentos médicos para pessoas que não detenham recursos financeiros é um dever do Estado, em sentido lato, e solidária é a responsabilidade entre os entes da federação, restando configurada, pois, a hipótese de litisconsórcio passivo do tipo facultativo, cabendo à parte escolher contra qual ente deseja litigar. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> <span class="NormalTextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text;">Desse modo, não há que falar em inclusão obrigatória da União no polo passivo desta lide , como pretende o agravante. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> Prosseguindo, insta destacar que o direito constitucional à saúde também encontra previsão no art. 6º 4 , da CF, sendo nessa regra enquadrado como um direito social e fundamental que, atrelado ao princípio fundamental do direito à vida digna, fundamento da República Federativa do Brasil (art. 1º, inciso II I 5 , da CF), assegura a todos o atendimento necessário na área da saúde, estando inclusos os serviços de assistência médica, farmacêutica e hospitalar. <span class="EOP SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 73px;"> Quadra registrar, outrossim, que, na qualidade de direito fundamental, não há que se falar em sua inaplicabilidade, pois conforme o § 1º do art. 5º 6 , da CF, as normas protetivas do direito à saúde possuem aplicabilidade imediata. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 72px;"> Com base em tais premissas, tem-se que é dever incontestável do Estado, portanto, garantir o direito à saúde de todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo, especialmente quando o que se tem não é exatamente o exercício de uma política pública de saúde, mas a sua completa ausência ou cumprimento insuficiente. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 72px;"> <span class="TextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Traçado esse breve panorama normativo e volvendo ao caso em análise, depreende-se que a autora foi acometida por AVC Isquêmico (CID 10: I64), o que ocasionou sequela de importante déficit motor, deixando-a dependente da ajuda de terceiros para a realização de atividades rotineiras , razão pela qual necessita de dieta enteral adequada e de insumos para a instrumentalização desta (vide laudos acostados ao ID nº 87823278 - págs. 7/13 dos autos de origem). &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 72px;"> Acrescente-se que os documentos acima mencionados, que gozam de presunção de idoneidade técnica e veracidade sobre a necessidade da paciente, não foram objeto de impugnação pelos promovidos.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p

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	class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 72px;"> Outrossim, há de se observar a evidente hipossuficiência econômica da demandante, eis que , além de ser assistida pela Defensoria Pública, se encontra dependente do cuidado de terceiros , possui idade avançada e está aposentada . A lém disso , convém destacar que inexistem elementos probantes que afastem a presunção de escassez de recursos afirmada pela parte autora . &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color:

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	transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Seguidamente, pontuo que a responsabilidade pelo fornecimento da dieta enteral e dos insumos requeridos é do Município de Aracati, conforme disposição do art. 18, incisos IV, alínea “c”, e V, da Lei nº 8.080/90 7 , de modo que este ente público deverá, primeiramente , ser compelido a satisfazer a obrigação de fazer, e não o Estado do Ceará, a teor do disposto no Tema de R epercussão Geral nº 793. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px 0px; padding: 0px; user-select:

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	text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 72px;"> Por conseguinte, cumpre ressaltar que não há violação ao princípio da isonomia em decisão que visa conceder tratamento de saúde por meio de judicialização da demanda, vez que a intervenção do Judiciário, nos casos em que se verifica a insuficiência na prestação ao direito à saúde, se justifica diante da necessidade de implementar direito fundamental, resguardando a dignidade da pessoa humana. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> I mpende enfatizar , ademais, que a simples alegação de insuficiência de recursos , sem a efetiva prova desta afirmativa , não pode servir para legitimar a omissão do Município quanto ao dever de assegurar ao cidadão o mínimo existencial, assim compreendido como conjunto de prestações materiais e absolutamente essenciais para todo ser humano ter uma vida digna, especialmente na área da saúde.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -

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	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> A fim de corroborar tal entendimento, colaciono trecho do voto do Ministro Celso de Mello, no julgamento da Suspensão de Tutela Antecipada 175-AgR CE, julgado em 17/03/2010, DJe : 30/04/2010, que, diante do conflito entre a cláusula da reserva do possível e a garantia do mínimo existencial, ponderou que o direito à saúde deve prevalecer sobre a questão da indisponibilidade orçamentária estatal, quando não comprovada, objetivamente, a limitação material. Vejamos: &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> […] Não se ignora que a realização dos direitos econômicos, sociais e culturais – além de caracterizar-se pela gradualidade de seu processo de concretização – depende, em grande medida, de um inescapável vínculo financeiro subordinado às possibilidades orçamentárias do Estado, de tal modo que, comprovada, objetivamente, a alegação de incapacidade econômico-financeira da pessoa estatal, desta não se poderá razoavelmente exigir, então, considerada a limitação material referida, a imediata efetivação do comando fundado no texto da Carta Política.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;,

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	&quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Não se mostrará lícito, contudo, ao Poder Público, em tal hipótese, criar obstáculo artificial que revele – a partir de indevida manipulação de sua atividade financeira e/ou político-administrativa – o legítimo, arbitrário e censurável propósito de fraudar e de inviabilizar o estabelecimento e a preservação, em favor da pessoa e dos cidadãos, de condições materiais mínimas de existência (ADPF 45/DF. Rel. Min. CELSO DE MELLO, informativo STF nº 345/2004).&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Cumpre advertir, desse modo, que a cláusula da “reserva do possível” - ressalvada a ocorrência de justo motivo objetivamente aferível – não pode ser invocada, pelo Estado, com a finalidade de exonerar-se, dolosamente, do cumprimento, de suas obrigações constitucionais, notadamente quando, dessa conduta governamental negativa, puder resultar nulificação ou, até mesmo, aniquilação de direitos constitucionais impregnados de um sentido de essencial fundamentalidade. […]. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> No caso dos autos, a parte recorrente deixou de juntar qualquer prova que venha demonstrar, objetivamente, que não possui os recursos financeiros necessários para o cumprimento da obrigação de fazer imposta , razão pela qual entendo que o direito à saúde deve prevalecer . &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text;

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	overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Frise-se, ainda , que o juiz pode determinar todas as medidas necessárias para assegurar o cumprimento de ordem judicial, incluindo-se a imposição de multa, bloqueio de verbas e demais penalidades para o caso de descumprimento da decisão, a teor do disposto no art. 139, inciso IV 8 , do CPC. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Em arremate, saliento que o estado em que se encontra a demandante (risco de piora do quadro clínico) caracteriza o perigo de dano real e irreparável ou de difícil reparação. &#160; </p></div><div

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	class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Desta feita, resta evidente a presença dos requisitos cumulativos necessários ao deferimento da tutela antecipatória em favor da parte autora (art. 300 , caput , do CPC 9), razão pela qual concluo que a decisão interlocutória vergastada, que concedeu a tutela antecipatória requerida na exordial , <span class="NormalTextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -

Processo	3003360-10.2024.8.06.0000
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">não merece qualquer reproche. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ante o exposto, conheço e nego provimento ao recurso . &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Fortaleza, data e hora informadas pelo sistema. <span class="EOP SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 7.93333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	3003360-10.2024.8.06.0000
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> 1. Art. 196. A saúde é direito de todos e dever do Estado, garantido mediante políticas sociais e econômicas que visem à redução do risco de doença e de outros agravos e ao acesso universal e igualitário às ações e serviços para sua promoção, proteção e recuperação. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 2. A rt. 198. As ações e serviços públicos de saúde integram uma rede regionalizada e hierarquizada e constituem um sistema único, organizado de acordo com as seguintes diretrizes: [...] I - descentralização, com direção única em cada esfera de governo; II - atendimento integral, com prioridade para as atividades preventivas, sem prejuízo dos serviços assistenciais; III - participação da comunidade. <span class="EOP SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;,

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	&quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Art. 23. É competência comum da União, dos Estados, do Distrito Federal e dos Municípios: […] II – cuidar da saúde e assistência pública, da proteção e garantia das pessoas portadoras de deficiência. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Art. 6º São direitos sociais a educação, a saúde, a alimentação, o trabalho, a moradia, o transporte, o lazer, a segurança, a previdência social, a proteção à maternidade e à infância, a assistência aos desamparados, na forma desta Constituição. <span class="EOP SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

Processo	3003360-10.2024.8.06.0000
	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> 5. Art. 1º A República Federativa do Brasil, formada pela união indissolúvel dos Estados e Municípios e do Distrito Federal, constitui-se em Estado Democrático de Direito e tem como fundamentos: [...] III - a dignidade da pessoa humana . &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. Art. 5. [...] § 1º As normas definidoras dos direitos e garantias fundamentais têm aplicação imediata. &#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> 7. Art.

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	18. À direção municipal do SUS compete: [...] IV - executar serviços: [...] c) de alimentação e nutrição; [...] V - dar execução, no âmbito municipal, à política de insumos e equipamentos para a saúde. &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;"> 8. Art. 139. O juiz dirigirá o processo conforme as disposições deste Código, incumbindo-lhe: [...] IV - determinar todas as medidas indutivas, coercitivas, mandamentais ou sub-rogatórias necessárias para assegurar o cumprimento de ordem judicial, inclusive nas ações que tenham por objeto prestação pecuniária . &#160;</p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 9. Art. 300. A tutela de urgência será concedida quando houver elementos que evidenciem a probabilidade do direito e o perigo de dano ou o risco ao resultado útil do processo. <span class="EOP SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW211395745 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	51
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	ANTONIA NIVALDA MULATO
Advogado(s) - Polo ativo	ANTONIO FERREIRA BEZERRA - (CE26246-A) DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A)
Polo passivo	MUNICIPIO DE ACOPIARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-3f9cbe97-7fff-058c-ec8e-8d0641b71ace" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Processo: 3004045-17.2024.8.06.0000 – Agravo de instrumento</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Agravante: ANTONIA NIVALDA MULATO</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Agravado(a): MUNICIPIO DE ACOPIARA</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Processo civil. Agravo de instrumento. Cumprimento individual de sentença coletiva. Decisão que determinou o sobrestamento do feito até o julgamento do tema 1169 do STJ. Não cabimento. Título executivo judicial que depende de meros cálculos aritméticos. Possibilidade de seguimento do feito. Recurso provido. Decisão reformada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Trata-se de agravo de instrumento contra decisão interlocutória que suspendeu o cumprimento individual de sentença, em razão da afetação do Tema Repetitivo nº 1.169 pelo Superior

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	Tribunal de Justiça, que trata da necessidade de liquidação prévia em ações coletivas.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em saber se a suspensão do cumprimento de sentença, com base no Tema Repetitivo nº 1.169 do STJ, é aplicável ao presente caso, considerando que o título executivo judicial contém todos os elementos necessários à apuração dos valores devidos e a individualização do crédito pode ser feita por simples cálculos aritméticos.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A decisão de suspensão não se aplica ao caso, pois o título executivo judicial contém elementos suficientes para a individualização do crédito, com simples cálculos aritméticos, dispensando a liquidação prévia, conforme jurisprudência consolidada do Superior Tribunal de Justiça.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A suspensão do processo determinada pelo juízo de origem baseou-se no Tema nº 1.169/STJ, mas a jurisprudência tem reconhecido a desnecessidade de sobrestamento quando o título executivo permite a individualização dos valores devidos de forma simples.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Mostra-se viável, portanto, o prosseguimento imediato do cumprimento de sentença.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Recurso provido. Decisão reformada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> _________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CPC, art. 1.037, inciso II.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgInt nos EDcl no REsp 1.995.564/RS, Rel. Min. Ricardo Villas

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	Bôas Cueva, 28/11/2022; STJ, AgInt no REsp 2.005.866/RS, Rel. Min. Nancy Andrighi, 3/10/2022; TJDFT, Agravo de Instrumento 07142996620238070000, Rel. Min. Diva Lucy de Faria Pereira, 14/06/2023; e TJCE – Agravo de Instrumento – 30032285020248060000, Relator(a): Maria do Livramento Alves Magalhães, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do agravo de instrumento para dar-lhe provimento, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Trata-se de AGRAVO DE INSTRUMENTO interposto por ANTÔNIA NIVALDA MULATO contra decisão proferida pela 2ª Vara Cível da Comarca de Acopiara/CE que, nos autos da Ação de Execução de Título Executivo Judicial que tramita sob o nº 3000687-54.2024.8.06.0029, ajuizada pela parte recorrente em face do MUNICÍPIO DE ACOPIARA, determinou a suspensão do processo até ulterior decisão do STJ acerca do Tema Repetitivo nº 1.169.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em suas razões recursais, a parte agravante alega, em suma, que o referido Tema 1.169, ao tratar da necessidade ou não de liquidação prévia diante do cumprimento de sentença condenatória genérica, não se amolda ao presente caso, pelo que defende o prosseguimento do cumprimento individual de sentença. Por fim, pugna pelo conhecimento e provimento do recurso para revogar a decisão do Juízo a quo a fim de que se mantenha o trâmite processual.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">

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	Sem contrarrazões.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Parecer da Procuradoria-Geral de Justiça (ID nº 15587045).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço o recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Cinge-se a controvérsia em aferir a higidez da decisão proferida em sede de Cumprimento Individual de Sentença que determinou a suspensão do feito até o julgamento do Tema Repetitivo n.º 1169 pelo C. Superior Tribunal de Justiça.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">De início, cumpre assinalar que o Superior Tribunal de Justiça afetou os Recursos Especiais n.º 1978629/RJ, 1985037/RJ e 1985491/RJ, para uniformizar o entendimento da matéria sobre a seguinte questão: Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento de ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos aos autos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Quanto ao referido tema, há determinação de suspensão do processamento de todos os processos que versem sobre a mesma matéria e transmitem no território nacional, nos termos do art. 1.037, inciso II, do Código de Processo Civil.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Em que pese a determinação de suspensão, verifico que a ordem não se aplica ao caso tratado nos autos, porquanto o título executado pela parte agravante contém todos os elementos necessários à adequada individualização.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;"

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	dir="ltr"> Com efeito, a sentença proferida nos autos da Ação Coletiva de n.º 0004059-72.2018.8.06.0029 condenou o Município de Acopiara ao pagamento das diferenças observadas em relação ao adicional de 1/3 de férias dos professores da rede pública municipal, nos seguintes termos (id. 7436280 daqueles autos): <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> (…) Por todo exposto, e atento a tudo mais que dos presentes autos consta, JULGO PROCEDENTE a pretensão autoral, para CONDENAR o Município de ACOPIARA/CE ao pagamento das diferenças observadas em relação ao adicional de 1/3 de férias dos professores da rede pública municipal que tenham, de fato, gozado o período de 45 (quarenta e cinco) dias de férias nos anos respectivos, relativamente aos anos de 2013, 2014, 2015, 2016, 2017 e as que vencerem no decorrer do andamento deste processo, devendo o referido adicional ser calculado sobre todo o período de férias.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Nos termos do Resp 1495146/MG, por se tratar de condenação judicial referente a servidor público, deverá incidir juros de mora de acordo com a remuneração oficial da caderneta de poupança e correção monetária pelo IPCA-E. A partir de 09/12/2021, caso existente verba pendente de pagamento, incidirá a taxa SELIC para correção monetária e juros de mora, nos termos do artigo 3º da Emenda Constitucional nº 113/2021. (…).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> A sentença foi confirmada por este colegiado que, por unanimidade, acordou em avocar o reexame necessário, e conhecer da apelação e da remessa para negar-lhes provimento, nos termos do voto proferido pelo eminente Relator Desembargador Francisco Luciano Lima Rodrigues. O referido acórdão transitou em julgado em 18/12/2023, conforme certidão constante naqueles autos.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Da análise do dispositivo da sentença, é possível observar que o título executivo judicial tratou de todos os elementos necessários para a apuração dos valores devidos de forma discriminada, não se caracterizando como título genérico, uma vez que carece de simples cálculos aritméticos para a individualização do crédito e definição do quantum a ser recebido.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Nessa perspectiva, o Superior Tribunal de Justiça vem se manifestando pela prescindibilidade da prévia liquidação do julgado, quando for possível a apuração do crédito por simples cálculos aritméticos. Vejamos: <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. EXPURGOS INFLACIONÁRIOS. LIQUIDAÇÃO DE SENTENÇA. CÁLCULOS ARITMÉTICOS. 1. Recurso especial interposto contra acórdão publicado na vigência do Código de Processo Civil de 2015 (Enunciados Administrativos nºs 2 e 3/STJ). 2. O

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	Superior Tribunal de Justiça possui entendimento de ser viável a realização da execução individual de título judicial formado em ação coletiva quando for possível a individualização do crédito e a definição do valor devido por meros cálculos aritméticos. 3. Quando a determinação do valor da condenação depender apenas de cálculo aritmético, o cumprimento de sentença poderá se dar sem a fase de liquidação, bastando ao credor instruir o pedido com a memória discriminada e atualizada do cálculo. 4. O Superior Tribunal de Justiça, ao julgar o REsp 1.247.150/PR sob o regime dos recursos especiais repetitivos, não tratou da necessidade de liquidação prévia de sentença coletiva, mas, tão somente, do não cabimento da multa prevista no art. 475-J do CPC/1973 ao pedido de cumprimento individual do título executivo. 5. Agravo interno não provido. (AgInt nos EDcl no REsp n. 1.995.564/RS, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 28/11/2022, DJe de 9/12/2022). (Destaque-se).</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ESPECIAL. AÇÃO COLETIVA. CUMPRIMENTO PROVISÓRIO DE SENTENÇA. EMBARGOS DE DECLARAÇÃO. OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE. NÃO OCORRÊNCIA. VIOLAÇÃO DO ART. 489 DO CPC/15. INOCORRÊNCIA. REEXAME DE FATOS E PROVAS. INADMISSIBILIDADE. SENTENÇA COLETIVA. LIQUIDAÇÃO. DESNECESSIDADE. MEROS CÁLCULOS ARITMÉTICOS. DISSÍDIO JURISPRUDENCIAL. COTEJO ANALÍTICO E SIMILITUDE FÁTICA. AUSÊNCIA. SÚMULA 7 DO STJ. DISSÍDIO JURISPRUDENCIAL. PREJUDICADO. 1. Ação coletiva em fase de cumprimento provisório de sentença. 2. Ausentes os vícios do art. 1.022 do CPC, rejeitam-se os embargos de declaração. 3. Devidamente analisadas e discutidas as questões de mérito, e fundamentado corretamente o acórdão recorrido, de modo a esgotar a prestação jurisdicional, não há que se falar em violação do art. 489 do CPC. 4. O reexame de fatos e provas em recurso especial é inadmissível. 5. A jurisprudência desta Corte Superior tem se manifestado no sentido de que a execução individual de título formado em processo coletivo pode ocorrer sem a necessidade de prévia liquidação do julgado quando for possível a apuração do crédito por simples cálculos aritméticos, cabendo ao Tribunal de origem analisar, de forma concreta, se é necessária a liquidação do julgado. Precedentes. 6. O dissídio jurisprudencial deve ser comprovado mediante o cotejo analítico entre acórdãos que versem sobre situações fáticas idênticas. 7. A incidência da Súmula 7 do STJ prejudica a análise do dissídio jurisprudencial pretendido. Precedentes desta Corte. 8. Agravo interno no recurso especial não provido. (AgInt no REsp n. 2.005.866/RS, relatora Ministra Nancy Andrighi, Terceira Turma, julgado em 3/10/2022, DJe de 5/10/2022). (Destaque-se).</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO ESPECIAL. EXECUÇÃO INDIVIDUAL. SENTENÇA COLETIVA. LIQUIDAÇÃO. DESNECESSIDADE. MEROS CÁLCULOS ARITMÉTICOS. AGRAVO INTERNO A QUE SE NEGA PROVIMENTO. 1. A jurisprudência desta Corte Superior tem se manifestado no sentido de que a execução individual de título formado em processo coletivo pode ocorrer sem a necessidade de prévia liquidação do julgado quando for possível a apuração do crédito por simples cálculos aritméticos, cabendo ao Tribunal de origem analisar, de forma concreta, se é necessária a liquidação do julgado <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-

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	style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(AgInt no REsp 1.840.244/AP, Rel. Ministra ASSUSETE MAGALHÃES, SEGUNDA TURMA, julgado em 26/10/2020, DJe 12/11/2020; AgInt nos EDcl no AREsp 1.158.508/PR, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 10/8/2020, DJe 17/8/2020). 2. Agravo interno a que se nega provimento. (AgInt no REsp n. 1.850.199/RJ, relator Ministro Manoel Erhard (Desembargador Convocado do Trf5), Primeira Turma, julgado em 27/6/2022, DJe de 30/6/2022). (Destaque-se). <br /></p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Perfilhando esse entendimento, trago à baila julgados dos tribunais pátrios em que se reconheceu a desnecessidade de suspensão da demanda com fundamento no Tema nº 1.169/STJ, expressis litteris:&#160;</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">AGRAVO DE INSTRUMENTO. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. DECISÃO QUE DETERMINOU O SOBRESTAMENTO DOS AUTOS, ATÉ O JULGAMENTO DO TEMA N. 1.169/STJ. INSURGÊNCIA DA EXEQUENTE. DESNECESSIDADE DE SUSPENSÃO DA DEMANDA. ACOLHIMENTO. ENTENDIMENTO REITERADO DESTE SODALÍCIO, DE QUE DISPENSÁVEL A INSTAURAÇÃO DA FASE DE LIQUIDAÇÃO DE SENTENÇA, EM CASOS ANÁLOGOS AO DOS PRESENTES AUTOS. POSSIBILIDADE DE APURAÇÃO DO MONTANTE EVENTUALMENTE DEVIDO, POR MEROS CÁLCULOS ARITMÉTICOS. PRESCINDIBILIDADE DO SOBRESTAMENTO DO PROCESSO DECISÃO REFORMADA. RECURSO CONHECIDO E PROVIDO. (TJSC – AI: 50737174820228240000, Relator: Bettina Maria Maresch de Moura, Data de Julgamento: 04/04/2023, Terceira Câmara de Direito Público). (Destaque-se).</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">PROCESSO CIVIL. AGRAVO DE INSTRUMENTO. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. TEMA 1.169/STJ. SUSPENSÃO NA ORIGEM. DESNECESSIDADE DE LIQUIDAÇÃO PRÉVIA. MEROS CÁLCULOS ARITMÉTICOS. DECISÃO REFORMADA. 1. O Superior Tribunal de Justiça determinou a

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	suspensão de todos os processos que versem sobre a liquidação prévia de sentença condenatória genérica proferida em demanda coletiva para o ajuizamento de ação objetivando o cumprimento individual (Tema 1.169/STJ). 2. Na espécie, o título judicial em execução traz todos os elementos necessários à adequada individualização, de forma que a apuração do valor a ser executado depende apenas de cálculos aritméticos, enquadrando-se no permissivo legal para que o credor promova desde logo o cumprimento da sentença (art. 509, § 2º, do Código de Processo Civil). Além disso, a suspensão na origem se deu antes mesmo da triangulação da relação processual, o que impossibilita que se avalie, no caso concreto, se há efetivo prejuízo ao contraditório e à ampla defesa pela ausência de prévia liquidação. 3. Agravo de Instrumento provido. Unânime. (TJDF 07053830920248070000 1887235, Relator: FÁTIMA RAFAEL, Data de Julgamento: 10/07/2024, 3ª Turma Cível, Data de Publicação: 13/07/2024). (Destaque-se).</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">AGRAVO DE INSTRUMENTO. LIQUIDAÇÃO INDIVIDUAL DE SENTENÇA COLETIVA. DECISÃO DE SOBRESTAMENTO DO FEITO FUNDADA EM RECURSO REPETITIVO (TEMA 1.169, STJ). DISTINÇÃO ENTRE OBJETOS DISCUTIDOS. PROSSEGUIMENTO DO FEITO NA ORIGEM. POSSIBILIDADE. RECURSO CONHECIDO E PROVIDO 1. A questão submetida a julgamento no Tema 1.169 do STJ, cinge-se, unicamente, a: Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento de ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos aos autos. 2. O caso sub judice consubstancia-se justamente em liquidação prévia ao cumprimento de sentença coletiva transitada em julgado, pela qual se busca aferir, por meio de simples cálculo aritmético, o valor devido ao exequente em decorrência da determinação de reposição de perdas salariais oriundas do Plano Collor, no percentual de 84,32% relativamente ao IPC de março /1990. 3. Assim, diante da distinção entre os objetos da presente demanda e do Tema 1.169 do STJ, é de rigor a reforma da decisão que determinou o sobrestamento daquela até o julgamento definitivo deste. 4. Recurso conhecido e provido. (TJDF 07142996620238070000 1716478, Relator: DIVA LUCY DE FARIA PEREIRA, Data de Julgamento: 14/06/2023, 1ª Turma Cível, Data de Publicação: 04/07/2023). (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Em caso semelhante, assim vem decidindo este Órgão Julgador:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Direito Processual Civil. Agravo De Instrumento. Suspensão Do Processo. Tema Repetitivo 1.169 do STJ. Simples Cálculos Aritméticos.

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	Decisão Reformada. Recurso Conhecido e Provido. I. Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça. II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado. III. Razões De Decidir: III.1. Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça. (AGRAVO DE INSTRUMENTO – 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024). (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Destarte, considerando que na hipótese dos autos o título executivo judicial tratou de todos os elementos necessários para a apuração dos valores devidos de forma discriminada, carecendo apenas de simples cálculos aritméticos para a individualização do crédito e definição do quantum a ser recebido, tenho que a determinação do prosseguimento do feito na origem é medida que se impõe, não havendo que se falar em sobrestamento do feito com fundamento no Tema nº 1.169/STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Pelo exposto, CONHEÇO do agravo de instrumento para DAR-LHE provimento, reformando a decisão de origem para desconstituir a ordem de suspensão combatida e, por conseguinte, determinar que seja dado regular processamento ao feito de nº 3000687-54.2024.8.06.0029.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-

Processo	3004045-17.2024.8.06.0000
	weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">&#160; Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	52
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	ITBI - Imposto de Transmissão Intervivos de Bens Móveis e Imóveis
Polo ativo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo ativo	Não informado
Polo passivo	OI S.A. - EM RECUPERAÇÃO JUDICIAL
Advogado(s) - Polo passivo	LUIZ GUSTAVO ANTONIO SILVA BICHARA - (RJ112310-A) MATTHEUS REIS E MONTENEGRO - (RJ166994)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003181-76.2024.8.06.0000
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-280dffbe-7fff-8724-deb6-6706ce369757" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr">Processo: 3003181-76.2024.8.06.0000 – Embargos de declaração</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr">Embargante: OI S.A. - EM RECUPERAÇÃO JUDICIAL</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr">Embargado: MUNICÍPIO DE FORTALEZA</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr">Ementa: Processo civil. Embargos de declaração em agravo de instrumento. Omissão. Tema 1.113 do STJ. Supressão de instância. Violação ao Duplo grau de jurisdição. Recurso não

Processo	3003181-76.2024.8.06.0000
	conhecido.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> 1. Trata-se de Embargos de Declaração opostos pelo pela parte agravada contra acórdão proferido pela 3ª Câmara de Direito Público deste Tribunal de Justiça, que conheceu e deu provimento ao agravo de instrumento apresentado pelo Município de Fortaleza.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> 2. A questão em discussão consiste em saber se há omissão no acórdão recorrido por não ter o Órgão Julgador se pronunciado sobre o Tema 1.113 do STJ.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> 3. A tese recursal relacionada ao Tema 1.113 do STJ não pode ser analisada, pois tal questão não foi submetida ao contraditório nem à análise do juízo singular, sendo vedada sua apreciação por este Tribunal em razão da supressão de instância e da violação ao princípio do duplo grau de jurisdição.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> 4. Recurso não conhecido.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr">Dispositivos relevantes citados: CPC/2015, art. 1.022.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr">Jurisprudência relevante citada: STJ, Tema 1.113, REsp n. 1.937.821/SP, relator Ministro Gurgel de Faria, Primeira Seção, julgado em 24/2/2022, DJe de 3/3/2022.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal

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	de Justiça do Estado do Ceará, em não conhecer dos embargos de declaração, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 15pt; margin-bottom: 6pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Trata-se de EMBARGOS DE DECLARAÇÃO opostos por OI S.A. - EM RECUPERAÇÃO JUDICIAL contra o acórdão proferido pela 3ª Câmara de Direito Público deste Tribunal de Justiça, que conheceu e deu provimento ao agravo de instrumento apresentado pelo MUNICÍPIO DE FORTALEZA.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões, a parte embargante alega que a decisão padece de vício de omissão por não ter o Órgão Julgador se pronunciado sobre o Tema 1.113 do STJ. Ao final, pugna pelo acolhimento dos presentes embargos a fim de que seja sanado o vício em questão, devendo, pois, ser mantida a decisão que concedeu a tutela de urgência e, nos termos do art. 151, inciso II do CTN, suspendeu a exigibilidade do ITBI ante o depósito judicial por ela realizado nos autos principais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Contrarrazões recursais (ID nº 15585775).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 14pt; font-family: &quot;Times New Roman&quot;, serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-

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	ink: none; vertical-align: baseline; white-space: pre-wrap;">VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Consoante dicção do Art. 1.022 do CPC/15, os embargos declaratórios são cabíveis contra qualquer decisão judicial para esclarecer obscuridade ou eliminar contradição; suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz; ou corrigir erro material, tratando-se, pois, de espécie recursal de fundamentação vinculada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Com efeito, considera-se omissa a decisão que não se manifestar sobre um pedido, acerca de argumentos relevantes lançados pelas partes e em relação a questões de ordem pública, cognoscíveis de ofício pelo magistrado. Por outro lado, é obscura, quando for ininteligível, faltar clareza e precisão suficiente a não permitir a certeza jurídica a respeito das questões resolvidas. Contraditória é a decisão que contiver proposições inconciliáveis entre si de maneira que a afirmação de uma logicamente significará a negociação da outra. Finalmente, erro material é aquele manifesto, sobre o qual não pode haver dúvida a respeito do desacerto do decisum como, verbi gratia, equívoco na redação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Como se vê, os embargos de declaração constituem recurso de rígidos contornos processuais, exigindo-se, para seu acolhimento, que estejam presentes os pressupostos legais de cabimento, não tendo condão para ensejar decisão substitutiva do julgado embargado. Sua natureza é integrativa ou aclaratória, pois objetivam complementar ou aclarar a decisão embargada, dissipando-lhe eventuais vícios.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No presente caso, a parte embargante alega que a decisão padece de vício de omissão por não ter se pronunciado sobre o Tema 1.113 do STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Tal pretensão aclaratória, contudo, não merece ser conhecida.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Isso porque, conforme se pode verificar no teor da decisão objeto do presente recurso, bem como no provimento jurisdicional ora impugnado, a tese firmada no tema do STJ não foi submetida ao contraditório nem à análise do juízo singular, sendo vedada sua apreciação por este Órgão Julgador, mormente na via restrita do agravo de instrumento, sob pena de supressão de instância e violação ao princípio do duplo grau de jurisdição.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Há de se destacar, outrossim, que o julgamento do agravo de instrumento se restringiu à análise do acerto ou desacerto da decisão recorrida, tendo, na ocasião, este Órgão Julgador dado provimento ao recurso interposto pelo Município de Fortaleza para indeferir a contracautela apresentada na origem, em razão da insuficiência do valor depositado, sem, contudo, impedir que a parte agravada, ora embargante, complemente o valor do depósito judicial ou apresente ao Juízo de origem outra forma de garantia compatível com o valor do imposto em disputa, como seguro-garantia ou fiança bancária, por exemplo.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Dentro desse

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	contexto, a tese recursal acima indicada não deve sequer ser conhecida, pois, não tendo sido enfrentada pelo Juízo a quo, sua análise por este Colegiado se configura em supressão de instância.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Em arremate, por não julgar protelatória a insurgência, deixo de condenar a parte embargante na multa prevista no §2º do Art. 1.026 do CPC/15. O mesmo acontece em relação ao requerimento por litigância de má-fé, por não restar verificada a ocorrência de qualquer das hipóteses do Art. 80 do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Pelo exposto, NÃO CONHEÇO os aclaratórios.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	53
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Desconsideração da Personalidade Jurídica
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	LIH CHIH NORDESTE S/A LIAO HSI JUNG WU SWEI FAN LIN SHU CHENG
Advogado(s) - Polo passivo	JOUSYANE LAVOR COSTA - (CE22604-A) MARCIO ALAN MENEZES MOREIRA - (CE18728-A)
Terceiros	Não informado

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Acordão	&#160; &#160; <div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);"> <img class="WACImage SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 89px; height: 120px; text-wrap-mode: nowrap !important;" 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alt="" /> <span class="EOP SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 22px;

Processo	3005812-90.2024.8.06.0000
	font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-

Processo	3005812-90.2024.8.06.0000
	alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> Processo: 3005812-90.2024.8.06.0000 - Agravo de Instrumento. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> Agravante: Estado do Ceará. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;

Processo	3005812-90.2024.8.06.0000
	font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> Agravados: Lih Chih Nordeste S/A e outros. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ementa: Direito constitucional e processual civil. Agravo de Instrumento. Execução fiscal. Intempestividade de embargos de declaração . Recurso parcialmente conhecido e <span

Processo	3005812-90.2024.8.06.0000
	class="NormalTextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">provido.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Agravo de instrumento interposto por ente estatal em face de decisão interlocutória que não conheceu embargos de declaração com supedâneo em intempestividade . &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-

Processo	3005812-90.2024.8.06.0000
	size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">II. Questão em discussão &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em saber se: (i) o s embargos de declaração foram opostos tempestivamente; e, (ii) houve erro na aplicação do art. 135, inciso III, do CTN, e da jurisprudência sobre o tema . &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color:

Processo	3005812-90.2024.8.06.0000
	windowtext; text-align: justify;"> 3. Segundo dispõem os arts . 183, caput e §1º, 219, caput , 1.003, caput, e 1.023, caput , todos do CPC, o prazo para a oposição do recurso de embargos de declaração pelo Estado do Ceará é de 10 (dez) dias úteis a contar da data de sua intimação pessoal por carga, remessa ou meio eletrônico. <span class="EOP SCXW157640553 BCX8" style="-webkit-user-drag:

Processo	3005812-90.2024.8.06.0000
	none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Ademais, a Lei nº 11.419/2006 , dispondo sobre a informatização do processo judicial, consigna, em seu art. 5º, §1º, que as intimações feita por meio eletrônico, como é o caso dos autos, consideram-se realizadas no dia em que o intimado efetivar a consulta eletrônica ao teor da intimação . Acrescenta, em seu §3º, que a consulta às referias intimações deve ser feita em até 10 (dez) dias corridos contados da data do envio da intimação , sob pena de considerar-se a intimação automaticamente realizada na data do término desse prazo.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. Descendo à realidade dos fólios, vislumbra-se que os autos foram remetidos eletronicamente ao representante da Fazenda Estadual, para ciência do inteiro teor da decisão embargada, no dia 28/02/2022 (segunda-feira). Verifica-se, ainda, que não existe nenhum ato certificando a consulta eletrônica ao inteiro teor da referida intimação, razão pela qual esta deve ser tida por realizada após 10 (dez) dias corridos da data do envio – 10/03/2022 (quinta-feira). <span class="NormalTextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-

Processo	3005812-90.2024.8.06.0000
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Nesse ínterim, com esteio no art. 231, inciso V, do CPC, te m-se que o prazo recursal para o Estado do Ceará opor embargos de declaração começou a correr no dia 11/03/2022 (sexta-feira) e, computados apenas os dias úteis, findaria apenas em 24/03/2022 (quinta-feira). Conclui-se, assim, que os aclaratórios opostos pelo ente estatal no dia 24/03/2022 (quinta-feira), último dia do prazo, foram tempestivos. &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6 . Resta evidente o erro de julgamento do Juízo de origem ao não conhecer os embargos de declaração com supedâneo em intempestividade , sendo, pois, de rigor a reforma do julgado. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	3005812-90.2024.8.06.0000
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">7. Por derradeiro, considerando que a questão meritória dos embargos - erro na aplicação do art. 135, inciso III, do CPC, e da jurisprudência sobre o tema - , &#160; por óbvio, não foi apreciada pelo Juízo de origem, deixa-se de conhecê-la , pois agir de modo diverso resultaria em supressão de instância e ofensa ao duplo grau de jurisdição . &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV. Dispositivo &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

Processo	3005812-90.2024.8.06.0000
	user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> 8 . Recurso parcialmente conhecido e provido . Tempestividade dos e mbargos de d eclaração reconhecida. Retorno dos autos à origem para que o Juízo aprecie as razões invocadas n o referido recurso.&#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> __________ &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color:

Processo	3005812-90.2024.8.06.0000
	windowtext; text-align: justify;"> Dispositivos relevantes citados: C PC , arts . 183, caput e §1º, 219, caput , 231, inciso V, 1.003, caput, e 1.023, <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; font-style: italic; line-height: 18px; font-family: &quot;Times New Roman&quot;,

Processo	3005812-90.2024.8.06.0000
	&quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">caput; Lei nº 11.419/2006, art. 5º. &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer parcialmente o recurso para d ar-lhe provimento, nos termos do voto da Relatora, parte integrante deste.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="EOP SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	3005812-90.2024.8.06.0000
	Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Fortaleza, data e hora informadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 10.6px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora <span class="EOP SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	3005812-90.2024.8.06.0000
	Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Cuida-se de AGRAVO DE INSTRUMENTO interposto pelo ESTADO DO CEARÁ contra decisão interlocutória proferida pelo Juízo da Vara Única da Comarca de Acarape que, nos autos de Ação de Execução Fiscal (Processo nº 0003988-09.2000.8.06.0027) proposta pelo agravante em desfavor de LIH CHIH NORDESTE S/A., não conheceu embargos de declaração, eis que intempestivos (ID nº 73257187 – fólios de origem). &#160; </p></div><div

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class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais (ID nº 15149750), o ente estatal pugna pela reforma da decisão vergastada, de forma a considerar tempestivos os embargos de declaração e afastar a necessidade de instauração de incidente de desconsideração da personalidade jurídica, determinando a inclusão dos corresponsáveis no polo passivo da execução fiscal.&#160;&#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em sede de contrarrazões (ID nº 15628118), os agravados impugnam as teses recursais e defendem a manutenção do julgado recorrido.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Deixo de abrir vista dos autos à Procuradoria Geral de Justiça, com esteio na Súmula nº 189, do STJ, <span class="NormalTextRun SpellingErrorV2Themed SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-

Processo	3005812-90.2024.8.06.0000
	image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">verbis : “é desnecessária a intervenção do Ministério Público nas execuções fiscais” . &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório, no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	3005812-90.2024.8.06.0000
	highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> O cerne da controvérsia consiste em aferir a higidez da decisão interlocutória vergastada, que não conheceu embargos de declaração opostos pelo Estado do Ceará com supedâneo em suposta intempestividade do protocolo da insurgência ; bem como se houve erro na aplicação do art. 135, inciso III, do CTN, e da jurisprudência sobre o tema . Pois bem. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Segundo dispõem os ar t s . 183, <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; font-style: italic; line-height: 27px; font-family: &quot;Times New

Processo	3005812-90.2024.8.06.0000
	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">caput e §1º 1 , 219, caput 2 , 1.003, caput 3 <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-

Processo	3005812-90.2024.8.06.0000
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; font-style: italic; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">, e 1.023, caput 4 , todos do CPC, o prazo para a oposição do recurso de embargos de declaração pelo Estado do Ceará é de 10 (dez) dias úteis a contar da data de sua intimação pessoal por carga, remessa ou meio eletrônico.&#160; <span class="EOP SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New

Processo	3005812-90.2024.8.06.0000
	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ademais, a Lei nº 11.419/2006, dispondo sobre a informatização do processo judicial, consigna: &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 5º As intimações serão feitas por meio eletrônico em portal próprio aos que se cadastrarem na forma do art. 2º desta Lei, dispensando-se a publicação no órgão oficial, inclusive eletrônico. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> §1º. Considerar-se-á realizada a intimação no dia em que o intimando efetivar a consulta eletrônica ao teor da intimação, certificando-se nos autos a sua realização. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	3005812-90.2024.8.06.0000
	highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> §2º. Na hipótese do § 1º deste artigo, nos casos em que a consulta se dê em dia não útil, a intimação será considerada como realizada no primeiro dia útil seguinte. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> §3º. A consulta referida nos §§ 1º e 2º deste artigo deverá ser feita em até 10 (dez) dias corridos contados da data do envio da intimação, sob pena de considerar-se a intimação automaticamente realizada na data do término desse prazo. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> §4º. Em caráter informativo, poderá ser efetivada remessa de correspondência eletrônica, comunicando o envio da intimação e a abertura automática do prazo processual nos termos do § 3º deste artigo, aos que manifestarem interesse por esse serviço. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-

Processo	3005812-90.2024.8.06.0000
	variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">§5º. Nos casos urgentes em que a intimação feita na forma deste artigo possa causar prejuízo a quaisquer das partes ou nos casos em que for evidenciada qualquer tentativa de burla ao sistema, o ato processual deverá ser realizado por outro meio que atinja a sua finalidade, conforme determinado pelo juiz. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> §6º. As intimações feitas na forma deste artigo, inclusive da Fazenda Pública, serão consideradas pessoais para todos os efeitos legais. (destaca-se). &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Descendo à realidade dos fólios, vislumbro que os autos foram remetidos eletronicamente ao representante da Fazenda Estadual, para ciência do inteiro teor da decisão embargada, no dia <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR"

Processo	3005812-90.2024.8.06.0000
	xml:lang="PT-BR"> 28/02/2022 (segunda -feira) (IDs nºs 73256924 e 73257175 do processo de origem). Verifico, ademais, que não existe nenhum ato certificando a consulta eletrônica ao inteiro teor da referida intimação , razão pela qual esta deve ser tida por realizada após 10 (dez) dias corridos da data do envio – 10/03/202 2 (quinta-feira) . &#160; &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -

Processo	3005812-90.2024.8.06.0000
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Nesse ínterim, com esteio no art. 231, inciso V 5 , do CPC, tenho que o prazo recursal para o Estado do Ceará opor embargos de declaração começou a correr n o dia 11/03/2022 (sexta -feira) <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;"

Processo	3005812-90.2024.8.06.0000
	lang="PT-BR" xml:lang="PT-BR"> e, computados apenas os dias úteis, find aria apenas em 24/03/2022 (quint a-feira) .&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Logo , concluo que os aclaratórios <span class="NormalTextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	3005812-90.2024.8.06.0000
	transparent; margin: 0px; padding: 0px; user-select: text;">opostos pelo ente estatal no dia 24/03/2022 (quinta-feira) (ID nº 73257178 do processo de origem) , último dia do prazo, foram tempestivos . &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Desta feita, compreendo que o Juízo de origem, ao não conhecer o recurso por intempestividade, não agiu com acerto , sendo, pois, de rigor a reforma do julgado . &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-

Processo	3005812-90.2024.8.06.0000
	kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Por derradeiro, considerando que a questão meritória dos embargos de declaração - erro na aplicação do art. 135, inciso III, do CPC, e da jurisprudência sobre o tema - , por óbvio, não foi apreciada pelo Juízo de origem , deixo de conhecê-la , pois agir de modo diverso resultaria em supressão de instância e ofensa ao duplo grau de jurisdição . &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Nesse sentido: &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;

Processo	3005812-90.2024.8.06.0000
	direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMBARGOS DE DECLARAÇÃO EM AGRAVO POR INSTRUMENTO. IMPROBIDADE ADMINISTRATIVA. ALEGADA OMISSÃO QUANTO AO PLEITO DE SUBSTITUIÇÃO DE BEM INDISPOBILIZADO. VÍCIO DE EMBARGABILIDADE EVIDENCIADO. QUESTÃO, NO ENTANTO, QUE NÃO DEVE SER CONHECIDA, SOB PENA DE SUPRESSÃO DE INSTÂNCIA. PLEITO NÃO ANALISADO NA DECISÃO AGRAVADA. "Discute-se, no agravo de instrumento, o acerto ou o desacerto da decisão profligada, sobejando, por isso, interdito decidir sobre questões não apreciadas pela decisão impugnada, sob pena de supressão de instância, afrontosa ao princípio do duplo grau de jurisdição" (TJSC, Agravo de Instrumento n. 5044512-71.2022.8.24.0000, rel. Des. Júlio César Knoll, Terceira Câmara de Direito Público, j. em 13/09/2022). ACLARATÓRIOS ACOLHIDOS PARA SANAR A OMISSÃO, SEM ATRIBUIÇÃO DE EFEITO INFRINGENTE. (TJ-SC - AI: 50604171920228240000, Relator: Carlos Adilson Silva, Data de Julgamento: 14/03/2023, Segunda Câmara de Direito Público) (destaca-se). &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> AGRAVO DE INSTRUMENTO. DIREITO PROCESSUAL CIVIL. CUMPRIMENTO DE SENTENÇA. INTIMAÇÃO PARA DESOCUPAÇÃO VOLUNTÁRIA DO IMÓVEL. TERCEIRO PREJUDICADO. PEDIDO DE SUSPENSÃO DA ORDEM DE DESPEJO FORMULADO NO PROCESSO DE ORIGEM, AINDA NÃO APRECIADO PELO JUÍZO DE PRIMEIRO GRAU. SUPRESSÃO DE INSTÂNCIA. IMPOSSIBILIDADE. OFENSA AO DUPLO GRAU DE JURISDIÇÃO. RECURSO NÃO CONHECIDO. 1 - Trata-se de Agravo de Instrumento interposto por terceiro prejudicado em face de decisão que determinou a intimação para desocupação voluntária do imóvel, pretendendo o recorrente a revogação da ordem de despejo. <span class="TextRun SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New

Processo	3005812-90.2024.8.06.0000
	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">2 ¿ As razões recursais apresentadas pelo agravante são objeto de pedido formulado junto ao processo de origem, o qual ainda não foi apreciado. 3 ¿ Dessa forma, considerando que a matéria aqui arguida ainda não foi objeto de apreciação pelo juízo de primeiro grau, admitir a pretensão requerida pelo agravante por meio do presente recurso de Agravo de Instrumento, configurar-se-ia em verdadeira supressão de instância, o que não é permitido no ordenamento jurídico brasileiro, sob pena de violação ao duplo grau de jurisdição. 4 ¿ Recurso não conhecido. ACÓRDÃO: Vistos, relatados e discutidos estes autos em que são partes as acima indicadas, acordam os desembargadores integrantes da 4ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em NÃO CONHECER do presente recurso, nos termos do relatório e do voto da relatora, que passam a fazer parte integrante do presente acórdão. Fortaleza, 14 de fevereiro de 2023. MARIA DO LIVRAMENTO ALVES MAGALHÃES Desembargadora Relatora (TJ-CE - AI: 06264398820228060000 Fortaleza, Relator: MARIA DO LIVRAMENTO ALVES MAGALHÃES, Data de Julgamento: 14/02/2023, 4ª Câmara Direito Privado, Data de Publicação: 14/02/2023) (destaca-se). &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMENTA: AGRAVO DE INSTRUMENTO - ALEGAÇÃO DE MATÉRIA NÃO DECIDIDA NA INSTÂNCIA DE ORIGEM - SUPRESSÃO DE INSTÂNCIA - AÇÃO DE OPOSIÇÃO - TUTELA PROVISÓRIA DE URGÊNCIA - REQUISITOS NÃO COMPROVADOS. 1. A análise pelo Tribunal de uma questão que não foi decidida no juízo de primeira instância impede sua apreciação, sob pena de supressão de instância e violação do princípio do duplo grau de jurisdição. 2. A tutela de urgência de natureza antecipada será concedida quando, diante da probabilidade do direito alegado, houver perigo de dano ou risco ao resultado útil do processo. (TJ-MG - AI: 10000212178784001 MG, Relator: José Américo Martins da Costa, Data de Julgamento: 01/07/2022, Câmaras Cíveis / 15ª CÂMARA CÍVEL, Data de Publicação: 06/07/2022) (destaca-se). &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial,

Processo	3005812-90.2024.8.06.0000
	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ante o exposto, conheço parcialmente o Agravo de Instrumento e dou-lhe provimento , para reformar a decisão agravada, de modo a conhecer os Embargos de Declaração e determinar o retorno dos autos à origem para que o Juízo aprecie as razões invocadas no referido recurso.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É como voto. <span class="EOP SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Art. 183. A União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público gozarão de prazo em dobro para todas as suas manifestações processuais, cuja contagem terá início a partir da intimação pessoal. § 1º A intimação pessoal far-se-á por carga, remessa ou meio eletrônico. &#160;</p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. Art. 219. Na contagem de prazo em dias, estabelecido por lei ou pelo juiz, computar-se-ão somente os dias úteis. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear:

Processo	3005812-90.2024.8.06.0000
	both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Art. 1.003. O prazo para interposição de recurso conta-se da data em que os advogados, a sociedade de advogados, a Advocacia Pública, a Defensoria Pública ou o Ministério Público são intimados da decisão. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Art. 1.023. Os embargos serão opostos, no prazo de 5 (cinco) dias, em petição dirigida ao juiz, com indicação do erro, obscuridade, contradição ou omissão, e não se sujeitam a preparo. &#160; </p></div><div class="OutlineElement Ltr SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW157640553 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. Art. 231. Salvo disposição em sentido diverso, considera-se dia do começo do prazo: [...] V - o dia útil seguinte à consulta ao teor da citação ou da intimação ou ao término do prazo para que a consulta se dê, quando a citação ou a intimação for eletrônica. &#160;

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	</p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	55
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Decretação de Ofício
Polo ativo	NOVA ENGEVIX ENGENHARIA E PROJETOS S.A.
Advogado(s) - Polo ativo	MAURICIO LICKS - (RS96994)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão

<p style="text-align: center;">&#160;</p><p>&#160;</p><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;">   <span class="SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;">   <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);">   <img class="WACImage SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 89px; height: 120px; text-wrap-mode: nowrap !important;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAFkAAAB4CAIAAAAWmcl
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	font-family: Calibri, Calibri_EmbeddedFont, Calibri_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt;

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	line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Processo: 3002858-71.2024.8.06.0000 – Embargos de Declaração. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Embargante: Nova Engevix Engenharia e Projetos S/A. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-

Processo	3002858-71.2024.8.06.0000
	numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Embargado: Estado do Ceará. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Ementa: Direito processual civil. Embargos de declaração em agravo de instrumento. Contradição. Ocorrência. Ausência de efeitos infringentes. Recurso parcialmente provido. &#160;</p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> I. Caso em exame <span class="EOP SCXW14924486

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BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">   1. Embargos de Declaração opostos em face de acórdão que deu provimento ao Agravo de Instrumento interposto   pelo embargante,   para reconhecer prescrição da pretensão executória.   &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR">   II. Questão em discussão   &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">   2. A questão em discussão consiste em verificar se   a   <span class="NormalTextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-

Processo	3002858-71.2024.8.06.0000
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">decisão , ao determinar que a verba sucumbencial deva ser apurada com base no valor da causa e ao mesmo tempo fazer referência a dispositivos legais que ordenam a sua incidência sobre o valor do proveito econômico, foi contraditória . &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> III. Razões de decidir &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 3. O acórdão vergastado possui a contradição apontada. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;

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	background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 4. Vício sanado, sem, contudo, alterar a conclusão adotada no agravo de instrumento , qual seja: condenar o Estado do Ceará ao adimplemento da verba honorária em 10% (dez por cento) sobre o valor atualizado da causa que não ultrapassa a faixa indicada no art. 85, §3º, inciso I, do CPC, e, naquilo que exceder, o percentual mínimo das faixas subsequentes, nos termos do art. 85, §§4º, inciso III, e 5º, do CPC. &#160;</p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; IV. Dispositivo &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> 5. Recurso parcialmente provido <span class="NormalTextRun

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	SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> _________________ &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> Dispositivos relevantes citados: CPC, arts . 85 , §§§3º, 4º e 5º, e 1.022. &#160;</p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New

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	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer o recurso para dar-lhe parcial provimento, nos termos do voto da relatora, parte integrante deste. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 9.46667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data e hora informadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 9.46667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New

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	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Cuida-se de EMBARGOS DE DECLARAÇÃO opostos por NOVA ENGEVIX ENGENHARIA E PROJETOS S/A. em face de acórdão proferido por esta Colenda Câmara Julgadora, que conheceu e deu provimento ao Agravo de Instrumento por ele interposto (ID nº 15141119).&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span

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	class="TextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Em suas razões recursais (ID nº 15582820), a embargante sustenta que o acórdão é contraditório/obscuro ao determinar que a verba sucumbencial deve ser apurada com base no “valor da causa” e ao mesmo tempo fazer referência a dispositivos legais que ordenam a sua incidência sobre o valor do “proveito econômico” . Ao final, pugna pelo conhecimento e provimento do recurso, para sanar a contradição/obscuridade indicada.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Contrarrazões acostadas ao ID nº 15802656. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="TextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-

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	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">É o relatório, no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Presentes os requisitos de admissibilidade, conheço o recurso. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 79px;"> Segundo a dicção do art. 1.022 do CPC, os Embargos Declaratórios são cabíveis contra qualquer decisão judicial para esclarecer obscuridade ou eliminar contradição, suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz ou corrigir erro material. Tal espécie recursal possui rígidos contornos processuais, exigindo-se, para seu acolhimento, que estejam presentes os pressupostos legais de cabimento, não tendo condão de ensejar pura e simplesmente uma decisão substitutiva do julgado embargado. <span class="EOP SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Times New Roman&quot;, &quot;Times New

Processo	3002858-71.2024.8.06.0000
	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Na hipótese, o embargante alega que o acórdão de ID nº 15239028, ao mencionar que o percentual dos honorários advocatícios sucumbenciais deverá incidir sobre o valor da causa e invocar inciso que se refere ao valor do proveito econômico obtido, incorreu em contradição/obscuridade.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Adianto, desde já, que existe a contradição apontada , razão pela qual passo a saná-la. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both;

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	cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> O art. 85 do CPC, tornou mais objetivo o processo de arbitramento dos honorários advocatícios nas causas em que a Fazenda Pública for parte , estabelecendo em seu §§3º e 4º, inciso III, como regra geral, que estes deverão ser fixados em percentual sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa , senão vejamos: &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 85. [...] &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> § 3º Nas causas em que a Fazenda Pública for parte, a fixação dos honorários observará os critérios estabelecidos nos incisos I a IV do § 2º e os seguintes percentuais: <span class="EOP SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I - mínimo de dez e máximo de vinte por cento sobre o valor da condenação ou do proveito econômico obtido até 200 (duzentos) salários-mínimos; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II - mínimo de oito e máximo de dez por cento sobre o valor da condenação ou do proveito econômico obtido acima de 200 (duzentos) salários-mínimos até 2.000 (dois mil) salários-mínimos; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun

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	SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">III - mínimo de cinco e máximo de oito por cento sobre o valor da condenação ou do proveito econômico obtido acima de 2.000 (dois mil) salários-mínimos até 20.000 (vinte mil) salários-mínimos; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV - mínimo de três e máximo de cinco por cento sobre o valor da condenação ou do proveito econômico obtido acima de 20.000 (vinte mil) salários-mínimos até 100.000 (cem mil) salários-mínimos; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> V - mínimo de um e máximo de três por cento sobre o valor da condenação ou do proveito econômico obtido acima de 100.000 (cem mil) salários-mínimos. <span class="EOP SCXW14924486 BCX8" style="-webkit-

Processo	3002858-71.2024.8.06.0000
	user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> § 4º Em qualquer das hipóteses do § 3 º: &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I - os percentuais previstos nos incisos I a V devem ser aplicados desde logo, quando for líquida a sentença; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 10pt; line-height: 16px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;,

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	&quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> II - não sendo líquida a sentença, a definição do percentual, nos termos previstos nos incisos I a V, somente ocorrerá quando liquidado o julgado; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III - não havendo condenação principal ou não sendo possível mensurar o proveito econômico obtido, a condenação em honorários dar-se-á sobre o valor atualizado da causa; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV - será considerado o salário-mínimo vigente quando p rolatada sentença líquida ou o que estiver em vigor na data da decisão de liquidação. &#160; </p></div><div

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	class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> § 5º Quando, conforme o caso, a condenação contra a Fazenda Pública ou o benefício econômico obtido pelo vencedor ou o valor da causa for superior ao valor previsto no inciso I do § 3º, a fixação do percentual de honorários deve observar a faixa inicial e, naquilo que a exceder, a faixa subsequente, e assim sucessivamente. &#160;</p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] (destaca-se) . &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Na hipótese vertente, ve rifico <span class="NormalTextRun SCXW14924486 BCX8" style="-

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	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">que não houve condenação e nem proveito econômico obtido, pois a ação foi extinta em virtude d o reconhecimento da prescrição da pretensão executória . Nesse liame, t enho que, seguindo a ordem de preferência referenciada acima, os honorários de sucumbência devem ser fixados sobre o valor atualizado da causa . &#160;</p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ademais, considerando que o valor da causa ultrapassa o patamar previsto no art. 85, §3º, inciso I, do CPC, entendo que a verba honorária deve ser fixada no percentual mínimo d esta faixa – 10% (dez por cento) - <span class="NormalTextRun SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text;">e, naquilo que exceder, o percentual mínimo das faixas subsequentes, a teor do disposto no art. 85, §5º, do CPC.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 77px;"> Ante o exposto, conheço e dou parcial provimento ao recurso , para sanar a contradição indicad a , sem, contudo, alterar a conclusã o adotada pelos julgadores , qual seja: condenar o Estado do Ce ará ao adimplemento d a verba honorária em 10% (dez por cento) sobre o valor atualizado da causa que não ultrapassa a faixa indicada no art. 85, §3º, inciso I, do CPC, e, naquilo que exceder, o percentual mínimo das faixas subsequentes, nos termos do art. 85, §§4º, inciso III, e 5º, do CPC. &#160;</p></div><div class="OutlineElement Ltr SCXW14924486 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 77px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Fortaleza, data e hora informadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe

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	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW14924486 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>

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Número de ordem	56
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Gratificação de Inatividade
Polo ativo	MUNICIPIO DE ITAPIPOCA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA IVANILDA DE OLIVEIRA
Advogado(s) - Polo passivo	DEODATO JOSE RAMALHO NETO - (CE15895-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5G5H9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2IrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owwvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quQ7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;3000215-31.2024.8.06.0101 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE ITAPIPOCA</p><p> APELADO: MARIA IVANILDA DE OLIVEIRA</p><p> A1</p><p>   <br />   </p><p style="text-align: center;">&#160;</p><p style="text-align: justify;">   EMENTA:&#160;   ADMINISTRATIVO. PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. SERVIDORA PÚBLICA APOSENTADA DO MUNICÍPIO DE ITAPIPOCA/CE. LICENÇA-PRÊMIO NÃO USUFRUÍDA. CONVERSÃO EM PECÚNIA. POSSIBILIDADE. REVOGAÇÃO DA LEI QUE PREVIA O BENEFÍCIO. PREENCHIMENTO DOS REQUISITOS LEGAIS VIGENTES À ÉPOCA. SÚMULA Nº 51 DO TJCE. MUNICÍPIO NÃO SE DESINCUMBIU DO SEU ÔNUS PROBATÓRIO. VEDAÇÃO AO ENRIQUECIMENTO ILÍCITO DA ADMINISTRAÇÃO. DIREITO À PERCEPÇÃO DA VANTAGEM A PARTIR DA

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	VIGÊNCIA DA LEI INSTITUIDORA. RECURSO DE APELAÇÃO CONHECIDO E DESPROVIDO.&#160;SENTENÇA ALTERADA, DE OFÍCIO, PARA POSTERGAR A FIXAÇÃO DA VERBA HONORÁRIA SUCUMBENCIAL.</p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> I. Caso em exame </p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> 1. Apelação cível interposta pelo Município de Itapipoca contra sentença que julgou procedente ação ajuizada por servidora, para determinar que o ente municipal conceda&#160;o&#160;pagamento&#160;de&#160;2 (duas) licenças-prêmio (referentes ao período de 1995 a 2005), não usufruídas pela autora.</p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> II. Questão em discussão </p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> 2. A questão em discussão consiste em analisar o direito da servidora municipal à conversão da licença-prêmio em pecúnia.</p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> III. Razões de decidir </p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> 3. De acordo com o art. 105 da Lei Municipal nº 205/1994, após cada quinquênio de efetivo exercício o servidor fará jus a 3 (três) meses de licença, a título de prêmio por assiduidade, sem prejuízo da remuneração. Tal dispositivo foi revogado expressamente pela Lei Municipal nº 33, de 26 de julho de 2005.</p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> 4. Ressalta-se que, apesar de revogado em 2005, o direito à licença-prêmio foi incorporado e passou a integrar o patrimônio jurídico daqueles servidores que implementaram os requisitos legais para tanto durante a vigência da lei instituidora, a partir de 1994.</p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> 5. Ademais, trata-se de ato administrativo vinculado, de tal sorte que uma vez satisfeitos os requisitos legais pertinentes, o agente público passa a ter direito subjetivo à percepção da licença-prêmio.</p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> 6. In casu, restando evidenciado nos autos que a autora ingressou no serviço público municipal em 09/02/1995, aposentando-se das suas funções em 08/07/2021. Todavia, não há prova de que usufruiu de licença-prêmio adquirida legitimamente durante a vigência da Lei nº 205/1994. Por sua vez, o ente público olvidou acostar documentação apta a comprovar fato que modificasse, impedisse ou extinguisse o direito vindicado (art. 373, II, CPC), limitando-se a alegar a ausência de previsão legal para o pagamento da vantagem.</p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> IV. Dispositivo e tese </p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> 7. Apelação cível conhecida e desprovida. Sentença reformada de ofício para postergar a definição do percentual dos honorários advocatícios sucumbenciais para após a liquidação do julgado.</p><p class="MsoNormal" style="margin-left: 4cm; line-height: 200%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 1cm; line-height: 200%; text-align: justify;"> &#160;Tese de julgamento: “É direito da servidora a conversão em pecúnia da licença-prêmio não gozada ou não contada em dobro para aposentadoria, sob pena de enriquecimento ilícito da administração pública”.</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 1cm; line-height: 200%; text-align: justify;"> &#160; Dispositivos relevantes citados:&#160; arts. 105 a 111 da Lei Municipal nº 205/1994. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 1cm; line-height: 200%; text-align: justify;"> &#160; Jurisprudência relevante citada: AgInt no REsp n. 1.936.519/AM, relator Benedito Gonçalves, Primeira Turma, DJe de 30/3/2022; Súmula 51 do TJCE. &#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em&#160;conhecer da apelação cível para negar-lhe provimento , nos termos do voto do relator.</p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align:

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	justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p class="Textbody" style="margin-top: .05pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Trata-se de apelação cível interposta pelo Município de Itapipoca contra sentença prolatada pelo Juízo da 1ª Vara Cível da Comarca de Itapipoca.</p><p class="Textbody" style="margin-top: .15pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ação (Id. 15180523): de cobrança ajuizada por Maria Ivanilda de Oliveira contra o Município de Itapipoca, requerendo a conversão da licença-prêmio em pecúnia.</p><p class="Textbody" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Sentença (Id. 15180537): proferida nos seguintes termos: "extingo o processo com resolução de mérito, nos termos do Art. 487, inciso I, do CPC, julgando&#160; PROCEDENTE&#160;a pretensão autoral para determinar que o Município de Itapipoca/CE conceda&#160;&#160;o&#160;&#160;pagamento&#160;&#160;de&#160;&#160;2 (duas) licenças-prêmio (1995-2005) não gozadas para a Requerente, conforme o que restou decidido no julgamento do RE 870.947 (Repercussão Geral - Tema nº 810), onde o STF assentou entendimento de que o cálculo de atualização monetária dos créditos contra a Fazenda Pública deverá ser observado o IPCA-E e, quanto aos juros moratórios, a remuneração da caderneta de poupança, na forma do art. 1º-F da Lei nº 9.494/97, com a redação dada pela Lei nº 11.960/09, observada, contudo, a incidência do art. 3º da Emenda Constitucional nº 113/2021, a partir de sua publicação, em 09/12/2021, segundo a qual, para fins de atualização monetária e juros, haverá a incidência, uma única vez, até o efetivo pagamento, do índice da taxa referencial do Sistema Especial de Liquidação e de Custódia (SELIC), acumulado mensalmente.&#160;Diante da sucumbência, condeno o Requerido ao pagamento de honorários advocatícios em 10% (dez por cento) da condenação, nos termos do Art. 85, §3º, inciso I, do CPC. Sem custas (Art. 5, inciso I, Lei Estadual nº 16.132/16).&#160;Sentença não sujeita ao reexame necessário, em razão de estar fundada tanto em Súmula de Tribunal Superior, bem como em tema repetitivo no âmbito do STJ (Art. 496, §4º, incisos I e II, do CPC)".</p><p class="Textbody" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Razões recursais (Id. 15180591): o Município alega, em suma, a ausência de direito ao recebimento de licença-prêmio, pelo fato de o benefício ter sido revogado pela Lei Municipal nº 033/2005. Ao final, requer a reforma da sentença para julgar improcedente a demanda.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Contrarrazões (Id. 15180594): pugna pelo desprovimento do recurso.</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Parecer da Procuradoria Geral de Justiça (Id. 15493928): deixou de se manifestar acerca do mérito, por entender ausente o interesse público na demanda.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: justify;"> <br /> </p><p

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	class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Presentes os requisitos de admissibilidade, conheço da apelação.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Conforme relatado, cinge-se a controvérsia a analisar a sentença que julgou procedente ação ajuizada por servidora, para determinar que o ente municipal conceda&#160;o&#160;pagamento&#160;de&#160;2 (duas) licenças-prêmio (referentes ao período de 1995 a 2005), não usufruídas pela autora.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> A sentença deve ser mantida, conforme será explicitado a seguir.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> De acordo com a Lei Municipal nº 205/1994, quando ainda estava em vigência, em seu art. 105 e seguintes, normatiza-se acerca do direito à licença-prêmio aos servidores públicos do município, senão vejamos: &#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Art. 105. Após cada quinquênio de efetivo exercício o servidor fará jus a 3 (três) meses de licença, a título de prêmio por assiduidade, sem prejuízo da remuneração.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> §1º. Para o servidor titular de cargo de carreira, no exercício de cargo em comissão, gozar de licença-prêmio, com as vantagens desse cargo, deve ter nele pelo menos 2 (dois) anos de exercício ininterrupto.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> §2º. Somente o tempo de serviço público prestado ao Município será contado para efeito de licença-prêmio.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Art. 106. Não se concederá licença-prêmio ao servidor que, no período aquisitivo:</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I - sofrer penalidade disciplinar de suspensão;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II - afastar-se do cargo em virtude de: Licença para tratamento de&#160;interesses particulares; Condenação a pena privativa de liberdade por sentença definitiva; Afastamento para acompanhar cônjuge ou companheiro.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Parágrafo único. As faltas injustificadas ao serviço retardarão a concessão da licença-prêmio prevista neste artigo, na proporção de 1 mês para cada falta.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Art. 107. A licença-prêmio, a pedido do servidor, poderá ser gozada por inteiro ou parceladamente.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Parágrafo único. Requerida para gozo parcelado, a licença-prêmio não será concedida por período inferior a um mês.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Art. 108. É facultado à autoridade competente, tendo em vista o interesse da Administração, devidamente fundamentado, determinar, dentro de 90 (noventa) dias seguintes da apuração do direito, a data do início do gozo. pela licença-prêmio, bem como decidir se poderá ser concedida por inteiro ou parceladamente.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Art. 109. A licença-prêmio só poderá ser interrompida, de ofício, quando o exigir interesse

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	público, ou a pedido do servidor, preservado, em qualquer caso, o direito de gozo do período restante da licença.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Art. 110. É facultado ao servidor contar em dobro o tempo de licença-prêmio não gozada, para efeito de aposentadoria e disponibilidade.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Art. 111. O servidor deverá aguardar em exercício a concessão da licença-prêmio.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Parágrafo único. O direito de requerer licença-prêmio não sujeita a caducidade.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ocorre que a Lei Municipal nº 33, de 26 de julho de 2005, expressamente revogou tal dispositivo, nos seguintes termos: &#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Art. 8º: Fica alterada a Seção V do Capítulo IV do Título IV da Lei 205/94 de 23/03/1994 com seus respectivos artigos, que passa a ter a seguinte redação: SEÇÃO V DA LICENÇA PARA DESEMPENHO DE MANDATO CLASSISTA.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ressalta-se que, apesar de revogado em 2005, o direito à licença-prêmio foi incorporado e passou a integrar o patrimônio jurídico daqueles servidores que implementaram os requisitos legais para tanto durante a vigência da lei instituidora, a partir de 1994.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ademais, como se extrai do texto legal que vigorou até 2005, o direito à fruição de tal benefício surgia a partir do mês subsequente àquele em que o servidor completasse 05 (cinco) anos de exercício no cargo público.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Convém salientar, outrossim, que a licença-prêmio consiste no direito do servidor público estatutário de se afastar regularmente do exercício da atividade pública, sem prejuízo da remuneração, a título de prêmio por sua assiduidade.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ademais, trata-se de ato administrativo vinculado, de tal sorte que uma vez satisfeitos os requisitos legais pertinentes, o agente público passa a ter direito subjetivo à percepção da licença-prêmio.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> In casu, restando evidenciado nos autos que a autora ingressou no serviço público municipal em 09/02/1995, aposentando-se das suas funções em 08/07/2021 conforme documentos de Id. 15180524.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Todavia, não há prova de que usufruiu de licença-prêmio adquirida legitimamente durante a vigência dos arts. 105 e seguintes da Lei nº 205/1994 acima citados. Certo é que, a partir da aposentadoria, passou a ser devida a conversão daquele período em pecúnia, sob pena de, caso contrário, configurar-se enriquecimento ilícito da Administração, que se beneficiou com a prestação de seus serviços.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Tal conversão das licenças-prêmio não gozadas em pecúnia independe de expressa autorização legal, sendo, isso sim, decorrência lógica da responsabilidade objetiva da Administração (art. 37, §6º, da Constituição Federal de 1988), a qual tem o dever de indenizar os seus servidores, nesses casos, como forma de compensá-los pelo trabalho desempenhado sem a fruição de referida vantagem assegurada por lei, para fins de atender ao interesse público.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Salienta-se que o ente público, por sua vez, olvidou acostar documentação apta a comprovar fato que

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	modificasse, impedisse ou extinguisse o direito vindicado (art. 373, II, CPC), limitando-se a alegar a ausência de previsão legal para o pagamento da vantagem.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Nos termos da jurisprudência do STJ, é possibilitado a conversão em pecúnia da licença-prêmio não gozada ou não contada em dobro para aposentadoria, sob pena de enriquecimento ilícito da administração pública. Senão vejamos (destacou-se): &#160;</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> PROCESSUAL CIVIL E ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO ESPECIAL. POLICIAL MILITAR ESTADUAL. VIOLAÇÃO DO ART. 24 DO DECRETO-LEI N. 667/1969. AUSÊNCIA DE PREQUESTIONAMENTO. SÚMULA 211/STJ. LICENÇA ESPECIAL E FÉRIAS NÃO USUFRUÍDAS. CONVERSÃO EM PECÚNIA. POSSIBILIDADE. 1. Tendo o recurso sido interposto contra acórdão publicado na vigência do CPC/2015, devem ser exigidos os requisitos de admissibilidade na forma nele previsto, conforme Enunciado Administrativo n. 3/2016/STJ. 2. A falta de prequestionamento da matéria suscitada no recurso especial, a despeito da oposição de embargos de declaração, impede o seu conhecimento, a teor da Súmula 211/STJ. 3. O acórdão recorrido encontra-se em consonância com o entendimento adotado nesta Corte, "firme no sentido de ser possível a conversão em pecúnia da licença-prêmio não gozada ou não contada em dobro para aposentadoria, sob pena de enriquecimento ilícito da administração pública" (AgInt no REsp 1.826.302/AL, Rel. Ministro Sérgio Kukina, Primeira Turma, DJe 18/11/2019). 4. Agravo interno não provido. (AgInt no REsp n. 1.936.519/AM, relator Benedito Gonçalves, Primeira Turma, DJe de 30/3/2022)&#160;</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> A recorrência da temática levou esta Corte de Justiça a consolidar esse entendimento por meio do enunciado sumular nº 51:</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Súmula nº 51 do TJCE: É devida ao servidor público aposentado a conversão em pecúnia da licença-prêmio não gozada, sob pena de enriquecimento ilícito do Poder Público.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Nesse sentido, colaciono o seguinte precedente desta 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, referente à mesma causa de pedir, senão vejamos (destacou-se): &#160;</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">DIREITO ADMINISTRATIVO E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. SERVIDORA PÚBLICA MUNICIPAL APOSENTADA. LICENÇA PRÊMIO NÃO USUFRUÍDA. CONVERSÃO EM PECÚNIA. POSSIBILIDADE. REVOGAÇÃO DA LEI QUE PREVIA O BENEFÍCIO. PREENCHIMENTO DOS REQUISITOS LEGAIS VIGENTES À ÉPOCA. MUNICÍPIO NÃO SE DESINCUMBIU DO SEU ÔNUS PROBATÓRIO. VEDAÇÃO AO ENRIQUECIMENTO ILÍCITO DA ADMINISTRAÇÃO. SENTENÇA ILÍQUIDA. FIXAÇÃO DA VERBA HONORÁRIA NA FASE DE LIQUIDAÇÃO. APELAÇÃO CONHECIDA E DESPROVIDA. 1. O cerne da questão em deslinde consiste em verificar se a parte autora, servidora pública aposentada do Município de Itapipoca, faz jus à conversão em pecúnia de licença-prêmio por ela não usufruída, em razão da revogação do dispositivo da Lei Municipal nº 205/1994 que previa originalmente tal instituto. 2. Apesar de revogado pela Lei Municipal nº 33/2005, o direito à licença-prêmio foi incorporado e passou a integrar o patrimônio jurídico daqueles servidores que implementaram os requisitos legais para tanto durante a vigência da lei instituidora, a partir de 1994. 3. A jurisprudência do Superior Tribunal de Justiça é coesa no sentido de ser possível a conversão em pecúnia da licença-

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	prêmio não gozada ou não contada em dobro para aposentadoria, sob pena de enriquecimento ilícito da administração pública. Precedentes deste Tribunal. Súmula nº 51 do TJCE. 4. Em se tratando de sentença ilíquida, a verba honorária sucumbencial deve ser apurada apenas na fase de liquidação do julgado, nos termos do art. 85, §4º, II, c/c §11º, do CPC. 5. Apelação conhecida e desprovida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer da Apelação, para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste. Fortaleza, data e hora informadas pelo sistema. DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO Relatora (Apelação Cível&#160;- 0052740-46.2021.8.06.0101, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160; 12/12/2022, data da publicação:&#160; 12/12/2022)</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> E desta Relatoria: Apelação Cível nº 3001179-58.2023.8.06.0101, 3ª Câmara de Direito Público, Data do julgamento: 19/12/2023.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Desse modo, permanecem, pois, totalmente inabalados os fundamentos da decisão pela procedência do pedido, impondo-se sua confirmação nesta instância, porquanto houve a correta aplicação do direito ao caso pelo Juízo a quo.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> Por fim, no que tange aos honorários advocatícios, merece reforma a sentença, de ofício, no que tange ao momento de arbitramento do percentual, fixado em 10% (dez por cento) sobre o valor da condenação, uma vez que, conforme estabelece o art. 85, § 4º, inciso II, do CPC, não sendo líquida a sentença, a definição do percentual dos honorários sucumbenciais somente deve ocorrer quando da liquidação da decisão.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> Diante do exposto, conheço da apelação para negar-lhe provimento, reformando, porém, de ofício a sentença de primeiro grau, a fim de postergar a definição do percentual dos honorários advocatícios sucumbenciais para após a liquidação do julgado.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Em virtude da sucumbência do ente público também nesta segunda instância, deixo consignado que a fixação do percentual de honorários advocatícios na fase de liquidação (art. 85, §4º, II, do CPC) deverá considerar a majoração do art. 85, §11, CPC.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É como voto.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	57
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização Trabalhista
Polo ativo	MUNICIPIO DE IBARETAMA
Advogado(s) - Polo ativo	Não informado
Polo passivo	ANDERSON CAMURCA DA SILVA
Advogado(s) - Polo passivo	FRANCISCO CLAUDIO CAVALCANTE DA SILVA - (CE22624-A)

Processo	0200919-29.2022.8.06.0151
Terceiros	Não informado

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"> <span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUilIR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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AAAAAASUVORK5CYII=" alt="" /> </p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ <br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;">   <br /> </p><p> PROCESSO:&#160;0200919-29.2022.8.06.0151 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE IBARETAMA. <br /> </p><p> APELADO: ANDERSON CAMURCA DA SILVA.</p><p align="center">   <br /> </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> Ementa: CONSTITUCIONAL. ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. EX-SERVIDOR PÚBLICO. EXERCÍCIO DE CARGO EM COMISSÃO ENTRE OS ANOS DE 2017 E 2020. DIREITO À PERCEPÇÃO DE VERBAS RESCISÓRIAS (DÉCIMO TERCEIRO SALÁRIO E DE FÉRIAS ACRESCIDAS DO ADICIONAL DE UM TERÇO). ART. 7º, INCISOS VIII E XVII, C/C O ART. 39, § 3º, DA CONSTITUIÇÃO FEDERAL DE 1988. PAGAMENTO DEVIDO. ÔNUS DA PROVA QUE INCUMBIA AO MUNICÍPIO DE IBARETAMA/CE.   HONORÁRIOS. SUCUMBÊNCIA MÍNIMA. APLICAÇÃO DO ART. 86, PARÁGRAFO ÚNICO, DO CPC AO CASO. PRECEDENTES DESTE TRIBUNAL. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   <strong style="mso-bidi-font-weight: normal;">   I. CASO EM EXAME   </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 1. Apelação Cível interposta pelo Município de Ibaretama/CE, adversando sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação de cobrança movida por Anderson Camurça da Silva, ex-servidor público, exonerado do cargo em comissão de “subprocurador”, que exerceu entre os anos de 2017 e 2020. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   II. QUESTÃO EM DISCUSSÃO   </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> 2. A principal questão discutida nos autos gira em torno do direito à percepção de verbas rescisórias (13º salário e férias acrescidas do adicional de 1/3), na forma da lei.   &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> 3. Ora, a CF/88, em seu art. 39, §3º, assegura, expressamente, ao s servidores em geral, efetivos ou comissionados, alguns direitos trabalhistas, dentre eles, 13º salário e férias acrescidas do adicional de 1/3 (art. 7º, incisos VIII e XVII). &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 4. E, nas causas movidas por ex-

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	servidores, para a cobrança de eventuais verbas rescisórias, se evidenciada a existência do vínculo funcional, o ônus da prova da realização dos pagamentos recai sobre o ente público.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 5. Incide, aqui, a Teoria da Carga Dinâmica da Prova, segundo a qual o seu ônus deve ser imputado àquela parte que, dadas as circunstâncias existentes no caso, tenha melhores condições para dele se desincumbir in concreto.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 6. Logo, não havendo dúvida quanto à existência do vínculo funcional, incumbia ao Município de Ibaretama/CE ter demonstrado que realizou o pagamento das verbas rescisórias devidas ao ex-servidor público, Anderson Camurça da Silva, após sua exoneração do cargo em comissão de “subprocurador”, o que, entretanto, não ocorreu.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 7. Ademais, verificada a sucumbência mínima de uma das partes (autor), deve a outra (réu) responder, por inteiro, pelo pagamento dos honorários (CPC, art. 86, parágrafo único). &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> IV. DISPOSITIVO </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 8. Recurso conhecido e não provido.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 9. Sentença mantida.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> ______</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Dispositivos relevantes citados: CF/88, arts. 7º, XVII e 39, §3º, e CPC, art. 86, parágrafo único. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> &#160; </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: center;"> &#160; </p><p class="EmentadoAcrdo" style="line-height: 150%; text-align: center;"> ACÓRDÃO </p><p class="EmentadoAcrdo" style="text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0200919-29.2022.8.06.0151, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para negar-lhe provimento, confirmando integralmente a sentença, nos termos do voto da Relatora.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 &#160; </p><p class="MsoNormal" style="margin-bottom: 12pt; line-height: 150%; text-align: center;"> R elatora &#160; </p><p class="MsoNormal" style="line-height: 150%; text-align: center;"> &#160; </p><p class="MsoNormal" style="line-height: 200%; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de apelação cível, adversando sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação de cobrança (Processo nº 0200919-29.2022.8.06.0151). &#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> <span style="color:

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	black;">O caso/a ação originária : Anderson Camurça da Silva ingressou com ação de cobrança em face do Município de Ibaretama/CE, alegando, em suma, que, entre os anos de 2017 e 2020, exerceu o cargo em comissão de “subprocurador”, e que, ao ser exonerada, não percebeu as verbas rescisórias a que teria direito por lei (v.g., 13º salário e férias acrescidas do adicional de 1/3, etc.).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Citado, o ente público ofertou contestação (ID 15607230).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160; Sentença proferida pelo magistrado de primeiro grau (ID 15607348), dando parcial procedência à ação de cobrança, in verbis: </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 120.5pt; text-align: justify;"> “ANTE O EXPOSTO, julgo parcialmente procedentes os pedidos da autora, nos termos do art. 487, I, do CPC, de modo a condenar a parte promovida a pagar à parte promovente o valor relativo às férias&#160;proporcionais, acrescidas de 1/3 (um terço)&#160;referentes ao período de abril de 2017 a 2020, além de 13º salário proporcional referente aos anos de&#160;2018 e 2019.” (sic) </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Ibaretama/CE interpôs Apelação Cível (ID 15607360), buscando a reforma integral do r. <em style="mso-bidi-font-style: normal;">decisum.</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Para tanto, afirmou que não assistiri a ao ex-servidor público, in casu, o direito a eventuais verbas rescisória s, porque teria apenas exercido cargo em comissão, que é de livre nomeação e exoneração, na forma da lei.</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, ao final, pugnou pelo total provimento de seu recurso ou, alternativamente, pela distribuição dos ônus da sucumbência (honorários), de forma proporcional, nos termos do art. 86, caput, do Código de Processo Civil de 2015. &#160;</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foram ofertadas contrarrazões (ID 15607364). &#160; </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça como custos legis, na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, não havendo, portanto, interesse público a ser tutelado pelo ilustre representante Parquet neste azo. </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="MsoNormal" style="line-height: 150%; text-align: justify;"> &#160; </p><p class="MsoNormal" style="line-height: 200%; text-align: center;"> VOTO </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos todos os requisitos legais pertinentes, conheço da apelação cível, e passo, a seguir, ao enfrentamento de suas razões. </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foi devolvida a este Tribunal apenas controvérsia em torno do direito do ex-servidor público, Anderson Camurça da Silva, à percepção de verbas rescisórias (13º salário e férias acrescidas do adicional de 1/3), após sua exoneração de cargo em comissão de ‘subprocurador”,

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	que exerceu entre os anos de 2017 e 2020, no âmbito do Município de Ibaretama/CE, como visto.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, o art. 39, §3º, da CF/88 assegura, expressamente, aos servidores em geral, efetivos ou comissionados, alguns direitos trabalhistas, dentre eles, 13º salário e férias acrescidas do adicional de 1/3 (art. 7º, VIII e XVII), ex vi: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <br /> </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> VIII - décimo terceiro salário com base na remuneração integral ou no valor da aposentadoria; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal; (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, nas causas movidas para a cobrança de tais verbas rescisórias, cabe ao ex-servidor que invoca a inadimplência do ente público, única e tão somente, demonstrar a existência do seu vínculo funcional, à época. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ao ente público, por seu turno, recai o dever de comprovar o pagamento dos respectivos valores ou a presença de qualquer outro fato extintivo, impeditivo ou modificativo do direito reivindicado pelo ex-servidor. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Incide, aqui, a Teoria da Carga Dinâmica da Prova, segundo a qual o seu ônus deve ser imputado à parte que, dadas as circunstâncias existentes, tenha melhores condições para dele se desincumbir in concreto. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Deveras, é mais simples ao ente público, que deve ter pleno controle dos dados relativos à vida funcional de todos os integrantes de seus quadros, fazer prova da (in)existência de direito reivindicado pelo ex-servidor.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Acerca do tema, ex vi: </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “Ação de Cobrança – Saldo de verbas rescisórias – Ex-servidora estatutária do Município de Ferraz de Vasconcelos/SP – Não se desincumbiu a ré, ora apelada, do seu ônus processual quanto à prova de fato impeditivo, modificativo ou extintivo do direito do autor, nos termos do art. 333, inciso II, do Código de Processo Civil – Impossibilidade de carrear à autora a produção de "prova diabólica" – Onus probandi que deve ser carreado àquele que tiver melhores condições de suportá-lo segundo a Teoria da Distribuição Dinâmica do ônus da prova. Atualização do débito nas condenações impostas à Fazenda Pública – Aplicação do disposto no art. 1º-F da Lei n.º 9.494/97, com redação determinada pelo art. 5.º da Lei n.º 11.960/09, observadas as determinações do C. Supremo Tribunal Federal. Sentença reformada – Recurso provido.” (TJSP - Apelação

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	Cível 0006143-29.2014.8.26.0191; Relator (a): Renato Delbianco; Órgão Julgador: 2ª Câmara de Direito Público; Foro de Ferraz de Vasconcelos - 3ª Vara Judicial; Data do Julgamento: 01/09/2015; Data de Registro: 03/09/2015). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. VERBAS REMUNERATÓRIAS (13º SALÁRIO, FÉRIAS E LICENÇA-PRÊMIO). SERVIDOR PÚBLICO EFETIVO APOSENTADO. NECESSIDADE DE MELHOR INSTRUÇÃO DO FEITO, PELO MUNICÍPIO RÉU/APELADO. TEORIA DA DISTRIBUIÇÃO DINÂMICA DO ÔNUS DA PROVA. SENTENÇA CASSADA, DE OFÍCIO. RECURSO PREJUDICADO. 1. Embora, a priori, caiba ao autor o ônus de demonstrar o fato constitutivo do seu direito, tem entendido esta Corte, em situações como a dos autos, que ao ente público requerido torna-se mais fácil instruir o processo com cópias dos holerites e demais documentos funcionais do postulante, de forma a permitir a averiguação da regularidade ou não dos pagamentos, referentes ao período questionado. 2. À luz da teoria da distribuição dinâmica do ônus da prova (art. 373, §1º, CPC), deve ser cassada a sentença, ainda que de ofício, a fim de que o réu/apelado comprove a alegada quitação das verbas remuneratórias postuladas pelo autor/apelante, isto porque, em linha de princípio, quem afirma um fato positivo tem de prová-lo com preferência a quem sustenta um fato negativo. Sentença cassada, de ofício. Apelação cível prejudicada.” (TJGO, Apelação (CPC) 5216651-21.2017.8.09.0065, Rel. ZACARIAS NEVES COELHO, 2ª Câmara Cível, julgado em 30/08/2019, DJe de 30/08/2019). (destacado). </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “APELAÇÃO CÍVEL. DIREITO ADMINISTRATIVO. COBRANÇA. SERVIDOR MUNICIPAL COM VÍNCULO COMPROVADO. FALTA DE PAGAMENTO. ÔNUS DA PROVA QUE COMPETIA À ADMINISTRAÇÃO PÚBLICA. AUSÊNCIA PROBATÓRIA DA QUITAÇÃO DA DÍVIDA PELO MUNICÍPIO. DEVER DO ENTE PÚBLICO DE EFETUAR O PAGAMENTO DA CONTRAPRESTAÇÃO PELO TRABALHO DESEMPENHADO, SOB PENA DE ENRIQUECIMENTO ILÍCITO. CONSECTÁRIOS LEGAIS FIXADOS DE ACORDO COM OS PARÂMETROS ESTABELECIDOS PELO SUPREMO TRIBUNAL FEDERAL, NO JULGAMENTO DOS EMBARGOS DECLARATÓRIOS OPOSTOS NO RE 870.947, OBSERVADO PELO JUÍZO A QUO. APELO NÃO PROVIDO. SENTENÇA INTEGRADA. I - Em ação de cobrança ajuizada por servidor contra Município, objetivando o pagamento de vencimento atrasado, comprovado o vínculo com a Administração, compete ao réu, a teor do inciso II, do artigo 373 do CPC, demonstrar a existência de fato impeditivo, modificativo, ou extintivo do direito vindicado, conceito no qual se inclui a demonstração, por via documental, da quitação da parcela trabalhista reclamada na presente demanda, ou de eventual afastamento temporário do demandante, o que, in casu, não ocorreu. II - Demonstrada a efetiva prestação de serviços pelo suplicante e não se desincumbindo a municipalidade de seu ônus probatório, é devida, ao servidor, a verba de ordem remuneratória pleiteada na inicial, sob pena de se configurar em enriquecimento sem causa da Administração Pública, em detrimento do particular. III - Tratando-se de condenação imposta à Fazenda Pública, os consectários legais devem ser fixados de acordo com os parâmetros estabelecidos pelo Supremo Tribunal Federal, no julgamento dos embargos declaratórios apresentados no RE 870.947, o que foi observado pelo Juízo a quo. IV - Apelo não provido. Sentença integrada.(APL nº 0500112-19.2013.8.05.0105,Relator: DINALVA GOMES LARANJEIRA PIMENTEL,Publicado em: 03/12/2019). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Ora, a partir da documentação acostada aos autos (ID’s 15607213, 15607232 e 15607233), facilmente se infere que Anderson Camurça da Silva , realmente , exerceu o cargo em comissão de “subprocurador” entre os anos de 2017 e 2020, no âmbito do Município de Ibaretama/CE, não havendo, com isso, nenhuma dúvida quanto à existência do seu vínculo funcional. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Incumbia, assim, ao ente público demonstrar que realizou o pagamento da totalidade das verbas rescisórias devidas ao ex-servidor (13º salário e férias acrescidas do adicional de 1/3), o que, porém, não ocorreu.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Daí por que, correta sua

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	condenação in casu, mediante distribuição do ônus da prova (art. 373, incisos I e II, do CPC), ex vi : </p><p class="MsoNormal" style="margin: 6pt 0cm 0.0001pt 4cm; text-align: justify;"> &#160; “Art. 373. O ônus da prova incumbe: &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> I - ao autor, quanto ao fato constitutivo de seu direito; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> II - ao réu, quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor.” (destacado).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Não é demais lembrar, nesse ponto, que a própria Constituição Federal de 1988 garante, diretamente, esses direitos aos ocupantes de cargos efetivos e/ou comissionados (art. 7º, inciso XVII c/c art. 39, § 3º), como visto. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Com efeito, apenas para os “agentes políticos” (v.g., detentores de mandato eletivo ou secretários) , é que deve ser editada previamente uma lei, autorizando a extensão desses direitos (13º salário e férias acrescidas do adicional de 1/3), conforme Tema nº 484 do Supremo Tribunal Federal , ex vi:</p><p class="EmentadoAcrdo" style="margin: 6pt 0cm 12pt 4cm; text-align: justify;"> “DIREITO ADMINISTRATIVO. AGRAVO INTERNO EM RECURSO EXTRAORDINÁRIO COM AGRAVO. AGENTE POLÍTICO. FIXAÇÃO DE SUBSÍDIO. RECEBIMENTO DE DÉCIMO TERCEIRO SALÁRIO. AUSÊNCIA DE PREVISÃO NA LEGISLAÇÃO MUNICIPAL. SÚMULAS 279 E 280/STF. 1. O Supremo Tribunal Federal, no julgamento do Tema 484/STF, não afirmou a obrigatoriedade do pagamento de décimo terceiro e do terço de constitucional de férias aos agentes políticos, senão que a “definição sobre a adequação de percepção dessas verbas está inserida no espaço de liberdade de conformação do legislador infraconstitucional”. 2. Para dissentir das conclusões do Tribunal de origem com relação à ausência de legislação municipal autorizando o pagamento de tais verbas, seria necessário analisar a legislação infraconstitucional pertinente e reexaminar os fatos e provas constantes dos autos, providências inviáveis neste momento processual. Precedentes. 3. Nos termos do art. 85, § 11, do CPC/2015, fica majorado em 25% o valor da verba honorária fixada anteriormente, observados os limites legais do art. 85, §§ 2º e 3º, do CPC/2015. 4. Agravo interno a que se nega provimento, com aplicação da multa prevista no art. 1.021, § 4º, do CPC/2015.” (ARE 1368626 AgR, Relator(a): ROBERTO BARROSO, Primeira Turma, julgado em 02/05/2022, PROCESSO ELETRÔNICO DJe-088&#160; DIVULG 06-05-2022&#160; PUBLIC 09-05-2022). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Nesse sentido, ensina o Professor José dos Santos Carvalho Filho que <em style="mso-bidi-font-style: normal;">“o que caracteriza o agente político não é só o fato de serem mencionados, na Constituição, mas sim o de exercerem efetivamente (e não eventualmente) função política de governo e de administração, de comando e, sobretudo, de fixação das estratégias de ação, ou seja, aos agentes políticos é que cabe realmente traçar os destinos do país.” (vide Manual de Direito Administrativo. 25 ed. São Paulo: Atlas, 2012, p. 584-585).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desse modo, não se pode, aqui, equiparar um trabalhador, que apenas esteve no 2º escalão do governo, aos “agentes políticos”, sendo, portanto, inadequado o condicionamento do seu direito às verbas rescisórias (13º salário e a férias acrescidas do adicional de 1/3) à existência de autorização específica em lei.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Este é o posicionamento que tem sido adotado pelas Câmaras de Direito Público do TJ/CE, em hipóteses como a dos autos:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <span style="font-size: small;"> <span style="color: black; background: white;">“RECURSO DE APELAÇÃO. DIREITO PROCESSUAL CIVIL, ADMINISTRATIVO E CONSTITUCIONAL. <strong style="mso-bidi-font-weight: normal;">SERVIDOR PÚBLICO. CARGO EM COMISSÃO. VERBAS REMUNERATÓRIAS. FÉRIAS E TERÇO CONSTITUCIONAL. ÔNUS DA PROVA. RECURSO DE

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	APELAÇÃO CONHECIDO E DESPROVIDO. HONORÁRIOS POSTERGADOS. 01. Cuida-se de Recurso de Apelação Cível com a finalidade de reforma da sentença que entendeu procedência da Ação de Cobrança intentada pela parte ora recorrida e que condenou o Município de Viçosa do Ceará a pagar verbas referentes às férias vencidas, acrescidas de 1/3 do período laborado de 01.04.2013 a 30.12.2016, não pagas pelo réu por ocasião da exoneração da parte promovente do cargo de livre nomeação e desligamento. 02. O art. 39, §3º, c/c artigo 7º, VIII e XVII, da CF88, asseguram ao ocupante de cargo público, seja efetivo ou comissionado, a percepção de férias acrescidas de um terço, inclusive em valor proporcional ao período laborado. 03. In casu, tem-se comprovado nos autos que a parte autora foi ocupante do cargo comissionado, no período de 01 de abril de 2013 até 30 de dezembro de 2016, de forma que outro entendimento não deve prevalecer, senão o de que lhe é assegurado, pela expressa dicção constitucional acima colacionada, o direito à percepção das verbas relativas às férias proporcionais e respectivo terço constitucional referentes ao período acima mencionado. 04. O Município apelante, não fez prova da efetiva quitação das verbas remuneratórias pleiteadas na inicial, e acolhidas pelo magistrado de piso, ônus este do qual não se desincumbiu, consoante artigo 373, II, do CPC. Precedentes. 05. Observo que, na senda dos entendimentos deste Sodalício Alencarino, resta incontroverso o direito à percepção dos valores inerentes ao saldo salarial relativo ao período de 01.04.2013 a 30.12.2016, isto é, nos moldes apresentados pela parte requerente e já reconhecidos pelo magistrado de planície, não merecendo alteração o decisum nesse ponto. 06. Apelação conhecida e desprovida. Honorários Advocatícios e majoração apenas na fase de liquidação (art. 85, §4º, II e §11, CPC).” (Processo nº 0002521-48.2019.8.06.0182; Relator (a):&#160;PAULO FRANCISCO BANHOS PONTE; Comarca: Viçosa do Ceará; Órgão julgador: 1ª Câmara de Direito Público; Data do julgamento: 05/07/2021) (destacado).</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; line-height: 150%; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “ APELAÇÃO CÍVEL. CONSTITUCIONAL E ADMINISTRATIVO. <strong style="mso-bidi-font-weight: normal;">COBRANÇA. CARGO COMISSIONADO. RELAÇÃO JURÍDICO-ADMINISTRATIVA E ESTATUTÁRIA. OBRIGAÇÃO QUANTO AO PAGAMENTO FÉRIAS E TERÇO CONSTITUCIONAL. APELO CONHECIDO E DESPROVIDO. 1. Trata-se de Apelação interposta pelo Município de Viçosa, requerendo a reforma da sentença que julgou procedente o pedido inaugural, no sentido de condená-lo ao pagamento de R$ 1.735,64 (mil, setecentos e trinta e cinco reais e sessenta e quatro centavos) referentes às férias e um terço constitucional correspondente ao período em que o autor trabalhara para a municipalidade ocupando cargo comissionado, ficando ainda condenado ao pagamento da verba honorária. 2. A Constituição Federal de 1988 conferiu aos servidores ocupantes de cargo público, sejam eles ocupantes de cargo efetivo ou comissionado, os direitos dispostos no art. 7º, da CF, dentre os quais encontram-se as férias e 1/3 constitucional. Diante da expressa previsão constitucional (art. 39, § 3º), ainda que se trate de cargo de livre nomeação e exoneração (art. 37, II, CF), inexiste dúvidas quanto ao direito ao percebimento de verbas rescisórias advindas do exercício do cargo de comissão. 3. Precedentes jurisprudenciais do STF e desta Corte de Justiça. 4. Apelo conhecido e desprovido. (Processo nº 0002545-76.2019.8.06.0182; &#160; Relator (a):&#160;MARIA IRANEIDE MOURA SILVA; Comarca:&#160;Viçosa do Ceará; Órgão julgador: 2ª Câmara de Direito Público; Data do julgamento: 23/06/2021). (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 5pt 0cm 12pt 4cm; text-align: justify;"> <span style="font-size: medium;"> <span style="color: black; background: white;"> <span style="font-size: small;">“PROCESSUAL CIVIL. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO DE COBRANÇA. APELAÇÃO CIVIL. <strong style="mso-bidi-font-weight: normal;">SERVIDOR PÚBLICO OCUPANTE DE CARGO COMISSIONADO EXONERADO. RECLAMA DIREITO A FÉRIAS, TERÇO DE FÉRIAS. ART. 39, § 3º E ART. 7, VIII e XVII, DA CONSTITUIÇÃO FEDERAL. APELAÇÃO CÍVEL CONHECIDA E IMPROVIDA. I. O descortino em revista nesta seara recursal é saber acerca das verbas rescisórias reivindicadas pelo autor em razão de ter ocupado cargo comissionado perante o Município requerido, durante o período de 26/06/2015 a 30/12/2016. II. Com efeito, o servidor público ocupante de cargo em comissão de livre nomeação e exoneração, na forma do art. 37, II e V, da Constituição Federal, ao ser exonerado, possui o direito a receber, 13º (décimo terceiro) salário e o adicional de férias, afora a indenização pelas férias não gozadas, na forma do art. 39, § 3º e art. 7º, VIII e XVII, da Constituição Federal. III. Portanto, repise-se que a jurisprudência nacional tem consolidado o entendimento que servidor público ocupante de cargo em comissão de livre nomeação e exoneração, na forma do art. 37, II e V, da Constituição Federal, quando

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	dispensado, possui apenas o direito a receber, 13º (décimo terceiro) salário e o adicional de férias, afora a indenização pelas férias não gozadas, na forma do art. 39, § 3º e art. 7, VIII e XVII, da Constituição Federal Precedentes. IV. No mais, o Ente Público nenhuma prova produziu de molde a afiançar o argumento de que o autor não tem direito ao recebimento das verbas postuladas, por ocasião do exercício do cargo comissionado. Ora, repise-se que todos os trabalhadores nacionais, independentemente da maneira de admissão, o legislador constituinte pôs a salvo diversos direitos sociais, igualmente concedidos aos trabalhadores em geral, incluindo férias remuneradas e respectivo terço adicional, afora o décimo terceiro salário. V. Por esta forma, consoante o art. 373, inciso II, do Código de Processo Civil, não se desincumbiu do ônus de comprovar o pagamento dos valores pleiteados, de molde a desconstituir a sentença recorrida. VI. Realmente, "o ônus da prova como regra de conduta, a teor do art. 373 do CPC, é atribuído de acordo com o interesse na afirmação do fato. Cabe ao autor a prova dos fatos constitutivos do seu direito, porque são aqueles que poderão levar à procedência de seu pedido. Ao réu caberá o ônus de provar os fatos modificativos, extintivos ou impeditivos do direito do autor, porque poderão levar à improcedência do pedido formulado na petição inicial. Se o réu se limitar a negar o fato constitutivo do direito alegado pelo autor, o ônus continuará cabendo a este último. Sob as perspectivas das partes, o art. 373 lhes permite traçar sua estratégia probatória, exercendo um papel de regra de conduta. VII. Apelação Cível conhecida e improvida.” (Processo nº 0002568-22.2019.8.06.0182; Relator (a):&#160;INACIO DE ALENCAR CORTEZ NETO; Comarca:&#160;Viçosa do Ceará; Órgão julgador: 3ª Câmara de Direito Público; Data do julgamento: 05/07/2021) (destacado) </p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, verificada a sucumbência mínima de uma das partes (autor), deve a outra (réu) responder , por inteiro, pelo pagamento dos honorários, incidindo, aqui, o art. 86, parágrafo único, do CPC/2015, in verbis:</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> “Art. 86. Se cada litigante for, em parte, vencedor e vencido, serão proporcionalmente distribuídas entre eles as despesas. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Parágrafo único. Se um litigante sucumbir em parte mínima do pedido, o outro responderá, por inteiro, pelas despesas e pelos honorários .” (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Por tudo isso, permanecem totalmente inabalados os fundamentos da sentença, impondo-se sua confirmação por este Tribunal. &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, conheço do recurso, para negar-lhe provimento, confirmando integralmente a sentença, por seus próprios termos.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, in casu, o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3 º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p class="MsoNormal" style="margin: 8.5pt 0cm 6pt; text-indent: 111.85pt; line-height: 150%; text-align: justify;"> Ademais, como o autor decaiu apenas de parte mínima de seus pedidos, deverão os ônus sucumbenciais ser suportados, integralmente, pelo réu, a teor do art. 86, parágrafo único, do CPC/2015.</p><p class="MsoNormal" style="margin: 8.5pt 0cm 6pt; text-indent: 111.85pt; line-height: 150%; text-align: justify;"> Não havendo, porém, condenação em valor certo e determinado, a fixação dos honorários deverá mesmo ser postergada para a fase de liquidação, a teor do art. 85, § 4º, inciso II, c/c § 11, do CPC/2015.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É como voto. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160;

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	 </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 </p><p class="MsoNormal" style="margin-bottom: 12pt; line-height: 150%; text-align: center;"> R elatora </p><p style="text-align: justify;"> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	58
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	JOAO ADAIRLON DE BRITO
Advogado(s) - Polo ativo	FELIPE METON HOLANDA CAVALCANTI DE ALBUQUERQUE - (CE25515-A)
Polo passivo	DEPARTAMENTO ESTADUAL DE TRANSITO
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <img style="font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3TaQ+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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	TEDNsFW3E0279sYsYyewNC/n27DeaNLpz7wGnPvuKGWXV2hPGu/bv4YerMrD1RVt/r/5XX/+d8m8zTCsNZ9Uu8NsV7gjVjx8/wdzZcyjML2TXzl3aO1kfiej94eaP7PrkICH5cbzqIeYSZEDLeGGFSng1ExXAtDXzRrRKNMd9QzbRqwuJXJFL3P5KOqWoNEuZtfJfaom4sEyOaSVRuH20IZ299TAIHUH5whmc/voU90SlqxkY9azU7LlzNaDe2bKVSxcv1rf2r5X/O8B+Vxqc4++BU6OqlpOrhyJKiqdy6P2DXLmmgHvET5Kfbd6zGZcpfrzsPoT24UPE3yhFLmapZIiAolKcF4tH0y7VVqoNzxU600bErUri1Y1lNYGpWNVisj5Pi0rv521J+owCjn71GT/LtdXzQd9++63kxKvIyMjQtmop1z+Lev+35T8GrKH8me3fFcYdPXKYwqJ8Kqoq+ej9D7l5WSLUgwdcu36JeRsXYR4xgmd99GgdZahJA7XITfko3dvslEBVEVXMUAJCc2Ffa/lbi0QDWocN4RVvE0IKY7X3m6nX3zy8c5/vvz/H+s0qpcnUnpO6cOHCH4D6s3b+J+UvA/b78oeRFEd6+/Ytdu7ZI6lGEXPmzOPjjz/mp1s3RPc/5IuzX2pLvPv52UgqJGxTgUGioZYkS6ag/JQCS03ytRSn3zZCjxc9B+E80Y1lO9by0x1R6I8ec+G7s+x4ZztlJSXMmD6dM6fP/B2j/qfAUuV/FLAGE9U1UDVa19Drt26xStKrnNx8li5ZxqlPJalXr0SWZHfboV24JAaKXhpCO8kZW6aYignqCWB6NBWwWiVLBPQbTF8/O3JmTOWbsyptecKP166xf+9eKirF/MtLOXr0E7ncbwFJlf9JoBrK/yhgvy8C26//GsrlcxdZXDePitypbFu3kYuXdJNy5y+epah2Kr191QscJbEXjdVSzLFlvBHtPAYwbKInW/fu4MHDRzyUSH3s+CfMqZ1JiXobpjBYTQ6oov5rhP/t8t8DTHDSwrZW1evXfzOT458cpax8GmXi3z748DCCggSG+yzdvgqzqFG09x5AJ78hPOcymKjSJE59o3t28eqla6xZv07zjcsWL9HejK6KOrWaNW540fh/s/wXAVOI6dil/bcoparXtDR06ed7d9iwcSO5uXmsW7ueGzd+4uEvD9l3+F1GRXsxeLgFedOLufLTD9r+Z778iurySu2dEifqXxeqirqCdhlV//t4/fcA+3eLmlYpKy9jujhsLbJJwq/en/rO9m3aa+bV208+eO8Q+Tm5rJHE/6efftKO+2/4p3+n/K8ApjqrTLTBTK9KUjxr1izKyso4e/aspttUVauW9+3bR052Nnv36J5/UuVvj/9/Wf5XAWvYqqKmxtWDrSUiDy5fvMSDe/f58P0PSE5Kkgh4VNtHZ3W/Met/g2X/6yapyu9BUy9JWrp4MR8eep/szCw+OfzbVPFv/5nW/73y/wnAFFMa2HLlyhUS4qfg7+MrwC3Rfmsoao//H7D60gCY2u7asZPioqmSf+pkw/+G6f15gf8DLlMncTlWGuAAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;0200896-94.2022.8.06.0115 -&#160;APELAÇÃO CÍVEL (198) </p><p> APELANTE: JOAO ADAIRLON DE BRITO. </p><p> APELADO: DEPARTAMENTO ESTADUAL DE TRANSITO. </p><p align="center"> <br /> </p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> EMENTA: PROCESSUAL CIVIL. DIALETICIDADE RECURSAL. RAZÕES DE APELAÇÃO INSUFICIENTES À IMPUGNAÇÃO DA SENTENÇA. RECURSO NÃO CONHECIDO. INTELIGÊNCIA DO ART. 1.010, III DO CPC. PRECEDENTES DO STJ.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> - Trata o caso de apelação cível interposta com o objetivo de desconstituir sentença que decidiu pela improcedência dos pedidos formulados na inicial, nos termos do art. 487, I, do CPC.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> - É pacífico entendimento segundo o qual o recurso deve rebater, de maneira precisa e direta, as razões utilizadas pelo Julgador para embasar o seu convencimento, sob pena de não conhecimento da insurgência.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> - No caso em análise, ao apresentar o presente apelo, o recorrente aduziu argumentos que não detêm qualquer relação com os fundamentos da sentença recorrida, restando inobservado, portanto, o Princípio da Dialeticidade.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> - Inobservância do art. 1.010, III do CPC.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-

Processo	0200896-94.2022.8.06.0115
	space:pre-wrap;">- Precedentes do STJ e desta egrégia Corte de Justiça.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> - Apelação não conhecida.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> <br /> <br /> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-7fbe1e54-7fff-e936-a3d8-6e0115a2e54c" style="font-weight:normal;"> <br /> </p><h3 style="line-height:1.2;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height:1.7999999999999998;margin-left: 1pt;text-indent: 112.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0200896-94.2022.806.0115, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer da apelação interposta, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024.</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> Portaria 1550/2024</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight:normal;"> <br /> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta com o objetivo de desconstituir sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Limoeiro do Norte, que decidiu pela improcedência dos pedidos formulados na inicial.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial, sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align:

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	baseline; white-space: pre-wrap; text-decoration: underline;">O caso/a ação originária: João Adairlon de Brito ajuizou ação anulatória de auto de infração de trânsito cumulada com pedido de tutela provisória de urgência em face do Departamento Estadual de Trânsito do Estado do Ceará – DETRAN, aduzindo, em suma, que ficou impedido de obter sua CNH definitiva, após lhe ser imposta penalidade (multa de natureza grave), com base no Auto de Infração Nº SB00218817/DETRAN/CE.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Sustentou, porém, que não cometeu a infração e que não pode exercer seu direito à ampla defesa por falta de prévia notificação.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Tutela de urgência indeferida no ID 14127797.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Contestação não apresentada pelo DETRAN/CE.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Sentença, no ID 14127822, proferida pelo Juízo da 1ª Vara Cível da Comarca de Limoeiro do Norte, que decidiu pela improcedência dos pedidos formulados na inicial. Transcrevo trecho do julgado, no que interessa:</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">“Ante o exposto, JULGO IMPROCEDENTES os pedidos formulados na petição inicial, nos termos do artigo 487, inciso I, do Código de Processo Civil.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Irresignado, o autor interpôs o presente recurso de apelação<span style="font-size:12pt;font-family:Arial,sans-

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	serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">, ID 14127826, alegando prova de difícil obtenção, nos termos do art. 373, parágrafo primeiro do CPC, reiterando os termos da inicial e pugnando pelo provimento do recurso, com a consequente reforma da sentença de primeira instância.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Contrarrazões, ofertadas no ID 14127830, em que o DETRAN apresenta a Certidão de Notificações de Autos de Infração de Trânsito n° 3037 realizada em face de um terceiro, registrado como proprietário do veículo, e expõe registro de autuação da abordagem do recorrente, requerendo o improvimento do recurso.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Parecer da Procuradoria Geral de Justiça, no ID 15401691, opinando pela desnecessidade de sua manifestação sobre o mérito da causa.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> É o relatório.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> A presente insurgência recursal não merece ser conhecida, uma vez que o apelante, em suas razões, não logrou êxito em apontar elementos fáticos ou jurídicos capazes de ensejar a reforma da decisão de primeiro grau.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Em seu apelo, o recorrente limita-se a discorrer, em suma, que não fora devidamente notificado sobre a infração cometida e que a prova da notificação constituiria “prova difícil”, nos termos do art. 373, §1º do CPC. Isto é, não fazendo qualquer referência específica aos fundamentos da sentença recorrida, que, em verdade, houve por bem decidir, pela improcedência dos pedidos, fundamentando que cabia à parte autora comprovar minimamente suas alegações, conforme art. 373, inciso I do CPC, posto que não teria demonstrado a “cassação do seu direito de dirigir, nem o cancelamento de sua Permissão para Dirigir – PPD ou impossibilidade de receber sua CNH, bem como não demonstrou a negativa dos órgãos de trânsito em conceder a Carteira Nacional de Habilitação CNH e a existência da infração de trânsito que lhe é imputada.” (trecho de

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	ID 14127822).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Percebe-se, assim, que o apelante, ao pretender impugnar a sentença recorrida, partiu de pressuposto lógico e jurídico absolutamente distinto daquele utilizado pelo Juízo a quo, devolvendo à análise deste Corte de Justiça questão de direito que não possui relação com a controvérsia existente nos autos.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Logo, flagrante é a inobservância ao princípio processual da dialeticidade, previsto no art. 1.010, III do CPC, segundo o qual a apelação deve rebater, de maneira fundamentada e direta, as razões utilizadas pelo Julgador para embasar o seu convencimento, sob pena de não conhecimento da insurgência recursal. Confira-se a redação do citado dispositivo:</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> "Art. 1.010. A apelação, interposta por petição dirigida ao juízo de primeiro grau, conterá: (...)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">III - as razões do pedido de reforma ou de decretação de nulidade;" (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Como sabido, o ordenamento jurídico pátrio não admite o recurso genérico ou inespecífico, conforme lecionam os juristas Nelson Nery Júnior e Rosa Maria de Andrade Nery, na obra “Código de Processo Civil Comentado”, 7ª edição, pág. 882, in verbis:</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> “O apelante deve dar as razões, de fato e de direito, pelas quais entende deva ser anulada ou reformada a sentença recorrida. Sem as razões do inconformismo, o recurso não pode ser conhecido (...). O momento adequado para apresentar-se a fundamentação do recurso de apelação é o da sua interposição. (...). Juntamente com a fundamentação, o pedido de nova decisão delimita o âmbito de devolutividade do recurso de apelação: só é devolvida ao tribunal ad quem a

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	matéria efetivamente impugnada (tantum devolutum quantum appellatum). Sem as razões e/ou pedido de nova decisão, não há meios de se saber qual foi a matéria devolvida. Não pode haver apelação genérica, assim como não se admite pedido genérico, como regra. Assim como o autor delimita o objeto litigioso (lide) na petição inicial (CPC 128), devendo o juiz julgá-lo nos limites em que foi deduzido (CPC 460), com o recurso de apelação ocorre o mesmo fenômeno: o apelante delimita o recurso com as razões e o pedido de nova decisão, não podendo o tribunal julgar além, aquém ou fora do que foi pedido.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Ao discorrer sobre o tema, Daniel Amorim Assumpção Neves, na obra “Novo Código de Processo Civil Comentado artigo por artigo”, 2ª edição, 2017, leciona que:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> “(...) Por outro lado, é incluída a ausência de impugnação específica dos fundamentos da decisão recorrida como causa para o não conhecimento monocrático do recurso. Na prática, já era possível, mesmo sem a previsão legal, considerar essa espécie de vício como causa de inadmissibilidade apta à prolação de decisão unipessoal.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Na realidade, como aponta a melhor doutrina, tanto na hipótese de julgamento monocrático por estar o recurso prejudicado, como em decorrência da ausência de impugnação específica dos fundamentos da decisão recorrida, são hipóteses específicas de inadmissibilidade recursal.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Há, inclusive, previsão legal específica no Novo Código de Processo Civil que autoriza o próprio relator a não conhecer do recurso em hipóteses como a em análise:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> “Art. 932. Incumbe ao relator:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">III - não conhecer de recurso inadmissível, prejudicado ou que não tenha impugnado especificamente os fundamentos da decisão recorrida;” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Nada impede, contudo, que a questão seja diretamente submetida ao

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	Colegiado, até mesmo para obstar eventual interposição de Agravo Interno, sempre em observância ao primado constitucional da celeridade e da razoável duração do processo.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Quanto ao princípio da dialeticidade, assim vem se manifestando esta egrégia Corte de Justiça, por meio das suas Câmaras de Direito Público:</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">“RECURSOS DE APELAÇÃO E REMESSA NECESSÁRIA. DIREITO ADMINISTRATIVO E PROCESSUAL CIVIL. COISA JULGADA RECONHECIDA. SERVIDOR PÚBLICO. COBRANÇA. VENCIMENTO MENOR QUE O SALÁRIO MÍNIMO. DIFERENÇAS. ART 7º, IV, C/C ART 39, § 3º, DA CF/88. APELAÇÃO DA REQUERENTE NÃO CONHECIDO E RECURSO DA EDILIDADE E REEXAME NECESSÁRIO CONHECIDOS E PARCIALMENTE PROVIDOS. 1. O cerne da questão consiste em analisar a possibilidade de pagamento, por parte do Município, das verbas remuneratórias retroativas referentes ao período em que pagou ao servidor valor inferior ao salário mínimo, bem como seus reflexos nas férias e no décimo terceiro salário. Respeitada a prescrição quinquenal a contar do ajuizamento da ação. Recurso da autora 2. O apelo apresentado pela parte autora e que impugna a condenação da autora nas sanções descritas na norma para os casos de litigância de má-fé, bem como requer seja concedido o benefício da justiça gratuita. As razões recursais dissociam-se daquelas utilizadas decisão recorrida, sendo imperativo, nesses casos, o não conhecimento do recurso. Flagrante o desrespeito ao princípio da dialeticidade, que consubstancia-se no ônus do recorrente de impugnar todos os fundamentos que justificariam a manutenção da decisão impugnada. Precedentes. Recurso do Município de Umari e Reexame Necessário 3. Quanto à preliminar de coisa julgada, da análise do julgamento realizado pelo Colendo TRT da 7ª Região, dessume-se ter sido efetivamente apreciado o mérito da demanda ali em discussão. Na ocasião, o magistrado trabalhista entendeu pelo reconhecimento da prescrição do direito autoral e referente ao período laborado anteriormente à entrada em vigor da Lei nº 109/2005 (Estatuto dos Servidores Públicos do Município do Umari). Dúvidas não pairam quanto à necessidade de reconhecimento da coisa julgada referente às verbas trabalhistas anteriores à entrada em vigor da Lei nº 109/2005, publicada no DOE em 02/06/2009. 4. No mérito, a garantia constitucional do salário-mínimo estende-se a qualquer servidor, estando estampada na Carta Magna, no art. 7º, inc. IV, c/c art. 39, § 3º. Inexiste qualquer previsão legal que possibilite o pagamento proporcional do salário-mínimo de acordo com a jornada de trabalho. Precedentes. 5. Tendo em vista tais considerações, o município recorrente deve remunerar seus servidores adequando-se ao quantum limítrofe estipulado na Carta Maior, qual seja, o salário-mínimo nacionalmente unificado. Comprovado o pagamento a menor, diferenças devidas. 6. A autora não apresentou recurso apto a afastar o dispositivo da sentença aqui analisada e que entendeu serem devidas as diferenças de salário inferior ao mínimo somente até 31/12/2010, quando teria a edilidade iniciado o pagamento das remunerações em valores nunca inferior ao salário mínimo. Aplicação do princípio non reformatio in pejus. 7. Recurso de Apelação manejado pela parte autora não conhecido, por ausência de dialeticidade e Reexame Necessário e Apelação manejada pelo Município de Umari conhecidos, para dar-lhes parcial provimento, reconhecendo a preliminar de coisa julgada e afastando a possibilidade de qualquer discussão a respeito de verbas remuneratórias

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	devidas em período anterior à entrada em vigor da Lei nº 109/2005 (DOE 02/06/2009), e no mérito mantendo a condenação do Município de Umari no pagamento das diferenças remuneratórias inferiores ao valor do salário mínimo vigente à época e seus consectários, limitada a condenação no período entre a data da entrada em vigor da Lei nº 109/2005 e 31/12/2010. (APC 0000297-08.2014.8.06.0217; Relator(a): PAULO FRANCISCO BANHOS PONTE; Comarca: Umari; Órgão julgador: 1ª Câmara Direito Público; Data do julgamento: 19/06/2017; Data de registro: 20/06/2017) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> * * * *</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">“CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO CAUTELAR. SERVIDORES PÚBLICOS MUNICIPAIS. ISONOMIA DE VENCIMENTOS COM SERVIDORES BENEFICIADOS POR FORÇA DE DECISÃO JUDICIAL. EXTINÇÃO DO FEITO EM PRIMEIRO GRAU SEM ANÁLISE DO MÉRITO, POR INADEQUAÇÃO DA VIA ELEITA. IMPOSSIBILIDADE. COISA JULGADA. EFEITO INTER PARTES. INSURGÊNCIA RECURSAL BASEADA EM FUNDAMENTO DIVERSO. IMPOSSIBILIDADE DE ANÁLISE NESTA INSTÂNCIA. INOBSERVÂNCIA AO PRINCÍPIO DA DIALETICIDADE. APELAÇÃO NÃO CONHECIDA. 1. O artigo 1.010 do Código de Processo Civil de 2015 dispõe que a apelação deve conter, obrigatoriamente, os fundamentos de fato e de direito aptos a ensejar a possível reforma da sentença. Com efeito, o recurso, necessariamente, precisa conter argumentos para pedir a reforma da sentença atacada, devendo contrapor-se às teses nela acolhidas, ou seja, as razões pelas quais a parte apelante entende que deva ser reformado o decisum. 2. No caso concreto, os apelantes discorrem sobre a possibilidade de estender aos autores o piso salarial deferido pelo Decreto Municipal nº 7.153/85, a fim de perceberem seus vencimentos em igualdade de condições a de outros servidores detentores de mesmo cargo e atribuições similares, os quais, por força de medida judicial, tiveram implantados, em seus contracheques, reajustes vencimentais com base em múltiplos de mínimos. Ocorre que a sentença vergastada não se fundou em nenhuma das hipóteses contidas no recurso, mas, tão somente, extinguiu o feito sem resolução de mérito, em face da inadequação da via eleita. 3. De acordo com o princípio da dialeticidade, não basta a mera vontade de recorrer, é necessário que a parte recorrente apresente os motivos da irresignação com base no que restou decidido pelo juízo a quo, demonstrando, claramente, quais os pontos em que o magistrado se equivocou ou agiu contra legem. 4. Na hipótese sub examine não merece conhecimento a insurgência recursal, por padecer de óbice intransponível, consistente na ausência de relação entre os fundamentos do decisum de primeiro grau e as razões aqui apresentadas. 5. Apelação Cível não conhecida<span style="font-size:12pt;font-

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	family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">.” (APC 0092264-84.2006.8.06.0001; Relator(a): LUIZ EVALDO GONÇALVES LEITE; Comarca: Fortaleza; Órgão julgador: 2ª Câmara Direito Público; Data do julgamento: 01/02/2017; Data de registro: 01/02/2017) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">“CONSTITUCIONAL. ADMINISTRATIVO. APELAÇÃO CÍVEL E REMESSA NECESSÁRIA. INÉPCIA DA PEÇA RECURSAL. NÃO CONHECIMENTO DO APELO. SERVIDORA PÚBLICA MUNICIPAL. COBRANÇA DE SALÁRIOS ATRASADOS. INADIMPLÊNCIA NÃO COMPROVADA. SENTENÇA MODIFICADA. 1. É inepta a petição recursal em total dissonância do conteúdo da sentença que pretende impugnar e da petição inicial, afrontando, assim, o princípio da dialeticidade, o que impõe o não conhecimento do recurso. 2. O julgamento antecipado da lide sem prévio anúncio, por si só, não é apto a configurar a nulidade da sentença, se há elementos suficientes nos autos para a formação da convicção do julgador. 3. A inadimplência dos salários de agosto e dezembro de 2012 não restou comprovada nos autos. 4. Apelação não conhecida. Remessa necessária conhecida e provida.” (APC 0005479-50.2014.8.06.0095; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Ipu; Órgão julgador: 3ª Câmara Direito Público; Data do julgamento: 15/05/2017; Data de registro: 15/05/2017) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">De tão remansosa jurisprudência, este Tribunal de Justiça sumulou tal posicionamento, conforme enunciado da súmula nº 43, verbis:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">“Súmula 43, TJCE – Não se conhece de recurso quando não é feita a exposição do direito e das razões do pedido de nova decisão.”</p><p style="line-

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	height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Outro não é o entendimento dominante no Superior Tribunal de Justiça. Confira-se:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">“AGRAVO INTERNO NO RECURSO ESPECIAL. CONTRATO DE CONSÓRCIO. 1. TAXA DE ADMINISTRAÇÃO. COBRANÇA MANTIDA PELA SENTENÇA, COM CONFIRMAÇÃO PELO ACÓRDÃO DA APELAÇÃO. FALTA DE INTERESSE RECURSAL. CORREÇÃO MONETÁRIA. ÍNDICE APLICÁVEL. SÚMULA N. 83 DO STJ. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA QUANTO A ESSES DOIS PONTOS DA DECISÃO AGRAVADA. VIOLAÇÃO AO PRINCÍPIO DA DIALETICIDADE. 2. CLÁUSULA PENAL. REEXAME DE PROVAS. SÚMULA N. 7/STJ. 3. AGRAVO INTERNO CONHECIDO EM PARTE E, NESSA EXTENSÃO, DESPROVIDO. 1. Inexistindo impugnação específica dos fundamentos da decisão agravada acerca de determinadas questões, não há como analisar o agravo interno em relação a elas, considerando-se a ofensa ao princípio da dialeticidade (Súmula 182/STJ). 2. Tendo o Tribunal de origem concluído pela abusividade do percentual estipulado no contrato a título de cláusula penal, a revisão de tal entendimento não está ao alcance desta Corte, por demandar o reexame do conjunto fático-probatório dos autos, providência vedada nesta instância especial, nos termos da Súmula 7/STJ. 3. Agravo interno parcialmente conhecido e, nessa extensão, desprovido.” (AgInt no REsp 1584953/SE, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 20/09/2016, DJe 04/10/2016) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 106.29921259842519pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">De fato, o melhor entendimento doutrinário e jurisprudencial sustenta como pressuposto objetivo do recurso, entre outros, a sua clara e precisa fundamentação, que delimitará o campo de julgamento do Tribunal, o qual fica adstrito ao primado do tantum devolutum quantum appellatum.</p><p style="line-height:1.7999999999999998;text-indent: 106.29921259842519pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Mais uma vez o magistério jurisprudencial:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:5pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ORDINÁRIO EM MANDADO DE SEGURANÇA. ENUNCIADO ADMINISTRATIVO 3/STJ. CONCURSO PÚBLICO. CANDIDATO APROVADO EM CADASTRO DE RESERVA. PRETENSÃO DE NOMEAÇÃO. EXISTÊNCIA DE VAGAS. PRETERIÇÃO ARBITRÁRIA POR CONTRATAÇÃO DE TERCEIROS. DENEGAÇÃO DA ORDEM. SUPERVENIÊNCIA LEGAL. EXTINÇÃO DE CARGOS. PROVIMENTO DE TODOS OS CARGOS EXISTENTES. <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-

Processo	0200896-94.2022.8.06.0115
	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">FALTA DE IMPUGNAÇÃO À ESSA MOTIVAÇÃO. DESATENDIMENTO DO ÔNUS DA DIALETICIDADE. 1. Entre a motivação utilizada como fundamento do julgamento e as razões do recurso que impugna tal decisão deve haver relação de congruência, de maneira a permitir que o órgão com competência recursal possa examinar a juridicidade da "ratio decidendi", pena de inobservância do ônus da dialeticidade. 2. Agravo interno não provido.” (AgInt no RMS 52.792/PE, Rel. Ministro MAURO CAMPBELL MARQUES, SEGUNDA TURMA, julgado em 27/06/2017, DJe 30/06/2017) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 106.29921259842519pt;text-align: justify;margin-top:20pt;margin-bottom:12pt;" dir="ltr"> Dessa forma, o não conhecimento da apelação é, medida que se impõe.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Por tais razões, não conheço do recurso de apelação interposto, diante da ausência de apresentação de razões em consonância com o disposto no art. 1.010, III do Código de Processo Civil.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO &#160;</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> Portaria 1550/2024</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	59
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Gestante / Adotante / Paternidade
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	DANIEL GOMES SILVA
Advogado(s) - Polo passivo	ROSSANA DE OLIVEIRA MARTINS - (CE37226-A) JOSE MARCELO BEZERRA - (CE32211-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3002561-79.2023.8.06.0071
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHsWsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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	aclaramento da decisão embargada, sendo inadmissível sua oposição, para rediscussão de matérias apreciadas e resolvidas pelo Órgão Julgador (Súmula 18 do TJCE). </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 5. Assim, não se constatando, no acórdão vergastado, a omissão apontada pel o embargante, impõe-se o desprovimento dos seus aclaratórios, os quais, como dito, não se prestam à reforma do referido decisum colegiado.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> 6. Ausentes os vícios insertos no art. 1.022 do CPC, torna-se despicienda a declaração requerida pelo embargante, para fins de prequestionamento. </p><p align="center">&#160;</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> - Embargos de declaração conhecidos e desprovidos. </p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Vistos, relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 3002561-79.2023.8.06.0071, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para negar- lhe provimento, nos termos do voto da Relatora.</p><p style="line-height: 150%; margin-left: 0.02cm; text-indent: 3.98cm; margin-top: 0.4cm; margin-bottom: 0.4cm"> Local, data e hora informados pelo sistema.</p><p class="western" style="text-transform: uppercase; margin-top: 0.21cm" align="center"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0.3cm;" align="center"> R elatora </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center"> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Cuida-se, na espécie, de Embargos de Declaração interpostos pelo Estado do Ceará, apontando a existência de omissão no acórdão da 3ª Câmara de Direito Público do TJ/CE que, por unanimidade, conheceu e negou provimento à apelação cível do requerido , mantendo totalmente inalterada a sentença de primeiro grau de jurisdição, que decidiu pela procedência da pretensão autoral, declarando o direito do promovente à prorrogação da licença-paternidade, nos autos da ação ordinária (ID 14809640), in verbis : </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> <br /> <br /> </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> “ EMENTA: APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. CONSTITUCIONAL. ADMINISTRATIVO. SERVIDOR PÚBLICO ESTADUAL. PRORROGAÇÃO LICENÇA-PATERNIDADE.&#160;AUSÊNCIA DE NORMA LOCAL DISPONDO ACERCA DA MATÉRIA. UTILIZAÇÃO, POR ANALOGIA, DE LEGISLAÇÃO FEDERAL. POSSIBILIDADE. PRIMAZIA DO PRINCÍPIO DA PROTEÇÃO À FAMÍLIA E À INFÂNCIA.&#160; PRECEDENTES DESTE TRIBUNAL DE JUSTIÇA. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA INTEGRALMENTE MANTIDA. <span lang="pt-

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	PT"> 1. &#160; Cuida-se, na espécie, de apelação cível,&#160;adversando sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Crato que,&#160;em&#160;sede de&#160;ação ordinária,&#160;decidiu pela procedência da pretensão autoral, declarando&#160;o direito do promovente à&#160;prorrogação&#160;da licença-paternidade de 05 (cinco) dias por mais 15 (quinze), totalizando 20 (vinte) dias. 2. Cinge-se&#160;a controvérsia recursal&#160;em aferir o acerto da sentença que reconheceu o direito do requerente,&#160;inspetor de polícia civil,&#160;à extensão da licença-paternidade por 15 (quinze) dias, totalizando 20 (vinte) dias, após o nascimento de sua&#160;filha. 3.&#160;In casu,&#160;a ausência de norma específica não pode ser empecilho para a concretização dos princípios e garantias constitucionais, cabendo a aplicação do&#160;Regime&#160;Jurídico&#160;Único dos&#160;Servidores&#160;Públicos&#160;Civis da União por analogia, permitido pela jurisprudência do Superior Tribunal de Justiça. 4. &#160; Nesse sentido, este Tribunal de Justiça também possui entendimento de que a inércia estatal não&#160;pode&#160;impedir a extensão da licença-paternidade, eis que se trata não apenas do direito do genitor, mas também do recém-nascido em ter o acompanhamento dos pais nos seus primeiros dias de vida. 5.&#160;Portanto, o direito do autor/apelado de gozar de licença-paternidade pelo período de 20 (vinte) dias, por ocasião do nascimento de sua filha, é medida que se impõe. 6. Permanecem, portanto, totalmente inabalados os fundamentos da sentença pela procedência da ação, impondo-se sua confirmação nesta oportunidade. - Precedentes. - Apelação conhecida e desprovida - Sentença mantida na íntegra.” </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> <br /> </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Embargos de declaração: deste acórdão foi interposto o presente recurso (ID 14941432), sob o fundamento da existência de “omissão”. Assevera o Embargante, em suma, que o decisum não enfrentou todos os argumentos de defesa apresentados no decorrer no processo, notadamente quanto à apreciação de dispositivos constitucionais federais invocados que apontam a inexistência do direito autoral.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Pleiteou, assim, a supressão de tal “vício”, com a atribuição de efeitos infringentes aos seus embargos de declaração.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Sem c ontrarrazões, conforme informação nos autos de decurso de prazo.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> É o relatório.</p><p align="center">&#160;</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> <br /> <br /> </p><p align="center"> <br /> </p><p style="line-height: 150%; margin-bottom: 0cm" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Preliminarmente, conheço dos presentes embargos de declaração, porque reunidos todos os requisitos de admissibilidade.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Vale ressaltar que, de acordo com o art. 1.022, I, II e III, do CPC/2015, os embargos de declaração se prestam, única e tão somente, para elidir na sentença, ou no acórdão, eventual obscuridade, contradição, omissão ou erro material, sendo, portanto, vinculada

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	sua fundamentação.</p><p style="line-height: 100%; margin-left: 4cm; margin-top: 0.21cm; margin-bottom: 0cm" align="justify"> “ Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para:</p><p style="line-height: 100%; margin-left: 4cm; margin-top: 0.21cm; margin-bottom: 0cm" align="justify"> I – esclarecer obscuridade ou eliminar contradição;</p><p style="line-height: 100%; margin-left: 4cm; margin-top: 0.21cm; margin-bottom: 0cm" align="justify"> II – suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento;</p><p style="line-height: 100%; margin-left: 4cm; margin-top: 0.21cm" align="justify"> III – corrigir erro material”</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Então, pelo que se extrai do texto legal, os vícios que autorizam o uso de tal recurso são aqueles que se verificam entre proposições da própria decisão, isto é, na sua fundamentação ou no seu dispositivo.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> No presente caso, o ente público promovido opôs embargos de declaração contra o acórdão proferido pela 3ª Câmara de Direito Público do TJ/CE, sob o fundamento de existência de omissão no referido decisum, como visto anteriormente.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> O embargante alega que o acórdão foi o misso quanto à apreciação de dispositivos constitucionais federais invocados que apontam a inexistência do direito autoral, não enfrentando d evidamente a questão acerca d a extensão da licença-paternidade por 15 (quinze) dias, totalizando 20 (vinte) dias, após o nascimento de filha do requerente . </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Suas razões, contudo, não merecem prosperar.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Isso porque o que se percebe, in casu, não é uma tentativa de saneamento da decisão, e sim de rediscutir a causa.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> De fato, todas as questões relevantes foram enfrentadas por este Órgão Julgador, com fundamentação clara, concatenada e satisfatória para a solução da lide, não havendo nenhum defeito a ser elidido.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> E, a demonstrar a inexistência dos vícios previstos no art. 1.022 do CPC, transcrevo parte de seus fundamentos, onde está claro que as matérias controvertidas se encontram devidamente solucionadas, ex vi:</p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto" align="justify"> “ Dentro&#160;dos direitos sociais conferidos aos trabalhadores urbanos e rurais, tem-se a licença paternidade, nos termos do art. 7°, XIX, da Constituição Federal, e estendido aos servidores públicos, conforme art. 39, §3°, senão vejamos:</p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent" align="justify"> (…)</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-

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	variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> Á propósito, o art. 226 da Constituição Federal estabelece que a família, base da sociedade, tem especial proteção do Estado e, em razão disso, diversos são os dispositivos que visam fortalecer e garantir a sua proteção. Por sua vez, o art. 227 da CF prevê o seguinte:</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> Art. 227. É dever da família, da sociedade e do Estado assegurar à criança, ao adolescente e ao jovem, com absoluta prioridade, o direito à vida, à saúde, à alimentação, à educação, ao lazer, à profissionalização, à cultura, à dignidade, ao respeito, à liberdade e à convivência familiar e comunitária, além de colocá-los a salvo de toda forma de negligência, discriminação, exploração, violência, crueldade e opressão.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> Desse modo, verifica-se que a previsão constitucional consubstancia o princípio da isonomia, assim como o dever estatal de proporcionar especial proteção à família e à paternidade, com o fim de estimular a convivência da criança com a figura paterna, permitindo a criação de vínculos e seu pleno desenvolvimento humano e social. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> Na hipótese dos autos, a ausência de norma específica não pode ser empecilho para a concretização dos princípios e garantias constitucionais, cabendo a aplicação do Regime Jurídico Único dos Servidores Públicos Civis da União por analogia, permitido pela jurisprudência do Superior Tribunal de Justiça,</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> (…)</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> Em se tratando de servidor público civil da União, o prazo de cinco dias previsto no art. 208 a título de licença-paternidade é prorrogável por mais quinze dias por força do Decreto nº 8.737/2016, assim disposto:</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> “ Art. 1º Fica instituído o Programa de Prorrogação da Licença Paternidade para os servidores regidos pela Lei nº 8.112, de 11 de dezembro de 1990.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> Art. 2º A prorrogação da licença-paternidade será concedida ao servidor público que requeira o benefício no prazo de dois dias úteis após o nascimento ou a adoção e terá duração de quinze dias, além dos cinco dias concedidos pelo art. 208 da Lei nº 8.112, de 1990.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> § 1º A prorrogação se iniciará no dia subsequente ao término da licença de que trata o art. 208 da Lei nº 8.112, de 1990.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> § 2º O disposto neste Decreto é aplicável a quem adotar ou obtiver guarda judicial para fins de adoção de criança.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> § 3º Para os fins do disposto no § 2º, considera-se criança a pessoa de até doze anos de idade incompletos.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> Art. 3º O beneficiado pela prorrogação da licença-paternidade não poderá exercer qualquer atividade remunerada durante a prorrogação da licença paternidade. Parágrafo único. O descumprimento do disposto neste artigo implicará o cancelamento da prorrogação da licença e o registro da ausência como falta ao serviço.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> <span

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	style="font-size: small;">Art. 4º O servidor em gozo de licença-paternidade na data de entrada em vigor deste Decreto poderá solicitar a prorrogação da licença, desde que&#160;requerida até o último dia da licença ordinária de cinco dias.”</p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent" align="justify"> Assim sendo, resta evidente a tendência da prorrogação aqui discutida, de sorte que a inexistência concreta de lei local, ou seja, do Estado do Ceará, para regulamentar o direito postulado não pode servir de empecilho para que se assegure a extensão da licença paternidade no caso concreto, posto que o caput do art. 7º da Constituição Federal admite que os direitos previstos nos seus incisos não são taxativos, podendo ser estendidos quando prevê que “são direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social ”. (destacamos) </p><p class="western" style="margin-left: 4cm; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> <br /> </p><p class="western" style="line-height: 150%; text-indent: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.21cm" align="justify"> Vê-se, portanto, que os membros da 3ª Câmara de Direito Público do TJ/CE, diante da ausência de norma específica não poder ser empecilho para a concretização dos princípios e garantias constitucionais, aplicou o Regime Jurídico Único dos Servidores Públicos Civis da União por analogia, permitido pela jurisprudência do Superior Tribunal de Justiça, reconhecendo o direito à extensão da licença-paternidade por 15 (quinze) dias, totalizando 20 (vinte) dias, após o nascimento de filha do requerente, ora embargado . </p><p class="western" style="line-height: 150%; text-indent: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.21cm" align="justify"> Logo, diante da primazia da proteção à família e à infância, afastou -se a aplicação, no presente caso, do princípio da separação dos poderes e da autonomia federativa, a fim de garantir a eficácia ao artigo 226 da Constituição Federal. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-bottom: 0.42cm" align="justify"> Assim, as questões da demanda se encontram devidamente resolvidas no acórdão proferido por este Órgão Julgador, não havendo necessidade de integração ou complementação de seus fundamentos.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Com efeito, os supostos “vícios” apontados pelo embargante, em seu arrazoado, revelam, na verdade, o manifesto propósito de rediscutir o resultado da causa, sob o viés dos próprios interesses.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Não custa lembrar, nesse ponto, que perquirir acerca do acerto ou desacerto da interpretação adotada por este Tribunal é medida reservada às vias recursais próprias, não cabendo à parte descontente utilizar-se

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	dos embargos de declaração para este fim, ainda que considere que o resultado final não se afigura consentâneo à melhor aplicação do direito.</p><p style="line-height: 150%; margin-left: -0.05cm; text-indent: 4.05cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Ademais, ainda que assim não o fosse, há que se destacar antiga e firme posição do Superior Tribunal de Justiça no sentido de que o Órgão Julgador não está obrigado a analisar detalhadamente todas as questões levantadas pelas partes, respondendo-as uma a uma, desde que a conclusão do seu decisum se encontre devidamente fundamentada:</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm" align="justify"> “ EMBARGOS DE DECLARAÇÃO NO AGRAVO REGIMENTAL NO RECURSO EM MANDADO DE SEGURANÇA. CONCURSO PARA ESCRIVÃO DE POLÍCIA CIVIL. TESTE DE APTIDÃO FÍSICA - TAF. EXIGÊNCIA. EXPRESSA PREVISÃO LEGAL. LEGALIDADE. OMISSÃO. CONTRADIÇÃO. INOCORRÊNCIA . 1. O cabimento dos embargos de declaração se dá apenas nas hipóteses previstas no art. 1.022 do CPC: para sanar obscuridade ou contradição no acórdão, ou ainda para elidir omissão, pronunciando-se sobre ponto essencial. Não é essa a hipótese dos autos, em que o acórdão se apresenta adequadamente fundamentado e as teses do recurso foram integralmente examinadas e repelidas, resultado que não foi, afinal, aquele que o recorrente desejou . 2. Mas ainda que assim não fosse, é certo que o juiz, desde que fundamente sua decisão, não está obrigado a se manifestar sobre todos os argumentos suscitados pelas partes. Quanto a isso, a jurisprudência desta Corte é farta em precedentes . 3. Em conclusão, não há omissão a sanar. As alegações do embargante são, em síntese, reiteração dos argumentos anteriormente apresentados nas razões recursais e revelam, quanto aos pontos suscitados, tão somente irresignação com o que foi decidido por esta Primeira Turma. Todavia, os declaratórios não constituem a via adequada para o simples reexame do julgado . 4. Ainda que manejados com finalidade de prequestionamento, os embargos de declaração demandam a ocorrência de algum dos vícios constantes do art. 1.022 do CPC . 5. Embargos de declaração rejeitados.” (EDcl no AgRg no RMS 47.139/MA, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA TURMA, julgado em 05/10/2017, DJe 19/10/2017) (destacamos)</p><p style="line-height: 150%; margin-left: -0.05cm; text-indent: 4.05cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Portanto, o que se observa é que há in casu, por parte do embargante, uma tentativa de nova apreciação da matéria, o que é vedado nesta via estreita de aclaratórios. A esse respeito, há vários precedentes deste Tribunal e, por todos, o enunciado da súmula 18 do TJCE, ex vi:</p><p class="western" style="margin-left: 4cm; text-indent: 0.02cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”. </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm" align="justify"> De outro modo: os aclaratórios têm o condão de integrar ou aclarar a decisão embargada, sendo inadmissível sua oposição, para rediscussão de matérias apreciadas e resolvidas satisfatoriamente.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Em suma: não há que se falar em omissão, contradição, obscuridade ou erro material no acórdão vergastado, diante de sua f undamentação clara e satisfatória para o deslinde da causa.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Finamente, no que diz respeito ao prequestionamento, é lição comezinha que o embargante deve se ater, exclusivamente, às hipóteses previstas no art. 1.022 do CPC/2015, conforme restou assentado pelo Órgão Especial deste Tribunal, no acórdão a seguir ementado, in verbis:</p><p style="line-height: 150%; margin-left: 4cm; text-indent: 0cm; margin-top: 0.42cm" align="justify"> “ PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRAVO REGIMENTAL NO MANDADO DE SEGURANÇA. OMISSÃO. INEXISTÊNCIA. APRECIAÇÃO DAS MATÉRIAS ARGUÍDAS. AUSÊNCIA DE ENQUADRAMENTO EM QUAISQUER DAS HIPÓTESES ELENCADAS NO ART. 1.022 DO CPC/2015. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. PREQUESTIONAMENTO. INVIABILIDADE. RECURSO CONHECIDO E DESPROVIDO. 1. Os embargos de declaração têm como escopo completar ou aclarar as decisões judiciais que tenham pontos omissos, obscuros ou contraditórios, sendo a presença destes vícios o pressuposto

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	de admissibilidade dessa espécie recursal. 2. "A jurisprudência do Superior Tribunal de Justiça consolidou entendimento no sentido de que, em se tratando de redução de vencimentos e não de supressão, está configurada a relação de trato sucessivo, com a renovação mensal do prazo decadencial para a impetração do mandado de segurança." (STJ – MS 12413/DF – Rel. Min. Og Fernandes, Terceira Seção, julgado em 13/03/2013, Dje 21/03/2013) 3. "O servidor público não possui direito adquirido a regime jurídico, tampouco a regime de vencimentos ou de proventos, sendo possível à Administração promover alterações na composição remuneratória e nos critérios de cálculo, como extinguir, reduzir ou criar vantagens ou gratificações, instituindo o subsídio, desde que não haja diminuição no valor nominal percebido, em respeito ao princípio constitucional da irredutibilidade de vencimentos." (STJ – AgRg no RMS 43259/MS, Rel. Min. Herman Benjamin, Segunda Turma, julgado em 22/10/2013, Dje 09/12/2013). 4. O tema tratado no acórdão que se pretende levar à análise dos Tribunais Superiores não precisa, novamente, através de prequestionamento, ser decidido em embargos de declaração. 5. O prequestionamento deve pautar-se no disposto do art. 1.022, do Código de Processo Civil/2015; ausentes quaisquer dos vícios elencados no referido artigo, não é devida a declaração requerida. 6.Incidência da Súmula nº 18/TJCE que aduz: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada". 7. Recurso conhecido e desprovido." (ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros números: 626694902015806000050001) (destacado)</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm" align="justify"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o desprovimento dos presentes aclaratórios é medida que se impõe nesta oportunidade, tornando-se, outrossim, despicienda qualquer declaração para fins de prequestionamento de eventuais recursos à instância especial.</p><p style="line-height: 150%; margin-top: 0.2cm; margin-bottom: 0.2cm" align="center"> DISPOSITIVO </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.2cm; margin-bottom: 0cm" align="justify"> Diante do exposto, conheço dos presentes embargos de declaração, para NEGAR-LHES provimento, ante a ausência de quaisquer dos vícios enumerados no art. 1.022 do Código de Processo Civil, mantendo inalterado o acórdão vergastado em todos os seus termos.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.2cm; margin-bottom: 0cm" align="justify"> Por ora, apesar do não acolhimento do presente recurso, que buscou, única e tão somente, o reexame de questões anteriormente analisadas por esta 3ª Câmara de Direito Público do TJ/CE, deixo de aplicar a multa prevista no art. 1.026, § 2º, do CPC, por não ter sido possível constatar que houve intuito manifestamente protelatório na hipótese dos autos.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> É como voto.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm"> Fortaleza, data e hora indicadas pelo sistema.</p><p class="western" style="text-transform: uppercase; margin-bottom: 0cm" align="center"> <br /> </p><p class="western" style="margin-bottom: 0cm" align="center"> Juíza convocada elizabete silva pinheiro – PORTARIA Nº 1550/2024 </p><p align="center">&#160;</p><p class="western" style="line-height: 150%; margin-top: 0.21cm" align="center"> Relatora</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p> <br /> </p><p style="text-indent: 8%; text-align: center;"> &#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	60
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE

Processo	3001666-72.2023.8.06.0151
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Eletiva
Polo ativo	FRANCISCA ANDREIA DA SILVA BEZERRA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MUNICIPIO DE QUIXADA Procuradoria do Município de Quixadá ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	RAFAEL DA ROCHA AVELINO - (CE45509-A) KAEELINA DE ARAUJO CARNEIRO - (CE51882-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

Processo	3001666-72.2023.8.06.0151
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img 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	e, ipso facto, a 500 (quinhentos) salários-mínimos (CPC/2015, art. 496, § 3º, incisos II e III), ainda que corrigido e atualizado.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 5. <strong style="mso-bidi-font-weight: normal;">É o caso , então, de não conhecimento do Reexame Necessário e, consequentemente, de manutenção do seu decisum, à luz dos precedentes deste Tribunal.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> -Reexame necessário não conhecido. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <br /> </p><p class="MsoNormal" style="text-align: justify;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> ACÓRDÃO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Reexame Necessário nº 3001666-72.2023.8.06.0151 , em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do Reexame Necessário, para manter, ipso facto, totalmente inalterada a sentença proferida pelo magistrado de primeiro grau, nos termos do voto da e. Relatora.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160; Local, data e hora informados pelo sistema.</p><p class="MsoNormal" style="line-height: 150%; text-align: center;">&#160;</p><p class="MsoNormal" style="line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 &#160; </p><p class="MsoNormal" style="line-height: 150%; text-align: center;"> R elatora &#160; </p><p class="MsoNormal" style="text-align: justify;"> <br /> </p><p class="MsoNormal" style="margin: 23.9pt -0.3pt 12pt 0cm; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de Reexame Necessário, adversando sentença proferida pelo magistrado de primeiro grau , que deu total procedência a ação de obrigação de fazer (Processo nº 3001666-72.2023.8.06.0151).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária: a Sra. Francisca Andréia da Silva Bezerra moveu ação de obrigação de fazer em face do Estado do Ceará e do Município de Quixadá/CE, aduzindo, em suma, que é portadora de “displasia poliostótica fibrosa” (CID 10: Q781), necessitando, por conta disso, ser submetida a cirurgia prescrita pelos médicos, sob pena de piora do seu quadro <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Diante do que, pugnou, então, inclusive liminarmente, pela condenação da Administração à efetivação de seu direito à saúde.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> Liminar indeferida (ID 15629563)</p><p class="MsoNormal" style="margin-top: 6pt; text-indent: 113.95pt; line-height: 150%; text-align: justify;"> Citados, <strong style="mso-bidi-font-weight: normal;"> o Município de Quixadá apresentou contestação (ID 15629569), enquanto que o Estado do Ceará, não (ID 15629573). </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sentença proferida

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	pelo magistrado de primeiro grau, dando total procedência da ação de obrigação de fazer (ID 15629948): </p><p class="MsoNormal" style="margin: 0cm 0.3pt 12pt 4cm; text-align: justify;"> " Ante o exposto, e por tudo o mais que dos autos consta,&#160;confirmo a tutela pleiteada e&#160;julgo PROCEDENTE o&#160;pedido inicial, a teor do art. 487, I, do Código de Processo Civil, no que tange à realização da cirurgia que&#160;a&#160;autora&#160;necessita.&#160;Aproveito o ensejo, e defiro a liminar pleiteada, determinando que os entes públicos realizem o procedimento cirúrgico que a autora necessite, no prazo de 15 dias, sob pena de multa diária no valor de R$ 500,00(quinhentos reais). " (sic) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Não houve a interposição de recursos . </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessário o envio dos autos à PGJ . </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="MsoNormal" style="margin: 12pt 0.3pt 0.0001pt 0cm; line-height: 150%; text-align: center;">&#160;</p><p class="MsoNormal" style="margin: 12pt 0.3pt 0.0001pt 0cm; line-height: 150%; text-align: center;"> VOTO </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> No presente caso, foi proferida sentença pelo magistrado de primeiro grau, que deu total procedência a ação de obrigação de fazer, condenando o Estado do Ceará e o Município de Quixadá/CE ao fornecimento de cirurgia para a Sra. Francisca Andréia da Silva Bezerra, paciente hipossuficiente e portadora de doença grave (displasia poliostótica fibrosa - CID 10: Q781), como visto.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, esta Relatora não desconhece que, atualmente, ainda se encontra em vigor a Súmula nº 490 do STJ, segundo a qual: "A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas".</p><p class="MsoNormal" style="margin: 12pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sucede que o CPC/2015 elevou, e muito, os limites mínimos estabelecidos para se impor a obrigatoriedade da confirmação da sentença pelo Tribunal, em caso de condenação da Fazenda Pública, ex vi:</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> " Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença:</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> (...)</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> § 3 ^o Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> I - 1.000 (mil) salários-mínimos para a União e as respectivas autarquias e fundações de direito público; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> II - 500 (quinhentos) salários-mínimos para os Estados, o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados; </p><p class="MsoNormal" style="margin: 0cm 0cm 6pt 4cm; text-align: justify;"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público." (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Daí por que, em homenagem aos princípios da eficiência e da celeridade, que sempre devem pautar a atuação do Poder Judiciário na busca pela razoável duração do processo, tem sido admitida a relativização da aplicação da Súmula nº 490 do STJ, quando, apesar de aparentemente ilíquido, o valor da condenação ou do proveito econômico, in

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	concreto, puder ser aferido sem maior esforço e, indiscutivelmente, não alcançar os tetos apontados pelo CPC/2015, para fins de submissão da sentença ao duplo grau de jurisdição , in verbis:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “PROCESSUAL CIVIL. RECURSO ESPECIAL. ENTE ESTADUAL. REEXAME NECESSÁRIO. VALOR DE ALÇADA. PROVEITO ECONÔMICO DA DEMANDA. PARÂMETRO PARA AFASTAMENTO DA ILIQUIDEZ. POSSIBILIDADE. 1. "Aos recursos interpostos com fundamento no CPC/1973 (relativos a decisões publicadas até 17 de março de 2016) devem ser exigidos os requisitos de admissibilidade na forma nele prevista, com as interpretações dadas, até então, pela jurisprudência do Superior Tribunal de Justiça" (Enunciado Administrativo n. 2 - STJ). 2. De acordo com o disposto no art. 475, I, § 2º, do CPC/1973, a sentença cuja condenação, ou o direito controvertido, não ultrapasse o valor correspondente a 60 (sessenta) salários-mínimos, não está sujeita ao reexame necessário. 3. O entendimento consolidado na Súmula 490 do STJ pode ser relativizado nas hipóteses em que o proveito econômico buscado na demanda servir como parâmetro balizador ao afastamento da iliquidez da sentença. 4. Hipótese em que o Tribunal de origem ratificou que o direito controvertido na ação de cobrança não supera, de forma manifesta, o patamar de 60 (sessenta) salários-mínimos, quantia tida como alçada pela legislação processual para tornar obrigatória a remessa necessária da sentença proferida em desfavor do ente estatal. 5. Agravo interno não provido.” (STJ - AgInt no REsp 1542426/MG; Relatro: Min. GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; line-height: 150%; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 0cm 0cm 6pt 4cm; text-align: justify;"> <span style="font-size: small;"> PROCESSUAL CIVIL E PREVIDENCIÁRIO. NEGATIVA DE PRESTAÇÃO JURISDICIONAL. INEXISTÊNCIA. SENTENÇA ILÍQUIDA. CPC/2015. NOVOS PARÂMETROS. CONDENAÇÃO OU PROVEITO ECONÔMICO INFERIOR A MIL SALÁRIOS MÍNIMOS. REMESSA NECESSÁRIA. DISPENSA. [...] 3. A controvérsia cinge-se ao cabimento da remessa necessária nas sentenças ilíquidas proferidas em desfavor da Autarquia Previdenciária após a entrada em vigor do Código de Processo Civil/2015. 4. A orientação da Súmula 490 do STJ não se aplica às sentenças ilíquidas nos feitos de natureza previdenciária a partir dos novos parâmetros definidos no art. 496, § 3º, I, do CPC/2015, que dispensa do duplo grau obrigatório as sentenças contra a União e suas autarquias cujo valor da condenação ou do proveito econômico seja inferior a mil salários mínimos. 5. A elevação do limite para conhecimento da remessa necessária significa uma opção pela preponderância dos princípios da eficiência e da celeridade na busca pela duração razoável do processo, pois, além dos critérios previstos no § 4º do art. 496 do CPC/15, o legislador elegeu também o do impacto econômico para impor a referida condição de eficácia de sentença proferida em desfavor da Fazenda Pública (§ 3º). 6. A novel orientação legal atua positivamente tanto como meio de otimização da prestação jurisdicional - ao tempo em que desafoga as pautas dos Tribunais - quanto como de transferência aos entes públicos e suas respectivas autarquias e fundações da prerrogativa exclusiva sobre a rediscussão da causa, que se dará por meio da interposição de recurso voluntário. 7. Não obstante a aparente iliquidez das condenações em causas de natureza previdenciária, a sentença que defere benefício previdenciário é espécie absolutamente mensurável, visto que pode ser aferível por simples cálculos aritméticos, os quais são expressamente previstos na lei de regência, e são realizados pelo próprio INSS. 8. Na vigência do Código Processual anterior, a possibilidade de as causas de natureza previdenciária ultrapassarem o teto de sessenta salários mínimos era bem mais factível, considerado o valor da condenação atualizado monetariamente. 9. Após o Código de Processo Civil/2015, ainda que o benefício previdenciário seja concedido com base no teto máximo, observada a prescrição quinquenal, com os acréscimos de juros, correção monetária e demais despesas de sucumbência, não se vislumbra, em regra, como uma condenação na esfera previdenciária venha a alcançar os mil salários mínimos, cifra que no ano de 2016, época da propositura da presente ação, superava R$ 880.000,00 (oitocentos e oitenta mil reais). 9. Recurso especial a que se nega provimento.” (STJ - REsp 1735097/RS, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É exatamente esta a situação dos autos, porque, muito embora não tenha o Juízo a quo condenado os entes públicos em quantia certa, o proveito econômico obtido pela enferma se mostra perfeitamente mensurável, até mesmo pelo valor atribuído à causa (R$ 50.000,00) e, com absoluta certeza, será inferior a 100 (cem) e, ipso facto, a 500 (quinhentos) salários-mínimos (CPC/2015, art. 496, § 3º, incisos II e III), ainda que corrigido e atualizado monetariamente.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Portanto, seu decisum não precisa, obrigatoriamente, passar pelo crivo deste Tribunal para que possa produzir efeitos, estando evidenciada, in

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	casu, uma das hipóteses de dispensa do duplo grau de jurisdição, como visto.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Na mesma linha, há recentes precedentes desta Corte:</p><p class="MsoNormal" style="margin: 6pt 0cm 0.0001pt 4cm; text-align: justify;"> “CONSTITUCIONAL E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO. PROVEITO ECONÔMICO DECORRENTE DA CONDENAÇÃO INFERIOR AOS VALORES DO ARTIGO 496, INCISO II DO CPC. REEXAME NECESSÁRIO NÃO CONHECIDO. FORNECIMENTO DE LEITO. DEMANDA AJUIZADA CONTRA O ESTADO DO CEARÁ. HONORÁRIOS ADVOCATÍCIOS. PAGAMENTO EM FAVOR DA DEFENSORIA PÚBLICA ESTADUAL. NÃO CABIMENTO. INCIDÊNCIA DA SÚMULA 421 E DO RECURSO ESPECIAL Nº 1199715/RJ, JULGADO NA SISTEMÁTICA DOS RECURSOS REPETITIVOS (TEMA 433), AMBOS DO SUPERIOR TRIBUNAL DE JUSTIÇA. SENTENÇA EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ E DESTA CORTE ESTADUAL. MANUTENÇÃO. REMESSA NECESSÁRIA NÃO CONHECIDA. APELO CONHECIDO E DESPROVIDO. 1. Revela-se dispensável a remessa necessária quando o proveito econômico decorrente da condenação é inferior ao valor expresso no inciso II do § 3º do artigo 496 do CPC, que constitui exceção ao duplo grau de jurisdição obrigatório. Precedentes. 2. São indevidos honorários sucumbenciais pelo Estado do Ceará à Defensoria Pública Estadual. Inteligência da Súmula 421 do Superior Tribunal de Justiça e do Recurso Especial nº 1199715/RJ, repetitivo (Tema 433), do STJ. 3. Os arestos proferidos após a Lei Complementar Federal nº &#160; 132/2009 mostram-se atualizados e estão baseados na tese de que a &#160; Defensoria Pública é parte integrante da estrutura orgânica do Estado e com ele s e confunde. As autonomias funcional e administrativa tratadas no art. 4º, XXI, da Lei Orgânica Nacional da Defensoria Pública e no art. 134, § 2º, da Constituição Federal não possuem aptidão para afastar a sua qualidade de órgão vinculado ao Poder Executivo do ente federativo que a instituiu, não lhe sendo permitido cobrar honorários a este, sob pena de confusão entre devedor e credor. 4. Remessa necessária não conhecida. Apelação conhecida e desprovida.” (Apelação / Remessa Necessária - 0000833-80.2018.8.06.0119, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 08/11/2021, data da publicação: 08/11/2021). (destacado)</p><p class="MsoNormal" style="margin: 12pt 0cm 0.0001pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 12pt 0cm 0.0001pt 4cm; text-align: justify;"> “RECURSOS OFICIAL E APELATÓRIO EM AÇÃO DECLARATÓRIA C/C OBRIGAÇÃO DE PAGAR QUANTIA CERTA. VENCIMENTOS INFERIORES AO MÍNIMO NACIONAL. IMPOSSIBILIDADE. CONDENAÇÃO INFERIOR A 100 (CEM) SALÁRIOS-MÍNIMOS. APURAÇÃO POR SIMPLES CÁLCULO ARITMÉTICO. REMESSA NECESSÁRIA NÃO CONHECIDA. RECURSO APELATÓRIO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O Código de Processo Civil, em seu art. 496, § 3º, inciso III, estabelece que não há reexame necessário quando o valor da condenação for inferior a 100 (cem) salários-mínimos, tratando-se dos Municípios e respectivas autarquias e fundações de direito público. 2. Assim, diante dos precisos parâmetros indicados para a apuração do valor da condenação, é possível concluir, por simples cálculo aritmético, que será muito inferior ao patamar legal previsto para dispensa da remessa necessária, impondo a aplicação da respectiva norma (art. 496, § 3º, inciso III, do CPC). 3. Recurso apelatório conhecido e provido. Remessa Necessária não conhecida. Sentença reformada em parte.” (Apelação/Remessa Necessária - 0008365-65.2019.8.06.0121, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 15/12/2021, data da publicação: 16/12/2021) (destacado)</p><p class="MsoNormal" style="margin: 12pt 0cm 0.0001pt 4cm; text-align: center;"> * * * * *</p><p class="MsoNormal" style="margin: 12pt 0cm 0.0001pt 4cm; text-align: justify;"> <span style="color: black;"> <span style="font-size: small;">“PROCESSUAL CIVIL. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO DE OBRIGAÇÃO DE FAZER C/C COBRANÇA EM FACE DO MUNICÍPIO DE CATUNDA. REMESSA NECESSÁRIA E APELAÇÕES CÍVEIS. PRELIMINAR DE INOVAÇÃO RECURSAL RECONHECIDA DE OFÍCIO QUANTO AO RECURSO DE APELAÇÃO DA PARTE AUTORA. PROFESSORA DO MUNICÍPIO DE CATUNDA. FIXAÇÃO DO PISO SALARIAL NACIONAL DO MAGISTÉRIO. LEI FEDERAL Nº 11.738/2008 E LEI MUNICIPAL Nº 240/2011. DIFERENÇAS SALARIAIS DEVIDAS. OBRIGAÇÃO DE FAZER. IMPLEMENTAÇÃO NA REMUNERAÇÃO DA REQUERENTE CABÍVEL APENAS APÓS O TRÂNSITO EM JULGADO. ADICIONAL POR TEMPO DE SERVIÇO E GRATIFICAÇÃO PÓ DE GIZ DEVEM INTEGRAR A BASE DE CÁLCULO PARA O DÉCIMO TERCEIRO SALÁRIO. CONSTITUIÇÃO FEDERAL. ART. 7º, VIII E ART. 39, § 3º. HONORÁRIOS ADVOCATÍCIOS. DECISÃO ILÍQUIDA. FIXAÇÃO DO PERCENTUAL

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	POSTERGADA PARA A FASE DE LIQUIDAÇÃO. CONDENAÇÃO INDEVIDA DO ENTE PÚBLICO AO PAGAMENTO DE CUSTAS PROCESSUAIS. ISENÇÃO PREVISTA NA LEI ESTADUAL Nº 16.132/2016. CONHECIMENTO DE OFÍCIO. REMESSA NECESSÁRIA NÃO CONHECIDA. HIPÓTESE DE DISPENSA. ART. 496, § 3º, III, CPC. APELAÇÃO DO MUNICÍPIO IMPROVIDA E DA PARTE AUTORA PARCIALMENTE PROVIDA. SENTENÇA REFORMADA EM PARTE. 1. In casu, o valor do piso salarial dos profissionais do magistério do Município de Catunda foi adequado ao nacional através da Lei Municipal nº 302/2017, sendo, portanto, devidas as diferenças salariais relativas ao piso salarial nacional do magistério nos moldes preconizados na Lei Federal nº 11.738/2008, respeitada a prescrição quinquenal, como determinado em sentença. Entretanto, o juízo a quo deixou de vincular referida condenação ao art. 62 da Lei Municipal nº 240/2011, o qual dispõe acerca das titulações aos profissionais da área, de modo que merece reforma a sentença nesse tocante. Implementação cabível apenas após o trânsito em julgado do decisum, de acordo com o art. 2-B da Lei nº 9.494/97. 2. Ademais, o adicional por tempo de serviço e a gratificação pó de giz devem integrar a base de cálculo para o décimo terceiro salário, nos termos dos arts. 39, § único, e 7º, VIII, da Constituição Federal. 3. Apelo do Município de Catunda conhecido e desprovido. Apelação da parte autora conhecida em parte e, nessa extensão, provida para determinar o pagamento das diferenças salariais nos moldes da Lei Federal nº 11.738/2008 c/c com o art. 62 da Lei Municipal nº 240/2011. Reexame Necessário não conhecido, dispensado nos termos do art. 496, § 3º, inc. III, do CPC. 4. Por fim, reformada a sentença, ex officio, para postergar à fase de liquidação o arbitramento do percentual referente aos honorários advocatícios sucumbenciais (art. 85, § 4º, inciso II, do CPC/2015), e isentar o ente público do pagamento das custas do processo (art. 5º, inciso I, da Lei Estadual nº 16.132/2016). (Apelação / Remessa Necessária&#160;- 0000149-76.2017.8.06.0189, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 07/03/2022, data da publicação:&#160; 10/03/2022). (destacado) </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o caso, então, de não conhecimento do reexame necessário e, consequentemente, de manutenção da sentença , à luz de tais precedentes.</p><p class="MsoNormal" style="text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160;</p><p class="MsoNormal" style="line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="text-indent: 120.5pt; text-align: justify;">Isto posto, <strong style="font-size: medium; text-indent: 4cm;">não conheço do reexame necessário, mantendo, ipso facto, totalmente inalterada a sentença, por seus próprios fundamentos.</p><p class="MsoNormal" style="text-indent: 120.5pt; text-align: justify;"> &#160; É como voto.</p><p class="MsoNormal" style="text-indent: 120.5pt; text-align: justify;"> &#160; Local, data e hora informados pelo sistema.</p><p class="MsoNormal" style="line-height: 150%; text-align: center;">&#160;</p><p class="MsoNormal" style="line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 &#160; </p><p class="MsoNormal" style="line-height: 150%; text-align: center;"> R elatora </p><p style="text-align: justify;"> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	0020813-66.2019.8.06.0090
Número de ordem	61
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Equivalência salarial

Processo	0020813-66.2019.8.06.0090
Polo ativo	CLAUDETE FORTUNATO DE SOUZA OLIVEIRA AMANDA PINHEIRO RODRIGUES POLLYANA ALVES ARAUJO JONILEIDES CARNEIRO DE LIMA ARAUJO
Advogado(s) - Polo ativo	FRIDTJOF CHRYSOSTOMUS DANTAS ALVES - (CE21519-A)
Polo passivo	MUNICIPIO DE ICO
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0020813-66.2019.8.06.0090
Acordão	<p style="text-align: center;"> <img style="font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqKXFhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96bJUnKMFH/Go9J2rR8R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWysKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGDmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7Ako2jKE0cRsEkW/Im2gJtyQlyPxHab5YZQ5OTrdbmEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWysKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGDD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESGBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5g

Processo	0020813-66.2019.8.06.0090

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	style="mso-bidi-font-weight: normal;">Em verdade, a suposta omissão apontada pelas servidoras públicas (embargantes), em suas razões, revela o único e exclusivo propósito de voltar a discutir o resultado da lide, que foi favorável aos interesses do Município de Icó/CE (embargado), como visto. &#160;</p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> 4. Os embargos de declaração, porém, têm por finalidade a integração ou aclaramento da decisão, sendo absolutamente vedada sua oposição, para rediscussão de matérias apreciadas e resolvidas pelo Órgão Julgador (Súmula nº 18 do TJ/CE). </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">5. <strong style="mso-bidi-font-weight: normal;">Assim, não se constatando, no acórdão, qualquer um dos vícios previsto no <strong style="mso-bidi-font-weight: normal;">1.022, I, II e III, do CPC, <strong style="mso-bidi-font-weight: normal;">deve ser negado provimento ao recurso neste azo. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> - Embargos de Declaração conhecidos e desprovidos. <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> &#160; </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 12.0pt; text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: ideograph-numeric;" align="center"> ACÓRDÃO </p><p class="Recuodecorpodetexto22" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Vistos, relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 0020813-66.2019.8.06.0090, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do TJ/CE, por unanimidade, em conhecer do recurso, para, entretanto, negar-lhe provimento, nos termos do voto da e. Relatora.</p><p class="MsoNormal" style="margin-top: 12.0pt; text-align: justify; text-indent: 4.0cm; line-height: 150%; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> Local, data e hora informadas pelo sistema. </p><p class="MsoNormal" style="margin-top: 18.0pt; text-align: center; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;" align="center"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO - PORTARIA 1.550/2024 </p><p class="MsoNormal" style="margin-top: 2.0pt; text-align: center; line-height: 150%; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;" align="center"> Relatora </p><p class="MsoNormal" style="margin-top: 2.0pt; text-align: center; line-height: 150%; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;" align="center"> &#160;</p><p class="Recuodecorpodetexto22" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> RELATÓRIO </p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Cuida-se, na espécie, de Embargos de Declaração, apontando a existência de suposta omissão em Acórdão da 3ª Câmara de Direito Público do TJ/CE, que negou provimento a Apelação Cível, e confirmou a sentença proferida pelo magistrado de primeiro grau, que teve por improcedente a ação ordinária movida por servidoras públicas, visando a extensão de uma vantagem (atualmente denominada de “Tempo Integral”) que vem sendo paga pelo Município de Icó/CE a outras 02 (duas) integrantes da categoria, com base no princípio da isonomia, in verbis: &#160;</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal;"> “ EMENTA: CONSTITUCIONAL. ADMINISTRATIVO. APELAÇÃO CÍVEL EM AÇAO ORDINÁRIA.

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	SERVIDORAS PÚBLICAS DO MUNICÍPIO DE ICÓ/CE. OCUPANTES DO CARGO DE “SECRETÁRIA ESCOLAR”. AUSÊNCIA DE DIREITO À EXTENSÃO DA VANTAGEM CONCEDIDA A OUTRAS 02 (DUAS) INTEGRANTES DA MESMA CATEGORIA. APLICAÇÃO DA SÚMULA VINCULANTE Nº 37 DO STF AO PRESENTE CASO. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. 1. Cuida-se, na espécie, de Apelação Cível, adversando sentença em que o magistrado de primeiro grau concluiu pela total improcedência de ação ordinária. 2. Foi devolvida a este Tribunal a controvérsia em torno da existência ou não do direito de servidoras públicas do Município de Icó/CE, ocupantes do cargo de “secretária escolar”, à extensão de uma vantagem (denominada de “Tempo Integral”) que vem sendo paga a outras 02 (duas) integrantes da mesma categoria, com base no princípio da isonomia. 3. Ora, há bastante tempo, é pacífica a orientação do Supremo Tribunal Federal de que: “ não cabe ao Poder Judiciário, que não tem função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia” (Súmula Vinculante nº 37). 4. Assim, o simples fato de o Município de Icó/CE ter concedido, sem amparo em lei, uma vantagem (denominada de “Tempo Integral”) a 02 (duas) servidoras públicas, ocupantes do cargo de “secretária escolar”, de per si, não autoriza o Judiciário a deferir sua extensão aos demais integrantes da mesma categoria, sob pena de ofensa ao Princípio da Separação dos Poderes (CF/88, art. 2º). 5. Diante do que, p ermanecem, então, totalmente inabalados os fundamentos do decisum proferido pelo Juízo a quo, devendo ser confirmado neste azo. - Precedentes. - Recurso conhecido e não provido. - Sentença mantida. ” (sic) &#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> Inconformadas, a servidoras públicas interpuseram Embargos de Declaração (ID 15653830), sustentando que, por exercerem os seus cargos em tempo integral (40 horas), não haveria qualquer ilegalidade na extensão de vantagem que vem sendo paga pelo Município de Icó/CE a outras 02 (duas) integrantes da categoria, com o mesmo fundamento.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Nesse sentido, diz que o <em style="mso-bidi-font-style: normal;">decisum proferido por este Órgão Julgador é omisso, por não ter enfrentado devidamente tal questão.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Diante do que, requerem, então, a imediata supressão de tal vício, com a atribuição de efeitos infringentes ao recurso</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> <strong style="mso-bidi-font-weight: normal;"> Sem contrarrazões .</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> É o relatório.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;">&#160;</p><p class="Recuodecorpodetexto22" style="margin-top: 18.0pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> VOTO </p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Preliminarmente, conheço do recurso.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Vale ressaltar que, de acordo com o art. 1.022, I, II e III, do CPC, os embargos de declaração se prestam, única e tão somente, para elidir na sentença, ou no acórdão, eventual obscuridade, contradição, omissão ou erro material, sendo, portanto, vinculada sua fundamentação.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> “Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: </p><p

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	class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> I – esclarecer obscuridade ou eliminar contradição; </p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> II – suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; </p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: 150%;"> III – corrigir erro material” </p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Então, pelo que se extrai do texto legal, os vícios que autorizam o uso de tal recurso são os que se verificam entre proposições da própria decisão, isto é, na sua fundamentação ou no seu dispositivo.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Todavia, o que se tem, aqui, não é uma tentativa de integração ou aclaramento do decisum, e sim de rediscutir a causa.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Isso porque, foram devidamente enfrentadas no acórdão proferido pela 3ª Câmara de Direito Público do TJ/CE todas as questões relevantes para o caso, de forma clara, concatenada e satisfatória, estando sua fundamentação compatível com precedentes do STF e do TJ/CE.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> E, a demonstrar a inexistência dos vícios do art. 1.022 do CPC, transcrevo excerto do decisum, onde se infere que não há defeito a ser sanado nesta via (obscuridade, contradição, omissão ou erro material), ex vi:</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> “ Ora, há bastante tempo, é pacífica a orientação do Supremo Tribunal Federal, no sentido de que: “ não cabe ao Poder Judiciário, que não tem função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia” (Súmula vinculante nº 37).</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> Assim, o simples fato de o Município de Icó/CE ter concedido, sem amparo em lei, uma vantagem (denominada de “Tempo Integral”) a 02 (duas) servidoras públicas, ocupantes do cargo de “secretária escolar”, de per si, não autoriza o Judiciário a deferir sua extensão aos demais integrantes da mesma categoria, sob pena de ofensa ao Princípio da Separação dos Poderes, pevisto no art. 2º da Constituição Federal de 1988. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> Na mesma linha, todas as 03 (três) Câmaras de Direito Público do TJ/CE têm reiteradamente decidido que a fixação ou alteração da remuneração dos servidores públicos é matéria reservada à lei (CF/88, art. 37, inciso X), e atrelada à organização interna de cada um dos Poderes, ex vi: </p><p class="MsoNormal" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-autospace: ideograph-numeric;"> [...] </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> Diante do que, dúvida não há de que procedeu corretamente o Juízo a quo, quando concluiu pela total improcedência da ação ordinária, devendo ser integralmente mantido seu decisum neste azo.” </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> &#160; &#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm;

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	line-height: 150%; text-autospace: ideograph-numeric;"> De fato, não há prova da existência de norma local, instituindo a vantagem (atualmente denominada de “Tempo Integral”) no Município de Icó/CE, e disciplinando sua concessão aos servidores públicos. &#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> Logo, ainda que venha sendo paga pela Administração a determinados agentes, sem amparo em lei, não autoriza, de per si, sua extensão aos demais integrantes da categoria, sob pena de ofensa ao princípio da separação dos poderes, previsto no art. 2º da Constituição Federal de 1988.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> Afinal, a fixação ou alteração da remuneração dos seus servidores públicos é matéria reservada à lei (CF/88, art. 37, inciso X), e atrelada à organização interna do Município de Icó/CE.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> Daí por que, plenamente adequada a aplicação, in casu, da Súmula Vinculante nº 37 do STF, que assim dispõe: não cabe ao Poder Judiciário, que não tem função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia” (destacado).</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> E outra não tem sido a orientação adotada pelas 03 (três) Câmaras de Direito Público do TJ/CE, in verbis: </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> <span style="font-size: 10pt; color: black;"> <span style="font-size: small;">“ADMINISTRATIVO E PROCESSUAL CIVIL. AGRAVO INTERNO. SERVIDORAS PÚBLICAS DO MUNICÍPIO DE FORTALEZA. EXTENSÃO DE VANTAGEM VENCIMENTAL COM ESPEQUE NO PRINCÍPIO DA ISONOMIA. DECISÃO MONOCRÁTICA QUE NEGOU PROVIMENTO AO RECURSO DE APELAÇÃO. REPERCUSSÃO GERAL RECONHECIDA PELO SUPREMO TRIBUNAL FEDERAL. RECURSO EXTRAORDINÁRIO Nº 592.317/RJ. SÚMULA VINCULANTE 37 E SÚMULA 339 DO STF. SERVIDORA PARADIGMA BENEFICIADA POR DECISÃO PROFERIDA NO ÂMBITO DA JURISDIÇÃO TRABALHISTA. VEDAÇÃO. RECURSO DESPROVIDO. 1- A questão em análise envolve postulação de servidoras públicas municipais (professoras), na qual objetivam, sob o princípio constitucional da isonomia, em face de exercer as mesmas atribuições de outra servidora paradigma, perceber os mesmos vencimentos desta. <strong>2- Acerca do assunto, o Supremo Tribunal Federal, ao julgar o Recurso Extraordinário nº 592.317, em sede de repercussão geral, decidiu que: "Não cabe ao Poder Judiciário, que não tem a função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia. Discutia-se a possibilidade de aumento de vencimentos e extensão de vantagens e gratificações pelo Poder Judiciário e pela Administração Pública. O Tribunal reafirmou o Enunciado 339 da Súmula do STF. Registrou que a jurisprudência da Corte é pacífica no sentido de que o aumento de vencimentos de servidores depende de lei e não pode ser efetuado apenas com base no princípio da isonomia. Ademais, o Poder Judiciário não pode proceder à equiparação salarial entre servidores de mesmo cargo, quando o paradigma decorrer de decisão judicial transitada em julgado, bem assim estender gratificação especificamente destinada a servidores em exercício em determinada secretaria quando cedidos a outro órgão (RE 592.317/RJ, rel. Min. GILMAR MENDES, julgado em 28/8/2014, acórdão publicado no DJe de 10/11/2014). 3- Observa-se dos presentes fólios que a questão em destrame é idêntica àquela objeto do RE-RG nº 592.317/RJ, em que as autoras – servidoras públicas do Município de Fortaleza – com esteio no princípio constitucional da isonomia (arts. 5º, caput, e 7º, XXX, da CF) e em reclamação trabalhista, almejam a implantação em folha de pagamento dos mesmo valor - R$ 1.332,83 (um mil, trezentos e trinta e dois reais e oitenta e três centavos), sob a rubrica "COMPL SAL JUD" - concedido em decisão judicial trabalhista à servidora paradigma. 4- A decisão monocrática recorrida baseou-se não somente no RE-RG nº 592.317/RJ (Inf. nº 756), mas também nos enunciados – de igual teor – da Súmula Vinculante 37 e da Súmula 339 do STF: "Não cabe ao Poder Judiciário, que não tem função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia". 5- Evidenciada na jurisprudência do Pretório Excelso a questão constitucional tangente à vedação de o Poder Judiciário, sob o fundamento da isonomia, aumentar vencimentos de servidores, bem como à impossibilidade de vinculação de piso salarial a múltiplos de salário-mínimo, não há fazer prevalecer a tese recursal (art. 1.040,

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	II, CPC). 6- Agravo interno conhecido e desprovido.” (Agravo Interno Cível&#160;- 0072228-84.2007.8.06.0001, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento:&#160; 17/12/2018, data da publicação:&#160; 18/12/2018) (destacado) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: center; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;" align="center"> * * * * * </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> <span style="font-size: 10pt; color: black;"> <span style="font-size: small;">“DIREITO CONSTITUCIONAL E ADMINISTRATIVO. AÇÃO ORDINÁRIA. APELAÇÃO. DELEGADO DE POLÍCIA CIVIL DESIGNADO PARA ATUAR EM UNIDADE DE POLÍCIA CIVIL. PRETENSÃO DE PERCEPÇÃO DA GRATIFICAÇÃO DE REPRESENTAÇÃO CONCEDIDA A DELEGADOS TITULARES DE DELEGACIAS FORMALMENTE CONSTITUÍDAS. ALEGAÇÃO DO EXERCÍCIO DAS MESMAS ATRIBUIÇÕES. AUSÊNCIA DE PREVISÃO LEGAL. SENTENÇA DE IMPROCEDÊNCIA. IMPOSSIBILIDADE DE CONCESSÃO DA GRATIFICAÇÃO DE REPRESENTAÇÃO PELO JUDICIÁRIO, A TÍTULO DE ISONOMIA. EMBARGOS DE DECLARAÇÃO, A PRETEXTO DE OMISSÃO E PRETENSÃO DE MODIFICAÇÃO DO JULGADO. INEXISTÊNCIA DOS VÍCIOS APONTADOS. INTENÇÃO DE REDISCUSSÃO DE QUESTÕES JÁ DECIDIDAS. EMBARGOS REJEITADOS. As hipóteses de cabimento dos embargos de declaração restringem-se aos casos de obscuridade, contradição e omissão do acórdão atacado ou para corrigir erro material. Alega o embargante que a decisão embargada mereceria saneamento, porque teria se omitido sobre a circunstância essencial de que a sua pretensão não se funda em equiparação de funções, por semelhança, entre Delegados de Unidade Policial e de Delegacia de Polícia, mas de reconhecer que o embargante exerceu suas funções como titular de uma Delegacia de Polícia que existe de fato, que não foi, entretanto, formalmente regulamentada por pura omissão estatal. Não se verifica, na espécie, as alegadas lacunas de fundamentação, tendo o acórdão atacado deixado expressamente consignado que, nos termos do art. 73, IV, § 2º, Lei nº 12.124/1993, vigente á época dos fatos, a gratificação de representação pretendida somente deve ser concedida a policial exercente de cargo em comissão ou função comissionada, não tendo o autor apresentou qualquer ato normativo que assegure ao delegado de polícia designado para exercer suas funções institucionais em Unidade de Polícia Civil as vantagens inerentes à titularidade de uma Delegacia legalmente instalada. Fundamentou ainda que, mesmo se considerando como não isonômico o tratamento dado ao demandante em relação a delegados titulares de delegacias formalmente constituídas, a extensão, pelo Judiciário, da gratificação de representação pretendida, ausente previsão legal para tanto, contraria o disposto na Súmula Vinculante nº 37 do STF, As aduzidas lacunas de fundamentação se referem à tentativa de rediscussão do mérito da questão, para reverter o resultado que foi adverso ao embargante, o que não se insere nas hipóteses de cabimento dos declaratórios. Embargos de Declaração conhecidos e rejeitados.” (Embargos de Declaração Cível&#160;- 0048444-13.2017.8.06.0071, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento:&#160; 13/09/2023, data da publicação:&#160; 13/09/2023) (destacado) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: center; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;" align="center"> ***** </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; mso-hyphenate: auto; mso-layout-grid-align: none; text-autospace: none;"> <span style="font-size: small;"> <span style="color: black;">“APELAÇÃO CÍVEL. ADMINISTRATIVO. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA DO MUNICÍPIO DE FORTALEZA/CE. "GRATIFICAÇÃO DE DIFÍCIL ACESSO" (ATUALMENTE DENOMINADA DE "GRATIFICAÇÃO DE INCENTIVO À LOTAÇÃO"). REQUISITOS LEGAIS NÃO ATENDIDOS. IMPOSSIBILIDADE DE EXTENSÃO DE TAL VANTAGEM COM FUNDAMENTO NO PRINCÍPIO DA ISONOMIA. SÚMULA VINCULANTE Nº 37 DO STF. PRECEDENTES DESTE TRIBUNAL. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA CONFIRMADA. 1. Trata-se, no presente caso, de apelação cível, adversando sentença em que o magistrado de primeiro grau considerou improcedente ação ordinária movida por servidora pública do Município de Fortaleza/CE. 2. Foi devolvida a este Tribunal a controvérsia em torno da existência ou não do direito à implantação da "Gratificação de Difícil Acesso" (atualmente denominada de "Gratificação de Incentivo à Lotação"), expressamente prevista na Lei nº 5.895/84 e no Decreto nº 6.944/85. 3. Ora, é possível se inferir da leitura das normas aplicáveis ao caso que, para a concessão de tal vantagem, são necessários 02 (dois) requisitos cumulativos: (a) a lotação em escola distante a mais de 15 km (quinze quilômetros) do centro urbano da cidade e (b) o percurso até o local de trabalho deve ser feito por meio de vias secundárias não pavimentadas em

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	toda sua extensão. 4. Assim, com base na teoria da distribuição do ônus da prova de que trata o art. 373 do CPC, tinha a autora/apelante o dever de demonstrar que tais requisitos estariam atendidos in concreto, o que, porém, não ocorreu. 5. Nesse diapasão, é válido destacar que o simples fato de tal vantagem está sendo indevidamente paga a alguns professores, de per si, não autoriza sua extensão a outros integrantes da categoria, porque os erros e violações legais devem ser reprimidos e nunca preservados. 6. Ademais, "não cabe ao Poder Judiciário, que não tem função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia" (Súmula Vinculante nº 37 do Supremo Tribunal Federal). 7. Logo, procedeu corretamente o magistrado de primeiro grau, quando concluiu pela improcedência da ação, devendo ser integralmente mantido seu decisum. - Precedentes. - Recurso conhecido e não provido. - Sentença mantida.” (AC&#160;- 0042877-90.2012.8.06.0001, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 04/04/20 22, data da publicação:&#160; 04/04/2022) (destacado) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> Vê-se, então, que não existe qualquer omissão no decisum, incidindo, aqui, a velha máxima do direito de que sua mera concisão não representa ofensa ao princípio da obrigatoriedade da motivação, ex vi :</p><p class="Recuodecorpodetexto21" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-indent: 1.65pt; line-height: normal;"> “ Questão de ordem. Agravo de Instrumento. Conversão em recurso extraordinário (CPC, art. 544, §§ 3° e 4°). 2. Alegação de ofensa aos incisos XXXV e LX do art. 5º e ao inciso IX do art. 93 da Constituição Federal. Inocorrência. <strong style="mso-bidi-font-weight: normal;">3. O art. 93, IX, da Constituição Federal exige que o acórdão ou decisão sejam fundamentados, ainda que sucintamente, sem determinar, contudo, o exame pormenorizado de cada uma das alegações ou provas, nem que sejam corretos os fundamentos da decisão. 4. Questão de ordem acolhida para reconhecer a repercussão geral, reafirmar a , jurisprudência do Tribunal, negar provimento ao recurso e autorizar a adoção dos procedimentos relacionados à repercussão geral.” (AI 791292 QO-RG, Relator(a): Min. GILMAR MENDES, julgado em 23/06/2010, REPERCUSSÃO GERAL - MÉRITO DJe-149 DIVULG 12-08-2010 PUBLIC 13-08-2010 EMENT VOL-02410-06 PP-01289 RDECTRAB v. 18, n. 203, 2011, p. 113-118). (destacado)</p><p class="MsoNormal" style="margin-bottom: 12.0pt; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Em verdade, a suposta omissão apontada pelas servidoras públicas (embargantes), em suas razões, revela o único e exclusivo propósito de voltar a discutir o resultado da causa, que foi favorável aos interesses do Município de Icó/CE (embargado), como visto. </p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Perquirir acerca do acerto ou desacerto da interpretação adotada por este Tribunal é medida reservada a outras vias, sendo absolutamente vedada a utilização dos embargos de declaração para essa finalidade, nos termos da Súmula nº 18 do TJ/CE, ex vi <em style="mso-bidi-font-style: normal;">:</p><p class="MsoNormal" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-indent: .65pt;"> <strong style="mso-bidi-font-weight: normal;"> SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”. </p><p class="Recuodecorpodetexto21" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> De outro modo: os embargos de declaração têm o condão de integrar ou aclarar a decisão, sendo inadmissível sua oposição, para rediscussão de matérias apreciadas e resolvidas satisfatoriamente.</p><p class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Em suma: não há que se falar em omissão, contradição, obscuridade ou erro material no acórdão, diante de sua f <strong style="mso-bidi-font-weight: normal;">undamentação clara e satisfatória para o deslinde da causa.</p><p class="Recuodecorpodetexto21" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o não provimento do recurso é medida que se impõe a este Tribunal.</p><p class="Recuodecorpodetexto22" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center">&#160;</p><p class="Recuodecorpodetexto22" style="margin-top:

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	5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> DISPOSITIVO </p><p class="MsoNormal" style="margin-top: 5.65pt; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Diante do exposto, <strong style="mso-bidi-font-weight: normal;">conheço dos embargos de declaração, para NEGAR-LHES provimento, ante a ausência de quaisquer dos vícios enumerados no art. 1.022 do Código de Processo Civil, mantendo inalterado o acórdão vergastado em todos os seus termos.</p><p class="MsoNormal" style="margin-top: 5.65pt; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Por ora, apesar do não acolhimento do presente recurso, que buscou apenas o reexame de questões anteriormente analisadas pela 3ª Câmara de Direito Público do TJ/CE, deixo de aplicar a multa prevista no art. 1.026, § 2º, do CPC, por não ter sido possível constatar que houve intuito manifestamente protelatório na hipótese dos autos.</p><p class="MsoNormal" style="margin-top: 5.65pt; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> É como voto.</p><p class="MsoNormal" style="margin-top: 5.65pt; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Fortaleza, data e hora indicadas no sistema.</p><p class="MsoNormal" style="text-align: center; line-height: 150%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="text-align: center; line-height: 150%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 </p><p class="MsoNormal" style="margin-bottom: 12.0pt; text-align: center; line-height: 150%;" align="center"> Relatora</p><p> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	62
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Nulidade - Ausência de Citação
Polo ativo	DEFENSORIA PUBLICA DO ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MUNICIPIO DE FORTALEZA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"> <span style="font-size: medium;"> <span style="font-family: arial, helvetica, sans-serif;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5h5SkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxdf8u7H77L6nbXMXDGb

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	sans-serif;">2. A questão em discussão gira em torno do acerto da decisão interlocutória proferida pelo Juízo de primeiro grau que não acolheu a exceção de pré-executividade, afastando a prescrição e mantendo a citação por edital na execução fiscal. </p><p style="line-height: 1.38; margin-left: 140pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de Decidir </p><p style="line-height: 1.38; margin-left: 142pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 3. Ora, facilmente se extrai dos autos que, antes de requerer a citação por edital, a Fazenda Pública não pleiteou ao Juízo de primeiro grau a utilização dos meios que estavam ao seu alcance para descobrir o endereço atualizado do devedor, malferindo, com isso, o disposto no art. 256, §3º, do Código de Processo Civil. </p><p style="line-height: 1.38; margin-left: 142pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 4. Com efeito, por sua menor efetividade e maior custo para os cofres públicos, a citação por edital na execução fiscal somente deve ser admitida, se previamente esgotadas todas possibilidades de localização do devedor, o que, porém, não ocorreu. </p><p style="line-height: 1.38; margin-left: 142pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 5. Não foi sequer realizada, in casu , uma busca minimamente efetiva para localização de seu atual endereço nos cadastros de órgãos públicos (Receita Federal, Junta Comercial, etc.) ou nos diversos sistemas à disposição do Poder Judiciário (RENAJUD, SIEL, INFOJUD, INFOSEG, etc.). </p><p style="line-height: 1.38; margin-left: 142pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 6. Assim, evidenciado o error in procedendo em que incorreu o Juízo de primeiro grau, deve ser reformada a decisão interlocutória que determinou a citação por edital na execução fiscal, inobservando a súmula 414 do STJ, para, ipso facto, tornar sem efeito a citação por edital do devedor. </p><p style="line-height: 1.38; margin-left: 140pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese </p><p style="line-height: 1.38; margin-left: 140pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <span style="color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;"> 7. Recurso conhecido e provido. Decisão interlocutória reformada. </p><p style="line-height: 1.38; margin-left: 140pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> &#160; _____________ </p><p style="line-height: 1.38; margin-left: 142pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos relevantes citados: Lei 6.830/80: art. 8º. CPC: art. 256, §3º; <br /> </p><p style="line-height: 1.26; margin-left: 142pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Jurisprudência relevante citada: STJ: Súmula n.º 414. TJCE: Agravo de Instrumento - 0625067-07.2022.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 13/06/2022, data da publicação:&#160; 13/06/2022. </p><p align="center"> <strong id="docs-internal-guid-89acc229-7fff-fce6-eaa7-8b4a7ebecb12" style="font-weight: normal;"> <br /> </p><h3 style="line-height: 1.38; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO </h3><p style="line-height: 1.7999999999999998; margin-left: 1pt; text-indent: 112.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3003197-30.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do agravo de instrumento interposto, para dar-lhe provimento, reformando a decisão interlocutória proferida pelo Juízo de primeiro grau , nos termos do voto da Relatora. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Local, data e hora indicados pelo sistema. </p><p style="line-height: 1.38; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p style="line-height: 1.38; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Portaria nº 1550/2024 </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top:

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	10pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de agravo de instrumento em face de decisão interlocutória proferida pelo Juízo da 1ª Vara de Execuções Fiscais da Comarca de Fortaleza, que não acolheu exceção de pré-executividade, mantendo a citação por edital na execução fiscal (Processo nº 00151040-09.2008.8.06.0001). </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> O caso/a ação originária: a Defensoria Pública, na condição de curadora especial, apresentou exceção de pré-executividade (ID 50284874, processo de origem), suscitando, em resumo, i) a ocorrência da prescrição e a ii) nulidade do ato que determinou a citação por edital do devedor na execução fiscal movida pelo Município de Fortaleza, sob alegação de que fora realizada antes de esgotados, previamente, todos os meios possíveis para a localização de seu atual endereço, malferido o disposto no art. 256, §3º, do CPC/2015 e, alternativamente, que fosse determinado a suspensão do feito nos termos do art. 40 da LEF. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Decisão interlocutória (ID 89167965, Processo nº 00151040-09.2008.8.06.0001), o Juízo a quo rejeitou “ a exceção de pré-executividade para manter a cobrança do crédito tributário e o normal prosseguimento da execução fiscal” (destacado). </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Inconformada, a parte exequida, por meio da curadoria especial da Defensoria Pública interpôs Agravo de Instrumento , buscando a reforma do decisório prolatado na instância a quo , para fins de </p><p style="line-height:

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	1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Daí que, postulou, inclusive liminarmente, a reforma da decisão de origem, para fins de “ declarar a nulidade dos atos processuais praticados após a citação por MANDADO do(a) Executado(a), desconstituindo-se os atos subsequentes a este momento processual, na medida em que o Exequente não diligenciou no sentido de requerer a repetição do ato de citação por mandado […]” . </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Decisão interlocutória (ID 13597394), exarada pela e. Desembargadora Maria Iracema Martins do Vale, deferindo parcialmente a antecipação da tutela recursal, para o fim específico de determinar a suspensão da citação editalícia e dos atos posteriores, até ulterior deliberação deste Juízo. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Contrarrazões (ID 14536950), suplicando pela manutenção do decisum , por seus próprios e jurídicos fundamentos. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Desnecessária a intervenção do Ministério Público , nos termos da Súmula nº 189 do Superior Tribunal de Justiça. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> É o relatório. </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> VOTO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Preenchidos os requisitos legais, conheço do agravo de instrumento, passando, a seguir, ao enfrentamento de suas razões. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <span style="color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-

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	space: pre-wrap;"> Foi devolvida a este Tribunal a discussão em torno do acerto da decisão interlocutória proferida pelo Juízo de primeiro grau que não acolheu a exceção de pré-executividade, afastando a prescrição e mantendo a citação por edital na execução fiscal, sem observar o esgotamento de todas as modalidades citatórias. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Conforme se depreende dos autos, após a infrutífera citação por carta, com o retorno do AR com a informação “Mudou-se”, foi realizada a citação por oficial de justiça (ID 50286900 do processo de origem), restando certificado que o executado “não se estabelecer mais no endereço fornecido”. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Mesmo após indicação de novo endereço (ID 50286903, processo originário) pelo ente exequente, não foi possível a realização do ato citatório, havendo o meirinho certificado (ID 50284869) que deixou de proceder à penhora ordenada pelo fato de não ter localizado bens penhoráveis para a satisfação da dívida, sem, contudo, elucidar se o endereço era, ou não, do executado. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Foi, então, requerida a citação por edital, “ a citação por edital da parte executada, nos termos do artigo 8º, IV, da Lei 6.830/80, à luz dos elementos constantes dos autos, sobejamente caracterizadores dos pressupostos legais da citação ficta” (ID 50284871, processo de origem), sendo tal medida deferida pelo Juízo a quo (fl. ID 50284862, processo de origem). </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Posteriormente, realizada a citação editalícia (ID 50284867, processo de origem), o Julgador de primeiro grau determinou a nomeação da Defensoria Pública para atuar como curador especial do devedor (50286875, processo de origem). </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Pois bem. Não pairam dúvidas de que se trata nos autos de exceção de pré-executividade, hipótese excepcional de defesa, da qual o devedor só pode se valer para suscitar matéria de ordem pública, que obste, de plano, o prosseguimento da execução, e que prescinda da produção de outras provas para ser dirimida. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Isso quer dizer, então, que, ao se utilizar de tal via, o devedor tem a obrigação de trazer, imediatamente, ao conhecimento

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	do Órgão Julgador, todos os elementos necessários à formação de seu convencimento sobre a existência de eventuais vícios que tornem o processo nulo de pleno direito. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> A este respeito, ensina a melhor doutrina que: </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “(...) doutrina e jurisprudência passaram a admitir a possibilidade de o executado, nos próprios autos da execução, apresentar simples petição, com questionamentos à execução, desde que comprovados documentalmente. Trata-se de defesa atípica, não regulada expressamente pela legislação processual, mas que foi admitida pela jurisprudência, em homenagem ao devido processo legal: não seria correto permitir o prosseguimento de execução cuja prova de sua injustiça se pudesse fazer de plano, documentalmente . (…)</p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Eis, assim, as principais características desta modalidade de defesa: a) atipicidade: não há regramento legal a respeito do tema; b) limitação probatória : somente as questões que se podem provar documentalmente poderiam ser alegadas ; c) informalidade: a alegação poderia ser feita por simples petição.” (DIDIER JR., Fredie; CARNEIRO DA CUNHA, Leonardo José; BRAGA, Paula Sarno &amp; OLIVEIRA, Rafael; in CURSO DE DIREITO PROCESSUAL CIVIL – EXECUÇÃO, Volume 5, págs. 389/390, Editora JusPodium, Bahia, 2009) (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Ora, facilmente se extrai dos autos que, antes de requerer a citação por edital, a Fazenda Pública não observou a ordem dos meios de citação do feito fiscal, malferindo, com isso, o disposto no art. 8º da LEF e art. 256, §3º, do Código de Processo Civil, in verbis: </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “Lei 6.830/80. Art. 8º - O executado será citado para, no prazo de 5 (cinco) dias, pagar a dívida com os juros e multa de mora e encargos indicados na Certidão de Dívida Ativa, ou garantir a execução, observadas as seguintes normas: </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> I - a citação será feita pelo correio , com aviso de recepção, se a Fazenda Pública não a requerer por outra forma; </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> [...] </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> III - se o aviso de recepção não retornar no prazo de 15 (quinze) dias da entrega da carta à agência postal, a citação será feita por Oficial de Justiça <span style="color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline;

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	white-space: pre-wrap;">[…]” (destacado) </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> *** </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “CPC . Art. 256. A citação por edital será feita: </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> I - quando desconhecido ou incerto o citando; </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> II - quando ignorado, incerto ou inacessível o lugar em que se encontrar o citando; </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> III - nos casos expressos em lei. </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> § 1º Considera-se inacessível, para efeito de citação por edital, o país que recusar o cumprimento de carta rogatória. </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> § 2º No caso de ser inacessível o lugar em que se encontrar o réu, a notícia de sua citação será divulgada também pelo rádio, se na comarca houver emissora de radiodifusão. </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> § 3º O réu será considerado em local ignorado ou incerto se infrutíferas as tentativas de sua localização, inclusive mediante requisição pelo juízo de informações sobre seu endereço nos cadastros de órgãos públicos ou de concessionárias de serviços públicos .” (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Com efeito, por sua menor efetividade e maior custo para os cofres públicos, a citação por edital na execução fiscal somente deve ser admitida, se previamente esgotadas todas possibilidades de localização do devedor, o que, entretanto, não ocorreu, in casu , porque sequer fora realizada uma busca minimamente efetiva para localização de seu atual endereço nos cadastros de órgãos públicos (Receita Federal, Junta Comercial, etc.) ou nos diversos

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	sistemas à disposição do Poder Judiciário (RENAJUD, SIEL, INFOJUD, INFOSEG, etc.). </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Esta orientação se encontra, inclusive, sedimentada na Súmula n.º 414 do STJ, que assim dispõe: “ a citação por edital na execução fiscal é cabível quando frustradas as demais modalidades” . (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Nesse mesmo sentido, também há expressivos precedentes oriundos das Câmaras de Direito Público do TJ/CE. Ilustrativamente, ex vi: </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “AGRAVO DE INSTRUMENTO. EXECUÇÃO FISCAL. CITAÇÃO POR EDITAL. CITAÇÃO POSTAL E POR OFICIAL DE JUSTIÇA INVÁLIDAS EM VIRTUDE DO INCOMPLETO ENDEREÇO INFORMADO NOS MANDADOS DE CITAÇÃO. INTERPRETAÇÃO CONJUNTA DOS ART. 8º DA LEF E OS ART. 256, §3º, DO CPC. ENTENDIMENTO DO STJ FIXADO NO RECURSO ESPECIAL REPETITIVO REsp. 1.103.050/BA. REFORMADA A DECISÃO INTERLOCUTÓRIA DE ORIGEM. RECURSO CONHECIDO E PROVIDO. 1. Cinge-se a controvérsia à necessidade de, nas execuções fiscais, diligenciar com vistas a localizar o endereço atualizado do executado antes de se proceder à citação por edital. 2. Com efeito, a interpretação que se constrói a partir do art. 8º da LEF c/c o art. 256, § 3º, do CPC, é a de que a citação por edital somente será realizada após o esgotamento de todos meios possíveis para localizar o devedor. Nessa senda, o Superior Tribunal de Justiça, no julgamento do REsp. 1.103.050/BA, submetido à sistemática dos recursos especiais repetitivos, firmou entendimento no sentido de que a citação por edital, na execução fiscal, é cabível quando esgotadas as outras duas modalidades de citação ali previstas: a citação pelo correio e por oficial de justiça. 3. Esse entendimento foi sedimentado na Súmula 414 n.º do STJ, segundo a qual "a citação por edital na execução fiscal é cabível quando frustradas as demais modalidades". 4. Segundo consta do aviso de recebimento de fl. 5 (autos principais), a citação não ocorreu por força da inexistência do número indicado pela parte exequente. Igualmente, a citação por mandado restou infrutífera, face à inexistência da numeração apontada, de acordo com a certidão do oficial de Justiça responsável pela diligência de fl. 24 (autos principais). 5. Agravo de instrumento conhecido e provido.” (Agravo de Instrumento - 0625067-07.2022.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 13/06/2022, data da publicação:&#160; 13/06/2022) (destacado)</p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> * * * * * </p><p style="line-height: 1.38; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “PROCESSUAL CIVIL E TRIBUTÁRIO.

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	EMBARGOS À EXECUÇÃO FISCAL. RECURSO DE APELAÇÃO. NULIDADE DA CITAÇÃO DO EXECUTADO POR EDITAL. JULGAMENTO EXTRA PETITA. INOCORRÊNCIA. NECESSIDADE DE PRÉVIO ESGOTAMENTO DOS MEIOS REAIS DE LOCALIZAÇÃO DO EXECUTADO, NA FORMA ART. 8º. INC. III, DA LEI Nº. 6.830/80 C/C ART. 256, § 3º, DO CP/15. PRECEDENTES DO STJ E DO TJCE. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. 1. Cuida-se de apelação cível interposta em face da sentença que, nos autos de Embargos à Execução Fiscal, acolheu-os, declarando a nulidade da citação por edital e de todos os atos processuais posteriores à citação, realizados na Execução Fiscal. 2. Conforme disposto no art. 341, parágrafo único do CPC, o Curador Especial é beneficiado com a isenção do ônus de impugnação especificada, exatamente por não ter contato com o executado, estando, portanto, impossibilitado de contrariar cada um dos fatos deduzidos na inicial como fundamento da pretensão do exequente, não havendo que se falar em julgamento extra petita por não ter sido arguida a nulidade da citação. 3. Conforme jurisprudência do STJ, a citação editalícia é medida excepcional, somente sendo cabível quando esgotados meios reais de localização da parte demandada. 4. In casu, a citação via correio não se efetivou em razão de "endereço insuficiente". Da mesma forma, a citação via oficial de justiça não se efetivou em virtude da não localização do número indicado no endereço constante na CDA, tendo, em seguida, sido determinada a citação da executada por edital, de maneira que não esgotados os meios reais de localização da executada. 5. Apelo conhecido e desprovido. Sentença confirmada. (Apelação Cível - 0016021-16.2020.8.06.0064, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 27/06/2022, data da publicação:&#160; 27/06/2022) (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Assim, evidenciado o error in procedendo em que incorreu o Juízo de primeiro grau, deve ser reformada a decisão interlocutória agravada.&#160; </p><h3 style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> DISPOSITIVO </h3><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Isto posto, conheço e dou provimento ao agravo de instrumento, para reformar a decisão interlocutória em que o Juízo a quo determinou a citação por edital na execução fiscal, inobservando a súmula 414 do STJ, para, ipso facto, tornar sem efeito a citação por edital do devedor.

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	 </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> É como voto. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Local, data e hora indicados pelo sistema. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.38; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p style="line-height: 1.38; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Portaria nº 1550/2024 </p><div> <br /> </div><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> <br /> </p><p style="text-indent: 8%; text-align: center;"> &#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	63
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Desapropriação
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	FABIO PEDROSA VASCONCELOS - (CE16743-A)
Polo passivo	CERAMICA STA TEREZINHA LTDA MARIA GOMES RODRIGUES
Advogado(s) - Polo passivo	HAROLDO GUTEMBERG URBANO BENEVIDES - (CE28242-A) PHILLIPE DE MESQUITA BRAGA RODRIGUES - (CE24425-A) ALINE CARNEIRO OLIVEIRA - (CE0027063A) JANAINA DA SILVA RABELO - (CE20765-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	0cm;" align="justify"> III. Razões de decidir <br /> 3. E m que pese a alegação de ausência de impugnação específica em sede de contrarrazões, houve a devida exposição dos argumentos utilizados pelo agravante para combater a decisão contra a qual se insurge, notadamente no que tange ao ônus pelas despesas processuais, razão pela qual não se verifica a configuração da referida questão preliminar. <br /> 4. A decisão proferida pelo magistrado de primeiro grau de jurisdição, que determinou a realização, a requerimento da parte expropriada, de perícia, atribuindo o ônus pelo pagamento dos respectivos honorários periciais ao Estado do Ceará, não desafia o recurso de agravo de instrumento , uma vez que não se observou o enquadramento da decisão agravada em qualquer das hipóteses de cabimento previstas nos incisos do art. 1.015 do CPC. </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> IV. Dispositivo e Tese </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> 5. Recurso não conhecido.</p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> _________ </p><p align="center">&#160;</p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados: CPC, art. 1.015. <br /> Jurisprudência relevante citada: TJCE, Apelação Cível 0000456-20.2017.8.06.0160; Rel. (a): Inacio de Alencar Cortez Neto, 3ª Câmara de Direito Público; Data do j. 27.05.2019. </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="line-height: 1.7470588235294116; margin-left: 14pt; text-indent: 99.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 8pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3004078-07.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Agravo de Instrumento interposto, mas para negar-lhe provimento, nos termos do voto da Relatora.</p><p style="line-height: 150%; margin-left: 0.5cm; text-indent: 3.98cm; margin-top: 0.42cm;" align="justify"> &#160;</p><p style="line-height: 1.7470588235294116; margin-left: 14pt; text-indent: 99.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 8pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">Fortaleza/CE, data e hora indicadas pelo sistema.</p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center"> <br /> </p><p style="text-indent: 8%; text-align: center;"> &#160; </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> Trata-se, no presente caso, de agravo de instrumento adversando decisão interlocutória proferida pelo M.M. Juiz de Direito da 13ª Vara da Fazenda Pública da Comarca de Fortaleza, que, em ação de desapropriação, atribuiu o ônus pelo pagamento dos honorários periciais ao Estado do Ceará determinando, por conseguinte, o recolhimento do valor.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> O caso/a ação originária : o Estado do Ceará ingressou com Ação de Desapropriação em face de CERÂMICA SANTA TEREZINHA LTDA ME, tendo por objeto parte do Lote 34, da Quadra 07, do Loteamento Parque Itaguara, localizado em área declarada de utilidade pública pelo Decreto Estadual nº 29.034, de 25 de outubro de 2007, visando abrir frente de obra para a urbanização do Rio Maranguapinho, situado nesta Capital.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> Da decisão agravada : o Magistrado de primeiro grau reconheceu ser do Estado do Ceará, autor da ação expropriante, o ônus de pagar os honorários periciais e intimou o ente público para efetuar o depósito da citada verba (ID 88062683 do feito principal). Transcrevo seu dispositivo, no que interessa:</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> “Na ação de desapropriação, é do autor o ônus de pagar os honorários de perito, independentemente de ter sido a perícia requerida pelo expropriado, considerando que é do expropriante o interesse na realização da prova, já que tem o dever constitucional de pagar a justa indenização.</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> […]</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <span style="font-size:

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	13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Assim, diante da inércia do expropriante, DETERMINO a intimação do Estado do Ceará para que efetue o depósito dos honorários periciais, no valor indicado em id. 69456962, no prazo de 15 dias.”</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">Irresignado, o ente público interpôs Agravo de Instrumento (ID 13986467), buscando a reforma integral do r. decisum, a fim de que o pagamento da verba honorária pericial, que foi requerida pela ré, parte beneficiária da justiça gratuita, seja provido com recursos do orçamento do TJCE.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">Contrarrazões apresentadas pela parte agravada sustentando a ausência de impugnação integral, requerendo, portanto, o não conhecimento do recurso.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria-Geral de Justiça (ID 15600581) opinando pelo não conhecimento do agravo de instrumento e, caso conhecido, pela manutenção da sentença recorrida.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7470588235294116; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7470588235294116; text-align: center; margin-top: 12pt; margin-bottom: 8pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Consoante relatado, cuida-se de agravo de instrumento adversando decisão interlocutória proferida pelo M.M. Juiz de Direito da 13ª Vara da Fazenda Pública da Comarca de Fortaleza, que atribuiu o ônus pelo pagamento dos honorários periciais ao Estado do Ceará, no âmbito de ação de desapropriação.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Da preliminar de ausência de Impugnação específica</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:

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	transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">No presente caso, em que pese a alegação de ausência de impugnação específica em sede de contrarrazões, verifico que houve a devida exposição dos argumentos utilizados pelo agravante para combater a decisão contra a qual se insurge, notadamente no que tange ao ônus pelas despesas processuais.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dessa forma, rejeito a preliminar aventada.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Do não conhecimento do recurso</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Para além da necessidade da impugnação específica em sede recursal, para o conhecimento de um recurso é necessária a realização do juízo de admissibilidade, pelo qual se observa a presença dos requisitos intrínsecos (cabimento, legitimação, interesse e inexistência de fato impeditivo, modificativo ou extintivo do poder de recorrer) e extrínsecos (preparo, tempestividade e regularidade formal).</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, há questão prévia que impede o conhecimento do presente agravo de instrumento.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É que, analisando detidamente o feito, não se observou o enquadramento da decisão agravada em qualquer das hipóteses de cabimento previstas nos incisos do art. 1.015 do CPC, que assim dispõe:</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> “Art. 1.015. Cabe agravo de instrumento contra as decisões interlocutórias que versarem sobre:</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> I - tutelas provisórias;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> II - mérito do processo;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> III - rejeição da alegação de convenção de arbitragem;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> IV - incidente de desconsideração da personalidade jurídica;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> V - rejeição do pedido de gratuidade da justiça ou acolhimento do pedido de sua revogação;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size:

Processo	3004078-07.2024.8.06.0000
	12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">VI - exibição ou posse de documento ou coisa;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> VII - exclusão de litisconsorte;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> VIII - rejeição do pedido de limitação do litisconsórcio;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> IX - admissão ou inadmissão de intervenção de terceiros;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> X - concessão, modificação ou revogação do efeito suspensivo aos embargos à execução;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> XI - redistribuição do ônus da prova nos termos do art. 373, § 1º ;</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> XII - (VETADO);</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> XIII - outros casos expressamente referidos em lei.</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> Parágrafo único. Também caberá agravo de instrumento contra decisões interlocutórias proferidas na fase de liquidação de sentença ou de cumprimento de sentença, no processo de execução e no processo de inventário.”</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> In casu , a decisão proferida pelo magistrado de primeiro grau de jurisdição, que determinou a realização, a requerimento da parte expropriada, de perícia, atribuindo o ônus pelo pagamento dos respectivos honorários periciais ao Estado do Ceará, não desafia o recurso de agravo de instrumento, consoante entendimento jurisprudencial e doutrinário a este respeito.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> O que se verifica da leitura dos autos é que o ente público se manifestou no sentido de ser o pagamento da referida verba suportado pela parte ré, que requereu a sua realização.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, é forçoso reconhecer que essa espécie de pronunciamento judicial não pode ser confrontada mediante agravo de instrumento, tendo em vista que não se amolda a nenhum dos casos

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	taxativamente previstos no artigo 1.015 do CPC.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> No tocante à taxatividade do rol elencado pelo Código de Processo Civil, o Prof. Daniel Amorim Assumpção Neves, em sua obra Manual de Direito Processual Civil, volume único, 9ª edição, 2017, pág. 1658, leciona que:</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> “No novo sistema recursal criado pelo Novo Código de Processo Civil é excluído o agravo retido e o cabimento do agravo de instrumento está limitado às situações previstas em lei. O art. 1.015, caput, do Novo CPC admite o cabimento do recurso contra determinadas decisões interlocutórias, além das hipóteses previstas em lei, significando que o rol legal de decisões interlocutórias recorríveis por agravo de instrumento é restritivo, mas não o rol previsto no art. 1015 do Novo CPC, considerando a possibilidade de o próprio Código de Processo Civil, bem como leis extravagantes, previrem outras decisões interlocutórias impugnáveis pelo agravo de instrumento que não estejam estabelecidas pelo dispositivo legal.”</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Neste mesmo sentido, o entendimento sedimentado desta egrégia Corte de Justiça, consoante se extrai dos seguintes arestos:</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">“PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE EXCEÇÃO DE SUSPEIÇÃO. INDEFERIMENTO. DECISÃO INTERLOCUTÓRIA NÃO RECORRÍVEL POR AGRAVO DE INSTRUMENTO. DECISÃO QUE PODERÁ SER IMPUGNADA APENAS EM PRELIMINAR DA APELAÇÃO QUE JULGAR A AÇÃO. RECURSO NÃO CONHECIDO. I. Trata-se de recurso de apelação interposto em face de decisão que julgou improcedente a Ação de Exceção de Suspeição movida pelo Município de Santa Quitéria II. O art. 148, §1º, do Código de Processo Civil, dispõe que a parte interessada deverá arguir a suspeição de membro do Ministério Público, em petição fundamentada, na primeira oportunidade em que lhe couber falar nos autos. III. Tratando-se de decisão interlocutória não recorrível por agravo de instrumento, o recorrente só poderia insurgir-se contra a decisão que rejeitou a exceção de suspeição por meio de preliminar de apelação, contra a sentença que julgar a ação em definitivo, nos termos do artigo 1.009 do CPC, o que não ocorreu nos presentes autos, já que a ação na qual alega a ocorrência de suspeição, ainda não fora julgada. IV. Apelação não conhecida.” (APC 0000456-20.2017.8.06.0160; Relator (a): INACIO DE ALENCAR CORTEZ NETO; Órgão julgador: 3ª Câmara de Direito Público; Data do julgamento: 27/05/2019; Data de registro: 27/05/2019) (destacamos)</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em situações análogas, é o entendimento esposado pelos Tribunais pátrio, in verbis:</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">“PROCESSO CIVIL. AÇÃO DE DESAPROPRIAÇÃO. <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-

Processo	3004078-07.2024.8.06.0000
	weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">HOMOLOGAÇÃO DE HONORÁRIOS PERICIAIS. INSURGÊNCIA RECURSAL VIA AGRAVO DE INSTRUMENTO. NÃO CABIMENTO. NÃO CONHECIMENTO. Em verdade, com o advento do Novo Código de Processo Civil, Lei Nacional nº 13.105/2015, o cabimento de agravo de instrumento passou a ter rol taxativo, conforme previsão expressa no artigo 1.015, seus incisos e parágrafo único. Com efeito, não se encontra presente no aludido elenco a decisão que homologa valor de honorários periciais suplementares, motivo pelo qual não cabe agravo de instrumento contra tal decisão. Ausência de requisito de admissibilidade recursal, qual seja, cabimento. Entendimento do E. Superior Tribunal de Justiça e deste E. Tribunal acerca do tema. Não conhecimento.” (TJ-RJ - AI: 00435609420178190000 RIO DE JANEIRO NITEROI 8 VARA CIVEL, Relator: CLEBER GHELFENSTEIN, Data de Julgamento: 30/08/2017, DÉCIMA QUARTA CÂMARA CÍVEL, Data de Publicação: 31/08/2017) (destacamos)</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: center; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr"> ****</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">“AGRAVO DE INSTRUMENTO. HOMOLOGAÇÃO DOS HONORÁRIOS PERICIAIS. NOVA SISTEMÁTICA. ARTIGO 1.015 DO NOVO CÓDIGO DE PROCESSO CIVIL. ROL TAXATIVO. INADEQUAÇÃO. NÃO CONHECIMENTO. 1. Não se conhece de agravo de instrumento se a decisão proferida não se encontra no rol taxativo do art. 1.015, do CPC/2015. 2. Recurso não conhecido. (TJPR - 11ª C.Cível - 0041576-59.2017.8.16.0000 - Rio Negro - Rel.: Desembargador Fábio Haick Dalla Vecchia - J. 22.05.2018)” (TJ-PR - AI: 00415765920178160000 PR 0041576-59.2017.8.16.0000 (Decisão monocrática), Relator: Desembargador Fábio Haick Dalla Vecchia, Data de Julgamento: 22/05/2018, 11ª Câmara Cível, Data de Publicação: 22/05/2018) (destacamos)</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: center; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr"> ****</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO INTERNO EM AGRAVO DE INSTRUMENTO. NÃO CONHECIMENTO DO AGI. HOMOLOGAÇÃO DE HONORÁRIOS PERICIAIS. MATÉRIA NÃO PREVISTA NO ROL DO ART. 1.015 DO CÓDIGO DE PROCESSO CIVIL. SUPERIOR TRIBUNAL DE JUSTIÇA. TAXATIVIDADE MITIGADA. RESPs nº 1.696.396/MT e 1.704.520/MT. URGÊNCIA NÃO COMPROVADA. 1. Trata-se de agravo interno interposto contra decisão desta relatoria que não conheceu do agravo de instrumento em razão do não enquadramento da decisão que homologa o valor de honorários periciais nas hipóteses do rol taxativo do art. 1.015 do Código de Processo Civil. 2. Segundo o regime de recorribilidade trazido pelo novo CPC, as hipóteses de

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	cabimento do agravo de instrumento restringem-se àquelas elencadas no rol do art. 1.015 e aos casos expressamente referidos em lei (princípio da taxatividade), sendo vedada interpretação extensiva. 3. O Superior Tribunal de Justiça, no julgamento dos recursos representativos da controvérsia - RESPs nº 1.696.396/MT e 1.704.520/MT- fixou a tese de que será admitida a interposição de agravo de instrumento, em hipóteses não previstas no rol do art. 1.015 do CPC, quando verificada a urgência decorrente da inutilidade do julgamento da questão no recurso de apelação. 4. In casu, o pronunciamento jurisdicional que homologa honorários periciais não se amolda às hipóteses de cabimento do agravo de instrumento, tampouco se refere à questão urgente que tornaria inútil o questionamento por meio de recuso de apelação, pois o eventual reconhecimento do valor excessivo dos honorários periciais em sede apelação ensejará nova oportunidade de realização da perícia, sem prejuízo processual à parte. 5. Recurso conhecido e desprovido.” (TJ-DF 07213125820198070000 DF 0721312-58.2019.8.07.0000, Relator: SANDOVAL OLIVEIRA, Data de Julgamento: 04/12/2019, 2ª Turma Cível, Data de Publicação: Publicado no DJE : 16/12/2019 . Pág.: Sem Página Cadastrada.) (destacamos)</p><p style="line-height: 1.164705882352941; margin-left: 113pt; text-align: center; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> ****</p><p style="line-height: 1.164705882352941; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr">“AGRAVO DE INSTRUMENTO HOMOLOGAÇÃO DE HONORÁRIO S PERICIAS E DETERMINAÇÃO DE DEPÓSITO - RESPONSABILIDADE PELO PAGAMENTO - DELIBERAÇÃO NÃO AGRAVÁVEL - VIA INADEQUADA - INEXISTÊNCIA DE PREVISÃO LEGAL. As decisões passíveis de serem recorridas pela via do recurso de agravo de instrumento, segundo o CPC/15, são apenas aquelas elencadas em seu art. 1.015, ou seja, trata-se de "rol taxativo". A deliberação que determina o pagamento dos honorários periciais não comporta agravo de instrumento e, por não ser abrangida pela preclusão, pode ser alegada em eventuais razões de apelação.” (TJ-MG 12504550420188130000 MG, Relator: Des.(a) MANOEL DOS REIS MORAIS, Data de Julgamento: 23/01/2019) (destacamos)</p><p style="line-height: 1.164705882352941; margin-left: 113pt; text-align: center; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> ****</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">“AGRAVO DE INSTRUMENTO. NEGÓCIOS JURÍDICOS BANCÁRIOS. AÇÃO REVISIONAL. GRATUIDADE JUDICIÁRIA PARA O ATO DA PERÍCIA CONTÁBIL. INDEFERIMENTO. NECESSIDADE NÃO DEMONSTRADA. PEDIDO SUBSIDIÁRIO DE REDUÇÃO DO VALOR FIXADO EM HONORÁRIOS PERICIAIS. NÃO CONHECIDO. ROL TAXATIVO. MATÉRIA NÃO CONTEMPLADA<span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">. DECISÃO MANTIDA. 1. Admissibilidade. O rol contido no artigo 1.015 do Código de Processo Civil é taxativo e não comporta alargamento. Precedentes desta Corte. Não cabe a interposição de Agravo de Instrumento, em fase de conhecimento, de decisão que indefere a redução dos honorários periciais. Hipótese de não conhecimento da pretensão recursal por impertinência temática. 2. Para a gratuidade judiciária, ainda que postulada apenas em relação a um ato processual, deve estar demonstrada a hipossuficiência econômica dos requerentes, capaz de impossibilitá-los de arcar com as custas referidas sem prejuízo do seu próprio sustento ou de sua família. 3. No caso, ausentes os elementos que demonstrem a necessidade alegada pelos Agravantes, de isenção do pagamento de honorários periciais. AGRAVO DE INSTRUMENTO PARCIALMENTE CONHECIDO E, NA EXTENSÃO, DESPROVIDO”. (TJ-RS - AI: 70084854827 RS, Relator: Alberto Delgado Neto, Data de Julgamento: 19/03/2021, Vigésima Terceira Câmara Cível, Data de Publicação: 22/03/2021) (destacamos)</p><p style="line-height: 1.164705882352941; margin-left: 113pt; text-align: center; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> ****</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">“AGRAVO DE INSTRUMENTO – Locação – Arbitramento de honorários periciais definitivos na fase de conhecimento – Inconformismo da ré, almejando redução por entender excessivo o valor – Decisão que não integra o rol do artigo 1.015 do Código de Processo Civil - Precedentes desta C. Câmara – Recurso não conhecido.” (TJ-SP - AI: 20253476920218260000 SP 2025347-69.2021.8.26.0000, Relator: Jayme de Oliveira, Data de Julgamento: 30/07/2021, 29ª Câmara de Direito Privado, Data de Publicação: 30/07/2021) (destacamos)</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Destaque-se que esta relatora não desconhece o entendimento adotado pelo colendo Superior Tribunal de Justiça, por meio do Tema 988, segundo o qual “O rol do art. 1.015 do CPC é de taxatividade mitigada, por isso admite a interposição de agravo de instrumento quando verificada a urgência decorrente da inutilidade do julgamento da questão no recurso de apelação.” (destacamos)</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Acontece que, para que ocorra a mitigação pretendida, faz-se necessária a demonstração da urgência, decorrente da inutilidade do julgamento da questão em momento futuro, o que não restou observado pelo agravante na espécie.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">

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	Em verdade, a questão em apreço pode ser perfeitamente analisada em sede de recurso de apelação, oportunidade na qual, se for o caso, se poderá determinar o rateio dos valores dos honorários periciais entre os litigantes, sem maiores óbices.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Ademais, de acordo com o disposto no art. 82, parágrafo 2º, do CPC, “A sentença condenará o vencido a pagar ao vencedor as despesas que antecipou.”</p><p align="center"> &#160;</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Sendo assim, diante da ausência de hipótese de cabimento, o não conhecimento do recurso é medida que se impõe.</p><p class="western" style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> DISPOSITIVO </p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Diante do exposto, não estando a decisão impugnada elencada no rol do art. 1.015 do CPC e diante dos precedentes jurisprudenciais citados, não conheço do presente Agravo de Instrumento por ausência de hipótese de cabimento.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> É como voto.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> &#160;</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Fortaleza/CE, data e hora indicadas pelo sistema.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	64
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	ICMS / Incidência Sobre o Ativo Fixo
Polo ativo	DIMASTER - COMERCIO DE PRODUTOS HOSPITALARES LTDA.
Advogado(s) - Polo ativo	JULIO CESAR GOULART LANES - (CE21994-A)
Polo passivo	PROCURADORIA GERAL DO ESTADO PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

Processo	0208120-37.2022.8.06.0001
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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;0208120-37.2022.8.06.0001 - EMBARGOS DE DECLARAÇÃO</p><p> EMBARGANTE: DIMASTER - COMERCIO DE PRODUTOS HOSPITALARES LTDA.</p><p> EMBARGADO: &#160;ESTADO DO CEARÁ. <br /> .</p><p align="center"> <br /> </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">EMENTA: EMBARGOS DE DECLARAÇÃO. APELAÇÃO CÍVEL. MANDADO DE SEGURANÇA. ICMS-DIFAL. PUBLICAÇÃO DA LEI COMPLEMENTAR Nº 190/2022 APENAS REGULAMENTANDO A COBRANÇA DE REFERIDO TRIBUTO ANTERIORMENTE INSTITUÍDO POR NORMA LOCAL (LEI ESTADUAL Nº 15.863/2015). DETERMINAÇÃO EXPRESSA DE OBSERVÂNCIA SOMENTE DA ANTERIORIDADE NONAGESIMAL PELO ESTADO DO CEARÁ   (CF/   88, ART. 150, INCISO III, ALÍNEA “C”   ). <strong style="mso-bidi-font-weight: normal;">NÃO VERIFICAÇÃO DE QUALQUER OMISSÃO, CONTRADIÇÃO, OBSCURIDADE OU ERRO MATERIAL NO ACÓRDÃO PROFERIDO POR ESTE TRIBUNAL. MERA TENTATIVA DE NOVA DISCUSSÃO DA MATÉRIA. IMPOSSIBILIDADE. SÚMULA Nº 18 DO TJ/CE. RECURSO CONHECIDO E NÃO PROVIDO.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   <strong style="mso-bidi-font-weight: normal;">1. <strong style="mso-bidi-font-weight: normal;">Trata-se, no presente caso, de Embargos Declaração, apontando a existência de omissões no acórdão da 3ª Câmara de Direito Público do TJ/CE que, em sede de Apelação Cível, reformou a sentença proferida pelo magistrado de primeiro grau, e, ipso facto, concedeu, em parte, a ordem requerida no mandado de segurança impetrado pela empresa Dimaster – Comércio de Produtos Hospitalares Ltda. , estabe <strong style="mso-bidi-font-weight: normal;">lecendo apenas a necessidade de observância pelo Estado do Ceará   <strong style="mso-bidi-font-weight: normal;">do interstício de 90 (noventa) dias, previsto no art. 3º da Lei Complementar nº 190/2022 editada pela União,   <strong style="mso-bidi-font-weight: normal;">para fins de &#160; cobrança do ICMS-DIFAL,   <strong style="mso-bidi-font-weight: normal;">ainda no decorrer do exercício financeiro de 2022. <span

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	style="mso-bookmark: _Hlk126762774;">&#160; <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">2. Ocorre que <strong style="mso-bidi-font-weight: normal;">foram devidamente enfrentadas, <strong style="mso-bidi-font-weight: normal;">no referido <strong style="mso-bidi-font-weight: normal;"> decisum, <strong style="mso-bidi-font-weight: normal;">todas as questões relevantes para o caso estando sua fundamentação perfeitamente compatível, inclusive, com a orientação predominante neste Tribunal sobre a matéria versada nos autos. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">3. E m verdade, os supostos “vícios” apontados pela contribuinte (embargante), em suas razões, revelam o único e exclusivo propósito de voltar a discutir o resultado da lide, na parte em que foi favorável aos interesses do fisco (embargado), como visto. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> 4. Os embargos de declaração, porém, têm por finalidade a integração ou aclaramento da decisão, sendo absolutamente vedada sua oposição, para rediscussão de matérias apreciadas e resolvidas pelo Órgão Julgador (Súmula nº 18 do TJ/CE). </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">5. <strong style="mso-bidi-font-weight: normal;">Assim, não se constatando, no acórdão, qualquer vício <strong style="mso-bidi-font-weight: normal;">, <strong style="mso-bidi-font-weight: normal;">deve ser negado provimento ao recurso, tornando-se, ainda, desnecessária qualquer manifestação, por este Tribunal, para fins de prequestionamento. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> - Embargos de declaração conhecidos e desprovidos. <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="line-height: 200%; text-align: center;"> ACÓRDÃO </p><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 0208120-37.2022.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, mas para lhe negar provimento, nos termos do voto da Relatora. &#160; </p><p class="Recuodecorpodetexto21" style="margin: 11.35pt 0cm 11.35pt 0.55pt; text-indent: 112.85pt; line-height: normal; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 </p><p class="MsoNormal" style="line-height: 150%; text-align: center;"> Relatora </p><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; text-indent: 4cm; line-height: normal; text-align: center;"> &#160; </p><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;">

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	 RELATÓRIO </p><p class="Recuodecorpodetexto22" style="margin-left: 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de Embargos de Declaração, apontando a existência de omissões em acórdão da 3ª Câmara de Direito Público do TJ/CE que, em sede de Apelação Cível, reformou a sentença proferida pelo magistrado de primeiro grau, e, ipso facto, concedeu, em parte, a ordem requerida no mandado de segurança impetrado pela empresa Dimaster – Comércio de Produtos Hospitalares Ltda., estabelecendo apenas a necessidade de observância pelo Estado do Ceará do interstício de 90 (noventa) dias, previsto no art. 3º da Lei Complementar nº 190/2022 editada pela União, para fins de &#160; cobrança do ICMS-DIFAL, ainda no decorrer do exercício financeiro de 2022: </p><p class="MsoNormal" style="margin-left: 4cm; line-height: 115%; text-align: justify;"> “ EMENTA: APELAÇÃO CÍVEL. MANDADO DE SEGURANÇA. TRIBUTÁRIO. ICMS-DIFAL. PUBLICAÇÃO DA LEI COMPLEMENTAR Nº 190/2022 APENAS REGULAMENTANDO A COBRANÇA DE REFERIDO TRIBUTO ANTERIORMENTE INSTITUÍDO POR NORMA LOCAL (LEI ESTADUAL Nº 15.863/2015). DETERMINAÇÃO EXPRESSA DE OBSERVÂNCIA SOMENTE DA ANTERIORIDADE NONAGESIMAL PELO ESTADO DO CEARÁ (CONSTITUIÇÃO FEDERAL DE 19 88, ART. 150, INCISO III, ALÍNEA “C”). PRECEDENTES DAS CÂMARAS DE DIREITO PÚBLICO DO TJ/CE. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Cuida-se, na espécie, de apelação cível, adversando sentença proferida pelo M.M. Juiz de Direito da 5ª Vara da Fazenda Pública da Comarca de Fortaleza/CE, que denegou a ordem requerida em mandado de segurança. 2. Preliminarmente, a mera pendência de decisão final nas ADI’s 7.066 e 7.070, em trâmite no Supremo Tribunal Federal, é insuficiente para, de per si, determinar a imediata suspensão de causas que versem sobre a mesma matéria, não havendo, assim, qualquer óbice ao prosseguimento do feito. 3. Já quanto ao mérito, é cediço que o ICMS consiste em um dos impostos mais complexos do sistema tributário nacional, que se encontra inserido no âmbito de competência dos Estados e do DF, conforme previsto expressamente no art. 155, inciso II, da CF/88. 4. E, com o advento d a EC nº 87/2015, foi substancialmente alterada a sistemática de recolhimento do ICMS nas operações envolvendo a circulação de mercadorias entre diferentes Estados-Membros , tendo o Supremo Tribunal Federal decidido que não poderia haver a cobrança do diferencial de alíquota (DIFAL), até a edição de Lei Complementar, regulamentando-o (Tema nº 1.093). 5. Sucede que, com a publicação d a Lei Complementar nº 190/2022, não foi apenas suprida a lacuna apontada no precedente vinculante do STF mas também estabelecida, em seu art. 3º, uma outra condição para que os Estados pudessem, finalmente, realizar a cobrança do ICMS-DIFAL. 6. Com efeito, o legislador optou, explicitamente, por favorecer os contribuintes, elastecendo por mais 90 (noventa dias) o termo a quo para a exigibilidade do referido tributo (ICMS-DIFAL) pelos Estados . 7. Todavia, dispõe a Lei Complementar nº. 190/2022, de forma clara e exata, que se aplica, em tal hipótese, única e tão somente, a anterioridade nonagesimal (CF/ 88, art. 150, inciso III, alínea “c”). 8. Bem por isso, não há que se falar aqui em necessidade de observância também da anterioridade de exercício (<span style="line-height:

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	115%;">CF/88, art. 150, inciso III, alínea “b”), a té porque, como foi explicado, a União apenas editou normas gerais sobre o ICMS-DIFAL anteriormente instituído pela Lei Estadual nº 15.863/2015, isto é, não aumentou a carga tributária dos contribuintes. 9. A efetiva instituição do ICMS-DIFAL, na esfera local, ocorreu com a Lei Estadual nº 15.863/2015, para a qual tanto a anterioridade nonagesimal, quanto a anterioridade de exercício foram respeitadas, inexistindo, portanto, surpresa para os contribuintes. 10. Assim, procedeu corretamente o Juízo a quo, quando estabeleceu a possibilidade de cobrança do referido tributo sobre as operações da empresa Dimaster – Comércio de Produtos Hospitalares Ltda., ainda no decorrer do exercício financeiro de 2022, devendo, porém, seu decisum ser reformado apenas ressalvar a necessidade de cumprimento pelo Estado do Ceará do interstício de 90 (noventa) dias, contados da publicação da Lei Complementar nº 190/2022 (art. 3º), para fazer valer esse poder-dever . - Precedentes. - Recurso conhecido e parcialmente provido. - Sentença modificada em parte. ” &#160; (ID 15239031) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformada, a empresa Dimaster – Comércio de Produtos Hospitalares Ltda. interpôs Embargos de Declaração (ID 14068668), sustentando, em suma, que referido decisum seria “omisso”, basicamente, em relação a 03 (três) questões: (a) o dever de observância pelo Estado do Ceará não somente da “anterioridade nonagesimal” , mas também da “anterioridade de exercício” (CF/88, art. 153, Inciso III, alíneas “b” e “c”), para efeito de cobrança do ICMS-DIFAL; (b) a impossibilidade de convalidação de norma local (Lei nº 15.863/2015) editada antes de seu fundamento de validade (Lei Complementar nº 190/2022), e (c) a necessidade de suspensão do feito, enquanto a matéria não for apreciada pelo STF, diante &#160; do reconhecimento de sua repercussão geral. </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Requereu, então, a imediata supressão de tais “vícios”. </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;">&#160;</p><p class="Recuodecorpodetexto22" style="margin: 0cm; line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> <em style="mso-bidi-font-style: normal;"> &#160; <strong style="mso-bidi-font-weight: normal;"> VOTO </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preliminarmente, conheço dos presentes embargos de declaração, porque reunidos todos os requisitos de admissibilidade. </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vale ressaltar que, de acordo com o art. 1.022, incisos I, II e III, do CPC, os embargos de declaração se prestam, única e tão somente, para elidir na sentença, ou no acórdão, eventual obscuridade, contradição, omissão ou erro material, sendo, portanto, vinculada sua fundamentação. </p><p class="Recuodecorpodetexto21" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; text-align: justify;"> “Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: </p><p class="Recuodecorpodetexto21" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; text-align: justify;"> I – esclarecer obscuridade ou eliminar contradição; </p><p class="Recuodecorpodetexto21" style="margin: 0cm 0cm 0cm 4cm; line-height: normal;

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	text-align: justify;"> II – suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; </p><p class="Recuodecorpodetexto21" style="margin-left: 4cm; line-height: 150%; text-align: justify;"> III – corrigir erro material” </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Então, pelo que se extrai da literalidade da lei, os vícios que autorizam o uso de tal recurso são aqueles que se verificam entre proposições da própria decisão, isto é, na sua fundamentação ou no seu dispositivo. </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Todavia, o que se tem, aqui, não é uma tentativa de integração ou aclaramento do decisum, e sim de rediscutir a causa. </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Com efeito, foram devidamente enfrentadas no acórdão proferido pela 3ª Câmara de Direito Público do TJ/CE todas as questões relevantes para o caso, com fundamentação clara, concatenada e satisfatória, não havendo, portanto, qualquer defeito a ser sanado neste azo. </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E a demonstrar a inexistência dos vícios previstos no art. 1.022 do CPC/2015, transcrevo excertos de seus fundamentos: </p><p class="MsoNormal" style="margin: 0cm 0cm 6pt 4cm; text-align: justify;"> “Foi devolvida a este Tribunal a controvérsia em torno da necessidade ou não de observância pelo Estado do Ceará dos princípios da anterioridade de exercício e nonagesimal, para realizar a cobrança do ICMS-DIFAL sobre operações da empresa Dimaster – Comércio de Produtos Hospitalares Ltda., com base na Lei Complementar nº 190/2022. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">Por outro lado, a mera pendência de decisão final nas ADI’s 7.066 e 7.070 em tramitação no STF, é insuficiente para, de per si, determinar a suspensão de outras causas que versem sobre a mesma matéria, não havendo, assim, qualquer óbice ao prosseguimento do processo, ex vi: <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Já quanto ao mérito, é cediço que o ICMS consiste em um dos impostos mais complexos do sistema tributário nacional, que se encontra inserido no âmbito de competência dos Estados e do DF, conforme previsto expressamente no art. 155, inciso II, da Constituição Federal de 1988, in verbis </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> E, desde o advento da EC nº 87/2015, para as operações envolvendo a circulação de mercadorias entre diferentes Estados-Membros, deve ser adotada apenas a “alíquota interestadual”, independentemente da condição do consumidor final (contribuinte ou não do imposto), ex vi: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">

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	[...] </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Fato é que a EC nº 87/2015, neste ponto, alterou substancialmente a sistemática de recolhimento do ICMS, criando, inclusive, uma nova relação tributária até então inexistente, entre o remetente da mercadoria (contribuinte) e o Estado em que localizado seu destinatário. &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Consequentemente, só lei complementar editada pela União poderia estabelecer as normas gerais sobre a cobrança do Diferencial de Alíquota (DIFAL) do ICMS , por força do art. 146, inciso III, da CF/88, ex vi: &#160; </p><p class="Textbody" style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> [...] </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Não por outra razão, o STF, em sede de Repercussão Geral, definiu que: “a cobrança do diferencial de alíquota alusivo ao ICMS, conforme introduzido pela Emenda Constitucional nº 87/2015, pressupõe edição de lei complementar veiculando normas gerais.” (Te ma nº 1.093) &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Merece ser destacado, porém, que o voto do Ministro Dias Tofolli, condutor do acórdão proferido no recurso afetado c omo representativo da controvérsia (RE 1.287.019) , deixou bem claro que as normas locais anteriormente editadas pelos Estados, instituindo a cobrança do ICMS-DIFAL, seriam plenamente válidas, e estariam apenas com a eficácia condicionada ao advento da lei complementar de competência da União, in verbis: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Sucede que, com a publicação da Lei Complementar nº 190/2022, não foi apenas suprida a lacuna apontada no precedente do STF, mas também estabelecida, em seu art. 3º, uma outra condição, para que os Estados pudessem, finalmente, realizar a cobrança do ICMS-DIFAL, ex vi: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Vê-se, portanto, que o legislador optou, explicitamente, por favorecer os contribuintes, elastecendo, por mais 90 (noventa) dias, o termo a quo para a exigibilidade do tributo (ICMS-DIFAL) pelos Estados. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Todavia, dispõe a Lei Complementar nº. 190/2022, de forma clara e exata, que se aplica, em tal hipótese, única e tão somente, a anterioridade nonagesimal (CF/ 88, art. 150, inciso III, alínea “c”). &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">

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	Bem por isso, não há que se falar aqui em necessidade de observância também da anterioridade de exercício (CF/88, art. 150, inciso III, alínea “b”), a té porque, como foi explicado, a União apenas editou normas gerais sobre o tributo (ICMS-DIFAL) anteriormente instituído pela Lei Estadual nº 15.863/2015, isto é, não aumentou a carga tributária dos contribuintes. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] &#160; </p><p class="TableContents" style="margin-left: 4cm; text-align: justify;"> Deveras, a efetiva instituição do ICMS-DIFAL, na esfera local, ocorreu com a Lei Estadual nº 15.863/2015, para a qual tanto a anterioridade nonagesimal, quanto a anterioridade de exercício foram devidamente respeitadas, inexistindo, portanto, surpresa para os contribuintes. </p><p class="TableContents" style="margin-left: 4cm; text-align: justify;"> Assim, procedeu corretamente o Juízo a quo, quando estabeleceu a possibilidade de cobrança do referido tributo sobre as operações da empresa Dimaster – Comércio de Produtos Hospitalares Ltda., ainda no decorrer do exercício financeiro de 2022, devendo, porém, seu decisum ser reformado apenas ressalvar a necessidade de cumprimento pelo Estado do Ceará do interstício de 90 (noventa) dias, contados da publicação da Lei Complementar nº 190/2022 (art. 3º), para fazer valer esse poder-dever . ” (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, ficou bem claro, no decisum, que seria possível a cobrança do ICMS-DIFAL pelo Estado do Ceará, ainda no decorrer do exercício financeiro de 2022, desde que observado o interstício de 90 (noventa) dias, previsto no art. 3º da Lei Complementar nº 190/2022 editada pela União, ex vi: &#160;</p><p class="MsoNormal" style="margin: 8.5pt 0cm 8.5pt 4cm; text-align: justify;"> “Art. 3º - Esta Lei Complementar entra em vigor na data de sua publicação, observado, quanto à produção de efeitos, o disposto na alínea “c” do inciso III do caput do art. 150 da Constituição Federal.” (destacado) </p><p class="Contedodatabela" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isso porque, a União não teria criado e/ou aumentado a carga tributária dos contribuintes in concreto, mas apenas expedido “normas gerais” sobre um tributo (ICMS-DIFAL) anteriormente instituído no âmbito do Estado do Ceará por meio da Lei nº 15.863/2015 – para a qual tanto a “anterioridade nonagesimal”, quanto a “anterioridade de exercício” foram respeitadas –, inexistindo, com isso, violação ao princípio da não-surpresa . </p><p class="Contedodatabela" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, diversamente do que sustenta a empresa Dimaster – Comércio de Produtos Hospitalares Ltda. , são válidas as disposições da Lei nº 15.863/2015, que estava somente com sua eficácia suspensa, até a edição da Lei Complementar nº 190/2022, conforme precedente do STF (RE 1.287.019), ex vi: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> “Em síntese, não havendo normas em lei complementar tratando do ICMS correspondente ao diferencial de alíquotas na hipótese de operações ou prestações interestaduais com consumidor não contribuinte do tributo, cabe perquirir se podem os estados e o Distrito Federal efetivar a cobrança desse imposto antes do advento de tais normas, suprindo-as com a celebração de convênio interestadual. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Adianto que, a meu ver, a resposta é negativa. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] </p><p

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	class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Muito por conta disso, a Segunda Turma, no julgamento do paradigmático RE nº 917.950/SP-AgR, Relator para o acórdão o Ministro Gilmar Mendes, esclareceu que as leis estaduais editadas com o propósito de cobrança desse tributo após a EC nº 33/01 e antes da LC nº 114/02 – a qual dispôs sobre o tema - seriam válidas, mas só produziriam efeitos a partir da vigência dessa lei complementar, no que fossem com ela compatíveis. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> Em suma, reitero que não podem os estados nem o Distrito Federal, invocando a competência plena à qual alude o art. 24, § 3º, da Constituição Federal, exigir o imposto correspondente ao diferencial de alíquotas em tela antes do advento da lei complementar pertinente. E, aplicando à presente discussão a orientação da Corte prevalecente no RE nº 917.950/SP-AgR e no RE nº 1.221.330/SP, Tema nº 1.094, julgo que as leis estaduais ou do Distrito Federal editadas após a EC 87/15 que preveem o ICMS correspondente ao diferencial de alíquotas nas operações ou prestações interestaduais com consumidor final não contribuinte do imposto são válidas, mas não produzem efeitos enquanto não for editada lei complementar dispondo sobre o assunto.” (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Nesse mesmo sentido, têm se manifestado as 03 (três) Câmaras de Direito Público do TJ/CE, em situações como a dos autos, ex vi: </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “PROCESSUAL CIVIL. TRIBUTÁRIO. RECURSO DE APELAÇÃO. ICMS. DIFERENCIAL DE ALÍQUOTA (DIFAL). SUSPENSÃO DA EXIGIBILIDADE DO CRÉDITO TRIBUTÁRIO. IMPOSSIBILIDADE. TRIBUTO INSTITUÍDO PELA LEI ESTADUAL 15.863/2015, EDITADA APÓS A EC Nº. 87/2015. LEI CONSIDERADA VÁLIDA, MAS SEM EFICÁCIA ATÉ A EDIÇÃO DE LEI COMPLEMENTAR GERAL. TEMA 1093 DO STF. LEI COMPLEMENTAR Nº 190/2022. PRINCÍPIO DA ANTERIORIDADE TRIBUTÁRIA. OBSERVÂNCIA. RECURSO CONHECIDO E DESPROVIDO. 1. Trata-se de Apelação Cível, interposta contra decisão que denegou a segurança que objetivava a suspensão da exigibilidade do recolhimento do Diferencial de Alíquota de ICMS (DIFAL) nas operações de venda para destinatários não contribuintes de ICMS, durante o exercício financeiro de 2022. 2. Por meio do voto condutor do RE 1287019, que fixou a tese em repercussão geral através do Tema 1093, o STF considerou as leis estaduais válidas, mas suas eficácias estariam condicionadas à edição de lei complementar. 3. A Lei Estadual nº. 15.863/2015, que dispõe acerca do Imposto sobre Operações Relativas à Circulação de Mercadorias e sobre Prestações de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação – ICMS, foi editada após a Emenda Constitucional nº. 87/2015, já havendo completado todo seu ciclo normativo, sendo considerada válida, mas cuja eficácia ficou condicionada à edição de lei complementar federal. 4. O Legislador, ao editar a Lei Complementar nº. 190/2022, condicionou sua eficácia apenas ao princípio da anterioridade nonagesimal, não se verificando ilegalidade na cobrança do Diferencial de Alíquota de ICMS (DIFAL) findo o referido prazo. 4. Recurso conhecido e desprovido.” (Apelação Cível&#160;- 0224669-25.2022.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 01/08/2022). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <span style="font-size: 10pt; color: black; background: white;"> <span style="font-size: medium;"> <span style="font-size: small;">“AGRAVO DE INSTRUMENTO. DIREITO CONSTITUCIONAL E TRIBUTÁRIO. PEDIDO DE SUSPENSÃO DA EXIGIBILIDADE DO ICMS-DIFAL DURANTE TODO O ANO DE 2022, EM OBSERVÂNCIA AO PRINCÍPIO DA ANTERIORIDADE ANUAL. DESNECESSIDADE. LC Nº 190/2022 QUE APENAS ESTABELECE NOVO MECANISMO DE REPARTIÇÃO DE RECEITAS, NÃO CRIANDO OU MAJORANDO TRIBUTO. PRECEDENTES DO STF E DESTA CORTE ESTADUAL DE JUSTIÇA. AGRAVO DE INSTRUMENTO CONHECIDO E DESPROVIDO. 1. Trata-se de agravo de instrumento interposto em face de decisão interlocutória que concedeu apenas em parte o pleito de medida liminar formulado nos autos do Mandado de Segurança nº 0224634-65.2022.8.06.0001, impetrado contra ato do Coordenador de Administração Tributária da Secretaria da Fazenda do Estado do Ceará, "no sentido de determinar que os impetrados suspendam a exigibilidade do ICMS-DIFAL somente pelo período de 90 (noventa) dias contados da publicação da Lei Complementar 190/2022, obedecendo a regra constitucional". 2. A parte agravante defende ser

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	inconstitucional a cobrança do Diferencial de Alíquota – DIFAL ainda no exercício de 2022, haja vista a necessidade de observância ao princípio da anterioridade anual, previsto no art. 150, III, ‘b’, da Constituição Federal, de modo que a Lei Complementar 190/2022 somente poderá produzir efeitos de 1º de janeiro de 2023 em diante. 3. A partir da Emenda Constitucional nº 87/2015, que alterou o § 2º do art. 155 da Carta Magna de 1988 e incluiu o art. 99 no Ato das Disposições Constitucionais Transitórias, o DIFAL passou a ser exigido nas hipóteses do adquirente ser consumidor final, seja ele contribuinte ou não. Em razão disso, o Conselho Nacional de Política Fazendária – CONFAZ editou o Convênio ICMS nº 93/2015, que "Dispõe sobre os procedimentos a serem observados nas operações e prestações que destinem bens e serviços a consumidor final não contribuinte do ICMS, localizado em outra unidade federada". Não houve, entretanto, a edição de lei complementar para regulamentar a sistemática do DIFAL, conforme exigido pelo art. 146, III, da Constituição Federal. 4. Nesse aspecto, a Corte Suprema, no julgamento do RE nº 1.287.019 e da ADI 5469, Tema 1093, em regime de repercussão geral, fixou tese no sentido de que "A cobrança do diferencial de alíquota alusiva ao ICMS, conforme introduzido pela emenda EC 87/2015, pressupõe a edição de lei complementar veiculando normas gerais". 5. A fim de atender à referida exigência, a União editou a Lei Complementar nº 190, de 04 de janeiro de 2022, que "Altera a Lei Complementar nº 87, de 13 de setembro de 1996 (Lei Kandir), para regulamentar a cobrança do Imposto sobre Operações relativas à Circulação de Mercadorias e sobre Prestações de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação (ICMS) nas operações e prestações interestaduais destinadas a consumidor final não contribuinte do imposto". 6. Conforme previsto em seu art. 3º, a referida lei complementar "entra em vigor na data de sua publicação, observado, quanto à produção de efeitos, o disposto na alínea "c" do inciso III do caput do art. 150 da Constituição Federal", que trata da anterioridade nonagesimal. 7. Quanto à anterioridade anual, reclamada pela parte recorrente, entende-se que a LC nº 190/2022 apenas estabelece novo mecanismo de repartição de receitas, não criando ou majorando tributo. Assim, não há a necessidade de observância ao art. 150, III, ‘b’, que se refere apenas à instituição e aumento de tributo. 8. Acerca da matéria, ao apreciar o pedido liminar deduzido pelo Governador do Estado do Ceará nos autos da ADI 7.078/CE, o Ministro Alexandre de Morais, em decisão proferida aos 17 de maio do corrente ano, entendeu que a referida lei complementar não está sujeita ao princípio da anterioridade, porquanto não criou e nem majorou tributo, mesmo que de forma indireta. 9. Recurso conhecido e desprovido.” &#160; (Agravo de Instrumento&#160;- 0627355-25.2022.8.06.0000, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento:&#160; 10/08/2022). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <span style="font-family: arial, helvetica, sans-serif;"> <span style="color: black; background: white;"> <span style="font-size: medium;"> <span style="font-size: small;">REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. DIREITO TRIBUTÁRIO. ICMS. DIFAL. SUSPENSÃO DA EXIGIBILIDADE DO CRÉDITO TRIBUTÁRIO. NECESSIDADE DE OBSERVÂNCIA DOS PRINCÍPIOS DA ANTERIORIDADE DE EXERCÍCIO. DESNECESSIDADE. LEI ESTADUAL 15.863/2015 EDITADA APÓS A EC Nº. 87/2015. LEI CONSIDERADA VÁLIDA PELO STF, MAS SEM EFICÁCIA ATÉ A EDIÇÃO DE LEI COMPLEMENTAR GERAL, CONFORME TEMA 1093, COM REPERCUSSÃO GERAL, ATRAVÉS DO RE 1.287.019. LEI COMPLEMENTAR Nº. 190/2022. DETERMINAÇÃO EXPRESSA DE OBSERVÂNCIA APENAS DO PRINCÍPIO DA ANTERIORIDADE NONAGESIMAL. SENTENÇA CONFIRMADA. 1. Cinge-se a controvérsia à aferição da possibilidade de suspensão da exigibilidade e cobrança do ICMS DIFAL decorrente das operações de remessa de mercadorias a consumidores finais não contribuintes de ICMS localizados no Estado do Ceará de 01 de janeiro de 2022 até 31 de dezembro de 2022, incidindo a anterioridade nonagesimal e a anterioridade de exercício. O cerne da questão é verificar a aplicabilidade, ou não, do princípio da anterioridade de exercício cumulativamente ao da anterioridade nonagesimal. 2. A eficácia da Lei Complementar nº. 190/2022 ficou ressalvada apenas em relação ao princípio da anterioridade nonagesimal. Temos, pois, que o legislador, ao editar lei para regulamentar a cobrança do ICMS nas operações e prestações interestaduais destinadas a consumidor final não contribuinte do imposto, condicionou a eficácia da referida lei apenas ao principio constitucional da noventena, mantendo silente no que toca à anterioridade de exercício. Ocorrida a publicação da Lei Complementar nº. 190/2022 no dia 05/01/2022, a produção de efeitos desta se iniciou em 05/04/2022. 3. Observando a ratio decidendi do voto condutor do RE 1287019, que fixou a tese em repercussão geral através do Tema 1093, tenho que assiste razão ao Estado do Ceará quando sustenta que o Supremo Tribunal Federal considerou as leis estaduais válidas, mas a eficácia estaria condicionada à edição de lei complementar. Precedentes do STF. Entendimento alinhado à orientação do Supremo Tribunal Federal quanto à matéria, valendo lembrar o decidido no RE nº 917.950 e

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	reafirmado no julgamento do RE nº 1.221.330. 4. Acrescente-se que a Lei Estadual nº. 15.863/2015, editada após a Emenda Constitucional nº. 87/2015, já havia completado todo seu ciclo normativo, sendo considerado válida, mas apenas a eficácia ficou condicionada à edição de lei complementar federal, que condicionou a produção de efeitos à observância do prazo de 90 dias. 5. Remessa necessária e apelação conhecidas, mas desprovidas. (Apelação / Remessa Necessária&#160;- 0210129-69.2022.8.06.0001, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 18/07/2022, data da publicação:&#160; 18/07/2022) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Oportuno destacar, ainda, que o mero reconhecimento da repercussão geral da matéria ora discutida nos autos pelo STF (RE 1.426.271/CE), de per si, é insuficiente para determinar a suspensão de outros processos, não havendo, com isso, qualquer óbice ao prosseguimento do writ: </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> <span style="font-size: 10pt; color: black;"> <span style="font-size: medium;"> <span style="font-size: small;">“QUESTÃO DE ORDEM NA REPERCUSSÃO GERAL NO RECURSO EXTRAORDINÁRIO. DIREITO PENAL E PROCESSUAL PENAL. CONTRAVENÇÕES PENAIS DE ESTABELECER OU EXPLORAR JOGOS DE AZAR. ART. 50 DA LEI DE CONTRAVENÇÕES PENAIS. <strong style="mso-bidi-font-weight: normal;">REPERCUSSÃO GERAL RECONHECIDA. POSSIBILIDADE DE SUSPENSÃO, CONFORME A DISCRICIONARIEDADE DO RELATOR, DO ANDAMENTO DOS FEITOS EM TODO TERRITÓRIO NACIONAL, POR FORÇA DO ART. 1.035, § 5º, DO CPC/2015. APLICABILIDADE AOS PROCESSOS PENAIS. SUSPENSÃO DA PRESCRIÇÃO DA PRETENSÃO PUNITIVA RELATIVA AOS CRIMES PROCESSADOS NAS AÇÕES PENAIS SOBRESTADAS. INTERPRETAÇÃO CONFORME A CONSTITUIÇÃO DO ART. 116, I, DO CP. POSTULADOS DA UNIDADE E CONCORDÂNCIA PRÁTICA DAS NORMAS CONSTITUCIONAIS. FORÇA NORMATIVA E APLICABILIDADE IMEDIATA AOS FUNDAMENTOS CONSTITUCIONAIS DO EXERCÍCIO DA PRETENSÃO PUNITIVA, DO PRINCÍPIO DO CONTRADITÓRIO E DA VEDAÇÃO À PROTEÇÃO PENAL INSUFICIENTE. 1. A repercussão geral que implica o sobrestamento de ações penais, quando determinado este pelo relator com fundamento no art. 1.035, §5º, do CPC, susta o curso da prescrição da pretensão punitiva dos crimes objeto dos processos suspensos, o que perdura até o julgamento definitivo do recurso extraordinário paradigma pelo Supremo Tribunal Federal. <strong style="mso-bidi-font-weight: normal;">2. A suspensão de processamento prevista no §5º do art. 1.035 do CPC não é consequência automática e necessária do reconhecimento da repercussão geral realizada com fulcro no caput do mesmo dispositivo, sendo da discricionariedade do relator do recurso extraordinário paradigma determiná-la ou modulá-la. 3. Aplica-se o §5º do art. 1.035 do CPC aos processos penais, uma vez que o recurso extraordinário, independentemente da natureza do processo originário, possui índole essencialmente constitucional, sendo esta, em consequência, a natureza do instituto da repercussão geral àquele aplicável. [...] 11. Questão de ordem acolhida ante a necessidade de manutenção da harmonia e sistematicidade do ordenamento jurídico penal.” (RE-RG-QO 966177, Relator(a):&#160; Min. LUIZ FUX, Julgado em 07/06/2017, publicado em 01/02/2019, Tribunal Pleno). (destacado). </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Logo, não existe qualquer omissão a ser dirimida in concreto, incidindo, aqui, pacífica orientação dos Tribunais de que sua mera concisão não representa ofensa ao princípio da obrigatoriedade da motivação : </p><p class="Recuodecorpodetexto21" style="margin: 8.5pt 0cm 8.5pt 4cm; line-height: normal; text-align: justify;"> “ Questão de ordem. Agravo de Instrumento. Conversão em recurso extraordinário (CPC, art. 544, §§ 3° e 4°). 2. Alegação de ofensa aos incisos XXXV e LX do art. 5º e ao inciso IX do art. 93 da Constituição Federal. Inocorrência. <strong style="mso-bidi-font-weight: normal;">3. O art. 93, IX, da Constituição Federal exige que o acórdão ou decisão sejam fundamentados, ainda que sucintamente, sem determinar, contudo, o exame pormenorizado de cada uma das alegações ou provas, nem que sejam corretos os fundamentos da decisão. 4. Questão de ordem acolhida para reconhecer a repercussão geral, reafirmar a , jurisprudência do Tribunal, negar provimento ao recurso e autorizar a adoção dos procedimentos relacionados à repercussão geral.” (AI 791292 QO-RG, Relator(a): Min. GILMAR MENDES, julgado em 23/06/2010, REPERCUSSÃO GERAL - MÉRITO DJe-149 DIVULG 12-08-2010 PUBLIC 13-08-2010 EMENT VOL-02410-06 PP-01289 RDECTRAB v. 18, n. 203, 2011, p. 113-118). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Facilmente se infere, portanto, que as supostas omissões apontadas

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	pela contribuinte (embargante), em suas razões, revelam, em verdade, o único e exclusivo propósito de voltar a discutir o resultado da lide, na parte em que foi favorável aos interesses do fisco (embargado), como visto. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Não custa lembrar, nesse ponto, que perquirir acerca do acerto ou desacerto da interpretação adotada por este Tribunal é medida reservada às vias recursais próprias, não cabendo à parte descontente se utilizar dos embargos de declaração para este fim, ainda que considere que o resultado final não se afigura consentâneo à melhor aplicação do direito. </p><p class="Recuodecorpodetexto21" style="margin: 12pt 0cm 0cm -1.5pt; text-indent: 114.9pt; line-height: 150%; text-align: justify;"> Ademais, ainda que assim não o fosse, há que se destacar firme posição do STJ de que o Órgão Julgador não está obrigado a analisar detalhadamente todas as questões levantadas pelas partes, respondendo-as uma a uma, desde que a conclusão do seu <em style="mso-bidi-font-style: normal;">decisum se encontre bem fundamentada: </p><p class="Recuodecorpodetexto21" style="margin: 12pt 0cm 6pt 4cm; line-height: normal; text-align: justify;"> “EMBARGOS DE DECLARAÇÃO NO AGRAVO REGIMENTAL NO RECURSO EM MANDADO DE SEGURANÇA. CONCURSO PARA ESCRIVÃO DE POLÍCIA CIVIL. TESTE DE APTIDÃO FÍSICA - TAF. EXIGÊNCIA. EXPRESSA PREVISÃO LEGAL. LEGALIDADE. <strong style="mso-bidi-font-weight: normal;">OMISSÃO. CONTRADIÇÃO. INOCORRÊNCIA. 1. <strong style="mso-bidi-font-weight: normal;">O cabimento dos embargos de declaração se dá apenas nas hipóteses previstas no art. 1.022 do CPC: para sanar obscuridade ou contradição no acórdão, ou ainda para elidir omissão, pronunciando-se sobre ponto essencial. Não é essa a hipótese dos autos, em que o acórdão se apresenta adequadamente fundamentado e as teses do recurso foram integralmente examinadas e repelidas, resultado que não foi, afinal, aquele que o recorrente desejou. 2. <strong style="mso-bidi-font-weight: normal;">Mas ainda que assim não fosse, é certo que o juiz, desde que fundamente sua decisão, não está obrigado a se manifestar sobre todos os argumentos suscitados pelas partes. Quanto a isso, a jurisprudência desta Corte é farta em precedentes. 3. <strong style="mso-bidi-font-weight: normal;">Em conclusão, não há omissão a sanar. As alegações do embargante são, em síntese, reiteração dos argumentos anteriormente apresentados nas razões recursais e revelam, quanto aos pontos suscitados, tão somente irresignação com o que foi decidido por esta Primeira Turma. Todavia, os declaratórios não constituem a via adequada para o simples reexame do julgado. 4. Ainda que manejados com finalidade de prequestionamento, <strong style="mso-bidi-font-weight: normal;">os embargos de declaração demandam a ocorrência de algum dos vícios constantes do art. 1.022 do CPC. 5. Embargos de declaração rejeitados.” (EDcl no AgRg no RMS 47.139/MA, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA TURMA, julgado em 05/10/2017, DJe 19/10/2017) (destacado) </p><p class="Recuodecorpodetexto21" style="margin: 12pt 0cm 0cm -1.5pt; text-indent: 114.9pt; line-height: 150%; text-align: justify;"> Portanto, o que se observa é que há, <em style="mso-bidi-font-style: normal;">in casu, por parte do embargante, uma tentativa de nova apreciação da matéria anteriormente discutida, o que é vedado nesta via. A esse respeito, há vários precedentes deste Tribunal e, por todos, o enunciado da súmula 18 do TJCE, <em style="mso-bidi-font-style: normal;">ex vi: <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin: 12pt 0cm 0.0001pt 4cm; text-indent: 0.65pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”. </p><p class="Recuodecorpodetexto21" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> De outro modo: os embargos de declaração têm o condão de integrar ou aclarar a decisão embargada, sendo inadmissível sua oposição, para rediscussão de matérias apreciadas e resolvidas satisfatoriamente. &#160; </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Em suma: não há que se falar em omissão, contradição, obscuridade ou erro material no acórdão vergastado, diante de sua f <strong style="mso-bidi-font-weight: normal;">undamentação clara e satisfatória para o deslinde da causa. </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Finamente, no que diz respeito ao prequestionamento, é lição comezinha que o

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	embargante deve se ater, exclusivamente, às hipóteses previstas no art. 1.022 do CPC/2015, conforme restou assentado pelo Órgão Especial deste Tribunal, no acórdão a seguir ementado, <em style="mso-bidi-font-style: normal;">in verbis: </p><p class="Recuodecorpodetexto21" style="margin: 12pt 0cm 6pt 4cm; text-indent: 0.05pt; line-height: normal; text-align: justify;"> <span style="font-family: arial, helvetica, sans-serif;"> <span style="font-size: medium;"> <span style="font-size: small;">“PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRAVO REGIMENTAL NO MANDADO DE SEGURANÇA. OMISSÃO. INEXISTÊNCIA. APRECIAÇÃO DAS MATÉRIAS ARGUÍDAS. AUSÊNCIA DE ENQUADRAMENTO EM QUAISQUER DAS HIPÓTESES ELENCADAS NO ART. 1.022 DO CPC/2015. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. <strong style="mso-bidi-font-weight: normal;">PREQUESTIONAMENTO. INVIABILIDADE. RECURSO CONHECIDO E DESPROVIDO. 1. Os embargos de declaração têm como escopo completar ou aclarar as decisões judiciais que tenham pontos omissos, obscuros ou contraditórios, sendo a presença destes vícios o pressuposto de admissibilidade dessa espécie recursal. 2. "A jurisprudência do Superior Tribunal de Justiça consolidou entendimento no sentido de que, em se tratando de redução de vencimentos e não de supressão, está configurada a relação de trato sucessivo, com a renovação mensal do prazo decadencial para a impetração do mandado de segurança." (STJ – MS 12413/DF – Rel. Min. Og Fernandes, Terceira Seção, julgado em 13/03/2013, Dje 21/03/2013) 3. "O servidor público não possui direito adquirido a regime jurídico, tampouco a regime de vencimentos ou de proventos, sendo possível à Administração promover alterações na composição remuneratória e nos critérios de cálculo, como extinguir, reduzir ou criar vantagens ou gratificações, instituindo o subsídio, desde que não haja diminuição no valor nominal percebido, em respeito ao princípio constitucional da irredutibilidade de vencimentos." (STJ – AgRg no RMS 43259/MS, Rel. Min. Herman Benjamin, Segunda Turma, julgado em 22/10/2013, Dje 09/12/2013). 4. O tema tratado no acórdão que se pretende levar à análise dos Tribunais Superiores não precisa, novamente, através de prequestionamento, ser decidido em embargos de declaração. <strong style="mso-bidi-font-weight: normal;">5. O prequestionamento deve pautar-se no disposto do art. 1.022, do Código de Processo Civil/2015; ausentes quaisquer dos vícios elencados no referido artigo, não é devida a declaração requerida. 6.Incidência da Súmula nº 18/TJCE que aduz: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada".&#160; 7. Recurso conhecido e desprovido.” (ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros números: 626694902015806000050001) (destacado) </p><p class="Recuodecorpodetexto21" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o desprovimento dos presentes embargos de declaração é medida que se impõe neste azo, tornando-se, ainda, desnecessário qualquer pronunciamento para fins de prequestionamento de eventuais recursos à instância especial. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="Recuodecorpodetexto22" style="margin: 5.65pt 0cm; line-height: 150%; text-align: justify;">&#160;</p><p class="Recuodecorpodetexto22" style="margin: 5.65pt 0cm; line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> DISPOSITIVO </p><p class="MsoNormal" style="margin-top: 5.65pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Diante do exposto, <strong style="mso-bidi-font-weight: normal;">conheço dos presentes embargos de declaração, para NEGAR-LHES provimento, ante a ausência de quaisquer dos vícios enumerados no art. 1.022 do Código de Processo Civil, mantendo inalterado o acórdão vergastado em todos os seus termos. </p><p class="MsoNormal" style="margin-top: 5.65pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Por ora, apesar do não acolhimento do presente recurso, que buscou, única e tão somente, o reexame de questões anteriormente analisadas por esta 3ª Câmara de Direito Público do TJ/CE, deixo de aplicar a multa prevista no art. 1.026, § 2º, do CPC, por não ter sido possível constatar que houve intuito manifestamente protelatório na hipótese dos autos. </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É como voto. </p><p class="Recuodecorpodetexto21" style="margin: 11.35pt 0cm 11.35pt 0.55pt; text-indent: 112.85pt; line-height: normal; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin:

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	6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 </p><p class="MsoNormal" style="line-height: 150%; text-align: center;"> Relatora </p><p> &#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	65
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	ESTADO DO CEARA MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA VIVIANE RODRIGUES DE SOUSA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">A questão em discussão consiste em saber se houve omissão no voto embargado.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">3. O Estado do Ceará alega que o voto embargado teria sido omisso quanto à ilegitimidade passiva do Estado do Ceará, ao passo que o Município de Fortaleza sustenta que teria havido omissão quanto ao não preenchimento dos requisitos para obtenção do benefício, em especial, quanto a demonstração da situação sócio-econômica (ausência de meios materiais de prover a moradia) e de faixa de renda.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">4. De fato, não há que se falar em ilegitimidade passiva do ente público estatal, vez que o direito à moradia e à segurança estão assegurados pela Constituição Federal, cabendo aos entes públicos estatal e municipal, solidariamente, garantir efetividade ao cidadão, principalmente aquele mais vulnerável.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">5. Da mesma forma, também os Embargos de Declaração opostos pelo Município de Fortaleza não merecem ser providos. Isso porque, diferente do que tenta demonstrar o ente municipal insurgente, inexiste qualquer vício capaz de infirmar o acórdão ora recorrido, que tratou expressamente sobre o texto normativo de regência e a adequação do caso da autora à proteção legal.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">IV. Dispositivo e Tese</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">6. Embargos de Declaração conhecidos e desprovidos. Acórdão mantido.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> _________</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Dispositivo relevante citado: CPC, art. 1.022.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"><span

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	style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">&#160;Jurisprudência relevante citada: Súmula nº 18 do TJCE; TJCE, Agravo de Instrumento - 0622873-68.2021.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 28/06/2021, data da publicação: 28/06/2021.</p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p align="center"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 0148502-06.2018.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e rejeitar o recurso, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;25 de novembro de 2024.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO <strong style="font-size: small;">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de embargos declaratórios opostos em face de acórdão da 3ª Câmara de Direito Público que, por unanimidade, deu provimento ao apelo anteriormente interposto, nos seguintes termos (ID 10307400 da APC nº 0148502-06.2018.8.06.0001):</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size:

Processo	0148502-06.2018.8.06.0001
	13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">“ EMENTA: APELAÇÕES CÍVEIS. CONSTITUCIONAL. AÇÃO ORDINÁRIA. PLEITO DE INCLUSÃO NO PROGRAMA DE LOCAÇÃO SOCIAL. DIREITO FUNDAMENTO À MORADIA. COMPETÊNCIA COMUM DOS ENTES FEDERATIVOS PARA PROMOVER AÇÕES VOLTADAS À CONCRETIZAÇÃO DA REFERIDA GARANTIA. EXPULSÃO DA MORADIA PELA ATIVIDADE ILÍCITA DE ORGANIZAÇÃO CRIMINOSA. VULNERABILIDADE SOCIAL DA PROMOVENTE CONFIGURADA. REQUISITOS CUMULATIVOS PREVISTOS NA LEI Nº 10.328/15 ATENDIDOS. PRECEDENTES. APELAÇÕES CONHECIDAS E NÃO PROVIDAS. SENTENÇA MANTIDA.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Tratam os autos de apelações cíveis interpostas pelos promovidos, adversando sentença proferida pelo Juízo da 4ª Vara da Fazenda Pública de Fortaleza, que decidiu pela parcial procedência da ação ordinária ajuizada em face do Estado do Ceará e do Município de Fortaleza, condenando os entes públicos promovidos a procederem com a inscrição da autora no Programa de Locação Social, indeferindo pleito de indenização por danos materiais e morais.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. Foi devolvida a este Tribunal apenas a controvérsia em torno da inclusão da parte promovente, ora recorrida, no Programa de Locação Social.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. O direito fundamental à moradia, disposto expressamente no artigo 6º, caput, da Constituição Federal, possui posição de destaque com o objetivo central de assegurar a moradia digna em condições habitáveis para todos os cidadãos, sendo dever do Estado garantir sua efetividade em razão da competência comum existente entre os entes federados, nos termos do art. 23, inciso IX do Texto Maior, bem como ante à aplicabilidade imediata da norma.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. O Programa de Locação Social surgiu no âmbito do Município de Fortaleza como uma forma temporária de auxiliar famílias que se encontram em situação de risco ou vulnerabilidade, não dispondo de meios para adquirir ou alugar moradia. Todavia, para tanto, é necessário enquadrar-se nos pressupostos exigidos na Lei nº 10.328/15.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. No caso dos autos, observa-se que restou demonstrada a necessidade de atuação do Poder Público em favor da autora, a fim de que seja assegurado o direito de habitar em local digno e seguro, conforme lhe assegura os princípios constitucionais, em razão da situação de gravosa vulnerabilidade social, por ter sido retirada de sua unidade habitacional, juntamente com sua família, por membros pertencentes a facção criminosa, de acordo com a documentação apresentada nos autos (ID 7198980/7198981).</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 6. Diante do que, permanecem, portanto, totalmente inabalados os fundamentos do decisum a quo, impondo-se sua confirmação por este Tribunal.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes deste TJCE.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Apelações conhecidas e não providas.</p><p

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	style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Sentença confirmada.”</p><p align="center"> <strong id="docs-internal-guid-27c352c1-7fff-331e-9738-8011949449ff" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Inconformado, o Estado do Ceará opôs Embargos de Declaração (ID 10543330), pugnando pelo reconhecimento de sua ilegitimidade passiva, a fim de extinguir o processo sem resolução do mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Também o Município de Fortaleza manejou aclaratórios (ID 10764826), alegando haver omissão no voto condutor, uma vez que o acórdão embargado teria ignorado que a requerente não preenchia os requisitos para obtenção do benefício, em especial, quanto a demonstração da situação sócio-econômica (ausência de meios materiais de prover a moradia) e de faixa de renda. Assim, requereu a reforma da decisão embargada, a fim de que fossem desprovidos os pleitos autorais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Contrarrazões apresentadas pela embargada (ID 10663972 e 12518296) pugnando pelo desprovimento dos aclaratórios.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dispõe o art. 1.022, I, II e III do CPC que cabem embargos de declaração quando houver na sentença, ou no acórdão, obscuridade, contradição, omissão ou erro material, sendo certo que o vício que autoriza o uso deste recurso é o que se verifica entre proposições do provimento jurisdicional, entre a fundamentação e a parte conclusiva ou dentro do próprio dispositivo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> No presente caso, o que se percebe dos embargantes não é sua tentativa de integração do

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	acórdão, mas de rediscutir a causa.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Em suma, o Estado do Ceará alega que o voto embargado teria sido omisso quanto à ilegitimidade passiva do Estado do Ceará, ao passo que o Município de Fortaleza sustenta que teria havido omissão quanto ao não preenchimento dos requisitos para obtenção do benefício, em especial, quanto a demonstração da situação sócio-econômica (ausência de meios materiais de prover a moradia) e de faixa de renda.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Quanto ao argumento do ente estatal, impõe-se registrar que o voto embargado ressaltou a competência comum dos entes públicos em relação ao direito fundamental à moradia, a saber:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Como se sabe, o direito fundamental à moradia, disposto expressamente no artigo 6º, caput, da Constituição Federal, possui posição de destaque com o objetivo central de assegurar a moradia digna em condições habitáveis para todos os cidadãos, sendo dever do Estado garantir sua efetividade em razão da competência comum existente entre os entes federados, nos termos do art. 23, inciso IX, do Texto Maior, bem como ante à aplicabilidade imediata da norma.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Proporcionando, dessa forma, o direito à dignidade da pessoa humana, bem como o cumprimento dos objetivos fundamentais da República Federativa do Brasil, especificamente no que concerne o artigo 3º, inciso III do Texto Maior, qual seja: “erradicar a pobreza e a marginalização e reduzir as desigualdades sociais e regionais”.” (ID 10307400) (destacado)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Ademais, o acórdão recorrido colacionou precedentes desta Corte de Justiça, inclusive desta 3ª Câmara de Direito Público, que corroboram o entendimento esposado pelo voto embargado de que o Estado do Ceará também seria parte legítima para figurar no feito, in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. DIREITO CONSTITUCIONAL DE ACESSO À MORADIA. COMPETÊNCIA COMUM DOS ENTES FEDERATIVOS. PROGRAMA DE LOCAÇÃO SOCIAL. ALUGUEL SOCIAL NO VALOR DE R$ 520,00 (QUINHENTOS E VINTE REAIS) POR MÊS. VULNERABILIDADE SOCIAL CONFIGURADA. INCLUSÃO DOS AGRAVADOS EM PROGRAMA DE LOCAÇÃO SOCIAL. RECURSO CONHECIDO E DESPROVIDO. 1. Cuida-se de Agravo de Instrumento interposto com o escopo de ser reformada a decisão interlocutória proferida pelo juízo da 1ª Vara da Comarca de Massapê, nos autos da Ação de Indenização por Danos Materiais e Morais com Pedido de Aluguel Social e interposta em desfavor do Estado do Ceará. 2. Dizem os agravados que a ordem de retirada de suas casas veio de integrantes da facção Comando Vermelho que dominava a área, sem qualquer motivo

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	aparente, apenas por serem provenientes do bairro Genibaú, supostamente dominado por facção rival. Prestaram declaração dos fatos junto à Defensoria Pública do Estado do Ceará. 3. O Estado argui, preliminarmente, ilegitimidade passiva e, no mérito, defendeu a ausência de requisitos para sua responsabilização civil, ante a culpa exclusiva de terceiro, alegando ausência de provas em relação aos supostos danos materiais e morais, e pugnando pela improcedência dos pedidos. 4. Ainda que se possa entender que a assistência pública é responsabilidade dos entes federados, a natureza dessa responsabilidade é solidária, cabendo à parte autora ingressar contra um, alguns ou todos. 5. Agravados em situação gravosa de vulnerabilidade social, circunstância que faz jus à participação na política habitacional a cargo do ente agravante. 6. Em casos excepcionais é permitido ao Poder Judiciário autorizar a implementação de políticas públicas de moradia e segurança. Precedentes jurisprudenciais. 7. Recurso conhecido e desprovido.” (Agravo de Instrumento - 0622873-68.2021.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 28/06/2021, data da publicação: 28/06/2021) (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 4pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De fato, não há que se falar em ilegitimidade passiva do ente público estatal, vez que o direito à moradia e à segurança estão assegurados pela Constituição Federal, cabendo aos entes públicos estatal e municipal, solidariamente, garantir efetividade ao cidadão, principalmente aquele mais vulnerável.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, o desprovimento dos aclaratórios manejados pelo Estado do Ceará é medida que se impõe.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Da mesma forma, também os Embargos de Declaração opostos pelo Município de Fortaleza não merecem ser providos. Isso porque, diferente do que tenta demonstrar o ente municipal insurgente, inexiste qualquer vício capaz de infirmar o acórdão ora recorrido, que tratou expressamente sobre o texto normativo de regência e a adequação do caso da autora à proteção legal, a saber:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ É relevante destacar que o Programa de Locação Social surgiu no âmbito do Município de Fortaleza como uma forma temporária de auxiliar famílias que se encontram em situação de risco ou vulnerabilidade, não dispondo de meios para adquirir ou alugar moradia. Todavia, para tanto, é necessário enquadrar-se nos pressupostos exigidos na Lei nº 10.328/15, que assim estabelece:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Art. 1º. Fica instituído, no âmbito do Município de Fortaleza, o Programa Locação Social, com a finalidade de atender a situações excepcionais e temporárias de:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-

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	bottom: 0pt;" dir="ltr"> (...)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> II - famílias em situação de desalojamento temporário, que já se encontrem cadastradas em programas habitacionais, e estejam em processo de reassentamento para novas unidades habitacionais;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III - mulheres em situação de violência doméstica e/ou sexual, idosos, pessoas com deficiência, enfermos graves ou arrimos de família.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Art. 2º. O Programa Locação Social consiste na concessão de auxílio às famílias que se enquadrem nas situações previstas no art. 1º desta Lei e que não disponham de meios materiais para adquirir ou alugar moradia.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (...)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 7º. O ingresso no Programa Locação Social ocorrerá através de cadastro próprio na Secretaria Municipal do Desenvolvimento Habitacional de Fortaleza (HABITAFOR) ou na Secretaria Municipal da Segurança Cidadã (SESEC), conforme o caso, mediante a comprovação da condição de baixa renda, vulnerabilidade social e situação de desastre do pretenso beneficiário, sendo assegurada a preferência para:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> I – os que habitarem em condições subumanas, em áreas de risco iminente ou que tenham sido atingidos por qualquer espécie de desastre;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> II – famílias em situação de desalojamento temporário, que já se encontrem cadastradas em programas habitacionais, e estejam em processo de reassentamento para novas unidades habitacionais;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III – mulheres em situação de violência doméstica e/ou sexual, idosos, pessoas com deficiência, enfermos graves ou arrimos de família;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> IV – famílias ou pessoas em situação de baixa renda ou em situação de vulnerabilidade social e que se encontrem em situação de moradia de rua.” (destacamos)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dos autos, verifica-se que a autora fora removida de sua moradia, no bairro Barroso, pelo Estado do Ceará/Secretaria das Cidades, em razão das obras de urbanização do Rio Cocó, vez que residia em área de risco a ser eliminada pelo Poder Público, que a reassentou em uma unidade habitacional do Programa Minha Casa Minha Vida, localizada na Rua Verde 44, Residencial José Euclides Ferreira Gomes, Quadra 08, Bloco 09, apto. 401, bairro Jangurussu, Fortaleza – CE. No entanto, em 26 de janeiro de 2018, a requerente foi expulsa, juntamente com sua família, pela facção criminosa que domina os Conjuntos Habitacionais do PMCMV.</p><p style="line-height: 1.2;

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	margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Logo, observa-se que restou demonstrada a necessidade de atuação do Poder Público em favor da autora, a fim de que seja assegurado o direito de habitar em local digno e seguro, conforme lhe assegura os princípios constitucionais, em razão da situação de gravosa vulnerabilidade social, por ter sido retirada de sua unidade habitacional, juntamente com sua família, por membros pertencentes a facção criminosa, de acordo com a documentação apresentada nos autos (ID 7198980/7198981).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, vale destacar, que questões de ordem orçamentária não têm o condão de se sobrepor às disposições constitucionais relacionadas a direitos que a Constituição Federal confere aos cidadãos, devendo existir um equilíbrio do dever do Estado para não violar o princípio da dignidade da pessoa humana e o direito à moradia.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Depreende-se, então, que a promovente, ora recorrida, preencheu os requisitos previstos na Lei nº 10.328/15. Deve, portanto, ser a sentença mantida. (destacado)”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, resta claro e nítido o intuito dos embargantes, uma vez que não se vislumbra a existência de qualquer mácula capaz de modificar o acórdão recorrido.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ora, conforme consta no voto ora questionado, a promovente, ora recorrida, preencheu os requisitos previstos na Lei nº 10.328/15.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Vale destacar que a promovente fora removida de sua antiga moradia, no bairro Barroso, pela Secretaria das Cidades do Estado do Ceará, em razão das obras de urbanização do Rio Cocó e, posteriormente, fora expulsa da nova residência, em 26 de janeiro de 2018, por membros pertencentes a facção criminosa.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Sendo assim, dúvidas não restam acerca do direito da parte embargada de ter deferido o pleito de concessão de aluguel social por partes dos demandados.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Perquirir acerca do acerto ou desacerto de tal atividade interpretativa é medida reservada às vias recursais próprias, não cabendo à parte utilizar-se dos embargos de declaração para este fim, ainda que considere que a conclusão da Turma Julgadora não se afigura consentânea a melhor aplicação do direito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portanto, o que se observa é uma nítida tentativa de rediscussão da matéria, o que é vedado nesta via estreita. Desta forma, há vários precedentes deste Tribunal e, por todos, o enunciado da súmula 18 do TJCE:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">De outro modo: os embargos declaratórios não possuem o condão de devolver mais uma vez a apreciação da matéria já decidida, ainda que a mesma se apresente de maneira que a parte vencida a considere imprecisa ou injusta.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em suma: nos presentes embargos de declaração, recurso que possui nítida natureza jurídica processual, com o objetivo de integrar o acórdão embargado, não há que se falar em omissão, contradição ou obscuridade diante de matéria tão exaustivamente estudada e discutida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o desprovimento dos presentes aclaratórios é medida que se impõe nesta oportunidade, tornando-se, outrossim, despicienda qualquer declaração para fins de prequestionamento de eventuais recursos à instância especial.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr">DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Diante do exposto, em face da inexistência de qualquer obscuridade, contradição, omissão ou erro material no julgado, conheço dos aclaratórios para NEGAR-LHES provimento, mantendo inalterado o acórdão embargado.</p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;25 de novembro de 2024.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; <span

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	style="color: #000000;"> 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	66
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Aposentadoria por Invalidez Acidentária
Polo ativo	Instituto de Previdência do Município de Caucaia, Ceará, MUNICIPIO DE CAUCAIA
Advogado(s) - Polo ativo	Não informado
Polo passivo	SANDRA DOS SANTOS OLIVEIRA
Advogado(s) - Polo passivo	JOSE CARLOS SILVA DOS SANTOS - (CE25037-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	#000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">decidiu pela procedência do pedido principal formulado em exordial, por entender que o transtorno bipolar se enquadraria no conceito de alienação mental previsto em lei, para o deferimento de aposentadoria por invalidez com proventos integrais.</p><p style="line-height: 1.7999999999999998; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">3. Contudo, em que pese a incapacidade total e permanente da parte autora, há que ser observado o Tema 524 do Supremo Tribunal Federal, segundo o qual “a concessão de aposentadoria de servidor público por invalidez com proventos integrais exige que a doença incapacitante esteja prevista em rol taxativo da legislação de regência”.</p><p style="line-height: 1.7999999999999998; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. Assim, uma vez que a recorrida não se desincumbiu de seu ônus probatório previsto no art. 373, I, do CPC, o provimento do apelo é medida que se impõe, a fim de indeferir o pedido principal formulado.</p><p style="line-height: 1.7999999999999998; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">5. No entanto, quanto ao pleito subsidiário de que os proventos fossem recalculados observando-se a redução de tempo de contribuição conferida pela Constituição Federal aos professores da educação infantil e de ensino fundamental e médio, infere-se que não houve manifestação em primeira instância sobre este pedido, devendo os autos retornarem para regular processamento pelo Juízo a quo.</p><p style="line-height: 1.7999999999999998; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes do STJ e deste TJCE.</p><p style="line-height: 1.7999999999999998; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Apelação conhecida e provida.</p><p style="line-height: 1.7999999999999998; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Retorno dos autos ao primeiro grau.</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> ACÓRDÃO</p><p>&#160;</p><p style="text-indent: 8%; text-align: justify;"> <strong style="font-size: small;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0050428-

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	48.2020.8.06.0064, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação interposta, para dar-lhe provimento, a fim de indeferir o pedido principal formulado na inicial. No entanto, devem os autos retornar ao primeiro grau de jurisdição para apreciação do pedido subsidiário de revisão do ato de aposentadoria , nos termos do voto da Relatora. </p><p style="text-indent: 8%; text-align: center;"> <em style="font-size: 12pt; font-family: Arial, sans-serif;"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p style="text-indent: 8%; text-align: center;"> <em style="font-size: 12pt; font-family: Arial, sans-serif;"> &#160; Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Cuida-se, na espécie, de Apelação Cível adversando sentença proferida pela magistrada de primeiro grau, que decidiu pela procedência do pedido formulado na ação ordinária, no sentido de conceder o benefício de aposentadoria integral à autora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">O caso/a ação originária: Sandra dos Santos Oliveira, servidora aposentada, moveu ação ordinária em face do Instituto de Previdência do Município de Caucaia (IPM) aduzindo que teria direito a revisão do ato que lhe concedeu a aposentadoria por invalidez, uma vez que faria jus aos proventos integrais por ser acometida de hipertensão e de transtorno bipolar, doenças que alega configurar cardiopatia grave e alienação mental.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Subsidiariamente, postulou pela revisão de seus proventos a fim de que o ente promovido observasse a redução de tempo de contribuição conferida aos professores da educação infantil e de ensino fundamental e médio, nos termos da redação do § 5º do art. 40 da Constituição Federal, nos moldes vigente à época de sua aposentadoria.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Ademais, afirma que a última remuneração percebida em atividade utilizada para o cálculo de seus proventos (R$ 3.111,41) não corresponderia ao valor efetivamente percebido, que, segundo alegou, deveria ser de R$ 4.687,06 (quatro mil seiscentos e oitenta e sete reais e seis centavos).</p><p style="line-height: 1.7999999999999998; text-indent:

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	113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Diante do que, requereu, então, a intervenção do Poder Judiciário para fazer valer seu direito ao recálculo de seus proventos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Citado, o ente público não ofertou contestação.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Petição do senhor Carlos Augusto Araújo do Nascimento (ID 13633870) informando o superveniente óbito da autora e requerendo sua habilitação nos autos como cônjuge supérstite e pensionista da requerente falecida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Sentença proferida pelo magistrado de primeiro grau pela procedência do pedido formulado (ID 13633885), in verbis:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> “ 1. Ante o exposto, julgo procedente o pedido autoral na forma do artigo 487, inciso I, do Código de Processo Civil, a fim de condenar o promovido a implantar o benefício da aposentadoria por invalidez integral da autora falecida e a pagar, em favor do companheiro habilitado e pensionista, o valor da diferença entre os proventos proporcionais já pagos à finada e os integrais, ora devidos, desde a concessão da aposentadoria proporcional.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> 2. O montante da diferença deverá ser acrescido de juros de mora pela remuneração oficial da caderneta de poupança e de correção monetária pelo INPC.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight:

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	400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">3. Sem custas processuais.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> 4. Condeno o promovido ao pagamento dos honorários advocatícios que fixo em 10% (dez por cento) sobre o valor da condenação (artigo 85, §3º, do Código de Processo Civil).”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Inconformado, o Instituto de Previdência do Município de Caucaia/CE interpôs Apelação Cível (ID 13633898), sustentando a inadequação da sentença recorrida, que equiparou Transtorno Afetivo Bipolar à Alienação Mental, com o que restou sedimentado pelo Tema 524 do STF, afirmando que as doenças de que padecia a autora não se encontravam no rol legal taxativo para o deferimento de aposentadoria por invalidez com proventos integrais. Nesses termos, pugnou pelo provimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Contrarrazões (ID 13633902) pugnando pelo desprovimento do pedido ou, caso provido, pela devolução dos autos ao primeiro grau para que fosse analisado o pedido subsidiário de recálculo dos proventos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Parecer da Procuradoria Geral de Justiça (ID 14805008), opinando pelo conhecimento e provimento do recurso.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> VOTO</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Foi devolvida a este Tribunal a controvérsia a respeito de suposto equívoco no ato de aposentadoria da autora, servidora pública aposentada, falecida no <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:

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	transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">curso do presente feito e substituída por seu companheiro. <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">A magistrada a quo decidi pela procedência do pedido principal formulado na exordial, por entender que o transtorno bipolar se enquadraria no conceito de alienação mental previsto em lei para o deferimento de aposentadoria por invalidez com proventos integrais.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Sobre o tema em relevo, impõe-se destacar que a Súmula nº 359 do Supremo Tribunal Federal reza que, "ressalvada a revisão prevista em lei, os proventos da inatividade regulam-se pela lei vigente ao tempo em que o militar, ou o servidor civil, reuniu os requisitos necessários", em razão do princípio do tempus regit actum.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Sob <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

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	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">esse prisma, certo é que a Junta Médica Municipal deferiu o pedido de aposentadoria por invalidez da autora com proventos proporcionais em 02 de outubro de 2011 (ID 13633756), tendo em vista que fora diagnosticada com doenças incapacitantes: hipertensão, obesidade, transtorno afetivo bipolar leve ou moderado e transtorno do humor afetivo não especificado (CID I10, E66, F31.3 F39), mencionando, ainda, “ansiedade emocional”, “diabetes” e “aparente quadro de disfunção cardíaca”.&#160;</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">O ato de aposentadoria consta nos autos sob ID 13633759, afirmando serem os proventos “proporcionais com fundamento no art. 40, § 1º, inciso I da Constituição Federal, em consonância com o Artigo 6-A da Emenda Constitucional nº 41/2003, Emenda Constitucional nº 70/2012 e Lei Municipal 1414/2001, resultando no valor de R$ 3.111,41 (três mil cento e onze reais e quarenta e um <span style="font-size: 13.999999999999998pt; font-

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	family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">centavos)”.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Caso, portanto, de aplicação do tema 524 do Supremo Tribunal Federal, ao destacar que “a concessão de aposentadoria de servidor público por invalidez com proventos integrais exige que a doença incapacitante esteja prevista em rol taxativo da legislação de regência”.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Nesse sentido, extrai-se precedentes do Superior Tribunal de Justiça que, analisando a mesma matéria, assim decidiu: <br /> </p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“PROCESSUAL E ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO ESPECIAL. VIOLAÇÃO DO ARTIGO 1.022 DO CPC/2015. SÚMULA 284/STF. SERVIDOR PÚBLICA. PROFESSORA UNIVERSITÁRIA. UFC. APOSENTADORIA POR INVALIDEZ. PROVENTOS PROPORCIONAIS. DOENÇAS INCAPACITANTES QUE NÃO CONFIGURAM ACIDENTE EM SERVIÇO OU DOENÇA GRAVE, CONTAGIOSA OU INCURÁVEL, ESPECIFICADAS EM LEI. NEXO DE CAUSALIDADE COM AS ATIVIDADES LABORAIS. NÃO COMPROVAÇÃO. LAUDO MÉDICO. JUNTA MÉDICA OFICIAL.

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	ALTERAÇÃO. IMPOSSIBILIDADE. ÓBICE DA SÚMULA 7/STJ. RECURSO NÃO PROVIDO. 1. O recurso foi interposto contra acórdão publicado na vigência do Código de Processo Civil de 2015, devendo ser exigidos os requisitos de admissibilidade na forma nele previsto, conforme Enunciado /Administrativo n. 3/2016/STJ. 2. Caso em que a Turma julgadora, competente na análise da situação fático-probatória dos autos, entendeu que "não restou comprovado que as doenças que acometeram a servidora se trataram de acidente de trabalho ou de moléstia profissional, ou que tenham sido originadas do regular exercício do cargo de Professora da UFC, tampouco a autora logrou êxito em infirmar as conclusões da Junta Médica Oficial que gozam de presunção de veracidade e legitimidade". 3. Não se conhece da suposta afronta ao artigo 1.022 do CPC/2015, pois a recorrente não apresentou qualquer argumento a ensejar a apreciação da ofensa ao referido normativo. Incide à hipótese a Súmula 284/STF. 4. Aferir se a incapacidade - transtorno psiquiátrico junto à Universidade Federal do Ceará -, como quer a recorrente para enquadrá-la como decorrente de acidente em serviço ou moléstia profissional (artigo 186, I, da Lei n. 8.112/1990), não se mostra possível na via estreita do recurso especial, por envolver reexame de matéria fático-probatória, atraindo, assim, o teor da Súmula 7/STJ. 5. Agravo interno não provido.” (AgInt no REsp n. 1.944.964/CE, relator Ministro Benedito Gonçalves, Primeira Turma, julgado em 5/9/2022, DJe de 9/9/2022.) (destacado). <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">No mesmo sentido, precedentes desta e. Corte de Justiça: <br /></p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"><span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">“EMBARGOS DE DECLARAÇÃO em Recurso de apelação. APOSENTADORIA POR INVALIDEZ COM PROVENTOS INTEGRAIS. INDEFERIMENTO. TEMA 524, STF. OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE NÃO EVIDENCIADAS. REDISCUSSÃO DA MATÉRIA. IMPOSSIBILIDADE (SÚMULA Nº 18, TJCE). Aclaratórios conhecidos, porém desprovidos. 1. Cuida-se de Embargos de Declaração em Recurso de Apelação, com vistas a sanar suposto erro material no acórdão proferido pela Eg. 1ª Câmara de Direito Público e que manteve a sentença entendeu pela improcedência do feito, na qual pleiteava a embargante aposentadoria por invalidez com proventos integrais. Alega a embargante, em resumo, que fora realizada equivocada interpretação do Tema 524, STF. 2. Os Embargos Declaratórios, por expressa determinação do art. 1.022 do CPC tem como finalidade esclarecer obscuridade ou eliminar contradição, suprir omissão de ponto ou questão sobre o qual deveria se pronunciar ou ainda corrigir eventual erro material. 3. Assim, o presente recurso não poderá, em situação alguma, ser utilizado para a rediscussão de matéria trazida na sentença ou no acórdão, uma vez que as hipóteses restritas previstas na legislação tencionam, em suma, que não ocorram dilações indevidas para o trânsito em julgado das decisões judiciais, sob pena de comprometer a celeridade processual (art. 5º, LXXVIII, CF), segundo entendimento pacificado dos Tribunais Superiores. Precedentes. Súmula 18 do TJ/Ce. 4. In casu, não se vê qualquer omissão no acórdão embargado, posto que a questão teve solução dentro do que preceitua o ordenamento jurídico uma vez que todos os pontos impugnados foram satisfatoriamente contemplados, mostrando-se o pleito do embargante como uma forma de rediscutir a matéria, o que é inviável. 5. Aclaratórios conhecidos, porém desprovidos.” (Embargos de Declaração Cível - 0033333-78.2012.8.06.0001, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:

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	transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Público, data do julgamento: 29/08/2022, data da publicação: 30/08/2022) (destacado)</p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> ***</p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“ADMINISTRATIVO. AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. SERVIDOR PÚBLICO MUNICIPAL. APOSENTADORIAPOR INVALIDEZ. REVISÃO DO BENEFÍCIO DE PROPORCIONAL POR TEMPO DE CONTRIBUIÇÃO PARA INTEGRAL. TRANSTORNO AFETIVO BIPOLAR. AUSÊNCIA DE PREVISÃO LEGAL. IMPOSSIBILIDADE. PRECEDENTES DOS TRIBUNAIS SUPERIORES.FUNDAMENTOS INSUFICIENTES PARA REFORMAR A DECISÃO IMPUGNADA. AGRAVO CONHECIDO E DESPROVIDO. 1.Como é sabido, a Administração Pública está adstrita ao princípio da legalidade, razão pela qual não merece acolhimento o pleito autoral de revisão de aposentadoria por invalidez, com proventos proporcionais ao tempo de contribuição para integrais, em razão de doença não prevista no § 1º, do art. 13 da Lei Municipal nº 9.103/2006, no caso, transtorno afetivo bipolar. 2."Consoante entendimento firmado pelo Supremo Tribunal Federal no julgamento do RE 656.960, sob o rito da repercussão geral, às aposentadorias de servidores públicos federais por invalidez, com proventos integrais, em razão de moléstia profissional, também se aplica a taxatividade do art. 186, § 1º, da Lei 8.112/1990" (STJ – AgInt no REsp 1710044/ES, Relator o Ministro Benedito Gonçalves, Primeira Turma, julgado em 14/08/2018, DJe 20/08/2018). 3.O

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	agravante não trouxe argumentos novos capazes de infirmar os fundamentos que alicerçaram a decisão agravada, razão pela qual deve ser desprovido o agravo interno. 4.Agravo conhecido e desprovido.” (Agravo Interno Cível - 0135862-73.2015.8.06.0001,Rel. Desembargador(a) ANTÔNIO ABELARDO BENEVIDES MORAES, 3ª Câmara Direito Público, data do julgamento: 10/06/2019, data da publicação: 10/06/2019) (destacado). <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">No caso, consoante o ato de aposentadoria da autora, a Lei Municipal vigente à época era a Lei Municipal nº 1.414/2001, cujo artigo 28 dispunha nos seguintes termos: <br /></p><p> </p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“Art. 28. A aposentadoria por invalidez será devida ao segurado que for considerado incapaz de readaptação e ser-lhe-á paga enquanto permanecer nessa condição.</p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> § 1º A aposentadoria por invalidez será precedida de auxílio-doença.</p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> § 2º A aposentadoria por invalidez terá proventos proporcionais ao tempo de contribuição, exceto se decorrente de acidente em serviço, moléstia profissional ou doença grave, contagiosa ou incurável.</p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> (…)</p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"><span style="font-size: 14pt; font-family: Arial, sans-serif; background-color: transparent; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align:

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	baseline; white-space-collapse: preserve;">§ 6º Consideram-se doenças graves, contagiosas ou incuráveis, a que se refere o parágrafo anterior, tuberculose ativa; hanseníase, alienação mental; neoplasia maligna; cegueira; paralisia irreversível e incapacitante; cardiopatia grave; doença de Parkinson; espondiloartrose anquilosante; nefropatia grave; estado avançado da doença de Paget (osteíte deformante); síndrome da deficiência imunológica adquirida – Aids; e contaminação por radiação, com base em conclusão da medicina especializada.</p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">§ 7º A concessão de aposentadoria por invalidez dependerá da verificação da condição de incapacidade, mediante exame médico-pericial do órgão competente.</p><p style="line-height: 1.38; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">&#160;§ 8º Em caso de doença que impuser afastamento compulsório, com base em laudo conclusivo da medicina especializada, ratificado pela junta médica, a aposentadoria por invalidez independerá de auxílio-doença e será devida a partir da publicação do ato de sua concessão.”Ante o excerto legal transcrito, verifica-se que a lei de regência ao tempo da aposentadoria da servidora trazia expressamente as moléstias que gerariam a aposentadoria por invalidez com proventos integrais.</p><p>&#160;</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">No caso da autora, embora portadora de cardiopatia, não ficou cabalmente demonstrado que seria caso de gravidade apta a conceder-lhe a aposentadoria por invalidez com proventos integrais. Vale dizer, ainda, que o quadro de “disfunção cardíaca” a que <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif;

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	color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">alude o laudo é, de acordo com o que restou consignado naquele documento, “aparente”, ou seja, não há efetiva e necessária comprovação de que estivesse presente cardiopatia grave.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Por seu turno, a bipolaridade constatada no laudo médico é do tipo leve ou moderada (CID F31.3), assim não há prova nos autos que corroborem a tese de que a doença que acometia a autora se enquadraria no conceito de “alienação mental”.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Curial mencionar que não é possível olvidar que a Administração Pública deve observar o princípio da legalidade, não sendo possível ampliar o conceito legal para abranger casos que destoem da previsão taxativa do normativo de regência.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Portanto, assiste razão ao apelante ao pleitear a modificação da sentença que deferiu a aposentadoria por invalidez com proventos integrais.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Sendo assim, não merece prosperar a sentença a quo, vez que deve ser indeferido o pedido de aposentadoria com proventos integrais, antes as razões acima expendidas.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Contudo, observa-se que a parte autora, ora recorrida, formulou pedido subsidiário de revisão do ato de aposentadoria, levando-se em

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	consideração a redução prevista no art. 40, § 5º, da CF/88.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Ora, em que pese tenha sido requerido e deferido o pedido de que fosse acostado ao feito o procedimento administrativo de aposentadoria da promovente (ID 1633775), tal providência não foi cumprida, uma vez que anunciado o julgamento conforme o estado do processo (ID 13633790), nos termos do art. 355, inciso I, CPC, tendo a decisão a quo tratado tão somente sobre o pedido principal. <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Dessa forma, não é possível a este órgão julgador de segunda instância adentrar no mérito do pleito subsidiário, sob pena de supressão de instância. <br /></p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Sendo assim, o retorno dos autos ao primeiro grau de jurisdição para regular processamento e análise do pedido subsidiário é medida que se impõe. <br /> </p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; DISPOSITIVO <br /> </p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Por tais razões, conheço da apelação interposta, para dar-lhe provimento, a fim de indeferir o pedido principal formulado na inicial de que a aposentadoria da servidora fosse calculada com proventos integrais. Deve, no entanto, retornar o feito ao Juízo <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 700; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">a quo para a devida instrução e apreciação do pedido subsidiário quanto a revisão do ato aposentatório, nos termos requerido na inicial.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">&#160;É como voto.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> &#160; &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	67
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	IPTU/ Imposto Predial e Territorial Urbano
Polo ativo	MUNICIPIO DE OROS
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA DE FATIMA MACIEL BEZERRA
Advogado(s) - Polo passivo	Não informado

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Terceiros	Não informado

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Acordão	<p style="text-align: center;"> <img style="font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4e//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4PP0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3TaQ+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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	top:12pt;margin-bottom:0pt;" dir="ltr"> - Apelação não conhecida.</p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-33bb9d98-7fff-d58d-4621-803e5a612c29" style="font-weight:normal;"> <br /> </p><h3 style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height:1.7999999999999998;margin-left: 1pt;text-indent: 112.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0050162-08.2021.8.06.0135, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer da apelação interposta, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Portaria 1550/2024</p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta em face de sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Icó que decidiu pela extinção do processo sem resolução de mérito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">O caso/a ação originária: o Município de Orós ajuizou Ação de Execução Fiscal em face de Maria de Fatima Maciel Bezerra com base em certidão da dívida ativa, oriunda de débitos de IPTU, no valor total de R$ 828,96 (oitocentos e vinte e oito reais e noventa e seis centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">A Sentença: <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-

Processo	0050162-08.2021.8.06.0135
	align:baseline;white-space:pre;white-space:pre-wrap;">(ID 15677282) em que o Juízo da 1ª Vara Cível da Comarca de Icó decidiu pela extinção do processo sem resolução de mérito, por ausência de interesse de agir, sob o fundamento de que o valor executado não justificaria a movimentação do aparato judiciário. Transcrevo o dispositivo da sentença:</p><p style="line-height:1.38;margin-left: 114pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Ante o exposto, julgo extinto o presente processo sem resolução do mérito, por falta de interesse de agir, com fulcro no art. 485, VI, do CPC.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Irresignado, o ente público interpôs o presente recurso apelatório (ID 15677288) pugnando pela regular continuidade de tramitação do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Inexistiram contrarrazões, conforme certidão de ID 15677290.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desnecessária a intervenção do Ministério Público , nos termos da súmula 189 do STJ.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É o relatório.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Trata o caso de execução fiscal ajuizada com o objetivo de executar créditos regularmente inscritos em dívida ativa.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-

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	space:pre-wrap;">A presente demanda, por se referir a execução proposta pela Fazenda Pública, deve se desenvolver sob o rito previsto na Lei 6.830/80 (Lei de Execuções Fiscais – LEF). Partindo deste pressuposto, deve-se realizar o juízo de admissibilidade da apelação cível em análise.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Neste sentido, cumpre observar o disposto no art. 34 da LEF:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Art. 34 - Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">§ 1º - Para os efeitos deste artigo considerar-se-á o valor da dívida monetariamente atualizado e acrescido de multa e juros de mora e de mais encargos legais, na data da distribuição.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 2º - Os embargos infringentes, instruídos, ou não, com documentos novos, serão deduzidos, no prazo de 10 (dez) dias perante o mesmo Juízo, em petição fundamentada.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 3º - Ouvido o embargado, no prazo de 10 (dez) dias, serão os autos conclusos ao Juiz, que, dentro de 20 (vinte) dias, os rejeitará ou reformará a sentença.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Há que se destacar, de início, que referido dispositivo encontra-se em plena vigência, uma vez que recepcionado pela ordem jurídica vigente, consoante entendimento firmado pelo Supremo Tribunal Federal:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“AGRAVO REGIMENTAL NO AGRAVO DE INSTRUMENTO. CONSTITUCIONALIDADE DA LEI 6.830/80. SUPERVENIÊNCIA DO ARTIGO 108, II, DA CB/88. REVOGAÇÃO TÁCITA. NÃO OCORRÊNCIA. PRECEDENTE. 1. <span style="font-size:12pt;font-

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	family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">Este Supremo Tribunal Federal já decidiu que o artigo 108, inciso II, da Constituição do Brasil, não revogou tacitamente o disposto do artigo 34 da Lei 6.830/80. Agravo regimental a que se nega provimento.” (STF, AI 710921 AgR, Relator(a):&#160; Min. EROS GRAU, Segunda Turma, julgado em 10/06/2008, DJe-117 DIVULG 26-06-2008 PUBLIC 27-06-2008 EMENT VOL-02325-16 PP-03211) (destacamos)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">“RECURSO. Agravo convertido em Extraordinário. Apelação em execução fiscal. Cabimento. Valor inferior a 50 ORTN. Constitucionalidade. Repercussão geral reconhecida. Precedentes. Reafirmação da jurisprudência. Recurso improvido. É compatível com a Constituição norma que afirma incabível apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN.” (STF, ARE 637975 RG, Relator(a): Min. MINISTRO PRESIDENTE, julgado em 09/06/2011, DJe-168 DIVULG 31-08-2011 PUBLIC 01-09-2011 EMENT VOL-02578-01 PP-00112 REVJMG v. 62, n. 198, 2011, p. 405-407) (destacamos)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Agravo regimental no recurso extraordinário com agravo. Negativa de prestação jurisdicional. Não ocorrência. Impossibilidade de apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN. Princípios do devido processo legal, do contraditório e da ampla defesa. Inexistência de violação. 1. A jurisdição foi prestada pelo Tribunal de origem mediante decisão suficientemente fundamentada. 2. O Supremo Tribunal Federal, no julgamento do ARE nº 637.975/MG-RG (DJe de 1º/9/11), com repercussão geral reconhecida, de relatoria do Ministro Cezar Peluzo, entendeu que a norma que afirma ser incabível apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN não afronta os princípios constitucionais da legalidade, do devido processo legal, da ampla defesa, do contraditório, da inafastabilidade da prestação jurisdicional e do duplo grau de jurisdição. 3. Agravo regimental não provido.” (STF, ARE 639448 AgR, Relator(a): Min. DIAS TOFFOLI,

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	Primeira Turma, julgado em 19/06/2012, ACÓRDÃO ELETRÔNICO DJe-155 DIVULG 07-08-2012 PUBLIC 08-08-2012) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Pois bem. Ocorre que o caso dos autos envolve quantia inferior ao valor de alçada legalmente previsto, conforme estabeleceu o colendo STJ, em julgado adiante transcrito, sob o rito dos recursos repetitivos:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. RECURSO ESPECIAL REPRESENTATIVO DA CONTROVÉRSIA. ART. 543-C, DO CPC. TRIBUTÁRIO. EXECUÇÃO FISCAL. VALOR DE ALÇADA. CABIMENTO DE APELAÇÃO NOS CASOS EM QUE O VALOR DA CAUSA EXCEDE 50 ORTN'S. ART. 34 DA LEI N.º 6.830/80 (LEF). 50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27, EM DEZ/2000. PRECEDENTES. CORREÇÃO PELO IPCA-E A PARTIR DE JAN/2001. 1. O recurso de apelação é cabível nas execuções fiscais nas hipóteses em que o seu valor excede, na data da propositura da ação, 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, à luz do disposto no artigo 34, da Lei n.º 6.830, de 22 de setembro de 1980. 2. A ratio essendi da norma é promover uma tramitação mais célere nas ações de execução fiscal com valores menos expressivos, admitindo-se apenas embargos infringentes e de declaração a serem conhecidos e julgados pelo juízo prolator da sentença, e vedando-se a interposição de recurso ordinário. 3. Essa Corte consolidou o sentido de que "com a extinção da ORTN, o valor de alçada deve ser encontrado a partir da interpretação da norma que extinguiu um índice e o substituiu por outro, mantendo-se a paridade das unidades de referência, sem efetuar a conversão para moeda corrente, para evitar a perda do valor aquisitivo", de sorte que "50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) a partir de janeiro/2001, quando foi extinta a UFIR e desindexada a economia". (REsp 607.930/DF, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 06/04/2004, DJ 17/05/2004 p. 206) 4. Precedentes jurisprudenciais: AgRg no Ag 965.535/PR, Rel. Ministro Mauro Campbell Marques, Segunda Turma, julgado em 02/10/2008, DJe 06/11/2008; AgRg no Ag 952.119/PR, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 19/02/2008, DJ 28/02/2008 p. 1; REsp 602.179/SC, Rel. Ministro Teori Albino Zavascki, Primeira Turma, julgado em 07/03/2006, DJ 27/03/2006 p. 161. 5. Outrossim, há de se considerar que a jurisprudência do Egrégio STJ manifestou-se no sentido de que "extinta a UFIR pela Medida Provisória nº 1.973/67, de 26.10.2000, convertida na Lei 10.552/2002, o índice substitutivo utilizado para a atualização monetária dos créditos do contribuinte para com a Fazenda passa a ser o IPCA-E, divulgado pelo IBGE, na forma da resolução 242/2001 do Conselho da Justiça Federal". (REsp 761.319/RS, Rel. Ministro Luiz Fux, Primeira Turma, julgado em 07/03/2006, DJ 20/03/2006 p. 208) 6. A doutrina do tema corrobora esse entendimento, assentando que "tem-se utilizado o IPCA-E a partir de então pois servia de parâmetro para a fixação da UFIR. Não há como aplicar a SELIC, pois esta abrange tanto correção como juros". (PAUSEN, Leandro. ÁVILA, René Bergmann. SLIWKA, Ingrid Schroder. Direito Processual Tributário. 5.ª ed. Porto Alegre: Livraria do Advogado editora, 2009, p. 404) 7. Dessa sorte, mutatis mutandis, adota-se como valor de alçada para o

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	cabimento de apelação em sede de execução fiscal o valor de R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), corrigido pelo IPCA-E a partir de janeiro de 2001, valor esse que deve ser observado à data da propositura da execução. 8. In casu, a demanda executiva fiscal, objetivando a cobrança de R$ 720,80 (setecentos e vinte reais e oitenta centavos), foi ajuizada em dezembro de 2005. O Novo Manual de Cálculos da Justiça Federal, (disponível e &lt;http://aplicaext.cjf.jus.br/phpdoc/sicomo/&gt;), indica que o índice de correção, pelo IPCA-E, a ser adotado no período entre jan/2001 e dez/2005 é de 1,5908716293. Assim, R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), com a aplicação do referido índice de atualização, conclui-se que o valor de alçada para as execuções fiscais ajuizadas em dezembro/2005 era de R$ 522,24 (quinhentos e vinte e dois reais e vinte a quatro centavos), de sorte que o valor da execução ultrapassa o valor de alçada disposto no artigo 34, da Lei n.º 6.830/80, sendo cabível, a fortiori, a interposição da apelação. 9. Recurso especial conhecido e provido. Acórdão submetido ao regime do art. 543-C do CPC e da Resolução STJ 08/2008.” (REsp 1168625/MG, Rel. Ministro LUIZ FUX, PRIMEIRA SEÇÃO, julgado em 09/06/2010, DJe 01/07/2010) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Em verdade, na data da distribuição do presente feito (maio de 2021), 50 ORTN correspondiam a R$ R$ 1.113,30 (mil cento e treze reais e trinta centavos) (&lt;https://www3.bcb.gov.br/CALCIDADAO/publico/corrigirPorIndice.do?method=corrigirPorIndice&gt;).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desse modo, o que se conclui é que a apelação cível interposta não preenche o requisito intrínseco do cabimento, não podendo, desta maneira, ser conhecida.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tal fato se explica pelo motivo de que a sentença proferida em 1º grau de jurisdição somente poderia ter sido impugnada mediante a propositura de embargos infringentes e embargos de declaração, por força de expressa previsão legal.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Não é outro o posicionamento adotado pela mais abalizada doutrina, conforme se depreende dos trechos a seguir:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Das sentenças de primeira instância, proferidas em execuções de valor igual ou inferior a 50 ORTNs só se admitirão embargos infringentes. (...) com o objetivo de evitar que a segunda instância fique assoberbada com processos de reduzido valor...” (Teoria e Prática do Processo Executivo Fiscal; Antônio Carlos Costa e Silva; Aide Editora; 2ª edição; Rio de Janeiro; pág. 631)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Das sentenças de primeira

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	instância proferidas em execuções fiscais de valor igual ou inferior a 50 (cinqüenta) ORTN só se admitirão embargos infringentes e de declaração. (...) Na verdade, tais sentenças são irrecorríveis, não podendo ser desafiadas pelo recurso de apelação. Cabe, apenas, para o próprio juiz, embargos declaratórios ou um recurso denominado de embargos infringentes, que não se confundem com os embargos infringentes previstos no CPC. Trata-se de recurso intentado para o próprio juiz para que ele reveja sua sentença.” (A Fazenda Pública em Juízo; Leonardo José Carneiro da Cunha; Editora Dialética; 4ª edição; São Paulo; págs. 316/317)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Assim, torna-se patente que a inadequada propositura de apelação cível, quando a Lei dispõe de maneira clara e específica (art. 34 da Lei 6.830/80) que o recurso cabível seria os embargos infringentes, não permite a aplicação do princípio da fungibilidade, porquanto tem-se na espécie erro grosseiro, que desautoriza a incidência da instrumentalidade das formas, até mesmo por inexistir dúvida objetiva no caso.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Mais uma vez, o magistério jurisprudencial:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO REGIMENTAL NO RECURSO ESPECIAL. EXECUÇÃO FISCAL. EXTINÇÃO. VALOR INFERIOR A 50 ORTNS. APELAÇÃO NÃO ADMITIDA. RECURSO CABÍVEL. EMBARGOS INFRINGENTES. ART. 34 DA LEI 6.830/80. PRINCÍPIO DA FUNGIBILIDADE RECURSAL. INAPLICABILIDADE. ACÓRDÃO RECORRIDO EM SINTONIA COM O ATUAL ENTENDIMENTO DO STJ. SÚMULA 83/STJ. AGRAVO REGIMENTAL IMPROVIDO. 1. A aplicação alternativa do Princípio da Fungibilidade encontra óbice, na medida em que impede a interposição de determinado recurso quando outro é previsto na legislação vigente, conforme dispõe o art. 34 da LEF que das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN só se admitirão Embargos Infringentes e de Declaração. 2. Inexistente dúvida objetiva acerca do recurso a ser interposto, como é o caso dos autos, em face da expressa disposição contida no art. 34 da Lei 6.830/80, não se admite a aplicação do Princípio da Fungibilidade Recursal. 3. O acórdão recorrido está em sintonia com o atual entendimento deste Tribunal Superior, razão pela qual não merece prosperar a irresignação. Incide, in casu, o princípio estabelecido na Súmula 83/STJ: "Não se conhece do Recurso Especial pela divergência, quando a orientação do Tribunal se firmou no mesmo sentido da decisão recorrida." 4. Cumpre ressaltar que a referida orientação é aplicável também aos recursos interpostos pela alínea "a" do art. 105, III, da Constituição Federal de 1988. Nesse sentido: REsp 1.186.889/DF, Segunda Turma, Relator Ministro Castro Meira, DJe de 2.6.2010. 5. Agravo Regimental não provido.” (AgRg no AREsp 727.807/RJ, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 01/03/2016, DJe 19/05/2016) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-

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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">Neste sentido a linha de raciocínio esposada por esta egrégia Corte de Justiça:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO INTERNO. DECISÃO UNIPESSOAL DO RELATOR QUE DEIXOU DE CONHECER DA APELAÇÃO CÍVEL. AUSÊNCIA DE INTERESSE RECURSAL. EXECUÇÃO FISCAL. CRÉDITO EXEQUENDO INFERIOR AO TETO DE ALÇADA PREVISTO NO ART. 34 DA LEI Nº 6.830/1980. SENTENÇA TERMINATIVA, NOS MOLDES DO ART. 267, VI, CPC/1973. RECURSO DESPROVIDO. 1- Nas sentenças proferidas em execuções fiscais cuja dívida não alcança o teto mensurado no art. 34 da Lei nº 6.830/1980, são admissíveis tão somente embargos de declaração e embargos infringentes de alçada, por expressa disposição legal. Precedentes do STJ e deste Tribunal. 2- A Súmula 452 do STJ não diz respeito à decisão que deixa de conhecer do recurso. No caso dos autos, o valor executado corrigido é inferior a 50 ORTN, a obstar o conhecimento do apelo. As alegações recursais não se mostram razoáveis para reformar a decisão monocrática. 3- Agravo interno conhecido e desprovido.” (AR 0003462-92.2009.8.06.0070; Relator(a): FERNANDO LUIZ XIMENES ROCHA; Comarca: Crateús; Órgão julgador: 1ª Câmara Direito Público; Data do julgamento: 20/03/2017; Data de registro: 20/03/2017; Outros números: 3462922009806007050000) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. VALOR EXEQUENDO INFERIOR A 50 ORTN. IMPOSSIBILIDADE DE INTERPOSIÇÃO DE APELAÇÃO. INTELIGÊNCIA DO ART. 34 DA LEI Nº 6.830/1980. INADEQUAÇÃO DA VIA ELEITA. PRECEDENTES DESTA CORTE E DO STJ. RECURSO NÃO CONHECIDO. 1. O art. 34 da Lei 6.830/1980 dispõe que o meio adequado para impugnação de sentenças proferidas em sede de execuções fiscais que não ultrapassem o montante de 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional – ORTN são embargos de declaração e embargos infringentes dirigidos ao juízo que proferiu a decisão. 2. <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-

Processo	0050162-08.2021.8.06.0135
	align:baseline;white-space:pre;white-space:pre-wrap;">A importância exequenda está aquém do patamar que possibilita a interposição de recurso apelatório dirigido a esta Egrégia Corte de Justiça, razão pela qual torna-se imperioso o não conhecimento do feito, ante a inadequação da via eleita. Precedentes desta Corte e do STJ. 3. Recurso não conhecido." (APC 0001302-49.2009.8.06.0182; Relator(a): LUIZ EVALDO GONÇALVES LEITE; Comarca: Viçosa do Ceará; Órgão julgador: 2ª Câmara Direito Público; Data do julgamento: 15/03/2017; Data de registro: 15/03/2017) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">"PROCESSUAL CIVIL. TRIBUTÁRIO. AÇÃO DE EXECUÇÃO FISCAL. AGRAVO REGIMENTAL. APELAÇÃO. IMPOSSIBILIDADE DE APELAÇÃO EM CASOS DE EXECUÇÃO FISCAL CUJO VALOR SEJA INFERIOR A 50 ORTN – LEI 6.830/1980, ART. 34. CONSTITUCIONALIDADE RECONHECIDA PELO STF. INEXISTÊNCIA DE AFRONTA AO DUPLO GRAU DE JURISDIÇÃO. PRINCÍPIOS DA LEGALIDADE, DO DEVIDO PROCESSO LEGAL, DA AMPLA DEFESA, DO CONTRADITÓRIO E DA INAFASTABILIDADE DA PRESTAÇÃO JURISDICIONAL PRESERVADOS. PRECEDENTES DO SUPREMO TRIBUNAL FEDERAL, SUPERIOR TRIBUNAL DE JUSTIÇA E DESTA CORTE DE JUSTIÇA. I. Trata-se de Ação Execução Fiscal promovida pelo Município de Crateús, que tramita sob o nº 15877-68.2013.806.0070, na qual pretende o Ente o recebimento do valor de R$ 594,58 (quinhentos e noventa e quatro reais e cinquenta e oito centavos) proveniente de IPTU regularmente inscrito em Dívida Ativa. II. A Lei 6.830/1980, art. 34, expressamente determina que, da sentença de 1º grau proferida nos autos de uma Execução Fiscal cujo valor objeto da ação atinja até 50 (cinquenta) ORTN, aceitar-se-á, tão somente, a interposição de Embargos Infringentes e Embargos de Declaração<span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">. III. Acerca do tema, cumpre destacar que o SUPERIOR TRIBUNAL DE JUSTIÇA, no julgamento do RESP 1.168.625, de Relatoria do Ministro Luiz Fux, consolidou o entendimento de que com a extinção da ORTN o valor da alçada deve ser encontrado a partir da interpretação da norma que extinguiu o índice, como forma de evitar a perda do valor aquisitivo. Desse modo, entendeu que 50 ORTN equivaleria ao valor de R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) a partir de janeiro de 2001 e que tal valor deve ser sempre corrigido pelo IPCA-E. IV. Assim, conclui-se que o valor de 50 ORTN equivalia a R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) em janeiro de 2001 e que tal valor deve ser atualizado pelo IPCA/E até a data da distribuição da ação de execução fiscal para verificar o valor equivalente. Na presente situação, atualizando o aludido valor por meio do site do Banco Central do Brasil, verifica-se que na data do ajuizamento da Ação de Execução Fiscal, ou seja, em abril de 2013, o valor de 50 ORTN equivalia a R$ 718,29 (setecentos e dezoito reais e vinte e nove centavos). V. Desse modo, verificando-se que o débito atualizado abrange o valor de R$ 594,58 (quinhentos e noventa e quatro centavos e cinquenta e oito centavos), já atualizado e corrigido monetariamente à data do ajuizamento da ação, ou seja, em abril de 2013, consoante Certidões da Dívida Ativa (fls.5/6), conclui-se pela impossibilidade de interposição de recurso de apelação, porquanto ausente requisito intrínseco basilar ao seu conhecimento, eis que o valor da execução não ultrapassou os 50 ORTN. VI. Ressalta-se que o Supremo Tribunal Federal, quando do julgamento do ARE 637.975, com repercussão geral reconhecida, de relatoria do eminente Ministro Cezar Peluzo, explicitamente obstou qualquer afronta ao duplo grau de jurisdição o fato de não ser recebido recurso de apelação em face da restrição imposta no artigo 34 da Lei 6.830/1980. Da mesma forma, restou afastada a alegada violação aos princípios da legalidade, do

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	devido processo legal, da ampla defesa, do contraditório e da inafastabilidade da prestação jurisdicional. VII. Logo, depreende-se que resta patente a interposição errônea da apelação pelo Município, o que, por consequência, configura erro grosseiro e enseja o não recebimento do apelo, fato que deve ser reconhecido nesta instância. Ademais, faz-se mister salientar que não se permite na presente situação a aplicação do princípio da fungibilidade, porquanto, conforme registrado alhures, trata-se de erro grosseiro, que desautoriza a incidência da instrumentalidade das formas, até mesmo por inexistir dúvida objetiva no caso. VIII. Agravo Regimental conhecido, mas improvido.” (AR 0015877-68.2013.8.06.0070; Relator(a): INACIO DE ALENCAR CORTEZ NETO; Comarca: Crateús; Órgão julgador: 3ª Câmara Direito Público; Data do julgamento: 28/11/2016; Data de registro: 28/11/2016; Outros números: 15877682013806007050000) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Dessa maneira, por ter a Fazenda Pública utilizado equivocadamente o recurso de apelação, laborando contra legem, o não conhecimento do inconformismo, é medida que se impõe.</p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Diante do exposto, com base nas razões retro expendidas, considerando, ainda, o disposto no art. 34 da Lei de Execuções Fiscais, não conheço da apelação interposta, uma vez que incabível para a espécie.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024. <br /> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO &#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Portaria 1550/2024</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;">

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Número de ordem	68
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adicional de Periculosidade
Polo ativo	DAMIAO FURTADO DE OLIVEIRA
Advogado(s) - Polo ativo	AQUILES LIMA DE SOUSA - (CE22030-A)
Polo passivo	MUNICIPIO DE MAURITI Procuradoria do Município de Mauriti
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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	0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de Decidir</p><p style="line-height: 1.656; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. É sabido que a concessão do adicional de periculosidade tem por objetivo a compensação dos riscos sofridos no exercício da função pública, mostrando-se, por isso, indispensável a realização de perícia técnica adequada à análise da periculosidade a que se submete, diariamente, o servidor.</p><p style="line-height: 1.656; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. A necessidade da realização de perícia consiste em condição sine qua non para a concessão do adicional de periculosidade, nos termos do disposto no art. 77 da Lei Municipal nº 518/200312/2006 (Estatuto dos Servidores Públicos do Município de Mauriti).</p><p style="line-height: 1.656; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Destarte, uma vez evidenciado que a existência de perícia constitui requisito primordial para o correto deslinde da demanda, é nula de pleno direito a sentença proferida pelo magistrado de primeiro grau que resolveu antecipadamente a lide, sem ter determinado a realização da referida prova.</p><p style="line-height: 1.656; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Logo, a anulação da sentença e a retorno dos autos à origem é medida que se impõe.</p><p style="line-height: 1.656; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height: 1.656; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Apelação conhecida e provida. Sentença anulada.</p><p style="line-height: 1.656; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> _____________</p><p style="line-height: 1.656; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Dispositivos relevantes citados: Lei Municipal nº 518/2003, art. 77.</p><p style="line-height: 1.656; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Jurisprudência relevante citada: TJCE: APELAÇÃO CÍVEL - 02039845220228060112, Relator(a): LISETE DE SOUSA GADELHA, 1ª Câmara de Direito Público, Data do julgamento: 22/08/2023.&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif;

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	color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000140-26.2024.8.06.0122, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação interposta, para dar-lhe provimento, no sentido de anular a sentença recorrida e, consequentemente, determinar o retorno dos autos à origem, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Fortaleza, data e hora indicadas no sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 4pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORT. 1550/2024</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta em face de sentença proferida pelo Juízo da Vara Única da Comarca de Mauriti que julgou improcedente o pedido formulado na inicial.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr">O caso/a ação originária: Damião Furtado de Oliveira ingressou com ação ordinária contra o Município de Mauriti afirmando, em suma, ser servidor público daquela edilidade, ocupante do cargo de “vigia”, desde 01/08/2011.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Alegou que, por exercer suas atividades em constante exposição de risco, teria direito ao recebimento de parcelas referentes ao adicional de periculosidade no percentual de 25% (vinte e cinco por cento) sobre suas remunerações.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em <span style="font-size: 12pt; font-family: Arial, sans-serif; color:

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	#000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">contestação, ID 15111553, o promovido sustentou a prescrição quinquenal e a incorreção do valor da causa. Defendeu a necessidade de perícia técnica para pagamento do adicional e a impossibilidade de pagamento de verbas retroativas.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ao final, requereu a improcedência dos pedidos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Sentença: proferida pelo Juízo a quo, ID 15111564, pela improcedência do pedido autoral. Transcreve-se seu dispositivo, na parte que interessa:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ A guiza do exposto, por tudo que consta nos autos e com fulcro no art. 487, I do CPC, julgo IMPROCEDENTE a pretensão autoral, conforme fundamentação supra.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Deixo de condenar o vencido em custas e honorários advocatícios, posto litigar sob o pálio da justiça gratuita (art. 98, § 3º do CPC).”</p><p style="line-height: 0.03818181818181818; margin-left: 113pt; text-indent: 1pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Irresignado, o autor interpôs recurso apelatório, ID 15111570, requerendo a anulação da sentença a fim de viabilizar a perícia técnica visando aferir a existência de trabalho periculoso.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Contrarrazões <span style="font-size: 12pt;

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	font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">, apresentadas em ID 15111573, pugnando pela manutenção da decisão vergastada em sua totalidade.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Parecer da Procuradoria Geral de Justiça , ID 15525743, opinando pelo conhecimento do recurso, deixando de se manifestar sobre o mérito da controvérsia por entender ausente interesse público apto a ensejar a sua intervenção.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Preenchidos os requisitos intrínsecos e extrínsecos de admissibilidade, conheço do recurso apelatório interposto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> A questão em discussão consiste em verificar se correto a dispensa da prova pericial e o julgamento antecipado do feito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Como relatado acima, o autor, servidor público municipal, ingressou com ação ordinária em face do Município de Mauriti afirmando, em suma, ser ocupante do cargo de “vigia”, e que, por exercer sua atividade em constante exposição de risco, teria direito ao recebimento de parcelas referentes ao adicional de periculosidade no percentual de 25% (vinte e cinco por cento) sobre suas remunerações.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Sobre o assunto, o Estatuto dos Servidores Públicos do Município de Mauriti (Lei Municipal nº 518/2003) dispõe que:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “ ART. 77 – O servidor publico municipal que trabalhar, com habitualidade, em locais insalubres ou em contato permanente com substancia tóxica, radioativa ou com risco de vida, fará jus ao adicional pelo exercício de atividades insalubres ou perigosas, a incidir sobre o vencimento do cargo publico efetivo.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> […]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">ART. 80 – Na concessão dos adicionais de atividade insalubre<span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">s ou perigosas, serão observados as situações concretas que serão avaliadas e enquadrados nos seguintes níveis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II – Atividade perigosa de grau:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> a) Mínimo;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> b) Médio;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> c) Maximo;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 1º - Os adicionais de atividades insalubres e perigosas serão concedidos de acordo com os seguintes percentuais:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I – 15% (quinze por cento) do vencimento básico do servidor público municipal para atividade de grau mínimo.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II – 20% (vinte por cento) do vencimento básico do servidor público municipal para a atividade de grau médio;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III – 25% (vinte e cinco por cento) do vencimento básico do servidor público municipal para a atividade de grau Maximo.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 4º - São consideradas atividades ou operações perigosas, aquelas que, por sua natureza ou métodos de trabalho, impliquem no contato permanente com inflamáveis ou explosivos em condições de risco acentuado.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 6º - na identificação das atividades consideradas insalubres e perigosas serão observados os parâmetros fixados elo ministério do trabalho para os trabalhadores em geral, exceto quando á fixação dos percentuais dos adicionais que obedecerão ao disposto no § 1º deste artigo.”(destacado)</p><p style="text-indent: 8%; text-align:

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	center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Com efeito o pagamento de adicional de periculosidade e sua gradação encontra previsão no Estatuto dos Servidores do Município.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">E, pelo que se depreende, a concessão de tal vantagem tem por objetivo a compensação dos riscos sofridos no exercício da função pública, mostrando-se, por isso mesmo, indispensável a realização de perícia técnica adequada à análise do grau de periculosidade a que se submete, diariamente, o servidor.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em outras palavras, a necessidade da realização de perícia consiste em condição sine qua non para a concessão do adicional de periculosidade ao servidor, nos termos da legislação municipal aplicável ao caso.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Assim, uma vez evidenciado que a existência de perícia constitui requisito primordial para o correto deslinde da demanda, é nula de pleno direito a sentença proferida pelo magistrado de primeiro grau que resolveu antecipadamente a lide, sem ter determinado a realização da referida prova.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Oportuno destacar, nesse ponto, que é exatamente esse o entendimento que vem sendo adotado pelas Câmaras de Direito Público do TJCE, ao se deparar com idênticas situações, in verbis:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“PROCESSUAL CIVIL. DIREITO ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. SERVIDOR PÚBLICO MUNICIPAL. VIGIA. PRETENSÃO DE RECEBER ADICIONAL DE PERICULOSIDADE. PREVISÃO LEI MUNICIPAL Nº 12/2006 (ESTATUTO DOS SERVIDORES PÚBLICOS MUNICIAIS DE JUAZEIRO DO NORTE), REGULAMENTADA PELO DECRETO

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	MUNICIPAL Nº 231/2008. NECESSIDADE PRODUÇÃO DE PROVA PERICIAL PARA DESLINDE DA LIDE. SENTENÇA ANULADA. 1. Cuida-se de Recurso de Apelação Cível, visando reformar sentença que julgou procedente a Ação Ordinária ajuizada em face do Município de Juazeiro do Norte, reconhecendo o direito do autor ao adicional de periculosidade no percentual de 30% (trinta por cento) sobre o salário, condenando a edilidade a implantar referido adicional em folha, com seus reflexos, desde a propositura da ação, devendo os valores atrasados serem calculados em fase de liquidação. 2. Autor, servidor público municipal, exercendo a função de Vigia, desde 15.01.2007, trabalhando em atividades de segurança pessoal ou patrimonial, fazendo jus portanto, ao percebimento do Adicional de Periculosidade, no percentual de 30%(trinta por cento), previsto na Lei Nº 5.139 de 13 de Abril de 2021. 3. O art. 69 da Lei Complementar nº 12/2006 (Estatuto dos Servidores Públicos Municiais de Juazeiro do Norte), devidamente regulamentada pelo Decreto Municipal nº 231, de 02/01/2008, prevê o percebimento do adicional de periculosidade e os percentuais relativos aos graus mínimo, médio e máximo e a aplicação de normas estabelecidas para trabalhadores em geral, legislação específica e demais normas do Ministério do Trabalho. 4. Nos termos do art. 7º do Decreto Municipal nº 231/2008, a periculosidade deve ser comprovada por meio da emissão de perícia técnica e emissão de Laudo Pericial no ambiente de trabalho do servidor requerente, a fim de que seja constatado se realmente a atividade é periculosa, e seja quantificado o correspondente grau. 5. A periculosidade é aferida por meio de perícia médica, com base nas Normas Regulamentadoras aprovadas pelo Ministério do Trabalho, e no caso em análise, diante do acervo probatório acostado aos autos, não verifica-se a presença de tal laudo pericial, sendo extremante precário para comprovar o direito alegado. 6. Diante da ausência de provas suficientes para o deslinde da lide, resta concluir, que a sentença merece ser anulada com o retorno dos autos ao primeiro grau para o regular processamento do feito, imprescindível a dilação probatória. 7. Apelação conhecida e provida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do Recurso de Apelação, para dar-lhe provimento, anulando a sentença vergastada, nos termos do voto da relatora, parte deste. Fortaleza, dia e horário registrados no sistema. MARIA IRANEIDE MOURA SILVA Presidente do Órgão Julgador e Relatora (Apelação Cível - 0054614-33.2021.8.06.0112, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 26/10/2022, data da publicação: 26/10/2022)“) (destacado)</p><p style="line-height: 1.38; margin-left: 113pt; text-align: center; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> ****</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“PLEITO DE CUMULAÇÃO DO BENEFÍCIO DE ADICIONAL DE PERICULOSIDADE. PERCENTUAL DE 30% (TRINTA POR CENTO). IMPOSSIBILIDADE. LEI MUNICIPAL Nº. 12/2006. NECESSIDADE DE LAUDO PERICIAL. INSTRUÇÃO NECESSÁRIA. ANULAÇÃO DA SENTENÇA. DEVOLUÇÃO PARA REGULARIZAÇÃO DAS PROVAS E NOVA APRECIAÇÃO. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. SENTENÇA ANULADA.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">1. Cuida-se de

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	Recurso de Apelação Cível que visa modificar a sentença de mérito que entendeu pela procedência da Ação Ordinária de Cobrança ajuizada pelo apelado, que condenou o município réu ao pagamento do adicional de periculosidade no percentual de 30% (trinta por cento). Em suas razões, argumenta a edilidade, em síntese, que o autor não faz jus ao adicional de periculosidade, posto que não implantadas as condições descritas em apresentação de laudo pericial. 2. O adicional de periculosidade é devido àqueles que exerçam suas atribuições em locais periculosos, ou seja, em circunstâncias que os exponha a incidência de agente ou locais nocivos à saúde, seja ele em decorrência da atividade desempenhada ou mesmo das péssimas condições de trabalho. No caso, a Lei Municipal nº. 12/2006 (Estatuto dos Servidores Públicos do Município de Juazeiro do Norte), no art. 69, prevê a concessão de adicional de periculosidade aos servidores que “trabalhem com habitualidade em locais periculosos ou em contato com substâncias tóxicas, radioativas ou em risco de vida”. 3. Contudo, não fora juntado ao presente feito o referido Laudo pericial onde se pudesse evidenciar a efetiva constatação da periculosidade em nível suficiente para garantir ao autor o adicional pleiteado. 4. Assim, que sejam os autos devolvidos ao primeiro grau para a devida instrução do feito, notadamente com a determinação de que seja efetivada uma perícia no local de trabalho do autor a fim de que se constate a eventual existência de periculosidade nas atribuições desempenhadas ou no ambiente em que os desempenha, nos termos da Lei Municipal nº 12/2006. 5. Recurso de Apelação conhecida e provida para anular a sentença de primeiro grau. (APELAÇÃO CÍVEL - 02039845220228060112, Relator(a): LISETE DE SOUSA GADELHA, 1ª Câmara de Direito Público, Data do julgamento: 22/08/2023) (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Vale destacar que o autor requereu, desde a inicial, a produção de prova pericial, reiterando o pedido na réplica (ID 15111557).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Sendo assim, não poderia o douto magistrado de primeiro grau sentenciar o feito sem a realização da prova técnica, única capaz de aferir a veracidade das afirmativas autorais e a existência ou não de atividade periculosa.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Destarte, constatada a necessidade de produção de prova pericial, impõe-se a anulação da sentença e o retorno do feito ao primeiro grau para regular prosseguimento, restando, em vista disso, prejudicado o exame do mérito da apelação.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr">Isto posto, conheço da apelação interposta, para dar-lhe provimento, a fim de anular a sentença recorrida, com o consequente retorno do feito ao Juízo a quo para seu regular processamento.</p><p

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	style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Fortaleza, data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORT. 1550/2024</p><p style="text-indent: 8%; text-align: center;"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	69
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Ação Anulatória
Polo ativo	G A COMERCIO DE DERIVADOS DE PETROLEO LTDA
Advogado(s) - Polo ativo	JOAO RAFAEL DE FARIAS FURTADO - (CE17739-A)
Polo passivo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3023291-30.2023.8.06.0001
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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RUwTnC2cXntABLwxAj0hmhkjRXuOGXBRVAMWEeMhHPMBtcH6VvmLaw3Mk1nhUzWXTIpKzgWZl4hmIVsrIRCgH4tM9gNH3JDQRbTQjnkKrBIBgCUbrC6bLZfv7vdFpGvbN5RBJqp3WwbnK2Nbac8yLEHnM2Q0ynLXRJ3ELqwR2QQSLsiBLqqdRgnn7F7tnsdQfc2YWELh5tZM3RsnrlumUHcmGVnBPfHT5PVMDkuEZR5E2kYV6lhJOAgvQ8bLkqvc7Ss1SKvfPrVRD3QY0HvQw7hqH2DqkkZN1QKoCmIo1Gk7TdJRWZXM7QhVRBMXqTtNb7fCPSm9QqPzSTGBoDuUvFm5gUZGajsbWDwqaqOuQZtUa0jXdR1b2zRdj8UQXaQg6d2TfF9RU2Y8BKxOn5nFTvNumPGbOWvAtiMkqgcJeX4YBFb5C8XOWkYCKJ6q6hdIYfJTUrvIBpFgZmTRKDOW2CN2d0N42PYAAApkS7aSPIUvMXBVUYYOu3ZqR8MRgSmQpXXVRYxtOFdEXNaxGvyRqq8FM8R6MnY6QVBRBwHYHDmjbhX1XbXVR4yD6zcYhmiB4R5LfVEEzMHaJ4qNCQJOYNu3RBNC28PGhqCHZULH7eOeCYIeGQJMW1PV1nG81gJ0JSYCRRXZXWxlTgmaa1UZJv51XDaLMBQVqMBYRBZWSM6QGCvbiTBbZDKJ5IZuaFZgZAIvtiXV26QmbxRRjPPeY7IG6GOpqFiB2lfkuQfEL1rBYeDd1npyWQ8ZlAKJBfEOzGXbf8wYLZzMfmoXXMcvJEfHKvTFYEi0sDkY5nXhQzfWvdvTkVFNDjR21P6CCcEIZMPsSbN2e6WMPdKMFM7rnlC7rsChHKN1BBrIt5P8Z5l1fyB6k1DQaX7MKaX9DRbY1G2b6sYcZ4bMptGE9NAmb3Uwq8Sw3APKzJ6FKLKLC2zSR8RIHRu1uQj1OpG2mmcxbFsBeIX2oEfkUMZ5LphG4ByUjuMZ8zhyMqBGyCGhWZBG66QKuAAAAHVRXRXZwnTUGawAAAABJRU5ErkJggg==

Processo	3023291-30.2023.8.06.0001
	variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;"> OMISSÃO . CONTRADIÇÃO. NÃO OCORRÊNCIA. S ÚMULA Nº 18 DO TJCE. RECURSO NÃO PROVIDO. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> I. Caso em exame </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> 1. Embargos de Declaração o post os em face de acórdão que negou provimento ao apelo interposto, mantendo integralmente a decisão proferida em primeira instância. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> II. Questão em Discussão </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> 2. A questão em discussão consiste em saber se houve omissão e/ou contradição n o voto embargado <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates:

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	normal; font-variant-position: normal; font-variant-emoji: normal;">.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> III. Razões de decidir</p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> 3. O recorrente afirma omissão e contradição no acórdão quanto à preliminar de nulidade da sentença sob o argumento de que não teria sido analisado o pedido de perícia e não ter havido a prévia intimação sobre o julgamento antecipado da lide, bem como po r reconhecer o voto embargado ser possível o exame jurisdicional de aspectos substanciais do ato, mas omitir -se quanto à tese recursal de que o ato praticado pelo PROCON seria ilegal por carência de fundamentação da penalidade imposta. </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> 4. Contudo, no que se refere à tese de que haveria contradição entre o voto embargado e outros julgados desta e. Corte de Justiça, impõe-se realçar que o vício que autoriza o uso deste recurso é o que se verifica entre proposições do provimento jurisdicional, assim a argumentação do recorrente configura, nesse ponto, nítida tentativa de desvirtuamento dos aclaratórios, devendo o argumento citado ser sustentado pelas vias próprias. </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> <span style="font-variant-numeric: normal; font-

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	variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;"> 5. Ademais, a análise do teor do decisório evidencia o enfrentamento das argumentações postas no recurso do apelante, ora embargante, reiteradas no s aclaratórios. E, ainda que assim não o fosse, consoante firme jurisprudência do STJ, não há ofensa ao art. 1.022 do CPC quando o órgão julgador decide a questão com base em fundamentação suficiente para o deslinde da controvérsia, não havendo a necessidade de análise de todos os pontos apresentados pelo insurgente. </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> 6. Igualmente, quanto à tese de que o voto teria sido omisso quanto à preliminar de cerceamento de defesa, melhor sorte não lhe assiste, já que o decisório embargado tratou expressamente sobre a argumentação posta pelo então apelante, esmiuçando as razões pelas quais não se verificaria nenhuma nulidade no acórdão recorrido, realçando ser o magistrado o destinatário das provas, podendo avaliar a necessidade de sua produção com esteio no seu livre convencimento motivado, ao passo que refuta a alegação de que a ocorrência de julgamento antecipado da lide sem prévio anúncio, por si só, não configuraria nulidade do decisório, sob pena de ofensa ao princípio do pas de nullité sans grief. </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> 7. Por fim, destaca-se que, inexistentes os vícios insertos no art. 1.022 do CPC, torna-se despicienda qualquer declaração para fins de prequestionamento de eventuais recursos à instância especial. </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> IV. Dispositivo e Tese </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> 8 . Embargos de Declaração conhecidos e desprovidos. Acórdão mantido. </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> __________ </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> Dispositivo relevante citado: CPC , art. <span style="font-

Processo	3023291-30.2023.8.06.0001
	size: 10pt;">1.022. </p><p class="western" style="margin-left: 4.5cm; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada: Súmula nº 18 do TJCE; STJ, EDcl no REsp 1797298/PR, Min. Herman Benjamin, Segunda Turma, julgado em: 19/11/2019, publicado em: 19/12/2019 . ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros números: 626694902015806000050001 </p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm; margin-bottom: 0cm;" align="justify"> &#160; </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Vistos, relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 3023291-30.2023.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e rejeitar o recurso , nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center"> <br /> </p><p style="text-indent: 8%; text-align: center;"> &#160; </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de embargos declaratórios opostos em face de acórdão da 3ª Câmara de Direito Público que, por unanimidade, negou provimento ao apelo interposto, nos seguintes termos (ID 14809639 da APC nº 3023291-30.2023.8.06.0001): </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="color: #000000; background-color: transparent; font-weight: 400; font-style: normal;

Processo	3023291-30.2023.8.06.0001
	font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> “EMENTA: Administrativo. Apelação Cível. Ação Ordinária. Não Conhecimento. Anulação de multa aplicada pelo PROCON. Desprovimento. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Apelação Cível em face de sentença que julgou improcedente a ação ordinária que buscava a anulação de multa aplicada pelo PROCON em decorrência de suposta violação a dispositivos do Código de Defesa do Consumidor (CDC). </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em Discussão </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste na possibilidade de não conhecimento da Remessa Necessária quando aferível o valor da condenação ou do proveito econômico. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Em homenagem aos princípios da eficiência e da celeridade, que sempre devem pautar a atuação do Poder Judiciário na busca pela razoável duração do processo, tem sido admitida a relativização da aplicação da Súmula nº 490 do STJ, quando, apesar de aparentemente ilíquido, o valor da condenação ou do proveito econômico, in concreto, puder ser aferido sem maior esforço e, indiscutivelmente, não alcançar o teto apontado pelo CPC/2015, para fins de submissão da sentença ao duplo grau de jurisdição. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. No presente caso, o proveito, econômico obtido pelo paciente se mostra perfeitamente mensurável, até mesmo pelo valor da causa (R$ 1.200,00) e, com absoluta certeza, será inferior a 500 (quinhentos) salários-mínimos (CPC/2015, art. 496, § 3º, inciso II), ainda que corrigido e atualizado monetariamente. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Remessa Necessária não conhecida. Sentença mantida. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ________ </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dispositivo relevante citado: CPC, art. 496, §3. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-

Processo	3023291-30.2023.8.06.0001
	bottom: 0pt;" dir="ltr"> Jurisprudência relevante citada: STJ, AgInt no REsp 1542426/MG; Rel. Min. Gurgel de Faria, Primeira Turma, j. 08/10/2019; STJ, REsp 1735097/RS, Rel. Min. Gurgel de Faria, Primeira Turma, j. 08/10/2019; Apelação Cível e Remessa Necessária 0008365-65.2019.8.06.0121, Rel. Desembargador(a) Francisco Gladyson Pontes, 2ª Câmara Direito Público, j. 15/12/2021.” </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Inconformada, G A Comércio de Derivados de Petróleo LTDA opôs embargos de declaração , requerendo o pronunciamento expresso quanto aos artigos 2º da Lei de Liberdade Econômica (13.874/19); Lei 1.521/51(art. 4º, alínea b) (e suas alterações pela Lei 7.492/86 e 8.137/90) , Lei 12.259/11 (art. 36, inciso III e § 3º, inciso IX), Lei 8.078/90 (art. 39, inciso X) , art. 170 da Constituição Federal, art. 28-A Decreto Estadual 2.181, além dos artigos 7º, 10º, 11º, 355, inciso I e 357, todos do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, alega que o voto embargado teria sido omisso quanto à preliminar de nulidade da sentença em razão da ausência de manifestação do Magistrado a quo quanto ao pleito de instrução processual e pedido de perícia, bem como por não ter havido a prévia intimação sobre o julgamento antecipado da lide, o que entende, ainda, contraditório em relação a outros julgados desta Corte de Justiça proferidos em casos análogos em que se reconheceu ofensa ao contraditório.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Defende, ainda, a omissão e a contradição do acórdão embargado por reconhecer ser possível o exame jurisdicional de aspectos substanciais do ato, mas omitir-se quanto à tese recursal de que o ato praticado pelo PROCON seria ilegal por carência de fundamentação da penalidade imposta, que teria deduzido erroneamente os lucros auferidos pela embargante. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Requer, ao fim, a modificação do acórdão recorrido e o prequestionamento da matéria. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Contrarrazões da parte embargada suplicando pela rejeição dos aclaratórios (ID 15674576), sustentando que, no acórdão embargado não haveria omissão, contradição, obscuridade ou erro material.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm; margin-bottom: 0cm;" align="justify"> <span id="docs-internal-guid-

Processo	3023291-30.2023.8.06.0001
	fed50223-7fff-3ff7-bfc5-983b00d3fb98">&#160; </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório. </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm;" align="justify"> <br /> </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dispõe o art. 1.022, I, II e III do CPC que cabem embargos de declaração quando houver na sentença, ou no acórdão, obscuridade, contradição, omissão ou erro material, sendo certo que o vício que autoriza o uso deste recurso é o que se verifica entre proposições do provimento jurisdicional, entre a fundamentação e a parte conclusiva ou dentro do próprio dispositivo .</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, evidencia-se que o recurso ora em exame não se destina à análise do argumento do embargante de que o decisório recorrido teria sido contraditório em relação a outros julgados desta e. Corte de Justiça, o que configura nítida tentativa de desvirtuamento dos aclaratórios, devendo o argumento citado ser sustentado pelas vias próprias. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Também a tese de que teria havido contradição do voto embargado ao reconhecer ser possível o exame jurisdicional de aspectos substanciais do ato, mas omitir-se em relação à argumentação de que o ato praticado pelo PROCON seria ilegal por carência de fundamentação da penalidade imposta, não merece acolhimento, uma vez que o acórdão recorrido analisou detidamente e suficientemente a referida alegação, não sendo possível, portanto, verificar contradição ou omissão do decisum sobre esse ponto, como ilustram os excertos adiante colacionados:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “Vê-se, pois, que é sim possível ao Poder Judiciário apreciar a regularidade de sanção imposta pela Administração, inclusive em relação ao seu motivo determinante, sob pena de acobertamento de eventuais ilegalidades e/ou arbitrariedades, que desbordem dos limites da discricionariedade. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Pois bem. No presente caso, porém, após exame da prova dos autos, verifica-se que, diversamente do que sustenta o autor/apelante, não há nenhuma mácula na decisão do PROCON, a ser afastada pelo Judiciário nesta oportunidade. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Com efeito, a partir da leitura dos atos administrativos ora atacados, constata-se que, in casu, o PROCON observou o devido processo administrativo, garantindo à autora a possibilidade de oferecer defesa em todas as suas fases. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

Processo	3023291-30.2023.8.06.0001
	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> Está claro que, ao deliberar pela aplicação das multas ora questionadas nos autos, o PROCON levou em consideração, notadamente, o fato de que a referida empresa elevou de forma injustificada os preços dos seus combustíveis, exigindo, assim, vantagem manifestamente excessiva do consumidor e, concomitantemente, prevalecendo-se de sua fraqueza, em afronta a direitos e garantias previstos expressamente no CDC (art. 39, IV, V e X e XIII). </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ora, no âmbito de uma relação de consumo, a adoção de práticas como essas, v.g., que colocam o consumidor em desvantagem exagerada, sem dúvida alguma, configura um abuso do fornecedor, passível de imposição de sanções previstas no CDC. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portanto, é patente que houve, in concreto, a violação pelo fornecedor do dever de boa-fé, colocando seus consumidores em situação de vulnerabilidade, o que levou o PROCON a penalizá-la, com fulcro no art. 39, IV, V e X e XIII, todos do CDC, e acima citados. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Lado outro, também não se vislumbra dos autos que o quantum da multa aplicada pelo PROCON (5.667,63 UFIRCES) tenha exorbitado dos parâmetros de razoabilidade e proporcionalidade traçados pelo CDC (art. 57), mas, ao contrário, guarda compatibilidade tanto com a natureza e a lesividade da prática abusiva perpetrada pela parte autora/apelante, quanto com o seu poderio econômico. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Até porque, é cediço que a multa, em casos assim, possui caráter sancionatório e pedagógico, isto é, desempenha o papel de punir o ato vedado pela lei e de evitar a sua reiteração, não ficando limitada aos danos causados aos consumidores ou à vantagem econômica auferida pelo fornecedor. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Não há, pois, que se falar em violação ao art. 57 do CDC. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desse modo, resta evidenciado que o PROCON Fortaleza atuou dentro dos limites de sua competência legal, não podendo o Poder Judiciário, no exercício de seu mister, adentrar no mérito de ato administrativo, sob pena de ofensa ao Princípio da Separação dos Poderes (art. 2º da Constituição Federal de 1988).” (ID 14809639) </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Curial realçar, ainda, que, consoante firme jurisprudência do STJ, não há ofensa ao art. 1.022 do CPC quando o órgão julgador decide a questão com base em fundamentação suficiente para o deslinde da controvérsia, não havendo a necessidade de análise de todos os pontos apresentados pelo insurgente, como ilustra o julgado a seguir: </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. RECURSO ESPECIAL. EXECUÇÃO DE SENTENÇA. SUBSTITUIÇÃO PROCESSUAL. OFENSA AO ART. 1.022 DO CPC NÃO CONFIGURADA. AUSÊNCIA DE OMISSÃO, CONTRADIÇÃO

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	OU OBSCURIDADE. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Nas razões do Recurso Especial, a parte recorrente requer a restauração da vigência plena dos artigos tidos por violados, garantindo a inteireza positiva, de autoridade e uniformidade de interpretação do Direito Federal, com (a) a extinção da execução em razão da ilegitimidade ativa do exequente e, (b) subsidiariamente, a reabertura do prazo para a apresentação de Embargos à Execução/Impugnação, mediante nova citação. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. No momento a insurgência se apresenta contra o acórdão que não conheceu do REsp, uma vez que o Tribunal de origem enfrentou o cerne das questões debatidas às fls. 526-532, e-STJ. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Assim, não se configura a ofensa ao art. 1.022 do Código de Processo Civil quando o Tribunal de origem julga integralmente a lide e soluciona a controvérsia. O órgão julgador não é obrigado a rebater, um a um, todos os argumentos trazidos pelas partes em defesa da tese que apresentaram. Deve apenas enfrentar a demanda, observando as questões relevantes e imprescindíveis à sua resolução. Nesse sentido: REsp 927.216/RS, Segunda Turma, Relatora Ministra Eliana Calmon, DJ de 13/8/2007; e REsp 855.073/SC, Primeira Turma, Relator Ministro Teori Albino Zavascki, DJ de 28/6/2007. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. A solução integral da controvérsia, com fundamento suficiente, não caracteriza ofensa ao art. 1.022 do CPC. Os Embargos Declaratórios não constituem instrumento adequado para a rediscussão da matéria de mérito, nem ao prequestionamento de dispositivos constitucionais com vistas à interposição de Recurso Extraordinário. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Não há lacuna na apreciação do decisum embargado. As alegações da parte embargante não têm o intuito de solucionar omissão, contradição ou obscuridade, mas denotam a vontade de rediscutir o julgado. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 6. Embargos de Declaração rejeitados.” (STJ, EDcl no REsp 1797298/PR, Min. Herman Benjamin, Segunda Turma, julgado em: 19/11/2019, publicado em: 19/12/2019) </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Igualmente, quanto a tese de que o voto teria sido omisso quanto a preliminar de cerceamento de defesa, melhor sorte não lhe assiste, já que o decisório embargado tratou expressamente sobre a argumentação posta pelo então apelante. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ora, da minuciosa análise dos autos, não se verifica qualquer nulidade no acórdão recorrido, vez que consta o fundamento da rejeição da preliminar de cerceamento de defesa, ao destacar que o magistrado é o destinatário das provas, podendo avaliar a necessidade de sua produção com esteio no seu livre convencimento motivado, ao passo que refuta a alegação de que a ocorrência de julgamento antecipado da lide sem prévio anúncio, por si só, não configuraria nulidade do decisório, sob pena de ofensa ao princípio do <span style="color: #000000;

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	background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">pas de nullité sans grief . Confira-se:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ - Da preliminar de ocorrência de cerceamento de defesa </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Em sede de recurso de apelação, foi suscitada preliminar que versa acerca da nulidade da sentença em face do julgamento antecipado da lide. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Como é cediço, o julgamento antecipado da lide não implica, por si só, em cerceamento do direito de defesa, porquanto a prova é destinada ao juiz da causa e a ele compete avaliar sua utilidade, necessidade e adequação, podendo indeferir as que reputar inúteis, desnecessárias ou protelatórias ao deslinde da causa. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, se o magistrado entender que a lide está madura para proferir decisão, cabe-lhe conhecer diretamente do pedido, julgando antecipadamente a lide, nos termos do art. 355, inciso I, do CPC, in verbis :</p><p style="line-height: 1.38; margin-left: 142pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Art. 355. O juiz julgará antecipadamente o pedido, proferindo sentença com resolução de mérito, quando: </p><p style="line-height: 1.38; margin-left: 142pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> I - não houver necessidade de produção de outras provas; (…) </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desta forma, não obstante o anúncio do julgamento antecipado, em regra, preceder a sentença, no presente caso, a ausência da intimação pessoal da empresa apelante não é apta a acarretar qualquer prejuízo, porquanto, a prova documental apresentada foi suficiente para a formação da convicção do julgador, não implicando em cerceamento do direito de defesa. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Nesse sentido é o entendimento do STJ no julgamento do AgInt no AgInt no AREsp nº 843.680/SP, de relatoria do Ministro Herman Benjamin: " O STJ possui entendimento de que o magistrado tem ampla liberdade para analisar a conveniência e a necessidade da produção de provas, podendo perfeitamente indeferir provas periciais, documentais, testemunhais e/ou proceder ao julgamento antecipado da lide, se considerar que há elementos nos autos suficientes para a formação da sua convicção quanto às questões de fato ou de direito vertidas no processo, sem que isso implique cerceamento do direito de defesa <span style="color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">." </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, a pretendida instrução processual somente postergaria ainda mais a solução do feito, prejudicando ambas as partes e, principalmente, àquele que tem o direito material a seu favor, uma vez que os elementos já constantes nos autos possibilitam o seu julgamento. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Afasto, portanto, a preliminar de cerceamento de defesa, face o julgamento antecipado da lide, porquanto a matéria em debate é eminentemente de direito.” </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dessarte, não se verifica nenhuma omissão, contradição ou erro material no julgado, como pretende o recorrente. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, resta claro e nítido o intuito do embargante, uma vez que não se vislumbra a existência de qualquer mácula capaz de modificar o acórdão recorrido. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Perquirir acerca do acerto ou desacerto de tal atividade interpretativa é medida reservada às vias recursais próprias, não cabendo à parte utilizar-se dos embargos de declaração para este fim, ainda que considere que a conclusão da Turma Julgadora não se afigura consentânea a melhor aplicação do direito. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portanto, o que se observa é uma nítida tentativa de rediscussão da matéria, o que é vedado nesta via estreita. Desta forma, há vários precedentes deste Tribunal e, por todos, o enunciado da súmula 18 do TJCE: </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 120.47244094488187pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De outro modo: os embargos declaratórios não possuem o condão de devolver mais uma vez a apreciação da matéria já decidida, ainda que a mesma se apresente de maneira que a parte vencida a considere imprecisa ou injusta. </p><p style="line-height: 1.7999999999999998; text-indent: 120.47244094488187pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Em suma: nos

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	presentes embargos de declaração, recurso que possui nítida natureza jurídica processual, com o objetivo de integrar o acórdão embargado, não há que se falar em omissão, contradição ou obscuridade diante de matéria tão exaustivamente estudada e discutida.</p><p style="line-height: 1.7999999999999998; text-indent: 120.47244094488187pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Finalmente, no que diz respeito ao prequestionamento, é lição comezinha que o embargante deve se ater, exclusivamente, às hipóteses previstas no art. 1.022 do CPC, conforme restou assentado pelo Órgão Especial deste Tribunal, no acórdão a seguir ementado, in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <span style="color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <span style="font-size: medium;">“PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRAVO REGIMENTAL NO MANDADO DE SEGURANÇA. OMISSÃO. INEXISTÊNCIA. APRECIAÇÃO DAS MATÉRIAS ARGUÍDAS. AUSÊNCIA DE ENQUADRAMENTO EM QUAISQUER DAS HIPÓTESES ELENCADAS NO ART. 1.022 DO CPC/2015. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. PREQUESTIONAMENTO. INVIABILIDADE. RECURSO CONHECIDO E DESPROVIDO. 1. Os embargos de declaração têm como escopo completar ou aclarar as decisões judiciais que tenham pontos omissos, obscuros ou contraditórios, sendo a presença destes vícios o pressuposto de admissibilidade dessa espécie recursal. 2. "A jurisprudência do Superior Tribunal de Justiça consolidou entendimento no sentido de que, em se tratando de redução de vencimentos e não de supressão, está configurada a relação de trato sucessivo, com a renovação mensal do prazo decadencial para a impetração do mandado de segurança." (STJ – MS 12413/DF – Rel. Min. Og Fernandes, Terceira Seção, julgado em 13/03/2013, Dje 21/03/2013) 3. "O servidor público não possui direito adquirido a regime jurídico, tampouco a regime de vencimentos ou de proventos, sendo possível à Administração promover alterações na composição remuneratória e nos critérios de cálculo, como extinguir, reduzir ou criar vantagens ou gratificações, instituindo o subsídio, desde que não haja diminuição no valor nominal percebido, em respeito ao princípio constitucional da irredutibilidade de vencimentos." (STJ – AgRg no RMS 43259/MS, Rel. Min. Herman Benjamin, Segunda Turma, julgado em 22/10/2013, Dje 09/12/2013). 4. O tema tratado no acórdão que se pretende levar à análise dos Tribunais Superiores não precisa, novamente, através de prequestionamento, ser decidido em embargos de declaração. 5. O prequestionamento deve pautar-se no disposto do art. 1.022, do Código de Processo Civil/2015; ausentes quaisquer dos vícios elencados no referido artigo, não é devida a declaração requerida. 6.Incidência da Súmula nº 18/TJCE que aduz: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada". 7. Recurso conhecido e desprovido.” (ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros números: 626694902015806000050001) (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o desprovimento dos presentes aclaratórios é medida que se impõe nesta oportunidade, tornando-se, outrossim, despicienda qualquer declaração para fins de prequestionamento de eventuais recursos à instância especial. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Desta forma, inexistentes os vícios apontados, a manutenção do acórdão recorrido é medida que se impõe. </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> DISPOSITIVO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Diante do exposto, em face da inexistência de qualquer obscuridade, contradição, omissão ou erro

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	material no julgado, conheço dos aclaratórios para NEGAR-LHES provimento, mantendo inalterado o acórdão embargado . Nego, outrossim, qualquer violação a dispositivos legais.</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> &#160; </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É como voto. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-bottom: 0cm;" align="justify"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	70
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE CARIRE
Advogado(s) - Polo ativo	PATRICIA ROSA MANSO NOBRE - (CE34329-A) SAULO GONCALVES SANTOS - (CE22281-A)
Polo passivo	MARDONIO ANACLETO DE AGUIAR
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3000249-72.2023.8.06.0058

Acordão

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Processo	3000249-72.2023.8.06.0058
	top:12pt;margin-bottom:0pt;" dir="ltr"> - Apelação não conhecida.</p><p align="center"> <strong id="docs-internal-guid-6c784ec9-7fff-87aa-48e9-259fc68b8cc2" style="font-weight:normal;"> <br /> </p><h3 style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height:1.7999999999999998;margin-left: 1pt;text-indent: 112.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000249-72.2023.8.06.005, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer da apelação interposta, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;margin-left: 1pt;text-indent: 112.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024. <br /> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Portaria 1550/2024</p><p align="center"> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta em face de sentença proferida pelo Juízo da Vara Única da Comarca de Cariré que decidiu pela extinção do processo sem resolução de mérito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">O caso/a ação originária: o Município de Cariré ajuizou Ação de Execução Fiscal em face de Mardonio Anacleto de Aguiar com base em certidões da dívida ativa, oriunda de débitos de IPTU, no valor total de R$ 223,68 (duzentos e vinte e três reais e sessenta e oito centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial, sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space:

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	pre-wrap; text-decoration: underline;">A Sentença: (ID 15521597) em que o Juízo da Vara Única da Comarca de Cariré decidiu pela extinção do processo sem resolução de mérito, por ausência de interesse de agir, sob o fundamento de que o valor executado não justificaria a movimentação do aparato judiciário. Transcrevo o dispositivo da sentença:</p><p style="line-height:1.38;margin-left: 114pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Ante ao exposto, com base no art. 485, VI, do CPC, EXTINGO O PROCESSO SEM RESOLUÇÃO DO MÉRITO.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Irresignado, o ente público interpôs o presente recurso apelatório (ID 15521600) pugnando pela regular continuidade de tramitação do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Inexistiram contrarrazões, conforme despacho de ID 15521602.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desnecessária a intervenção do Ministério Público , nos termos da súmula 189 do STJ.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É o relatório.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Trata o caso de execução fiscal ajuizada com o objetivo de executar créditos regularmente inscritos em dívida ativa.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-

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	serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">A presente demanda, por se referir a execução proposta pela Fazenda Pública, deve se desenvolver sob o rito previsto na Lei 6.830/80 (Lei de Execuções Fiscais – LEF). Partindo deste pressuposto, deve-se realizar o juízo de admissibilidade da apelação cível em análise.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Neste sentido, cumpre observar o disposto no art. 34 da LEF:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Art. 34 - Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">§ 1º - Para os efeitos deste artigo considerar-se-á o valor da dívida monetariamente atualizado e acrescido de multa e juros de mora e de mais encargos legais, na data da distribuição.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 2º - Os embargos infringentes, instruídos, ou não, com documentos novos, serão deduzidos, no prazo de 10 (dez) dias perante o mesmo Juízo, em petição fundamentada.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 3º - Ouvido o embargado, no prazo de 10 (dez) dias, serão os autos conclusos ao Juiz, que, dentro de 20 (vinte) dias, os rejeitará ou reformará a sentença.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Há que se destacar, de início, que referido dispositivo encontra-se em plena vigência, uma vez que recepcionado pela ordem jurídica vigente, consoante entendimento firmado pelo Supremo Tribunal Federal:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“AGRAVO REGIMENTAL NO AGRAVO DE INSTRUMENTO. CONSTITUCIONALIDADE DA LEI 6.830/80<span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-

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	space:pre-wrap;">. SUPERVENIÊNCIA DO ARTIGO 108, II, DA CB/88. REVOGAÇÃO TÁCITA. NÃO OCORRÊNCIA. PRECEDENTE. 1. Este Supremo Tribunal Federal já decidiu que o artigo 108, inciso II, da Constituição do Brasil, não revogou tacitamente o disposto do artigo 34 da Lei 6.830/80. Agravo regimental a que se nega provimento.” (STF, AI 710921 AgR, Relator(a):&#160; Min. EROS GRAU, Segunda Turma, julgado em 10/06/2008, DJe-117 DIVULG 26-06-2008 PUBLIC 27-06-2008 EMENT VOL-02325-16 PP-03211) (destacamos)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">“RECURSO. Agravo convertido em Extraordinário. Apelação em execução fiscal. Cabimento. Valor inferior a 50 ORTN. Constitucionalidade. Repercussão geral reconhecida. Precedentes. Reafirmação da jurisprudência. Recurso improvido. É compatível com a Constituição norma que afirma incabível apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN.” (STF, ARE 637975 RG, Relator(a): Min. MINISTRO PRESIDENTE, julgado em 09/06/2011, DJe-168 DIVULG 31-08-2011 PUBLIC 01-09-2011 EMENT VOL-02578-01 PP-00112 REVJMG v. 62, n. 198, 2011, p. 405-407) (destacamos)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Agravo regimental no recurso extraordinário com agravo. Negativa de prestação jurisdicional. Não ocorrência. Impossibilidade de apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN. Princípios do devido processo legal, do contraditório e da ampla defesa. Inexistência de violação. 1. A jurisdição foi prestada pelo Tribunal de origem mediante decisão suficientemente fundamentada. 2. O Supremo Tribunal Federal, no julgamento do ARE nº 637.975/MG-RG (DJe de 1º/9/11), com repercussão geral reconhecida, de relatoria do Ministro Cezar Peluzo, entendeu que a norma que afirma ser incabível apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN não afronta os princípios constitucionais da legalidade, do devido processo legal, da ampla defesa, do contraditório, da inafastabilidade da prestação jurisdicional e do duplo grau de jurisdição<span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-

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	decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">. 3. Agravo regimental não provido.” (STF, ARE 639448 AgR, Relator(a): Min. DIAS TOFFOLI, Primeira Turma, julgado em 19/06/2012, ACÓRDÃO ELETRÔNICO DJe-155 DIVULG 07-08-2012 PUBLIC 08-08-2012) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Pois bem. Ocorre que o caso dos autos envolve quantia inferior ao valor de alçada legalmente previsto, conforme estabeleceu o colendo STJ, em julgado adiante transcrito, sob o rito dos recursos repetitivos:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. RECURSO ESPECIAL REPRESENTATIVO DA CONTROVÉRSIA. ART. 543-C, DO CPC. TRIBUTÁRIO. EXECUÇÃO FISCAL. VALOR DE ALÇADA. CABIMENTO DE APELAÇÃO NOS CASOS EM QUE O VALOR DA CAUSA EXCEDE 50 ORTN'S. ART. 34 DA LEI N.º 6.830/80 (LEF). 50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27, EM DEZ/2000. PRECEDENTES. CORREÇÃO PELO IPCA-E A PARTIR DE JAN/2001. 1. O recurso de apelação é cabível nas execuções fiscais nas hipóteses em que o seu valor excede, na data da propositura da ação, 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, à luz do disposto no artigo 34, da Lei n.º 6.830, de 22 de setembro de 1980. 2. A ratio essendi da norma é promover uma tramitação mais célere nas ações de execução fiscal com valores menos expressivos, admitindo-se apenas embargos infringentes e de declaração a serem conhecidos e julgados pelo juízo prolator da sentença, e vedando-se a interposição de recurso ordinário. 3. Essa Corte consolidou o sentido de que "com a extinção da ORTN, o valor de alçada deve ser encontrado a partir da interpretação da norma que extinguiu um índice e o substituiu por outro, mantendo-se a paridade das unidades de referência, sem efetuar a conversão para moeda corrente, para evitar a perda do valor aquisitivo", de sorte que "50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) a partir de janeiro/2001, quando foi extinta a UFIR e desindexada a economia". (REsp 607.930/DF, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 06/04/2004, DJ 17/05/2004 p. 206) 4. Precedentes jurisprudenciais: AgRg no Ag 965.535/PR, Rel. Ministro Mauro Campbell Marques, Segunda Turma, julgado em 02/10/2008, DJe 06/11/2008; AgRg no Ag 952.119/PR, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 19/02/2008, DJ 28/02/2008 p. 1; REsp 602.179/SC, Rel. Ministro Teori Albino Zavascki, Primeira Turma, julgado em 07/03/2006, DJ 27/03/2006 p. 161. 5. Outrossim, há de se considerar que a jurisprudência do Egrégio STJ manifestou-se no sentido de que "extinta a UFIR pela Medida Provisória nº 1.973/67, de 26.10.2000, convertida na Lei 10.552/2002, o índice substitutivo utilizado para a atualização monetária dos créditos do contribuinte para com a Fazenda passa a ser o IPCA-E, divulgado pelo IBGE, na forma da resolução 242/2001 do Conselho da Justiça Federal". (REsp 761.319/RS, Rel. Ministro Luiz Fux, Primeira Turma, julgado em 07/03/2006, DJ 20/03/2006 p. 208) 6. A doutrina do tema corrobora esse entendimento, assentando que "tem-se utilizado o IPCA-E a partir de então pois servia de parâmetro para a fixação da UFIR. Não há como aplicar a SELIC, pois esta abrange tanto correção como juros". (PAUSEN, Leandro. ÁVILA, René Bergmann. SLIWKA, Ingrid Schroder. Direito Processual Tributário. 5.ª ed. Porto Alegre: Livraria do Advogado editora, 2009, p. 404) 7. <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-

Processo	3000249-72.2023.8.06.0058
	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">Dessa sorte, mutatis mutandis, adota-se como valor de alçada para o cabimento de apelação em sede de execução fiscal o valor de R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), corrigido pelo IPCA-E a partir de janeiro de 2001, valor esse que deve ser observado à data da propositura da execução. 8. In casu, a demanda executiva fiscal, objetivando a cobrança de R$ 720,80 (setecentos e vinte reais e oitenta centavos), foi ajuizada em dezembro de 2005. O Novo Manual de Cálculos da Justiça Federal, (disponível e &lt;http://aplicaext.cjf.jus.br/phpdoc/sicomo/&gt;), indica que o índice de correção, pelo IPCA-E, a ser adotado no período entre jan/2001 e dez/2005 é de 1,5908716293. Assim, R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), com a aplicação do referido índice de atualização, conclui-se que o valor de alçada para as execuções fiscais ajuizadas em dezembro/2005 era de R$ 522,24 (quinhentos e vinte e dois reais e vinte a quatro centavos), de sorte que o valor da execução ultrapassa o valor de alçada disposto no artigo 34, da Lei n.º 6.830/80, sendo cabível, a fortiori, a interposição da apelação. 9. Recurso especial conhecido e provido. Acórdão submetido ao regime do art. 543-C do CPC e da Resolução STJ 08/2008.” (REsp 1168625/MG, Rel. Ministro LUIZ FUX, PRIMEIRA SEÇÃO, julgado em 09/06/2010, DJe 01/07/2010) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Em verdade, na data da distribuição do presente feito (novembro de 2023), 50 ORTN correspondiam a R$ R$ 1.314,85 (mil trezentos e quatorze reais e oitenta e cinco centavos) (&lt;https://www3.bcb.gov.br/CALCIDADAO/publico/corrigirPorIndice.do?method=corrigirPorIndice&gt;).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desse modo, o que se conclui é que a apelação cível interposta não preenche o requisito intrínseco do cabimento, não podendo, desta maneira, ser conhecida.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tal fato se explica pelo motivo de que a sentença proferida em 1º grau de jurisdição somente poderia ter sido impugnada mediante a propositura de embargos infringentes e embargos de declaração, por força de expressa previsão legal.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Não é outro o posicionamento adotado pela mais abalizada doutrina, conforme se depreende dos trechos a seguir:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Das sentenças de primeira instância, proferidas em execuções de valor igual ou inferior a 50 ORTNs só se admitirão embargos infringentes. (...) com o objetivo de evitar que a segunda instância fique assoberbada com processos de reduzido valor...” (Teoria e Prática do Processo Executivo Fiscal; Antônio Carlos Costa e Silva; Aide Editora; 2ª edição; Rio de Janeiro; pág. 631)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-

Processo	3000249-72.2023.8.06.0058
	size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">“Das sentenças de primeira instância proferidas em execuções fiscais de valor igual ou inferior a 50 (cinqüenta) ORTN só se admitirão embargos infringentes e de declaração. (...) Na verdade, tais sentenças são irrecorríveis, não podendo ser desafiadas pelo recurso de apelação. Cabe, apenas, para o próprio juiz, embargos declaratórios ou um recurso denominado de embargos infringentes, que não se confundem com os embargos infringentes previstos no CPC. Trata-se de recurso intentado para o próprio juiz para que ele reveja sua sentença.” (A Fazenda Pública em Juízo; Leonardo José Carneiro da Cunha; Editora Dialética; 4ª edição; São Paulo; págs. 316/317)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Assim, torna-se patente que a inadequada propositura de apelação cível, quando a Lei dispõe de maneira clara e específica (art. 34 da Lei 6.830/80) que o recurso cabível seria os embargos infringentes, não permite a aplicação do princípio da fungibilidade, porquanto tem-se na espécie erro grosseiro, que desautoriza a incidência da instrumentalidade das formas, até mesmo por inexistir dúvida objetiva no caso.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Mais uma vez, o magistério jurisprudencial:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO REGIMENTAL NO RECURSO ESPECIAL. EXECUÇÃO FISCAL. EXTINÇÃO. VALOR INFERIOR A 50 ORTNS. APELAÇÃO NÃO ADMITIDA. RECURSO CABÍVEL. EMBARGOS INFRINGENTES. ART. 34 DA LEI 6.830/80. PRINCÍPIO DA FUNGIBILIDADE RECURSAL. INAPLICABILIDADE. ACÓRDÃO RECORRIDO EM SINTONIA COM O ATUAL ENTENDIMENTO DO STJ. SÚMULA 83/STJ. AGRAVO REGIMENTAL IMPROVIDO. 1. A aplicação alternativa do Princípio da Fungibilidade encontra óbice, na medida em que impede a interposição de determinado recurso quando outro é previsto na legislação vigente, conforme dispõe o art. 34 da LEF que das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN só se admitirão Embargos Infringentes e de Declaração. 2. Inexistente dúvida objetiva acerca do recurso a ser interposto, como é o caso dos autos, em face da expressa disposição contida no art. 34 da Lei 6.830/80, não se admite a aplicação do Princípio da Fungibilidade Recursal. 3. O acórdão recorrido está em sintonia com o atual entendimento deste Tribunal Superior, razão pela qual não merece prosperar a irresignação. Incide, in casu, o princípio estabelecido na Súmula 83/STJ: "Não se conhece do Recurso Especial pela divergência, quando a orientação do Tribunal se firmou no mesmo sentido da decisão recorrida." 4. Cumpre ressaltar que a referida orientação é aplicável também aos recursos interpostos pela alínea "a" do art. 105, III, da Constituição Federal de 1988. Nesse sentido: REsp 1.186.889/DF, Segunda Turma, Relator Ministro Castro Meira, DJe de 2.6.2010. 5. Agravo Regimental não provido.” (AgRg no AREsp 727.807/RJ, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 01/03/2016, DJe 19/05/2016) (destacamos)</p><p style="line-

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	height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Neste sentido a linha de raciocínio esposada por esta egrégia Corte de Justiça:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO INTERNO. DECISÃO UNIPESSOAL DO RELATOR QUE DEIXOU DE CONHECER DA APELAÇÃO CÍVEL. AUSÊNCIA DE INTERESSE RECURSAL. EXECUÇÃO FISCAL. CRÉDITO EXEQUENDO INFERIOR AO TETO DE ALÇADA PREVISTO NO ART. 34 DA LEI Nº 6.830/1980. SENTENÇA TERMINATIVA, NOS MOLDES DO ART. 267, VI, CPC/1973. RECURSO DESPROVIDO. 1- Nas sentenças proferidas em execuções fiscais cuja dívida não alcança o teto mensurado no art. 34 da Lei nº 6.830/1980, são admissíveis tão somente embargos de declaração e embargos infringentes de alçada, por expressa disposição legal. Precedentes do STJ e deste Tribunal. 2- A Súmula 452 do STJ não diz respeito à decisão que deixa de conhecer do recurso. No caso dos autos, o valor executado corrigido é inferior a 50 ORTN, a obstar o conhecimento do apelo. As alegações recursais não se mostram razoáveis para reformar a decisão monocrática. 3- Agravo interno conhecido e desprovido.” (AR 0003462-92.2009.8.06.0070; Relator(a): FERNANDO LUIZ XIMENES ROCHA; Comarca: Crateús; Órgão julgador: 1ª Câmara Direito Público; Data do julgamento: 20/03/2017; Data de registro: 20/03/2017; Outros números: 3462922009806007050000) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. VALOR EXEQUENDO INFERIOR A 50 ORTN. IMPOSSIBILIDADE DE INTERPOSIÇÃO DE APELAÇÃO. INTELIGÊNCIA DO ART. 34 DA LEI Nº 6.830/1980. INADEQUAÇÃO DA VIA ELEITA. PRECEDENTES DESTA CORTE E DO STJ. RECURSO NÃO CONHECIDO. 1. O art. 34 da Lei 6.830/1980 dispõe que o meio adequado para impugnação de sentenças proferidas em sede de execuções fiscais que não ultrapassem o montante de 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional – ORTN são embargos de declaração e embargos infringentes dirigidos ao juízo que proferiu a decisão<span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-

Processo	3000249-72.2023.8.06.0058
	align:baseline;white-space:pre;white-space:pre-wrap;">. 2. A importância exequenda está aquém do patamar que possibilita a interposição de recurso apelatório dirigido a esta Egrégia Corte de Justiça, razão pela qual torna-se imperioso o não conhecimento do feito, ante a inadequação da via eleita. Precedentes desta Corte e do STJ. 3. Recurso não conhecido.” (APC 0001302-49.2009.8.06.0182; Relator(a): LUIZ EVALDO GONÇALVES LEITE; Comarca: Viçosa do Ceará; Órgão julgador: 2ª Câmara Direito Público; Data do julgamento: 15/03/2017; Data de registro: 15/03/2017) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. TRIBUTÁRIO. AÇÃO DE EXECUÇÃO FISCAL. AGRAVO REGIMENTAL. APELAÇÃO. IMPOSSIBILIDADE DE APELAÇÃO EM CASOS DE EXECUÇÃO FISCAL CUJO VALOR SEJA INFERIOR A 50 ORTN – LEI 6.830/1980, ART. 34. CONSTITUCIONALIDADE RECONHECIDA PELO STF. INEXISTÊNCIA DE AFRONTA AO DUPLO GRAU DE JURISDIÇÃO. PRINCÍPIOS DA LEGALIDADE, DO DEVIDO PROCESSO LEGAL, DA AMPLA DEFESA, DO CONTRADITÓRIO E DA INAFASTABILIDADE DA PRESTAÇÃO JURISDICIONAL PRESERVADOS. PRECEDENTES DO SUPREMO TRIBUNAL FEDERAL, SUPERIOR TRIBUNAL DE JUSTIÇA E DESTA CORTE DE JUSTIÇA. I. Trata-se de Ação Execução Fiscal promovida pelo Município de Crateús, que tramita sob o nº 15877-68.2013.806.0070, na qual pretende o Ente o recebimento do valor de R$ 594,58 (quinhentos e noventa e quatro reais e cinquenta e oito centavos) proveniente de IPTU regularmente inscrito em Dívida Ativa. II. A Lei 6.830/1980, art. 34, expressamente determina que, da sentença de 1º grau proferida nos autos de uma Execução Fiscal cujo valor objeto da ação atinja até 50 (cinquenta) ORTN, aceitar-se-á, tão somente, a interposição de Embargos Infringentes e Embargos de Declaração<span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">. III. Acerca do tema, cumpre destacar que o SUPERIOR TRIBUNAL DE JUSTIÇA, no julgamento do RESP 1.168.625, de Relatoria do Ministro Luiz Fux, consolidou o entendimento de que com a extinção da ORTN o valor da alçada deve ser encontrado a partir da interpretação da norma que extinguiu o índice, como forma de evitar a perda do valor aquisitivo. Desse modo, entendeu que 50 ORTN equivaleria ao valor de R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) a partir de janeiro de 2001 e que tal valor deve ser sempre corrigido pelo IPCA-E. IV. Assim, conclui-se que o valor de 50 ORTN equivalia a R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) em janeiro de 2001 e que tal valor deve ser atualizado pelo IPCA/E até a data da distribuição da ação de execução fiscal para verificar o valor equivalente. Na presente situação, atualizando o aludido valor por meio do site do Banco Central do Brasil, verifica-se que na data do ajuizamento da Ação de Execução Fiscal, ou seja, em abril de 2013, o valor de 50 ORTN equivalia a R$ 718,29 (setecentos e dezoito reais e vinte e nove centavos). V. Desse modo, verificando-se que o débito atualizado abrange o valor de R$ 594,58 (quinhentos e noventa e quatro centavos e cinquenta e oito centavos), já atualizado e corrigido monetariamente à data do ajuizamento da ação, ou seja, em abril de 2013, consoante Certidões da Dívida Ativa (fls.5/6), conclui-se pela impossibilidade de interposição de recurso de apelação, porquanto ausente requisito intrínseco basilar ao seu conhecimento, eis que o valor da execução não ultrapassou os 50 ORTN. VI. Ressalta-se que o Supremo Tribunal Federal, quando do julgamento do ARE 637.975, com repercussão geral reconhecida, de relatoria do eminente Ministro Cezar Peluzo,

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	explicitamente obstou qualquer afronta ao duplo grau de jurisdição o fato de não ser recebido recurso de apelação em face da restrição imposta no artigo 34 da Lei 6.830/1980. Da mesma forma, restou afastada a alegada violação aos princípios da legalidade, do devido processo legal, da ampla defesa, do contraditório e da inafastabilidade da prestação jurisdicional. VII. Logo, depreende-se que resta patente a interposição errônea da apelação pelo Município, o que, por consequência, configura erro grosseiro e enseja o não recebimento do apelo, fato que deve ser reconhecido nesta instância. Ademais, faz-se mister salientar que não se permite na presente situação a aplicação do princípio da fungibilidade, porquanto, conforme registrado alhures, trata-se de erro grosseiro, que desautoriza a incidência da instrumentalidade das formas, até mesmo por inexistir dúvida objetiva no caso. VIII. Agravo Regimental conhecido, mas improvido.” (AR 0015877-68.2013.8.06.0070; Relator(a): INACIO DE ALENCAR CORTEZ NETO; Comarca: Crateús; Órgão julgador: 3ª Câmara Direito Público; Data do julgamento: 28/11/2016; Data de registro: 28/11/2016; Outros números: 15877682013806007050000) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Dessa maneira, por ter a Fazenda Pública utilizado equivocadamente o recurso de apelação, laborando contra legem, o não conhecimento do inconformismo, é medida que se impõe.</p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Diante do exposto, com base nas razões retro expendidas, considerando, ainda, o disposto no art. 34 da Lei de Execuções Fiscais, não conheço da apelação interposta, uma vez que incabível para a espécie.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Portaria 1550/2024</p><div> <span

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	style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:italic;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;"> <br /> </div><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	71
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Assistência Social
Polo ativo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA DO SOCORRO PEREIRA DA SILVA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <span style="font-
size: medium;">   <strong style="font-size: medium;">ESTADO DO CEARÁ   <br />
   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />
<strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong
style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA
MARTINS DO VALE </p><p style="text-align: center;">   <br /> </p><p> <span style="font-size:
medium;">PROCESSO:&#160;3004576-06.2024.8.06.0000 -&#160;AGRAVO DE
INSTRUMENTO (202)</p><p> AGRAVANTE:
MUNICIPIO DE FORTALEZA.</p><p> <span style="font-size:
medium;">AGRAVADA: MARIA DO SOCORRO PEREIRA DA SILVA.</p><p
align="center">   <br /> </p><p
class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> EMENTA:
CONSTITUCIONAL.   AGRAVO DE INSTRUMENTO.
AÇÃO   ORDINÁRIA.   INCLUSÃO
EM   PROGRAMA DE LOCAÇÃO SOCIAL DO MUNICÍPIO DE
FORTALEZA. REQUISITOS CUMULATIVOS PREVISTOS NA LEI Nº 10.328/15
ATENDIDOS. DIREITO À MORADIA.   CONCESSÃO DE TUTELA DE
URGÊNCIA. PROBABILIDADE DO DIREITO. PERIGO DA DEMORA. AGRAVO DE
INSTRUMENTO CONHECIDO E   NÃO PR OVIDO.
DECISÃO INTERLOCUTÓRIA   MANTIDA
.</p><p class="western" style="margin-left: 4cm; margin-bottom:
0cm" align="justify">   1. Em evidência, agravo
de instrumento, desafiando decisão interlocutória proferida pelo Juízo da 5ª Vara da
Fazenda Pública da Comarca de Fortaleza/CE, que deferiu a tutela de urgência formulada
em ação ordinária. </p><p class="western" style="margin-left: 4cm;
margin-bottom: 0cm" align="justify">   <span style="font-
size: 12pt;">   2. É cediço que para a concessão da tutela de urgência, deve ser
observado o disposto no art. 300, caput, do CPC, a saber, a probabilidade do direito
(fumus boni
iuris   ), bem
como o perigo de dano e/ou o risco ao resultado útil do processo (
      periculum in mora
).
</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm"
align="justify">   3. A Lei nº 10.328/2015, prevê,
expressamente, a possibilidade de o Município de Fortaleza incluir, em Programa de
Locação Social, família de baixa renda e que se encontra em situação de risco,
subsidiando, temporariamente, o aluguel de imóvel, com vistas a suprir carência de
moradia. </p><p class="western" style="margin-left: 4cm; margin-
bottom: 0cm" align="justify">   <span style="font-size:
12pt;">   4
.   Para que se
tenha acesso ao Programa de Locação Social é necessário enquadrar-se nos
pressupostos exigidos no artigo 7º da Lei nº 10.328/15, quais sejam: estar previamente
cadastrado na HABITAFOR ou na Secretaria Municipal da Segurança Cidadã e se
encontrar em uma das situações previstas nos incisos do referido dispositivo.

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	 </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 5. Neste ponto, a autora/agravada demonstrou de forma satisfatória que preenche tal pressuposto, uma vez que a documentação acostada aos autos comprova a existência de cadastro prévio junto aos órgãos legalmente previstos. </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 6 . O direito fundamental à moradia, disposto expressamente no artigo 6º, caput , da Constituição Federal, possui posição de destaque com o objetivo central de assegurar a moradia digna em condições habitáveis para todos os cidadãos, sendo dever do Estado garantir sua efetividade em razão da competência comum existente entre os entes federados, nos termos do art. 23, inciso IX do Texto Maior, bem como ante à aplicabilidade imediata da norma . </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 7 . Finalmente, há que se destacar a existência de perigo da demora , posto que permanecendo a agravada nessa situação de vulnerabilidade social, estaria, assim, transgredindo o direito à dignidade da pessoa humana, causando sérios e irreparáveis prejuízos. </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 8 . Desse modo, o não provimento do agravo de instrumento interposto é medida que se impõe. </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 9. Permanece, pois, inabalada a decisão interlocutória ora agravada, que deferiu a tutela de urgência requestada, impondo-se sua manutenção neste azo. </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> - Precedentes deste TJCE. </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> - Agravo de Instrumento conhecido e não provido. </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> - Decisão interlocutória mantida. </p><p align="center"> <br /> </p><h3 class="western" style="margin-left: -0.1cm; margin-top: 0.42cm"> <br /> </h3><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3004576-06.2024.8.06.0000 , em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do agravo de instrumento interposto, para negar -lhe provimento, mantendo a decisão interlocutória recorrida , nos termos do voto da Relatora.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm"> Fortaleza, data e hora indicadas pelo sistema.</p><p class="western" style="text-transform: uppercase; margin-bottom: 0cm" align="center"> <br /> </p><p align="center"> <br /> </p><p class="western" style="margin-bottom: 0cm" align="center"> Juíza convocada elizabete silva pinheiro – PORTARIA Nº 1550/2024 </p><div> <br />

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	  </div><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center"> <br /> </p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Em evidência, agravo de instrumento, desafiando decisão interlocutória proferida pelo Juízo da 5 ª Vara da Fazenda Pública da Comarca de Fortaleza/CE, que deferiu a tutela de urgência formulada em ação ordinária.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> O caso/a ação originária: Maria do Socorro Pereira da Silva moveu ação de obrigação de fazer com pedido de tutela de urgência em face do Município de Fortaleza (Processo nº 3014481-32.2024.8.06.0001), objetivando a sua inclusão no Programa de Locação Social até o recebimento da unidade habitacional a ser fornecida pelo ente público.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Para tanto, alegou que mesmo vivendo em situação de vulnerabilidade social, e t endo sido diagnosticada com grave enfermidade crônica “ depressão ”, ainda não foi contemplada com a citada política pública.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm" align="justify"> Diante do que, requereu, inclusive liminarmente, a condenação do Poder Público à efetivação de seu direito à moradia digna, custeando “aluguel social” até ulterior fornecimento de habitação própria.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm" align="justify"> A decisão agravada: o magistrado de primeiro grau deferiu a tutela de urgência requerida na ação ordinária (autos do processo originário nº 3014481-32.2024.8.06.0001 , ID 96415653), in verbis: </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> “ Isso posto, hei por bem DEFERIR A TUTELA DE URGÊNCIA PLEITEADA, nos moldes do artigo 300 do Código de Processo Civil, no sentido de garantir à autora Maria do Socorro Pereira da Silva o direito de ser contemplada no Programa de Locação Social, até ulterior deliberação.” </p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Inconformado, o Município de Fortaleza interpôs agravo de instrumento , sustentando, em suma, que o magistrado de primeiro grau incorreu em claro e manifesto equívoco in concreto, haja vista que a autora não preencheu os requisitos necessários à contemplação do programa social.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Alegou, ainda, que a decisão proferida pelo Poder Judiciário culmina na burla a um sistema de espera em que inexistem vagas livres para a realização de novos cadastros, ferindo os princípios da isonomia, legalidade, supremacia

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	do interesse público e da reserva do possível.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Pugnou, então, inclusive liminarmente, pelo provimento do recurso, para revogar o decisum que concedeu a tutela de urgência à autora, no que se refere ao pedido de inclusão em programa de aluguel social.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Contraminuta (ID 15391012) ofertada pela autora, pleiteando pelo improvimento do recurso.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Parecer da Procuradoria Geral de Justiça (ID 15587069). </p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> É o relatório.</p><p align="center"> <br /> </p><p align="center"> <br /> </p><p align="center"> &#160;</p><p style="line-height: 150%; orphans: 0; widows: 0; margin-top: 0.42cm" align="center"> VOTO </p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-bottom: 0cm" align="justify"> Presentes os requisitos intrínsecos e extrínsecos de admissibilidade, conheço do presente recurso.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> O presente agravo de instrumento foi interposto pelo ente público, buscando a revogação da decisão interlocutória, que deferiu a tutela de urgência requestada na ação principal (Processo nº 3014481-32.2024.8.06.0001), concedendo o pleito de inclusão da agravada e de sua família no Programa de Locação Social.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> A controvérsia dos autos se restringe, portanto, em aferir se estão ou não devidamente preenchidos, in casu, os requisitos legais e necessários para a concessão de tal medida.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Ora, é cediço que, atualmente, para a concessão da tutela de urgência, deve ser observado o disposto no art. 300, caput, do CPC, a saber, a probabilidade do direito (fumus boni iuris), bem como o perigo de dano e/ou o risco ao resultado útil do processo (periculum in mora). </p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Pois bem, com base em tais premissas, e após analisar detidamente os autos, estou convencida de que o decisum ora vergastado merece ser mantid o neste azo, pelos motivos abaixo discriminados.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> A Lei nº 10.328/2015, prevê, expressamente, a possibilidade de o Município de Fortaleza incluir, em Programa de Locação Social, família de baixa renda e que se encontra em situação de risco, subsidiando, temporariamente, o aluguel de imóvel, com vistas a suprir carência de moradia.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Todavia, para que isso ocorra, é imprescindível o atendimento dos requisitos exigidos em seu art. 7º, que assim dispõe:</p><p style="orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm" align="justify"> " Art. 2º O Programa Locação Social consiste na concessão de auxílio às famílias que se enquadrem nas situações previstas no art. 1º desta Lei e que não disponham de meios materiais para adquirir ou alugar moradia. [...]"</p><p style="orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm" align="justify"> [...]</p><p style="orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm" align="justify"> Art. 7º O ingresso no Programa Locação Social ocorrerá através de cadastro próprio na Secretaria Municipal do Desenvolvimento Habitacional de Fortaleza (HABITAFOR) ou na Secretaria Municipal da Segurança Cidadã (SESEC), conforme o caso, mediante a comprovação da condição de baixa renda, vulnerabilidade social e situação de desastre do pretenso beneficiário, sendo assegurada a preferência para:</p><p style="orphans: 0; widows: 0; margin-left: 4cm; margin-

Processo	3004576-06.2024.8.06.0000
	bottom: 0cm" align="justify"> I - os que habitarem em condições subumanas, em áreas de risco iminente ou que tenham sido atingidos por qualquer espécie de desastre; <br /> II - famílias em situação de desalojamento temporário, que já se encontrem cadastradas em programas habitacionais, e estejam em processo de reassentamento para novas unidades habitacionais; <br /> III - mulheres em situação de violência doméstica e/ou sexual, idosos, pessoas com deficiência, enfermos graves ou arrimos de família; <br /> IV - famílias ou pessoas em situação de baixa renda ou em situação de vulnerabilidade social e que se encontrem em situação de moradia de rua.” (d estacamos)</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm" align="justify"> Em análise perfunctória do dispositivo acima transcrito, é possível observar que o primeiro requisito exigido para desfrutar do benefício se consubstancia na existência de prévio cadastro no referido programa junto à HABITAFOR ou à Secretaria Municipal da Segurança Cidadã (SESEC).</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm" align="justify"> Denota-se que a autora/agravada logrou êxito em demonstrar de forma satisfatória que preenche tal pressuposto, uma vez que a documentação acostada aos autos comprova a existência de protocolo de cadastramento nos programas habitacionais do município de Fortaleza (ID 88310087 PJE PG).</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm" align="justify"> Com efeito, o que se extrai da controvérsia, conforme relatório do Núcleo de Habitação e Moradia da Defensoria Pública – NUHAM, elaborado pela Assistente Social Maria Lucilma Freitas de Sousa, CRESS/CE 7601, que a autora e sua família integram a Comunidade Nova Cajazeiras, com ocupação desde o início de 2017, localizando-se em área de risco (Rio cocó), abandonada em virtude da violência urbana , encontrando-se em situação de vulnerabilidade, conforme conclusão do parecer técnico, in verbis :</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm; background: transparent;" align="justify"> “ Conforme lei 10328/2015, que dispõe sobre o Programa Locação Social, em seu artigo 7º, inciso II, estabelece prioridade para acesso às famílias em situação de desalojamento temporário que já se encontram cadastradas em programas habitacionais (…), reitera-se o fato da família ter sido forçada a desocupar o domicílio em que vivia em consequência da violência urbana (família expulsa por facção). Cita-se, o inciso IV que preconiza as famílias, ou pessoas em situação de baixa renda ou em situação de vulnerabilidade. (…)</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm; background: transparent;" align="justify"> Corrobora-se que a família em questão, atende aos critério de baixa renda, pois considera-se família de baixa renda, a que depreende renda familiar mensal per capita de até meio salário-mínimo, caracterização expressa no decreto 11.016 de 29 de março de 2022 que regulamenta o Cadastro Único para Programas Sociais do Governo Federal.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm; background: transparent;" align="justify"> Diante do supracitado, destaca-se que a família atende aos critérios de acesso ao programa de locação social municipal e posteriormente, o acesso à unidade habitacional para garantir o direito à moradia digna, que disponha de segurança, disponibilidade de serviços públicos básicos e essenciais, equipamentos e infraestrutura, boa habitabilidade e localização.” (ID 88310089 PJE PG)</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm" align="justify"> Depreende-se, então, que a agravada preencheu os requisitos legais previstos na Lei nº 10.328/15. Restando claro, portanto, a presença do fumus boni iuris , consequente, circunstância apta a ensejar o deferimento do seu pleito.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-bottom: 0cm" align="justify"> <span style="font-

Processo	3004576-06.2024.8.06.0000
	size: small;"> Outrossim, como se sabe, direito fundamental à moradia, disposto expressamente no artigo 6º, caput , da Constituição Federal, possui posição de destaque com o objetivo central de assegurar a moradia digna em condições habitáveis para todos os cidadãos, sendo dever do Estado garantir sua efetividade em razão da competência comum existente entre os entes federados, nos termos do art. 23, inciso IX, do Texto Maior, bem como ante à aplicabilidade imediata da norma .</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm" align="justify"> Proporcionando, dessa forma, o direito à dignidade da pessoa humana, bem como o cumprimento dos objetivos fundamentais da República Federativa do Brasil, especificamente no que concerne o artigo 3º, inciso III do Texto Maior, qual seja: “ erradicar a pobreza e a marginalização e reduzir as desigualdades sociais e regionais ”. </p><p class="western" style="line-height: 150%; text-indent: 4.13cm; margin-top: 0.21cm; margin-bottom: 0.21cm" align="justify"> Ademais, há que se destacar a existência de perigo da demora, posto que permanecendo a agravada nessa situação de vulnerabilidade social, estaria, assim, transgredindo o direito à dignidade da pessoa humana, causando sérios e irreparáveis prejuízos.</p><p class="western" style="line-height: 150%; text-indent: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.18cm" align="justify"> Não é outro o entendimento adotado pelas Câmaras de Direito Público deste egrégio Tribunal de Justiça, bem como pelos Tribunais da Federação. Vejamos:</p><p class="western" style="line-height: 150%; margin-left: 4cm; text-indent: -0.01cm; margin-bottom: 0cm" align="justify"> “ CONSTITUCIONAL, ADMINISTRATIVO E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. DIREITO FUNDAMENTAL À MORADIA. PROGRAMA DE LOCAÇÃO SOCIAL. POLÍTICA PÚBLICA ESTADUAL E MUNICIPAL. EXPULSÃO DA MORADIA PELA ATIVIDADE ILÍCITA DE ORGANIZAÇÃO CRIMINOSA. SEGURANÇA PÚBLICA. DEVER DO ESTADO. CIRCUNSTÂNCIAS DEMONSTRADAS NOS AUTOS. REQUISITOS DO ART. 300 DO CPC. SITUAÇÃO DE INQUESTIONÁVEL RISCO SOCIAL E VULNERABILIDADE DA MULHER GESTANTE. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1- A decisão adversada privilegiou a concretização do direito fundamental à moradia como finalidade de uma política pública de responsabilidade solidária dos entes federados. Consoante parecer técnico da Secretaria Municipal dos Direitos Humanos e Desenvolvimento Social – favorável à concessão do benefício social pleiteado – a recorrida, gestante, e seu filho de 2 anos de idade se enquadram claramente nos perfis de baixa renda e vulnerabilidade social constantes da Lei Municipal nº 10.328/2015 e do Decreto Municipal nº 13.579/2015, e se encontram em situação de moradia de rua ou em condições subumanas. Verifica-se, ademais, negativa de concessão do benefício almejado em documento firmado por Secretário Executivo do Município de Fortaleza. 2- Por outro lado, a Lei Estadual nº 14.965/2011 ampara a situação da recorrida, em situação de vulnerabilidade social e que se encontra em situação de moradia de rua, desabrigamento ou desalojamento, em face do ora agravante. O referido diploma legal autoriza o Estado do Ceará a implantar Programa de Locação Social, destinado a subsidiar aluguel provisório em virtude de projetos sociais de sua responsabilidade e estabelece que o valor do benefício de Locação Social corresponderá a R$ 400,00 (quatrocentos reais) (art. 6º), não havendo demonstrado o recorrente em que o dispêndio mensal dessa quantia – em caráter provisório, por no máximo 2 anos (art. 9º) – afetaria as finanças ou prejudicaria a consecução de outras políticas públicas estaduais. 3- A Suprema Corte já decidiu que: "O Poder Judiciário, em situações excepcionais, pode determinar que a Administração Pública adote medidas assecuratórias de direitos constitucionalmente reconhecidos como essenciais, como é o caso do direito à moradia, sem que isso configure violação do princípio da separação dos poderes" (STF, ARE 914.634-AgR, Rel. Min. DIAS TOFFOLI, Segunda Turma, DJe 29.2.2016). A Constituição da República de 1988 prevê, no art. 6º, o direito à moradia – incluído pela Emenda Constitucional nº 26/2000 – entre os direitos sociais, merecendo a questão habitacional atenção do constituinte originário, que no art. 23, inc. IX, estipulara a competência comum dos entes federados para a promoção de programas de construção de moradias e a melhoria das condições habitacionais. 4- Diante das circunstâncias do caso concreto, com

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	respaldo na prova documental assente nos fólios, em que se verifica que a recorrida foi obrigada a deixar a própria moradia em face de ameaças à sua vida e à de sua família, em decorrência da atuação antijurídica de grupo criminoso – questão inclusive reconhecida como não isolada pelo poder público em sua petição – inquestionável a presença dos requisitos do art. 300 do CPC, em face dos elementos que evidenciam a probabilidade do direito e o perigo de dano ou o risco ao resultado útil do processo, uma vez que a recorrida se encontra em situação de vulnerabilidade. 5- Agravo de Instrumento conhecido e parcialmente provido." (AI nº 0626921-41.2019.8.06.0000; Relator (a):&#160;FERNANDO LUIZ XIMENES ROCHA; Comarca:&#160;Fortaleza; Órgão julgador: 1ª Câmara Direito Público; Data do julgamento: 13/07/2020; Data de registro: 13/07/2020) (destacamos)</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="center"> * * * * * </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="justify"> DIREITO CONSTITUCIONAL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. INSCRIÇÃO DA AGRAVADA EM PROGRAMA DE LOCAÇÃO SOCIAL. LEI MUNICIPAL Nº 10.328/15. PREENCHIMENTO DOS REQUISITOS. VULNERABILIDADE SOCIAL CONFIGURADA. CONCRETIZAÇÃO DO DIREITO CONSTITUCIONAL À MORADIA. PRECEDENTES DO STJ E DO TJCE. AGRAVO CONHECIDO E DESPROVIDO. PRECEDENTES. <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal;"> <span style="color: #000000;"> <span style="font-size: 10pt;">1. O recurso do Município de Fortaleza objetiva a reforma da decisão concessiva da tutela de urgência, que determinou a inclusão da parte agravada no programa denominado "Locação Social" (Lei Municipal nº 10.328/2015. Para tanto, o ente público alega que a parte não preenche os requisitos legais para a obtenção do benefício. Aduz, ainda, a insuficiência de recursos financeiros, além da violação à separação dos poderes e aos princípios da impessoalidade e da isonomia. Sustenta, também, a vedação legal à concessão de tutela liminar desse jaez, bem como a responsabilidade do Estado do Ceará para atender ao pleito autoral. 2. A matéria em tela versa, em sua essência, sobre o direito social à moradia. Na Constituição Federal de 1988, os direitos sociais se encontram amplamente reconhecidos, cabendo destacar o direito à moradia, previsto no caput do art. 6º. 3. Relativamente ao Programa Locação Social, instituído pela Lei Municipal nº 10.328/2015, como bem reconheceu o Juízo a quo, a autora/agravada demonstrou a contento o preenchimento dos requisitos legais, por se tratar de família em situação de vulnerabilidade social, estando a parte na condição de mulher arrimo de família, que paga o aluguel do seu atual imóvel com benefício do Bolsa Família, no valor de R$ 200,00 (duzentos reais), complementado pela bolsa de R$ 400,00 (quatrocentos reais) recebida por seu filho, que é Estagiário Jovem Aprendiz. 4. Quanto à tese de que o Judiciário não deve intervir na política pública municipal, o entendimento firmado pelo Supremo Tribunal Federal é o de que, em situações excepcionais, o Judiciário está constitucionalmente autorizado a obrigar a Administração Pública a adotar medidas assecuratórias de direitos fundamentais essenciais, como é o caso do direito social à moradia, previsto no art. 6º da Carta Magna, sem que isso configure violação à norma da separação dos poderes. 5. Agravo de instrumento conhecido e desprovido. (Agravo de Instrumento&#160;- 0629101-93.2020.8.06.0000, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento:&#160; 11/05/2022, data da publicação:&#160; 11/05/2022) (destacado) </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm;" align="center"> * * * * * </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="justify"> CIVIL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO DECLARATÓRIA. TUTELA DE PROVISÓRIA DE URGÊNCIA. DEFERIMENTO. INCLUSÃO DAS AUTORAS (AGRAVADAS) EM PROGRAMA DE LOCAÇÃO SOCIAL. REQUISITOS DO ART. 300 DO CPC. PREENCHIDOS. RECURSO CONHECIDO E NÃO PROVIDO. DECISÃO MANTIDA. (Agravo de Instrumento&#160;- 0633956-52.2019.8.06.0000, Rel.

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	Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 17/10/2022, data da publicação:&#160; 18/10/2022) (destacado) </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="center"> * * * * * </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. DIREITO CONSTITUCIONAL DE ACESSO À MORADIA. COMPETÊNCIA COMUM DOS ENTES FEDERATIVOS. PROGRAMA DE LOCAÇÃO SOCIAL. ALUGUEL SOCIAL NO VALOR DE R$ 520,00 (QUINHENTOS E VINTE REAIS) POR MÊS. VULNERABILIDADE SOCIAL CONFIGURADA. INCLUSÃO DOS AGRAVADOS EM PROGRAMA DE LOCAÇÃO SOCIAL. RECURSO CONHECIDO E DESPROVIDO. 1. Cuida-se de Agravo de Instrumento interposto com o escopo de ser reformada a decisão interlocutória proferida pelo juízo da 1ª Vara da Comarca de Massapê, nos autos da Ação de Indenização por Danos Materiais e Morais com Pedido de Aluguel Social e interposta em desfavor do Estado do Ceará. 2. Dizem os agravados que a ordem de retirada de suas casas veio de integrantes da facção Comando Vermelho que dominava a área, sem qualquer motivo aparente, apenas por serem provenientes do bairro Genibaú, supostamente dominado por facção rival. Prestaram declaração dos fatos junto à Defensoria Pública do Estado do Ceará. 3. O Estado argui, preliminarmente, ilegitimidade passiva e, no mérito, defendeu a ausência de requisitos para sua responsabilização civil, ante a culpa exclusiva de terceiro, alegando ausência de provas em relação aos supostos danos materiais e morais, e pugnando pela improcedência dos pedidos. 4. Ainda que se possa entender que a assistência pública é responsabilidade dos entes federados, a natureza dessa responsabilidade é solidária, cabendo à parte autora ingressar contra um, alguns ou todos. 5. Agravados em situação gravosa de vulnerabilidade social, circunstância que faz jus à participação na política habitacional a cargo do ente agravante. 6. Em casos excepcionais é permitido ao Poder Judiciário autorizar a implementação de políticas públicas de moradia e segurança. Precedentes jurisprudenciais. 7. Recurso conhecido e desprovido. (Agravo de Instrumento&#160;- 0622873-68.2021.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 28/06/2021, data da publicação:&#160; 28/06/2021) (destacado)</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="center"> * * * * * </p><p class="western" style="line-height: 150%; margin-bottom: 0cm" align="justify"> <br /> </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> “ APELAÇÃO - Município de Jundiaí - Aluguel-social em favor de deficiência física (cadeirante), em quadro de extrema vulnerabilidade social e fragilidade familiar, sem abrigo e vivendo nas ruas (com seu companheiro e um menor impúbere), pelas tristes contingências da vida - Legitimidade passiva da municipalidade reconhecida, in casu, ante os normativos locais e federais, em linha etiológica e principiológica como os valores constitucionais de singular proteção à dignidade da pessoa humana, à família e aos cidadãos em extrema necessidade de assistência social - Responsabilidade compartilhada dos entes públicos – Sistema Único de Assistência Social (SUAS) - Provas que atestam ser a autora deficiente física, incapaz para o sustento próprio e de seu filho menor impúbere, ambos em situação de rua - Vinculação expressa da legislação local (Lei Municipal nº 8.265/2014) à Lei Orgânica da Assistência Social-LOAS (Lei Federal nº 8.742/93) - Município que, inclusive, recebe repasse de verbas do Governo Central, de vinculação legal e cogente à assistência aos necessitados, conforme, ainda, a

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	vinculação à Política Nacional de Assistência Social-PNAS/2004 - Aplicação, ademais, do Estatuto da Pessoa com Deficiência Física (Lei Federal nº 13.146/2015, art. 31, caput e §2º), que impõe o socorro por moradia digna/residência inclusiva, ante o princípio da proteção integral, no âmbito do SUAS - Ausência de regulamentação do benefício do aluguel-social na norma local que não impede a sua concessão, clamando para a atuação do Poder Judiciário na tutela do direito ofendido - Interpretação extensiva sistemática e teleológica, bem como aplicação analógica do benefício do aluguel-social (auxílio-moradia) previsto na Lei Municipal nº 8.122/2013 (para desabrigados resultantes de catástrofes), nela colhendo os critérios econômicos e temporais do benefício - Sentença reformada - Extinção do feito sem julgamento do mérito afastada - Decreto de procedência da demanda, com realinhamento dos efeitos da sucumbência - RECURSO PROVIDO. &#160;(APC nº 0002017-67.2014.8.26.0309 ; TJSP;&#160;Apelação Cível 0002017-67.2014.8.26.0309; Relator(a):&#160;Vicente de Abreu Amadei; Órgão Julgador: 1ª Câmara de Direito Público; Foro de Jundiaí -&#160;Vara da Fazenda Pública; Data do Julgamento: 15/12/2015; Data de Registro: 18/12/2015) (destacamos)</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="center"> * * * * * </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> <span style="font-size: small;"> AGRAVO DE INSTRUMENTO. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS C/C ALUGUEL SOCIAL E PEDIDO DE TUTELA. ACESSO À MORADIA.&#160; TUTELA DE URGÊNCIA CONCEDIDA. PRELIMINAR DE ILEGITIMIDADE PASSIVA DO ESTADO DO CEARÁ. AFASTADA. COMPETÊNCIA COMUM DOS ENTES FEDERATIVOS. PROGRAMA LOCAÇÃO SOCIAL E A CONCESSÃO DO BENEFÍCIO ALUGUEL SOCIAL. SITUAÇÃO DE VULNERABILIDADE SOCIAL EVIDENCIADA. REQUISITOS DO ART. 300 DO CPC PREENCHIDOS. ALEGAÇÃO DE CABIMENTO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. NÃO CONHECIMENTO. SUPRESSÃO DE INSTÂNCIA. RECURSO PARCIALMENTE CONHECIDO E, NA EXTENSÃO CONHECIDA, DESPROVIDO. 1. Trata-se Agravo de Instrumento com Pedido de Efeito Suspensivo com pedido de efeito suspensivo interposto em face da decisão interlocutória que deferiu medida liminar para determinar que os entes públicos demandados providenciem, no prazo de 15 (quinze) dias, a inscrição da parte autora/agravada no Programa Locação Social e a concessão do Benefício Aluguel Social no mesmo prazo, devendo, todavia, sua permanência no programa ser limitada e avaliada conforme o art. 2º, § 8º, da Lei Municipal nº 10.238/15. &#160;2. Considerando que as políticas públicas envolvendo a responsabilidade de promover programas de habitação e moradia como forma de atingir o objetivo fundamental de erradicação da pobreza, redução das desigualdades sociais e promoção do bem comum figuram dentre as competências comuns a todos os entes da Federação, conforme estabelecido de forma expressa, no art. 23, IX, da CRFB/88, impõe-se a rejeição da preliminar de ilegitimidade passiva do Estado do Ceará. 3. A própria Constituição do Estado do Ceará alberga o reconhecimento do direito à prestação assistencial almejado, sendo indicado, nos arts. 298, 300, 304 e 336, ambos do Carta Estadual, que é dever do Estado e dos municípios cearenses, promover o acesso da população ao direito à habitação e a programas públicos de habitação mediante destinação impositiva de recursos, inclusive, para a implementação de programas habitacionais de interesse da população de baixa renda, faixa econômica na qual se insere a parte agravada. 4. Em regra geral, descabe ao Poder Judiciário imiscuir-se na formulação ou execução de programas sociais ou econômicos da Administração. No entanto, como tudo no Estado Democrático de direito não é absoluto, não podem os direitos constitucionalmente consagrados ficarem condicionados à boa vontade do Administrador, sendo de primordial relevância que o Judiciário atue como órgão controlador da atividade administrativa, inexistindo ofensa ao Princípio da Separação dos Poderes. 5. Na hipótese, a autora/agravada logrou êxito em demonstrar, pelo menos a priori, sua extrema vulnerabilidade social e econômica, observando-se sua adequação&#160; nas hipóteses do Programa Locação Social, requerido desde 19/01/2019 e ratificado em 14/06/2023, sendo vislumbrada a presença de elementos suficientes para permitir, ainda que através de um juízo de cognição sumária, que os direitos fundamentais à moradia e à vida digna foram violados, restando, portanto, preenchidos os requisitos do art. 300 do CPC. 6. Não é possível conhecer, por meio de agravo de instrumento, da impugnação formulada pelo agravante quanto ao afastamento do pedido de indenização por danos morais e materiais sob pena de supressão de instância, vez que a questão não fora apreciada pelo juízo de origem, pois a decisão recorrida versa unicamente sobre a concessão de tutela de urgência. 6. Recurso parcialmente conhecido e desprovido. (AGRAVO DE INSTRUMENTO - 30016230620238060000, Relator(a): JOSE TARCILIO SOUZA DA SILVA, 1ª Câmara de Direito Público, Data do julgamento: 20/03/2024) (destacado)</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.49cm;

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	background-image: initial; background-position: initial; background-size: initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;" align="justify"> <br /> <br /> </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.49cm; background-image: initial; background-position: initial; background-size: initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;" align="justify"> “ ADMINISTRATIVO - MUNICÍPIO DE SÃO GONÇALO - ALUGUEL SOCIAL - DIREITO À MORADIA - LEGITIMIDADE - LIMITAÇÃO DA CONCESSÃO DO BENEFÍCIO - DESCABIMENTO DE PAGAMENTOS RETROATIVOS. I - Legitimidade passiva do Município de São Gonçalo que se faz presente na medida em que o art. 8º, do Decreto Estadual nº 42.406/10, que instituiu o programa morar seguro, para o reassentamento da população que vive em áreas de risco, evidencia a solidariedade passiva do Município e do Estado. Incide, ainda, o disposto no art. 23, IX, da CRFB, que prevê responsabilidade solidária dos Entes Federativos para promover políticas públicas visando solucionar as questões referentes à moradia e ao bem-estar da população. II - A instituição do benefício "aluguel social" se deu com o fito de minimizar as perdas e transtornos sofridos pelas vítimas das fortes chuvas que atingiram a cidade do Rio de Janeiro. Comprovação pela parte autora de que seu imóvel foi interditado pela Defesa Civil. III - O direito a moradia encontra-se consagrado como direito fundamental (art. 6º, da CRFB), pelo que deve ser garantido com prioridade. Inclusão da autora em programa de "aluguel social". Possibilidade. Limitação da concessão do benefício a título de aluguel social ao máximo de 12 meses, prorrogável uma vez, por igual período, em consonância com a legislação que rege a matéria. Descabimento de pagamentos retroativos. IV - Conhecimento e provimento parcial do recurso.” (TJ-RJ - APL: 00056546320148190004, Relator: Des(a). RICARDO COUTO DE CASTRO, Data de Julgamento: 17/11/2020, SÉTIMA CÂMARA CÍVEL, Data de Publicação: 19/11/2020)</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> Permanecem, então, inabalados os fundamentos do decisum oriundo do Juízo a quo, devendo ser confirmado por este Tribunal. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.18cm" align="justify"> <br /> <br /> </p><p class="western" style="line-height: 150%; margin-top: 0.3cm; margin-bottom: 0.3cm" align="center"> DISPOSITIVO </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Diante do exposto, com fulcro nos fatos e fundamentos jurídicos acima explicitados e por tudo o que consta nos autos, conheço do agravo de instrumento interposto, para negar -lhe provimento, mantendo a decisão interlocutória recorrida , por seus próprios fundamentos.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> É como voto.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm"> Fortaleza, data e hora indicadas pelo sistema.</p><p class="western" style="text-transform: uppercase; margin-bottom: 0cm" align="center"> <br /> </p><p class="western" style="margin-bottom: 0cm" align="center"> Juíza convocada elizabete silva pinheiro – PORTARIA Nº 1550/2024 </p><p class="western" style="line-height: 150%; margin-top: 0.21cm" align="center"> Relatora</p><p align="center"> <br />

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	</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p> <br /> </p><p style="text-indent: 8%; text-align: center;"> &#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	72
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Classificação e/ou Preterição
Polo ativo	AUTARQUIA MUNICIPAL DE TRANSITO E CIDADANIA
Advogado(s) - Polo ativo	GONCALO HENRIQUE BARRETO ARAUJO - (CE16067-A)
Polo passivo	SAMUEL SOARES SOLON
Advogado(s) - Polo passivo	ADRIANO ARAUJO DA SILVA - (RR2082-A) JOSE VANDERI MAIA - (RR716-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	mantida.</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Agravo de instrumento em face de decisão interlocutória proferida pelo Juízo da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, que deferiu a liminar requerida na demanda de origem</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. A questão em discussão diz respeito à possibilidade de conceder efeito suspensivo à pretensão recursal, no sentido de suspender a liminar concedida pelo juízo a quo, que determinou que as autoridades impetradas se abstenham de eliminar o impetrante do concurso público em decorrência de possuir apenas permissão para dirigir.</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de Decidir</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. O portador de permissão para dirigir detém as mesmas prerrogativas legais (art. 269, §3º, do CTB) e se submete às mesmas obrigações impostas aos detentores de carteira nacional de habilitação.</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Daí que não se mostra razoável a exclusão do candidato do certame, pois ambos os documentos o habilitam conduzir veículo automotor, não havendo, na prática, distinção que justifique o impedimento para o exercício do cargo público em questão.</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">5. Consequentemente, deve ser mantido inalterado o decisum a quo vez que o impetrante logrou em demonstrar os requisitos legais para a concessão da tutela de urgência, mormente quanto a possível eliminação do candidato por não possuir, até aquele momento, a Carteira Nacional de Habilitação Definitiva.</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Agravo de instrumento conhecido e não provido. Decisão mantida.</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt;

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	font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">____________</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos relevantes citados: Lei nº 12.016/2009, art. 7º, III; CTB, art. 263 e 269.</p><p style="line-height: 1.656; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr"> Jurisprudência relevante citada: TJCE: APELAÇÃO / REMESSA NECESSÁRIA - 30112734020248060001, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 08/10/2024</p><p style="line-height: 1.38; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.38; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> ACÓRDÃO</p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-fc15654a-7fff-02fe-4d8b-5d843e1c91a8" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3002654-27.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para negar-lhe provimento, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Fortaleza, data e hora informadas no sistema.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO - PORTARIA 1550/2024</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 4pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> <br /> <br /> </p><p style="line-height: 1.38; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

Processo	3002654-27.2024.8.06.0000
	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Tratam os autos de agravo de instrumento em face de decisão interlocutória proferida pelo Juízo da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, que deferiu a liminar requerida na demanda de origem.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">O caso/a ação originária: Samuel Soares Solon impetrou mandado de segurança contra ato tido por ilegal e abusivo atribuído ao Secretário Municipal do Planejamento, Orçamento e Gestão do Município de Fortaleza e do Superintendente da Autarquia Municipal de Trânsito e Cidadania de Fortaleza, buscando a garantia de ser nomeado e tomar posse no cargo de Agente Municipal de Operação e Fiscalização de Trânsito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Aduziu que prestou concurso público para o provimento de 128 (cento e vinte e oito) vagas para o cargo de Agente Municipal de Operação e Fiscalização de Trânsito junto à Autarquia Municipal de Trânsito e Cidadania do Município de Fortaleza (AMC), logrando aprovação em todas as fases, restando classificado em 101º lugar.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Afirmou que, durante o curso de formação, as autoridades impetradas indicaram que os candidatos que possuem apenas permissão para dirigir, como é o caso do impetrante, não poderiam ser nomeados e empossados.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">A decisão agravada: o Juízo de primeiro grau deferiu a liminar pretendida na origem (ID 85831249, PJE 1º grau). Confira-se:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Pelo exposto, com fulcro no art. 7º, III, da Lei nº 12.016/09 c/c art. 300 do CPC, CONCEDO a liminar requerida no sentido de determinar às autoridades impetradas que se abstenham de eliminar o impetrante do concurso público, bem como que pratiquem qualquer ato que impeça sua nomeação em decorrência de possuir apenas a Permissão para Dirigir (PPD). Por evidente, a nomeação está condicionada à observância de aprovação em todas as etapas do certame, à ordem de classificação e à existência de vagas.”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">O agravo de instrumento: inconformada, a Autarquia Municipal de Trânsito e Cidadania do Município de Fortaleza (AMC) interpôs recurso buscando, inclusive liminarmente, a reforma do referido <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

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	italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">decisum, sob o argumento de ser vedada a concessão de liminar em face do Pode Público.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Sustentou, ainda, que o caráter precário e temporário da medida liminar não se compatibiliza com o deferimento da "nomeação, posse e exercício" em cargo público.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> No mérito, aduziu à diferença entre a Carteira Nacional de Habilitação (CNH) e a Permissão para Dirigir (PPD), bem como à inexistência de irregularidade no Edital do Concurso Público em espeque, uma vez que este se embasou no ordenamento jurídico.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Decisão interlocutória (ID 12862586), proferida pela então relatora do feito, e. Desembargadora Maria Iracema Martins do Vale, indeferindo o efeito suspensivo requestado.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Contrarrazões (ID 13458075), pugnando o recorrido pelo desprovimento do recurso e a manutenção da decisão agravada.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Parecer da Procuradoria-Geral de Justiça (ID 15096698), manifestando pelo conhecimento e desprovimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Presentes os requisitos intrínsecos e extrínsecos de admissibilidade, conheço do presente recurso, passando à análise do seu mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <span style="font-size: 12pt; font-

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	family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Como visto, o presente agravo de instrumento foi interposto contra interlocutória proferida pelo Juízo da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, que concedeu a liminar requerida em mandado de segurança.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">A controvérsia a ser dirimida diz respeito à possibilidade de conceder efeito suspensivo à pretensão recursal, no sentido de suspender a liminar concedida pelo juízo a quo, que determinou “às autoridades impetradas que se abstenham de eliminar o impetrante do concurso público, bem como que pratiquem qualquer ato que impeça sua nomeação em decorrência de possuir apenas a Permissão para Dirigir (PPD). Por evidente, a nomeação está condicionada à observância de aprovação em todas as etapas do certame, à ordem de classificação e à existência de vagas.” (ID 12707595).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Em se tratando de mandado de segurança, exigível é a ocorrência simultânea dos dois requisitos autorizadores para a concessão da medida liminar, a saber, “fundamento relevante e do ato impugnado puder resultar a ineficácia da medida” (art. 7º, III da Lei nº 12.016/2009).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Pois bem, partindo dessas premissas, e após examinar detidamente autos, vislumbra-se, in concreto, que o juízo a quo procedeu com acerto ao deferir a medida requestada. Explica-se.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> A Comissão Organizadora do Certame emitiu parecer (ID 85651190 – PJE 1º grau) pelo possível indeferimento e consequente eliminação dos candidatos que não apresentarem a Carteira Nacional de Habilitação – CNH, inadmitindo a apresentação da Permissão para Dirigir – PPD (carteira provisória), para fins de nomeação e posse no cargo público, enquadrando-se o impetrante nesta situação.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ocorre que o Juízo de origem apontou o fundamento relevante em favor do impetrante, por não vislumbrar diferença entre a Permissão para Dirigir e a Carteira Nacional de Habilitação, uma vez que ambas possuem natureza jurídica de licença, autorizando seu portador a conduzir veículo automotor.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Com efeito, o portador de PPD detém as mesmas prerrogativas legais (art. 269, §3º, do CTB) e se submete às mesmas obrigações impostas aos detentores de CNH (vide art. 263 do CTB).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Por oportuno, colaciona-se:</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “ Art. 263. A cassação do documento de habilitação dar-se-á:</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I - quando, suspenso o direito de dirigir, o infrator conduzir qualquer veículo;</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - no caso de reincidência, no prazo de doze meses, das infrações previstas no inciso III do art. 162 e nos arts. 163, 164, 165, 173, 174 e 175;</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III - quando condenado judicialmente por delito de trânsito, observado o disposto no art. 160.</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV - (VETADO). (Incluído pela Lei nº 14.304, de 2022) (Vigência) </p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 1º Constatada, em processo administrativo, a irregularidade na expedição do documento de habilitação, a autoridade expedidora promoverá o seu cancelamento.</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 2º Decorridos dois anos da cassação da Carteira Nacional de Habilitação, o infrator poderá requerer sua reabilitação, submetendo-se a todos os exames necessários à habilitação, na forma estabelecida pelo CONTRAN.”</p><p style="line-height: 1.38; margin-left: 111pt; text-align: center; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr"> <span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">***</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “ Art. 269. A autoridade de trânsito ou seus agentes, na esfera das competências estabelecidas neste Código e dentro de sua circunscrição, deverá adotar as seguintes medidas administrativas:</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> […]</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 3º São documentos de habilitação: (Redação dada pela Lei nº 14.599, de 2023)</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">I - a Carteira Nacional de Habilitação; (Incluído pela Lei nº 14.599, de 2023)</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">II - a Permissão para Dirigir; e(Incluído pela Lei nº 14.599, de 2023)</p><p style="line-height: 1.38; margin-left: 111pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">III - a Autorização para Conduzir Ciclomotor. (Incluído pela Lei nº 14.599, de 2023) <span style="font-size:

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	10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">” (destacado)</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 120.4724409448819pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Daí que não se mostra razoável a exclusão do candidato do certame, pois ambos os documentos habilitam o impetrante à condução de veículo automotor, não havendo, na prática, distinção que justifique o impedimento para exercício do cargo público em questão.</p><p style="line-height: 1.7999999999999998; text-indent: 120.4724409448819pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Destaca-se em casos análogos, este Tribunal tem entendido que ambos os documentos permitem atingir os mesmos fins do edital, ex vi:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“CONCURSO PÚBLICO. PEDIDO ORIGINAL DE CONCESSÃO DE ORDEM PARA QUE O IMPETRANTE GARANTA O DIREITO DE SER NOMEADO E DE TOMAR POSSE EM CONCURSO PÚBLICO, PARA PROVIMENTO DO CARGO DE AGENTE MUNICIPAL DE OPERAÇÃO E FISCALIZAÇÃO DE TRÂNSITO (AMOFT). CNH – CARTEIRA NACIONAL DE HABILIDADE – EXIGÊNCIA EDITALÍCIA. AGRAVADO SÓ POSSUI A PPD – PEMISSÃO PARA DIRIGIR. IMPEDIMENTO DE PROSSEGUIR NO CONCURSO. OFENSA AOS PRINCÍPIOS DA RAZOABILIDADE E PROPORCIONALIDADE. ANÁLISE DA LEGALIDADE. LITERALIDADE EDITALÍCIA QUE DEVE SER AFASTADA. AMBOS OS DOCUMENTOS PERMITEM ATINGIR OS MESMOS FINS DO EDITAL: DIRIGIR VEÍCULOS AUTOMOTORES. RECURSO CONHECIDO E IMPROVIDO. DECISÃO MANTIDA. (AGRAVO DE INSTRUMENTO - 30024854020248060000, Relator(a): FRANCISCO GLADYSON PONTES, 2ª Câmara de Direito Público, Data do julgamento: 22/08/2024)” (destacado)</p><p style="line-height: 1.38; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> *****</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“Concurso Público para Agente Municipal de Trânsito. Documento de Habilitação. Requisito de Investidura. Admissibilidade da PPD ou da CNH. Sentença Mantida. I. Caso em exame 1. Remessa necessária da sentença que concedeu segurança, determinando que as autoridades impetradas se abstenham de eliminar o impetrante do certame, bem como proibindo qualquer ato que impeça a nomeação do impetrante no cargo de Agente Municipal de Trânsito ou que desconstitua a que já foi realizada, em decorrência de possuir apenas

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	PPD, e não a CNH, como requisito de investidura no cargo. 2. Da decisão, a Autarquia Municipal de Trânsito de Fortaleza também interpôs apelação, ao argumento de que o edital do concurso não padece de qualquer irregularidade, pois está de acordo com a legislação local de regência. II. Questão em discussão 3. A questão principal consiste em saber se o candidato habilitado para dirigir apenas com PPD, e não com a CNH, pode tomar posse no cargo de Agente Municipal de Trânsito. III. Razões de decidir 4. Porque o Código de Trânsito classifica a PPD e a CNH como espécies do gênero “documento de habilitação de trânsito”, a apresentação de qualquer deles é admissível como prova do preenchimento do requisito de investidura no cargo de Agente Municipal de Trânsito. 5. A imposição de requisito legal de investidura no cargo só se legitima quando compatível com a natureza e as atribuições do cargo, à luz da razoabilidade e da proporcionalidade. 6. A literalidade da lei local e do edital, que mencionam apenas a CNH como documento apto para investidura no cargo de Agente Municipal de Trânsito, deve ser interpretada de modo a ajustar sua aplicação à Constituição Federal e ao Código de Trânsito. 7. A mera interpretação da norma não se submete à Cláusula de Reserva de Plenário, sobretudo, se baseada na jurisprudência do Plenário do STF. IV. Dispositivo 8. Apelação desprovida. Sentença confirmada. (APELAÇÃO / REMESSA NECESSÁRIA - 30112734020248060001, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 08/10/2024)” (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Ademais, da análise do parecer da Comissão Organizadora do Certame, conclui-se pela iminência da eliminação do impetrante no concurso público, fato apto a resultar na ineficácia da medida, ante o risco de não participar das demais fases do concursos e de não lhe ser assegurada a reserva de vaga.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Consequentemente, deve ser mantido inalterado o decisum a quo, uma vez que o impetrante logrou demonstrar os requisitos legais para a concessão da tutela de urgência, mormente quanto à sua possível eliminação do certame por não possuir, até aquele momento, a Carteira Nacional de Habilitação Definitiva.</p><p style="line-height: 1.7999999999999998; text-indent: 4pt; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <br /> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Isto posto, voto por conhecer do agravo de instrumento e negar-lhe provimento, mantendo inalterada a decisão interlocutória ora combatida.</p><p

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	style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORT. 1550/2024</p><p style="text-indent: 8%; text-align: center;"> Relatora</p><div> <br /> </div><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	73
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE BANABUIU
Advogado(s) - Polo ativo	Não informado
Polo passivo	Francisco Antonio Nogueira Sena
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0070414-52.2019.8.06.0151
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3HbxlvDN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58lIJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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AAAAAASUVORK5CYII=" alt="" /> </p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;0070414-52.2019.8.06.0151 - &#160;APELAÇÃO CÍVEL (198) </p><p> APELANTE: MUNICIPIO DE BANABUIU. <br /> </p><p> APELADO: FRANCISCO ANTONIO NOGUEIRA SENA. </p><p align="center"> <br /> </p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> EMENTA: PROCESSO CIVIL. TRIBUTÁRIO. EXECUÇÃO FISCAL. VALOR DE ALÇADA INFERIOR A 50 ORTN. RECURSO DE APELAÇÃO. INADEQUAÇÃO DA VIA ELEITA. PRINCÍPIO DA FUNGIBILIDADE. INAPLICABILIDADE. VIGÊNCIA DO ART. 34 DA LEI 6.830/80. APELO NÃO CONHECIDO.</p><p style="line-height:1.38;margin-left: 112pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 1. Trata o caso de execução fiscal ajuizada com o objetivo de executar crédito regularmente inscrito em dívida ativa.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 2. A presente demanda, por se referir a execução proposta pela Fazenda Pública, deve se desenvolver sob o rito previsto na Lei 6.830/80 (Lei de Execuções Fiscais – LEF).</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 3. O caso dos autos, entretanto, envolve quantia inferior ao valor de alçada previsto no art. 34 da LEF (50 ORTN), que, inclusive, já foi considerado recepcionado pelo Supremo Tribunal Federal.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 4. Assim, torna-se patente que a inadequada propositura de apelação cível, quando a Lei dispõe de maneira clara e específica que o recurso cabível seria os embargos infringentes, não permite a aplicação do princípio da fungibilidade, porquanto tem-se na espécie erro grosseiro, que desautoriza a incidência da instrumentalidade das

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	formas.</p><p style="line-height:1.38;margin-left: 112pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Apelação não conhecida.</p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-949afb69-7fff-bfc0-3d97-b00910497f32" style="font-weight:normal;"> <br /> </p><h3 style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height:1.7999999999999998;margin-left: 1pt;text-indent: 112.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0070414-52.2019.8.06.0151, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer da apelação interposta, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Portaria 1550/2024</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> <br /> </p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta em face de sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Quixadá que decidiu pela extinção do processo sem resolução de mérito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">O caso/a ação originária: o Município de Banabuiú ajuizou Ação de Execução Fiscal em face de Francisco Antônio Nogueira Sena com base em certidões da dívida ativa, oriunda de débitos de IPTU, no valor total de R$ 497,18 (quatrocentos e noventa e sete reais e dezoito centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial, sans-

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	serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">A Sentença: (ID 15654919) em que o Juízo da 2ª Vara Cível da Comarca de Quixadá decidiu pela extinção do processo sem resolução de mérito, por ausência de interesse de agir, sob o fundamento de que o valor executado não justificaria a movimentação do aparato judiciário. Transcrevo o dispositivo da sentença:</p><p style="line-height:1.38;margin-left: 114pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Ante o exposto, julgo extinto o processo, sem resolução do mérito, nos termos do art. 485, inciso VI, do CPC, por falta de interesse de agir.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Irresignado, o ente público interpôs o presente recurso apelatório (ID 15654922) pugnando pela regular continuidade de tramitação do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Inexistiram contrarrazões, conforme certidão de ID 15654928.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desnecessária a intervenção do Ministério Público , nos termos da súmula 189 do STJ.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É o relatório.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Trata o caso de execução fiscal ajuizada com o objetivo de executar

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	créditos regularmente inscritos em dívida ativa.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> A presente demanda, por se referir a execução proposta pela Fazenda Pública, deve se desenvolver sob o rito previsto na Lei 6.830/80 (Lei de Execuções Fiscais – LEF). Partindo deste pressuposto, deve-se realizar o juízo de admissibilidade da apelação cível em análise.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Neste sentido, cumpre observar o disposto no art. 34 da LEF:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Art. 34 - Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">§ 1º - Para os efeitos deste artigo considerar-se-á o valor da dívida monetariamente atualizado e acrescido de multa e juros de mora e de mais encargos legais, na data da distribuição.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 2º - Os embargos infringentes, instruídos, ou não, com documentos novos, serão deduzidos, no prazo de 10 (dez) dias perante o mesmo Juízo, em petição fundamentada.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 3º - Ouvido o embargado, no prazo de 10 (dez) dias, serão os autos conclusos ao Juiz, que, dentro de 20 (vinte) dias, os rejeitará ou reformará a sentença.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Há que se destacar, de início, que referido dispositivo encontra-se em plena vigência, uma vez que recepcionado pela ordem jurídica vigente, consoante entendimento firmado pelo Supremo Tribunal Federal:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“AGRAVO REGIMENTAL NO AGRAVO DE INSTRUMENTO. CONSTITUCIONALIDADE DA LEI

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	6.830/80. SUPERVENIÊNCIA DO ARTIGO 108, II, DA CB/88. REVOGAÇÃO TÁCITA. NÃO OCORRÊNCIA. PRECEDENTE. 1. Este Supremo Tribunal Federal já decidiu que o artigo 108, inciso II, da Constituição do Brasil, não revogou tacitamente o disposto do artigo 34 da Lei 6.830/80. Agravo regimental a que se nega provimento.” (STF, AI 710921 AgR, Relator(a):&#160; Min. EROS GRAU, Segunda Turma, julgado em 10/06/2008, DJe-117 DIVULG 26-06-2008 PUBLIC 27-06-2008 EMENT VOL-02325-16 PP-03211) (destacamos)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">“RECURSO. Agravo convertido em Extraordinário. Apelação em execução fiscal. Cabimento. Valor inferior a 50 ORTN. Constitucionalidade. Repercussão geral reconhecida. Precedentes. Reafirmação da jurisprudência. Recurso improvido. É compatível com a Constituição norma que afirma incabível apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN.” (STF, ARE 637975 RG, Relator(a): Min. MINISTRO PRESIDENTE, julgado em 09/06/2011, DJe-168 DIVULG 31-08-2011 PUBLIC 01-09-2011 EMENT VOL-02578-01 PP-00112 REVJMG v. 62, n. 198, 2011, p. 405-407) (destacamos)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Agravo regimental no recurso extraordinário com agravo. Negativa de prestação jurisdicional. Não ocorrência. Impossibilidade de apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN. Princípios do devido processo legal, do contraditório e da ampla defesa. Inexistência de violação. 1. A jurisdição foi prestada pelo Tribunal de origem mediante decisão suficientemente fundamentada. 2. O Supremo Tribunal Federal, no julgamento do ARE nº 637.975/MG-RG (DJe de 1º/9/11), com repercussão geral reconhecida, de relatoria do Ministro Cezar Peluzo, entendeu que a norma que afirma ser incabível apelação em casos de execução fiscal cujo valor seja inferior a 50 ORTN não afronta os princípios constitucionais da legalidade, do devido processo legal, da ampla defesa, do contraditório,

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	da inafastabilidade da prestação jurisdicional e do duplo grau de jurisdição. 3. Agravo regimental não provido.” (STF, ARE 639448 AgR, Relator(a): Min. DIAS TOFFOLI, Primeira Turma, julgado em 19/06/2012, ACÓRDÃO ELETRÔNICO DJe-155 DIVULG 07-08-2012 PUBLIC 08-08-2012) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Pois bem. Ocorre que o caso dos autos envolve quantia inferior ao valor de alçada legalmente previsto, conforme estabeleceu o colendo STJ, em julgado adiante transcrito, sob o rito dos recursos repetitivos:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. RECURSO ESPECIAL REPRESENTATIVO DA CONTROVÉRSIA. ART. 543-C, DO CPC. TRIBUTÁRIO. EXECUÇÃO FISCAL. VALOR DE ALÇADA. CABIMENTO DE APELAÇÃO NOS CASOS EM QUE O VALOR DA CAUSA EXCEDE 50 ORTN'S. ART. 34 DA LEI N.º 6.830/80 (LEF). 50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27, EM DEZ/2000. PRECEDENTES. CORREÇÃO PELO IPCA-E A PARTIR DE JAN/2001. 1. O recurso de apelação é cabível nas execuções fiscais nas hipóteses em que o seu valor excede, na data da propositura da ação, 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, à luz do disposto no artigo 34, da Lei n.º 6.830, de 22 de setembro de 1980. 2. A ratio essendi da norma é promover uma tramitação mais célere nas ações de execução fiscal com valores menos expressivos, admitindo-se apenas embargos infringentes e de declaração a serem conhecidos e julgados pelo juízo prolator da sentença, e vedando-se a interposição de recurso ordinário. 3. Essa Corte consolidou o sentido de que "com a extinção da ORTN, o valor de alçada deve ser encontrado a partir da interpretação da norma que extinguiu um índice e o substituiu por outro, mantendo-se a paridade das unidades de referência, sem efetuar a conversão para moeda corrente, para evitar a perda do valor aquisitivo", de sorte que "50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) a partir de janeiro/2001, quando foi extinta a UFIR e desindexada a economia". (REsp 607.930/DF, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 06/04/2004, DJ 17/05/2004 p. 206) 4. Precedentes jurisprudenciais: AgRg no Ag 965.535/PR, Rel. Ministro Mauro Campbell Marques, Segunda Turma, julgado em 02/10/2008, DJe 06/11/2008; AgRg no Ag 952.119/PR, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 19/02/2008, DJ 28/02/2008 p. 1; REsp 602.179/SC, Rel. Ministro Teori Albino Zavascki, Primeira Turma, julgado em 07/03/2006, DJ 27/03/2006 p. 161. 5. Outrossim, há de se considerar que a jurisprudência do Egrégio STJ manifestou-se no sentido de que "extinta a UFIR pela Medida Provisória nº 1.973/67, de 26.10.2000, convertida na Lei 10.552/2002, o índice substitutivo utilizado para a atualização monetária dos créditos do contribuinte para com a Fazenda passa a ser o IPCA-E, divulgado pelo IBGE, na forma da resolução 242/2001 do Conselho da Justiça Federal". (REsp 761.319/RS, Rel. Ministro Luiz Fux, Primeira Turma, julgado em 07/03/2006, DJ 20/03/2006 p. 208) 6. A doutrina do tema corrobora esse entendimento, assentando que "tem-se utilizado o IPCA-E a partir de então pois servia de parâmetro para a fixação da UFIR. Não há como aplicar a SELIC, pois esta abrange tanto correção como juros". (PAUSEN, Leandro. ÁVILA, René Bergmann. SLIWKA, Ingrid Schroder. Direito

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	Processual Tributário. 5.ª ed. Porto Alegre: Livraria do Advogado editora, 2009, p. 404) 7. Dessa sorte, mutatis mutandis, adota-se como valor de alçada para o cabimento de apelação em sede de execução fiscal o valor de R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), corrigido pelo IPCA-E a partir de janeiro de 2001, valor esse que deve ser observado à data da propositura da execução. 8. In casu, a demanda executiva fiscal, objetivando a cobrança de R$ 720,80 (setecentos e vinte reais e oitenta centavos), foi ajuizada em dezembro de 2005. O Novo Manual de Cálculos da Justiça Federal, (disponível e &lt;http://aplicaext.cjf.jus.br/phpdoc/sicomo/&gt;), indica que o índice de correção, pelo IPCA-E, a ser adotado no período entre jan/2001 e dez/2005 é de 1,5908716293. Assim, R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), com a aplicação do referido índice de atualização, conclui-se que o valor de alçada para as execuções fiscais ajuizadas em dezembro/2005 era de R$ 522,24 (quinhentos e vinte e dois reais e vinte a quatro centavos), de sorte que o valor da execução ultrapassa o valor de alçada disposto no artigo 34, da Lei n.º 6.830/80, sendo cabível, a fortiori, a interposição da apelação. 9. Recurso especial conhecido e provido. Acórdão submetido ao regime do art. 543-C do CPC e da Resolução STJ 08/2008.” (REsp 1168625/MG, Rel. Ministro LUIZ FUX, PRIMEIRA SEÇÃO, julgado em 09/06/2010, DJe 01/07/2010) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Em verdade, na data da distribuição do presente feito (outubro de 2019), 50 ORTN correspondiam a R$ R$ 1.022,13 (mil e vinte e dois reais e treze centavos) (&lt;https://www3.bcb.gov.br/CALCIDADAO/publico/corrigirPorIndice.do?method=corrigirPorIndice&gt;).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desse modo, o que se conclui é que a apelação cível interposta não preenche o requisito intrínseco do cabimento, não podendo, desta maneira, ser conhecida.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tal fato se explica pelo motivo de que a sentença proferida em 1º grau de jurisdição somente poderia ter sido impugnada mediante a propositura de embargos infringentes e embargos de declaração, por força de expressa previsão legal.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Não é outro o posicionamento adotado pela mais abalizada doutrina, conforme se depreende dos trechos a seguir:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Das sentenças de primeira instância, proferidas em execuções de valor igual ou inferior a 50 ORTNs só se admitirão embargos infringentes. (...) com o objetivo de evitar que a segunda instância fique assoberbada com processos de reduzido valor...” (Teoria e Prática do Processo Executivo Fiscal; Antônio Carlos Costa e Silva; Aide Editora; 2ª edição; Rio de Janeiro; pág. 631)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-

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	space:pre-wrap;">* * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Das sentenças de primeira instância proferidas em execuções fiscais de valor igual ou inferior a 50 (cinqüenta) ORTN só se admitirão embargos infringentes e de declaração. (...) Na verdade, tais sentenças são irrecorríveis, não podendo ser desafiadas pelo recurso de apelação. Cabe, apenas, para o próprio juiz, embargos declaratórios ou um recurso denominado de embargos infringentes, que não se confundem com os embargos infringentes previstos no CPC. Trata-se de recurso intentado para o próprio juiz para que ele reveja sua sentença.” (A Fazenda Pública em Juízo; Leonardo José Carneiro da Cunha; Editora Dialética; 4ª edição; São Paulo; págs. 316/317)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Assim, torna-se patente que a inadequada propositura de apelação cível, quando a Lei dispõe de maneira clara e específica (art. 34 da Lei 6.830/80) que o recurso cabível seria os embargos infringentes, não permite a aplicação do princípio da fungibilidade, porquanto tem-se na espécie erro grosseiro, que desautoriza a incidência da instrumentalidade das formas, até mesmo por inexistir dúvida objetiva no caso.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Mais uma vez, o magistério jurisprudencial:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO REGIMENTAL NO RECURSO ESPECIAL. EXECUÇÃO FISCAL. EXTINÇÃO. VALOR INFERIOR A 50 ORTNS. APELAÇÃO NÃO ADMITIDA. RECURSO CABÍVEL. EMBARGOS INFRINGENTES. ART. 34 DA LEI 6.830/80. PRINCÍPIO DA FUNGIBILIDADE RECURSAL. INAPLICABILIDADE. ACÓRDÃO RECORRIDO EM SINTONIA COM O ATUAL ENTENDIMENTO DO STJ. SÚMULA 83/STJ. AGRAVO REGIMENTAL IMPROVIDO. 1. A aplicação alternativa do Princípio da Fungibilidade encontra óbice, na medida em que impede a interposição de determinado recurso quando outro é previsto na legislação vigente, conforme dispõe o art. 34 da LEF que das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN só se admitirão Embargos Infringentes e de Declaração. 2. Inexistente dúvida objetiva acerca do recurso a ser interposto, como é o caso dos autos, em face da expressa disposição contida no art. 34 da Lei 6.830/80, não se admite a aplicação do Princípio da Fungibilidade Recursal. 3. O acórdão recorrido está em sintonia com o atual entendimento deste Tribunal Superior, razão pela qual não merece prosperar a irresignação. Incide, in casu, o princípio estabelecido na Súmula 83/STJ: "Não se conhece do Recurso Especial pela divergência, quando a orientação do Tribunal se firmou no mesmo sentido da decisão recorrida." 4. Cumpre ressaltar que a referida orientação é aplicável também aos recursos interpostos pela alínea "a" do art. 105, III, da Constituição Federal de 1988. Nesse sentido: REsp 1.186.889/DF, Segunda Turma, Relator Ministro Castro Meira, DJe de 2.6.2010. 5. Agravo Regimental não provido.” (AgRg

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	no AREsp 727.807/RJ, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 01/03/2016, DJe 19/05/2016) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Neste sentido a linha de raciocínio esposada por esta egrégia Corte de Justiça:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO INTERNO. DECISÃO UNIPESSOAL DO RELATOR QUE DEIXOU DE CONHECER DA APELAÇÃO CÍVEL. AUSÊNCIA DE INTERESSE RECURSAL. EXECUÇÃO FISCAL. CRÉDITO EXEQUENDO INFERIOR AO TETO DE ALÇADA PREVISTO NO ART. 34 DA LEI Nº 6.830/1980. SENTENÇA TERMINATIVA, NOS MOLDES DO ART. 267, VI, CPC/1973. RECURSO DESPROVIDO. 1- Nas sentenças proferidas em execuções fiscais cuja dívida não alcança o teto mensurado no art. 34 da Lei nº 6.830/1980, são admissíveis tão somente embargos de declaração e embargos infringentes de alçada, por expressa disposição legal. Precedentes do STJ e deste Tribunal. 2- A Súmula 452 do STJ não diz respeito à decisão que deixa de conhecer do recurso. No caso dos autos, o valor executado corrigido é inferior a 50 ORTN, a obstar o conhecimento do apelo. As alegações recursais não se mostram razoáveis para reformar a decisão monocrática. 3- Agravo interno conhecido e desprovido.” (AR 0003462-92.2009.8.06.0070; Relator(a): FERNANDO LUIZ XIMENES ROCHA; Comarca: Crateús; Órgão julgador: 1ª Câmara Direito Público; Data do julgamento: 20/03/2017; Data de registro: 20/03/2017; Outros números: 3462922009806007050000) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. VALOR EXEQUENDO INFERIOR A 50 ORTN. IMPOSSIBILIDADE DE INTERPOSIÇÃO DE APELAÇÃO. INTELIGÊNCIA DO ART. 34 DA LEI Nº 6.830/1980. INADEQUAÇÃO DA VIA ELEITA. PRECEDENTES DESTA CORTE E DO STJ. RECURSO NÃO CONHECIDO. 1. O art. 34 da Lei 6.830/1980 dispõe que o meio adequado para impugnação de sentenças proferidas em sede de execuções fiscais que não ultrapassem o montante de 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional – ORTN são embargos de declaração e embargos infringentes dirigidos ao juízo que proferiu a decisão<span style="font-

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	size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">. 2. A importância exequenda está aquém do patamar que possibilita a interposição de recurso apelatório dirigido a esta Egrégia Corte de Justiça, razão pela qual torna-se imperioso o não conhecimento do feito, ante a inadequação da via eleita. Precedentes desta Corte e do STJ. 3. Recurso não conhecido.” (APC 0001302-49.2009.8.06.0182; Relator(a): LUIZ EVALDO GONÇALVES LEITE; Comarca: Viçosa do Ceará; Órgão julgador: 2ª Câmara Direito Público; Data do julgamento: 15/03/2017; Data de registro: 15/03/2017) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. TRIBUTÁRIO. AÇÃO DE EXECUÇÃO FISCAL. AGRAVO REGIMENTAL. APELAÇÃO. IMPOSSIBILIDADE DE APELAÇÃO EM CASOS DE EXECUÇÃO FISCAL CUJO VALOR SEJA INFERIOR A 50 ORTN – LEI 6.830/1980, ART. 34. CONSTITUCIONALIDADE RECONHECIDA PELO STF. INEXISTÊNCIA DE AFRONTA AO DUPLO GRAU DE JURISDIÇÃO. PRINCÍPIOS DA LEGALIDADE, DO DEVIDO PROCESSO LEGAL, DA AMPLA DEFESA, DO CONTRADITÓRIO E DA INAFASTABILIDADE DA PRESTAÇÃO JURISDICIONAL PRESERVADOS. PRECEDENTES DO SUPREMO TRIBUNAL FEDERAL, SUPERIOR TRIBUNAL DE JUSTIÇA E DESTA CORTE DE JUSTIÇA. I. Trata-se de Ação Execução Fiscal promovida pelo Município de Crateús, que tramita sob o nº 15877-68.2013.806.0070, na qual pretende o Ente o recebimento do valor de R$ 594,58 (quinhentos e noventa e quatro reais e cinquenta e oito centavos) proveniente de IPTU regularmente inscrito em Dívida Ativa. II. A Lei 6.830/1980, art. 34, expressamente determina que, da sentença de 1º grau proferida nos autos de uma Execução Fiscal cujo valor objeto da ação atinja até 50 (cinquenta) ORTN, aceitar-se-á, tão somente, a interposição de Embargos Infringentes e Embargos de Declaração<span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">. III. Acerca do tema, cumpre destacar que o SUPERIOR TRIBUNAL DE JUSTIÇA, no julgamento do RESP 1.168.625, de Relatoria do Ministro Luiz Fux, consolidou o entendimento de que com a extinção da ORTN o valor da alçada deve ser encontrado a partir da interpretação da norma que extinguiu o índice, como forma de evitar a perda do valor aquisitivo. Desse modo, entendeu que 50 ORTN equivaleria ao valor de R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) a partir de janeiro de 2001 e que tal valor deve ser sempre corrigido pelo IPCA-E. IV. Assim, conclui-se que o valor de 50 ORTN equivalia a R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) em janeiro de 2001 e que tal valor deve ser atualizado pelo IPCA/E até a data da distribuição da ação de execução fiscal para verificar o valor equivalente. Na presente situação, atualizando o aludido valor por meio do site do Banco Central do Brasil, verifica-se que na data do ajuizamento da Ação de Execução Fiscal, ou seja, em abril de 2013, o valor de 50 ORTN equivalia a R$ 718,29 (setecentos e dezoito reais e vinte e nove centavos). V. Desse modo, verificando-se que o débito atualizado abrange o valor de R$ 594,58 (quinhentos e noventa e quatro centavos e cinquenta e oito centavos), já atualizado e corrigido monetariamente à data do ajuizamento da ação, ou seja, em abril de 2013, consoante Certidões da Dívida Ativa (fls.5/6), conclui-se pela impossibilidade de interposição de recurso de apelação, porquanto ausente requisito intrínseco basilar ao seu conhecimento, eis que o valor da execução não ultrapassou os 50 ORTN. VI. Ressalta-se

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	que o Supremo Tribunal Federal, quando do julgamento do ARE 637.975, com repercussão geral reconhecida, de relatoria do eminente Ministro Cezar Peluzo, explicitamente obstou qualquer afronta ao duplo grau de jurisdição o fato de não ser recebido recurso de apelação em face da restrição imposta no artigo 34 da Lei 6.830/1980. Da mesma forma, restou afastada a alegada violação aos princípios da legalidade, do devido processo legal, da ampla defesa, do contraditório e da inafastabilidade da prestação jurisdicional. VII. Logo, depreende-se que resta patente a interposição errônea da apelação pelo Município, o que, por consequência, configura erro grosseiro e enseja o não recebimento do apelo, fato que deve ser reconhecido nesta instância. Ademais, faz-se mister salientar que não se permite na presente situação a aplicação do princípio da fungibilidade, porquanto, conforme registrado alhures, trata-se de erro grosseiro, que desautoriza a incidência da instrumentalidade das formas, até mesmo por inexistir dúvida objetiva no caso. VIII. Agravo Regimental conhecido, mas improvido.” (AR 0015877-68.2013.8.06.0070; Relator(a): INACIO DE ALENCAR CORTEZ NETO; Comarca: Crateús; Órgão julgador: 3ª Câmara Direito Público; Data do julgamento: 28/11/2016; Data de registro: 28/11/2016; Outros números: 15877682013806007050000) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Dessa maneira, por ter a Fazenda Pública utilizado equivocadamente o recurso de apelação, laborando contra legem, o não conhecimento do inconformismo, é medida que se impõe.</p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Diante do exposto, com base nas razões retro expendidas, considerando, ainda, o disposto no art. 34 da Lei de Execuções Fiscais, não conheço da apelação interposta, uma vez que incabível para a espécie.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024. <br /> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO &#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:italic;font-variant:normal;text-decoration:none;vertical-align:baseline;white-

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	space:pre;white-space:pre-wrap;">Portaria 1550/2024</p><div> <br /></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	74
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	ANTONIO ARDILAU LIMA SOUSA MARIA DE FATIMA AVILA FERREIRA MARIA MENDES FELIX MARIA DE PAULA RICARDO FRANCISCO ANTONIO MAGALHAES DE VASCONCELOS
Advogado(s) - Polo ativo	VALDECY DA COSTA ALVES - (CE105170-S)
Polo passivo	MUNICIPIO DE TEJUCUOCA
Advogado(s) - Polo passivo	PRISCILA SOUSA DE OLIVEIRA - (CE39709-A) EDSON LUIS MONTEIRO LUCAS - (CE18105-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"> <span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZuu434D8svvvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dlcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT7TWtt/qf+nei 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	transparent; font-weight: 400; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">A questão em discussão consiste em saber se houve omissão no voto embargado.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">3. O recorrente afirma haver omissão no voto condutor, uma vez que o acórdão embargado teria desconsiderado os entendimentos remansosos, como seria o caso do processo nº 0000035-88.2019.8.06.0215.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">4. Contudo, consoante reconhecido pelo próprio embargante em seus aclaratórios, no acórdão embargado foi suficientemente “discutida a matéria inicial” (ID 14624957), não havendo que se falar, como insiste o recorrente, em ausência de análise quanto aos entendimentos remansos, uma vez que o voto contra qual se insurge o embargante colacionou diversos julgados desta e. Corte de Justiça em casos análogos.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">IV. Dispositivo e Tese</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Embargos de Declaração conhecidos e desprovidos. Acórdão mantido.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> _________</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Dispositivo relevante citado: CPC, art. 1.022.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">&#160;<span style="background-

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	color: transparent; font-size: 14pt; font-family: Arial, sans-serif; font-style: italic; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">Jurisprudência relevante citada: Súmula nº 18 do TJCE; TJCE, Apelação / Remessa Necessária - 0000150-46.2018.8.06.0215 , Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento: 23/10/2023, data da publicação: 23/10/2023; TJCE - Apelação Cível: 0000092-82.2014.8.06.0215 Irauçuba, Relator: FRANCISCO GLADYSON PONTES, Data de Julgamento: 14/06/2023, 2ª Câmara Direito Público, Data de Publicação: 14/06/2023.</p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="text-align: justify;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Vistos, relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 0000152-16.2018.8.06.0215, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e rejeitar o recurso , nos termos do voto da Relatora.</p><div> <br /> </div><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center">&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de embargos declaratórios opostos em face de acórdão da 3ª Câmara de Direito Público que, por unanimidade, deu provimento ao apelo anteriormente interposto, nos seguintes termos (ID 14365742 da APC nº 0000152-16.2018.8.06.0215):</p><p style="line-height: 1.2; margin-left: 113pt; text-align:

Processo	0000152-16.2018.8.06.0215
	justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “EMENTA: CONSTITUCIONAL. ADMINISTRATIVO. PROCESSUAL CIVIL. APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. SERVIDOR PÚBLICO DO MAGISTÉRIO DO MUNICÍPIO DE TEJUÇUOCA. PROGRESSÃO VERTICAL NA CARREIRA PELA VIA ACADÊMICA. COMPROVAÇÃO DA TITULAÇÃO. ATO VINCULADO. DEVIDA A PROGRESSÃO COM A ELEVAÇÃO DE UMA REFERÊNCIA DENTRO DA MESMA CLASSE. ART. 34 DA LEI MUNICIPAL 33/2009. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. SENTENÇA REFORMADA.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Em evidência, apelação cível interposta em face de sentença, por meio da qual o magistrado de primeiro grau considerou improcedente o pedido formulado na ação ordinária de cobrança movida por servidor público do Município de Tejuçuoca, objetivando a implementação de progressão funcional pela via acadêmica, com base na Lei Municipal nº 33/2009 (Plano de Carreira e Remuneração dos Profissionais do Magistério Público do Município de Tejuçuoca).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. Conforme relatado, o promovente, servidor público do magistério municipal, sustentou que possui direito a ascender na carreira por aperfeiçoamento profissional (progressão pela via acadêmica), vez que concluiu curso de graduação em Educação Física (diploma acostado aos autos), de modo a ser promovido verticalmente de “Professor de Educação Básica – PEB I” para “Professor de Educação Básica PEB II”, requerendo, ainda, o pagamento dos valores retroativos.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. A Lei Municipal nº 33/2009, de 30 de dezembro de 2009, que instituiu o Plano de Carreira e Remuneração do Magistério Público do Município de Tejuçuoca, alterada pela Lei Municipal nº 50/2015, prevê a possibilidade de progressão funcional pela via acadêmica, com avanço vertical de um padrão ou referência, mediante requerimento com comprovação da habilitação exigida.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. O art. 16 da Lei º 33/2009 dispõe sobre o que seria “progressão vertical” para os efeitos da lei, regulamentado que o cargo de provimento efetivo de professor possui vários níveis/classes. E, in concreto, todos os membros do quadro executam a mesma função, qual seja, professor da educação básica, sendo integrantes da mesma carreira de servidores públicos, não havendo, pois, que se falar em ofensa à regra de exigência de concurso público, estampada no art. 37, II, da CF, vez que a movimentação ocorre dentro do mesmo cargo.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Assim, satisfeitos os requisitos legais, tem o servidor direito à implementação da progressão de PEB I para PEB II e ao pagamento da diferença vencimental, eis que, tratando-se de ato vinculado, é incabível qualquer interpretação destoante daquela efetivamente prescrita em lei, uma vez que a ação administrativa não tem o condão de se afastar ou desviar das indicações legais/regulamentares às quais o Poder Público é sujeito.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 6. Apelação conhecida e provida. Sentença reformada.”</p><p align="center"> <strong id="docs-internal-guid-928a66ef-7fff-559f-a3a0-c37a7092a5be" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">Inconformado, o Município de Tejuçuoca opôs embargos de declaração, alegando haver omissão no voto condutor, uma vez que o acórdão embargado teria desconsiderado os entendimentos remansosos, como seria o caso do processo nº 0000035- 88.2019.8.06.0215, requerendo, portanto, a reforma do decisório.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Contrarrazões não apresentadas pelo embargado.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dispõe o art. 1.022, I, II e III do CPC que cabem embargos de declaração quando houver na sentença, ou no acórdão, obscuridade, contradição, omissão ou erro material, sendo certo que o vício que autoriza o uso deste recurso é o que se verifica entre proposições do provimento jurisdicional, entre a fundamentação e a parte conclusiva ou dentro do próprio dispositivo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> O recorrente alega haver omissão no voto condutor, uma vez que o acórdão embargado teria desconsiderado os entendimentos remansosos, como seria o caso do processo nº 0000035- 88.2019.8.06.0215.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Contudo, consoante reconhecido pelo próprio embargante em seus aclaratórios, no acórdão embargado foi suficientemente “discutida a matéria inicial” (ID 14624957), não havendo que se falar, como insiste o recorrente, em ausência de análise quanto aos entendimentos remansos, uma vez que o voto contra qual se insurge o embargante colacionou diversos julgados desta e. Corte de Justiça em casos análogos, a saber:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “Assim, satisfeitos os requisitos legais, tem o servidor direito à implementação da progressão de PEB I para PEB II e ao pagamento da diferença vencimental, eis que, tratando-se de ato vinculado, é incabível qualquer interpretação destoante daquela efetivamente prescrita em lei, uma vez que a ação administrativa não tem o condão de se afastar ou desviar das indicações legais/regulamentares às quais o Poder Público é sujeito.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">Nota-se que esse é o entendimento deste egrégio Tribunal de Justiça em casos análogos:</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> CONSTITUCIONAL E ADMINISTRATIVO. REMESSA NECESSÁRIA E APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA DO MUNICÍPIO DE TEJUÇUOCA. PROGRESSÃO PELA VIA ACADÊMICA. CONCLUSÃO DE CURSO DE GRADUAÇÃO. PREVISÃO NA LEI MUNICIPAL Nº 33/2009. ALEGAÇÃO DE INCONSTITUCIONALIDADE DA EMENDA MODIFICATIVA Nº 05/2015 AFASTADA. DIREITO CONFIGURADO A PARTIR DO REQUERIMENTO ADMINISTRATIVO. APELAÇÃO E REMESSA CONHECIDAS, MAS DESPROVIDAS. 1. Preliminarmente, afasto a suscitada necessidade de concessão de efeito suspensivo ao apelo, por suposta afronta à Lei nº 8.437/92, porquanto não se vislumbra qualquer violação aos seus dispositivos em relação à antecipação de tutela concedida na sentença. 2. Nas razões do apelo, o Município recorrente suscita a inconstitucionalidade da Emenda Modificativa nº 05/2015 que deu nova redação aos artigos 3º, VIII, e 16, § 1º, da Lei Municipal nº 33/2009, não sendo capaz de desconstituir a presunção de constitucionalidade da lei. 3. Não procede o argumento do ente público de que haveria necessidade de lei que regulamentasse a referida forma de progressão, conquanto o Plano de Cargos e Carreiras dos Professores já traz os requisitos necessários para evolução na carreira: requerimento com a comprovação de curso de especialização na área específica de atuação do docente devidamente reconhecido pelo MEC. 4. Apelação e remessa conhecidas, mas desprovidas. (TJCE, Apelação / Remessa Necessária - 0000150-46.2018.8.06.0215 , Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento: 23/10/2023, data da publicação: 23/10/2023) (destacado)</p><p style="line-height: 1.2; margin-left: 142pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> * * *</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">APELAÇÃO. CONSTITUCIONAL E ADMINISTRATIVO. SERVIDORES PÚBLICOS DO MUNICÍPIO DE TEJUÇUOCA. PROGRESSÃO FUNCIONAL. LEI MUNICIPAL Nº 33/2009. CONCLUSÃO DE CURSO SUPERIOR. POSSIBILIDADE. CONCLUSÃO DE PÓS-GRADUAÇÃO. POSSIBILIDADE. NECESSIDADE DE COMPROVAÇÃO DE CURSO RECONHECIDO PELA LEI MUNICIPAL. APELO CONHECIDO E DESPROVIDO. 1. No mérito, cumpre a este juízo de segundo grau avaliar a possibilidade de os autores da presente ação, professores da educação básica do município de Tejuçuoca, evoluírem na carreira, do Cargo de professor de Educação Básica I -PEB I para o Cargo de professor de Educação Básica II - PEB II e, ademais, de serem reconhecidas as titulações pertinentes à pós-graduação. 2. A progressão funcional do servidor, no presente caso, é a chamada progressão horizontal, em que o agente público permanece no mesmo cargo, mas percorre caminho que, normalmente, é representado por índices ou padrões, em que a melhoria é materializada por aumento nos vencimentos. 3. O Cargo de professor de Educação Básica II ¿ PEB II, cuja formação deve ser licenciatura plena em pedagogia ou em área específica do conhecimento, é plenamente acessível aos professores que ingressaram no serviço público para função que não exigia nível superior. Tal fato é evidentemente legal e de consonância com as normas municipais, pois houve movimentação dos servidores na mesma classe e cargo, com incremento apenas de um nível de formação. Com isso, de acordo com a Lei Municipal, depreende-se que a única maneira de deslocamento na carreira é por intermédio do aprimoramento profissional. Por consequência, a progressão na carreira é viabilizada pela titulação, configurando-se o movimento de ascensão na classe, sendo a única exigência a necessidade de demonstração do título por certidão ou diploma da área de atuação. 4. Acerca dos títulos de pós-graduação apresentados, os autores não podem receber em equivalência à titulação de pós-graduação, apenas e somente porque os certificados dos cursos apresentados pelos autores não se encaixam na lista exaustiva constante do dispositivo legal citado (art. 16, § 1º). Feitos esses registros, conclui-se que a legislação local tratou, também, sobre o direito dos professores a evolução funcional, uma vez preenchidos os requisitos necessários relativo a comprovação do Curso de Pós-Graduação com Certificado de Especialização somente para as seguintes matérias: avaliação educacional; educação ambiental; psicopedagogia; planejamento educacional; educação especial e metodologia do ensino fundamental. Nessa vertente, com base na lei do ente e no preenchimento dos requisitos exigidos pela lei, conforme documentação de fls.19/219, dúvidas não pairam sobre a impossibilidade de conceder direito à percepção da implementação da progressão aos autores, pois os cursos concluídos pelos servidores não

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	estão inclusos na lista presente na norma municipal. 5. Em breves alegações, o recorrente afirma que a lei municipal que instituiu o plano de cargos e carreiras do município é ilegal, pois confrontaria com dispositivo da Lei Orgânica do Município de Tejuçuoca que afirma ser necessária Lei Complementar, isto é, quorum qualificado, para dispor sobe tal assunto. Entretanto, o apelante não traz aos autos comprovação de que a lei de cargos e carreiras dos docentes do município não teria sido aprovada com quorum de Lei Complementar, sendo tal investigação possível apenas pela leitura de, se existentes, notas taquigráficas do ano de 2009 relativas à aprovação da referida lei. Por fim, não merece prosseguimento o argumento de que, apenas por não ter em sua parte preliminar o nome ¿Lei Complementar¿, a norma, portanto, seria ordinária. Nesses casos, o que deve ser averiguado, em caso de dúvida, é a quantidade de votos a favor da aprovação da lei, e não uma denominação. 6. Recurso conhecido e desprovido. (TJ-CE - Apelação Cível: 0000092-82.2014.8.06.0215 Irauçuba, Relator: FRANCISCO GLADYSON PONTES, Data de Julgamento: 14/06/2023, 2ª Câmara Direito Público, Data de Publicação: 14/06/2023) (destacado)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Logo, é forçoso reconhecer o direito do apelante à progressão pela via acadêmica, com a elevação de uma referência dentro da mesma classe, com efeitos financeiros a partir do requerimento.”</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, consoante firme jurisprudência do STJ, não há ofensa ao art. 1.022 do CPC quando o órgão julgador decide a questão com base em fundamentação suficiente para o deslinde da controvérsia, não havendo a necessidade de análise de todos os pontos apresentados pelo insurgente, como ilustra o julgado a seguir:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. RECURSO ESPECIAL. EXECUÇÃO DE SENTENÇA. SUBSTITUIÇÃO PROCESSUAL. OFENSA AO ART. 1.022 DO CPC NÃO CONFIGURADA. AUSÊNCIA DE OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Nas razões do Recurso Especial, a parte recorrente requer a restauração da vigência plena dos artigos tidos por violados, garantindo a inteireza positiva, de autoridade e uniformidade de interpretação do Direito Federal, com (a) a extinção da execução em razão da ilegitimidade ativa do exequente e, (b) subsidiariamente, a reabertura do prazo para a apresentação de Embargos à Execução/Impugnação, mediante nova citação.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. No momento a insurgência se apresenta contra o acórdão que não conheceu do REsp, uma vez que o Tribunal de origem enfrentou o cerne das questões debatidas às fls. 526-532, e-STJ.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Assim, não se configura a ofensa ao art. 1.022 do Código de Processo Civil quando o Tribunal de origem julga integralmente a lide e soluciona a controvérsia. O órgão julgador não é obrigado a rebater, um a um, todos os argumentos trazidos pelas partes em defesa da tese que apresentaram. Deve apenas enfrentar a demanda, observando as questões relevantes e imprescindíveis à sua resolução. Nesse sentido: REsp 927.216/RS, Segunda Turma, Relatora Ministra Eliana Calmon, DJ de 13/8/2007; e REsp 855.073/SC, Primeira Turma, Relator Ministro Teori Albino Zavascki, DJ de 28/6/2007.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:

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	color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">4. A solução integral da controvérsia, com fundamento suficiente, não caracteriza ofensa ao art. 1.022 do CPC. Os Embargos Declaratórios não constituem instrumento adequado para a rediscussão da matéria de mérito, nem ao prequestionamento de dispositivos constitucionais com vistas à interposição de Recurso Extraordinário.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Não há lacuna na apreciação do decisum embargado. As alegações da parte embargante não têm o intuito de solucionar omissão, contradição ou obscuridade, mas denotam a vontade de rediscutir o julgado.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 6. Embargos de Declaração rejeitados.” (STJ, EDcl no REsp 1797298/PR, Min. Herman Benjamin, Segunda Turma, julgado em: 19/11/2019, publicado em: 19/12/2019)</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dessarte, não se verifica nenhuma omissão, contradição ou erro material no julgado, como pretende o recorrente.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ora, a questão posta em discussão fora analisada e discutida pelos integrantes da Turma Julgadora, sendo certo que a Lei Municipal nº 33/2009, de 30 de dezembro de 2009, que instituiu o Plano de Carreira e Remuneração do Magistério Público do Município de Tejuçuoca (ID 11165648 a 11165599 e ID 11165651), alterada pela Lei Municipal 50/2015 (ID 11165600 a 11165601), prevê a possibilidade de progressão funcional pela via acadêmica, com avanço vertical de um padrão ou referência, mediante requerimento com comprovação da habilitação exigida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, como consta no acórdão recorrido, na evolução funcional pela via acadêmica há movimentação dentro da mesma classe, condicionada tão somente ao requerimento do servidor e a comprovação do título, seja por certidão, seja pelo diploma da área de atuação.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, resta claro e nítido o intuito do embargante, uma vez que não se vislumbra a existência de qualquer mácula capaz de modificar o acórdão recorrido.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Perquirir acerca do acerto ou desacerto de tal atividade interpretativa é medida reservada às vias recursais próprias, não cabendo à parte utilizar-se dos embargos de declaração para este fim, ainda que considere que a conclusão da Turma Julgadora não se afigura consentânea a melhor aplicação do direito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portanto, o que se observa é uma nítida tentativa de rediscussão da matéria, o que é vedado nesta via estreita. Desta forma, há vários precedentes deste Tribunal e, por todos, o enunciado da súmula 18 do

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	TJCE:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De outro modo: os embargos declaratórios não possuem o condão de devolver mais uma vez a apreciação da matéria já decidida, ainda que a mesma se apresente de maneira que a parte vencida a considere imprecisa ou injusta.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em suma: nos presentes embargos de declaração, recurso que possui nítida natureza jurídica processual, com o objetivo de integrar o acórdão embargado, não há que se falar em omissão, contradição ou obscuridade diante de matéria tão exaustivamente estudada e discutida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o desprovimento dos presentes aclaratórios é medida que se impõe nesta oportunidade, tornando-se, outrossim, despicienda qualquer declaração para fins de prequestionamento de eventuais recursos à instância especial.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Desta forma, inexistentes os vícios apontados, a manutenção do acórdão recorrido é medida que se impõe.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Diante do exposto, em face da inexistência de qualquer obscuridade, contradição, omissão ou erro material no julgado, conheço dos aclaratórios para NEGAR-LHES provimento, mantendo inalterado o acórdão embargado. Nego, outrossim, qualquer violação a dispositivos legais.</p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color:

Processo	0000152-16.2018.8.06.0215
	#000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">&#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	75
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Jornada Especial
Polo ativo	JACINTA ELISA REGO COLARES DE PAULA
Advogado(s) - Polo ativo	SERGIO ELLERY SANTOS GIRAO - (CE15154-A) SABRINA RODRIGUES GIRAO NOGUEIRA ELLERY - (CE17055-A) JOSBERTO DOS SANTOS GARCEZ - (CE15672-A)
Polo passivo	MUNICIPIO DE FORTALEZA
Advogado(s) - Polo passivo	MARCELO DE ARRUDA BEZERRA - (CE8080-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

Processo	3004967-26.2022.8.06.0001
Acordão	&#160; &#160; <span style="font-size: medium;">

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	style="color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> III. Razões de decidir </p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. A decisão embargada fundamentou de maneira clara acerca da inaplicabilidade da lei nº 3.999/61 ao caso concreto, seja pela interpretação de que a aplicação da referida norma se restringe expressamente às relações privadas, bem como pelo entendimento de impossibilidade de aplicação/extensão de normas federais a servidores municipais/estaduais, de modo que a respectiva lei não poderia servir de parâmetro aos anseios autorais.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. Ademais, consoante firme jurisprudência do STJ, não há ofensa ao art. 1.022 do CPC quando o órgão julgador decide a questão com base em fundamentação suficiente para o deslinde da controvérsia, não havendo a necessidade de análise de todos os pontos apresentados pelo insurgente.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Embargos de Declaração conhecidos e desprovidos. Acórdão mantido. </p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> _________ </p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dispositivo relevante citado: CPC, art. 1.022.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Jurisprudência relevante citada: Súmula nº 18 do TJCE; STJ, EDcl no REsp 1797298/PR, Min. Herman Benjamin, Segunda Turma, julgado em: 19/11/2019, publicado em: 19/12/2019. ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros números: 626694902015806000050001</p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Vistos,

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	relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 3004967-26.2022.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e rejeitar o recurso , nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO <strong style="font-size: medium; text-indent: 8%;"> &#160; </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de embargos declaratórios opostos em face de acórdão da 3ª Câmara de Direito Público que, por unanimidade, negou provimento ao apelo interposto, nos seguintes termos (ID 14365373 da APC nº 3004967-26.2022.8.06.0001): </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ EMENTA: APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA MOVIDA POR SERVIDORA PÚBLICA DO MUNICÍPIO DE FORTALEZA/CE. CIRURGIÃ DENTISTA. REDUÇÃO DE CARGA HORÁRIA. EXTENSÃO DA LEI FEDERAL Nº 3.999/1961. IMPOSSIBILIDADE. PRECEDENTES. SENTENÇA MANTIDA. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Trata-se de apelação cível adversando sentença que julgou improcedente o pleito formulado por servidora pública do Município de Fortaleza/CE, pretendendo a redução de sua carga horária para 20 (vinte) horas semanais, com a manutenção da remuneração percebida, além do pagamento pelas horas extras laboradas nos últimos 05 anos. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. De logo, curial ressaltar que a Lei nº 3.999/1961 restringe expressamente sua aplicação às relações privadas. Ademais, em que pese o STF tenha reconhecido a compatibilidade da referida norma à Constituição Federal (ADPF 325), a Suprema Corte já se manifestou sobre a impossibilidade de aplicação/extensão de normas federais a servidores municipais/estaduais. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="color: #000000; background-color:

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	transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> 3. Ante o exposto, uma vez que a Lei Federal nº 3.999/1961 não pode ser utilizada como parâmetro para conceder o pleito da autora/apelante, em respeito, sobretudo, ao Princípio Separação dos Poderes, o desprovimento do recurso é medida que se impõe. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Recurso conhecido e desprovido. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Sentença mantida." </p><p align="center"> <strong id="docs-internal-guid-1a65e75b-7fff-c417-62fc-afe608843e17" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Inconformada, a autora, ora embargante, opôs embargos de declaração , alegando haver contradição e omissão no voto condutor ao entender inaplicável a Lei nº 3.999/61 no que se refere à fixação da jornada de trabalho, uma vez que aquele ato normativo não teria restringido seu âmbito de aplicação às relações privadas, bem como sobre a competência privativa da União para legislar sobre as condições gerais do exercício profissional. Nesses termos, requereu a modificação do acórdão embargado.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Contrarrazões da parte embargada suplicando pela rejeição dos aclaratórios (ID 15627842), sustentando que, no acórdão embargado não haveria omissão, contradição, obscuridade ou erro material.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório. </p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dispõe o art. 1.022, I, II e III do CPC que cabem embargos de declaração quando houver na sentença, ou no acórdão, obscuridade, contradição, omissão ou erro material, sendo certo que o vício que autoriza o uso deste recurso é o que se verifica entre proposições do provimento jurisdicional, entre a fundamentação e a parte conclusiva ou dentro do próprio dispositivo. </p><p style="line-height:

Processo	3004967-26.2022.8.06.0001
	1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Em suma, a recorrente traz em seus aclaratórios a alegação de que no voto embargado haveria contradição e omissão ao entender inaplicável a Lei nº 3.999/61 no que se refere à fixação da jornada de trabalho, uma vez que aquele ato normativo não teria restringido seu âmbito de aplicação às relações privadas, bem como sobre a competência privativa da União para legislar sobre as condições gerais do exercício profissional. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Contudo, não assiste razão à embargante. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Isso porque a decisão embargada fundamentou de maneira clara acerca da inaplicabilidade da Lei nº 3.999/61 ao caso concreto ao esclarecer que a interpretação conferida pelos Tribunais Superiores ao referido ato normativo seria pela restrição de seu âmbito de aplicação às relações privadas, colacionado, ainda, jurisprudência desta Corte de Justiça em caso análogo. Ademais, o voto embargado ressaltou a impossibilidade de aplicação/extensão de normas federais a servidores municipais/estaduais, notadamente em observância ao princípio da Separação dos Poderes, de modo que a respectiva lei não poderia servir de parâmetro aos anseios autorais. Veja-se: </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Ademais, em que pese o Supremo Tribunal Federal tenha reconhecido a compatibilidade da referida lei à Constituição Federal, matéria tratada na Arguição de Descumprimento de Preceito Fundamental (ADPF) 325, a Suprema Corte já se manifestou sobre a impossibilidade de extensão de normas federais a servidores municipais/estaduais, como ilustram as decisões adiante transcritas: </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (...) </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ante o exposto, denota-se que a Lei Federal nº 3.999/1961 não pode ser utilizada como parâmetro para o pleito da autora/apelante de redução da sua carga horária aos limites da referida norma, uma vez que inaplicável ao caso em comento, sobretudo em virtude da observância ao princípio da Separação dos Poderes. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Nesse mesmo sentido já se posicionou este e. Tribunal: </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ APELAÇÃO. PROCESSUAL CIVIL,

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	ADMINISTRATIVO E CONSTITUCIONAL. AÇÃO DE OBRIGAÇÃO DE FAZER. SERVIDOR PÚBLICO MUNICIPAL. CIRURGIÃO DENTISTA. CARGA HORÁRIA. PARÂMETRO DA LEI FEDERAL Nº 3.999/1961. IMPOSSIBILIDADE. PRECEDENTES. SENTENÇA MANTIDA. APELAÇÃO CONHECIDA E DESPROVIDA. 1. Pelo que dos autos consta, o impetrante é servidor público do Município de Cedro, ocupante do cargo de odontólogo, lotado a Secretaria de Saúde, com carga horária de 40(quarenta) horas semanais, pretendendo pela via mandamental a redução de carga horária para 20 (vinte) horas semanais com a manutenção de sua remuneração no valor de R$ 3.808,91 (três mil, oitocentos e oito reais e noventa e um centavos). 2.O cerne da questão é saber se restou demonstrado pelo impetrante seu direito líquido e certo à redução de sua carga horária semanal, com base na Lei Federal nº 3.999/1961. Entretanto, referida Lei estabelece, expressamente, que a remuneração ali dispostas diz respeito às relações privadas. 3. O Supremo Tribunal Federal em sede de ADPF 325, sob a relatoria da Ministra Rosa Weber, reconheceu a compatibilidade da Lei nº 3.999/1961 com a Constituição Federal de 1988. Contudo, manifestou-se sobre a impossibilidade de aplicação/extensão de normas federais a servidores municipais/estaduais 4. Sentença mantida. Apelação conhecida e desprovida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer da apelação, mas para negar-lhe provimento, nos termos do voto da relatora. Fortaleza, dia e hora registrados no sistema." (Apelação Cível-0200560-43.2022.8.06.0066, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 26/07/2023, data da publicação: 26/07/2023). (destacamos)." (destacado) </p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, consoante firme jurisprudência do STJ, não há ofensa ao art. 1.022 do CPC quando o órgão julgador decide a questão com base em fundamentação suficiente para o deslinde da controvérsia, não havendo a necessidade de análise de todos os pontos apresentados pelo insurgente, como ilustra o julgado a seguir: </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> " PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. RECURSO ESPECIAL. EXECUÇÃO DE SENTENÇA. SUBSTITUIÇÃO PROCESSUAL. OFENSA AO ART. 1.022 DO CPC NÃO CONFIGURADA. AUSÊNCIA DE OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Nas razões do Recurso Especial, a parte recorrente requer a restauração da vigência plena dos artigos tidos por violados, garantindo a inteireza positiva, de autoridade e uniformidade de interpretação do Direito Federal, com (a) a extinção da execução em razão da ilegitimidade ativa do exequente e, (b) subsidiariamente, a reabertura do prazo para a apresentação de Embargos à Execução/Impugnação, mediante nova citação. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. No momento a insurgência se apresenta contra o acórdão que não conheceu do REsp, uma vez que o Tribunal de origem enfrentou o cerne das questões debatidas às fls. 526-532, e-STJ. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Assim, não se configura a ofensa ao art. 1.022 do Código de Processo Civil quando o Tribunal de origem julga integralmente a lide e soluciona a controvérsia. O órgão julgador não é obrigado a rebater, um a um, todos os argumentos trazidos pelas partes em defesa da tese que apresentaram. Deve apenas enfrentar a demanda, observando as questões relevantes e imprescindíveis à sua resolução. Nesse sentido: REsp 927.216/RS, Segunda Turma, Relatora Ministra Eliana Calmon, DJ de 13/8/2007; e REsp 855.073/SC, Primeira Turma, Relator Ministro Teori Albino Zavascki, DJ de 28/6/2007. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="color: #000000; background-color: transparent; font-

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	weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> 4. A solução integral da controvérsia, com fundamento suficiente, não caracteriza ofensa ao art. 1.022 do CPC. Os Embargos Declaratórios não constituem instrumento adequado para a rediscussão da matéria de mérito, nem ao prequestionamento de dispositivos constitucionais com vistas à interposição de Recurso Extraordinário. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Não há lacuna na apreciação do decisum embargado. As alegações da parte embargante não têm o intuito de solucionar omissão, contradição ou obscuridade, mas denotam a vontade de rediscutir o julgado. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 6. Embargos de Declaração rejeitados.” (STJ, EDcl no REsp 1797298/PR, Min. Herman Benjamin, Segunda Turma, julgado em: 19/11/2019, publicado em: 19/12/2019) </p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dessarte, não se verifica nenhuma omissão, contradição ou erro material no julgado, como pretende o recorrente. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, resta claro e nítido o intuito do embargante, uma vez que não se vislumbra a existência de qualquer mácula capaz de modificar o acórdão recorrido. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Perquirir acerca do acerto ou desacerto de tal atividade interpretativa é medida reservada às vias recursais próprias, não cabendo à parte utilizar-se dos embargos de declaração para este fim, ainda que considere que a conclusão da Turma Julgadora não se afigura consentânea a melhor aplicação do direito. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portanto, o que se observa é uma nítida tentativa de rediscussão da matéria, o que é vedado nesta via estreita. Desta forma, há vários precedentes deste Tribunal e, por todos, o enunciado da súmula 18 do TJCE: </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”. </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De outro modo: os embargos declaratórios não possuem o condão de devolver mais uma vez a apreciação da matéria já decidida, ainda que a mesma se apresente de maneira que a parte vencida a considere imprecisa ou injusta. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Em

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	suma: nos presentes embargos de declaração, recurso que possui nítida natureza jurídica processual, com o objetivo de integrar o acórdão embargado, não há que se falar em omissão, contradição ou obscuridade diante de matéria tão exaustivamente estudada e discutida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Finalmente, no que diz respeito ao prequestionamento, é lição comezinha que o embargante deve se ater, exclusivamente, às hipóteses previstas no art. 1.022 do CPC, conforme restou assentado pelo Órgão Especial deste Tribunal, no acórdão a seguir ementado, in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> “ <span style="color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRAVO REGIMENTAL NO MANDADO DE SEGURANÇA. OMISSÃO. INEXISTÊNCIA. APRECIAÇÃO DAS MATÉRIAS ARGUÍDAS. AUSÊNCIA DE ENQUADRAMENTO EM QUAISQUER DAS HIPÓTESES ELENCADAS NO ART. 1.022 DO CPC/2015. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. PREQUESTIONAMENTO. INVIABILIDADE. RECURSO CONHECIDO E DESPROVIDO. 1. Os embargos de declaração têm como escopo completar ou aclarar as decisões judiciais que tenham pontos omissos, obscuros ou contraditórios, sendo a presença destes vícios o pressuposto de admissibilidade dessa espécie recursal. 2. "A jurisprudência do Superior Tribunal de Justiça consolidou entendimento no sentido de que, em se tratando de redução de vencimentos e não de supressão, está configurada a relação de trato sucessivo, com a renovação mensal do prazo decadencial para a impetração do mandado de segurança." (STJ – MS 12413/DF – Rel. Min. Og Fernandes, Terceira Seção, julgado em 13/03/2013, Dje 21/03/2013) 3. "O servidor público não possui direito adquirido a regime jurídico, tampouco a regime de vencimentos ou de proventos, sendo possível à Administração promover alterações na composição remuneratória e nos critérios de cálculo, como extinguir, reduzir ou criar vantagens ou gratificações, instituindo o subsídio, desde que não haja diminuição no valor nominal percebido, em respeito ao princípio constitucional da irredutibilidade de vencimentos." (STJ – AgRg no RMS 43259/MS, Rel. Min. Herman Benjamin, Segunda Turma, julgado em 22/10/2013, Dje 09/12/2013). 4. O tema tratado no acórdão que se pretende levar à análise dos Tribunais Superiores não precisa, novamente, através de prequestionamento, ser decidido em embargos de declaração. 5. O prequestionamento deve pautar-se no disposto do art. 1.022, do Código de Processo Civil/2015; ausentes quaisquer dos vícios elencados no referido artigo, não é devida a declaração requerida. 6.Incidência da Súmula nº 18/TJCE que aduz: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada". 7. Recurso conhecido e desprovido.” (ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros números: 626694902015806000050001) (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o desprovimento dos presentes aclaratórios é medida que se impõe nesta oportunidade, tornando-se, outrossim, despicienda qualquer declaração para fins de prequestionamento de eventuais recursos à instância especial. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Desta forma, inexistentes os vícios apontados, a manutenção do acórdão recorrido é medida que se impõe. </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> DISPOSITIVO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top:

Processo	3004967-26.2022.8.06.0001
	12pt; margin-bottom: 0pt;" dir="ltr"> Diante do exposto, em face da inexistência de qualquer obscuridade, contradição, omissão ou erro material no julgado, conheço dos aclaratórios para NEGAR-LHES provimento, mantendo inalterado o acórdão embargado . Nego, outrossim, qualquer violação a dispositivos legais.</p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É como voto. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	76
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA
Assunto principal	Progressão Funcional com Interstício de Doze Meses
Polo ativo	MUNICIPIO DE MARACANAU
Advogado(s) - Polo ativo	ERIKA SAMINA RODRIGUES - (CE18392-A)
Polo passivo	ISABEL CRISTINA REIS SOARES
Advogado(s) - Polo passivo	ANTONIO RAFAEL MEDEIROS LACERDA - (CE30209-A) JOSE LEONARDO ALVES MARQUES - (CE30187-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão

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	   3. Quanto ao mérito, é&#160;possível se inferir do quadro fático retratado nos autos que foram preenchidos pela servidora todos&#160;os requisitos para promoção/progressão na carreira. </p><p class="western" style="line-height: 150%; margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> 4. Assim, procedeu acertadamente a magistrada de primeiro grau, quando condenou a Administração, in casu, a providenciar a imediata implementação de tal direito expressamente previsto na legislação em vigor.</p><p class="western" style="line-height: 150%; margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> 5. Oportuno destacar, no ponto, que o Município de Maracanaú/CE não comprovou a existência de qualquer fato impeditivo, modificativo ou extintivo do direito vindicado pela servidora pública, deixando de se desincumbir do seu ônus probatório (CPC, art. 373, II).</p><p class="western" style="line-height: 150%; margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> 6. Merece, contudo, ser reformada a sentença, em parte e de ofício, apenas para excluir da condenação o percentual arbitrado a título de honorários advocatícios, o qual deverá ser definido a posteriori , na fase de liquidação , a teor do art. 85, §4º, inciso II, do CPC e acrescentar que, a partir da publicação da Emenda Constitucional nº 113/2021, deverá incidir sobre o valor devido unicamente a taxa SELIC para atualização monetária e compensação pelos juros moratórios.</p><p class="western" style="line-height: 150%; margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> - Precedentes. </p><p class="western" style="line-height: 150%; margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> - Reexame necessário conhecido. </p><p class="western" style="line-height: 150%; margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> - Apelação conhecida e não provida. </p><p class="western" style="line-height: 150%; margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> - Sentença reformada, em parte e de ofício, apenas no que se refere aos honorários advocatícios e seus consectários legais.</p><p align="center">&#160;</p><p class="western" style="line-height: 150%; margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> <br /> </p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Vistos, relatados e discutidos os presentes autos de Reexame Necessário e Apelação Cível nº 3002604-72.2023.8.06.0117, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do reexame necessário e da apelação interposta, para afastar a preliminar suscitada e, no mérito, negar provimento a esta última, reformando, porém, em parte e de ofício, a sentença, apenas no que se refere aos honorários advocatícios e seus consectários legais, nos termos do voto da Relatora.</p><p style="line-height: 100%; margin-left: 0.02cm; text-indent: 3.98cm; margin-top: 0.4cm; margin-bottom: 0.4cm"> Local, data e hora informados pelo sistema.</p><p class="western" style="text-transform: uppercase; margin-top: 0.21cm;" align="center"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p align="center">&#160;</p><p class="western" style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm" align="center"> R elatora </p><div> <br /> </div><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center"> <br /> </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Em evidência, Reexame Necessário e Apelação Cível, adversando sentença em que a magistrada de primeiro grau considerou parcialmente

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	procedente ação ordinária movida por servidora pública do Município de Maracanaú/CE.</p><p class="western" style="line-height: 150%; text-indent: 3.97cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> O caso/a ação originária: Isabel Cristina Reis Soares Cavalcante Moura ingressou com ação ordinária em face do Município de Maracanaú/CE, aduzindo, em suma, que é servidora pública, exercendo o cargo de “fisioterapeuta”, desde 04/07/2011, atualmente pertencente à Classe 2, Nível 5, Referência 3, do referido cargo.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Sustentou que concluiu o curso de mestrado em Ciências Médicas pela Universidade de Fortaleza (UNIFOR) no dia 02/01/2019 e requereu somente em 11/07/2023, junto ao RH do município de Maracanaú, a sua progressão funcional de Nível 5 (especialização) para Nível 6 (mestrado), conforme atesta o requerimento administrativo em anexo, a teor do disposto no art. 18, inciso II, da Lei nº 8.172/2012, ante a entrada em vigor da Lei Municipal nº 2600/2017, que congelou as progressões funcionais dos servidores municipais.</p><p class="western" style="line-height: 150%; text-indent: 3.97cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> Informou que implementou todos os requisitos para a promoção/progressão na carreira, previstos na Lei nº 1.872/2012 (PCCR), mas, à época, não teve seu direito efetivado pela Administração, sob o fundamento de que inexistiria disponibilidade orçamentária para tanto.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Asseverou, porém, que eventual dificuldade financeira ou proximidade dos limites impostos pela LRF, por si só, não configuram motivos idôneos para eximir a Administração do seu dever de satisfazer direitos dos servidores quanto ao recebimento de vantagens expressamente instituídas por lei</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Diante do que, requereu, então, que fosse o Município de Maracanaú/CE condenado à efetivação de seu direito à promoção/progressão para o nível 6 (mestrado) a contar de fevereiro/2019, bem como à progressão da Classe 2 para as referências R4, a contar de 01/07/2017, R5, a partir de 01/07/2019, R6, desde 01/07/2021, e, por fim, para a referência R7 a partir de 01/07/2023, com o respectivo pagamento dos valores retroativos.</p><p class="western" style="line-height: 150%; text-indent: 3.97cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> Em sede de contestação (ID 13069023), o Município de Maracanaú/CE sustentou, inicialmente, que não poderia conceder as promoções/progressões aos seus servidores, em respeito aos limites da LRF e aos princípios da supremacia do interesse público e da legalidade. Razão pela qual requereu a improcedência do pleito autoral. Subsidiariamente, pleiteou a atribuição de efeitos ex nunc a eventual condenação à revisão do nível da carreira da servidora.</p><p class="western" style="line-height: 150%; text-indent: 4.02cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> Sentença, ID 13069025, em que o Juízo da 1ª Vara Cível da Comarca de Maracanaú/CE concluiu pela parcial procedência da ação. Transcrevo abaixo seu dispositivo: :</p><p class="western" style="margin-left: 3.99cm" align="justify"> “ Ante todo o exposto,&#160; JULGO PARCIALMENTE PROCEDENTE &#160;o pedido inicial, o que faço com esteio no art. 487, inciso I, do Código de Processo Civil, condenando o demandado na obrigação de garantir, mediante o ato administrativo competente, que a autora tenha acesso à promoção/progressão de carreira, ascendendo à Classe 2, Nível 6, Referência 7 do cargo de fisioterapeuta, implantando nos vencimentos da autora o valor correspondente à progressão; bem como no dever de pagar à autora o valor relativo às diferenças devidas da progressão, desde a data em que o direito restou constituído (11/07/2023), atualizadas monetariamente segundo o IPCA-E do primeiro dia útil subsequente ao da juntada do mandado de citação, e com juros moratórios segundo a remuneração da caderneta de poupança, na forma do art. 1º-F da Lei nº 9.494/97 com a redação dada pela Lei nº 11.960/09. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; margin-left: 3.99cm;"

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	align="justify"> Os valores serão apurados em liquidação de Sentença.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; margin-left: 3.99cm;" align="justify"> Sem custas, face o condenado ser a Fazenda Pública Municipal.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; margin-left: 3.99cm;" align="justify"> Ante a sucumbência mínima da autora, condeno o Município de Maracanaú/CE ao pagamento de honorários advocatícios no valor de dez por cento do valor da condenação, nos termos do artigo 85 do CPC.</p><p class="western" style="margin-left: 3.99cm" align="justify"> Sentença sujeita ao reexame necessário, &#160;nos termos do artigo 496, I, do CPC.” </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Inconformado, o Município de Maracanaú/CE interpôs Apelação Cível (ID 13069030), buscando a reforma do decisum, basicamente sob os mesmos argumentos outrora apresentados em sua contestação.</p><p class="western" style="line-height: 150%; text-indent: 3.97cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> C ontrarrazões (ID 13069033) da parte autora, sustentando, preliminarmente, a ausência de impugnação específica do recurso interposto pelo ente municipal e, no mérito, refutou os argumentos apresentados pelo recorrente, suplicando pela manutenção da sentença proferida pelo Juiz a quo.</p><p class="western" style="line-height: 150%; text-indent: 3.97cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> A Procuradoria Geral de Justiça deixou de apresentar manifestação conforme informação nos autos (ID 13069033).</p><p align="center">&#160;</p><p class="western" style="line-height: 150%; text-indent: 3.95cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> É o relatório.</p><p align="center"> <br /> </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm" align="center"> VOTO </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Consoante relatado, trata-se de reexame necessário e apelação cível em face de sentença que julgou parcialmente procedente ação ordinária movida por servidora pública do Município de Maracanaú/CE.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Estando devidamente preenchidos os requisitos legais pertinentes, conheço do reexame necessário e da apelação interposta, passando, a seguir, ao enfrentamento das questões controvertidas nos autos.</p><p class="western" style="line-height: 150%; margin-top: 0.21cm" align="justify"> - Da preliminar contrarrecursal de ausência de impugnação específica. </p><p class="western" style="line-height: 150%; text-indent: 4cm; background: transparent;" align="justify"> Sabe-se que, nos termos do art. 1.010, inciso III, do CPC, cabe ao apelante, em seu recurso, expor as razões do pedido de reforma, sob pena de não conhecimento do apelo, o que pode ocorrer, inclusive, monocraticamente, nos termos do art. 932, inciso III, do CPC, in verbis: </p><p class="western" style="line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> “

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	Art. 932. Incumbe ao relator: </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> (...)</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> III - não conhecer de recurso inadmissível, prejudicado ou que não tenha impugnado especificamente os fundamentos da decisão recorrida;”</p><p class="western" style="line-height: 150%; text-indent: 4cm; background: transparent;" align="justify"> Nessa perspectiva, vislumbra-se que o ordenamento jurídico pátrio não admite o recurso genérico ou inespecífico, conforme lecionam os juristas Nelson Nery Júnior e Rosa Maria de Andrade Nery, na obra&#160; “Código de Processo Civil Comentado”,&#160; 7ª edição, pág. 882,&#160; in verbis : </p><p class="western" style="line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> “ O apelante deve dar as razões, de fato e de direito, pelas quais entende deva ser anulada ou reformada a sentença recorrida. Sem as razões do inconformismo, o recurso não pode ser conhecido (...). O momento adequado para apresentar-se a fundamentação do recurso de apelação é o da sua interposição. (...). Juntamente com a fundamentação, o pedido de nova decisão delimita o âmbito de devolutividade do recurso de apelação: só é devolvida ao tribunal ad quem a matéria efetivamente impugnada (tantum devolutum quantum appellatum) . Sem as razões e/ou pedido de nova decisão, não há meios de se saber qual foi a matéria devolvida. Não pode haver apelação genérica, assim como não se admite pedido genérico, como regra. Assim como o autor delimita o objeto litigioso (lide) na petição inicial (CPC 128), devendo o juiz julgá-lo nos limites em que foi deduzido (CPC 460), com o recurso de apelação ocorre o mesmo fenômeno: o apelante delimita o recurso com as razões e o pedido de nova decisão, não podendo o tribunal julgar além, aquém ou fora do que foi pedido.” </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; text-indent: 4cm; background: transparent;" align="justify"> Contudo, no caso em exame, verifica-se que houve a devida exposição dos argumentos utilizados pelo apelante para combater a decisão contra a qual se insurge. Oportuno realçar que, segundo a jurisprudência do STJ, a mera reiteração das razões já apresentadas na petição inicial ou na contestação, por si só, não constitui ofensa ao princípio da dialeticidade e, portanto, não é motivo para o não conhecimento do recurso se, em tese, são capazes de invalidar os fundamentos da sentença, a saber:</p><p class="western" style="line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> “ PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ESPECIAL. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E COMPENSAÇÃO POR DANOS MORAIS. PREQUESTIONAMENTO. AUSÊNCIA. SÚMULA 282/STF. FUNDAMENTOS DO ACÓRDÃO NÃO IMPUGNADOS. SÚMULA 283/STF. APELAÇÃO. PRINCÍPIO DA DIALETICIDADE ATENDIDO.

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	CONSONÂNCIA ENTRE O ACÓRDÃO RECORRIDO E A JURISPRUDÊNCIA DO STJ. SÚMULA 568/STJ. IMPUGNAÇÃO. NÃO OCORRÊNCIA. 1. Ação de indenização por danos materiais e compensação por danos morais. 2. A ausência de decisão acerca dos dispositivos legais indicados como violados impede o conhecimento do recurso especial. 3. A existência de fundamentos do acórdão recorrido não impugnados - quando suficiente para a manutenção de suas conclusões - impede a apreciação do recurso especial. 4. A mera circunstância de terem sido reiteradas, na petição da apelação, as razões anteriormente apresentadas na inicial da ação ou na contestação, não é suficiente para o não conhecimento do recurso, eis que a repetição dos argumentos não implica, por si só, ofensa ao princípio da dialeticidade. Precedentes. 5. A aplicação da Súmula 568/STJ é devidamente impugnada quando a parte agravante demonstra, de forma fundamentada, que o entendimento esposado na decisão agravada não se aplica à hipótese em concreto ou, ainda, que é ultrapassado, o que se dá mediante a colação de arestos mais recentes do que aqueles mencionados na decisão hostilizada, o que não ocorreu na hipótese. 6. Agravo interno não provido. (STJ. AgInt no REsp n. 2.104.830/MS, relatora Ministra Nancy Andrighi, Terceira Turma, julgado em 20/5/2024, DJe de 23/5/2024) (destacado) </p><p class="western" style="line-height: 150%; text-indent: 4cm; background: transparent;" align="justify"> <br /> </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; text-indent: 4cm; background: transparent;" align="justify"> Nesses termos, rejeito a preliminar suscitada pela parte apelada.</p><p class="western" style="line-height: 150%"> - Do mérito. </p><p class="western" style="line-height: 150%; text-indent: 4cm; background: transparent;" align="justify"> Como visto, a magistrada de primeiro grau, em seu decisum, considerou parcialmente procedente ação ordinária movida por servidora pública do Município de Maracanaú/CE, determinando sua imediata promoção/progressão, para a Classe 2, Nível 6 (mestrado), Referência 7, do cargo de “fisioterapeuta”, bem como no dever de pagar à autora o valor relativo às diferenças devidas da progressão, desde a data em que o direito restou constituído (11/07/2023), implementados os requisitos previstos na Lei nº 1.872/2012. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; text-indent: 4cm; background: transparent;" align="justify"> Acerca da possibilidade de evolução/ascensão dos servidores dentro da mesma carreira para a qual ingressaram por concurso público, o professor José Maria Pinheiro Madeira, em sua clássica obra “Servidor Público na Atualidade” (Rio de Janeiro: Lúmen Juris, 2007, p. 355/356), explica que:</p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent" align="justify"> “ Na promoção o que ocorre é a subida nas classes ou níveis da carreira, ou seja, o que se tem é um escalonamento na carreira. Na Lei Federal não há nenhum Capítulo que se dedique à promoção. Os estatutos raramente dissecam como a promoção será feita, porque quem se encarrega

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	disso são os planos de carreira e cada categoria tem uma lei instituindo-a, como é o caso do policial militar, policial federal, magistratura etc. (…) Em regra, a promoção não é regulada pelo estatuto, mas sim pela lei que regula o plano de carreira. O ocupante de um cargo progride em sua carreira, passando a uma classe superior. Por exemplo, um servidor sai do nível B para o A, mas continua no mesmo cargo .” (destacamos) </p><p class="western" align="justify"> <br /> <br /> </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; text-indent: 3.9cm; background: transparent;" align="justify"> Na mesma linha José dos Santos Carvalho Filho, in Manual de Direito Administrativo, 26. ed., São Paulo: Atlas, 2013, p. 620, ensina que:</p><p class="western" style="line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> “ No que concerne particularmente à promoção, é forçoso reconhecer que são muito variados os sistemas de melhoria funcional. Algumas leis funcionais distinguem a promoção e a progressão (esta stricto sensu, porque toda melhoria, em última análise, retrata uma forma de progressão funcional). Naquela o servidor é alçado de cargo integrante de uma classe para o cargo de outra, ao passo que na progressão o servidor permanece no mesmo cargo, mas dentro dele percorre um iter funcional, normalmente simbolizado por índices ou padrões, em que a melhoria vai sendo materializada por elevação nos vencimentos . Para exemplificar, suponha-se que a carreira de Técnico de Administração tenha três classes, correspondentes aos níveis A, B e C, e que em cada classe haja três padrões de vencimentos (X, Y e Z). Se o servidor é Técnico de nível A e tem o padrão X, ao passar para o padrão Y, é beneficiado pela progressão. Após percorrer todos os padrões, terá direito a ocupar o cargo de Técnico de nível B: nesse momento sua melhoria funcional se processou pela promoção, visto que saiu de um cargo (o de Técnico nível A, que, em consequência, ficou vago) e ingressou em cargo de outra classe.” (destacamos) </p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; background: transparent" align="justify"> Sob esse prisma, convém transcrever as disposições expressas na Lei nº 1.872/2012 do Município de Maracanaú acerca da evolução na carreira dos servidores públicos municipais, ex vi : </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> “ Capítulo VIII – Do Desenvolvimento Profissional</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> Art. 17. O servidor evoluirá dentro da carreira correspondente ao seu cargo, através de progressão e promoção.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> Art. 18. A progressão ocorrerá:</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> I - pelo efetivo exercício de 2 (dois) anos na referência, implicando na passagem de uma referência para outra imediatamente superior, levando-se em consideração, ainda, a avaliação de desempenho;</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> II - em função do grau de escolaridade ou titulação, implicando na passagem de um nível de formação para outro, dentro da mesma classe, mediante requerimento com apresentação de diploma ou certificado, nos termos do Anexo V.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> § 1º O tempo de efetivo exercício no cargo a que se refere o inciso I deste artigo será contado:</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> I - do enquadramento descrito no artigo 13 desta lei, para os servidores que tenham sido investidos no cargo

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	antes da publicação desta Lei;</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> II - da data de investidura no cargo, para os servidores que tenham ingressado na carreira após a publicação desta Lei.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> § 2º Para concessão da progressão de que trata o inciso II deste artigo, será considerado apenas:</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> I - o título ou certificado relativo ao grau de educação formal que exceda ao exigido para o cargo ou função, nos termos dos Anexos I e II desta Lei; II - o maior título, sendo vedada sua cumulatividade;</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> III - o título ou certificado de curso que mantenha correlação direta com o cargo que o servidor ocupa será considerado apenas uma vez, para todos os efeitos;</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> IV - o título ou escolaridade comprovada por certificado ou diploma emitido por instituição de ensino credenciada pelo Ministério da Educação, ou por esta reconhecida, no caso de curso realizado no exterior.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> Art. 19. A promoção do servidor para classe subsequente dar-se-á por capacitação e mérito, levando-se em consideração:</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> I - a avaliação de desempenho,</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> II - o tempo de efetivo exercício na classe</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> III - e a pontuação obtida com a capacitação ou a participação em eventos e atividades relacionados ao cargo que o servidor ocupe, conforme Anexo VII desta Lei.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> § 1º Por Ato do Chefe do Poder Executivo, será disciplinada a apuração da pontuação de que trata o inciso III deste artigo, devendo ser considerada a soma da carga horária obtida em cursos ou eventos que tenham sido concluídos no período de permanência na classe.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> § 2º Os certificados e demais comprovantes de participação em cursos, eventos e outras atividades serão considerados apenas uma vez para efeito da pontuação de que trata o inciso III deste artigo.”</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> No presente caso, é possível se inferir do quadro fático retratado nos autos que foram preenchidos pela servidora todos os requisitos para promoção/progressão na carreira, consoante os documentos acostados aos autos (ID’s 13068884, 13068886/13068991).</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> Daí por que, procedeu acertadamente a magistrada de primeiro grau, a meu ver, quando condenou a Administração a providenciar a imediata implementação de tal direito, com efeitos financeiros relativo às diferenças devidas da progressão, desde a data em que o direito restou constituído (11/07/2023), implementados &#160;os requisitos previstos na Lei nº 1.872/2012, acima citados. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> A propósito, não é outra a orientação do STJ:</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> “ ADMINISTRATIVO E PROCESSUAL CIVIL. RECURSO ESPECIAL. SERVIDOR PÚBLICO. PROFESSOR DE ENSINO BÁSICO, TÉCNICO E TECNOLÓGICO. LEI 12.772/2012. PROMOÇÃO NA CARREIRA. INTERSTÍCIO DE DEZOITO MESES. POSSIBILIDADE. RECURSO ESPECIAL DA SERVIDORA A QUE SE DÁ PROVIMENTO. 1. Cuida-se, na origem, de Ação Ordinária ajuizada em face do Instituto Federal de Educação, Ciência e Tecnologia Farroupilha, objetivando o direito à promoção na carreira e o pagamento das diferenças remuneratórias a contar de 14.2.2014, em decorrência da aplicação do interstício excepcional de 18 (dezoito) meses, previsto no art. 34 da Lei 12.772/2012. 2. Cinge-se a controvérsia acerca da possibilidade de a Servidora obter sua promoção funcional,

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	observado o interstício de 18 meses de efetivo exercício. 3. A previsão contida no art. 34 da Lei 12.772/2012, com redação dada pela Lei 13.325/2016, vigente quando do julgamento proferido pelo Tribunal de origem, é expressa ao determinar que aos Servidores ocupantes de cargos na Carreira de Magistério do Ensino Básico, Técnico e Tecnológico do Plano de Carreira e Cargos de Magistério Federal em efetivo exercício na data de 1º de março de 2013, para a primeira progressão ou promoção funcional, será observado o interstício de 18 meses. 4. Com efeito, tendo a ora recorrente preenchido os demais requisitos legais, deve lhe ser assegurada a promoção funcional, levando-se em consideração o interstício excepcional de 18 meses, de modo que deve ser promovida para o nível 1 da Classe DIV a partir de 14.2.2014, sendo-lhe devidos os efeitos financeiros contados desta data até 14.8.2014, quando fora devidamente promovida pela Administração Pública . 5. Recurso Especial da Servidora a que se dá provimento.” (STJ. REsp 1645604/RS, Relator o Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 11/02/2020, DJe 14/02/2020.)” (destacamos) * * * * * <br /> “ ADMINISTRATIVO. RECURSO EM MANDADO DE SEGURANÇA. PROFESSORA. DIREITO À PROMOÇÃO PREVISTA EM NORMA LEGAL. SUPERVENIÊNCIA DE LEI EM SENTIDO DIVERSO. IMPLEMENTAÇÃO FORMAL DO DIREITO ADQUIRIDO. 1. A impugnação da impetrante não se refere à legalidade da superveniência da Lei nº 10.963/2008, mas sim, à não aplicabilidade da mesma à sua situação, pois antes da lei nova já havia preenchido os requisitos legais da lei anterior (art. 4º da Lei Estadual 9.838/2005). 2. O nosso ordenamento jurídico impõe que as leis novas, sob pena de violarem o princípio da irretroatividade, não se aplicam aos fatos já consumados sob a vigência da lei anterior, respeitando o ato jurídico perfeito e a efetividade da segurança jurídica. 3. A redação do art. 4º da Lei 9.838/2005 estabelece que "[a] promoção na carreira do Magistério Público do Estado do Ensino Fundamental e Médio far-se-á de uma classe para a imediatamente superior, dentro do mesmo nível, observada a disponibilidade orçamentária, a requerimento do interessado e após a comprovação de estar o servidor no efetivo exercício das atividades de magistérios correspondentes às atribuições do cargo que ocupa e, conforme o caso, dos seguintes requisitos: I - Da classe "A" para a classe "B": aprovação no Programa de Certificação Ocupacional. 4. O citado diploma não faz referência à existência de vaga para a concessão da promoção, exigindo como requisito a "aprovação no Programa de Certificação Ocupacional", o qual foi cumprido pela então impetrante, conforme fez contar à e-STJ fl. 24. 5. Lado outro, "os efeitos financeiros, quando da concessão da segurança, devem retroagir à data de sua impetração, sendo inviável a cobrança de valores pretéritos no mesmo mandamus, nos termos do 14, § 4º, da Lei n. 12.016/2009" (RMS 40065/RS, Rel. Ministro Benedito Gonçalves, Primeira Turma, DJe 05/06/2013). 6. Recurso ordinário parcialmente provido para reconhecer o direito da impetrante de promoção da Classe "A" para "B", com efeito retroativo para dia 01/06/2007, data em que a mesma completou os requisitos para a promoção. (STJ. RMS 34.034/BA, Relator o Ministro BENEDITO GONÇALVES, PRIMEIRA TURMA, julgado em 15/08/2013, DJe 22/08/2013)” (destacamos) Oportuno destacar, no ponto, que o Município de Maracanaú/CE não comprovou a existência de qualquer fato impeditivo, modificativo ou extintivo do direito ora vindicado pela servidora pública, deixando de se desincumbir do seu ônus probatório, de que trata o art. 373, inciso II, do CPC : Art. 373. O ônus da prova incumbe: [...] II - ao réu, quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor . (destacado) Ademais, é assente que a mera alegação de indisponibilidade orçamentária, por parte da Administração, não tem o condão de afastar o direito de servidor público ao pagamento de vantagem que lhe é assegurada por lei. De fato, as Câmaras de Direito Público do TJ/CE tem, frequentemente, decidido que eventual

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	dificuldade financeira ou proximidade dos limites impostos pela LRF, por si só, não configuram motivos idôneos para eximir a Administração do seu dever de satisfazer direitos dos servidores quanto ao recebimento de vantagens expressamente salvaguardadas pela legislação, ex vi: “ CONSTITUCIONAL E ADMINISTRATIVO. REMESSA NECESSÁRIA E APELAÇÃO. AÇÃO DE OBRIGAÇÃO DE FAZER C/C COBRANÇA. SERVIDORA PÚBLICA MUNICIPAL. PROMOÇÃO/PROGRESSÃO. POSSIBILIDADE. PREVISÃO EXPRESSA NA LEI MUNICIPAL Nº 1.872/2012. PLANO DE CARGOS, CARREIRAS E VENCIMENTOS DOS SERVIDORES PÚBLICOS DO MUNICÍPIO DE MARACANAÚ. REQUISITOS LEGAIS PREENCHIDOS. PRINCÍPIO DA LEGALIDADE. LIMITES DA LEI DE RESPONSABILIDADE FISCAL QUE NÃO IMPOSSIBILITAM A CONCESSÃO DE DIREITO SUBJETIVO DO SERVIDOR. PRECEDENTES. ADEQUAÇÃO DOS CONSECTÁRIOS DA CONDENAÇÃO. RECURSO DE APELAÇÃO CONHECIDO E DESPROVIDO. REMESSA OFICIAL CONHECIDA E PARCIALMENTE PROVIDA. SENTENÇA REFORMADA EM PARTE. 1. Trata-se de apelação cível e remessa voluntária em face de decisão que determinou a implantação, nos vencimentos da promovente, da promoção/progressão prevista na Lei Municipal nº 1.872/2012. 2. Efetivamente, o referido normativo, que instituiu o Plano de Cargos, Carreira e Vencimentos dos servidores efetivos do Poder Executivo do Município de Maracanaú, no seu Capítulo VIII, estabelece critérios e requisitos para a promoção e progressão funcional. 3. No caso em exame, apesar do regular preenchimento dos requisitos legais indispensáveis, consta dos autos a recusa administrativa à concessão da progressão funcional da autora, com fundamento na necessidade de cumprimento do limite de gastos com pessoal, previsto na Lei de Responsabilidade Fiscal. 4.&#160; Uma vez preenchidos os requisitos previstos na norma municipal, patente o direito da autora à implantação de sua promoção e progressão, não havendo discricionariedade da administração pública em concedê-las ou não. Com relação à alegação do ente público promovido acerca do impacto financeiro-orçamentário da decisão vergastada, há que se observar que empecilhos de ordem financeira ou orçamentária não podem ser utilizados para elidir o direito de servidores públicos ao percebimento de vantagem legitimamente assegurada por lei. Precedente do STJ. &#160;5. Relativamente ao direito de percepção do pagamento pretérito das diferenças remuneratórias, importante registrar que o instituto da promoção/progressão é um direito subjetivo da requerente, assegurado quando do preenchimento dos requisitos estabelecidos em lei. 6. Em sede de reexame necessário, merece reforma a sentença, para que seja adequada a forma de correção das parcelas vencidas e não pagas. Restou determinou que incide, ao caso, juros de mora pelo índice da caderneta de poupança e correção monetária pelo IPCA-E. Contudo, a partir da data da publicação da Emenda Constitucional nº 113/21 (09/12/21), tendo em

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	vista o disposto no seu art. 3º, deverá incidir a taxa SELIC, uma única vez, para atualização monetária e compensação pelos juros de mora. 8. Recurso apelatório conhecido e desprovido. Reexame Necessário conhecido e parcialmente provido.” (TJCE. Apelação / Remessa Necessária - 0020109-40.2017.8.06.0117, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 07/11/2022, data da publicação: 07/11/2022) (destacado). </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%;" align="center"> *** </p><p style="line-height: 150%; margin-left: 4cm; text-indent: -0.01cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> SERVIDORA PÚBLICA MUNICIPAL DE MARACANAÚ. ASSISTENTE SOCIAL. PROMOÇÃO/PROGRESSÃO FUNCIONAL. PREVISÃO EXPRESSA DA LEI Nº 1.872/2012. INSTITUIÇÃO DE PLANO DE CARGOS, CARREIRAS E VENCIMENTOS. REQUISITOS LEGAIS PREENCHIDOS. PRINCÍPIO DA LEGALIDADE. DEVER DE OBSERVÂNCIA PELA ADMINISTRAÇÃO PÚBLICA. ASSEGURADA A PERCEPÇÃO DAS DIFERENÇAS REMUNERATÓRIAS PRETÉRITAS. DESCUMPRIMENTO DA LEI COM FUNDAMENTO NA LEI DE RESPONSABILIDADE FISCAL. IMPOSSIBILIDADE. PRECEDENTES DO STJ E DESTE TJCE. HONORÁRIOS ADVOCATÍCIOS. PERCENTUAL A SER DEFINIDO POR OCASIÃO DA LIQUIDAÇÃO DA SENTENÇA. ADEQUAÇÃO DOS CONSECTÁRIOS LEGAIS. APELAÇÃO CÍVEL CONHECIDA E DESPROVIDA. SENTENÇA REFORMADA EM PARTE, E DE OFÍCIO, PARA POSTERGAR PARA A FASE DE LIQUIDAÇÃO O ARBITRAMENTO DO PERCENTUAL REFERENTE AOS HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS (ART. 85, § 4º, II, CPC); E PARA ACRESCENTAR QUE, A PARTIR DA PUBLICAÇÃO DA EMENDA CONSTITUCIONAL Nº 113/2021, DEVERÁ INCIDIR SOBRE O VALOR DEVIDO UNICAMENTE A TAXA SELIC PARA ATUALIZAÇÃO MONETÁRIA E COMPENSAÇÃO PELOS JUROS MORATÓRIOS.(APELAÇÃO CÍVEL - 30026315520238060117, Relator(a): FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara de Direito Público, Data do julgamento: 14/05/2024) </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%;" align="center"> ***</p><p class="western" style="line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> “ <span style="color: #000000;"> <span style="font-size: 10pt;">CONSTITUCIONAL. ADMINISTRATIVO. PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. SERVIDOR PÚBLICO MUNICIPAL. PRELIMINAR DE SUSPENSÃO DO PROCESSO AFASTADA. REMUNERAÇÃO INFERIOR AO SALÁRIO MÍNIMO. IMPOSSIBILIDADE. OFENSA AO §3º, ART. 39 C/C INCISO IV DO ART. 7º DA CF/88. SÚMULA 47 DO TJCE. DIFERENÇAS SALARIAIS DEVIDAS. GRATIFICAÇÃO POR TEMPO DE SERVIÇO. PREVISÃO NA LEI MUNICIPAL Nº 01/1993. AUTOAPLICABILIDADE DA NORMA. PRESSUPOSTOS LEGAIS ATENDIDOS. DESNECESSIDADE DE REGULAMENTAÇÃO. REMESSA NECESSÁRIA E APELAÇÃO CONHECIDAS E DESPROVIDAS. SENTENÇA MANTIDA. HONORÁRIOS ADVOCATÍCIOS. SENTENÇA ILÍQUIDA. PERCENTUAL A SER DEFINIDO QUANDO LIQUIDADO O JULGADO, CONSIDERANDO O TRABALHO REALIZADO EM SEDE RECURSAL. [...] 2. O cerne da presente demanda consiste em analisar a possibilidade de a autor, servidora público municipal, perceber o salário mínimo constitucionalmente garantido, independentemente da carga horária de trabalho por ele cumprida, bem como o adicional por tempo de serviço, à razão de 1% por ano de efetivo exercício no serviço público. 3. Com efeito, o direito ao recebimento de salário não inferior ao mínimo legal é constitucionalmente garantido aos servidores públicos (art. 39, §3º, da CF), independentemente de previsão de carga horária no edital do concurso, de ato

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	administrativo fixando remuneração proporcional à jornada trabalhada ou previsão no regime jurídico dos servidores municipais, tendo em vista o princípio da supremacia da Constituição. 4. In casu, extrai-se que o postulante exerce a função de Auxiliar de Serviços Gerais no Município de Catunda desde 02/03/2007, conforme termo de posse de pág. 16. Outrossim, os documentos de págs. 18-21 comprovam que,no ano de 2012 a servidora percebeu vencimento mensal inferior ao salário mínimo vigente no país, a comprovar que o procedimento de pagamento utilizado pela Municipalidade está em desconformidade com as disposições constitucionais vigentes, havendo, portanto, ilegalidade a ser sanada. Assim, a sentença adversada coaduna-se com o teor da Súmula 47 desta Corte de Justiça. 5. Da mesma forma, o direito da parte autora, integrante do quadro de servidores municipais, ao adicional por tempo de serviço de 1% (um por cento) por ano de serviço está previsto no art. 68 da Lei Municipal nº 01/1993, que instituiu o Estatuto dos Servidores Públicos do Município de Catunda, sendo autoaplicável a norma que prevê o pagamento de adicionais por tempo de serviço e estabelece de forma clara os critérios para sua implementação, haja vista a sua aptidão para produzir todos os efeitos relativamente aos interesses e situações que o legislador quis regular. Precedentes deste TJCE.&#160; 6. Ademais, a tese recursal do ente municipal acerca de ausência de dotação orçamentária para a implementação e pagamento do adicional por tempo de serviço não pode servir de obstáculo à pretensão autoral, porquanto os empecilhos de ordem financeira ou orçamentária não são justificativas para a não percepção de vantagem legitimamente assegurada por lei, consoante julgados do STJ e deste Sodalício. &#160;7. Remessa Necessária e Apelação conhecidas e desprovidas. Sentença mantida" (TJCE. Apl 0000356-75.2017.8.06.0189; Relator (a):&#160;LISETE DE SOUSA GADELHA; Órgão julgador: 2ª Vara da Comarca de Santa Quitéria; Data do Julgamento: 16/09/2019). (Destacado). </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%;" align="center"> * * * * *</p><p class="western" style="line-height: 150%; margin-left: 4cm; background: transparent;" align="justify"> " APELAÇÃO CÍVEL E REEXAME NECESSÁRIO. ADMINISTRATIVO. SERVIDOR PÚBLICO. MUNICÍPIO DE MONSENHOR TABOSA. ADICIONAL POR TEMPO DE SERVIÇO. QUINQUÊNIO. LEI Nº 18/1990. ESTATUTO DOS SERVIDORES PÚBLICOS. PREVISÃO. PRINCÍPIO DA LEGALIDADE. OBSERVÂNCIA. 1. Na espécie, o Estatuto dos Servidores Públicos do Município de Monsenhor Tabosa, Lei nº 18/1990, prevê expressamente a percepção do adicional por tempo de serviço à razão de 5% (cinco por cento) por 5 (cinco) anos de serviço público efetivo, com critérios claros e precisos, prescindindo de regulamentação posterior, ao contrário do que defende o município apelante, sendo, portanto, auto-aplicável, produzindo efeitos imediatos e incidente sobre o vencimento base, incorporando-se, ex vi legis, ao patrimônio jurídico da apelada ; 2. No que concerne à alegativa do recorrente sobre o impacto financeiro que causará porventura seja determinado o pagamento do adicional por tempo de serviço, igualmente, não merece respaldo legal, haja vista que o STJ possui interativa jurisprudência no sentido de que empecilhos de ordem financeira ou orçamentária não podem ser utilizados com vistas a afastar o direito dos servidores públicos quanto à percepção de vantagem legitimamente assegurada por lei; &#160;3. Apelação Cível conhecida e desprovida. Reexame Necessário conhecido e provido em parte. (TJCE. APL 0004845-84.2016.8.06.0127 Relatora: MARIA IRANEIDE MOURA SILVA; Órgão julgador: 2ª Câmara de Direito Público; Data do Julgamento: 13/03/2019). (Destacado). </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.18cm; margin-bottom: 0.18cm;" align="justify"> Permanece, portanto, inalterada a sentença nesta parte.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Quanto aos consectários legais da condenação, sabe-se que se trata de matéria pacificada. Nesse diapasão, deve ser observada a tese firmada pelo STJ, sob a sistemática dos recursos repetitivos (Tema nº 905), pela qual:</p><p class="western" style="line-height:

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	150%; margin-left: 4cm; margin-top: 0.21cm" align="justify"> “ (...) 3.2 Condenações judiciais de natureza previdenciária. As condenações impostas à Fazenda Pública de natureza previdenciária sujeitam-se à incidência do INPC, para fins de correção monetária, no que se refere ao período posterior à vigência da Lei 11.430/2006, que incluiu o art. 41-A na Lei 8.213/91. Quanto aos juros de mora, incidem segundo a remuneração oficial da caderneta de poupança (art. 1º-F da Lei 9.494/97, com redação dada pela Lei n. 11.960/2009).” (REsp 1495146/MG, Rel. Ministro MAURO CAMPBELL MARQUES, PRIMEIRA SEÇÃO, julgado em 22/02/2018 (destacamos)</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-bottom: 0cm" align="justify"> Destaque-se, ademais, que, com o advento da EC nº 113/2021, faz-se necessário observar o seu artigo 3º, uma vez que estabelece a incidência da Taxa SELIC – Sistema Especial de Liquidação e de Custódia, para as condenações que envolvam a Fazenda Pública. Confira-se:</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> “ EC nº 113/21: </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Art. 3º Nas discussões e nas condenações que envolvam a Fazenda Pública , independentemente de sua natureza e para fins de atualização monetária, de remuneração do capital e de compensação da mora, inclusive do precatório, haverá a incidência, uma única vez, até o efetivo pagamento, do índice da taxa referencial do Sistema Especial de Liquidação e de Custódia (Selic), acumulado mensalmente. ” (destacamos) </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-bottom: 0cm" align="justify">Por fim, merece parcial reparo a sentença, <em style="font-size: small; text-indent: 4cm;">ex officio, em relação aos honorários sucumbenciais advocatícios, pois em se tratando de sentença ilíquida, tal verba deve ser apurada apenas na fase de liquidação do julgado, inclusive, a majoração decorrente do trabalho adicional realizado em grau recursal, nos termos do art. 85, § 4º, II c/c § 11º, do CPC.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.18cm; margin-bottom: 0.18cm" align="justify">&#160;</p><p class="western" style="line-height: 150%; margin-top: 0.42cm" align="center"> DISPOSITIVO </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Isto posto, conheço do reexame necessário e da apelação cível interposta, para rejeitar a preliminar suscitada pela apelada e, no mérito, negar provimento ao recurso, r eformando em parte a sentença, ex officio , tão somente para postergar à fase de liquidação o arbitramento do percentual referente aos honorários advocatícios sucumbenciais (art. 85, § 4º, inciso II, do CPC) e para acrescentar que, a partir da publicação da Emenda Constitucional nº 113/2021, deverá incidir sobre o valor devido unicamente a Taxa Selic para atualização monetária e compensação pelos juros moratórios. </p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> No momento da liquidação do julgado, ao fixar a verba sucumbencial, deverá o magistrado de primeiro grau observar a majoração prevista no art. 85, §11, do CPC. </p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> É como voto.</p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> Fortaleza, data e hora da assinatura digital.</p><p style="line-height: 150%; margin-top: 0.1cm; margin-bottom: 0.1cm; break-after: avoid;" align="left"> <br /> <br /> </p><p class="western" style="line-height: 150%; margin-top: 0.1cm; margin-bottom: 0.1cm" align="center"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORT. 1550/2024 </p><p class="western" style="line-height: 150%; margin-top: 0.1cm; margin-bottom: 0.1cm" align="center"> <span style="font-size:

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	small;">Relatora</p><p align="center">&#160;</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> <br /> </p><p align="center"> <br /> </p><p align="center"> <br /> </p><p align="center"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p> <br /> </p><p style="text-indent: 8%; text-align: center;"> &#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	77
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE FORTALEZA - SECRETARIA DE FINANCAS DO MUNICIPIO - SEFIN MUNICIPIO DE FORTALEZA
Advogado(s) - Polo ativo	Não informado
Polo passivo	JOAO ROBERTO DE CARVALHO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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<p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;0048791-43.2009.8.06.0001 -&#160;APELAÇÃO CÍVEL (198) </p><p> APELANTE: MUNICIPIO DE FORTALEZA. </p><p> APELADO: JOAO ROBERTO DE CARVALHO. </p><p align="center"> <br /> </p><p style="line-height:1.38;margin-left: 141pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">&#160;</p><p style="line-height:1.38;margin-left: 141pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> EMENTA: PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. FALECIMENTO DO DEVEDOR ANTES DA PROPOSITURA DA AÇÃO. EXTINÇÃO DO PROCESSO POR ILEGITIMIDADE PASSIVA. INCIDÊNCIA DA SÚMULA Nº 392/STJ.</p><p style="line-height:1.38;margin-left: 141pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 1. Tratam os autos de apelação cível por meio da qual o recorrente pugna pela reforma sentença que declarou a prescrição do direito de agir do exequente.</p><p style="line-height:1.38;margin-left: 141pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">2. É cediço que conforme a súmula 392 do Superior Tribunal de Justiça, havendo o falecimento do devedor antes da formação da relação processual, mesmo que em momento posterior ao ajuizamento da ação, não é possível substituir o polo passivo da execução ou redirecionar o feito fiscal ao espólio ou herdeiro.</p><p style="line-height:1.38;margin-left: 141pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 3. Verificando que o falecimento do devedor ocorreu anterior ao ajuizamento da ação e, por consequência lógica, antes de realizada a sua efetiva citação, resta plenamente impossível o prosseguimento do feito, por ausência de uma das condições da ação, qual seja, a ilegitimidade passiva do exequido.</p><p style="line-height:1.38;margin-left: 141pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-

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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">4. Sendo assim, extinção do feito executivo, é medida que se impõe, julgando por conseguinte, prejudicado o apelo interposto.</p><p style="line-height:1.38;margin-left: 141pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Precedentes do STJ, do TJCE e das Cortes da Federação.</p><p style="line-height:1.38;margin-left: 141pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Apelação prejudicada.</p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-5ac2acde-7fff-850e-63ef-1c7c72e28b13" style="font-weight:normal;"> <br /> <br /> </p><h3 style="line-height:1.38;text-align: center;margin-top:14pt;margin-bottom:4pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0048791-43.2009.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, extinguir o feito executivo sem resolução de mérito, nos termos do art. 485, VI, do CPC, restando prejudicado a análise do apelo interposto, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024. <br /> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Portaria 1550/2024 <br /> <br /> </p><p style="line-height:1.38;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta com o objetivo de desconstituir sentença proferida pelo 1ª Vara de Execuções Fiscais da Comarca de Fortaleza que declarou a prescrição do direito de agir do exequente.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"><span style="font-size: 12pt; font-

Processo	0048791-43.2009.8.06.0001
	family: Arial, sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">O caso/a ação originária: o Município de Fortaleza ajuizou ação de execução fiscal em face de João Roberto de Carvalho com base em certidões da dívida ativa, oriunda de débito de IPTU, no valor de R$ 19.774,28 (dezenove mil, setecentos e setenta e quatro reais e vinte e oito centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Frustrada a citação por carta (ID 13259650) e por mandado (ID 13259655), o Fisco peticionou nos autos informando que o devedor teria falecido e pleiteou que a 5ª Vara de Sucessões fosse oficiada para fornecer o endereço da inventariante.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Informação de óbito do exequido: ID 13259662.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Sentença: ID 13259674, o Juízo da 1ª Vara de Execuções Fiscais da Comarca de Fortaleza que declarou a prescrição intercorrente do crédito. Transcrevo seu dispositivo, no que interessa:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Ante o exposto, com fundamento no art. 40, § 4.º da Lei n.º 6830/80, c/c art. 924, V e art. 487, II do CPC, pronuncio de ofício a prescrição intercorrente em ordem a DECLARAR EXTINTO O PROCESSO COM RESOLUÇÃO DE MÉRITO. Torno insubsistente eventual penhora, determinando o desbloqueio e a intransferibilidade dos bens, inclusive na plataforma Bacenjud, se a medida houver sido efetivada.”</p><p style="line-height:1.7999999999999998;text-indent: 106.29921259842519pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr">Inconformado, o Município de Fortaleza interpôs o presente recurso apelatório (ID 13259682), pugnando pela regular continuidade de tramitação do feito.</p><p style="line-height:1.7999999999999998;text-indent:

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	106.29921259842519pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr">Inexistiram contrarrazões, conforme certidão de ID 13259686.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desnecessária a intervenção do Ministério Público , nos termos da súmula 189 do STJ.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É o relatório.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 106.29921259842519pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Tratam os autos de apelação cível por meio da qual o recorrente pugna pela reforma sentença que declarou a prescrição do direito de agir do exequente.</p><p style="line-height:1.7999999999999998;text-indent: 106.29921259842519pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Conforme anteriormente relatado, há, na espécie, ação de execução fiscal promovida por força da suposta inadimplência do devedor relativamente a débito de IPTU, no montante de R$ 19.774,28 (dezenove mil, setecentos e setenta e quatro reais e vinte e oito centavos), inscrito em dívida ativa.</p><p style="line-height:1.7999999999999998;text-indent: 106.29921259842519pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Ocorre que, é cediço que conforme a súmula 392 do Superior Tribunal de Justiça, havendo o falecimento do devedor antes da formação da relação processual, mesmo que em momento posterior ao ajuizamento da ação, o que não é o caso dos autos, não é possível substituir o polo passivo da execução ou redirecionar o feito fiscal ao espólio ou herdeiro. Confira-se:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Súmula 392 – STJ : “A Fazenda Pública pode substituir a certidão de dívida ativa (CDA) até a prolação da sentença de embargos, quando se tratar de correção de erro material ou formal, vedada a modificação do sujeito passivo da execução.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">Compulsando o caderno processual, é possível observar que o exequido faleceu em momento anterior à propositura da ação, notando-se, ainda, que os tributos exigidos

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	pelo Município dizem respeito aos exercícios de 2005 a 2007 (CDA’s de ID nº 13259645 e ID 13259646).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">Isso porque, é possível observar que o próprio Fisco noticiou, nos autos, o falecimento do sr. João Roberto de Carvalho (ID 13259657) e, em consulta ao Processo nº 0169596-40.2000.8.06.0001 (ID 13259662), especificamente na certidão de óbito de fl. 06, denota-se que o devedor veio a óbito em 31 de outubro de 1987 e, a presente ação executiva foi protocolada em 26 de maio de 2009 (Protocolo de ID 13259644).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Desse modo, verificando que o falecimento do devedor ocorreu anterior ao ajuizamento da ação e, por consequência lógica, antes de realizada a sua efetiva citação, resta plenamente impossível o prosseguimento do feito, por ausência de uma das condições da ação, qual seja, a ilegitimidade passiva do exequido.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Outro não seria o entendimento deste egrégio Tribunal de Justiça:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“DIREITO CONSTITUCIONAL. EXECUÇÃO FISCAL. FALECIMENTO DO DEVEDOR ANTES DA CITAÇÃO. IMPOSSIBILIDADE DE REDIRECIONAMENTO DA EXECUÇÃO. EXTINÇÃO DO PROCESSO POR CARÊNCIA DE AÇÃO SEM REDIRECIONAMENTO DO PAGAMENTO DE CUSTAS E HONORÁRIOS AO ESPÓLIO. APELAÇÃO CONHECIDA E PROVIDA. SENTENÇA REFORMADA. 01. Tratam os autos de apelação cível em ação de execução fiscal por meio da qual o Município de Fortaleza, parte autora, executou o crédito tributário referente ao IPTU dos anos de 2011, 2012 e 2013 em nome do executado. 02. O Cerne da presente querima repousa em saber se a parte recorrente tem obrigação de pagar custas processuais e honorários em caso de extinção do processo pela quitação do crédito tributário devido o falecimento do devedor, após a interposição da execução fiscal e antes da citação. 03. Como sabemos se tem por inadmissível a substituição da CDA, para a alteração do sujeito passivo da execução, nos termos da Súmula 392 do STJ: "A Fazenda Pública pode substituir a certidão de dívida ativa (CDA) até a prolação da sentença de embargos, quando se tratar de correção de erro

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	material ou formal, vedada a modificação do sujeito passivo da execução". A respeito da substituição da parte falecida pelos sucessores a jurisprudência do Superior Tribunal de Justiça firmou-se no sentido de que "o ajuizamento de execução fiscal contra pessoa já falecida não autoriza o redirecionamento ao espólio, haja vista que não se chegou a angularizar a relação processual" (AgRg no AREsp 555.204/SC, Rel. Ministro Mauro Campbell Marques, Segunda Turma, julgado em 23/10/2014, DJe 5/11/2014; AgRg no AREsp 522.268/RJ, Rel. Ministro Napoleão Nunes Maia Filho, Primeira Turma, julgado em 2/10/2014, DJe 17/10/2014; REsp 1410253/SE, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 12/11/2013, DJe 20/11/2013). 04. In casu, censurável se mostra a sentença recorrida, pois com o falecimento do contribuinte, anterior à citação, o processo até poderia ter sido extinto, porém não com base no art. art. 925 c/c art. 924, I, do CPC, mas sim com esteio no art. 485, VI, ante a carência de ação, e sem o redirecionamento do pagamento das custas processuais para os sucessores no âmbito desta execução. Enfim, a despeito de se ter declarado a extinção do processo pelo cumprimento da obrigação (art. 925 c/c art. 924, I, do CPC), considerando a impossibilidade de redirecionamento da execução, não poderia o juízo ter ordenado o pagamento de custas e honorários, redirecionando o pagamento das custas para o Espólio, mesmo com base no princípio da causalidade, uma vez que sequer a parte executada foi citada e o Espólio não é parte legítima no processo. 05. Assim, se o falecimento do contribuinte se deu antes mesmo da citação, a extinção da execução fiscal deve se dar nos termos do artigo 485, IV, do CPC, descabendo qualquer condenação do espólio ao pagamento de custas processuais ou de honorários advocatícios. 06. Apelação conhecida e provida para afastar a condenação do Espólio nos ônus de sucumbência. (Apelação Cível - 0424619-59.2015.8.06.0001, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento:&#160; 30/11/2020, data da publicação:&#160; 01/12/2020) (destacamos)</p><p style="line-height:1.2;text-indent: 4pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“EXECUÇÃO FISCAL. EXTINÇÃO DA AÇÃO. FALECIMENTO DA EXECUTADA ANTES DO AJUIZAMENTO DA AÇÃO. IMPOSSIBILIDADE DE REDIRECIONAMENTO PARA O ESPÓLIO DA DEVEDORA. SÚMULA 392 DO STJ. <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">PRECEDENTES DO SUPERIOR TRIBUNAL DE JUSTIÇA. AUSÊNCIA DE FORMAÇÃO DO CONTRADITÓRIO. APLICAÇÃO DO PRINCÍPIO PAS DE NULLITÉ SANS GRIEF. SENTENÇA MANTIDA. RECURSO APELATÓRIO DESPROVIDO. 1. Trata-se de recurso manejado contra a sentença que extinguiu a ação executiva fiscal por considerar inviabilizada a modificação do sujeito passivo da execução em razão do falecimento da parte executada antes de efetivada a sua citação. 2. A parte recorrente busca a reforma da sentença para dar regular seguimento à ação fiscal, arguindo, para tanto, a ausência de prova acerca do noticiado falecimento da executada, bem como ofensa aos princípios do contraditório e da não surpresa. 3. Cumpre consignar que, embora a parte apelante tenha alegado a inexistência de documento válido a comprovar o falecimento da parte executada e que a decisão foi embasada em prova inexistente, a certidão de óbito foi efetivamente acostada aos autos à página 48. 4. Quanto ao argumento relativo à nulidade da decisão por ofensa aos princípios do contraditório e da não surpresa, não é demais evidenciar a necessidade de o julgador intimar as partes para se manifestarem sobre elemento fático ou jurídico ainda não debatido no processo, ainda que a matéria seja cognoscível de ofício, oportunizando o direito de participação e de exercer influência sobre o que vai ser decidido. 5. Entretanto, o caso em debate exige ponderação entre os princípios do contraditório e da não surpresa com o princípio da instrumentalidade das formas, mediante o qual não se decreta a nulidade do ato processual se não restar configurado o prejuízo suportado pela parte ("pas de nullité sans grief"). 6. É que não obstante o juízo a quo ter extinguido a ação executiva fiscal com base em certidão de óbito da parte executada sem a prévia intimação da

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	Fazenda Pública para se manifestar sobre a questão, pode-se concluir que a solução apontada na sentença não teria resultado diverso caso tivesse sido observado o contraditório, notadamente porque o falecimento da executada, uma vez que ocorreu antes do ajuizamento da ação, impede que a execução tenha continuidade com a simples substituição pelo espólio da devedora. 7. Incide, na hipótese em comento, o enunciado da Súmula 392 do Superior Tribunal de Justiça: "A Fazenda Pública pode substituir a certidão de dívida ativa (CDA) até a prolação da sentença de embargos, quando se tratar de correção de erro material ou formal, vedada a modificação do sujeito passivo da execução." 8. Nesse contexto, entendo que não merece acolhimento a pretensão recursal de anulação da sentença para retorno da situação jurídica a seu status quo ante, pois conforme afirmado em linhas anteriores, o falecimento da executada em momento anterior ao ajuizamento da ação, devidamente comprovado por certidão de óbito acostada aos autos, torna inviável o redirecionamento da execução fiscal e, por conseguinte, impossibilita a sua continuidade por ausência de pressuposto de constituição e de desenvolvimento válido e regular do processo. 9. RECURSO CONHECIDO E DESPROVIDO. (Apelação Cível - 0603729-42.2020.8.06.0001, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 22/11/2021, data da publicação:&#160; 22/11/2021) (destacamos)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height:1.2;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> *****</p><p style="line-height:1.2;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“APELAÇÃO CÍVEL. TRIBUTÁRIO E PROCESSO CIVIL. EXECUÇÃO FISCAL. DÍVIDA DE IPTU. DEVEDOR FALECIDO ANTES DA PROPOSITURA DA AÇÃO. EXTINÇÃO DA EXECUÇÃO. PLEITO RECURSAL DE ANULAÇÃO DA SENTENÇA PARA REDIRECIONAMENTO DA EXECUÇÃO EM FACE DOS HERDEIROS. IMPOSSIBILIDADE DE SUBSTITUIÇÃO DA CDA E DO POLO PASSIVO. SÚMULA 392 DO SUPERIOR TRIBUNAL DE JUSTIÇA. IRRESIGNAÇÃO DESCABIDA. SENTENÇA ESCORREITA. APELO CONHECIDO E NÃO PROVIDO. 1. A controvérsia recursal consiste em analisar se é possível a substituição processual no polo passivo da demanda quando do falecimento do pretenso devedor antes do ajuizamento da presente execução fiscal. 2. O redirecionamento das execuções fiscais contra o espólio somente é admitida se o óbito do devedor ocorrer depois de realizada a citação, uma vez que, antes disso, não há angularização da relação processual. 3. Aplicação da Súmula 392 do STJ: "A Fazenda Pública pode substituir a certidão de dívida ativa (CDA) até a prolação da sentença de embargos, quando se tratar de correção de erro material ou formal, vedada a modificação do sujeito passivo da execução". 4. Precedente do STJ: "1. Conforme o entendimento do Superior Tribunal de Justiça, somente é possível o redirecionamento da execução fiscal em face do espólio quando o falecimento do contribuinte ocorrer após ele ter sido devidamente citado nos autos da execução, o que não ocorreu no caso dos autos (REsp n. 1.832.608/PR, relator Ministro Og Fernandes, Segunda Turma, julgado em 19/9/2019, DJe de

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	24/9/2019)". 5. Recurso de apelação conhecido e não provido.” (Apelação Cível - 0051489-47.2020.8.06.0062, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 29/08/2022, data da publicação:&#160; 29/08/2022) <br /> <br /></p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Há que se destacar, ademais, que é incabível a condenação em honorários sucumbenciais do Fisco pelo princípio da causalidade. Isso porque, inexiste nos autos, sequer, a formação da relação processual e, por isso, não há que se falar tal condenação.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Acerca da questão de direito, assim é o entendimento dos Tribunais Pátrios:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“EMENTA: APELAÇÃO CÍVEL - EXECUÇÃO FISCAL - FALECIMENTO DA PARTE EXECUTADA ANTES DA PROPOSITURA DA AÇÃO - EXTINÇÃO DO PROCESSO POR ILEGITIMIDADE PASSIVA - INCIDÊNCIA DA SÚMULA Nº 392/STJ - CONDENAÇÃO EM HONORÁRIOS ADVOCATÍCIOS - NÃO CABIMENTO - SENTENÇA PARCIALMENTE REFORMADA. 1. O falecimento da parte executada antes da propositura da ação execução fiscal enseja sua extinção, por ilegitimidade passiva (Súmula nº 392 do Superior Tribunal de Justiça). 2. Como a extinção da execução fiscal ocorreu sem a triangulação da relação processual, são indevidos honorários advocatícios. 3. Recurso parcialmente provido. V.V.: APELAÇÃO CÍVEL - EXECUÇÃO FISCAL - AJUIZAMENTO EM FACE DE DEVEDOR JÁ FALECIDO - EXTINÇÃO SEM RESOLUÇÃO DE MÉRITO - RÉU REPRESENTADO NOS AUTOS PELA DEFENSORIA PÚBLICA ESTADUAL - CABIMENTO DA CONDENAÇÃO AO PAGAMENTO DE HONORÁRIOS ADVOCATÍCIOS - COMUNICAÇÃO AO FISCO - OBRIGAÇÃO ACESSÓRIA QUE NÃO AFASTA A RESPONSABILIDADE DA EXEQUENTE AO PAGAMENTO DOS ÔNUS SUCUMBENCIAIS - RECURSO DESPROVIDO. 1 - Estando o executado representado nos autos pela Defensoria Pública, a qual atuou no feito, apresentando defesa, não há óbice à condenação da Fazenda Pública Municipal ao pagamento de honorários advocatícios. 2 - A comunicação do Fisco acerca do óbito do devedor constitui obrigação acessória e autônoma em relação à obrigação principal, na forma do art. 113, § 2º do CTN. 3 - O ajuizamento da execução fiscal em face de devedor já falecido à época em que constituído o crédito tributário enseja a condenação da Fazenda Pública ao pagamento de honorários advocatícios, em observância ao princípio da causalidade. 4 - Recurso desprovido. (TJ-MG - AC: 10145010074535001 Juiz de Fora, Relator: Júlio Cezar Guttierrez, Data de Julgamento: 07/06/2022, Câmaras Cíveis / 6ª CÂMARA CÍVEL, Data de Publicação: 13/06/2022) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Sendo assim, extinção do feito executivo, é medida que se impõe, julgando por conseguinte,

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	prejudicado o apelo interposto.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr">Por tais razões, extingo o feito executivo sem resolução de mérito, nos termos do art. 485, VI, do CPC, ante a ausência de legitimidade passiva do exequido para figurar no polo passivo da demanda, restando prejudicado a análise do apelo interposto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Fortaleza, 25 de novembro de 2024. <br /> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO &#160;</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Portaria 1550/2024</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	78
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Servidores Ativos
Polo ativo	MUNICIPIO DE BOA VIAGEM
Advogado(s) - Polo ativo	ANTONIO JOSAFA MARTINS MESQUITA - (CE19683-A)
Polo passivo	ZILMA AMARO DA ROCHA
Advogado(s) - Polo passivo	SAMANTHA KESSYA SOUZA PINHEIRO - (CE32117-A) FRANCISCO DE ASSIS MESQUITA PINHEIRO - (CE7068-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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</p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;0200821-53.2022.8.06.0051 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE BOA VIAGEM.</p><p> APELADO: ZILMA AMARO DA ROCHA.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: Processual Civil. Reexame Necessário. Dispensa. Tema 17 e Súmula 490, STJ. Sentença Ilíquida. Condenação mensurável por simples cálculos aritméticos. Juízo de retratação negativo. Acórdão mantido.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Devolvidos os autos para reapreciação da questão relativa à dispensa do reexame necessário, em atenção ao posicionamento firmado pelo Superior Tribunal de Justiça, em Tema 17 de sua jurisprudência, consoante a legislação de regência, para exame de adequação do que restou decidido por este Tribunal de Justiça com a orientação sedimentada pela Corte Cidadã.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em averiguar a conformidade do acórdão proferido por esta Câmara com a tese firmada no julgamento do recurso repetitivo REsp nº 1.101.727/PR (Tema 17) e Súmula 490, ambos do Superior Tribunal de Justiça.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-

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	align: baseline; white-space: pre-wrap;">III. Razões de Decidir</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A Súmula 490 e o Tema 17, ambos do STF foram formados sob a égide do CPC/1973 e, com a entrada em vigor do Código de Processo Civil de 2015, o art. 496 estabeleceu limites mínimos para se impor a obrigatoriedade da confirmação da sentença.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Assim, em homenagem ao princípio da razoável duração do processo, da eficiência e da celeridade, os quais devem pautar a atuação do Poder Judiciário, tem-se admitido a relativização da aplicação da Súmula 490 e Tema 17 STJ, quando apesar de aparentemente ilíquido, por simples cálculos aritméticos, é possível verificar que o valor da condenação ou o proveito econômico não alcançará os limites estabelecidos pelo CPC.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5.Muito embora o magistrado não tenha condenado o Município em valor certo, o proveito econômico obtido pela servidora se mostra perfeitamente mensurável e, com certeza, será inferior a 100 (cem) salários-mínimos, (CPC/2015, art. 496, § 3º, inciso III), ainda que acrescido dos consectários legais, especialmente porque as parcelas anteriores aos cinco anos da propositura da ação encontram-se prescritas.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Desse modo, mostra-se correta, neste ponto, a sentença de primeiro grau e a decisão anteriormente proferida por esta 3ª Câmara de Direito Público, que não conheceu o reexame necessário e rejeitou o apelo manejado pelo Município requerido.</p><p style="line-height: 1.38; margin-left: 113pt; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Juízo de retratação negativo. Acórdão confirmado.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ____________</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos relevantes citados: CPC, art. 496.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Jurisprudência relevante citada: STJ, AgInt no AREsp n. 2.257.406/RS, Rel. Teodoro Silva Santos, Segunda Turma, j. 26/8/2024; AgInt no REsp n. 1.897.319/MG, Rel. Paulo Sérgio Domingues, Primeira Turma, j. 20/5/2024.</p><p style="line-height: 1.26; text-align: center; margin-top: 12pt; margin-bottom: 8pt;" dir="ltr"> <br /> <br /> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos da Apelação Cível nº 0200821-53.2022.8.06.0051, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em juízo de retratação negativo, confirmar o acórdão anteriormente proferido, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora informados pelo sistema.</p><p align="center"> <strong id="docs-internal-guid-cf8edab7-7fff-724d-801e-006d1322e5a1" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Trata-se de análise de juízo de retratação, do acórdão de ID 7251164, para fins de apreciar a sua adequação aos parâmetros fixados pelo Superior Tribunal de Justiça, no Tema 17, assim ementado:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ RECURSO ESPECIAL. DIREITO PROCESSUAL CIVIL. REEXAME NECESSÁRIO. SENTENÇA ILÍQUIDA. CABIMENTO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. É obrigatório o reexame da sentença ilíquida proferida contra a União, os Estados, o Distrito Federal, os Municípios e as respectivas autarquias e fundações de direito público (Código de Processo Civil, artigo 475, parágrafo 2º).</p><p

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	style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. Recurso especial provido. Acórdão sujeito ao procedimento do artigo 543-C do Código de Processo Civil.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (REsp n. 1.101.727/PR, relator Ministro Hamilton Carvalhido, Corte Especial, julgado em 4/11/2009, DJe de 3/12/2009.)”. (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 4pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em Acórdão (ID 7251164), os membros da 3ª Câmara de Direito Público deste Sodalício não conheceram do reexame necessário, bem como conheceram e negaram provimento à da apelação interposta pelo Município de Boa Viagem. Confira-se sua ementa:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ EMENTA: REEXAME NECESSÁRIO. AÇÃO DE COBRANÇA. CONDENAÇÃO OU PROVEITO ECONÔMICO QUE NÃO ULTRAPASSA O LIMITE DE 100 (CEM) SALÁRIOS-MÍNIMOS. HIPÓTESE DE DISPENSA DO DUPLO GRAU DE JURISDIÇÃO. ART. 496, § 3º, INCISO III DO CPC. NÃO CONHECIMENTO. Apelação Cível. CONSTITUCIONAL E ADMINISTRATIVO. FÉRIAS ANUAIS DE 45 DIAS. ACRÉSCIMO DE 1/3 CALCULADO SOBRE A INTEGRALIDADE DO PERÍODO. DIREITO A INDENIZAÇÃO DOS VALORES NÃO ADIMPLIDOS, DE FORMA SIMPLES. HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS. DECISÃO ILÍQUIDA. FIXAÇÃO SOMENTE NA FASE DE LIQUIDAÇÃO DO JULGADO. SENTENÇA REFORMADA EM PARTE.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Trata o caso de apelação cível, em ação ordinária, por meio da qual a autora requer a condenação do Município de Boa Viagem à concessão de férias anuais de 45 (quarenta e cinco) dias, bem como o pagamento do respectivo terço constitucional sobre a integralidade do período.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Em homenagem aos princípios da eficiência e da celeridade, que sempre devem pautar a atuação do Poder Judiciário na busca pela razoável duração do processo, tem sido admitida a relativização da aplicação da súmula nº 490 do STJ, quando, apesar de aparentemente ilíquido, o valor da condenação ou do proveito econômico, in concreto, puder ser aferido por simples cálculos aritméticos e, indiscutivelmente, não alcançar o teto apontado pelo art. 496, § 3º do CPC, para fins de submissão da sentença ao duplo grau de jurisdição.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - É exatamente esta a situação ora retratada nos autos, porque, muito embora o Juízo de primeiro grau não tenha condenado o Município em valor certo, o proveito econômico obtido pela servidora se mostra perfeitamente mensurável e, com absoluta certeza, será bem inferior a 100 (cem) salários-mínimos (CPC/2015, art. 496, § 3º, inciso III), ainda que atualizado e corrigido monetariamente. Assim, o não conhecimento do reexame necessário é medida que se impõe a este Tribunal.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - No que concerne ao direito de férias, o art. 17 da Lei nº 652/1997 (Estatuto do Magistério de Boa Viagem) prevê que o professor em função docente gozará de 45 (quarenta e cinco) dias de férias

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	por ano.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - A Carta Magna assegura ao trabalhador o gozo de descanso anual remunerado com, pelo menos, um terço a mais do que o salário normal (art. 7.º, XVII), nada impedindo que a legislação infraconstitucional amplie as garantias em questão com relação a determinadas categorias.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Direito dos professores da rede municipal a 45 (quarenta e cinco) dias de férias, uma vez que o texto legal é plenamente compatível com a Constituição Federal e não foi expressamente revogado por qualquer outra norma.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - O entendimento pacificado no âmbito da jurisprudência pátria está no sentido de que o abono de 1/3 do salário normal deve incidir sobre o período de férias anuais legalmente definido, abrangendo, inclusive, os que fazem jus a mais de 30 dias, mesmo que desdobradas em dois períodos, como é o caso dos autos.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Sendo assim, deve a apelada ser ressarcida quanto aos terços constitucionais não recebidos, de forma simples, respeitada a prescrição das parcelas anteriores aos cinco anos que precederam o ajuizamento da demanda.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes desta egrégia Corte de Justiça.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Reexame necessário não conhecido.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Apelação conhecida e desprovida.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Sentença reformada, apenas no que concerne aos honorários advocatícios sucumbenciais. ”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr">Irresignado, o Município de Boa Viagem interpôs recurso especial, ID 7736295, arguindo violação ao art. 496 do CPC, ao argumento de que a sentença que impôs a condenação do ente público municipal é ilíquida, não se aplicando o §3º do mencionado dispositivo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Decisão da Vice-Presidência , em ID 11862628, determinando o retorno dos autos ao órgão colegiado, para realização do juízo de conformação positivo ou

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	negativo ao Tema 17 do STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 11pt; margin-bottom: 11pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Trata o caso de decisão exarada pela Vice-Presidência desta Corte de Justiça que, em exame de admissibilidade de Recurso Especial interposto pela parte requerida, devolveu a matéria à apreciação deste órgão julgador em atenção ao posicionamento firmado pelo Superior Tribunal de Justiça, em Tema 17 de sua jurisprudência, consoante a legislação de regência, para exame de adequação do que restou decidido por este Tribunal de Justiça com a orientação sedimentada pela Corte Cidadã.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Passo, pois, ao reexame, posicionando-me, desde já, pela confirmação do acórdão proferido por esta Câmara.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> A questão devolvida para reapreciação gira em torno da dispensa do reexame necessário em sentenças ilíquidas.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Sobre a questão, o Superior Tribunal de Justiça firmou o seguinte entendimento:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Tema 17 STJ: A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas (REsp n. 1.101.727/PR, relator Ministro Hamilton Carvalhido, Corte Especial, julgado em 4/11/2009)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ****</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Súmula 490 STJ: A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas (Corte Especial, julgado em 28/06/2012, DJe 01/08/2012)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Ocorre que esses entendimentos foram formados sob a égide do CPC/1973 e, com a entrada em vigor do Código de Processo Civil de 2015, foram estabelecidos limites mínimos para se impor a obrigatoriedade da confirmação da sentença, nos termos do art. 496, <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> “ Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> I - proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> II - que julgar procedentes, no todo ou em parte, os embargos à execução fiscal.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> § 1º Nos casos previstos neste artigo, não interposta a apelação no prazo legal, o juiz ordenará a remessa dos autos ao tribunal, e, se não o fizer, o presidente do respectivo tribunal avocá-los-á.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> § 2º Em qualquer dos casos referidos no § 1º, o tribunal julgará a remessa necessária.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">§ 3º Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> I - 1.000 (mil) salários-mínimos para a União e as respectivas autarquias e fundações de direito público;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> II - 500 (quinhentos) salários-mínimos para os Estados, o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público .” (destacado)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr">Assim, em homenagem ao princípio da razoável duração do processo, da eficiência e da celeridade, os quais devem pautar a atuação do Poder Judiciário, <span style="font-size: 12pt; font-family: Arial,sans-serif; color:

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	#000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">tem-se admitido a relativização da aplicação da Súmula 490 e Tema 17 STJ quando, apesar de aparentemente ilíquido, é possível verificar que o valor da condenação ou o proveito econômico não alcançará os limites estabelecidos pelo CPC por simples cálculos aritméticos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Nesse sentido, colaciona-se os julgados recentes da Primeira e Segunda Turma do Superior Tribunal de Justiça, ex vi:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. ADMINISTRATIVO. CHEFES DE CARTÓRIO ELEITORAL. LEI N. 13.150/2015. RESOLUÇÃO TSE N. 23.448/2015. FUNÇÕES COMISSIONADAS NÍVEL 6. SENTENÇA ILÍQUIDA. AUSÊNCIA DE REEXAME NECESSÁRIO. MEROS CÁLCULOS ARITMÉTICOS. SÚMULAS N. 7 E 83 DO STJ. EFICÁCIA E EFEITOS FINANCEIROS CONDICIONAIS. OBSERVÂNCIA DAS DISPONIBILIDADE E ANUALIDADE ORÇAMENTÁRIAS. PAGAMENTO DE VALORES RETROATIVOS. IMPEDIMENTO LEGAL E REGULAMENTAR. AGRAVO INTERNO PARCIALMENTE PROVIDO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">1. O Tribunal de origem decidiu a matéria em conformidade com a jurisprudência desta Corte, que reconhece a possibilidade de dispensa do reexame necessário em sentenças ilíquidas, quando o proveito econômico for mensurável por meros cálculos aritméticos, incidindo, na espécie, os enunciados n. 7 e 83 das Súmulas do STJ.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. A Lei n. 13.150/2015 impôs condicionante à sua aplicabilidade, de modo que não poderia ser autoaplicada sem o preenchimento das condições estabelecidas, é dizer, de forma retroativa. Isso porque a eficácia e os efeitos financeiros da legislação em comento ficaram condicionados aos limites orçamentários autorizados na LDO e em anexo próprio da LOA.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Tais restrições temporais foram expressamente referendadas pela Resolução n. 23.448, de 22 de setembro de 2015, do Tribunal Superior Eleitoral, que autorizou sua aplicação a partir da Lei Orçamentária Anual de 2016, não podendo, assim, produzir reflexos sobre período anterior para alcançar valores retroativos, sob pena de violação às normas do direito financeiro, mormente quanto às disponibilidade e anualidade orçamentárias.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. Agravo interno parcialmente provido para dar parcial provimento ao recurso especial.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify;

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	margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (AgInt no AREsp n. 2.257.406/RS, relator Ministro Teodoro Silva Santos, Segunda Turma, julgado em 26/8/2024, DJe de 3/9/2024.)” (destacado)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> *****</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“PROCESSUAL CIVIL. AGRAVO INTERNO. RECURSO ESPECIAL. VIOLAÇÃO DO ART. 489 DO CPC. NÃO OCORRÊNCIA. SENTENÇA ILÍQUIDA. CPC VIGENTE. NOVOS PARÂMETROS. CONDENAÇÃO OU PROVEITO ECONÔMICO INFERIOR A MIL SALÁRIOS MÍNIMOS. REMESSA NECESSÁRIA. DISPENSA. PROVIMENTO NEGADO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Verifica-se que "[n]ão há falar em afronta aos arts. 489, § 1º, e 1.022 do CPC/2015 [Código de Processo Civil], por omissão ou vício de fundamentação no provimento jurisdicional recorrido, (i) quando a parte agravante nem sequer opôs embargos de declaração para fins de sanar o vício apontado em sede de recurso especial e (ii) quando a Corte local pronunciou-se, de forma clara e suficiente, acerca da questão suscitada nos autos, manifestando-se sobre todos os argumentos que, em tese, poderiam infirmar a conclusão adotada pelo Juízo" (AgInt no AREsp 2.443.850/RS, relator Ministro Antonio Carlos Ferreira, Quarta Turma, julgado em 8/4/2024, DJe de 11/4/2024).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. A jurisprudência do Superior Tribunal de Justiça é no sentido de que, " após vigência do novo estatuto processual, tem firmado entendimento de que a elevação do limite para conhecimento da remessa necessária significa uma opção pela preponderância dos princípios da eficiência e da celeridade, e não obstante a aparente iliquidez das condenações, se houver possibilidade de aferição por simples cálculos aritméticos, forçoso reconhecimento que se trata de verdadeira hipótese de dispensa de reexame " (AgInt no REsp 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Agravo interno a que se nega provimento.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (AgInt no REsp n. 1.897.319/MG, relator Ministro Paulo Sérgio Domingues, Primeira Turma, julgado em 20/5/2024, DJe de 24/5/2024.)” (destacado)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">Na espécie, a sentença de primeiro grau condenou o Município de Boa Viagem “ o abono constitucional de 1/3 (um terço) de férias calculado sobre todo o período de 45 (quarenta e cinco) dias ”, bem como “ao pagamento das diferenças observadas em relação ao adicional de 1/3 de férias, vencidas e as que vencerem no decorrer do andamento deste processo, excluindo-se as parcelas atingidas pela prescrição quinquenal, relativas aos 05 (cinco) anos anteriores ao ajuizamento da presente ação”.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> A autora formulou pedido indicando como valor da causa R$20.000 (vinte mil reais) e das provas juntadas aos autos, especialmente as fichas financeiras (ID 6322714), verifica-se que o salário-base da servidora à época da propositura da ação era de R$3.845,63 (três mil, oitocentos e quarenta e cinco reais e sessenta e três centavos).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Muito embora o magistrado não tenha condenado o Município em valor certo, o proveito econômico obtido pela servidora se mostra perfeitamente mensurável e, com certeza, será inferior a 100 (cem) salários-mínimos, (CPC/2015, art. 496, § 3º, inciso III), ainda que acrescido dos consectários legais, especialmente porque as parcelas anteriores aos cinco anos da propositura da ação encontram-se prescritas.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No mesmo sentido, a jurisprudência consolidada desta e. Corte de Justiça em casos análogos, consoante se extrai dos seguintes arestos:</p><p style="line-height: 1.26; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">“PROCESSUAL CIVIL. AÇÃO ORDINÁRIA DE COBRANÇA. REMESSA OFICIAL NÃO CONHECIDA. ESTIMATIVA DO VALOR GLOBAL DA CONDENAÇÃO INFERIOR AO VALOR DE ALÇADA. REEXAME NÃO CONHECIDO. 1. A tese jurídica fixada no julgamento do REsp nº 1.101.727/PR, que deu origem ao Tema nº 17/STJ, e, posteriormente, à Súmula 490/STJ, precede a entrada em vigor da atual legislação processual (CPC/2015), e não mais prepondera em razão da utilização do critério socioeconômico, pelo legislador ordinário, nas hipóteses de dispensa de reexame da sentença pela instância superior de jurisdição. 2. O Superior Tribunal de Justiça, o Tribunal Regional Federal da 5ª Região e as Câmaras de Direito Público desta e. Corte de Justiça vêm afastando o precedente formado no longínquo ano de 2009, ainda sob a vigência do CPC/1973, nas hipóteses em que o valor da condenação for presumidamente inferior aos valores de alçada, a depender do ente público litigante. Passou-se a adotar a ratio decidendi contida na tese difundida no STJ de que ¿É dispensável a remessa necessária nas sentenças ilíquidas proferidas em desfavor do INSS, cujo valor mensurável da condenação ou do proveito econômico seja inferior a 1.000 (um mil) salários mínimos¿. 3. Não se cogitando de valor da condenação superior a 100 (cem) salários mínimos, mantenho o não conhecimento do pedido de reexame da sentença. 4. Juízo de retratação não realizado. (Apelação Cível - 0200494-11.2022.8.06.0051, Rel. Desembargador(a)

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	WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 02/10/2023, data da publicação: 02/10/2023)” (destacado)</p><p style="line-height: 1.26; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> *****</p><p style="line-height: 1.26; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">“JUÍZO DE RETRATAÇÃO. ART. 1.030, INCISO II, DO CPC. CONSTITUCIONAL, ADMINISTRATIVO E PROCESSO CIVIL. APELAÇÃO CÍVEL. DISPENSA DO REEXAME NECESSÁRIO. ART. 496, §3º, INCISO III, DO CPC/15. ALEGADA DESOBEDIÊNCIA DO TEMA REPETITIVO Nº 17 E DA SÚMULA Nº 490, AMBOS DO STJ. INEXISTÊNCIA. AMPLIAÇÃO DO CONCEITO DE SENTENÇA LÍQUIDA. CONDENAÇÃO PASSÍVEL DE SER MENSURADA A PARTIR DE SIMPLES CÁLCULOS ARITMÉTICOS. PRECEDENTES DO STJ E DESTE SODALÍCIO. ACÓRDÃO RECORRIDO EM CONSONÂNCIA COM OS PRECEDENTES VINCULANTES INVOCADOS. JUÍZO DE RETRATAÇÃO REFUTADO. RATIFICAÇÃO DO JULGADO. 1. Conforme fora relatado, o acórdão deste colegiado entendeu, quanto ao pedido de reexame da sentença, que a remessa dos autos para tal finalidade não seria obrigatória por ser possível quantificar a condenação do ente público e concluir que ela está bem aquém ao valor de alçada. Interposto Recurso Especial pelo Município de Cedro, a Vice-presidência desta Corte, em juízo de admissibilidade, identificou possível inconsistência entre a conclusão do julgado, o entendimento fixado no Recurso Especial nº 1.101.727/PR (Tema Repetitivo nº 17) e a Súmula nº 490, do STJ, determinando o retorno dos autos para eventual revisão proposta em juízo de retratação, nos termos do art. 1.030, inciso II, do CPC. 2. De partida, vale destacar que se reconhece válidas e plenamente aplicáveis as orientações consignadas no Tema Repetitivo nº 17 e na Súmula nº 490, com as devidas adaptações aos novos parâmetros estatuídos no art. 496, §3º, do CPC/15. Além disso, cumpre assinalar que o Superior Tribunal de Justiça, em julgados proferidos já sob a égide do Código de Processo Civil de 2015, elasteceu o conceito de "sentença líquida" para abranger as hipóteses em que o valor do bem jurídico discutido puder ser mensurado por simples cálculos aritméticos. 3. In casu, este Colegiado, considerando os valores discriciminados pelos autores na exordial (R$ 27.624,00 ¿ vinte e sete mil, seiscentos e vinte e quatro reais) e a concessão parcial desta pretensão, concluiu que o proveito econômico auferido pela parte autora, mesmo acrescido dos consectários legais, não alcançaria o patamar legal de 100 (cem) salários mínimos previsto no inciso III do § 3º do art. 496 do CPC/2015, razão pela qual não merecia amparo a tese recursal relativa à necessidade de reexame necessário da contenda. 4. Desta feita, tem-se que o acórdão proferido por este Órgão Julgador, objeto do REsp interposto pelo Município de Cedro, encontra-se de acordo com o entendimento estabelecido no Tema Repetitivo nº 17, na Súmula nº 490, ambos do STJ, e com a jurisprudência fixada pelo Tribunal Superior sob a égide do CPC/15, de modo que a sua ratificação é medida que se impõe. Precedentes deste Sodalício. 5. Juízo de retratação rejeitado. Acórdão mantido. (Apelação Cível - 0015333-19.2018.8.06.0066, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 27/11/2023, data da publicação: 27/11/2023)” (destacado)</p><p style="line-height: 1.26; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> * *

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	*</p><p style="line-height: 1.26; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 0pt;" dir="ltr">“CONSTITUCIONAL E ADMINISTRATIVO. PROCESSUAL CIVIL. JUÍZO DE RETRATAÇÃO. ART. 1.030, II, DO CPC. ACÓRDÃO QUE NÃO ACATOU O PEDIDO DE REMESSA NECESSÁRIA FORMULADO PELO MUNICÍPIO APELANTE. DESNECESSIDADE DO REEXAME OBRIGATÓRIO EM RAZÃO DA INTERPOSIÇÃO DE RECURSO TEMPESTIVO DA FAZENDA PÚBLICA. EXEGESE DO ART. 496, §1º DO CPC. PRECEDENTES. VALOR DA CONDENAÇÃO OU DO PROVEITO ECONÔMICO SEGURAMENTE INFERIOR AO VALOR DE ALÇADA DE 100 (CEM) SALÁRIOS-MÍNIMOS (ART. 496, § 3º, III, DO CPC). AFERIÇÃO MEDIANTE MEROS CÁLCULOS ARITMÉTICOS. INAPLICABILIDADE DA SÚMULA 490 E DO TEMA 17, AMBOS DO STJ. PRECEDENTES DA CORTE ESPECIAL E DESTE TJCE. JUÍZO DE RETRATAÇÃO NEGATIVO. ACÓRDÃO MANTIDO. 1 ¿ Trata-se de análise de Juízo de Retratação, nos termos do art. 1.030, II, do CPC, em face de acórdão prolatado pela 1ª Câmara de Direito Público do TJCE, ante a possível dissonância da decisão colegiada recorrida com o enunciado do Tema 17 do STJ. 2 ¿ Conforme exegese do art. 496, §1º, do CPC, em regra, não há remessa necessária se houver apelação interposta pela Fazenda Pública. Precedentes. 3 ¿ No caso, a matéria que poderia ter sido analisada pela instância revisora em reexame obrigatório já foi apreciada no recurso de apelação, o que, por certo, configura evidente ausência de interesse do ente público quanto ao pleito de reexame necessário, porquanto não há prejuízo ao Município recorrente. 4 ¿ A Corte Superior de Justiça e este TJCE vêm mitigando a rigidez do entendimento sumulado (Súmula 490 do STJ e Tema 17 do STJ) nas hipóteses em que, embora ilíquido o decisum, os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. 5 ¿ No caso, a edilidade foi condenada a pagar ao autor, professor da educação básica da rede pública municipal, enquanto estivesse em atividade de docente em efetiva regência de classe, o abono constitucional de 1/3 (um terço) de férias, calculado sobre todo o período de 45 (quarenta e cinco) dias, e não apenas sobre o período de 30 (trinta) dias. Ademais, o Município foi condenado ao pagamento das diferenças observadas em relação ao adicional de 1/3 (um terço) de férias, vencidas e vincendas, respeitada a prescrição quinquenal. 6 ¿ Na hipótese, o Juízo de primeiro grau considerou que o presente feito não estava sujeito à remessa necessária, por entender que os valores discutidos não atingirão o limite previsto no art. 496, §3º, III do CPC. 7 ¿ Sendo possível inferir, na hipótese, por meros cálculos aritméticos, que o valor do proveito econômico não atingiria o valor de alçada (100 salários-mínimos para o Município), conclui-se que não há conflito do julgado com a Súmula nº 490 do STJ nem com o Tema 17 do STJ, razão pela qual se impõe a manutenção do acórdão anteriormente proferido. Precedentes do TJCE. 8 ¿ Juízo de retratação negativo. Acórdão mantido. (Apelação Cível - 0200545-22.2022.8.06.0051, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 04/12/2023, data da publicação: 04/12/2023)” (destacado)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 9pt;" dir="ltr"> Desse modo, mostra-se correta, neste ponto, a sentença de primeiro grau e a decisão anteriormente proferida por esta 3ª Câmara de Direito Público, que rejeitou o apelo manejado pelo Município requerido.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 11pt; margin-bottom: 11pt;" dir="ltr"> DISPOSITIVO</p><p style="line-

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	height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Por tais razões, em exercício de Juízo de retratação disposto no art. 1.040, II, do CPC, voto por confirmar integralmente o acórdão anteriormente proferido que não conheceu do reexame necessário e negou provimento ao recurso apelatório do Município de Boa Viagem.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ausente a interposição de recursos desta decisão, encaminhem-se os autos à Vice-Presidência para análise da admissibilidade do recurso especial.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora registrada no sistema.</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024</p><p align="center"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><div> <br /> </div><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	79
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	ANTONIO ALTAMIR RODRIGUES
Advogado(s) - Polo ativo	ANTONIO FERREIRA BEZERRA - (CE26246-A) DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A)
Polo passivo	MUNICIPIO DE ACOPIARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004035-70.2024.8.06.0000
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jH9BrKVrjWXlgSDzd0Ok7e14YPrwjl5SGwKJLqB7TkBmtSrcnIlUt56nixCFCzlIaJPLoTDXcZIm0pLDmLmhBJ9sGvTfz8CMgBWNZXVq8dNjeIVmNWHsgAOYsfYc80HSvQxFUbydjNDYRUDtl3Rn+AkOGuQCXWVhRlWPkd9RMCYvmwWJCX7ieOr1S85F12dj76jpHaUvtjW2ALGHO0ZTNIr47GgaOyCDlP7JEyRDmu8SrEaT+KtJXKtLcPvoqRFLq4cnMWu4y6MUqRRmoXxf6eKUAr6XjmFZcRqI3cMhqVWL6lgZCVO3HfvW86VPmTkKjY+HOb7dwh3L6MU7JdpA1bVj1TlAyPPrBj27/BQXZKkrhcNm7G+ImGq5BqVQfg5U4YWyuoWBhq9G0D/dmZiUi1jFkoJGdBa8YjNzRqVI6DXXDtTqnfVV3qlh5XwPuAqAnMf8jqBjCdi5j1cyWdsDMzENgMAqaGpt9e6DCbJVxeKcvMqYj6oVbhKe7W4Kc8S9qYO8W9e9YPi/gUYyNRUdxOnRr3w0G2ifBVVlWZBHFHFwKW7mh05rmeEj6rwAdgO01Vx7g5yS2C7fYK7VDrVdhkfe9PVU6dKPZHz/5TWXWAlCafgIJbsZjspeM2hOgwOP2gp/g9rkQ5tKtP4LUtVPnuD7xT7fgFfNKxQfHGNKRvL05KmkOp8T5XBb1O9jdSFqTD1ikv/jqoTbvRFVrZOL9kSgKMQlRDn7FRsIAaFIW2q1Kq5ILuEaXEzP3svYiP4c0DQ0mlP9h6Qzzk3oYmEHcKBbr3GWLq5m3ppZ6khQTQpPyVGWTyZOjIgIjl4+m9KUW6r0ZCJqG8ebg7PajX5bpTzLVc4sNHtY3XaQHcFjZsF5dRjzZ8g7mQyu4cOj3PTgH35Fc6r5c1qlnzHl8cdHnF3x8W9gmGMGjxrqsSknDULDIqI4e8E2ZRa9bEoj5jxxsW7FadX8dkIGRADyq5M3ENgtQv4SzWO7YZ6A16Dx9HZnpcjDNIoe7eaUA5wPkeyHX7U7wrBpkN9gj1uISAkBf3d7zw3nhW6AfVW8jgjYQ4aYBCfKLgmBiKtR05mLAhdSk2eyBtDEJ2qwJLxxhCxDEe7RbcGe1X6eKU3aJtMJRL1lfjSQfnnnDWqFHaGpQ0cvbH0kDCZoz7Bw8q0AFplTEf/5Br6ISRrB4XN0bVWh2KCeD79T/A6LCjOxb7iFUkK1SXjLRzd5ezB6fEgL7hlh3evTQWqTqoRfOoRY6j+lpwTxuDCb0CEmO9VrjqPT66Lr2jXx4cbfAhDNixvLMkpHDBmaWFZxnvz9zYrfAqA19qczmxMJ9DMZcVAv3aH49I69aQwWTjvtKZG8uD52dZ8o+E3G3u/ZhYa8yWSpupkNGPb3Nh4D9kT0Wd1VRE1pkKqFlV2SwhD9dA8Wr5OMSKfN5Zm99YHcVMJY5lR+MiL5Kqc1cABNbhRf2j2WGmSXIHpIQD3A+ETpwgUAzy6rs49QvoHVz2g9Ul7p3v4Y38vMScF0Si6UUoCrrU3NsYpNadmIUkpgdERqfYlkWDj+FQ8O7JpxhXMoSIwrC9hvEWMTx1WEcoDwPKv9KoH1BbDNA9cVgk3ZTr8XLMkpnkmAbwbcYAQmBUzSmn5yRPU+xFgNUiQrzZ8HSBhoyURg3B3LrRu3LcDTvBV6QfaayQLDW8VhNFTcCdpXv/iPuDBY8pPGYWULhhU1yHpsHdefHbsKSRl5/rBMeRxe9A3VDo9Q8Ju3oWvxJfV1vjsMOvNNWSJTZrnlhq2kZF1mZRQqtuTkEewQ07gOdE9bDMp8cfBb6cHMYu0K7lN7I2apDVp4RHu1bQcvNNu9DtO2BMIlvXI7gqZSymRQqUiRK3Ayy4TXrG6DIuqxtYFGqlhHgCuhlOhHPGj9WjxjN8qVqrXn11VMEcUSiBV+s/qXYwU+mT8MhGOlqXjjJ7lxFWnTKgdpqlhhWFCPvctnvV7RPnURzd4Kn0dyNdDfAgr89ZAqeimCKF1U2XjgdPXOjO9m0ukvr0wJqYmv86/HMTuijrL+oMJNemtsmHE5mWl3qSnbgYCm25DhcVy6V82lkbjPF23pplmbeAbDDUFy8UfGe9nmuyIDPeZFGlrfFvG3SUfcS4qBbThXbaKxk9BXqWqGbvIyB6RCOZTdWxGQ4jwq5HKrN42Er1MMuW2e5NXZKONF8UYOtHOFCQzR9MrbeiDi2AwqmKQQnDajo5xNTlVufGXAvw1JVJL8YZvPSUi6wCm2hoSJtqvxGPeWrMh6D4z3PKRJIXqW2sF3HKYewsdLhGuEcaEPN1TfsfEnnBlDCQmE0n4RwHBJ8VM0vPCU2Ps7YPI0NPfWT5wxGpmJWmf0qqHhZxDx63NPNbR0UUv0X2jFEh1rsUDsWMb8hFJgkNNOxvdhwUWndeqsEPthOC0C39BZIEQIJj8FWwLOgFsyaGk5aOSGVN8zAW6NrdxYt7G5Vvf28FHJyyNHjk+Zbm8mYBCyWKRVFhrIo7knl3wYJ2DpOLjThHn4lF89Vmk1s1OEvbqNdTsNrAwBxX69KyRKpIfaFDRuDAmRGlq/8qhaF95cMnhyAxP2uyxKDVXQpp8nm6Wn2+2tT6KI8gnjIwDKUFUsxJ0TUEDkIqnqdtjoG7GxdpSzQvO3IfQp0ZATgPPjhJmwPSgA8WzjSEu2MnWttdZJEDTT6MrKGdYG/BEmUIpE4W4iPZRQEnkrRq0hdyzUxCr61Y5CS+iNl5QaQoJV+fmxxSNrbQqozsCkWHk5tYcrp7IbwN5M8kAUvbrEXcrE7DxfsJXXmCBBvNGLq1sknw00Spi3Qz3iLnq2pHr/mk/2GmR4n3oAI+zOnxn6zSsyv5czCUY1XxJDzG/+3l8WqtkyU3t5zaJpdv0bXl08DRp3bxHpnQIqSmhuKqBJZkt8srbOmJ7ASCdDvGymc4JfgGqGGaV+UThNKF0r/H8/35S1Bhj1JM0ZURe6nBY6H+fknTJ2j3ljcTUsBsLdIMahMqU8hMSrULzlbdFCnAk5y7oXKvjaTNz9izTXOcqLEk1Ud1P/AD+X8f1fAJPKyTDNM/7HnJ/Vk4qp4kC6rwwoKHApq5uL/V7qnm1m4nBjLlUPSzkM7jnMBcm1JmNTOAOQwcpsuBzIzRUtp1KVkN/3vZp5LVnnM/f0iKcz8gXALGEB7eyEJ+XXxHyNA7SqhcSvTFXW1MLYwcJQSS+jpw2NF0bXuxmCDZZaZHqTl9lQOrGrdVbdSXjpKxfTsFcJU/zYMTr+hGGMAvaalkR2cRVVsQvFZ9E9Hm+mEqrkUNB6xXkFdSAEuOxcXy6c08Lx2MuE0jn97lHJdRzz87UyVsUM0Ivp76qdRZ4bUq3ZL7p2ByydX9QBVKXTgfpgnM2SV+uPUbU1wBTqpLYzNQ5LgCCl4oH3OZ7ynytWbahI15YKDpIJlbDQQpnuTDvGPGn/xyGSNnB0efw2xOw5Igu+7LNE8XFZR0i8Fe46jsX2vvjYKuC4/KTSvLgAw6XqkkEf6I2mN1ThR3h+pg4O43aW0yRO8AiafymsqdqWsdPhw1dgFaHcf1AfDRh4l8L2fyx4V7edOq0SO5w7C2oz7PFXmHm0k4EXkf91Lkz+tE5GE5l3J5M0B9A8EwLprjOk6tPEA1qFFYGHm6UgtKlRfwOyMU4qhj3KlVO1AHR9WjJGQf3HkGmbUzEJ76xvf3Zmv6P6Rx+nrLnJYgnN/T5ygXkDsy7qz9kSlp0RYuJNGtdf8pQn9lPEQm7GXv0KTAsn6AG36nnRaJ1zJdfdLQPGmhFZ3T6Yab3I31KvNxkfPQl+PL9cJ+B2Yxb/+Crb3KMPt9jd7evGdm93hFD0JXzl95x8I1TjRz8IqzJLjXv6oJD2x2kyIFBJ0r8jwcmjuCUkiFaxWDgwt5l2PeXjWiN/Ktt2CJ56ln7AvHXKb3oKfMmPOtXLcSGX/lJ1NPdbU16H2NZMY9xqvjnBdtJnYeUdPxK3+MmGDNQyqw12vKuFWkyXZyutBqmqKlOFnz8CvYLl0fn34tyx+ENNjHxYBOqq8cjtZxsQqhxYLlLgUcIv1t8yG7tmAb7Lz5UW+dKf63Oylh6LdKVtd7FQpZ9D5Trt9EqSEr6q+Y6lPxFrQVhSY1Edkkp1gFc0O6BqPGL/gPf4tOJX2eLS5Zwp+0u8rkm6yFw2Z8Ee6SiEV60hRF0ASWDB9hG8tXmD7TnNxvrlGn8PZRn2TSeFYNPzW7ZTCmbmUpfsIDCmMm4i/uGGaRyDbnl+lHs8zTj4SQRc7DNfOEBFTDj+0xOvVlz1ao6hsGVvGAeYqqDpCk+sNvDIPfoNjZr5GRB2WcXDqaTr5kRYL/B2vWEUPMgw4yjMGHUU+tYrQ6nYAA6qxnUyI4SjVIlSZK+26I8yI6dXwpW1JLlPwTK0fJW4l08CJoBRmFQKj5fJ0S0GVZ7IKDkzx1LZjdYkslRktJPcpFprzZqAP6PibHsm2LHrUZ+hz4nYVtf3SSmbwdWzPKRAOGYUd2qJ4yESojt3B44QaVxDaDb3rDE6XSnpqrg8QAojC7ePqt4hUpQ3Bs6vVRDYWBbTCLmXW/x4odGX72NDNuyx0GbqgLGyqgwSIFgBs3WgOqHsv4F9Tzfwi3L4zz2DvlP1VHdnXJ5ws4LUxgg5Zwx3u8Qt3MXOnAjEgWZBq1jgmQrs1Ka0hKa1BYXR8+aCOJJLaqYm2E57fwltKbnoXMp+sXxBwXnjqvC27C14PjM3AjSkClJyW0gxm+2GEbx3LTF9gaVfC0BZ1FzIGMBJSLxBJq1nFyV7rCpUmn8kFmu/tDMV2w9HWa84fvOkWEZxU0ZyuhJBHTlQz77YsL2MjiLvfNtytzqpW5dLVAYtt5YRJ8AcCzw2qyqwx8dHf5w5Bf5nDt9hDngGjhwO2B3jqE/A+ejlGgGXjxd2t4nQm7EkR7IxHzK0mDEgIFkxxpbMHTgxYkoYbz+e1Y5fmDKYaHvV14gxOW8fJuqXx+8VUAJjWLnE8m6gixlEmJotZO7HGHtjiKpBxEa6FyaOqHZvJmmYGAtuA1NzxaQ6s+L0wf0CDY6ymFT0gGuRYqVYmT0m9QmpDwlZGcJGwjW3xzKUMM4Im0Lat6xOgPfPOxHBP4kRpjhxctMvFvExTpFLmVgb/a/8H8JtJPgwSPGZA5RpnaGB3gMsa4ZUjWNDs4sqArZRVLO0oAyBqYJdWPqO36p9xoaS4mhRRCe5/3kuFjkBR+KwQ0NV5gmhmYE0m2ZkmcrpfcY1qpUyZXlbBbaYBORwHbWvCXJFJqRVmVPv91PnZEi7EtyW3eFSLMX1jGaKp9dpLC4x2HHZdaZE5dmUJGjmqLgKBXOn6w7xPKvm3lmVmWH4H2L19NxThXZnzf2jzYwF+9nxWNcqfrbgqEy3KAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;3004035-70.2024.8.06.0000 -&#160;AGRAVO DE INSTRUMENTO (202)</p><p> AGRAVANTE: ANTONIO ALTAMIR RODRIGUES.</p><p> AGRAVADO: MUNICIPIO DE ACOPIARA.</p><p style="text-indent: 8%; text-align: center;">&#160;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> EMENTA: Processual Civil. Agravo de Instrumento. Cumprimento individual de sentença coletiva. Inaplicabilidade do tema 1.169/STJ. Apuração de valores por simples cálculos aritméticos. Decisão reformada.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 1. Agravo de Instrumento interposto contra decisão interlocutória proferida pelo Juízo da 2ª Vara Cível da Comarca de Acopiara, que determinou a suspensão de cumprimento individual de sentença coletiva</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 2. A questão em discussão consiste em verificar se incide a determinação de suspensão no cumprimento individual de sentença coletiva ajuizada na origem, nos termos da decisão proferida em afetação de recurso repetitivo REsp nº 1978629/RJ, Tema 1.169/STJ.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> III. Razões de Decidir</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color:

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	#000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">3. Na espécie, o título judicial que fundamentou o cumprimento de sentença determinou o pagamento de valores atrasados de parcelas remuneratórias, os quais exigem simples cálculos aritméticos, dispensando a prévia liquidação, nos termos do §9º do art. 509 do CPC.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 4. O título judicial em questão não se mostra genérico, ante a identificação dos beneficiários, quais sejam, os professores da rede pública do Município de Acopiara; trazendo o seu alcance de maneira clara e precisa ao explicitar o pagamento de diferenças remuneratórias de férias e do terço constitucional no período compreendido entre 2013 a 2017, bem como as demais parcelas que se venceram no andamento do processo.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 5. Por tais razões, o cumprimento individual de sentença coletiva promovido pela agravante não se amolda à questão a ser submetida a julgamento repetitivo, nos termos definidos pelo Tema 1.169 do STJ.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 6. Logo, é o caso, então, de ser dado provimento ao recurso, para se reformar o decisum proferido pelo Juízo a quo e determinar o prosseguimento do feito na origem.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 7. Agravo de Instrumento conhecido e provido. Decisão interlocutória reformada.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> ____________</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Dispositivos relevantes citados: CPC, art. 509, §2º</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Jurisprudência relevante citada: STJ, ProAfR no REsp n. 1.978.629/RJ, relator Ministro Benedito Gonçalves, Corte Especial, julgado em 11/10/2022, DJe de 18/10/2022</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3004035-70.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em para conhecer e dar provimento ao

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	recurso, reformando a decisão interlocutória ora combatida, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Local, data e hora indicados pelo sistema. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Em evidência, Agravo de Instrumento interposto contra decisão interlocutória proferida pelo Juízo da 1ª Vara Cível da Comarca de Acopiara, que determinou a suspensão de cumprimento individual de sentença coletiva.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">O caso/a ação originária: Antônio Altamir Rodrigues requereu o cumprimento individual de sentença coletiva (Processo nº 3000749-94.2024.8.06.0029) em face do Município de Acopiara/CE, aduzindo que, nos autos da ação coletiva nº 0004059-72.2018.8.06.0029, o executado foi condenado ao pagamento de diferenças referentes ao terço constitucional de férias devidos aos professores da rede municipal de ensino, sobre 45 dias de férias anuais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Apresentou planilha atualizada do crédito totalizando R$ 11.460,67 (onze mil, quatrocentos e sessenta reais e sessenta e sete centavos).</p><p style="line-

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	height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Decisão agravada: o Juízo a quo determinou a suspensão do feito (ID 13920179). Confira-se seu dispositivo:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “ Assim, nos termos do art. 256-I, parágrafo único, do RISTJ, a mencionada questão foi cadastrada como TEMA REPETITIVO N. 1169, na base de dados da C. Corte Cidadã, constando, nas informações complementares, ordem expressa para "suspensão do processamento de todos os processos que versem sobre a mesma matéria e tramitem no território nacional, nos termos do art. 1.037, II, do CPC/2015". </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Ante o exposto, em consonância com o referido julgado, determino a suspensão dos presentes autos até decisão sobre o tema pelo C. Superior Tribunal de Justiça - STJ.” </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Irresignada, a parte autora interpôs o presente recurso de Agravo de Instrumento, afirmando que o Tema 1.169 se aplica somente aos casos de sentença genérica, não sendo o caso dos autos, e que o Superior Tribunal de Justiça entende ser desnecessária a liquidação quando o montante a ser apurado depender de meros cálculos aritméticos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Requereu, pois, o provimento do agravo, para fins de determinar que se mantenha o trâmite processual do cumprimento individual da sentença coletiva.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Sem Contrarrazões.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria-Geral de Justiça (ID 15628147), manifestando pelo conhecimento e desprovimento do recurso interposto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-

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	serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">É o relatório.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Preenchido os requisitos legais, conheço do agravo de instrumento, passando, a seguir, ao exame de suas razões.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> A questão em discussão consiste em verificar se incide a determinação de suspensão no cumprimento individual de sentença coletiva ajuizada na origem, nos termos da decisão proferida em afetação de recurso repetitivo REsp nº 1978629/RJ, Tema 1.169/STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">In casu, o cumprimento individual de sentença tem alicerce no trânsito em julgado de ação civil pública interposta pela Associação dos Professores da Rede Municipal de Acopiara em face do Município de Acopiara/CE, a fim de afastar a prática pela edilidade de não pagamento e fruição e remuneração de 45 (quarenta e cinco) dias de férias dos professores públicos municipais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> O Superior Tribunal de Justiça, afetou os recursos REsp nº 1.985.037/RJ e 1.985.491/RJ como representativo da seguinte controvérsia:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “PROCESSUAL CIVIL E ADMINISTRATIVO. RECURSO ESPECIAL. PROPOSTA DE AFETAÇÃO PELO RITO DOS RECURSOS ESPECIAIS REPETITIVOS. EXECUÇÃO INDIVIDUAL DE TÍTULO JUDICIAL COLETIVO. NECESSIDADE DE PRÉVIA LIQUIDAÇÃO DO JULGADO COLETIVO. </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 1. Delimitação da controvérsia: " Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento de ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos aos autos ". </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 2. Recurso especial afetado ao rito do art. 1.036 e seguintes do CPC/2015 (art. 256-I do RISTJ, na redação da Emenda Regimental 24, de 28/09/2016), em conjunto com os REsp 1.985.037/RJ e 1.985.491/RJ. </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <span style="color: #000000; background-color: transparent; font-weight: 400; font-style:

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	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> (ProAfR no REsp n. 1.978.629/RJ, relator Ministro Benedito Gonçalves, Corte Especial, julgado em 11/10/2022, DJe de 18/10/2022.)” (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Na espécie, o título judicial que fundamentou o cumprimento de sentença determinou o pagamento de valores atrasados de parcelas remuneratórias, os quais exigem simples cálculos aritméticos, dispensando a prévia liquidação, nos termos do §9 do art. 509 do CPC, in verbis:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “Art. 509. Quando a sentença condenar ao pagamento de quantia ilíquida, proceder-se-á à sua liquidação, a requerimento do credor ou do devedor: </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> I - por arbitramento, quando determinado pela sentença, convencionado pelas partes ou exigido pela natureza do objeto da liquidação; </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> II - pelo procedimento comum, quando houver necessidade de alegar e provar fato novo. </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> [...] </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> § 2º Quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover, desde logo, o cumprimento da sentença .” (destacado) <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> O título judicial em questão não se mostra genérico, ante a identificação dos beneficiários, quais sejam, os professores da rede pública do Município de Acopiara; trazendo o seu alcance de maneira clara e precisa ao explicitar o pagamento de diferenças remuneratórias de férias e do terço constitucional no período compreendido entre 2013 a 2017, bem como as demais parcelas que se venceram no andamento do processo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Por tais razões, o cumprimento individual de sentença coletiva promovido pela agravante não se amolda à questão a ser submetida a julgamento repetitivo, nos termos definidos pelo Tema 1.169 do STJ.</p><p

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	style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Em situações análogas à dos autos, assim tem decidido este egrégio Tribunal de Justiça:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. SUSPENSÃO DO PROCESSO. TEMA REPETITIVO 1.169 DO STJ. SIMPLES CÁLCULOS ARITMÉTICOS. DECISÃO REFORMADA . RECURSO CONHECIDO E PROVIDO. I. Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça.II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado.III. Razões De Decidir: III.1. Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça. (AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024)” (destacado)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> ***** <br /> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “ AGRAVO DE INSTRUMENTO EM CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. LIQUIDAÇÃO. TÍTULO EXECUTIVO JUDICIAL. CÁLCULOS ARITMÉTICOS. TEMA REPETITIVO 1.169/STJ. INAPLICABILIDADE. AGRAVO PROVIDO. I. Caso em exame 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos para a realização dos cálculos. II. Questão em discussão 2. A questão central é definir se o Tema 1.169/STJ é aplicável ao caso, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos. III. Razões de decidir 3. O Tema 1.169/STJ não se aplica ao caso, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos. IV. Dispositivo 4. Recurso conhecido e

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	provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva. (AGRAVO DE INSTRUMENTO - 30031999720248060000, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)” (destacado) <br /> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> ***** </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">“EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. DECISÃO QUE DETERMINOU O SOBRESTAMENTO DO FEITO ATÉ O JULGAMENTO DO TEMA 1169/STJ. NÃO CABIMENTO. TÍTULO EXECUTIVO JUDICIAL QUE DEPENDE DE MEROS CÁLCULOS ARITMÉTICOS. POSSIBILIDADE DE SEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. DECISÃO REFORMADA. (AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)” (destacado)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Logo, é o caso, então, de ser dado provimento ao recurso, para se reformar o decisum proferido pelo Juízo a quo e determinar o prosseguimento do feito na origem.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">Isto posto, voto por conhecer e dar provimento ao agravo de instrumento, para reformar a decisão interlocutória agravada e

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	determinar o prosseguimento do feito na origem</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Local, data e hora indicados pelo sistema.</p><p style="text-indent: 8%; text-align: center;">&#160;</p><p style="text-indent: 8%; text-align: center;">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	80
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Anulação
Polo ativo	GILBERTO JUNIOR DE SOUSA OLIVEIRA
Advogado(s) - Polo ativo	JOSE CAVALCANTE CARDOSO NETO - (CE13310-A)
Polo passivo	MUNICIPIO DE PACAJUS Procuradoria do Município de Pacajus INSTITUTO CONSULPAM CONSULTORIA PUBLICO-PRIVADA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	size: medium;">5. Ademais, como bem destacou o Juízo a quo, em seu decisum, o gabarito oficial divulgado pela Administração, in concreto, não apresentou erros grosseiros ou teratologias, o que afasta a possibilidade de intervenção excepcional do Judiciário, para fins do controle da legalidade dos seus atos, como visto. </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> 6. Assim, não havendo provas suficientes nos autos para elidir a presunção de legitimidade e veracidade de que gozam os atos administrativos em geral, era realmente o caso de improcedência da ação ordinária. &#160; </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> 7. Permanecem, então, inabalados os fundamentos da sentença, devendo ser confirmada por este Tribunal. </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> &#160; - Precedentes do STF e do TJ/CE. </p><p class="western" style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> - &#160; Recurso conhecido e não provido. </p><p class="western" style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> - Sentença mantida <em style="mso-bidi-font-style: normal;">. </p><p class="EmentadoAcrdo" style="margin: 12pt 0cm 6pt; break-after: avoid; text-align: justify;">&#160;</p><p class="EmentadoAcrdo" style="margin: 12pt 0cm 6pt; break-after: avoid; text-align: center;">&#160;</p><p class="EmentadoAcrdo" style="margin: 12pt 0cm 6pt; break-after: avoid; text-align: center;"> ACÓRDÃO &#160;</p><p class="EmentadoAcrdo" style="margin-bottom: 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000240-70.2023.8.06.0136 , em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para lhe negar provimento, confirmando a sentença, nos termos do voto da e. Relatora.</p><p class="EmentadoAcrdo" style="margin-bottom: 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="MsoNormal" style="margin-top: 6pt; text-align: center;"> R elatora </p><p class="EmentadoAcrdo" style="margin-bottom: 6pt; text-indent: 4cm; line-height: 150%; text-align: center;"> &#160; </p><p class="EmentadoAcrdo" style="margin-bottom: 12pt; line-height: 150%; text-align: center;"> RELATÓRIO </p><p class="EmentadoAcrdo" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de apelação cível, buscando a reforma de sentença proferida pelo M.M. Juiz de Direito 2ª Vara da Comarca de Pacajus/CE, que concluiu pela total improcedência de ação ordinária.</p><p class="EmentadoAcrdo" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso: Gilberto Junior de Sousa Oliveira moveu ação ordinária em face do Município de Pacajus/CE e do Instituto Consulpam, visando anulação de Questão nº 15 da Prova Objetiva (Tipo 02) do concurso público destinado ao provimento de cargos de “guarda municipal” e de “agente de trânsito”, porque estaria inquinada de vício (ausência de alternativa correta),</p><p class="EmentadoAcrdo" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Assim, requereu, inclusive liminarmente, a correção de tal omissão da Administração, para que, com o aumento de sua nota, pudesse prosseguir na disputa por uma das vagas ofertadas no Edital nº 002/2022.</p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> A sentença: <span style="color: black;"

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	lang="X-NONE"> &#160; Juízo a quo decidiu pela im procedência da ação ordinária (ID 15108394). Transcrevo abaixo seu dispositivo, ex vi : </p><p class="MsoBodyText" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> “ Diante de todo o exposto,&#160; JULGO LIMINARMENTE IMPROCEDENTES OS PEDIDOS, o que faço com base no art. 332, II, do Código de Processo Civil e EXTINGO O FEITO com resolução de mérito, na forma do art. 487, I, do mesmo estatuto legal . ” (sic) </p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o candidato interpôs <strong style="mso-bidi-font-weight: normal;"> Apelação Cível (ID 15108397), buscando a reforma integral do referido decisum monocrático , basicamente, pelas mesmas razões outrora expostas nos autos . <em style="mso-bidi-font-style: normal;">&#160;</p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> Foram ofertadas c <strong style="mso-bidi-font-weight: normal;"> ontrarrazões (ID 15108403).</p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Parecer da Procuradoria Geral de Justiça (ID 15518862), opinando pelo conhecimento e não provimento d o recurso .</p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;">&#160;</p><p class="MsoBodyText" style="margin-bottom: 12pt; line-height: 150%; text-align: center;"> VOTO </p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos todos os requisitos legais, conheço do recurso .</p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> A principal controvérsia a ser dirimida nos autos diz respeito à possibilidade (ou não) de interferência do Judiciário no exame da valoração do conteúdo de questões formuladas em provas de concursos públicos.</p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inicialmente, é bom lembrar que “o edital é a lei do concurso público ”, isto é, suas regras, desde que legais, obrigam tanto a Administração, quanto os candidatos, que não podem deixar de observá-las.</p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ficam estabelecidas, assim , normas que vinculam os dois lados da relação, sendo-lhes vedada a prática de atos que possam comprometer linearidade, universalidade e imparcialidade adotadas no concurso público.</p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Daí por que, tem prevalecido, entre os mais diversos tribunais do

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	país, a orientação de que, nas causas envolvendo concurso público, a atuação do Judiciário deve se limitar ao controle da legalidade dos atos da Administração, não podendo se imiscuir, v.g., nos critérios utilizados pela Banca Examinadora para formulação de provas, correção das respostas dadas pelos candidatos, e atribuição de notas, sob pena de violação ao princípio da separação dos poderes, insculpido no art. 2º da Constituição Federal de 1988, ex vi :</p><p class="MsoBodyText" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> “Art. 2º. São Poderes da União, independentes e harmônicos entre si, o Legislativo, o Executivo e o Judiciário.” (destacado) </p><p class="MsoBodyText" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Nesse mesmo sentido , há, inclusive, um precedente vinculante do Supremo Tribunal Federal (Tema nº 485), in verbis : </p><p class="MsoBodyText" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> “Recurso extraordinário com repercussão geral. 2. Concurso público. Correção de prova. Não compete ao Poder Judiciário, no controle de legalidade, substituir banca examinadora para avaliar respostas dadas pelos candidatos e notas a elas atribuídas. Precedentes. 3. Excepcionalmente, é permitido ao Judiciário juízo de compatibilidade do conteúdo das questões do concurso com o previsto no edital do certame. Precedentes. 4. Recurso extraordinário provido.” (RE 632853, Relator(a): GILMAR MENDES, Tribunal Pleno, julgado em 23-04-2015, ACÓRDÃO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-125 &#160; DIVULG 26-06-2015 &#160; PUBLIC 29-06-2015 RTJ VOL-00235-01 PP-00249) (destacado) </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, a partir da documentação acostada aos autos, não se infere qualquer vício na questão ora impugnada pelo candidato, mas, pelo contrário, seu enunciado se encontra em perfeita harmonia com a lei e o edital.</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, como bem destacou o Juízo a quo, em seu decisum, o gabarito oficial divulgado pela Administração não apresentou erros grosseiros ou teratologias, o que afasta a possibilidade de intervenção excepcional do Judiciário, para fins do controle da legalidade dos seus atos. &#160;</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> A idêntica conclusão também chegou a PGJ, em seu bem lançado parecer, que ora adoto como parte deste voto, ex vi:</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Pois bem. Da análise dos documentos adunados, no que tange à questão nº 15, temos que esta apresenta a seguinte redação: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> I – O atributo da presunção de legitimidade, também conhecido como </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> presunção de legalidade ou presunção de veracidade, significa que o ato administrativo, até prova em contrário, é considerado válido para o Direito. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> II – O atributo da imperatividade significa que o ato administrativo pode criar unilateralmente obrigações aos particulares, desde que haja anuência destes. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> III – A autoexecutoriedade consiste no atributo que permite à Administração aplicar punições aos particulares por violação da ordem jurídica, sem necessidade de ordem judicial. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> É CORRETO o que se afirma em: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> a) I e III. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> b) II e III. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> c) I e II. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> d) I, apenas </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> O gabarito oficial do concurso traz como resposta correta o item ´A´, o que entendo estar correto, especialmente quando na sentença, a magistrada destacou trechos de

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	doutrinadores que corroboram com o entendimento da banca examinadora (Id. 15108394), não havendo o que se falar, portanto, em erro grosseiro e em ausência de resposta correta.</p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> Registro, ainda, que os argumentos utilizados pelo próprio recorrente em sua peça preambular, por meio da qual apresenta autores que concordam com seu entendimento referente à questão em tela (p. 10-12, Id. 15108382), não anulam a possibilidade de haver entendimento divergente referente ao assunto, de modo que o fato de a banca não ter utilizado em sua correção o entendimento dos doutrinadores citados pela parte autora não configuraria ilegalidade a fim de justificar a intervenção do Poder Judiciário [...]”. &#160;(destacado) </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Assim, não havendo provas suficientes nos autos para elidir a presunção <em style="mso-bidi-font-style: normal;">iuris tantum de legitimidade de que gozam os atos administrativos em geral, eram realmente o caso de improcedência da ação ordinária. </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É este, inclusive o caminho que tem sido trilhado pelas Câmaras de Direito Público do TJ/CE, em situações similares à dos autos:</p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> <span style="font-size: 10pt; color: black; background: white;"> <span style="font-size: small;">“ADMINISTRATIVO. PROCESSUAL CIVIL. APELAÇÃO CÍVEL. MANDADO DE SEGURANÇA. CONCURSO PÚBLICO. PRELIMINAR DE LEGITIMIDADE PASSIVA DO PRESIDENTE DO IMPARH ACOLHIDA. PRETENSÃO DE REEXAME DE QUESTÕES DA PROVA OBJETIVA. DESCABIMENTO. MÉRITO ADMINISTRATIVO. VEDAÇÃO AO PODER JUDICIÁRIO DE SUBSTITUIR A BANCA EXAMINADORA. PRINCÍPIO DA SEPARAÇÃO DOS PODERES. APELO CONHECIDO E PROVIDO PARCIALMENTE. 1. O caso sub examine orbita em torno da pretensão do impetrante quanto à anulação das questões 20, 21 e 38 da prova objetiva do concurso público para o provimento do cargo de Analista de Planejamento e Gestão vinculado à Secretaria de Planejamento e Gestão da Prefeitura de Fortaleza e, por conseguinte, ao reconhecimento do seu direito de realizar a fase seguinte do certame. 2. À luz do que preceitua o edital, o Presidente do IMPARH (Instituto Municipal de Desenvolvimento de Recursos Humanos) detém atribuições para analisar os recursos administrativos interpostos, bem como solucionar os casos omissos referentes aos aspectos técnicos e operacionais do certame, mormente os relacionados à prova e classificação, de sorte que possui legitimidade para figurar no polo passivo da demanda. Precedente desta Corte de Justiça. Preliminar acolhida. 3. Acerca do controle de legalidade de questões de concurso público e com supedâneo no princípio da separação dos poderes, o Supremo Tribunal Federal firmou o entendimento de que "não compete ao Poder Judiciário substituir a banca examinadora para reexaminar o conteúdo das questões e os critérios de correção utilizados, salvo ocorrência de ilegalidade ou de inconstitucionalidade" (Tese de Repercussão Geral nº 485, RE 632.853, Relator Ministro Gilmar Mendes, DJE 29.06.2015). 4. Nesse contexto, apenas se afigura plausível a intervenção do Poder Judiciário na correção de provas quando restar evidente a ilegalidade da norma editalícia ou o seu descumprimento pela banca examinadora. 5. In casu, verifica-se que a impetração visa rediscutir os critérios de formulação de questões e de correção utilizados pela banca examinadora, de modo que a matéria diz respeito ao mérito administrativo, o que obsta a análise pelo Poder Judiciário. Precedentes do STJ e TJCE. 6. Apelo conhecido e provido parcialmente apenas para reconhecer a legitimidade passiva do Presidente do IMPARH, mantendo os demais aspectos da sentença.” (Apelação Cível&#160;- 0145241-04.2016.8.06.0001, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento:&#160; 24/09/2018, data da publicação:&#160; 24/09/2018). (destacado) </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> “ PROCESSO CIVIL. APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. CONCURSO PÚBLICO. ANULAÇÃO DE QUESTÕES. IMPOSSIBILIDADE. MÉRITO ADMINISTRATIVO. Deve o Poder Judiciário se limitar ao exame da legalidade e/ou inconstitucionalidade do edital. PRECEDENTES deste tribunal. Recurso conhecido e não provido. Sentença integralmente mantida. Em evidência, apelação cível em face de sentença de improcedência de ação, por meio da qual candidatos buscavam a anulação de questões de concurso público. Inicialmente, é pacífica a orientação dos nossos tribunais no sentido de que a homologação do resultado final de concurso público não obsta a apreciação de eventual ilegalidade em suas fases pelo Poder Judiciário, inexistindo, em tais casos, perda

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	superveniente de objeto. Deve, portanto, ser afastada essa preliminar. 3. Com base nisso, tem prevalecido a tese de que, nas causas envolvendo concurso público, a competência do Poder Judiciário deve se limitar, no mais das vezes, ao exame da legalidade/inconstitucionalidade do edital. 4. No presente caso, porém, não se vislumbra nenhum vício em quaisquer das questões ora adversadas na ação, mas, pelo contrário, encontra-se todas elas em perfeita harmonia com a lei e o edital do concurso público. 5. Assim, não pode o Poder Judiciário adentrar nos critérios de conveniência e oportunidade utilizados para formulação e correção de tais questões, sob pena de indevida incursão no mérito administrativo. 6. Desse modo, permanecem inabalados os fundamentos da decisão pela improcedência da ação, impondo-se sua confirmação neste azo, porque houve a correta aplicação do direito ao caso pelo magistrado de primeiro grau. - Precedentes. - Apelação conhecida e desprovida. - Sentença confirmada. (Apelação Cível&#160;- 0119444-89.2017.8.06.0001, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 07/06/2021, data da publicação:&#160; 07/06/2021). (destacado) </p><p class="MsoNormal" style="margin: 11.9pt 0cm 0.0001pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desse modo, deve ser negado provimento ao recurso, consequentemente, mantido totalmente inalterado o decisum proferido pelo Juízo <em style="mso-bidi-font-style: normal;">a quo, porque houve a correta aplicação do direito ao caso.</p><p class="MsoNormal" style="margin: 11.9pt 0cm 0.0001pt; text-indent: 4cm; line-height: 150%; text-align: justify;">&#160;</p><p class="MsoNormal" style="margin: 12pt 0cm 5pt; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, <strong style="mso-bidi-font-weight: normal;">conheço do recurso, mas para lhe negar provimento, confirmando a sentença, por seus próprios termos.</p><p class="MsoNormal" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160; É como voto.</p><p class="MsoNormal" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160; Local, data e hora informados pelo sistema.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="MsoNormal" style="margin-top: 6pt; text-align: center;"> R elatora </p><p style="text-align: justify;"> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	81
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Curso de Formação
Polo ativo	DARIO SOARES CUNHA JUNIOR
Advogado(s) - Polo ativo	CRISTIANO QUEIROZ ARRUDA - (CE28114-A)
Polo passivo	ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO DO CEARÁ PROCURADORIA GERAL DO ESTADO PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

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AAAAAASUVORK5CYII=" alt="" /> </p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ
<br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />
   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />
   <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA
MARIA IRACEMA MARTINS DO VALE </p><p style="text-align:
center;">   <br /> </p><p> <span style="font-
size: medium;">PROCESSO:&#160;0235853-46.2020.8.06.0001 -&#160;REMESSA
NECESSÁRIA CÍVEL (199)</p><p> AUTOR:
DARIO SOARES CUNHA JUNIOR.</p><p> <span style="font-size:
medium;">RECORRIDO: ESTADO DO CEARA, PROCURADORIA GERAL DO ESTADO
<br />   REPRESENTANTE: PROCURADORIA GERAL DO ESTADO DO CEARÁ,
PROCURADORIA GERAL DO ESTADO DO CEARÁ <br />   .</p><p
align="center">   <br /> </p><p style="line-
height: 1.7470588235294116; margin-left: 106pt; text-align: justify; margin-top: 8pt; margin-
bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family:
Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style:
normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:
pre-wrap;">EMENTA: REEXAME NECESSÁRIO. AÇÃO ORDINÁRIA. PLEITO
ADMINISTRATIVO DE AFASTAMENTO DE POLICIAL CIVIL. INÉRCIA DA
ADMINISTRAÇÃO. POSSIBILIDADE DE INTERVENÇÃO DO PODER JUDICIÁRIO.
PROCEDÊNCIA. PRECEDENTES DESTE TRIBUNAL. SENTENÇA INTEGRALMENTE
MANTIDA.</p><p style="line-height: 1.7470588235294116; text-align: center;
margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <span style="font-size:
13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:
transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none;
vertical-align: baseline; white-space: pre-wrap;">ACÓRDÃO</p><p style="line-
height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify;
margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"><span style="font-size:
13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:
transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;
vertical-align: baseline; white-space: pre-wrap;">Vistos, relatados e discutidos os presentes
autos de Reexame Necessário nº 0235853-46.2020.8.06.0001, em que figuram as partes
acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do
Estado do Ceará, por unanimidade, em <span style="font-size:
13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:
transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none;
vertical-align: baseline; white-space: pre-wrap;">conhecer do reexame necessário, para
confirmar integralmente a sentença<span style="font-size:
13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:
transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;
vertical-align: baseline; white-space: pre-wrap;">, <span style="font-size:
13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color:
transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;
vertical-align: baseline; white-space: pre-wrap;">nos termos do voto da e.
Relatora.</p><p style="line-height: 1.7470588235294116; text-indent:
113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">

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	Fortaleza/CE, data e hora indicadas pelo sistema.</p><p style="line-height: 1.7470588235294116; text-align: center; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO &#160;</p><p style="line-height: 1.7470588235294116; text-align: center; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> Portaria 1550/2024</p><p style="line-height: 1.7470588235294116; text-align: center; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7470588235294116; text-align: center; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> Em evidência, reexame necessário de sentença em que o magistrado de primeiro grau considerou procedente o pedido formulado na ação ordinária ajuizada em desfavor do Estado do Ceará.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr">O caso/a ação originária: Dário Soares Cunha Júnior, Inspetor da Polícia Civil do Estado do Ceará, moveu ação ordinária em desfavor do Estado do Ceará requerendo o afastamento “de suas atividades laborais, sem remuneração, a partir de 08 de julho de 2020 para cumprimento do protocolo de vigilância epidemiológica local e Curso de Formação a se realizar no período compreendido entre 15 de julho de 2020 a 06 de novembro de 2020, na UNIPRF, localizada na Rodovia José Carlos Daux, SC 401, Km 19, Canasvieiras, CEP 88032-005, Florianópolis/SC., exigindo-se do aluno tempo integral, com atividades que poderão ser desenvolvidas nos turnos diurno e noturno, inclusive sábados, domingos e feriados com frequência obrigatória”.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> Afirma que foi aprovado para o cargo de Policial Rodoviário Federal e que, nos termos do Edital de Convocação nº 68 – PRF – de 26 de junho de 2020, foi convocado para o Curso de Formação profissional referente àquele certame, de caráter eliminatório e classificatório. Nesse contexto, formalizou pleito administrativo para a concessão do afastamento sem remuneração de suas atividades laborais, mas não obteve resposta em tempo hábil, razão pela qual ingressou com a presente ação requerendo a intervenção do Poder Judiciário para fazer valer seu direito.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr">Em contestação <span

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	style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(ID 14163251), o Estado do Ceará argumentou, em síntese, que o pleito iria de encontro ao que dispõe o Decreto Estadual nº 29.445/2008, que permitiria o afastamento tão somente em caso de aprovação em concursos estaduais, requerendo, portanto, o desprovimento da ação.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr">Sentença: (ID 14163286), em que o magistrado de primeiro grau concluiu pela procedência da ação Transcrevo seu dispositivo:</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> “Destarte, acolhendo o parecer ministerial, e com fulcro no Art. 487, I, do CPC, JULGO PROCEDENTE o pleito autoral, para determinar ao promovido que adote as providências necessárias ao afastamento de DÁRIO SOARES CUNHA JÚNIOR do cargo que ocupa na Polícia Civil do Estado do Ceará a partir de 8.7.2020, para que possa cumprir o protocolo de vigilância epidemiológica local e participar do Curso de Formação Profissional atrelado ao concurso público para o provimento de vagas no cargo de Policial Rodoviário Federal, regulado pelo Edital nº 1/2018-PRF, a ser realizado na Universidade Corporativa de Polícia Rodoviária Federal (UNIPRF), localizada na Rodovia José Carlos Daux, SC 401, Km 19, Canasvieiras, CEP 88032-005, Florianópolis/SC, com início em 15.7.2020, pelo tempo de duração deste.</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Condeno o promovido em honorários advocatícios, que fixo em R$ 1.000,00 (um mil reais), conforme Art. 85, §§2º e 8º, do CPC, sem incorrer em custas (Art. 5º, I, da Lei nº 16.132/2016).</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Sujeita ao reexame necessário (Art. 496, I, do CPC).”</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Embargos de Declaração (ID 14163291) opostos pelo Estado do Ceará julgados procedentes pelo Juízo a quo, para fazer constar que o afastamento do servidor “ocorrerá com prejuízo da remuneração, aclaramento que passa a integrar a sentença de Id 60134080, permanecendo inalterados os demais pontos do julgado.” (ID 14163293).</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria Geral de Justiça (ID 14417742), opinando pelo conhecimento e desprovimento da Remessa Necessária.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align:

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	justify; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7470588235294116; text-align: center; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr">No presente caso, o magistrado de primeiro grau, em seu decisum, considerou procedente o pedido formulado na ação ordinária em que o autor, inspetor da Polícia Civil do Estado do Ceará, requereu o afastamento de suas funções sem remuneração para comparecer a curso de formação do concurso realizado pela Polícia Rodoviária Federal (Edital de Convocação nº 68 – PRF – de 26 de junho de 2020), no qual logrou êxito.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Analisando detidamente os autos entendo que deve a sentença ser integralmente confirmada nesta oportunidade.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Isso porque o Estatuto dos Funcionários Públicos Civis do Estado do Ceará, em seu art.110, dispõe que “ os dirigentes do Sistema Administrativo Estadual autorizarão o funcionário a se afastar do exercício funcional de acordo com o disposto em Regulamento ”.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Ademais, o Decreto Estadual nº 29.445/2008 é expresso ao autorizar os servidores públicos estaduais a se ausentarem de suas funções quando necessária a presença em curso de formação de concurso no qual tenham obtido aprovação, a saber:</p><p style="line-height: 1.164705882352941; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> “Art. 1º Os servidores civis e militares estaduais, aprovados em concurso público estadual, e que estejam matriculados nos respectivos cursos deformação e treinamento profissional, ficam autorizados a deles participar, sendo dispensados do “ponto” do seu cargo/função, visando a permitir a sua regular frequência no curso.</p><p style="line-height: 1.164705882352941; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> §1º. Para fazer jus ao benefício a que se refere o “caput”, deverá o servidor civil ou militar estadual formular o pedido de afastamento ao dirigente máximo do Órgão a que pertence, anexando ao seu requerimento comprovante de matrícula no curso deformação e treinamento profissional, cujo dirigente, verificando a regularidade da documentação apresentada, deferirá o pedido."</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">

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	E, consoante manifestação do representante do Ministério Público em seu opinativo em segunda instância, a razoabilidade impõe que o dispositivo em questão, embora se refira aos concursos públicos estaduais, seja aplicado aos casos de concursos federais, como bem elucidado nos trechos destacados a seguir:</p><p style="line-height: 1.164705882352941; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> “Interpretando-se sistematicamente o supratranscrito ato normativo, colhe-se manifesto o direito de dispensa das funções do servidor, civil ou militar, para participar de etapa de curso de formação em concursos públicos no âmbito estadual, não tratando da matéria quando houver a possibilidade de o servidor prestar concurso público em outro Estado.</p><p style="line-height: 1.164705882352941; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> Todavia, ainda que o dispositivo em referência refira-se apenas à "dispensa de ponto", quando da participação do candidato em concursos públicos da esfera estadual (no próprio Estado Ceará), a razoabilidade e a proporcionalidade impõem interpretação ampliativa deste preceito, a fim de que se admita, de análoga maneira, a participação em concursos das esferas federal, municipal, e de outros estados da Federação.” (ID 14417742).</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Trata-se de interpretação adotada por esta Corte de Justiça, consoante o precedente desta 3ª Câmara de Direito Público, colacionado adiante:</p><p style="line-height: 1.7470588235294116; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">“DIREITO ADMINISTRATIVO E CONSTITUCIONAL. REMESSA NECESSÁRIA EM MANDADO DE SEGURANÇA. INSPETOR DA POLÍCIA CIVIL DO ESTADO DO CEARÁ APROVADO EM CONCURSO DA POLÍCIA RODOVIÁRIA FEDERAL. PEDIDO DE DISPENSA DE PONTO PARA PARTICIPAR DO CURSO DE FORMAÇÃO PROFISSIONAL. DECRETO ESTADUAL Nº 29.445/2008. INTERPRETAÇÃO EM CONSONÂNCIA COM OS PRINCÍPIOS DA ISONOMIA, RAZOABILIDADE E PROPORCIONALIDADE. PRECEDENTES. REEXAME NECESSÁRIO CONHECIDO, MAS DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da demanda cinge-se em analisar se o Inspetor da Polícia Civil do Estado do Ceará, impetrante da ação mandamental, possui direito a participar de Curso de Formação Profissional para preenchimento de cargo público, decorrente de aprovação da fase objetiva, a ser realizado em outro Estado da Federação, sem prejuízo do afastamento temporário de suas funções. 2. Conforme consta no art. 1º, do Decreto Estadual nº 29.445, de 17 de setembro de 2008, é possível que o servidor civil e militar estadual, aprovado em concurso público estadual, matriculado em curso de formação e treinamento profissional, se afaste do cargo, sem prejuízo do "ponto", para participar do curso, sendo necessário realizar o requerimento ao dirigente máximo do Órgão a que pertence. 3. Ocorre que, atenta à ausência de razoabilidade na aplicação literal do supracitado dispositivo legal, a jurisprudência pátria, bem como deste Sodalício, tem afirmado reiteradamente o alcance devido à interpretação do citado dispositivo, à luz do princípio constitucional da isonomia e da acessibilidade aos cargos públicos, para alcançar servidores civis e militares estaduais que, aprovados em concursos de outras esferas políticas (União, Estados, Distrito Federal e Municípios), precisem ausentar-se, de maneira temporária do serviço, para frequentar curso de formação da carreira na qual pretendem ingressar, sem sanções administrativas no cargo que já exercem. 4. Desta feita, verifica-se, com exatidão, que o impetrante é detentor de direito líquido e certo que justifica o afastamento do cargo público neste Estado da federação, para realização de curso de formação decorrente de aprovação no cargo de Policial Rodoviário Federal, devendo o afastamento ocorrer com prejuízo da atual remuneração. 5. Reexame necessário conhecido e desprovido. Sentença confirmada.” (TJCE. Remessa Necessária Cível - 0236961-13.2020.8.06.0001, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 06/06/2022, data da publicação: 06/06/2022).</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"><span style="font-size: 13.999999999999998pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400;

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	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Diante do que, permanecem, então, totalmente inabalados os fundamentos da decisão a quo, devendo ser confirmada por este Tribunal.</p><p style="line-height: 1.7470588235294116; text-align: center; margin-top: 6pt; margin-bottom: 8pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr">Por todo o exposto, conheço do reexame necessário, para confirmar integralmente a sentença, por seus próprios termos.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7470588235294116; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> Fortaleza/CE, data e hora indicadas pelo sistema.</p><p class="western" style="margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> &#160;</p><p style="line-height: 1.7470588235294116; text-align: center; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	82
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Acompanhamento de Cônjuge ou Companheiro

Processo	3003805-28.2024.8.06.0000
Polo ativo	GLAUDIA PEREIRA DE LIMA
Advogado(s) - Polo ativo	JOUFRE MEDEIROS MONTENEGRO - (CE24047-A)
Polo passivo	MUNICIPIO DE MARACANAU
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003805-28.2024.8.06.0000
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	bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">1. Agravo de instrumento, com pedido de empréstimo de efeito suspensivo, interposto contra decisão que indeferiu pedido de arbitramento de honorários decorrentes de ação coletiva.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I I. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. A questão em discussão consiste em definir se os honorários decorrentes da ação coletiva podem ser fixados em habilitação e cumprimento individual de sentença.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. Se cada juízo ao qual forem distribuídas habilitações individuais fixar honorários referentes à ação coletiva, teremos possível bis in iden, o que prejudicaria o erário. Existe, pois, a prevenção do juízo prolator da sentença coletiva apenas para a execução coletiva, com o propósito, por exemplo, de evitar o congestionamento da unidade que abrigou a ação matriz por demanda predatória.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Os honorários advocatícios constituem crédito único e indivisível, de modo que o fracionamento da execução de honorários advocatícios sucumbenciais fixados em ação coletiva contra a Fazenda Pública, proporcionalmente às execuções individuais de cada beneficiário, viola o § 8º do artigo 100 da Constituição Federal.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Agravo de instrumento

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	desprovido.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ______</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CF/1988, art. 100, § 8º.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> Jurisprudência relevante citada: STF, Tema 1.142 de repercussão geral. &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do agravo de instrumento, para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <br /> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO <br />Relator &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Tem-se agravo de instrumento interposto por Glaudia Pereira de Lima em face de decisão proferida pelo juízo da 3ª Vara Cível da Comarca de Maracanaú, na ação de nº 0206119-22.2022.8.06.0117, ajuizada pela agravante em face do Município de Maracanaú.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">O processo principal: a requerente busca o recebimento das verbas remuneratórias reconhecidas na sentença da ação coletiva nº 0022485-33.2016.8.06.0117 e também a fixação dos honorários advocatícios na ação coletiva, correspondente ao seu crédito.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">A decisão agravada (id 88610419 dos autos originais): o juízo de origem indeferiu o pedido de cobrança de honorários de sucumbência constantes da inicial relativos ao honorários sucumbenciais da ação coletiva, por entendê-lo inadmissível, à luz da tese jurídica fixada no julgamento do Tema 1142 de repercussão geral.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">&#160;Agravo de instrumento (id 13785783): a recorrente alegou ser cabível a fixação de honorários de sucumbência da fase de conhecimento da ação coletiva no cumprimento individual, porque a sentença expressamente dispôs que a sua fixação ficaria postergada para a fase de liquidação. Defendeu haver distinção entre o caso e a hipótese do Tema 1142/STF, pois a situação não trataria de fracionamento do crédito para fins de recebimento da verba via RPV, mas de “pedido de habilitação individual em ação coletiva ilíquida, em que se dispôs expressamente que a fixação e sucumbência ficaria para a fase de liquidação/executiva, veja-se no acórdão transitado em julgado da ação coletiva”. Alegou que a decisão ofende a coisa julgada material formada na ação coletiva, que determinou o arbitramento dos honorários na liquidação, e também no conflito de competência de nº 0626438-06.2022.8.06.0000. Requereu a reforma da decisão agravada, “para determinar a fixação de sucumbência em patamar máximo, na fase executiva deste processo, bem como o prosseguimento da execução”.</p><p style="line-height: 2.16; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">Decisão de id 13803503 desta relatoria: indeferiu o requerimento de antecipação dos efeitos da tutela recursal.</p><p style="line-height: 2.16; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Sem contrarrazões recursais .</p><p style="line-height: 2.16; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Parecer da Procuradoria de Justiça (id 15706341): indiferente ao mérito.</p><p style="line-height: 2.16; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;"

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	dir="ltr">É o relatório.&#160; &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr">VOTO</p><p style="line-height: 2.16; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">Preenchidos os requisitos de admissibilidade, conheço do agravo de instrumento.</p><p style="line-height: 2.16; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">O recurso não comporta provimento.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de pedido de cumprimento de sentença proveniente de ação coletiva que reconheceu direito dos servidores aposentados do Município de Maracanaú, que não gozaram licenças-prêmio adquiridas na atividade, a conversão em pecúnia.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Na ação coletiva originária (Processo nº 0022485-33.2016.8.06.0117), os honorários sucumbenciais foram arbitrados o juízo da 1ª Vara Cível da Comarca de Maracanaú em R$ 1.000,00 (um mil reais), e, após julgamento de embargos opostos contra a sentença coletiva, a fixação foi transferida para a fase de liquidação do julgado.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">Posteriormente, no cumprimento individual de sentença coletiva o juízo da 3ª Vara Cível da Comarca de Maracanaú fixou honorários em 10% (dez por cento) sobre o proveito econômico obtido na execução individual, o que foi mantido após rejeição de embargos de declaração que tinham o intuito de forçar a fixação dos honorários de sucumbência decorrentes da ação coletiva, decisão, esta, agravada.&#160;</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Pois bem.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> O pedido de cumprimento individual de sentença distribuído à 3ª Vara Cível da Comarca de Maracanaú, decorrente de sentença coletiva proferida pelo juízo da 1ª Vara Cível da Comarca de Maracanaú, abrangeu apenas o crédito relacionado à parte Glaudia Pereira Lima. Assim, não pode o magistrado decidir diversamente do que já foi decidido em conflito de competência , e atribuir honorários advocatícios decorrentes da ação coletiva.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> As habilitações

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	individuais e cumprimentos de sentença coletiva são distribuídas por sorteios às Varas Cíveis da Comarca de Maracanaú e, aquela que receber, deve fixar os honorários referentes a cada credor habilitado. Contudo, os honorários decorrentes da ação coletiva devem ser arbitrados pelo juízo que proferiu a sentença coletiva, qual seja, como dito, o juízo da 1ª Vara Cível da Comarca de Maracanaú.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">Se cada juízo ao qual forem distribuídas habilitações individuais fixar honorários referentes à ação coletiva, teremos possível bis in iden, o que prejudicaria o erário. Existe, pois, a prevenção do juízo prolator da sentença coletiva apenas para a execução coletiva, com o propósito, por exemplo, de evitar o congestionamento da unidade que abrigou a ação matriz por demanda predatória.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Entendo, pois, acertada a decisão de 1º grau que aplicou a tese jurídica fixada no tema 1.142 do Plenário do Supremo Tribunal Federal após julgamento do RE nº 1.309.081, sob a sistemática dos recursos repetitivos:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Os honorários advocatícios constituem crédito único e indivisível, de modo que o fracionamento da execução de honorários advocatícios sucumbenciais fixados em ação coletiva contra a Fazenda Pública, proporcionalmente às execuções individuais de cada beneficiário, viola o § 8º do artigo 100 da Constituição Federal.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Em outras palavras, a pretensão da agravante implica fracionamento do crédito único e indivisível, mediante cálculo proporcional às execuções individuais de cada beneficiário, em ofensa direta ao entendimento do STF e do disposto no art. 100, § 8º, da CF: “É vedada a expedição de precatórios complementares ou suplementares de valor pago, bem como o fracionamento, repartição ou quebra do valor da execução para fins de enquadramento de parcela do total ao que dispõe o § 3º deste artigo”.&#160;&#160;&#160;&#160;</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> De fato, os honorários devidos na fase de conhecimento da ação coletiva não serão arbitrados no cumprimento individual de sentença coletiva movida pelo beneficiário, mesmo porque o credor individual do título coletivo pode constituir outro procurador - diferente daquele que atuou na ação coletiva - para ajuizar o cumprimento de sentença.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> A respeito, confiram-se as seguintes ementas de tribunais pátrios:</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> REEXAME. AGRAVO DE INSTRUMENTO. AÇÃO COLETIVA. HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS. FASE DE CONHECIMENTO. AÇÃO COLETIVA CONTRA A FAZENDA PÚBLICA. COBRANÇA. CUMPRIMENTO INDIVIDUAL. IMPOSSIBILIDADE. ENTENDIMENTO FIRMADO PELO E. SUPREMO TRIBUNAL FEDERAL NO JULGAMENTO DO RE Nº 1.309.081 (TEMA 1.142). DETERMINAÇÃO DE REJULGAMENTO. ADEQUAÇÃO DO ACÓRDÃO ANTERIOR QUANTO AO PONTO DEVOLVIDO. 1. Nos termos do artigo 1.040, inciso II, do CPC/15, constatada divergência entre o acórdão combatido e a orientação firmada por Tribunal Superior em recurso paradigma, necessário o reexame do feito pelo órgão julgador local. 2. O e. Supremo Tribunal Federal, no julgamento do RE nº 1.309.081, sob a sistemática

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	dos recursos repetitivos (Tema 1.142), firmou tese no sentido de que ?Os honorários advocatícios constituem crédito único e indivisível, de modo que o fracionamento da execução de honorários advocatícios sucumbenciais fixados em ação coletiva contra a Fazenda Pública, proporcionalmente às execuções individuais de cada beneficiário, viola o § 8º do artigo 100 da Constituição Federal?. 3. Parcialmente provido o Recurso Extraordinário para reconhecer que o acórdão proferido por este Colegiado divergiu da orientação jurisprudencial firmada em sede repercussão geral no julgamento do Tema 1.142, curvo-me ao entendimento firmado pela Suprema Corte e refuto a possibilidade de inclusão dos honorários advocatícios da fase de conhecimento em ação coletiva contra a Fazenda Pública em distintos cumprimentos individuais de sentença coletiva. 4. Agravo de Instrumento conhecido e provido. (TJ-DF 07173245820218070000 1662360, Relator: Robson Teixeira de Freitas, Data de Julgamento: 07/02/2023, 8ª Turma Cível, Data de Publicação: 23/02/2023)</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> EMENTA: AGRAVO DE INSTRUMENTO - CUMPRIMENTO DE SENTENÇA - AÇÃO COLETIVA AJUIZADA POR ENTIDADE SINDICAL - HONORÁRIOS SUCUMBENCIAIS REFERENTES À FASE DE CONHECIMENTO - ARBITRAMENTO EM SEDE DE CUMPRIMENTO DE SENTENÇA INDIVIDUAL REQUERIDO POR SERVIDORA SUBSTITUÍDA - IMPOSSIBILIDADE - TEMA Nº 1.142 DE REPERCUSSÃO GERAL DO COL. SUPREMO TRIBUNAL FEDERAL - VEDAÇÃO AO FRACIONAMENTO DE HONORÁRIOS ARBITRADOS EM DESFAVOR DA FAZENDA PÚBLICA - ART. 100, § 8º DA CONSTITUIÇÃO DA REPUBLICA - CRÉDITO ÚNICO E INDIVISÍVEL - DECISÃO REFORMADA - RECURSO PROVIDO. -Conforme tese de Repercussão Geral fixada pelo col. Supremo Tribunal Federal, "os honorários advocatícios constituem crédito único e indivisível, de modo que o fracionamento da execução de honorários advocatícios sucumbenciais fixados em ação coletiva contra a Fazenda Pública, proporcionalmente às execuções individuais de cada beneficiário, viola o § 8º do artigo 100 da Constituição Federal" (Tema nº 1.142) -À luz da tese de Repercussão Geral fixada pelo col. STF no julgamento do Tema nº 1.142, os honorários sucumbenciais referentes à fase de conhecimento da ação coletiva deverão ser liquidados e executados em meio próprio, como crédito único e indivisível, sendo inviável a sua cobrança de maneira fracionada nos autos das execuções individuais movidas pelos servidores substituídos, razão pela qual a reforma da r. decisão agravada é medida que se impõe. (TJ-MG - AI: 06989716520228130000, Relator: Des.(a) Yeda Athias, Data de Julgamento: 02/08/2022, 6ª CÂMARA CÍVEL, Data de Publicação: 08/08/2022)</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Isso não quer dizer, por outro lado, que não haverá fixação de honorários no cumprimento individual de sentença, mas, nesse caso, a verba será a remuneração do trabalho desenvolvido na fase executiva, e não na fase de conhecimento e, de todo modo, no caso em tela, já houve arbitramento da verba dos honorários devidos pelo cumprimento de sentença.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Não há tampouco ofensa à coisa julgada da ação coletiva nº 0206119-22.2022.8.06.0117, uma vez que a liquidação da verba honorária ainda será possível, mesmo que arbitrada equitativamente, nos autos da ação coletiva ou em meio próprio, mas, de todo modo, de uma só vez, sem fracionamentos.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Diante do exposto, conheço do agravo de instrumento, mas para negar-lhe provimento.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> É o voto que submeto à consideração de meus pares.</p><p style="line-height: 1.7470588235294116; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 2.16; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <span style="font-size: 8.5pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant:

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	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">&#160;</p><p style="line-height: 2.16; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p style="line-height: 2.16; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO <br /> Relator</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tutela Inibitória (Obrigação de Fazer e Não Fazer)
Polo ativo	FRANCISCO AURIMAR DA SILVA
Advogado(s) - Polo ativo	ROMULO LINHARES FERREIRA GOMES - (CE17508-A)
Polo passivo	MUNICIPIO DE SOBRAL
Advogado(s) - Polo passivo	STEFANNY DE MARIA INACIO PARENTE AGUIAR - (CE45100-A) JORGE MARCONDES PRADO ARAGAO - (CE7517-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Processo: 3003643-85.2022.8.06.0167 - Apelação Cível&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Apelante: Francisco Aurimar da Silva</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Apelado:

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	Município de Sobral&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ementa: Direito processual civil e administrativo. Apelação em ação de obrigação de fazer c/c cobrança. Promoção na carreira para subinspetor. Guarda municipal de sobral. Não comprovação da existência de cargo vago. Recurso desprovido.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> I. Caso em exame &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">1. Apelação interposta pela parte autora em face da sentença que julgou improcedente o pleito autoral, o qual busca a condenação do Município de Sobral ao pagamento de Gratificação de Curso no valor de 9% (nove por cento) a incidir sobre o vencimento base do cargo de Subinspetor de 2ª Classe, de forma retroativa, com fundamento no art. 29, § 4º, da Lei Municipal nº 1.643/2017, bem como a inserção, nos assentamentos profissionais do servidor, de tempo de exercício no cargo referente ao período de mora administrativa, para fins de novas e futuras ascensões funcionais e afins.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">2. Consiste em verificar se o ingresso de novos servidores na guarda municipal levaria à conclusão da existência de novas vagas para o cargo no qual o autor seria promovido.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">3. A admissão de novos guardas municipais no serviço público não acarreta a progressão automática dos mais antigos, porquanto não demonstrada a vacância no cargo a ser ocupado.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4. Não se pode falar em mora se não houve a comprovação da existência de vagas no cargo pretendido em momento anterior.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">5. Ainda que tivessem sido cumpridos todos os requisitos para a promoção, inclusive a existência de vaga para o cargo pretendido, por não estar em exercício no cargo pretendido, não há como computar o tempo de atividade no cargo pretendido, sob pena de inserção falsa de dados no registro funcional.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 6. Sendo do autor o ônus para comprovar a satisfação dos requisitos obrigatórios prescritos em lei para a almejada progressão, a ausência de preenchimento de qualquer deles, além de afastar eventual ilegalidade do ato, inviabiliza a promoção pela via judicial, sob pena de violação ao postulado constitucional da separação de poderes.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> IV. Dispositivo &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 7. Apelação desprovida.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ________________&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Dispositivos relevantes citados: Lei Municipal nº 818/2008, arts. 29; 30, §1º; 50.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgRg no AREsp: 324140/DF Rel. Ministro Arnaldo Esteves Lima, Primeira Turma, j.

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	06/08/2013.&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer o recurso de apelação, mas para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.&#160;&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> <br /></p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta por FRANCISCO AURIMAR DA SILVA em face da sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Sobral que, em sede de Ação de Cobrança c/c Obrigação de Fazer ajuizada pelo recorrente em desfavor do MUNICÍPIO DE SOBRAL, julgou improcedente o pleito autoral, com fundamento no art. 487, inciso I, do CPC (id. 8501551).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Opostos embargos de declaração, foram eles rejeitados (id. 8501555).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões (id. 13919890), o recorrente alega, em suma, que: i) a disponibilidade de vagas para promoção se dá pelo quantitativo do efetivo da Guarda Civil Municipal, e não pela mera existência de cargos criados por lei, conforme exposto na sentença guerreada; ii) a promoção do servidor público não é ato discricionário da

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	administração pública, mas um direito subjetivo do servidor e um ato vinculado; iii) os efeitos materiais e financeiros da ascensão funcional deverão retroagir ao dia do preenchimento de todos os requisitos pelo autor. Ao final, pugna pela reforma da sentença para julgar procedente o pleito autoral.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em sede de contrarrazões (id. 15569019), o ente público defende o acerto da sentença e requer o desprovimento do apelo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Instada a manifestar-se, a Procuradoria-Geral de Justiça apresentou Parecer&#160; de id. 10415671, opinando pelo conhecimento e desprovimento do recurso.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VOTO &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço a Apelação.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Cinge-se a controvérsia em aferir o direito do recorrente, servidor da guarda municipal do Município de Sobral, obter o recebimento de gratificação de curso (9% do vencimento base de subinspetor de 2ª classe) durante o período compreendido entre os dias 03/04/2018 e 12/11/2019, nos moldes da Lei Municipal nº 1.643/2017, bem como à inserção nos assentamentos funcionais do requerente do tempo de exercício no cargo de subinspetor de 2ª classe no período de 03/04/2018 até 12/11/2019, por considerar ter havido mora administrativa na promoção.&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O apelante é servidor público do Município de Sobral, atuando no cargo de guarda municipal desde 30/06/2004. O recorrente entende ser devida a gratificação referente ao período aquisitivo da promoção de Subinspetor de 2ª Classe com data retroativa a partir de 03 de abril de 2018, alegando que a admissão de 88 (oitenta e oito) guardas municipais em abril de 2018 acarretaria progressões e promoções imediatas na carreira para os servidores mais antigos.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Sobre o tema, elenque-se o art. 5º, incisos II e III, da Lei Municipal nº 818/2008:&#160;</p><p> <strong id="docs-internal-guid-3b26ba29-7fff-8f2e-98e2-8feb4ecaf946" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 5º. Todos os integrantes da Guarda Civil Municipal são considerados guardas municipais, os quais se encontram divididos nos seguintes círculos e graduações:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top:

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	0pt; margin-bottom: 0pt;" dir="ltr"> II – Círculo dos Subinspetores:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> a) Graduação de Subinspetores de 3ª Classe&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> b) Graduação de Subinspetores de 2ª Classe&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> c) Graduação de Subinspetores de 1ª Classe&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III – Círculo dos Guardas:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> a) Graduação de Guardas de 2ª Classe&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> b) Graduação de Guardas de 1ª Classe&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 1° O efetivo da Guarda Civil Municipal será mensurado pelos quantitativos mínimos para atender um ordenamento na estrutura desta corporação, sendo composto por 45% do efetivo por Guardas de 2 a e 1a Classe, 45% do efetivo por Subinspetores de 2 a e 1a classe e 10% do efetivo de Inspetores de 2 a e 1a Classe. (Inserido pela Lei Municipal nº 1.643/2017)&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 2° Para efeito de classificação dentro de cada círculo, a Comissão de Avaliação de Desempenho Funcional deverá utilizar o critério de antiguidade, conforme previsto no art. 61. (Inserido pela Lei Municipal nº 1.643/2017)&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No mesmo diploma normativo, são estabelecidos os requisitos necessários à promoção:&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 25. A progressão na carreira se dará pela Progressão Vertical e Horizontal, dentro de cada círculo e de um círculo para outro, e constitui-se na passagem do servidor efetivo do Quadro de Pessoal da Guarda Municipal de uma graduação para outra, imediatamente superior, incorrendo na elevação dos vencimentos do cargo anterior,

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	cumpridas as normas deste Capítulo.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Parágrafo Único. O profissional que não ascender ao cargo pretendido, atendendo aos percentuais descritos no § 1° do artigo 5° desta Lei, receberá o vencimento base do cargo pretendido, aguardando sua promoção ao referido cargo, exceto para o círculo de inspetor. (Inserido pela Lei Municipal nº 1.643/2017)&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 26. São requisitos gerais para a Progressão na Carreira de Guarda, Subinspetores e Inspetares, sendo exigíveis em todas as progressões, não cumulativas:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">I - Não ter faltado ao trabalho, injustificadamente, por mais de dez vezes dentro do período aquisitivo;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">II - Não ter atraso ao trabalho, injustificadamente, por mais de vinte vezes dentro do período aquisitivo;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">III - Não ser penalizado em processo administrativo dentro do período aquisitivo;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV - Não ter punições disciplinares que, somadas, importem em suspensão superior a trinta dias, esgotados todos os recursos administrativos, no período entre uma progressão e outra;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> V - Não ter cometido mais de cinco faltas disciplinares injustificadas, durante os últimos 24 (vinte e quatro) meses.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VI - Ter a escolaridade exigida para o cargo pretendido.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 29. A progressão do Guarda Municipal se dará mediante:&#160;</p><p style="line-height: 1.2; margin-

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	left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I - progressão vertical, através do aperfeiçoamento profissional por realização de cursos previamente credenciados pela Secretaria da Cidadania e Segurança do Município de Sobral associados ao tempo de serviço.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - progressão horizontal, referente a um acréscimo sobre o vencimento da graduação inicial, mediante aprovação em curso de capacitação.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§4°. O Guarda de 1ª Classe, após 5 (cinco) anos, cumprindo os requisitos constantes no art. 26 da Lei 818/2008 e tendo concluído, com aprovação, urna carga horária mínima de 300 (trezentas) horas exigidas em cursos de aperfeiçoamento, poderá ser promovido para Subinspetor de 2ª Classe, com a gratificação de curso de 9% (nove por cento), sobre o salário base do Subinspetor.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 30.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (...)&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 1°- O Guarda de 1a Classe, ultrapassado o interstício de quatro anos e aprovado em Curso de Capacitação de Subinspetores, será promovido, nomeado, empossado e assumira suas funções como Subinspetor de 3a Classe, mediante o surgimento de vagas.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 39 - Os Guardas e Subinspetores que tenham cumprido os requisitos para progressão vertical e que tenham concluído, com aprovação, o curso de capacitação para o círculo seguinte, não progredindo por falta de vagas, farão jus à Gratificação por Capacitação Especial sobre o salário base de seu círculo.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal;

Processo	3003643-85.2022.8.06.0167
	font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">§ 1° - A gratificação por capacitação especial equivalerá:&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I - ao Guarda de 1a Classe o percentual de 23 % (vinte e três por cento) sobre o salário base de sua categoria; REVOGADO&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - ao Subinspetor de 1a Classe o percentual de 22% (vinte e dois por cento) sobre o salário base de sua categoria;&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 2° - A gratificação de que trata este capítulo não será cumulativa à gratificação por curso já adquirida pelo guarda em seu próprio círculo.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 3° - Os Guardas e Subinspetores de que trata este artigo, poderão realizar os cursos de capacitação da primeira graduação, na escala círculo seguinte.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 50. Os candidatos aprovados no Curso de Capacitação serão nomeados ao cargo de Subinspetor, mediante a existência de vagas.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 1° - os candidatos que não assumirem as funções de Subinspetor, por insuficiência de vagas, concorrerão posteriormente, em iguais condições, com os demais candidatos que eventualmente tenham realizado o Curso de Capacitação de Subinspetor, na forma do artigo antecedente.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 2° - será aberto novo Curso de Capacitação de Subinspetor, a cada quatro anos, concorrendo em condições de igualdade todos os candidatos aptos nos termos dos artigos antecedentes. § 3° - o prazo do parágrafo anterior poderá ser desconsiderado caso haja a abertura de vagas para Subinspetor, e não existam candidatos aprovados e aptos para assumirem as funções.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 4° - os candidatos aprovados no Curso de Capacitação que não tenham progredido por ausência de vagas, poderão, por uma (única vez, após quatro anos de sua capacitação, refazer o mencionado curso, obtendo como nota final para efeito de classificação a média aritmética dos dois cursos realizados.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">§ 5° - os candidatos reprovados no Curso de Capacitação, ou que o abandonem sem a devida justificação, poderão, por uma (única vez, após quatro anos, refazer o mencionado curso, obtendo como nota final para efeito de classificação, se aprovado, a média aritmética dos dois cursos realizados.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 54 - 0 vencimento básico inicial para a primeira graduação da carreira de Subinspetor da Guarda Municipal equivalera ao vencimento básico inicial do Guarda Municipal no primeiro nível, acrescido de 50% (cinquenta por cento).&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A tese defendida pelo apelante é a de que o ingresso de novos servidores levaria à conclusão da existência de novas vagas para o cargo no qual seria promovido, o que não é necessariamente verdade, pois a entrada de novos servidores não acarreta a progressão automática dos mais antigos, sendo descabido o pleito de efeitos retroativos à 03/04/2018.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Para que essa argumentação fosse considerada, seria necessário que a parte recorrente comprovasse nos autos a existência de vacância no cargo a ser ocupado em eventual promoção, algo que não ocorreu nesse feito.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Insta ressaltar que, ainda que tivessem sido cumpridos todos os requisitos para a promoção, inclusive a existência de vaga para o cargo pretendido, por não estar em exercício no cargo pretendido, não há como computar o tempo de atividade no cargo pretendido, sob pena de inserção falsa de dados no registro funcional. Não se pode falar em mora se não houve a comprovação da existência de vagas no cargo pretendido.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em 2008, quando do início da vigência da Lei Municipal nº 818/2018 - Plano de Cargos, Carreiras e Vencimentos da Guarda Civil Municipal de Sobral, o autor/recorrente já se encontrava nos quadros da Guarda Municipal, mais precisamente desde 30/06/2004 (id. 8501536), sendo assim enquadrado nas disposições do Capítulo VI da referida norma.&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em que pese asseverar que, em 20/12/2017, teria aptidão para progredir para o cargo de subinspetor, consoante D.O.M de 20/12/2017 (id. 8501537) restou estipulado que os servidores ali listados estariam aptos a receber o vencimento base de subinspetor de 2ª classe da Guarda Civil Municipal de Sobral. Tanto que, no D.O.M. de 21/12/2017 (id. 8501538) houve concessão de acréscimo de 50% sobre o vencimento base, com fulcro no art. 54 da Lei nº 818/2008, acima elencado. &#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">A promoção em si, deu-se em 12/11/2019, consoante publicação no D.O.M. (id. 8501540), dado o surgimento de vagas para o cargo pretendido.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A jurisprudência do Superior Tribunal de Justiça não vacila quanto ao sentido e ao alcance das normas processuais disciplinadoras do ônus da prova. Confira-se:&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ADMINISTRATIVO. PROCESSUAL CIVIL. AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. SERVIDOR PÚBLICO. POLICIAL MILITAR. PROMOÇÃO. REQUISITOS LEGAIS. SUPOSTO NÃO PREENCHIMENTO. FATO IMPEDITIVO ALEGADO NA CONTESTAÇÃO. ÔNUS DA PROVA IMPUTÁVEL AO RÉU. PREQUESTIONAMENTO. EXISTÊNCIA. MATÉRIA EXCLUSIVAMENTE DE DIREITO. PROVIMENTO DO RECURSO ESPECIAL DOS AUTORES CONFIRMADO. AGRAVO REGIMENTAL NÃO PROVIDO.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. A questão federal deduzida no recurso especial - ofensa ao art. 326 do CPC, decorrente da imputação aos autores de ônus da prova exclusivo do réu, concernente a fato impeditivo alegado na contestação - foi prequestionada no acórdão distrital recorrido, pois o Tribunal de origem realizou expresso juízo de valor a respeito da matéria.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão sub judice é meramente de direito, uma vez que o deslinde da controvérsia não demanda o exame de nenhuma questão fática.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Em regra, o ônus da prova incumbe a quem alega o fato, de modo que, salvo nas declaratórias negativas, ao autor cabe a prova dos fatos constitutivos e ao réu a prova dos fatos extintivos, impeditivos ou modificativos. Inteligência dos art. 326 c/c 333, I e II, do CPC. Precedentes: AgRg no AREsp 154.040/GO, Rel. Min. BENEDITO GONÇALVES, Primeira Turma, DJe 18/6/12; REsp 1.253.315/SC, Rel. Min. MAURO CAMPBELL MARQUES, Segunda Turma, DJe 17/8/11; REsp 161.629/ES, Rel. Min. SÁLVIO DE FIGUEIREDO TEIXEIRA, Quarta Turma, DJ 21/2/00.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Manutenção da decisão agravada que deu provimento ao recurso especial dos autores, ora agravados, para julgar procedente o pedido de promoção por ressarcimento de preterição.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Agravo regimental não provido.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (STJ - AgRg no AREsp: 324140 DF 2013/0099540-3, Relator: Ministro ARNALDO ESTEVES LIMA, Data de Julgamento: 06/08/2013, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 14/08/2013)&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ademais, a

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	jurisprudência do STJ destaca que um dos requisitos fundamentais para a promoção em carreira é justamente a existência de vagas disponíveis para a graduação, in verbis:&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PROCESSUAL CIVIL. MANDADO DE SEGURANÇA. POLICIAL MILITAR. PROMOÇÃO POR ANTIGUIDADE. PRETERIÇÃO. AUSÊNCIA DA PROVA PRÉ-CONSTITUÍDA.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. A impetração do Mandado de Segurança pressupõe a violação a direito líquido e certo, entendido como tal aquele que é constatado de plano, não se admitindo dilação probatória, "circunstância essa que afasta a discussão de matéria fática fundada em simples conjecturas ou em meras suposições ou inferências" (STF, MS 23.652/DF, Rel. Ministro Celso de Mello, Tribunal Pleno, DJ 16.2.2001).&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Conforme bem exposto pelo acórdão recorrido, "em que pesem as ponderações do impetrante esta Corte de Justiça tem o entendimento de que a inclusão no Quadro de Acesso, por si só, não gera o direito de promoção imediata, visto que são necessários o cumprimento dos demais requisitos previstos na legislação pertinente a promoção dos militares, entre eles, comprovação de quantidade de vagas disponíveis para graduação pretendida e, se estaria dentro das mesmas, bem como pontuação necessária para promoção por merecimento ou posição no Almanaque, situações que impetrante não se desincumbiu em demonstrar".&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. No caso dos autos, o que se infere é que, por meio da documentação acostada, impossível concluir com certeza acerca da comprovação do direito pleiteado.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Ressalta-se que, in casu, não houve análise sobre eventual descumprimento da Lei de Responsabilidade Fiscal, a justificar a negativa de progressão funcional, não se enquadrando a matéria discutida naquela trazida no Tema 1.075/STJ. 4. Agravo Interno não provido.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (STJ - AgInt no RMS: 66553 TO 2021/0154467-9, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 29/11/2021, T2 - SEGUNDA TURMA, Data de Publicação: DJe 10/12/2021)&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por conseguinte,</p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Desse modo, é irrecusável a conclusão de que a sentença recorrida aplicou ao caso, com acerto e

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	correção, a disciplina positivada na lei processual sobre a distribuição do ônus da prova, para o fim de julgar improcedente o pedido autoral.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Nesse trilhar, colho precedentes desta eg. Corte de Justiça, expressis litteris:&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: DIREITO ADMINISTRATIVO E PROCESSUAL CIVIL. APELAÇÃO. AÇÃO ORDINÁRIA DE OBRIGAÇÃO DE FAZER C/C COBRANÇA. GUARDA MUNICIPAL DE SOBRAL.&#160; PROMOÇÃO NA CARREIRA PARA SUBINSPETOR. NÃO COMPROVAÇÃO DA EXISTÊNCIA DE CARGO VAGO. ÔNUS DA PARTE AUTORA. APELAÇÃO CONHECIDA E NÃO PROVIDA. SENTENÇA MANTIDA.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Tratam os presentes autos de ação ordinária de obrigação de fazer c/c cobrança de valores proposta por servidor da guarda municipal em face do Município de Sobral, por meio da qual o autor/recorrente objetiva obter o recebimento de gratificação de curso (9% do vencimento base de subinspetor de 2ª classe) durante o período compreendido entre os dias 03/04/2018 e 12/11/2019, nos moldes da Lei Municipal nº 1.643/2017; a condenação do requerido/recorrido a realizar a inserção nos assentamentos funcionais do requerente&#160; do tempo de exercício no cargo de subinspetor de 2ª classe no período de 03/04/2018 até 12/11/2019, por considerar ter havido mora administrativa na promoção.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. O apelante é servidor público do Município de Sobral, atuando no cargo de Guarda Municipal desde 30/06/2004. O recorrente entende ser devida a gratificação referente ao período aquisitivo da promoção de Subinspetor de 2ª Classe com data retroativa a partir de 03 de abril de 2018, alegando que a admissão de 88 (oitenta e oito) guardas municipais em abril de 2018 acarretaria progressões e promoções imediatas na carreira para os servidores mais antigos.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A tese defendida pelo apelante é a de que o ingresso de novos servidores implicaria haver novas vagas para o cargo pretendido, o que não é necessariamente verdade, pois a entrada de novos servidores não acarreta a progressão automática dos mais antigos, como foi bem delineado pela sentença de primeiro grau.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4.&#160; A progressão na carreira só é possível se houver disponibilidade de vagas para o cargo a ser ocupado na promoção. É ônus da parte autora provar a existência de vacância no cargo a ser ocupado em eventual promoção, algo que não ocorreu nesse feito.&#160; Precedentes do STJ.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Ficam majorados para 12% (doze por cento) os honorários advocatícios arbitrados na sentença em 10% (dez por cento), observada a suspensão quinquenal da exigibilidade, na forma do disposto nos arts. 85, § 11 e 98, § 3°, do Código de Processo Civil.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">

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	6. Recurso de apelação conhecido e não provido. Sentença mantida.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 30036369320228060167, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 02/04/2024) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER. PRETENSÃO DE PROMOÇÃO DE SUBINSPETOR DE 1ª CLASSE DA GUARDA MUNICIPAL DE SOBRAL PARA O DE INSPETOR DE 2ª CLASSE. A NOMEAÇÃO DE NOVOS GUARDAS MUNICIPAIS (ATO NORMATIVO Nº 201/2018) NÃO IMPLICA NECESSARIAMENTE NA PROMOÇÃO DAS DEMAIS CLASSES. NÃO COMPROVAÇÃO DA EXISTÊNCIA DE CARGO VAGO. ÔNUS DA PARTE AUTORA. MANUTENÇÃO DA IMPROCEDÊNCIA DA AÇÃO. RECURSO CONHECIDO E DESPROVIDO.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. O cerne da controvérsia recursal consiste em analisar se o autor, Subinspetor de 1° Classe da Guarda Civil Municipal de Sobral, faz jus à progressão funcional para o cargo de Inspetor de 2ª Classe com data retroativa para 03/04/2018, bem como à percepção das diferenças salariais, nos termos da Lei&#160; Municipal nº 818/2008, alterada pela Lei nº 1.643/2017.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. Da análise da Lei Municipal nº 818/2008 (Plano de Cargos, Carreiras e Vencimentos da Guarda Civil Municipal de Sobral), alterada pela Lei nº 1.643/2017, verifica-se que o Subinspetor de 1ª Classe, cumprindo os requisitos objetivos constantes no art. 26, bem como tendo concluído, com aprovação, uma carga horária mínima de 300 (trezentas) horas em cursos de aperfeiçoamento, poderá ser promovido para Inspetor de 2 a Classe, desde que exista vaga disponível para o aludido cargo.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Não é possível presumir que o ingresso de novos servidores na carreira de Guarda Municipal acarretou a modificação do número de vagas para o cargo no qual seria promovido, porquanto a nomeação de novos servidores não enseja a progressão automática dos mais antigos. Precedentes TJCE.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Caberia à parte autora demonstrar a existência de vacância no cargo a ser ocupado em eventual promoção, ônus que não se desincumbiu, o que, por si só, é motivo suficiente para justificar a improcedência do pleito autoral.</p><p

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	style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;5. Apelo conhecido e desprovido.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 30025895020238060167, Relator(a): FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara de Direito Público, Data do julgamento: 05/06/2024) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: PROCESSUAL CIVIL. ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA DE COBRANÇA. GUARDA MUNICIPAL DE SOBRAL. PROMOÇÃO PARA O CARGO DE SUBINSPETOR DE 2ª CLASSE. EXISTÊNCIA DE VAGAS DISPONÍVEIS. NÃO COMPROVAÇÃO. ÔNUS DA PROVA. ART. 373, INCISO I, DO CPC. IMPROCEDÊNCIA. PRECEDENTES DESTE TRIBUNAL. APELO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1.Trata-se de recurso de apelação visando a reforma da sentença que julgou improcedente a ação de cobrança ajuizada em desfavor do Município de Sobral.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2.No caso, o autor - Guarda Municipal de Sobral, nomeado para o cargo em 01/11/2006, alega que, nos termos da Lei Municipal nº 818/08, que instituiu o Plano de Cargos, Carreiras da Guarda Civil Municipal de Sobral – alterada pela Lei Municipal nº 1.643/2017, deveria ter sido enquadrado no cargo de Subinspetor de 2ª Classe desde 03/04/2018, todavia, tal enquadramento deu-se somente em 12/11/2019, e em razão do atraso da promoção, vem em Juízo pleitear as diferenças salariais inerentes ao cargo, entre o período de 03 de abril de 2018 a 12 de novembro de 2019.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3.Embora tenha preenchido os requisitos legais, inclusive, realizado o curso de aperfeiçoamento exigido, o requerente não comprovou a existência de vagas para o cargo almejado, requisito indispensável à promoção na carreira.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4.Em se tratando de fato constitutivo do seu direito, o ônus da prova cabe ao demandante, que não se desincumbiu em fazê-lo, nos termos do artigo 373, inciso I, do Código de Processo Civil.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5.Apelo conhecido e desprovido. Sentença mantida.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 30004953220238060167, Relator(a): MARIA IRANEIDE MOURA SILVA, 2ª Câmara de Direito Público, Data do julgamento: 31/07/2024) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent:

Processo	3003643-85.2022.8.06.0167
	70.86614173228347pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Diante do exposto e fundamentado, conheço a Apelação, mas para negar-lhe provimento, mantendo a sentença recorrida.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ficam majorados para 12 % (doze por cento) os honorários advocatícios arbitrados na sentença em 10% (dez por cento), observada a suspensão quinquenal da exigibilidade, na forma do disposto nos arts. 85, § 11 e 98, § 3°, do Código de Processo Civil.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	84
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Não padronizado
Polo ativo	ESTADO DO CEARA MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM PROCURADORIA GERAL DO ESTADO
Advogado(s) - Polo ativo	Não informado
Polo passivo	ROSILANE DA SILVA FALCAO
Advogado(s) - Polo passivo	MARCOS ANDRE FALCAO LIMA - (CE37688-A)

Processo	0244280-95.2021.8.06.0001
Terceiros	STJ-SENHA_CONFLITO MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

Processo 0244280-95.2021.8.06.0001

Acordão

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	8UYpJ3iRVPfSrR2y+FyfZwu6bpd/fe/hB+3X2e/XN13UcjdZ/qw19nYvhWyy4aSLN3IeFyGkT0m1P/vE3NiKO7Uyuf1JeQkykmravc13/dnMbqqKA5+LUCBSkGQoj1TzwwAP/WdTj6ikRIaQoR0SxH8MxbKfZ4Grcf1wbKcgRUaQg/v6PZK9TPX1DUaQgyiDDcqca8x95jfLoquuv/v8y6HRP/99Ri/0v+MTumTb4YCQAAAAASUVORK5CYII=" alt="" /> &#160; </p><p style="margin-bottom: 0cm; text-align: center;"> ESTADO DO CEARÁ </p><p style="margin-bottom: 0cm; text-align: center;"> PODER JUDICIÁRIO </p><p style="text-align: center;"> &#160; TRIBUNAL DE JUSTIÇA </p><p style="text-align: center;"> &#160; </p><p style="text-align: center;"> <br /> 3ª Câmara de Direito Público </p><p> &#160; &#160;</p><p> Nº PROCESSO:&#160;0244280-95.2021.8.06.0001 </p><p> CLASSE:&#160;APELAÇÃO CÍVEL </p><p> APELANTE: ESTADO DO CEARA e outros (2) </p><p> APELADO: ROSILANE DA SILVA FALCAO </p><p> &#160;</p><p>&#160;</p><p>&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> Ementa : Direito de Saúde. Juízo de retratação. Aplicação do tema 793 do STF. Responsabilidade solidária dos entes federativos. Pedido de exclusão da responsabilidade do Município de Fortaleza da obrigação. Medicamento incorporado. Grupo 1B. Estado compõe o polo passivo da lide. Possibilidade de eventual pedido de ressarcimento . Juízo de retratação não exercido. </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> I. Caso em exame <br /> 1. R ecurso Extraordinário interposto contra acórdão que não acolheu embargos de declaração e, portanto, manteve acórdão que conheceu e negou provimento aos apelos, para manter a competência de processar e julgar a demanda na Justiça Estadual, além de não afastar o Município de Fortaleza da obrigação de fornecimento do medicamento pleiteado. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; margin-bottom: 0cm;" align="justify"> II. Questão em discussão </p><p

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	class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 2. A questão a ser dirimida consiste em saber se cabe o afastamento d o Município de Fortaleza da obrigação de fornecer o medicamento, conforme a responsabilidade solidária em demandas de saúde. </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> III. Razões de decidir </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 3 . A incorporação do medicamento ao grupo 1B mantém a competência na Justiça Estadual, entretanto não configura elemento suficiente para excluir o ente municipal da demanda, tendo em vista que o Estado do Ceará já compõe o polo passivo da lide, e portanto, não haveria prejuízo em eventual demanda municipal de ressarcimento. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> IV. Dispositivo </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 4 . Juízo de retratação não exercido .</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> _______________</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados: Tema 793 do STF . </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-bottom: 0.21cm; break-before: page;" align="center"> ACÓRDÃO </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em não exercer o juízo de retratação, mantendo o acórdão que negou provimento aos embargos de declaração e, por sua vez, manteve o acórdão que conheceu das apelações e negou-lhes provimento, tudo nos termos do voto do relator, parte integrante deste. </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> Fortaleza, data informada pelo sistema. </p><p style="line-height: 200%; margin-bottom: 0.03cm;" align="justify"> <br /> <br /></p><p style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom:

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	0cm;" align="center"> Relator </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-top: 1.13cm; margin-bottom: 0.56cm;" align="center"> RELATÓRIO </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> Têm-se apelações que transferem a este tribunal o conhecimento sobre a controvérsia atinente à responsabilidade solidária e a inclusão da União no polo passivo da demanda que discute o fornecimento de medicamento. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> Após julgamento por esta 3ª Câmara de Direito Público, sobreveio d ecisão da Vice-Presidência, encaminhando os autos para eventual juízo de retratação, levando em consideração a tese jurídica fixada pelo STF no julgamento do Tema 793 de repercussão geral . </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> É o relatório. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> <br /> <br /></p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> <br /> <br /></p><p class="western" style="line-height: 200%; margin-bottom: 0.07cm; page-break-before: always;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> Cinge-se a questão a examinar se o acórdão impugnado diverge do entendimento exarado pelo STF no julgamento do Recurso Extraordinário 855.178 ED / SE , afeto ao Tema 793 de repercussão geral, assim ementado: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0.21cm;" align="justify"> Ementa: CONSTITUCIONAL E ADMINISTRATIVO. EMBARGOS DE DECLARAÇÃO EM RECURSO EXTRAORDINÁRIO COM REPERCUSSÃO GERAL RECONHECIDA. AUSÊNCIA DE OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE. DESENVOLVIMENTO DO PROCEDENTE. POSSIBILIDADE. RESPONSABILIDADE DE SOLIDÁRIA NAS DEMANDAS PRESTACIONAIS NA ÁREA DA SAÚDE. DESPROVIMENTO DOS EMBARGOS DE DECLARAÇÃO. 1. É da jurisprudência do Supremo Tribunal Federal que o tratamento médico adequado aos necessitados se insere no rol dos deveres do Estado, porquanto responsabilidade solidária dos entes federados. O polo passivo pode ser composto por qualquer um deles, isoladamente, ou conjuntamente. 2. A fim de otimizar a compensação entre os entes federados, compete à autoridade judicial, diante dos critérios constitucionais de descentralização e hierarquização, direcionar, caso a caso, o cumprimento conforme as regras de repartição de competências e determinar o ressarcimento a quem suportou o ônus financeiro. 3. As ações que demandem fornecimento de medicamentos sem registro na ANVISA deverão necessariamente ser propostas em face da União. Precedente específico: RE 657.718, Rel. Min. Alexandre de Moraes. 4. Embargos de declaração desprovidos. (RE 855178 ED, Relator(a): LUIZ FUX, Relator(a) p/ Acórdão: EDSON FACHIN, Tribunal Pleno, julgado em 23-05-2019, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-090

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	DIVULG 15-04-2020 PUBLIC 16-04-2020) </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Cumpre registrar que a demanda recursal tratava-se de apelações interpostas pelo Estado do Ceará, em que discutia a inclusão da União do polo passivo da demanda e a remessa dos autos à Justiça Federal; e pelo Município de Fortaleza, cujo pleito era sua exclusão da obrigação de fornecer o fármaco de alto custo, ou seja, que a obrigação fosse direcionada apenas ao Estado do Ceará. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Deve-se esclarecer que o acórdão que julgou referidas apelações afastou a inclusão da União no polo passivo da demanda e a remessa dos autos à Justiça Federal por ser a matéria objeto do apelo do Estado do Ceará, embora não fosse objeto do apelo do Município de Fortaleza. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Adstrito ao pedido do Município de Fortaleza, o acórdão de Id. 10731593, confirmado pelo acórdão de Id. 11589345, que julgou embargos de declaração confirmando a primeira decisão, negou provimento ao apelo do Município, que pleiteava sua exclusão completa da obrigação, com amparo na responsabilidade solidária dos entes nas demandas prestacionais na área da saúde, justamente amparado no tema nº 793 do STF. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> O entendimento ali exposto é no sentido de que não há falar, no caso em evidência, em direcionar a obrigação de fornecimento do fármaco pleiteado apenas para o ente estadual, visto que o argumento de alto custo do medicamento não configura critério constitucional de descentralização e hierarquização apto a gerar o direcionamento do cumprimento da obrigação apenas para o Estado do Ceará, conforme as regras de repartição de competências. Por esta razão, o acórdão, ora objeto de recurso extraordinário, manteve o Município de Fortaleza no polo passivo da demanda. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Ademais, o Município de Fortaleza é uma das principais capitais do país, não se tratando, portanto, de um pequeno município do interior com parco recursos orçamentários, e não se logrou de comprovar nos autos que o custeio do medicamento em questão comprometeria sua previsão orçamentária. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> R egistre-se que, no curso da ação, o fármaco pleiteado, ICATIBANTO, fora incorporado ao SUS, através da Portaria SECTICS/MS nº 68, de 20 de dezembro de 2023, nos seguintes termos:</p><p class="western" style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto;" align="justify"> O SECRETÁRIO DE CIÊNCIA, TECNOLOGIA E INOVAÇÃO E DO COMPLEXO ECONÔMICO-INDUSTRIAL DA SAÚDE DO MINISTÉRIO DA SAÚDE, no uso das atribuições que lhe conferem a alínea "c" do inciso I do art. 32 do Decreto nº 11.798, de 28 de novembro de 2023, e tendo em vista o disposto nos arts. 20 e 23 do Decreto nº 7.646, de 21 de dezembro de 2011, resolve: </p><p class="western" style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Art. 1º Incorporar, no âmbito do Sistema Único de Saúde - SUS, acetato de icatibanto para o tratamento de crises de angioedema hereditário tipos I e II, condicionado ao uso restrito hospitalar e conforme protocolo estabelecido pelo Ministério da Saúde. </p><p class="western" style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Art. 2º Conforme determina o art. 25 do Decreto nº 7.646, 21 de dezembro de 2011, as áreas técnicas terão o prazo máximo de 180 (cento e oitenta) dias para efetivar a oferta no SUS. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> O medicamento encontra-se no grupo 1B das normas de repartição de despesas e responsabilidade prevista no Componente Especializado da Assistência Farmacêutica, ou seja, trata-se de medicamento cuja aquisição é realizada pelas Secretarias de Saúde dos Estados e do Distrito Federal, com transferência de recursos do Ministério da Saúde a título de ressarcimento. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Cumpre registrar que, diante da aquisição do fármaco ser realizada pelos entes estatais, reforça-se a competência da Justiça Estadual para julgar o feito, embora esse

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	não seja o objeto do apelo do Município. Entretanto, não configura elemento suficiente para excluir o ente municipal da demanda, tendo em vista que o Estado do Ceará já compõe o polo passivo da lide, e portanto, não haveria prejuízo em eventual demanda municipal de ressarcimento. Diga-se de passagem que, caso o Estado do Ceará não participasse do polo passivo, caberia sua inclusão. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Tratando-se de medicamento incorporado, não se aplica o novo entendimento da súmula vinculante nº 61, aprovada em 20/09/2024. Ademais, não foi objeto do apelo, portanto não devolvida para apreciação em segundo grau, a matéria relativa ao mérito do fornecimento do medicamento e seus requisitos, mas tão somente a questão específica da competência administrativa e do juízo responsável pelo processamento e julgamento do feito. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Assim, não exerço o juízo de retratação previsto nos arts. 1.030, II e, 1.040, II, do CPC, por entender que o acórdão objeto d o recurso extraordinário está em consonância com a tese firmada no Tema 793 de repercussão geral, mantendo, portanto, seu teor, no sentido de conhecer das apelações e negar-lhes provimento . Acresço, apenas, que a obrigação seja direcionada preferencialmente ao Estado do Ceará, ante a incorporação do medicamento no grupo 1-B. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Determino o retorno dos autos à Vice-Presidência para as medidas que entender pertinentes. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> É o voto que submeto à consideração de meus pares. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Fortaleza, data informada pelo sistema. </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p>&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm; text-align: center;">&#160;</p><p class="western" style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	85
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Multas e demais Sanções
Polo ativo	BANCO BMG SA BANCO BMG SA
Advogado(s) - Polo ativo	JOSE GUILHERME CARNEIRO QUEIROZ - (CE41111-A)
Polo passivo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0262569-42.2022.8.06.0001
Acordão	

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	wrap;">questão em discussão consiste em saber se houve omissão no voto embargado.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. O recorrente afirma, em alegação genérica, que o voto embargado teria sido omisso ao não analisar todos os argumentos ventilados pelo ora embargante.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. Contudo, consoante firme jurisprudência do STJ, não há ofensa ao art. 1.022 do CPC quando o órgão julgador decide a questão com base em fundamentação suficiente para o deslinde da controvérsia, não havendo a necessidade de análise de todos os pontos apresentados pelo insurgente.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">IV. Dispositivo e Tese</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">5. Embargos de Declaração conhecidos e desprovidos. Acórdão mantido.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> _________</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivo relevante citado: CPC, art. 1.022.</p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.38; margin-left: 128pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;Jurisprudência relevante citada: Súmula nº 18 do TJCE; STJ, EDcl no REsp 1797298/PR, Min. Herman Benjamin, Segunda Turma, julgado em: 19/11/2019, publicado em: 19/12/2019. ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros

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	números: 6266949020158060000050001</p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 0262569-42.2022.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e rejeitar o recurso , nos termos do voto da Relatora.</p><div> <br /> </div><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO <strong style="font-size: small;">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de embargos declaratórios opostos em face de acórdão da 3ª Câmara de Direito Público que, por unanimidade, negou provimento ao apelo interposto, nos seguintes termos (ID 13998121 da APC nº 0262569-42.2022.8.06.0001):</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “EMENTA: ADMINISTRATIVO. CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. VIOLAÇÃO PELA EMPRESA DOS DEVERES DE TRANSPARÊNCIA E DE INFORMAÇÃO ADEQUADA AOS CLIENTES. PRÁTICAS CONSIDERADAS ABUSIVAS PELO PROCON. OFENSA A DISPOSITIVOS DO CÓDIGO DE DEFESA DO CONSUMIDOR. IMPOSIÇÃO DE SANÇÃO ADMINISTRATIVA APÓS O DEVIDO PROCESSO LEGAL. DECISÃO FUNDAMENTADA. MULTA ARBITRADA DENTRO DOS PARÂMETROS DA RAZOABILIDADE E DA PROPORCIONALIDADE. INEXISTÊNCIA DE ILEGALIDADE A SER AFASTADA PELO PODER JUDICIÁRIO. ATO ADMINISTRATIVO. MÉRITO. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">1. Em evidência, Apelação Cível, buscando a reforma de sentença proferida pelo M.M. Juiz de Direito da 14ª Vara da Fazenda Pública da Comarca de Fortaleza/CE, que considerou improcedente ação ordinária movida em face do Município de Fortaleza e, consequentemente, manteve inalterado ato administrativo prolatado pelo PROCON, que imputou multa ao BANCO BMG S/A, por violação a dispositivos do CDC.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. Restou evidenciado, nos autos, que foi observado o devido processo legal no âmbito do PROCON e que sua decisão administrativa se encontra fundamentada no CDC, o qual prevê a possibilidade de aplicação de sanções a fornecedores que, no desempenho de suas atividades, violem direitos dos consumidores.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Por outro lado, não se divisa que o quantum da multa aplicada, (9.600 UFIRCES) em cada procedimento impugnado, tenha exorbitado dos parâmetros de razoabilidade e proporcionalidade traçados pelo CDC (art. 57), mas, ao contrário, guarda compatibilidade tanto com a natureza e a lesividade da prática abusiva, quanto com as condições econômicas das partes.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. Assim, tendo o PROCON atuado dentro dos limites de sua competência legal, não pode o Judiciário, no exercício de seu mister, adentrar no mérito de ato administrativo, sob pena de ofensa ao Princípio da Separação dos Poderes (art. 2º da Constituição Federal de 1988).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Permanecem, portanto, totalmente inabalados os fundamentos da sentença, impondo-se sua confirmação.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Apelação conhecida e não provida.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Sentença mantida.” <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Inconformado, o Banco BMG opôs embargos de declaração, alegando haver omissão no voto condutor por não enfrentar todos os argumentos deduzidos no processo pelo ora embargante, requerendo, ao fim, a modificação do acórdão embargado e o prequestionamento da matéria.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Contrarrazões <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">da parte embargada suplicando pela rejeição dos aclaratórios (ID 15160343), sustentando que, no acórdão embargado não haveria omissão, obscuridade ou erro material.</p><p align="center"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dispõe o art. 1.022, I, II e III do CPC que cabem embargos de declaração quando houver na sentença, ou no acórdão, obscuridade, contradição, omissão ou erro material, sendo certo que o vício que autoriza o uso deste recurso é o que se verifica entre proposições do provimento jurisdicional, entre a fundamentação e a parte conclusiva ou dentro do próprio dispositivo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Em suma, o recorrente tão somente traz em seus aclaratórios a alegação genérica de que o voto embargado teria sido omisso ao não analisar todos os argumentos apresentados pelo ora embargante em seu apelo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Consoante firme jurisprudência do STJ, não há ofensa ao art. 1.022 do CPC quando o órgão julgador decide a questão com base em fundamentação suficiente para o deslinde da controvérsia, não havendo a necessidade de análise de todos os pontos apresentados pelo insurgente, como ilustra o julgado a seguir:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. RECURSO ESPECIAL. EXECUÇÃO DE SENTENÇA. SUBSTITUIÇÃO PROCESSUAL. OFENSA AO ART. 1.022 DO CPC NÃO CONFIGURADA. AUSÊNCIA DE OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. Nas razões do Recurso Especial, a parte recorrente requer a restauração da vigência plena dos artigos tidos por violados, garantindo a inteireza positiva, de autoridade e uniformidade de interpretação do Direito Federal, com (a) a extinção da execução em razão da ilegitimidade ativa do exequente e, (b) subsidiariamente, a reabertura do prazo para a apresentação de Embargos à Execução/Impugnação, mediante nova citação.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. No momento a insurgência se apresenta contra o acórdão que não conheceu do REsp, uma vez que o Tribunal de origem enfrentou o cerne das questões debatidas às fls. 526-532, e-STJ.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Assim, não se configura a ofensa ao art. 1.022 do Código de Processo Civil quando o Tribunal de origem julga integralmente a lide e soluciona a controvérsia. O órgão julgador não é obrigado a rebater, um a um, todos os argumentos trazidos pelas partes em defesa da tese que apresentaram. Deve apenas enfrentar a demanda, observando as questões

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	relevantes e imprescindíveis à sua resolução. Nesse sentido: REsp 927.216/RS, Segunda Turma, Relatora Ministra Eliana Calmon, DJ de 13/8/2007; e REsp 855.073/SC, Primeira Turma, Relator Ministro Teori Albino Zavascki, DJ de 28/6/2007.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. A solução integral da controvérsia, com fundamento suficiente, não caracteriza ofensa ao art. 1.022 do CPC. Os Embargos Declaratórios não constituem instrumento adequado para a rediscussão da matéria de mérito, nem ao prequestionamento de dispositivos constitucionais com vistas à interposição de Recurso Extraordinário.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Não há lacuna na apreciação do decisum embargado. As alegações da parte embargante não têm o intuito de solucionar omissão, contradição ou obscuridade, mas denotam a vontade de rediscutir o julgado.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 6. Embargos de Declaração rejeitados.” (STJ, EDcl no REsp 1797298/PR, Min. Herman Benjamin, Segunda Turma, julgado em: 19/11/2019, publicado em: 19/12/2019)</p><p align="center"> <strong id="docs-internal-guid-4d29d784-7fff-3304-cabb-83559059d602" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dessarte, não se verifica nenhuma omissão, contradição ou erro material no julgado, como pretende o recorrente.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Assim, resta claro e nítido o intuito do embargante, uma vez que não se vislumbra a existência de qualquer mácula capaz de modificar o acórdão recorrido.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Perquirir acerca do acerto ou desacerto de tal atividade interpretativa é medida reservada às vias recursais próprias, não cabendo à parte utilizar-se dos embargos de declaração para este fim, ainda que considere que a conclusão da Turma Julgadora não se afigura consentânea a melhor aplicação do direito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portanto, o que se observa é uma nítida tentativa de rediscussão da matéria, o que é vedado nesta via estreita. Desta forma, há vários precedentes deste Tribunal e, por todos, o enunciado da súmula 18 do TJCE:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De outro modo: os embargos declaratórios não possuem o condão de devolver mais uma vez a apreciação da matéria já decidida, ainda que a mesma se apresente de maneira que a parte vencida a considere imprecisa ou injusta.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align:

Processo	0262569-42.2022.8.06.0001
	justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em suma: nos presentes embargos de declaração, recurso que possui nítida natureza jurídica processual, com o objetivo de integrar o acórdão embargado, não há que se falar em omissão, contradição ou obscuridade diante de matéria tão exaustivamente estudada e discutida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Finalmente, no que diz respeito ao prequestionamento, é lição comezinha que o embargante deve se ater, exclusivamente, às hipóteses previstas no art. 1.022 do CPC, conforme restou assentado pelo Órgão Especial deste Tribunal, no acórdão a seguir ementado, in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRAVO REGIMENTAL NO MANDADO DE SEGURANÇA. OMISSÃO. INEXISTÊNCIA. APRECIAÇÃO DAS MATÉRIAS ARGUÍDAS. AUSÊNCIA DE ENQUADRAMENTO EM QUAISQUER DAS HIPÓTESES ELENCADAS NO ART. 1.022 DO CPC/2015. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. PREQUESTIONAMENTO. INVIABILIDADE. RECURSO CONHECIDO E DESPROVIDO. 1. Os embargos de declaração têm como escopo completar ou aclarar as decisões judiciais que tenham pontos omissos, obscuros ou contraditórios, sendo a presença destes vícios o pressuposto de admissibilidade dessa espécie recursal. 2. "A jurisprudência do Superior Tribunal de Justiça consolidou entendimento no sentido de que, em se tratando de redução de vencimentos e não de supressão, está configurada a relação de trato sucessivo, com a renovação mensal do prazo decadencial para a impetração do mandado de segurança." (STJ – MS 12413/DF – Rel. Min. Og Fernandes, Terceira Seção, julgado em 13/03/2013, Dje 21/03/2013) 3. "O servidor público não possui direito adquirido a regime jurídico, tampouco a regime de vencimentos ou de proventos, sendo possível à Administração promover alterações na composição remuneratória e nos critérios de cálculo, como extinguir, reduzir ou criar vantagens ou gratificações, instituindo o subsídio, desde que não haja diminuição no valor nominal percebido, em respeito ao princípio constitucional da irredutibilidade de vencimentos." (STJ – AgRg no RMS 43259/MS, Rel. Min. Herman Benjamin, Segunda Turma, julgado em 22/10/2013, Dje 09/12/2013). 4. O tema tratado no acórdão que se pretende levar à análise dos Tribunais Superiores não precisa, novamente, através de prequestionamento, ser decidido em embargos de declaração. 5. O prequestionamento deve pautar-se no disposto do art. 1.022, do Código de Processo Civil/2015; ausentes quaisquer dos vícios elencados no referido artigo, não é devida a declaração requerida. 6.Incidência da Súmula nº 18/TJCE que aduz: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada". 7. Recurso conhecido e desprovido.” (ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros números: 626694902015806000050001) (destacado)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent:

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	113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o desprovimento dos presentes aclaratórios é medida que se impõe nesta oportunidade, tornando-se, outrossim, despicienda qualquer declaração para fins de prequestionamento de eventuais recursos à instância especial.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Desta forma, inexistentes os vícios apontados, a manutenção do acórdão recorrido é medida que se impõe.</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> DISPOSITIVO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Diante do exposto, em face da inexistência de qualquer obscuridade, contradição, omissão ou erro material no julgado, conheço dos aclaratórios para NEGAR-LHES provimento, mantendo inalterado o acórdão embargado. Nego, outrossim, qualquer violação a dispositivos legais.</p><p align="center"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	86
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Equivalência salarial
Polo ativo	MUNICIPIO DE BOA VIAGEM
Advogado(s) - Polo ativo	ANTONIO JOSAFA MARTINS MESQUITA - (CE19683-A)
Polo passivo	LUCICLER FACUNDO FERREIRA
Advogado(s) - Polo passivo	FRANCISCO REGINALDO FERREIRA PINHEIRO - (CE18450-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0201505-75.2022.8.06.0051
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;&#160;&#160;</p><p> <strong id="docs-internal-guid-d8296934-7fff-52e8-21a7-264d006a5321" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 0201505-75.2022.8.06.0051 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Município de Boa Viagem</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelada: Lucicler Facundo Ferreira &#160;</p><p style="line-height: 1.9871999999999999; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #ff0000; background-color: transparent; font-weight: 700; font-style:

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	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">&#160; &#160;&#160;</p><p> <strong style="font-weight: normal;"><br /> </p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito processual civil. Juízo de retratação. Dispensa do reexame necessário. Alegada desobediência do tema repetitivo nº 17 do stj. Inexistência. Juízo de retratação refutado.&#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Juízo de retratação na forma do art. 1.030, inciso II, do CPC, em face de acórdão proferido pela 3ª Câmara de Direito Público deste egrégio Tribunal de Justiça que conheceu do recurso interposto pelo Município de Boa Viagem para negar-lhe provimento.</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em verificar possível inconsistência entre a conclusão do julgado com o entendimento fixado no Recurso Especial nº 1.101.727/PR (Tema Repetitivo nº 17).</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. O Superior Tribunal de Justiça, em julgados proferidos já sob a égide do CPC/15, elasteceu o conceito de "sentença líquida" para abranger as hipóteses em que o valor do bem jurídico discutido puder ser mensurado por simples cálculos aritméticos.</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Considerando o salário da postulante e a quantidade de parcelas vencidas e não prescritas, este Colegiado concluiu que o proveito econômico

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	auferido pela parte autora, mesmo acrescido dos consectários legais, não alcançaria o patamar legal de 100 (cem) salários mínimos previsto no inciso III do § 3º do art. 496 do CPC/2015, razão pela qual não merecia amparo a tese recursal relativa à necessidade de reexame necessário da contenda.&#160;&#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. O acórdão proferido por este Órgão Julgador encontra-se de acordo com o entendimento estabelecido no Tema Repetitivo nº 17, na Súmula nº 490, ambos do STJ, e com a jurisprudência fixada por este Tribunal Superior sob a égide do CPC/15.&#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo &#160;</p><p style="line-height: 1.2; margin-left: -1pt; margin-right: -1pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Juízo de retratação refutado.&#160;</p><p style="line-height: 1.44; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em rejeitar o juízo de retratação, nos termos do voto da Relatora, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> RELATÓRIO &#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Trata-se de JUÍZO DE RETRATAÇÃO, na forma do art. 1.030, inciso II, do CPC, visando eventual necessidade de adequação ao Tema nº 17 do STJ, em face de acórdão proferido pela 3ª Câmara de Direito Público deste egrégio Tribunal de Justiça que, conheceu do recurso interposto pelo MUNICÍPIO DE BOA VIAGEM para negar-lhe provimento, nos termos da ementa abaixo (id. 10996638):&#160;</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: APELAÇÃO CÍVEL. CONSTITUCIONAL E ADMINISTRATIVO. AÇÃO ORDINÁRIA. DESNECESSIDADE DE REEXAME NECESSÁRIO. CONDENAÇÃO OU PROVEITO ECONÔMICO OBTIDO INFERIOR AO LIMITE ESTABELECIDO NO ART. 496, §3º, INCISO III, DO CPC. PROFESSORA DO MUNICÍPIO DE BOA VIAGEM. ART. 17 DA LEI MUNICIPAL Nº 652/1997. FÉRIAS ANUAIS DE 45 (QUARENTA E CINCO) DIAS. ADICIONAL A SER CALCULADO SOBRE A INTEGRALIDADE DO PERÍODO. PRECEDENTES DO TJCE. HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS ESTABELECIDOS EM DESFAVOR DO MUNICÍPIO. NECESSIDADE DE FIXAÇÃO DO PERCENTUAL SOMENTE APÓS A LIQUIDAÇÃO DO JULGADO. ART. 85, §4º, INCISO II, DO CPC. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA PARCIALMENTE MODIFICADA DE OFÍCIO. &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Constata-se que os cálculos aritméticos não alcançam o montante equivalente a 100 (cem) salários mínimos, o que dispensa a submissão da sentença ao duplo grau de jurisdição obrigatório, a teor do art. 496, §3º, inciso III, do CPC.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A Constituição Federal assegura ao servidor público o gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal (art. 7º, inciso XVII, c/c art. 39, §3º), nada impedindo que a legislação infraconstitucional amplie as garantias em questão com relação a determinadas categorias. Nessa esteira, o Supremo Tribunal Federal pacificou entendimento no sentido de que o abono constitucional de um terço deve incidir sobre a totalidade da remuneração correspondente ao período de férias anuais, sendo devido, inclusive, nas hipóteses em que este ultrapassa 30 (trinta) dias.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Infere-se, pois, que o valor do abono de um terço deve corresponder à integralidade do período de férias, que, no caso ora analisado, referente ao magistério em regência do Município de Boa Viagem, é de 45 (quarenta e cinco) dias, como resta assentado no art. 17 da Lei Municipal nº 652/1997. Precedentes do TJCE.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Por fim, entende-se que merece reparo o capítulo do julgado que trata dos honorários advocatícios estabelecidos em desfavor do ente municipal, eis que o douto Juízo deveria ter fixado, ou melhor, postergado a sua fixação para após liquidação do julgado, razão pela qual corrijo, de ofício, o aspecto debatido, aplicando-se ao caso o que dispõe o art. 85, § 4º, inciso II, do CPC.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

Processo	0201505-75.2022.8.06.0051
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">5. Recurso conhecido e desprovido. Sentença parcialmente modificada de ofício.&#160;</p><p style="line-height: 1.44; margin-left: 142pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.44; margin-left: 142pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A parte promovida, outrora apelante, interpôs Recurso Especial (id. 122175790.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Devidamente intimado, o promovente deixou transcorrer in albis o prazo para apresentar contrarrazões (id. 12492846).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No juízo de admissibilidade, o então Vice-Presidente deste Tribunal de Justiça determinou o retorno dos autos ao órgão colegiado competente para avaliar se o acórdão objeto do recurso excepcional se encontra, ou não, em sintonia com o entendimento firmado no Tema nº 17, do STJ, e, assim, exercer o juízo de retratação, se for o caso, nos termos do art. 1.030, inciso II, do CPC (id. 14066764).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Conforme fora relatado, o acórdão deste colegiado entendeu, quanto ao pedido de reexame da sentença, que a remessa dos autos para tal finalidade não seria obrigatória por ser possível quantificar a condenação do ente público e concluir que ela está bem aquém ao valor de alçada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Interposto Recurso Especial pelo Município de Boa Viagem, a Vice-presidência desta Corte, em juízo de admissibilidade, identificou possível inconsistência entre a conclusão do julgado, o entendimento fixado no Recurso Especial nº 1.101.727/PR (Tema Repetitivo nº 17).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Por relevante, transcrevo a redação das teses consignadas nos julgados paradigmas suscitados, que precedem a entrada em vigor da atual legislação processual (CPC/15), <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Tema Repetitivo nº 17/STJ - A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas. (Recurso Especial nº 1101727/PR, submetido ao rito do art. 543-C do CPC/1973, sob a relatoria do Ministro Hamilton Carvalhido, Corte Especial, publicado em 03.12.2009).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Súmula nº 490/STJ - A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas. (Publicada em 1º/08/2012).</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> De partida, vale destacar que se reconhecem válidas as orientações acima consignadas, com as devidas adaptações aos novos parâmetros estatuídos no art. 496, §3º, do CPC/15, como fora pontuado na decisão vergastada. Com efeito, a elevação do limite pecuniário da condenação para fins de conhecimento da remessa necessária denota a opção do legislador pela preponderância dos princípios da eficiência e da celeridade na busca pela duração razoável do processo, pois, além dos critérios previstos no art. 496, §4º do CPC/15, o legislador elegeu, também, o do impacto econômico da sentença proferida em desfavor da Fazenda Pública.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Além do mais, o próprio Superior Tribunal de Justiça, em julgados proferidos já sob a égide do CPC/15, elasteceu o conceito de "sentença líquida" para abranger as hipóteses em que o valor do bem jurídico discutido puder ser mensurado por simples cálculos aritméticos. A corroborar, vejamos recentes julgados da Corte Cidadã, que tratam de demandas outras, que não apenas de natureza previdenciária, ex vi<span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">PROCESSUAL CIVIL. AGRAVO INTERNO. RECURSO ESPECIAL. VIOLAÇÃO DO ART. 489 DO CPC. NÃO OCORRÊNCIA. SENTENÇA ILÍQUIDA. CPC VIGENTE. NOVOS PARÂMETROS. CONDENAÇÃO OU PROVEITO ECONÔMICO INFERIOR A MIL SALÁRIOS MÍNIMOS. REMESSA NECESSÁRIA. DISPENSA. PROVIMENTO NEGADO. 1. Verifica-se que "[n]ão há falar em afronta aos arts. 489, § 1º, e 1.022 do CPC/2015 [Código de Processo Civil], por omissão ou vício de fundamentação no provimento jurisdicional recorrido, (i) quando a parte agravante nem sequer opôs embargos de declaração para fins de sanar o vício apontado em sede de recurso especial e (ii) quando a Corte local pronunciou-se, de forma clara e suficiente, acerca da questão suscitada nos autos, manifestando-se sobre todos os argumentos que, em tese, poderiam infirmar a conclusão adotada pelo Juízo" (AgInt no AREsp 2.443.850/RS, relator Ministro Antonio Carlos Ferreira, Quarta Turma, julgado em 8/4/2024, DJe de 11/4/2024). 2. A jurisprudência do Superior Tribunal de Justiça é no sentido de que, "após vigência do novo estatuto processual, tem firmado entendimento de que a elevação do limite para conhecimento da remessa necessária significa uma opção pela preponderância dos princípios da eficiência e da celeridade, e não obstante a aparente iliquidez das condenações, se houver possibilidade de aferição por simples cálculos aritméticos, forçoso reconhecimento que se trata de verdadeira hipótese de dispensa de reexame" (AgInt no REsp 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022). 3. Agravo interno a que se nega provimento. (STJ - AgInt no REsp: 1897319 MG 2020/0249899-0, Relator: Ministro PAULO SÉRGIO DOMINGUES, Data de Julgamento: 20/05/2024, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 24/05/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">ADMINISTRATIVO E PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO INTERNO NO RECURSO ESPECIAL. SERVIDOR PÚBLICO. AÇÃO DE COBRANÇA. <span

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	style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">ACÓRDÃO FUNDAMENTADO NO ACERVO FÁTICO DOS AUTOS. IMPOSSIBILIDADE DE REVISÃO, NA VIA ESPECIAL. SÚMULA 7/STJ. PRECEDENTES DO STJ. AGRAVO INTERNO IMPROVIDO. I. Agravo interno aviado contra decisão que julgara Recurso Especial interposto contra acórdão publicado na vigência do CPC/2015. II. Na origem, trata-se de Ação ajuizada pela parte ora agravada, objetivando o "pagamento do 1/3 (terço) de férias do ano de 2012, bem como das férias proporcionais acrescidas de 1/3 dos meses trabalhados no ano de 2013 (6/12 avos), de forma indenizada, tudo com incidência de juros de mora e correção monetária". Julgada parcialmente procedente a demanda, recorreu o réu, restando mantida a sentença, pelo Tribunal local. Daí a interposição do presente Recurso Especial. III. Não se olvida que, consoante o enunciado de Súmula 490 deste Corte: "A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários-mínimos, não se aplica a sentenças ilíquidas". IV. Lado outro, "esta Corte, após vigência do novo estatuto processual, tem firmado entendimento de que a elevação do limite para conhecimento da remessa necessária significa uma opção pela preponderância dos princípios da eficiência e da celeridade, e não obstante a aparente iliquidez das condenações, se houver possibilidade de aferição por simples cálculos aritméticos, forçoso reconhecimento que se trata de verdadeira hipótese de dispensa de reexame" (STJ, AgInt no REsp 1.916.025/SC, Rel. Ministra REGINA HELENA COSTA, PRIMEIRA TURMA, DJe de 21/03/2022). V. No caso, o Tribunal de origem, à luz das provas, rejeitou a pretensão autoral, ao fundamento de que "não há que falar em remessa necessária no presente caso, eis que resta evidente que as verbas discutidas são inferiores a 500 (quinhentos) salários-mínimos, a teor do art. 496, § 39, inc. II, do NCPC, tendo em vista que a lide trata apenas do terço constitucional das férias relativas aos anos de 2012 e 2013". VI. Nesse contexto, considerando a fundamentação do acórdão objeto do Recurso Especial, os argumentos utilizados pela parte recorrente somente poderiam ter sua procedência verificada mediante o necessário reexame de matéria fática, não cabendo a esta Corte, a fim de alcançar conclusão diversa, reavaliar o conjunto probatório dos autos, em conformidade com a Súmula 7/STJ. Precedentes do STJ. VII. Agravo interno improvido. (AgInt no AgInt no REsp n. 1.856.701/PR, relatora Ministra Assusete Magalhães, SEGUNDA TURMA, julgado em 30/10/2023, DJe de 6/11/2023.) (destaca-se)</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">E ainda, envolvendo o Município de Boa Viagem e a mesma questão jurídica em exame: STJ - REsp: 2.149.342, Ministro Francisco Falcão, DJe de 13/06/2024; STJ - REsp: 2141489, Relator: Ministro MAURO

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	CAMPBELL MARQUES, Data de Publicação: 17/05/2024; STJ - REsp: 2116810, Relator: REGINA HELENA COSTA, Data de Publicação: 02/02/2024.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> No mesmo sentido é o entendimento adotado por este Colendo Sodalício, por suas três Câmaras de Direito Público, senão vejamos: APELAÇÃO CÍVEL - 02014866920228060051, Relator(a): INACIO DE ALENCAR CORTEZ NETO, 1ª Câmara de Direito Público, Data do julgamento: 25/07/2024; APELAÇÃO CÍVEL - 02008552820228060051, Relator(a): TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara de Direito Público, Data do julgamento: 20/04/2024;&#160; Apelação / Remessa Necessária - 0002641-88.2019.8.06.0086, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 02/10/2023, data da publicação: 03/10/2023.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> In casu , a sentença recorrida condenou o ente público ao pagamento, na forma simples, das diferenças do terço constitucional de férias considerando o lapso temporal devido de 45 (quarenta e cinco) dias e respeitada a prescrição quinquenal. Nesse cenário, este colegiado, considerando o salário da postulante (R$ 3.845,63 - três mil, oitocentos e quarenta e cinco reais e quarenta e três centavos) (id. 10664098) e a quantidade de parcelas vencidas e não prescritas (diferença relativa à quinze dias de férias anuais referentes à 5 anos de labor), concluiu que o proveito econômico auferido pela parte autora, mesmo acrescido dos consectários legais, não alcançaria o patamar legal de 100 (cem) salários mínimos previsto no inciso III do § 3º do art. 496 do CPC/2015, razão pela qual não merecia amparo a tese recursal relativa à necessidade de reexame necessário da contenda.&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Desta feita, tem-se que o acórdão proferido por este Órgão Julgador, objeto do Recurso Especial interposto pelo Município de Boa Viagem, encontra-se de acordo com o entendimento estabelecido no Tema Repetitivo nº 17, na Súmula nº 490, ambos do STJ, e com a jurisprudência fixada por este Tribunal Superior sob a égide do CPC/15, de modo que a sua ratificação é medida que se impõe.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Perfilhando a mesma intelecção, no âmbito deste Tribunal de Justiça, inclusive mantendo as decisões em sede de juízo de retratação referente ao Município de Boa Viagem, nos termos do art. 1.030, II, do CPC,&#160; colaciono os precedentes abaixo:</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">EMENTA: PROCESSUAL CIVIL. AÇÃO ORDINÁRIA DE COBRANÇA. REMESSA OFICIAL. ESTIMATIVA DO VALOR GLOBAL DA CONDENAÇÃO INFERIOR AO VALOR DE ALÇADA. REEXAME NÃO CONHECIDO. 1<span style="font-size: 10pt; font-family: 'Times New Roman',serif; color:

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	#000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">. A tese jurídica fixada no julgamento do REsp nº 1.101.727/PR[1], que deu origem ao Tema nº 17/STJ, e, posteriormente, à Súmula 490/STJ, precede a entrada em vigor da atual legislação processual (CPC/2015), e não mais prepondera em razão da utilização do critério socioeconômico, pelo legislador ordinário, nas hipóteses de dispensa de reexame da sentença pela instância superior de jurisdição. 2. O Superior Tribunal de Justiça, o Tribunal Regional Federal da 5ª Região e as Câmaras de Direito Público desta e. Corte de Justiça vêm afastando o precedente formado no longínquo ano de 2009, ainda sob a vigência do CPC/1973, nas hipóteses em que o valor da condenação for presumidamente inferior aos valores de alçada, a depender do ente público litigante. Passou-se a adotar a ratio decidendi contida na tese difundida no STJ de que “É dispensável a remessa necessária nas sentenças ilíquidas proferidas em desfavor do INSS, cujo valor mensurável da condenação ou do proveito econômico seja inferior a 1.000 (um mil) salários mínimos”. 3. Não se cogitando de valor da condenação superior a 100 (cem) salários mínimos, mantenho o não conhecimento do pedido de reexame da sentença formulado em sede de apelação, onde foi garantido o duplo grau de jurisdição. 4. Juízo de retratação não realizado. (Apelação Cível - 0200977-41.2022.8.06.0051, Rel. Desembargador(a) WASHINGTON LUÍS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento: 19/08/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">CONSTITUCIONAL E ADMINISTRATIVO. PROCESSUAL CIVIL. JUÍZO DE RETRATAÇÃO. ART. 1.030, II, DO CPC. ACÓRDÃO QUE NÃO ACATOU O PEDIDO DE REMESSA NECESSÁRIA FORMULADO PELO MUNICÍPIO APELANTE. DESNECESSIDADE DO REEXAME OBRIGATÓRIO EM RAZÃO DA INTERPOSIÇÃO DE RECURSO TEMPESTIVO DA FAZENDA PÚBLICA. EXEGESE DO ART. 496, §1º DO CPC. PRECEDENTES. VALOR DA CONDENAÇÃO OU DO PROVEITO ECONÔMICO SEGURAMENTE INFERIOR AO VALOR DE ALÇADA DE 100 (CEM) SALÁRIOS-MÍNIMOS (ART. 496, § 3º, III, DO CPC). AFERIÇÃO MEDIANTE MEROS CÁLCULOS ARITMÉTICOS. INAPLICABILIDADE DA SÚMULA 490 E DO TEMA 17, AMBOS DO STJ. PRECEDENTES DA CORTE ESPECIAL E DESTE TJCE. JUÍZO DE

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	RETRATAÇÃO NEGATIVO. ACÓRDÃO MANTIDO. 1 ¿ Trata-se de análise de Juízo de Retratação, nos termos do art. 1.030, II, do CPC, em face de acórdão prolatado pela 1ª Câmara de Direito Público do TJCE, ante a possível dissonância da decisão colegiada recorrida com o enunciado do Tema 17 do STJ. 2 ¿ Conforme exegese do art. 496, §1º, do CPC, em regra, não há remessa necessária se houver apelação interposta pela Fazenda Pública. Precedentes. 3 ¿ No caso, a matéria que poderia ter sido analisada pela instância revisora em reexame obrigatório já foi apreciada no recurso de apelação, o que, por certo, configura evidente ausência de interesse do ente público quanto ao pleito de reexame necessário, porquanto não há prejuízo ao Município recorrente. 4 ¿ A Corte Superior de Justiça e este TJCE vêm mitigando a rigidez do entendimento sumulado (Súmula 490 do STJ e Tema 17 do STJ) nas hipóteses em que, embora ilíquido o decisum, os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. 5 ¿ No caso, a edilidade foi condenada a pagar ao autor, professor da educação básica da rede pública municipal, enquanto estivesse em atividade de docente em efetiva regência de classe, o abono constitucional de 1/3 (um terço) de férias, calculado sobre todo o período de 45 (quarenta e cinco) dias, e não apenas sobre o período de 30 (trinta) dias. Ademais, o Município foi condenado ao pagamento das diferenças observadas em relação ao adicional de 1/3 (um terço) de férias, vencidas e vincendas, respeitada a prescrição quinquenal. 6 ¿ Na hipótese, o Juízo de primeiro grau considerou que o presente feito não estava sujeito à remessa necessária, por entender que os valores discutidos não atingirão o limite previsto no art. 496, §3º, III do CPC. 7 ¿ Sendo possível inferir, na hipótese, por meros cálculos aritméticos, que o valor do proveito econômico não atingiria o valor de alçada (100 salários-mínimos para o Município), conclui-se que não há conflito do julgado com a Súmula nº 490 do STJ nem com o Tema 17 do STJ, razão pela qual se impõe a manutenção do acórdão anteriormente proferido. Precedentes do TJCE. 8 ¿ Juízo de retratação negativo. Acórdão mantido. (Apelação Cível - 0200545-22.2022.8.06.0051, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 04/12/2023, data da publicação:&#160; 04/12/2023) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">DIREITO CONSTITUCIONAL E ADMINISTRATIVO. ACÓRDÃO QUE DESPROVEU AGRAVO INTERNO, AFASTANDO A SUBMISSÃO DA SENTENÇA À REMESSA NECESSÁRIA. VALOR DA CONDENAÇÃO INFERIOR AO VALOR DE ALÇADA. ENCAMINHAMENTO DOS AUTOS A ESTA RELATORIA PARA JUÍZO DE RETRATAÇÃO. DESNECESSIDADE DO REEXAME OBRIGATÓRIO EM RAZÃO DA INTERPOSIÇÃO DE RECURSO VOLUNTÁRIO TEMPESTIVO PELA FAZENDA PÚBLICA. EXEGESE DO ART. 496, § 1º DO CPC. AUSÊNCIA DE COLISÃO DO ARESTO DESTA CORTE COM O A SÚMULA Nº

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	490/STJ OU COM O TEMA Nº 17 DE RECURSOS REPETITIVOS. JUÍZO DE RETRATAÇÃO NEGATIVO. ACÓRDÃO MANTIDO. Trata-se de análise do Juízo de Retratação, nos termos do art. 1.040, II, do CPC, em face de acórdão prolatado pela 2ª Câmara de Direito Público do TJCE, ante a possível dissonância da decisão colegiada recorrida com o enunciado do Tema nº 17 do STJ. Conforme disposição do art. 1040, inciso II, do Código de Processo Civil, uma vez publicado o acórdão paradigma, competirá ao órgão prolator do acórdão objeto de recurso proceder ao reexame do recurso anteriormente julgado, caso este acórdão recorrido contrarie a orientação estabelecida pelo tribunal superior. O próprio Superior Tribunal de Justiça, embora mantenha hígido o entendimento adotado no Tema nº 17 e na Súmula nº 490 do STJ, admite sua mitigação quando for viável a quantificação do valor da condenação por meio de simples cálculos aritméticos, como no caso ora analisado, em que o montante condenatório foi estimado em R$ 10.364,89 (dez mil, trezentos e sessenta e quatro reais e oitenta enove centavos) na exordial (fls. 11), considerando-se ainda, os valores auferidos pela apelada, consoante cálculos anexados (fls. 27/37), bem como a condenação ao pagamento das diferenças salariais em relação à gratificação por tempo integral, que deve refletir sobre o 13º salário e o adicional de férias. Mister se faz recordar que de acordo com a exegese do art. 496, § 1º, do Código de Processo Civil, uma vez interposto recurso voluntário, no caso de rito ordinário, a Remessa Necessária restará prejudicada. Juízo de Retratação negativo, mantendo-se a decisão colegiada inalterada. (Apelação Cível - 0050718-68.2021.8.06.0051, Rel. Desembargador(a) MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara Direito Público, data do julgamento:&#160; 15/05/2024, data da publicação:&#160; 15/05/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Ainda: Apelação Cível - 0050714-31.2021.8.06.0051, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento:&#160; 11/10/2023, data da publicação:&#160; 11/10/2023; Apelação Cível - 0200548-74.2022.8.06.0051, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 07/08/2023, data da publicação:&#160; 08/08/2023; Apelação Cível - 0050180-87.2020.8.06.0127, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento:&#160; 24/07/2023, data da publicação:&#160; 25/07/2023.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Como se observa, o acórdão impugnado amolda-se aos recentes precedentes do Superior Tribunal de Justiça e desta Corte de Justiça os quais versam sobre a admissibilidade ou não da remessa necessária em relação às situações de aparente iliquidez da julgado, após o advento da nova legislação processual

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	civil.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ante o exposto, rejeito o juízo de retratação, mantendo inalterado o acórdão objeto do recurso especial.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	87
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Pagamento
Polo ativo	MUNICIPIO DE POTIRETAMA
Advogado(s) - Polo ativo	PEDRO TEIXEIRA CAVALCANTE NETO - (CE176770-A)
Polo passivo	JOSE VALDECIO SOARES GOMES
Advogado(s) - Polo passivo	JANAINA SOARES CLAUDIO BARBOSA - (CE41086-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão

<p style="text-align: center;"> <img style="font-size: medium;"
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	não servem como meio de rediscussão da matéria já julgada (súmula 18 do TJCE).</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 4. Ausentes os vícios insertos no art. 1.022 do CPC, torna-se despicienda a declaração requerida pela parte embargante para fins de prequestionamento.</p><p style="line-height:1.38;margin-left: 114pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Embargos de declaração conhecidos e rejeitados.</p><p style="line-height:1.38;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <br /> <br /> </p><h3 style="line-height:1.7999999999999998;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Embargos de Declaração em Apelação Cível nº 0200030-47.2022.8.06.0031, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e rejeitar o recurso, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Tratam os autos de embargos declaratórios interpostos contra acórdão da 3ª Câmara de Direito Público que, por unanimidade, conheceu da apelação cível, para negar-lhe provimento, mantendo inalterada a sentença recorrida, nos seguintes termos (ID 14365381):</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “EMENTA: APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. CONSTITUCIONAL. ADMINISTRATIVO. SERVIDOR PÚBLICO. COBRANÇA DE SALÁRIOS ATRASADOS. NÃO COMPROVAÇÃO DE QUALQUER FATO IMPEDITIVO, MODIFICATIVO OU EXTINTIVO DO DIREITO VINDICADO NOS AUTOS. ÔNUS DA PROVA DO MUNICÍPIO DE POTIRETAMA/CE. PAGAMENTO DEVIDO. PRECEDENTES DO TJ/CE. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA INTEGRALMENTE MANTIDA NESTE AZO.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 1. Cuida-se, na espécie, de apelação cível, buscando a reforma de sentença proferida pelo magistrado de primeiro grau, que deu total procedência a ação ordinária, condenando o Município de Potiretama/CE ao pagamento de salários atrasados a servidor público, referentes aos meses de novembro e dezembro de 2020.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-

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	space:pre-wrap;">2. Atualmente, nos mais diversos tribunais do país, prevalece a orientação de que, em demandas movidas por agentes públicos para a cobrança de verbas trabalhistas, quando evidenciada a existência do vínculo, o ônus da prova da realização do pagamento cabe à Administração.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">3. Isso nada mais é do que a aplicação, in concreto, da Teoria da Carga Dinâmica da Prova, segundo a qual deve o seu ônus ser imputado àquele que, dadas as circunstâncias, tenha melhores condições para dele se desincumbir.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 4. Incumbia, portanto, ao Município de Potiretama/CE demonstrar que realizou o pagamento dos salários atrasados cobrados pelo servidor público, apresentando os respectivos comprovantes de quitação, ou, ainda, trazer aos autos outros elementos aptos a extinguir, impedir ou modificar o direito ora vindicado, o que não ocorreu.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">5. Permanecem, então, totalmente inabalados os fundamentos do decisum oriundo do Juízo a quo, devendo ser integralmente confirmado por este Tribunal.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Precedentes.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Recurso conhecido e não provido.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Sentença mantida.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">Os embargos de declaração: deste acórdão foi interposto o presente recurso (Embargos de Declaração nº 0200030-47.2022.8.06.0031), aduzindo a existência de omissão no julgado sob o fundamento de que o não teria se manifestado acerca da “presunção de veracidade e legitimidade que reveste os

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	atos administrativos e os documentos públicos (art. 405 do CPC), razão pela qual o ônus probatório quanto à desconstituição da prova de pagamento extraída dos Recibos de Pagamento Id. 12315910 era inteiramente do Embargado, e não da municipalidade (art. 373, I e II, do CPC)” (trecho de fl. 02 de ID 15116442).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">Impugnação aos aclaratórios: decorrido o prazo legal, nada foi apresentado ou requerido.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> É o relatório.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Dispõe o art. 1.022, I, II e III do CPC que cabem embargos de declaração quando houver na sentença, ou no acórdão, obscuridade, contradição, omissão ou erro material, sendo certo que o vício que autoriza o uso deste recurso é o que se verifica entre proposições do provimento jurisdicional, entre a fundamentação e a parte conclusiva ou dentro do próprio dispositivo.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> No presente caso, o que se percebe do embargante não é sua tentativa de integração do acórdão e sim de rediscutir a causa.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr">O voto proferido por esta 3ª Câmara de Direito Público solucionou todos os pontos controvertidos. Não subsiste, portanto, razão ao recorrente para pretender seja o decisum integrado para suprir omissão.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> E, a demonstrar a inexistência de qualquer imperfeição, transcrevo trecho dos fundamentos do acórdão, em que fica caracterizado que a questão fora satisfatoriamente delimitada:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “(…)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Foi devolvida a este Tribunal, <span style="font-size:12pt;font-family:Arial,sans-

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	serif;color:#000000;background-color:transparent;font-weight:400;font-style:italic;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">in casu, a controvérsia em torno do direito de servidor público aos salários referentes aos meses de novembro e dezembro de 2020, que não teriam sido pagos pelo Município de Potiretama/CE.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Ora, atualmente, nos mais diversos tribunais do país, ainda tem prevalecido a orientação de que, em demandas movidas por agentes públicos para a cobrança de quaisquer verbas trabalhistas, quando evidenciada a existência do vínculo, o ônus da prova da realização do pagamento cabe à Administração, ex vi:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Ação de Cobrança – Saldo de verbas rescisórias – Ex-servidora estatutária do Município de Ferraz de Vasconcelos/SP – Não se desincumbiu a ré, ora apelada, do seu ônus processual quanto à prova de fato impeditivo, modificativo ou extintivo do direito do autor, nos termos do art. 333, inciso II, do Código de Processo Civil – Impossibilidade de carrear à autora a produção de "prova diabólica" – Onus probandi que deve ser carreado àquele que tiver melhores condições de suportá-lo segundo a Teoria da Distribuição Dinâmica do ônus da prova. Atualização do débito nas condenações impostas à Fazenda Pública – Aplicação do disposto no art. 1º-F da Lei n.º 9.494/97, com redação determinada pelo art. 5.º da Lei n.º 11.960/09, observadas as determinações do C. Supremo Tribunal Federal. Sentença reformada – Recurso provido.” (TJSP - Apelação Cível 0006143-29.2014.8.26.0191; Relator (a): Renato Delbianco; Órgão Julgador: 2ª Câmara de Direito Público; Foro de Ferraz de Vasconcelos - 3ª Vara Judicial; Data do Julgamento: 01/09/2015; Data de Registro: 03/09/2015). (destacado)</p><p style="line-height:1.2;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. VERBAS REMUNERATÓRIAS (13º SALÁRIO, FÉRIAS E LICENÇA-PRÊMIO). SERVIDOR PÚBLICO EFETIVO APOSENTADO. NECESSIDADE DE MELHOR INSTRUÇÃO DO FEITO, PELO MUNICÍPIO RÉU/APELADO. TEORIA DA DISTRIBUIÇÃO DINÂMICA DO ÔNUS DA PROVA. SENTENÇA CASSADA, DE OFÍCIO. RECURSO PREJUDICADO. 1. Embora, a priori, caiba ao autor o ônus de demonstrar o fato constitutivo do seu direito, tem entendido esta Corte, em situações como a dos autos, que ao ente público requerido torna-se mais fácil instruir o processo com cópias dos holerites e demais documentos funcionais do postulante, de forma a permitir a averiguação da regularidade ou não dos pagamentos, referentes ao período questionado. 2. À luz da teoria da distribuição dinâmica do ônus da prova (art. 373, §1º, CPC), deve ser cassada a sentença, ainda que de ofício, a fim de que o réu/apelado comprove a alegada quitação das verbas remuneratórias postuladas pelo autor/apelante, isto porque, em linha de princípio, quem afirma um fato positivo tem de prová-lo com preferência a quem sustenta um fato negativo. Sentença cassada, de ofício. Apelação cível prejudicada.” (TJGO,

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	Apelação (CPC) 5216651-21.2017.8.09.0065, Rel. ZACARIAS NEVES COELHO, 2ª Câmara Cível, julgado em 30/08/2019, DJe de 30/08/2019). (destacado).</p><p style="line-height:1.2;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“APELAÇÃO CÍVEL. DIREITO ADMINISTRATIVO. COBRANÇA. SERVIDOR MUNICIPAL COM VÍNCULO COMPROVADO. FALTA DE PAGAMENTO. ÔNUS DA PROVA QUE COMPETIA À ADMINISTRAÇÃO PÚBLICA. AUSÊNCIA PROBATÓRIA DA QUITAÇÃO DA DÍVIDA PELO MUNICÍPIO. DEVER DO ENTE PÚBLICO DE EFETUAR O PAGAMENTO DA CONTRAPRESTAÇÃO PELO TRABALHO DESEMPENHADO, SOB PENA DE ENRIQUECIMENTO ILÍCITO. CONSECTÁRIOS LEGAIS FIXADOS DE ACORDO COM OS PARÂMETROS ESTABELECIDOS PELO SUPREMO TRIBUNAL FEDERAL, NO JULGAMENTO DOS EMBARGOS DECLARATÓRIOS OPOSTOS NO RE 870.947, OBSERVADO PELO JUÍZO A QUO. APELO NÃO PROVIDO. SENTENÇA INTEGRADA. I - Em ação de cobrança ajuizada por servidor contra Município, objetivando o pagamento de vencimento atrasado, comprovado o vínculo com a Administração, compete ao réu, a teor do inciso II, do artigo 373 do CPC, demonstrar a existência de fato impeditivo, modificativo, ou extintivo do direito vindicado, conceito no qual se inclui a demonstração, por via documental, da quitação da parcela trabalhista reclamada na presente demanda, ou de eventual afastamento temporário do demandante, o que, in casu, não ocorreu. II - Demonstrada a efetiva prestação de serviços pelo suplicante e não se desincumbindo a municipalidade de seu ônus probatório, é devida, ao servidor, a verba de ordem remuneratória pleiteada na inicial, sob pena de se configurar em enriquecimento sem causa da Administração Pública, em detrimento do particular. III - Tratando-se de condenação imposta à Fazenda Pública, os consectários legais devem ser fixados de acordo com os parâmetros estabelecidos pelo Supremo Tribunal Federal, no julgamento dos embargos declaratórios apresentados no RE 870.947, o que foi observado pelo Juízo a quo. IV - Apelo não provido. Sentença integrada.(APL nº 0500112-19.2013.8.05.0105,Relator: DINALVA GOMES LARANJEIRA PIMENTEL, Publicado em: 03/12/2019). (destacado)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Isso nada mais é do que a aplicação, in concreto, da Teoria da Carga Dinâmica da Prova, segundo a qual deve o seu ônus ser imputado àquele que, dadas as circunstâncias, tenha melhores condições para dele se desincumbir.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> De fato, é bem mais simples à Administração, que deve ter pleno controle dos dados relativos à vida funcional de todos os integrantes de seus quadros, fazer prova da inexistência de direito pleiteado pelo agente público.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Incumbia, portanto, ao réu/apelante demonstrar que realizou o pagamento dos salários atrasados cobrados pela autora/apelada, apresentando os respectivos comprovantes de quitação, ou, ainda, trazer outros elementos aptos a extinguir, impedir ou modificar o direito ora vindicado nos autos, o que não ocorreu.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"><span style="font-size:12pt;font-family:Arial,sans-

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	serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">Oportuno destacar, no ponto, que a Administração poderia facilmente comprovar o adimplemento de tais valores, sem a necessidade de intervenção do Poder Judiciário – colacionando ao caderno processual, v.g., extratos de depósitos bancários realizados em favor do agente público –, mas não o fez, devendo, por conseguinte, arcar com as consequências de sua contumácia.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">A mera apresentação de fichas financeiras ou de contracheques, de per si, não serve como meio de prova do recebimento dos salários e de outras verbas trabalhistas pelo agente público, por se tratar de documentos produzidos unilateralmente pela Administração, que descrevem, mas não atestam a quitação da dívida, conforme precedentes deste Tribunal, ex vi:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“RECURSO DE APELAÇÃO CÍVEL DIREITO ADMINISTRATIVO E PROCESSUAL CIVIL. PROVA DOCUMENTAL. SERVIDORA PÚBLICA. VERBAS REMUNERATÓRIAS ATRASADAS. PAGAMENTO. ÔNUS DO RÉU (ART. 373, II, CPC/15). FICHAS FINANCEIRAS NÃO COMPROVAM QUITAÇÃO. HONORÁRIOS MAJORADOS. APELAÇÃO CÍVEL CONHECIDa E DESPROVIDa. 1. Cuida-se de Recurso de Apelação Cível com vistas a modificar a sentença proferida pelo magistrado de primeiro grau e que julgou procedente o pleito formulado pelo autora/apelada, servidora pública municipal, condenando o município apelante no pagamento das verbas remuneratórias referentes aos meses de setembro a dezembro de 2012. Alega em suas razões a edilidade terem sido devidamente quitadas referidas verbas, consoante fichas financeiras em anexo à contestação. 2. Compulsando os autos e em cotejo à prova apresentada por ambas as partes, percebe-se que a municipalidade quedou-se inerte quanto a comprovação de que efetivamente efetuou o pagamento das verbas remuneratórias pleiteadas pelo promovente e referentes aos meses de setembro a dezembro de 2012 (art. 333, II, do CPC/73). 3. As fichas financeiras apresentadas pela edilidade descrevem as verbas remuneratórias devidas ao apelado, tão somente. Em nenhum momento constata-se a quitação das referidas verbas. Precedentes. 4. Recurso de Apelação conhecido, porém desprovido. Honorários sucumbenciais majorados para 15% sobre o valor da condenação (art. 85, §11º, do

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	CPC/15).” DESEMBARGADOR PAULO FRANCISCO BANHOS PONTE Relator e Presidente do Órgão Julgador (Apelação Cível nº 0004976-63.2013.8.06.0095; Relator (a): PAULO FRANCISCO BANHOS PONTE; Comarca: Ipu; Órgão julgador: 1ª Câmara de Direito Público; Data do Julgamento: 11/03/2019). (destacado)</p><p style="line-height:1.2;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">APELAÇÃO CÍVEL. CONSTITUCIONAL E ADMINISTRATIVO. AÇÃO ORDINÁRIA DE COBRANÇA. PAGAMENTO DE SALÁRIOS ATRASADOS. FICHAS FINANCEIRAS. AUSÊNCIA DE DEMONSTRAÇÃO DO ADIMPLEMENTO DA OBRIGAÇÃO PELO ENTE MUNICIPAL. ÔNUS QUE LHE INCUMBIA. APELO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. Trata-se de Recurso de Apelação adversando sentença prolata pelo Juízo da comarca de Umari, que julgou improcedente o pedido formulado na exordial dos autos da Ação Ordinária, interposta em desfavor do Município de Umari. 2. A Autora, exercendo o cargo de Secretária Municipal de Administração do Município de Umari, deixou de receber verbas trabalhistas, referentes aos meses de setembro, outubro, novembro e dezembro de 2012, motivo pelo qual pleiteia a condenação do ente municipal ao pagamento dos salários atrasados. 3. É pacífico, neste Tribunal e nos Tribunais Pátrios, o entendimento de que, na Ação de Cobrança de vencimentos atrasados movida em face da Fazenda Pública, cabe ao autor comprovar o vínculo funcional, segundo estabelecido no art. 373, I do NCPC e à Fazenda Pública comprovar a realização dos pagamentos. 4. Conforme consta nos autos, restou comprovado o vínculo funcional existente entre a autora e a Administração Pública. 5. O Município de Umari não logrou êxito em rechaçar a pretensão autoral, no sentido de demonstrar o pagamento alusivo aos meses de setembro, outubro, novembro e dezembro de 2012, através de seus dados internos, juntando apenas as fichas financeiras produzidas unilateralmente pelo recorrido, insuficientes para a comprovação do efetivo adimplemento da obrigação, porquanto, retratam informações nos assentamentos funcionais do servidor. 6. Recurso de Apelação conhecido e provido. Sentença reformada. (Apelação Cível nº 0000097-35.2013.8.06.0217; Rel.: TEREZE NEUMANN DUARTE CHAVES; Comarca: Umari; Órgão julgador: 3ª Câmara de Direito Público; Data do julgamento: 03/04/2019). (destacado)</p><p style="line-height:1.2;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">APELAÇÃO CÍVEL. CONSTITUCIONAL/ADMINISTRATIVO. PROCESSUAL CIVIL. SERVIDOR PÚBLICO MUNICIPAL. COMPROVAÇÃO DO TRABALHO NOTURNO. DIREITO AO RECEBIMENTO DO RESPECTIVO ADICIONAL. PAGAMENTO DOS SALÁRIOS REFERENTES AOS MESES DE DEZEMBRO DE 2008 E DEZEMBRO DE 2012. NÃO DEMONSTRAÇÃO DO ADIMPLEMENTO POR PARTE DO MUNICÍPIO. VALORES DEVIDOS. <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-

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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">PRECEDENTES DESTA CORTE, DO STJ E DO STF. RECURSO NÃO PROVIDO. SENTENÇA MANTIDA. 1. Tratam os autos de apelação cível em face de sentença que decidiu pela parcial procedência do pedido inicial, a fim de condenar a municipalidade ao pagamento dos salários relativos aos meses 12/08 e 12/12, bem como, a diferença do adicional noturno pleiteado. 2. O art. 7º, IX da Constituição Federal de 1988 garante a percepção da "remuneração do trabalho noturno superior à do diurno". 3. Importante destacar que o art. 71, do Estatuto dos Servidores Públicos do Município de Chorozinho estabelece que "O serviço noturno, prestado em horário compreendido entre 22 horas de um dia e 5 horas do dia seguinte, terá o valor/hora acrescido de 25% (vinte e cinco por cento), computando-se cada hora como 52 minutos e trinta segundos". 4. Sendo assim, a teor do que dispõe o enunciado da Súmula nº 213 do Supremo Tribunal Federal, ainda que o servidor tenha trabalhado em regime de plantão, é devido o adicional noturno. 5. No que diz respeito ao recebimento dos salários referentes aos meses de dezembro de 2008 e dezembro do ano de 2012, certo é que não houve a demonstração do efetivo pagamento por parte do apelante, em razão da juntada unicamente de ficha financeira que, isoladamente, não serve como prova. 6. Assim, não tendo o ente público se desincumbido de seu ônus da prova no momento oportuno, há que se reconhecer o improvimento do apelo. 7. Apelação conhecida e não provida. (Apelação Cível nº 0003541-38.2013.8.06.0068; Relator (a): ROSILENE FERREIRA FACUNDO - PORT. 1392/2018; Comarca: Chorozinho; Órgão julgador: 3ª Câmara de Direito Público; Data do julgamento: 24/06/2019; Data de registro: 24/06/2019). (destacado)</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Assim, procedeu acertadamente o Juízo a quo, quando deu total procedência à ação ordinária, condenando o Município de Potiretama/CE ao pagamento dos salários atrasados ao servidor público, referentes aos meses de novembro e dezembro de 2020, devidamente corrigidos e atualizados.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Permanecem, então, totalmente inabalados os fundamentos de seu decisum, devendo ser integralmente confirmado por este Tribunal.”</p><p style="line-height:1.7999999999999998;margin-left: -1pt;text-indent: 114.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:3pt;" dir="ltr">Uma detida análise do caso permite concluir que o decisum utilizou-se de adequada fundamentação acerca da matéria, valorando os argumentos apresentados pelos litigantes e, mediante desenvolvimento de raciocínio lógico e coerente, empregou à lide solução que pode ser facilmente compreendida mediante simples interpretação literal de suas disposições.</p><p style="line-height:1.7999999999999998;margin-left: -1pt;text-indent: 114.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:3pt;"

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	dir="ltr">Especificamente acerca da suposta omissão apontada pelo embargante, ainda que esta não tenha sido verificada, cumpre tecer as seguintes considerações.</p><p style="line-height:1.7999999999999998;margin-left: -1pt;text-indent: 114.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:3pt;" dir="ltr">Esta Corte de Justiça, em diversas oportunidades, tem manifestado entendimento no sentido de que, em situações como a do caso em apreço, aplica-se a Teoria da Carga Dinâmica da Prova, segundo a qual o ônus probatório deve ser imputado à parte que, dadas as circunstâncias, tenha melhores condições para dele se desincumbir.</p><p style="line-height:1.7999999999999998;margin-left: -1pt;text-indent: 114.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:3pt;" dir="ltr">Nesse diapasão, cabia ao autor somente demonstrar a existência de vínculo efetivo com a edilidade, comprovando a constituição do seu direito e, ao ente público demandado, o ônus de demonstrar que já teria pago os valores atrasados exigidos na ação. Isso porque, toda a documentação referente aos servidores municipais está em poder da Administração Pública, sendo possível demostrar facilmente a existência de tais fatos impeditivos, modificativo ou extintivos do direito do autor, conforme determina o art. 373, inciso II, do Código de Processo Civil, o que não ocorreu nos autos. <br /> Assim, conclui-se, que além de irrazoável determinar que o autor produza provas contra si mesma, há que se ressaltar que não pode o embargante, após ser beneficiado pelo serviço prestado, alegar ausência de prova sob pena de

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	locupletamento ilícito.</p><p style="line-height:1.7999999999999998;margin-left: -1pt;text-indent: 114.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:3pt;" dir="ltr"> Logo, a outra conclusão não se pode chegar, senão que o embargante, inconformado com o resultado do julgamento, alega a ocorrência de vício cuja existência não logrou êxito em demonstrar.</p><p style="line-height:1.7999999999999998;margin-left: -1pt;text-indent: 114.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:3pt;" dir="ltr"> Ademais, há que se ressaltar que perquirir acerca do acerto ou desacerto da interpretação adotada por este Tribunal é medida reservada às vias recursais próprias, não cabendo à parte descontente se utilizar dos embargos de declaração para este fim, ainda que considere que o resultado final não se afigura consentâneo à melhor aplicação do direito.</p><p style="line-height:1.7999999999999998;margin-left: -1pt;text-indent: 114.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:3pt;" dir="ltr">Inclusive, ainda que assim não o fosse, há que se destacar firme posição do STJ de que o Órgão Julgador não está obrigado a analisar detalhadamente todas as questões levantadas pelas partes, respondendo-as uma a uma, desde que a conclusão do seu decisum se encontre bem fundamentada:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">“EMBARGOS DE DECLARAÇÃO NO AGRAVO REGIMENTAL NO RECURSO EM MANDADO DE SEGURANÇA. CONCURSO PARA ESCRIVÃO DE POLÍCIA CIVIL. TESTE DE APTIDÃO FÍSICA - TAF. EXIGÊNCIA. EXPRESSA PREVISÃO LEGAL. LEGALIDADE. OMISSÃO. CONTRADIÇÃO. INOCORRÊNCIA. 1. O cabimento dos embargos de declaração se dá apenas nas hipóteses previstas no art. 1.022 do CPC: para sanar obscuridade ou contradição no acórdão, ou ainda para elidir omissão, pronunciando-se sobre ponto essencial. Não é essa a hipótese dos autos, em que o acórdão se apresenta adequadamente fundamentado e as teses do recurso foram integralmente examinadas e repelidas, resultado que não foi, afinal, aquele que o recorrente desejou. 2. Mas ainda que assim não fosse, é certo que o juiz, desde que fundamente sua decisão, não está obrigado a se manifestar sobre todos os argumentos suscitados pelas partes. Quanto a isso, a jurisprudência desta Corte é farta em precedentes. 3. Em conclusão, não há omissão a sanar. As alegações do embargante são, em síntese, reiteração dos argumentos anteriormente apresentados nas razões

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	recursais e revelam, quanto aos pontos suscitados, tão somente irresignação com o que foi decidido por esta Primeira Turma. Todavia, os declaratórios não constituem a via adequada para o simples reexame do julgado. 4. Ainda que manejados com finalidade de prequestionamento, os embargos de declaração demandam a ocorrência de algum dos vícios constantes do art. 1.022 do CPC. 5. Embargos de declaração rejeitados.” (EDcl no AgRg no RMS 47.139/MA, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA TURMA, julgado em 05/10/2017, DJe 19/10/2017) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: -1pt;text-indent: 114.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Portanto, o que se observa é uma tentativa de rediscussão da matéria, o que é vedado nesta via estreita. Desta forma, há vários precedentes deste Tribunal e, por todos, o enunciado da súmula 18 do TJCE:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> SÚMULA N. 18 DO TJCE: “SÃO INDEVIDOS EMBARGOS DE DECLARAÇÃO QUE TÊM POR ÚNICA FINALIDADE O REEXAME DA CONTROVÉRSIA JURÍDICA JÁ APRECIADA”.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> De outro modo: os embargos declaratórios não possuem o condão de devolver mais uma vez a apreciação da matéria já decidida, ainda que a mesma se apresente de maneira que a parte vencida a considere imprecisa ou injusta.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Em suma: nos presentes embargos de declaração, recurso que possui nítida natureza jurídica processual, com o objetivo de integrar o acórdão embargado, não há que se falar em omissão diante de matéria tão exaustivamente estudada e discutida.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">No que diz respeito ao prequestionamento, é lição comezinha que o embargante deve ater-se às hipóteses previstas no art. 1.022 do CPC conforme já restou assentado pelo Órgão Especial deste Sodalício, consoante acórdão a seguir ementado:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">&#160;“PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRAVO REGIMENTAL NO MANDADO DE SEGURANÇA. OMISSÃO. INEXISTÊNCIA. APRECIAÇÃO DAS MATÉRIAS ARGUÍDAS. AUSÊNCIA DE ENQUADRAMENTO EM QUAISQUER DAS HIPÓTESES ELENCADAS NO ART. 1.022 DO CPC/2015. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. PREQUESTIONAMENTO.

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	INVIABILIDADE. RECURSO CONHECIDO E DESPROVIDO. 1. Os embargos de declaração têm como escopo completar ou aclarar as decisões judiciais que tenham pontos omissos, obscuros ou contraditórios, sendo a presença destes vícios o pressuposto de admissibilidade dessa espécie recursal. 2. "A jurisprudência do Superior Tribunal de Justiça consolidou entendimento no sentido de que, em se tratando de redução de vencimentos e não de supressão, está configurada a relação de trato sucessivo, com a renovação mensal do prazo decadencial para a impetração do mandado de segurança." (STJ – MS 12413/DF – Rel. Min. Og Fernandes, Terceira Seção, julgado em 13/03/2013, Dje 21/03/2013) 3. "O servidor público não possui direito adquirido a regime jurídico, tampouco a regime de vencimentos ou de proventos, sendo possível à Administração promover alterações na composição remuneratória e nos critérios de cálculo, como extinguir, reduzir ou criar vantagens ou gratificações, instituindo o subsídio, desde que não haja diminuição no valor nominal percebido, em respeito ao princípio constitucional da irredutibilidade de vencimentos." (STJ – AgRg no RMS 43259/MS, Rel. Min. Herman Benjamin, Segunda Turma, julgado em 22/10/2013, Dje 09/12/2013). 4. O tema tratado no acórdão que se pretende levar à análise dos Tribunais Superiores não precisa, novamente, através de prequestionamento, ser decidido em embargos de declaração. 5. O prequestionamento deve pautar-se no disposto do art. 1.022, do Código de Processo Civil/2015; ausentes quaisquer dos vícios elencados no referido artigo, não é devida a declaração requerida. 6.Incidência da Súmula nº 18/TJCE que aduz: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada". 7. Recurso conhecido e desprovido." (ED 0626694-90.2015.8.06.0000; Relator(a): ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca: Fortaleza; Órgão julgador: Órgão Especial; Data do julgamento: 02/03/2017; Data de registro: 02/03/2017; Outros números: 626694902015806000050001) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:0pt;" dir="ltr"> Desta forma, inexistente o vício apontado, a manutenção do acórdão recorrido é medida que se impõe.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:6pt;" dir="ltr">Diante do exposto, em face da inexistência de qualquer obscuridade, contradição, omissão ou erro material no julgado, conheço dos aclaratórios para NEGAR-LHES provimento, mantendo inalterado o acórdão embargado.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> Fortaleza, 18 de novembro de 2024.</p><p align="center"> <strong id="docs-internal-guid-6a275f7a-7fff-8168-08a7-c3d49b530781" style="font-weight:normal;"> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:9pt;margin-bottom:9pt;"

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	dir="ltr"> Juíza Convocada DRA. ELIZABETE SILVA PINHEIRO</p><p align="center">&#160;</p><p style="line-height:1.2;text-align: center;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Portaria 1550/2024</p><div> <br /> </div><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	88
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	ESTADO DO CEARA FORTALEZA CARTORIO SEGUNDO OFICIO DE NOTAS E PROT TITUL EDGAR LIMA MAGALHAES FRANCISCO HUDSON FERREIRA DE CARVALHO
Advogado(s) - Polo ativo	Não informado
Polo passivo	FRANCISCO HUDSON FERREIRA DE CARVALHO EDGAR LIMA MAGALHAES CLAUDIO MARTINS ESTADO DO CEARA FORTALEZA CARTORIO SEGUNDO OFICIO DE NOTAS E PROT TITUL José Macêdo da Silva
Advogado(s) - Polo passivo	JEAN BRUNO TERTO MONTENEGRO - (CE27223-A) JEAN BRUNO TERTO MONTENEGRO - (CE27223-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA CLAUDIO MARTINS

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xAHatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

Processo	0158778-67.2016.8.06.0001

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alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;0158778-67.2016.8.06.0001 - &#160;APELAÇÃO CÍVEL (198) </p><p> APELANTE: ESTADO DO CEARA, FORTALEZA CARTORIO SEGUNDO OFICIO DE NOTAS E PROT TITUL, EDGAR LIMA MAGALHAES, FRANCISCO HUDSON FERREIRA DE CARVALHO </p><p> APELADO: FRANCISCO HUDSON FERREIRA DE CARVALHO, EDGAR LIMA MAGALHAES, CLAUDIO MARTINS, ESTADO DO CEARA, FORTALEZA CARTORIO SEGUNDO OFICIO DE NOTAS E PROT TITUL, JOSÉ MACÊDO DA SILVA </p><p> A3 </p><p> <br /> </p><p style="text-align: center;">&#160;</p><div class="OutlineElement Ltr SCXW254943653 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial,

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	Verdana, sans-serif; font-size: 12px;"> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <strong> Ementa: Civil e processual civil. Recursos de apelação . A ção ordinária de indenização por danos materiais e morais.&#160; Contrato de compra e venda imobiliária por procuração pública. Instrumento público lavrado mediante fraude. Erro grosseiro. Falha na prestação do serviço público. Dano moral.&#160;C onfigurado . Dano material. Não comprovado. Sentença de parcial procedência . Recursos conhecidos e não providos. Decisão m antida. <span class="EOP SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 24.6px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-

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	serif;">&#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> I. Caso em exame &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 0 1 . Trata-se de&#160;Recursos de Apelação (Id 0012362602 e 12362606)

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	, contra sentença em Ação Ordinária de Indenização por Danos Materiais e Morais&#160;proposta por Francisco Hudson Ferreira de Carvalho e Edgar Lima Magalhães, em desfavor do&#160;Estado do Ceará, do&#160;2º Ofício de Notas da Comarca de Fortaleza, de Cláudio Martins (Tabelião Titular) e José Macêdo da Silva (Tabelião Substituto), pretendendo a compensação por danos materiais e morais decorrentes de falha na prestação do serviço notarial. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 02. A sentença apelada&#160; (Id 0012362597) rejeitou a preliminar de ilegitimidade passiva suscitada pelo Estado do Ceará , excluiu da lide o Cartório do 2º Ofício de Notas da Comarca de Fortaleza/CE e José Macêdo da Silva (Tabelião Substituto), para, <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-

Processo	0158778-67.2016.8.06.0001
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; line-height: 24.6px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> no mérito, julg ar parcialmente procedentes os pedidos dos autores, para rejeitar a pretensão de reparação material, por ausência de provas e, acolher o pleito de reparação moral, condena ndo o Estado do Ceará e o Tabelião Titular, Cláudio Martins, solidariamente, ao pagamento a cada um dos demandantes da quantia de R$ 15.000,00 (quinze mil reais) . &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. Questão em discussão &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW41204679 BCX0" style="-

Processo	0158778-67.2016.8.06.0001
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 24.6px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">03 . A controvérsia dos autos cinge em aferir a responsabilidade civil do Estado d o Ceará e do titular do cartório na reparação, por eventuais danos materiais e morais, em razão de distrato de contrato de compra e venda imobiliária celebrado por procuração pública, em que se constatou ter sido lavrada mediante fraude , e, configurada a responsabilidade , se o valor fixado pela instância a quo , a título de indenização por danos morais <span class="NormalTextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0158778-67.2016.8.06.0001
	transparent; margin: 0px; padding: 0px; user-select: text;">, deve ser majorado e, ainda, se procede o pleito de reparação material . &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> III. Razões de decidir &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 04. De acordo com o Tema 777 do STF, “O Estado responde, objetivamente, pelos atos dos tabeliães e registradores oficiais que, no exercício de suas funções, causem danos a terceiros, assentado o dever de regresso contra o responsável, nos casos de dolo ou culpa, sob pena de improbidade administrativa” , <span class="NormalTextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-

Processo	0158778-67.2016.8.06.0001
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">motivo pelo qual deve ser rejeitada a p reliminar de ilegitimidade passiva ad caus am arguida pelo Estado do Ceará. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 05 . Também não prospera a tese de excludente de ilicitude (fato de terceiro), suscitada pelo ente público estadual , uma vez que o abalo injustamente infligido aos autores, embora decorrente de distrato de contrato de venda imobiliária f irmado mediante fraude&#160; entre particulares, é consequência direta da má qualidade do serviço público prestado pelo delegatário do cartório que, mesmo

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	diante de documentos públicos notoriamente falsos, pois confeccionados com erro grosseiro, permitiu fosse lavrada a procuração pública com base na qual foi formalizada a negociação desfeita.</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 06. A irregularidade na lavratura de procuração pública, que resultou na formalização de negócio ilícito (compra e venda imobiliária mediante fraude) em prejuízo às partes demandantes, é fato incontroverso, porquanto, além de comprovado por perícia oficial, não foi impugnada pelo Estado do Ceará, nem pelos demais demandados, que não contestaram a ação e não recorreram da sentença, importando reconhecer que o decisum , neste ponto, encontra-se protegido pela coisa julgada.</p> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 7 . A verba indenizatória fixada na instância <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; font-style: italic; line-height: 24.6px; font-family: Arial,

Processo	0158778-67.2016.8.06.0001
	Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">a quo , a título de reparação moral, no valor de R$ 15.000,00 (quinze mil reais) para cada demandante, se mostra, diante das circunstâncias do caso concreto, justa e adequada à reparação moral pretendida, eis que obedecidos os critérios da proporcionalidade e razoabilidade, sendo observado, ainda, o padrão adotado por esta Corte de Justiça em casos semelhantes. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 08. Quanto ao dano patrimonial, cumpria aos autores fazer prova mínima do alegado, na forma do art. 373, inciso I, do CPC, ônus do qual não se desincumbiram. Correta, portanto, a sentença que jugou improcedente o pedido autoral nesta arte. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> IV. Dispositivo e tese &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve;

Processo	0158778-67.2016.8.06.0001
	vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 9 . Recursos de apelação conhecidos e não providos. Sentença mantida. Custas pelos recorrentes, observada, em relação ao Estado do Ceará, a isenção da Lei Estadual nº 16.132/2016 (art. 5º, inc. V) e, aos autores, a suspensão do art. 98, § 3º do CPC. Honorários de advogado, conforme fixad o na sentença apelada, majorados, na forma do § 11 do art. 85 do CPC, em 2% (dois por cento), para torná-los definitivos em 12% (doze por cento). &#160; &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 10. Tese de julgamento: <span class="NormalTextRun

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	SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">“ O Estado responde, objetivamente, pelos atos dos tabeliães e registradores oficiais que, no exercício de suas funções, causem danos a terceiros, assentado o dever de regresso contra o responsável, nos casos de dolo ou culpa, sob pena de improbidade administrativa (Tema 777 do STF). C omprovado o evento danoso e o nexo de causalidade , decorrente da má qualidade do serviço prestado pelo delegatário da serventia extrajudicial, com consequências para os auto res , surge o dever de reparação pelo dano extrapatrimonial causado . De outro lado, não se

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	desincumbindo os demandantes do ônus de provar o dano material, a improced ência do pedido nesta parte é medida que se impõe. ” &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> -- &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dispositivos relevantes citados: A rtigo 37, § 6º, da Constituição Federal; Art. 944 do Código Civil; Ar t. 373, inciso I <span

Processo	0158778-67.2016.8.06.0001
	class="NormalTextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">do CPC. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada: Tema 777 do STF; RE 842846, Relator (a): LUIZ FUX, Tribunal Pleno, julgado em 27-02-2019, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe- 175&#160;DIVULG 12-08- 2019&#160;PUBLIC 13-08-2019; REsp n. 1.849.994/DF, relator Ministro Moura Ribeiro, Terceira Turma, julgado em 21/3/2023, DJe de 24/3/2023; AgInt no AREsp n. 528.197/RJ, relator Ministro <span class="NormalTextRun SpellingErrorV2Themed SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--

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	urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">Antonio Carlos Ferreira, Quarta Turma, julgado em 30/9/2019, DJe de 3/10/2019; STJ - REsp: 959780 ES 2007/0055491-9, Relator: Ministro PAULO DE TARSOSANSEVERINO, Data de Julgamento: 26/04/2011, T3 - TERCEIRA TURMA, Data de Publicação: DJe 06/05/2011; TJCE: Apelação Cível - 0003629-60.2013.8.06.0041, Rel. Desembargador(a) LISETE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento:&#160; 25/11/2019, data da publicação:&#160; 26/11/2019 . &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 24.6px; font-family: Arial, Arial_EmbeddedFont,

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	Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: &#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade , em conhecer dos Recursos de Apelação para NEGAR-LHES PROVIMENTO, nos termos do voto do relator.</p> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">&#160;</p> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;

Processo	0158778-67.2016.8.06.0001
	overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 11px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 11px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 11px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relator &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe

Processo	0158778-67.2016.8.06.0001
	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe

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	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 38px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center; text-indent: -38px;"> RELAT ÓRIO &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Tratam os autos de Recursos de Apelação contra sentença do Juízo de Direito da 5ª Vara da Fazenda Pública da Comarca de Fortaleza/CE (Id 12362597), na Ação Ordinária com Pedido de Indenização por Danos Materiais e Morais proposta por Francisco Hudson Ferreira de Carvalho <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;

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	font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">e Edgar Lima Magalhães em desfavor do Estado do Ceará , do 2º Ofício de Notas da Comarca de Fortaleza , de Cláudio Martins (Tabelião Titular) e José Macêdo da Silva (Tabelião Substituto) , objetivando a compensação por danos morais decorrente de falha na prestação do serviço notarial. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Decisão recorrida: a)

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	deferiu o pedido de justiça gratuita formulado pelos autores Francisco Hudson Ferreira de Carvalho e Edgar Lima Magalhães; b) declarou a ilegitimidade do 2º Ofício de Notas da Comarca de Fortaleza e do particular José Macêdo da Silva para figurar no polo passivo da demanda; c) rejeitou a preliminar de ilegitimidade passiva suscitada pelo Estado do Ceará d) e, por fim, julgou parcialmente procedentes os pedidos formulados pelos autores, extinguindo o processo com resolução de mérito, nos termos do art. 487, I, do Código de Processo Civil, para condenar o Estado do Ceará e o Tabelião Cláudio Martins, solidariamente, ao pagamento a cada um dos autores da quantia de R$ 15.000,00 (quinze mil reais), a título de compensação por danos morais, tomando-se por base o binômio do equilíbrio (desestímulo da conduta ilegal e evitar o enriquecimento ilícito do lesado). Condenou os autores e réus em custas judiciais, dispensando o ente estatal de tal pagamento, na forma da Lei estadual 16.132/2016, e, quanto aos autores , suspendeu a exigibilidade, ante a gratuidade processual deferida. Remessa necessária dispensada com base no art. 496, §3º, II, do Código de Processo Civil (ID Nº 0012362597) . &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Recurso de apelação do Estado do Ceará (Id 0012362602) em que requer a reforma da sentença proferida para, em sede de preliminar, reconhecer a ilegitimidade passiva do Estado, excluindo-o da lide; superada a preliminar, no mérito, reforme a sentença para julgar

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	improcedentes todos os pedidos requestados na exordial. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Recurso de apelação de Francisco Hudson Ferreira de Carvalho e Edgar Lima Magalhães (Id 12362606) pretendendo a reforma da sentença de mérito, para que sejam julgados procedentes os pedidos formulados na inicial, determinando a condenação das partes nos danos materiais, conforme fatos e fundamentos e valores já apresentados na inicial e nos contratos anexos; a reforma a sentença de mérito, para que sejam julgados procedentes os pedidos formulados na inicial, com a majoração dos danos morais, conforme fatos e fundamentos e valo res já apresentados na inicial e contratos anexos; e, c) que sejam apreciados os demais pedidos apresentados na inicial, bem como as suas procedências. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Contrarrazões <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none !important;" lang="PT-BR"

Processo	0158778-67.2016.8.06.0001
	xml:lang="PT-BR">do Estado do Ceará (Id 12362609), não sendo apresentadas contrarrazões por parte de Francisco Hudson Ferreira de Carvalho e Edgar Lima Magalhães . &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Os demais réus, 2º Ofício de Notas da Comarca de Fortaleza , Cláudio Martins (Tabelião Titular) e José Macêdo da Silva (Tabelião Substituto) <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12.5pt; line-height: 30px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none

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	!important;" lang="PT-BR" xml:lang="PT-BR">, intimados da sentença (Id 12362597) , não recorreram, nem apresentaram contrarrazões. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Remessa necessária dispensada com base no art. 496, § 3º, II, do Código de Processo Civil. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Manifestação da Procuradoria da Justiça pelo conhecimento dos Recursos de Apelação, vez que presentes os pressupostos de admissibilidade, porém, deixa de apreciar o mérito, por desnecessária a sua intervenção, ante a inexistência de interesse público na demanda (ID 12522171). &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> É o relatório. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe

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	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Presentes os pressupostos de admissibilidade, conheço dos recursos. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> O caso, já adianto, é de não provimento das apelações. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-

Processo	0158778-67.2016.8.06.0001
	select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Inicialmente, ausentes elementos capazes de infirmar a presunção de veracidade da declaração de hipossuficiência firmada pelos autores e de impugnação específica, defiro o pedido de gratuidade judiciária reiterado nesta instância recursal.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Cinge a análise em aferir a higidez da sentença recorrida que, reconhecendo que houve falha na prestação de serviço da serventia extrajudicial, sobretudo quando considerado que o negócio jurídico que vitimou os autores apenas ganhou aspecto de legalidade em razão da lavratura da procuração pública mediante o 2º Ofício de Notas da Comarca de Fortaleza (ID 46274171), desencadeando inegável abalo às vítimas do ilícito narrado, julgou parcialmente procedentes os pedidos autorais para, rejeitando o pleito de rep aração material, em virtude da ausência de prova da sua ocorrência, e condenar o Estado do Ceará o Tabelião Cláudio Martins , solidariamente, ao pagamento a cada um dos autores da quantia de R$15.000,00 (quinze mil reais), a título de reparação moral.&#160; &#160; &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph

Processo	0158778-67.2016.8.06.0001
	SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> I – DA APELAÇÃO DO ESTADO DO CEARÁ: &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Sustenta o ESTADO DO CEARÁ <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px;

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	font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">, preliminarmente, sua ilegitimidade passiva ad causam e, caso superada a preliminar, a ausência de responsabilidade da sua parte, eis que não pode ser imputado à Administração Pública Estadual qualquer ato lesivo em desfavor às partes autoras, na medida em que, na espécie, o dano foi causado por ato de terceiros, excludente equiparada a força maior, eximindo-a, portanto, de qualquer responsabilidade, sendo o caso, pois, de improcedência dos pedidos autorais em relação ao recorrente . &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Os fatos narrados na exordial, irregularidade na lavratura de procuração pública, que resultou na formalização de negócio ilícito (compra e venda imobiliária mediante fraude) em prejuízo às partes demandante, são incontroversos, porquanto não impugnados pelo Estado do Ceará, cuja contestação e apelação estão limitadas, reitera-se, na arguição de preliminar de ilegitimidade passiva ad causam e, no mérito, em excludente de ilicitude (fato de terceiro), nem pelos demais demandados, que não contestaram a ação e não recorreram da sentença, importando reconhecer que o decisum , neste ponto, encontra-se protegido pela coisa julgada. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-

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	select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Com efeito, a responsabilidade civil do Estado traduz-se, nos moldes do disposto no artigo 37, § 6º, da Constituição Federal, como objetiva, dispensando a comprovação da culpa estatal: &#160; </p> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> <br /> </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> § 6º As pessoas jurídicas de direito público e as de direito privado prestadoras de serviços públicos responderão pelos danos que seus agentes, nessa qualidade, causarem a terceiros, assegurado o direito de regresso contra o responsável nos casos de dolo ou culpa. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; line-

Processo	0158778-67.2016.8.06.0001
	height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">Feito o destaque, segundo o Tema 777 do STF, “O Estado responde, objetivamente, pelos atos dos tabeliães e registradores oficiais que, no exercício de suas funções, causem danos a terceiros, assentado o dever de regresso contra o responsável, nos casos de dolo ou culpa, sob pena de improbidade administrativa” . &#160;</p> </div> <div class="SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;"> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Esta é a ementa do julgado, in verbis : &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMENTA: DIREITO ADMINISTRATIVO. RECURSO EXTRAORDINÁRIO. REPERCUSSÃO GERAL. DANO MATERIAL. ATOS E OMISSÕES DANOSAS DE NOTÁRIOS E REGISTRADORES. TEMA 777. ATIVIDADE DELEGADA. RESPONSABILIDADE CIVIL DO DELEGATÁRIO E DO ESTADO EM DECORRÊNCIA DE DANOS CAUSADOS A TERCEIROS POR TABELIÃES E OFICIAIS DE REGISTRO NO EXERCÍCIO DE SUAS FUNÇÕES. SERVENTIAS EXTRAJUDICIAIS. ART. 236, §1º, DA CONSTITUIÇÃO DA REPÚBLICA. RESPONSABILIDADE OBJETIVA DO ESTADO PELOS ATOS DE TABELIÃES E REGISTRADORES OFICIAIS QUE, NO EXERCÍCIO DE SUAS FUNÇÕES, CAUSEM DANOS A TERCEIROS, ASSEGURADO O DIREITO DE REGRESSO CONTRA O RESPONSÁVEL NOS CASOS DE DOLO OU CULPA. POSSIBILIDADE. 1. Os serviços notariais e de registro são exercidos em carát er privado, por delegação do Poder Público. Tabeliães e registradores oficiais são particulares em colaboração com o poder público que exercem suas atividades in nomine do Estado, com lastro em delegação prescrita expressamente no tecido constitucional (art. 236, CRFB/88). 2. Os tabeliães e registradores oficiais exercem função munida de fé pública, que destina-se a conferir autenticidade, publicidade, segurança e eficácia às declarações de vontade. 3. O ingresso na atividade notarial e de registro depende de concurso público e os atos de seus agentes estão sujeitos à fiscalização do Poder Judiciário, consoante expressa determinação constitucional (art. 236, CRFB/88). Por exercerem um feixe de competências estatais, os titulares de serventias extrajudiciais qualificam-se como agentes públicos. 4. O Estado responde, objetivamente, pelos atos dos tabeliães e registradores oficiais que, no exercício de suas funções, causem dano a terceiros, assentado o dever de regresso contra o responsável, nos casos de dolo ou <span class="NormalTextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text;">culpa, sob pena de improbidade administrativa. Precedentes: RE 209.354 AgR , Rel. Min. Carlos Velloso, Segunda Turma, DJe de 16/4/1999; RE 518.894 AgR , Rel. Min. Ayres Britto, Segunda Turma, DJe de 22/9/2011; RE 551.156 AgR , Rel. Min. Ellen Gracie, Segunda Turma, DJe de 10/3/2009; AI 846.317 AgR , Relª . Minª. Cármen Lúcia, Segunda Turma, <span

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	class="NormalTextRun SpellingErrorV2Themed SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">DJe de 28/11/13 e RE 788.009 AgR , Rel. Min. Dias Toffoli, Primeira Turma, julgado em 19/08/2014, DJe 13/10/2014. 5. Os serviços notariais e de registro, mercê de exercidos e m caráter privado, por delegação do Poder Público (art. 236, CF/88), não se submetem à disciplina que rege as pessoas jurídicas de direito privado prestadoras de serviços públicos. É que esta alternativa interpretativa, além de inobservar a sistemática da aplicabilidade das normas constitucionais, contraria a literalidade do texto da Carta da República, conforme a dicção do art. 37, § 6º, que se refere a “pessoas jurídicas” prestadoras de serviços públicos, ao passo que notários e tabeliães respondem civilm ente enquanto pessoas naturais delegatárias de serviço público, consoante disposto no art. 22 da Lei nº 8.935/94. 6. A própria constituição determina que “lei regulará as atividades, disciplinará a responsabilidade civil e criminal dos notários, dos oficiais de registro e de seus prepostos, e definirá a fiscalização de seus atos pelo Poder Judiciário” (art. 236, CRFB/88), não competindo a esta Corte realizar uma interpretação analógica e extensiva, a fim de equiparar o regime jurídico da responsabilidade ci vil de notários e registradores oficiais ao das pessoas jurídicas de direito privado prestadoras de serviços públicos (art. 37, § 6º, CRFB/88). 7. A responsabilização objetiva depende de expressa previsão normativa e não admite interpretação extensiva ou ampliativa, posto regra excepcional, impassível de presunção. 8. A Lei 8.935/94 regulamenta o art. 236 da Constituição Federal e fixa o estatuto dos serviços notariais e de registro, predicando no seu art. 22 que “os notários e oficiais de registro são civi lmente responsáveis por todos os prejuízos que causarem a terceiros, por culpa ou dolo, pessoalmente, pelos substitutos que designarem ou escreventes que autorizarem, assegurado o direito de regresso. (Redação dada pela Lei nº 13.286, de 2016)”, o que configura inequívoca responsabilidade civil subjetiva dos notários e oficiais de registro, legalmente assentada. 9. O art. 28 da Lei de Registros Públicos (Lei 6.015/1973) contém comando expresso quanto à responsabilidade subjetiva de oficiais de registro, bem como o art. 38 da Lei 9.492/97, que fixa a responsabilidade subjetiva dos Tabeliães de Protesto de Títulos por seus próprios atos e os de seus prepostos. 10. Deveras, a atividade dos registradores de protesto é análoga à dos notários e demais registradores, inexistindo <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 10pt; font-style: italic; line-height: 16.1875px; font-family: Arial, Arial_EmbeddedFont,

Processo	0158778-67.2016.8.06.0001
	Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> discrímen que autorize tratamento diferenciado para somente uma determinada atividade da classe notarial. 11. Repercussão geral constitucional que assenta a tese objetiva de que: o Estado responde, objetivamente, pelos atos dos tabeliães e r egistradores oficiais que, no exercício de suas funções, causem dano a terceiros, assentado o dever de regresso contra o responsável, nos casos de dolo ou culpa, sob pena de improbidade administrativa. 12. In casu , tratando-se de dano causado por registrador oficial no exercício de sua função, incide a responsabilidade objetiva do Estado de Santa Catarina, assentado o dever de regresso contra o responsável, nos casos de dolo ou culpa, sob pena de improbidade administrativa. 13. Recurso extraordinário CONHEC IDO e DESPROVIDO para reconhecer que o Estado responde, objetivamente, pelos atos dos tabeliães e registradores oficiais que, no exercício de suas funções, causem dano a terceiros, assentado o dever de regresso contra o responsável, nos casos de dolo ou culpa, sob pena de improbidade administrativa. Tese: “O Estado responde, objetivamente, pelos atos dos tabeliães e registradores oficiais que, no exercício de suas funções, causem dano a terceiros, assentado o dever de regresso contra o responsável, nos caso s de dolo ou culpa, sob pena de improbidade administrativa”. (RE 842846, Relator(a): LUIZ FUX, Tribunal Pleno, julgado em 27-02-2019, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe- 175&#160; DIVULG <span class="NormalTextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text;">12-08- 2019&#160; PUBLIC 13-08-2019). &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> No mesmo sentido o STJ, in verbis : &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;

Processo	0158778-67.2016.8.06.0001
	direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> CIVIL E PROCESSUAL CIVIL. RECURSO ESPECIAL. AÇÃO INDENIZATÓRIA. RESPONSABILIDADE CIVIL DE TABELIÃES E REGISTRADORES. COMPRA E VENDA DE IMÓVEL ULTIMADA COM BASE EM PROCURAÇÃO PÚBLICA CONTENDO ASSINATURA FALSA. EFICÁCIA VINCULANTE DO RE nº 842.846/SC NÃO VERIFICADA NO CASO CONCRETO. PRETENSÃO INDENIZATÓRIA SUBMETIDA A PRAZO PRESCRICIONAL TRIENAL. PRAZO QUE SE INICIOU COM O TRÂNSITO EM JULGADO DA SENTENÇA QUE ANULOU O ATO NOTARIAL. FATOS OCORRIDOS ANTES DA LEI Nº 13.286/2016, QUE MODIFICOU O ART. 22 DA LEI Nº 8.935/94. RESPONSABILIDADE OBJETIVA. RECURSO ESPECIAL NÃO PROVIDO. 1. A eficácia vinculante da tese fixada no julgamento do RE nº 842.846/SC, Relator o Ministro LUIZ FUX, não tem aplicação na hipótese dos autos. 1.1. Naquela oportunidade, o STF examinou, apenas, a responsabilidade civil do Estado por atos comissivos ou omissivos praticados pelos tabeliães e registradores oficiais, esclarecendo que ele responde de forma objetiva, assentado, no entanto, o dever de regresso, nos casos de dolo ou culpa. 1.2. Na hipótese dos autos, não se discute a responsabilidade do Estado, mas sim, a responsabilidade direta do próprio Tabelião em decorrência da má prestação do serviço delegado. 2. Além disso, referida discussão é travada à luz de dispositivos legais não examinados pelo STF no julgamento do mencionado RE nº 842.846/SC (art. 22 da Lei nº 8.935/94 na redação que possuía antes do advento da Lei nº 13.286/2016). 1.3. Ação de indenização por danos materiais e morais por falha na prestação de serviço notarial está sub metida a prazo prescricional de três anos que, no caso, somente começou a fluir após o trânsito em julgado da decisão judicial que certificou a nulidade da escritura pública e do respectivo registro. 2. A responsabilidade civil dos Tabeliães e Registradores por atos da serventia ocorridos sob a égide do art. 22 da Lei nº 8.935/94, em sua redação original, é direta e objetiva, dispensando, portanto, demonstração de culpa ou dolo. 3. Apenas com o advento da Lei nº 13.286/2016 é que esses agentes públicos pass aram a responder de forma subjetiva. 4. Recurso especial não provido. (REsp n. 1.849.994/DF, relator Ministro Moura Ribeiro, Terceira Turma, julgado em 21/3/2023, DJe de 24/3/2023.) <span class="EOP SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height:

Processo	0158778-67.2016.8.06.0001
	16.1875px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> PROCESSUAL CIVIL E CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. RESPONSABILIDADE CIVIL DE TABELIÃO POR ATO DE SERVENTUÁRIO VINCULADO AO PODER JUDICIÁRIO. FUNDAMENTO CONSTITUCIONAL. RECURSO EXTRAORDINÁRIO NÃO INTERPOSTO. SÚMULA N. 126 DO STJ. RESPONSABILIDADE CIVIL DO ESTADO. JULGAMENTO EM RECURSO ESPECIAL SOB O RITO DA REPERCUSSÃO GERAL. 1. Inadmite-se o recurso especial quando não interposto recurso extraordinário contra acórdão assentado em fundamentos constitucional e infraconstitucional, qualquer deles suficiente para manter o julgado recorrido. Súmula n. 126 do STJ. 2. No julgamento do RE n. 842.846/SC, de relatoria do Min. Luiz Fux, cujo acórdão foi publicado em 13/8/2019, o STF fixou a tese de que o Estado responde, objetivamente, pelos atos dos tabeliães e registradores oficiais que, no exercício de suas funções, causem dano a terc eiros, assentado o dever de regresso contra o responsável, nos casos de dolo ou culpa, sob pena de improbidade administrativa. 3. Agravo interno a que se nega provimento. (AgInt no <span class="NormalTextRun

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	SpellingErrorV2Themed SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">AREsp n. 528.197/RJ, relator Ministro Antonio Carlos Ferreira, Quarta Turma, julgado em 30/9/2019, DJe de 3/10/2019.) &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Também não tem razão o Estado do Ceará quando assevera a ocorrência de excludente de ilicitude (fato de terceiro), na medida em que o dano , injustamente infligido aos autores, embora de corrente <span class="NormalTextRun SCXW41204679 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">e celebração de contrato de venda imobiliária , entre particulares, mediante fraude, é consequência direta , isso também é certo, da má qualidade do serviço público prestado pel o oficial d a serventia extrajudicial que, mesmo diante de documentos públicos sabidamente falsos, com erro grosseiro, ainda assim permitiu fosse lavrada a procuração pública , com base na qual foi formalizado o contrato em relevo, result ando em danos aos autores. &#160;</p> </div> <div

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	class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Com estas razões, conheço do recurso de apelação do Estado do Ceará para NEGAR-LHE PROVIMENTO . &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> II – DA APELAÇÃO DOS AUTORES: &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;

Processo	0158778-67.2016.8.06.0001
	overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Pretendem os recorrentes a reforma da sentença, para que seja reconhecido o direito à reparação pelo dano material sofrido e a majoração do dano moral. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; </p> </div> <div class="ListContainerWrapper SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; position: relative;"> <ol class="NumberListStyle4 SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: text; list-style-type: upper-alpha; overflow: visible;"> <li class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 93px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; display: block; font-size: 12pt; font-family: Arial, Arial_MSFontService, sans-serif; vertical-align: baseline;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> DO DANO MATERIAL: &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> <span class="EOP SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt;

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	line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Aduzem, na exordial, que adiantaram, na transação imobiliária fraudulenta, o montante de R$ 131.700,00 (cento e trinta e um mil e setecentos reais), a título de aquisição do bem – parte em espécie, outra mediante entrega de veículos, outra por transferência bancária e outra através de cheques pré-datados –, além de despesas com corretagem. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Desses valores, dizem que R$ 28.000,00 (vinte e oito mil reais), que foram pagos em espécie e por transferência bancária, foram devolvidos, remanescendo um total não restituído de R$ 103.700,00 (cento e três mil e setecentos reais). Esse o valor do dano material alegado. &#160; </p> </div> </div> <div class="SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;"> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Todavia, pelo que consta dos autos nenhum dos pagamentos, realizados e não repetidos, foram direcionados às partes demandadas, mas a particulares, no caso à pessoa de Túlio Venturoti Cardoso (suposto procurador de José Charles Lima Nogueira, Riva Milene Tavares Nogueira e Renata Silveira, reais proprietários dos imóveis adquiridos), e à empresa TB Engenharia, conforme relatado na exordial (Id 12361414, 12361415 e 12361416). &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe

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	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Dito isso, não é demais lembrar que, segundo o art. 944 do Código Civil, a indenização mede-se pela extensão do dano , e, nessa premissa, não se pode olvidar que, embora ausente impugnação específica pelo Estado do Ceará , conforme já destacado no tópico anterior, e de contestação pelos demais demandados, aos autores cumpria fazer prova mínima do alegado, na forma do art. 373, inciso I, do CPC, ônus do qual não se desincumbiram, uma vez que não foram juntados aos autos os respectivos recibos de pagamento, os comprovante da transferência bancária, os extratos bancários em que se constate a compensação dos cheques pré-datados emitidos, também não há comprovação da efetiva transferência/tradição dos veículos aut omotores dados como forma de pagamento. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Nesse raciocínio, destaco trecho da sentença recorrida em que o magistrado a quo , com propriedade, consigna, <span class="NormalTextRun

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	SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">in verbis : &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> No que toca à reparação por danos materiais, deixo consignado que um dos seus requisitos indispensáveis é a comprovação do efetivo prejuízo sofrido. Isso porque a indenização a ser arbitrada é determinada pela extensão do dano (art. 944 do Código Civil), de modo que se ele não comprovado, não há como indicar precisamente qual é a indenização a ser arbitrada. Logo, a ausência de prova inequívoca do dano sofrido inviabiliza o deferimento de qualquer reparação. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> No caso dos autos, apesar da relevância dos argumentos aventados pelos autores, tais afirmações não estão lastreadas de provas do dispêndio realizado. A única prova relacionada ao prejuízo material sofrido é a cópia do contrato firmado entre os autores e suposto estelionatário (<span class="NormalTextRun SpellingErrorV2Themed SCXW41204679

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	BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">IDs 46274168, 46274169 e 46274170), o que, por si só, não é capaz de confirmar o efetivo desembolso do valor pactuado. Não foram apresentadas provas da transferência dos veículos dados em pagamento, das transferências bancárias alega das, tampouco recibos dos valores supostamente pagos em espécie. Os autores, ademais, quando intimados para informar se pretendiam produzir novas provas nos autos, permaneceram silentes (ID 46272697), não requerendo em instrução probatória qualquer meio para comprovar o dano material alegado. Não há nos autos, também, qualquer meio indireto para mensurar os danos sofridos, já que não se tem qualquer indicativo do que foi devidamente desembolsado e o que foi posteriormente restituído. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;">&#160;</p> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Correta a sentença, portanto, que julgou improcedente a pretensão autoral nessa parte.&#160; </p> </div> <div class="ListContainerWrapper SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; position: relative;"> <div style="text-align: justify;"> <br /> </div> <ol class="NumberListStyle4 SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: text; list-style-type: upper-alpha; overflow: visible;"> <li class="OutlineElement Ltr SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 93px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; display: block; font-size: 12pt; font-family: Arial, Arial_MSFontService, sans-serif; vertical-align: baseline;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> DO DANO MORAL: &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent;

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	margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Segundo os autores, no momento da indicação dos danos morais o juízo deveria analisar (1) a ação de lavratura de uma procuração falsa pelo Cartório Martins fora o fator fundamental para que o Requerente fizesse a compra do objeto contratual; e (2) que a documentação apresentada ao Cartório Possuía meios fáceis de que fosse identificado o erro pelo tabelião, e ainda a escrita de forma errada no nome do órgão do governo, entendendo-se assim que tal procuração nunca deveria ter sido lavrada, uma vez que deveria se ter uma atenção extrema nesse tipo de documentação. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> <span class="NormalTextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text;">Continuam afirmando que, no momento em que os se viram com um contrato sem efeitos jurídicos e ainda a enorme repercussão da mídia sobre o caso, perceberam a dimensão do dano que estão sofrendo, não restando dúvida alguma que o desejo de uma negociação sobre o imóvel pelos requerentes foram frustrados, e, juntamente com sua família, setem-se decepcionados, principalmente por ter honrado rigorosamente com suas obrigações contratuais, criando expectativas de acontecimentos futuros com base em falsas promessas baseadas em documentos e mitidos pelo Cartório Martins. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Desse modo, continuam os autores, justamente pela postura correta e honesta que sempre tiveram em suas obrigações, faz crescer em seu s íntimo s o sentimento de que foram prejudicados, enganados, desrespeitados e injustiçados, pois cumpriram com todas as suas obrigações até o presente momento, enquanto , de outro lado, as partes requeridas construíram meios oficiais para o não cumprimento contratual. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve;

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	vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Assim, em face da má-fé do Cartório, de seu tabelião e de seu tabelião substituto, configurada pela lavratura da procuração pública, instrumento principal para a concretização da compra e venda do imóvel, e ainda buscando não sofrer lesões por sua própria conduta irregular, assim como, pelos danos psíquicos e emocionais (angústia, decepção, infortúnio) sofridos em decorrência de toda a situação narrada, requerem seja considerado, como medida pedagógica para inibir novas condutas, o valor equivalente a R$ 17 3.400,00 (Cento e Setenta e Três Mil e Quatrocentos mil reais) a título de reparação moral, correspondente ao valor de mercado do imóvel comprado e ainda equivalente a duas vezes o valor pago inicialmente pelo segundo requerente, a ser dividido na proporção de 35% (trinta e cinco por cento) para o requerente Edgar Lima Magalhães e 65% (sessenta e cinco por cento) para Francisco Hudson Ferreira de Carvalho , considerado o abalo sofrido por cada um deles. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Sem razão os recorrentes. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;

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	font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Como já manifestei em outros julgados, a definição pecuniária dos danos morais é tarefa complexa, uma vez que não existem critérios objetivos para a sua fixação, tendo em vista a dificuldade de valorar bens que, pela sua natureza, não admitem quantificação, merecendo cada caso atenção própria, dadas as suas particularidades. Desse modo, a fixação do valor da reparação depende do grau de culpa do agente, além da extensão do dano. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Na lição de Farias, Netto e Rosenvald (2020, p. 669), "a gravidade objetiva do fato lesivo e suas consequências na subjetividade do ofendido determinarão o montante compensatório" . Além desses parâmetros, a doutrina e a jurisprudência apontam outros critérios a serem levados em consideração, como a condição econômica do ofensor, a vedação ao enriquecimento sem causa, o caráter preventivo, pedagógico e punitivo do dano moral e a razoabilidade para a sua aplicação. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> O STJ vem firmando entendimento quanto à utilização do método bifásico para a quantificação do valor compensatório dos danos extrapatrimoniais. O método visa, basicamente, a individualização do dano, a partir da relação entre a valorização do bem jurídico lesado e as particularidades do caso concreto. A propósito, o seguinte precedente, <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; font-style: italic; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> in verbis : &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> RECURSO ESPECIAL. RESPONSABILIDADE CIVIL. ACIDENTE DE TRÂNSITO. MORTE. DANO MORAL. QUANTUM INDENIZATÓRIO. DISSÍDIO JURISPRUDENCIAL. CRITÉRIOS DE ARBITRAMENTO EQUITATIVO PELO JUIZ. MÉTODO BIFÁSICO. VALORIZAÇÃO DO INTERESSE JURÍDICO LESADO E DAS CIRCUNSTÂNCIAS DO CASO. 1. Discussão restrita à quantificação da indenização por dano moral sofrido pelo esposo da vítima falecida em acidente de trânsito, que foi arbitrado pelo tribunal de origem em dez mil reais. 2. Dissídio jurisprudencial caracterizado com os precedentes das duas turmas integrantes da Segunda Secção do STJ. 3. Elevação do valor da indenização por dano moral na linha dos precedentes desta Corte, considerando as duas etapas que devem ser percorridas para esse arbitramento. 4. Na primeira etapa, deve-se estabel ecer um valor básico para a indenização, considerando o interesse jurídico lesado, com base em grupo de precedentes jurisprudenciais que apreciaram casos semelhantes. 5. Na segunda etapa, devem ser consideradas as circunstâncias do caso, para fixação definitiva do valor da indenização, atendendo a determinação legal de arbitramento equitativo pelo juiz. 6. Aplicação analógica do enunciado normativo do parágrafo único do art. 953 do CC/2002. 7. Doutrina e jurisprudência acerca do tema.8. RECURSO ESPECIAL PRO VIDO. (STJ - REsp: 959780 ES 2007/0055491-9, Relator: Ministro PAULO DE TARSOSANSEVERINO, Data de Julgamento: 26/04/2011, T3 - TERCEIRA TURMA, Data de Publicação: <span class="NormalTextRun SpellingErrorV2Themed SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">DJe 06/05/2011) &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p> </div> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Nessa premissa, embora reconheça a gravidade da conduta do representante legal da serventia extrajudicial, que deixou de observar as cautelas mínimas necessárias quando da lavratura da procuração pública, mormente se considerarmos a falsificação grosseira dos documentos de identidade apresentados, o montante pretendido pelos autores, no caso R$ 173.400,00 (cento e setenta e três mil e quatrocentos reais), foge dos padrões da razoabilidade e da proporcionalidade. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Focado nessa premissa, entendo que a verba indenizatória, fixada na instância a quo no patamar de R$ 15.000,00 (quinze mil reais) para cada demandante, se mostra, diante das circunstâncias do caso concreto, é justa e adequada à reparação moral pretendida, porquanto fixada em observância aos padrões adotados por esta Corte de Justiça em casos semelhantes. <span class="EOP SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-

Processo	0158778-67.2016.8.06.0001
	serif;">&#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> CIVIL. PROCESSUAL CIVIL. ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA DE INDENIZAÇÃO POR DANOS MORAIS. CANCELAMENTO ADMINISTRATIVO DE COMUNICADO DE VENDA DE VEÍCULO. PROCEDIMENTO REALIZADO POR TERCEIRO COM PROCURAÇÃO GROSSEIRAMENTE FALSA DO VENDEDOR. AUSÊNCIA DE ANUÊNCIA OU COMUNICADO AO COMPRADOR. RESPONSABILIDADE OBJETIVA. PRESSUPOSTOS PRESENTES. DANO MORAL CONFIGURADO. QUANTUM EM OBEDIÊNCIA AOS PRINCÍPIOS DA RAZOABILIDADE E DA PROPORCIONALIDADE. PRECEDENTES STJ E TJCE. CONDENAÇÃO DA AUTARQUIA EM CUSTAS . IMPOSSIBILIDADE. NECESSIDADE DE REFORMA. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. SENTENÇA REFORMADA EM PARTE PARA AFASTAR PAGAMENTO DE CUSTAS PELO REQUERIDO. MAJORAÇÃO DOS HONORÁRIOS (ART. 85, § 11 DO CPC). 1. No caso dos autos, como bem concluiu o Juiz singular, diante do arcabouço probatório colhido, a responsabilidade do Departamento Estadual de Trânsito - DETRAN restou reconhecida, bem como comprovado o nexo causal entre o quanto alegado na inicial e o evento dano moral auferido devido a falha no p rocedimento administrativo de cancelamento de comunicação de venda pela Autarquia. 2. In casu <span class="NormalTextRun SCXW41204679 BCX0"

Processo	0158778-67.2016.8.06.0001
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">, o Promovente, após informar venda do veículo conforme preceitos legais vigentes à época, teve seu nome inscrito na dívida ativa do Estado do Ceará referente a tributos de IPVA referentes aos anos de 2008 a 2012, posteriores à venda. A inscrição em referência ocorreu em consequência de procedimento equivocado da Autarquia. 3. Assim é que, com base na Teoria do Risco Administrativo, a responsabilidade do Estado e de suas autarquias, em caso de má prestação de serviço público, deve ser entendida como objetiva, sendo exigida a presença somente dos requisitos concernentes à conduta (omissiva ou comissiva) pública, ao dano e ao nexo de causalidade entre ambos. 4. Dessa forma, reduzir o quantum indenizatório em sede de danos morais afrontaria o entendimento jurisprudencial das Cortes Superiores, em especial os precedentes desta Câmara, o que nos leva a manter o valor arbitrado no primeiro grau de R$ 15.000,00 (quinze mil reais) ao Requerente. 5. Quanto à condenação do DETRAN/CE em custas processuais, tenho que merece prosperar o inconformismo com fundamento no art. 5º, I da Lei Estadual nº 16.132/16 que estabeleceu ser a Autarquia em destaque isenta de tais cobranças. 6. Por fim, diante do provimento mínimo do inconformismo e do trabalho adicional realizado nesta sede recursal, a medida que se impõe é a majoração dos honorários sucumbenciais do percentual outrora fixado em 10% (dez por cento) sobre o valor da condenação, a qual majoro para 15% (quinze por cento), estando este dentro dos limites razoáveis admitidos pelo Códex Processual Civil, em seu art. 85, § 11. 7. Apelação Cível conhecida e parcialmente provida. Sentença reformada apenas para afastar pagamento de custas. Honorár ios majorados (art. 85 §11 do CPC). ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº. 0003629-60.2013.8.06.0041, ACORDAM os Desembargadores membros da 1ª Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Apelação interposta, para dar-lhe parcial provimento, nos exatos termos expedidos no voto da eminente Relatora, parte integrante deste. Fortaleza/CE, 25 de novembro de 2019. (Apelação Cível - 0003629-60.2013.8.06.0041, Rel. Desembargador(a) LISETE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento:&#160; 25/11/2019, data da publicação:&#160; 26/11/2019) <span class="EOP SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt; line-height:

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	16.1875px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Diante do exposto, conheço dos Recursos de Apelação , para NEGAR-LHES PROVIMENTO e manter a sentença recorrida , nos termos em que proferida . &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Custas pelos recorrentes, observada, em relação ao <span

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	class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Estado do Ceará , a isenção da Lei Estadual nº 16.132/2016 (art. 5º, inc. V) e, quanto aos autores, Francisco Hudson Ferreira de Carvalho e Edgar Lima Magalhães , a suspensão da exigibilidade prevista no art. 98, § 3º do CPC. &#160;</p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Honorários de advogado, conforme fixad o na sentença apelada, majorados, na forma d o § 11 do art. 85 do CPC, em 2% (dois por cento), torn ando-os definitivos em 12% (doze por cento). &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-

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	user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Expedientes necessários. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> É como voto. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 19.425px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR"

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	xml:lang="PT-BR">DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; </p> </div> <div class="OutlineElement Ltr SCXW41204679 BCX0" style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW41204679 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relator &#160; </p> </div></div><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	89
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Legitimidade Ativa e Passiva
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	SAUL BRASILEIRO LEITE
Advogado(s) - Polo passivo	ROBERTO LINCOLN DE SOUSA GOMES JUNIOR - (CE33249-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p>   PROCESSO:&#160;3002597-09.2024.8.06.0000 - &#160;AGRAVO DE INSTRUMENTO (202) </p><p>   AGRAVANTE: ESTADO DO CEARA </p><p>   AGRAVADO: SAUL BRASILEIRO LEITE </p><p>   A3   </p><p>   <br /> </p><p style="text-align: center;">&#160;</p><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">   <span

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	class="TextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 24.75px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> Ementa: Civil e Processual civil . Embargos de terceiro em execução fiscal. Tutela antecipada deferida na orige m . Requisitos do art. 300 do CPC. Preenchidos. Recurso conhecido e não provido. Decisão mantida. &#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I. Caso em exame : &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both;

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	cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Agravo de instrumento contra decisão em Embargos de Terceiros , opostos em face de Execução fiscal, que deferiu tutela antecipada determinando a suspensão d a exigibilidade dos créditos insertos em Dívida Ativa, tão somente quanto ao sócio embargante (agravado), ressalvada a possiblidade de sua exigibilidade com relação à pessoa jurídica, bem ainda a retirada do nome do Executado (agravado) do cadastro de inadimplentes e a emissão de Certidão Negativa com efeitos de positiva, até o julga mento definitivo d os Embargos, limitada a eficácia da decisão às CDA ’ s discutidas na Execução Fiscal respectiva <span

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	class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. Questão em discussão : &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em averiguar se estão presentes os requisitos do art. 300 do CPC . &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. Razões de decidir : <span class="EOP SCXW59950863 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 24.75px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. De acordo com o artigo 300 do CPC, o deferimento da tutela antecipada exige a presença, concomitante, da probabilidade do direito , do perigo de dano ou o risco ao resultado útil do processo e da possibilidade d e reversibilidade da medida. &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. O agravado sequer foi citado do processo executivo e, na condição de embargante, fez prova <span class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-

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	select: text;">de que , ao tempo da execução, já se encontrava afastado da gestão da empresa (Id 12652917 – p. 29/30 e 12652918 – p. 04/05). &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5 . De acordo com a jurisprudência do STJ (REsp n. 1.643.944/SP), a simples falta de pagamento do tributo não configura, por si só, circunstância que acarreta a responsabilidade subsidiária do sócio, prevista no art. 135 do CTN, sendo indispensável a comprovação de que este tenha agido com excesso de poderes ou infração à lei, ao contrato social ou ao estatuto da empresa (Tema 97 do STJ). &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. A análise do afastamento do agravado da gestão da empresa e sua eventual responsabilidade pelo pagamento das dívidas tributárias estaduais constantes das CDA ’ s

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	executadas demandam dilação probatória, a ser realizada ao longo da instrução no primeiro gra u. &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV. Dispositivo e tese &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7 . Agravo de instrumento conhecido e não provido. Decisão mantida. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Tese de julgamento: <span class="TextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; color: windowtext;

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	font-size: 12pt; line-height: 24.75px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> Atendidos os pressupostos necessários à concessão da tutela antecipada, notadamente a probabilidade do direito alegado , e não trazendo o recorrente elementos que infirmem o acerto da decisão agravada , sua manutenção é medida que se impõe . &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> --- &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dispositivo s relevante s citado s <span class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text;">: art. 300 do CPC. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Jurisprudência relevante citada:&#160; STJ: REsp n. 1.643.944/SP. &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO : Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do

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	Tribunal de Justiça do Estado do Ceará, por unanimidade , em conhecer do recurso para NEGAR-LHE PROVIMENTO , nos termos do voto do relator. &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;

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	background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGES &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATOR &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;

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	direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Cuida-se de Agravo de Instrumento (Id. 12652916), contra decisão do Juízo de Direito da 2ª Vara da Comarca de Itaitinga, nos Embargos de Terceiro nº 0001618-05.2018.8.06.0099, manejados por Saul Brasileiro Leite (agravado) e m <span class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text;">face d o Estado do Ceará (agravante) . &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Decisão recorrida (Id 12652923 - págs. 38/49 e 91/93) : deferiu o pedido de tutela antecipada, com fulcro no art. 300, § 2º, diante da probabilidade do direito do autor e do perigo de dano, determina ndo a suspensão da exigibilidade dos créditos insertos em Dívida Ativa, tão somente quanto ao sócio embargante (agravado), ressalvada a possiblidade de sua exigibilidade com relação à pessoa jurídica, devendo o Estado do Ceará (agra vante) retir ar o nome do Executado <span class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -

Processo	3002597-09.2024.8.06.0000
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">(agravado) do cadastro de inadimplentes e possibilite a emissão de Certidão Negativa com efeitos de positiva, até que seja m julgad os em definitivo os Embargos de Terceiro , limitada a eficácia da decisão às CDAs discutidas na E xecução F iscal nº 0014825- 08.2017.8.06.0099. &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Razões do recurso (Id 12652916) : aduzo recorrente <span class="NormalTextRun SCXW59950863 BCX0" style="-

Processo	3002597-09.2024.8.06.0000
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">, em apertada síntese, não preenchidos os requisitos do art. 300 do CPC, em especial a probabilidade do direito alegado, uma vez que o Embargante (agravado) não apresentou elem e ntos de prova capaz es de infirmar a presunção de liquidez, certeza e exigibilidade das CDAs atacadas e dos respectivos processos administrativos. Requer a total procedência do agravo de instrumento, para o fim de revogar e/ou reformar a decisão agravada. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Recurso recebido em seu plano formal, sendo indeferido o pleito de efeito suspensivo (Id 12713363). &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> <span class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

Processo	3002597-09.2024.8.06.0000
	text;">C ontrarrazões no Id 13355751. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Parecer do Ministério Público sem adentrar no mérito (I d 14906723). &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> É o relatório. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Presentes os pressupostos de admissibilidade, conheço do recurso. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> O caso, já adianto, é de não provimento do Agravo de Instrumento. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Esclareço, de início, que e <span class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag:

Processo	3002597-09.2024.8.06.0000
	none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">m razão da via estreita do Agravo de Instrumento , seu exame deve se limitar aos termos da decisão atacada, com a análise do preenchimento ou não dos requisitos necessários à concessão da tutela antecipada , não podendo este juízo ad quem a vançar em questões de mérito, sob pena de indevida supressão de instância. &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> O deferimento da tutela de urgência pressupõe a presença concomitante da probabilidade do direito, do perigo de dano ou risco ao resultado útil do processo, bem assim da possibilidade de reversibilidade da medida, na forma do artigo 300 do CPC, elementos que tenho, todos eles, presentes nos autos. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> <span

Processo	3002597-09.2024.8.06.0000
	class="TextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> No caso dos autos, o &#160;agravado teve seu nome inscrito no Cadastro de Inadimplentes da Fazenda Pública Estadual - CADINE em decorrência do processo de Execução Fiscal nº 0014825-08.2017.8.06.0099 , ajuizada contra a empresa CBL Colchões Brasileiro Leite - E ireli , apresentando Embargos de Terceiro com fundamento de que já estava afastado da empresa CBL Colchões Brasileiro Leite E ireli – EPP desde 10/09/2024, bem como de que não foi citado no processo executivo. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> O juízo de primeiro grau deferiu o pedido de tutela antecipada, nestes termos: &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

Processo	3002597-09.2024.8.06.0000
	SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Contudo, no caso em análise, examinando os autos dos processos administrativos e os débitos nos quais a empresa CBL Colchões Brasileiro Leite Eireli EPP, na qual era sócio, foi notificada e autuada, não consta nos autos de infração nenhum processo administrativo que direcione o inadimplemento dos débitos tributários (ICMS) ao seu gestor. Ou seja, apesar da empresa não ter adimplido com suas obrigações e ele ter sido sócio administrador na época em que os débitos foram contraídos, não consta nos autos nenhuma prova de que agiu com dolo, com culpa, com o intuito de se beneficiar pessoalmente ou beneficiar a empresa. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Pelo contrário, vejo que após a empresa ter sido autuada, foram feitas tentativas de parcelamento e reparcelamento dos débitos, apesar de após não terem sido devidamente cumpridos. Assim como, a sua retirada da sociedade ocorreu no ano de 2014, consta no contrato a integralização do débito, a empresa continuou suas atividades com os demais sócios e encontra-se ativa. &#160; </p></div><div class="OutlineElement

Processo	3002597-09.2024.8.06.0000
	Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ...... &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Isto posto, até que se prove o contrário, defiro o pedido de tutela antecipada, com fulcro no art. 300, § 2º, diante da probabilidade do direito do autor e do perigo de dano, para determinar a suspensão da exigibilidade dos créditos insertos em Dívida Ativa, tão somente quanto ao sócios embargante, ressalvada a possiblidade de sua exigibilidade com relação à pessoa jurídica, que o Estado do Ceará retire o nome do Executado do cadastro de inadimplentes e possibilite a emissão de Certidão Negativa com efeitos positiva, até que seja julgada em definitivo a presente ação. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="EOP SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-

Processo	3002597-09.2024.8.06.0000
	size: 10pt; line-height: 22.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Complementando em decisão de Embargos de Declaração, opostos pelo Estado do Ceará, assentou o magistrado: &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ante o exposto, conheço dos embargos, porque tempestivos, e dou-lhes provimento, suprindo as omissões e contradições existentes para determinar que a decisão de ID 35589888, que deferiu a tutela antecipada em favor do autor, se aplica tão somente às CDAs discutidas na ação de execução fiscal de nº 0014825-08.2017.8.06. 0099.(ID 84334390). &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-

Processo	3002597-09.2024.8.06.0000
	indent: 75px;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em sede recursal, o ente público sustenta que o Código Tributário Nacional só admite a expedição da certidão positiva com efeitos de negativa, quando os créditos não são vencidos, quando tenha sido efetivada a penhora (segurança do juízo) no processo de cobrança (execução fiscal) ou quando esteja suspensa a exigibilidade do crédito, devendo ser reformada a decisão a quo . &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> E m exame superficial dos autos, própri o deste momento, vejo que o agravado sequer <span class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-

Processo	3002597-09.2024.8.06.0000
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">foi citado do processo executivo e, na condição de embargante, apresent ou elementos de prova no sentido de que já se encontrava afastado da gestão da empresa ao tempo da execução (Id 12652917 – p. 29/30 e 12652918 – p. 04/05) . C onforme salientei na decisão em que neguei o efeito suspensivo (Id 12713363) , a análise do afastamento do agravado da gestão da empresa e su a responsabilidade pelo pagamento das dívidas tributárias estaduais constantes das CDAs executadas demandam dilação probatória, a ser realizada ao longo da instrução no primeiro gra u. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> <span class="TextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian:

Processo	3002597-09.2024.8.06.0000
	normal; font-variant-alternates: normal; font-variant-position: normal; color: windowtext; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> Ademais, de acordo com a jurisprudência do STJ, a simples falta de pagamento do tributo não configura, por si só, nem em tese, circunstância que acarreta a responsabilidade subsidiária do sócio, prevista no art. 135 do CTN, sendo indispensável a comprovação de que tenha agido com excesso de poderes ou infração à lei, ao contrato social ou ao estatuto da empresa (Tema 97 do STJ), não se vislumbrando, neste momento, indícios de eventual irregularidade na gestão da empresa por parte do agravado. Precedente STJ: REsp n. 1.643.944/SP, relatora Ministra Assusete Magalhães, Primeira Seção, julgado em 25/5/2022, DJe de 28/6/2022. &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Portanto , atendidos os pressupostos à concessão da tutela antecipada, notadamente a probabilidade do direito alegado, correta a decisão agravad a . &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -

Processo	3002597-09.2024.8.06.0000
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> An te o exposto, conheço do Agravo de Instrumento, posto que próprio e tempestivo, para , confirmando a decisão interlocutória de Id 12713363, NEG AR-LHE PROVIMENTO , conforme já explanado . &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Expedientes necess <span class="NormalTextRun SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text;">ários. &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> Fortaleza, data e hora do sistema. &#160;</p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; </p></div><div class="OutlineElement Ltr SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW59950863 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relator <span class="EOP SCXW59950863

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	BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	90
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Aposentadoria por Invalidez Acidentária
Polo ativo	ANTONIO NILTO BARBOSA DE OLIVEIRA
Advogado(s) - Polo ativo	CLARISSA VIEIRA BATISTA - (CE42751-A)
Polo passivo	INSTITUTO NACIONAL DO SEGURO SOCIAL - INSS
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GIIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7R7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	gravo de instrumento . Ação de conversão do benefício de auxílio-acidente em aposentadoria por invalidez acidentária. Ausência de comprovação de acidente de trabalho . Incompetência absoluta da justiça estadual.Recurso desprovido. 1. Caso em exame: Agravo de instrumento objetivando a reforma de decisão interlocutória que declinou da competência para processamento e julgamento da ação de conversão do benefício de auxílio-acidente em aposentadoria por invalidez acidentária. 2. Questão em discussão: A questão em discussão consiste em analisar se o benefício de auxílio-acidente concedido à parte autora pelo INSS decorre de acidente de trabalho, para firmar a competência da Justiça Estadual. 3. Razões de decidir: Extrato de Dossiê Previdenciário apresentado pelo INSS nas contrarrazões declara que a incapacidade laborativa não decorre de acidente de trabalho. Incompetência Absoluta da Justiça Estadual. 4. Dispositivo e tese: Agravo de Instrumento conhecido e desprovido. Jurisprudência relevante citad a : Súmula n º 235/STF. Súmula 501/ S TF. Súmula n º 15/ STJ . &#160; &#160; ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; conhecer do recurso para negar provimento , nos termos do voto do relator. &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; <br /> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br />

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	  </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;" align="justify"> Trata-se de Agravo de Instrumento contra decisão interlocutória proferida pelo Juízo da 2ª Vara Cível da Comarca de Iguatu que declinou da competência para o processamento e julgamento do processo n° 3001580-53.2024.8.06.0091. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;" align="justify"> Decisão recorrida: o juízo de primeiro grau declinou da competência para o processamento e julgamento do processo n° 3001580-53.2024.8.06.0091, ação de conversão do benefício de auxílio-acidente em aposentadoria por invalidez acidentária, com fundamento em ausência de comprovação de que o benefício concedido pelo INSS ao autor decorre de acidente de trabalho.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;" align="justify"> Razões do recurso: o agravante &#160;argumenta que a Justiça Estadual detém a competência absoluta para conhecer das causas que envolvem acidente de trabalho, pleiteando o deferi mento liminar para a conversão do benefício de auxílio-acidente em aposentadoria por invalidez acidentária e, no mérito, o provimento do recurso <span style="font-variant-

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	numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal;"> . </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;" align="justify"> Recurso recebido, em seu plano formal, com deferimento parcial d a tutela recursal somente para sobrestar a remessa imediata do feito à Justiça Federal. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;"> Contrarrazões do INSS pela manutenção da decisão agravada. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;" align="justify"> A Procuradoria-Geral de Justiça, devidamente intimada, não exarou parecer neste recurso. </p><p style="text-indent: 8%; text-align: justify;"> &#160; &#160; &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> <br /> </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;"> Presentes os pressupostos de admissibilidade, conheço do recurso.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;" align="justify"> A controvérsia instaurada nos autos do presente recurso cinge-se em averiguar a higidez da decisão hostilizada proferida pelo magistrado de primeiro grau, que declinou da competência para o processamento e julgamento do processo n° 3001580-53.2024.8.06.0091 com fundamento em ausência de comprovação de que o benefício concedido pelo INSS decorre de acidente de trabalho, encaminhando os autos à Justiça Federal. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;"> Pois bem.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm; background: transparent;"> Adianto, que o inconformismo da parte agravante não merece prosperar.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> O auxílio-doença está previsto no art. 59 da Lei 8.213/91, in verbis :</p><p style="line-height: 100%; orphans: 0; widows: 0; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Art. 59. O auxílio-doença será devido ao segurado que, havendo cumprido, quando for o caso, o período de carência exigido nesta Lei, ficar i ncapacitado para o seu trabalho ou para a sua atividade habitual por mais de 15 (quinze) dias consecutivos. </p><p style="line-height: 100%; orphans: 0; widows: 0; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Já o auxílio-acidente é previsto no art. 86 da mesma Lei:</p><p style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 100%;

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	orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Art. 86. O auxílio-acidente será concedido, como indenização, ao segurado quando, após consolidação das lesões decorrentes de acidente de qualquer natureza, resultarem seqüelas que impliquem redução da capacidade para o trabalho que habitualmente exercia . (Redação dada pela Lei nº 9.528, de 1997) &#160; O Decreto nº 3.048/99 regulamenta a disposição geral da lei de regência dos benefícios previdenciários: &#160; Art. 71. O auxílio por incapacidade temporária será devido ao segurado que, uma vez cumprido, quando for o caso, o período de carência exigido, ficar incapacitado para o seu trabalho ou para a sua atividade habitual por mais de quinze dias consecutivos, conforme definido em avaliação médico-pericial. (Redação dada pelo Decreto nº 10.410, de 2020) [...] Art. 104. O auxílio-acidente será concedido, como indenização, ao segurado empregado, inclusive o doméstico, ao trabalhador avulso e ao segurado especial quando, a pós a consolidação das lesões decorrentes de acidente de qualquer natureza, resultar sequela definitiva que , a exemplo das situações discriminadas no Anexo III, i mplique redução da capacidade para o trabalho que habitualmente exercia . (Redação dada pelo Decreto nº 10.410, de 2020) &#160; Com efeito, o auxílio-doença é temporário e cessa quando há recuperação da capacidade para o trabalho ou pela transformação em auxílio-acidente ou aposentadoria por invalidez, ao passo que, se, após a consolidação das lesões, resultarem sequelas que impliquem redução da capacidade para o trabalho que exercia habitualmente, ser-lhe-á concedido auxílio-acidente como indenização ao segurado. Conforme a legislação aplicada ao caso, o auxílio-acidente constitui benefício previdenciário pago ao trabalhador/segurado que venha a sofrer acidente de qualquer natureza , inclusive doenças de trabalho, e que, deste acidente,

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	tenham restado sequelas permanentes e definitivas que reduzam, ainda que minimamente, a sua capacidade de trabalho para o exercício da atividade até então desempenhada. </p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Conforme anotado na decisão liminar, o Supremo Tribunal Federal assentou competir à Justiça Estadual processar e julgar as causas relativas ao restabelecimento de benefícios previdenciários decorrentes de acidentes de trabalho: </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> RECURSO. Extraordinário. Competência para processar e julgar. Benefícios previdenciários. Acidentes de trabalho. Repercussão geral reconhecida. Precedentes. Reafirmação da jurisprudência. Recurso provido. Compete à Justiça Comum Estadual processar e julgar as causas relativas ao restabelecimento de benefícios previdenciários decorrentes de acidentes de trabalho.” (RE 638483 RG, Relator: Min. MINISTRO PRESIDENTE, julgado em 09/06/2011, REPERCUSSÃO GERAL MÉRITO DJe de 31-08-2011) </p><p style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> Súmula 235: É competente para a ação de acidente do trabalho a Justiça cível comum, inclusive em segunda instância, ainda que seja parte autarquia seguradora. </p><p style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> Súmula 501: Compete à Justiça ordinária estadual o processo e o julgamento, em ambas as instâncias, das causas de acidente do trabalho, ainda que promovidas contra a União, suas autarquias, empresas públicas ou sociedades de economia mista. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.85cm;" align="justify">&#160;</p><p class="western" style="line-height: 0.85cm; text-indent: 2.6cm; background: transparent;" align="justify"> O Superior Tribunal de Justiça, por sua vez, firmou entendimento no sentido de que “é competência da Justiça Estadual processar e julgar ação relativa a acidente de trabalho, estando abrangida nesse contexto tanto a lide que tem por objeto a concessão de benefício em razão de acidente de trabalho como também as relações daí decorrentes (restabelecimento, reajuste, cumulação), uma vez que o art. 109, I, da Constituição Federal não fez nenhuma ressalva a este respeito.” (REsp 1648552/MG, Rel. Ministro HERMAN BENJAMIN, Segunda Turma, julgado em 28/03/2017, Dje 18/04/2017). </p><p class="western" style="line-height: 0.85cm; text-indent: 2.5cm; background: transparent;" align="justify"> Tal matéria se encontra inclusive sumulada no âmbito do Superior Tribunal de Justiça, no enunciado nº 15, in verbis: “Compete à Justiça estadual processar e julgar os litígios decorrentes de acidente do trabalho.” </p><p class="western" style="line-height: 0.85cm; text-indent: 2.5cm; background: transparent;" align="justify"> Ao exame dos documentos juntados nas contrarrazões pelo INSS <span style="font-family: Arial, sans-

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	serif;"> , consta o Extrato de Dossiê Previdenciário (Ids 13226759/13226760) que declar a que INCAPACIDADE LABORATIVA não decorre de ACIDENTE DE TRABALHO (Id 13226759, p.12). </p><p class="western" style="line-height: 200%; text-indent: 2.6cm; margin-bottom: 0cm; background: transparent;" align="justify"> Logo, como não se trata de ação concernente a benefício por acidente de trabalho, faz-se necessária a inclusão da União no polo passivo, atraindo-se a competência da Justiça Federal.</p><p class="western" style="line-height: 200%; text-indent: 2.6cm; margin-bottom: 0cm; background: transparent;" align="justify"> Com o reconhecimento da incompetência absoluta da Justiça Estadual para processamento do feito, a decisão de primeiro grau de remessa dos autos à Justiça Federal não merece reparos.</p><p class="western" style="line-height: 200%; text-indent: 2.6cm; margin-bottom: 0cm; background: transparent;" align="justify"> &#160;Nesse sentido, a jurisprudência desta Corte de Justiça:</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> PROCESSUAL CIVIL E PREVIDENCIÁRIO. APELAÇÃO CÍVEL. AÇÃO PARA CONCESSÃO DE AUXÍLIO-DOENÇA. SENTENÇA DE IMPROCEDÊNCIA. PERÍCIA QUE NÃO DETECTOU ACIDENTE DE TRABALHO. INCOMPETÊNCIA ABSOLUTA DA JUSTIÇA ESTADUAL. DESCONSTITUIÇÃO, DE OFÍCIO, DA SENTENÇA. REMESSA DOS AUTOS À JUSTIÇA FEDERAL. APELAÇÃO PREJUDICADA. 1. A autora aduz ser trabalhadora rural, requerendo a concessão do benefício de auxílio-doença rural em 12/07/2017, sendo o pedido indeferido sob a alegação de falta de comprovação de atividade rural. 2. O Laudo Pericial elaborado em Juízo atesta que as lesões apresentadas pela apelante consistem em sequelas de quadrantectomia e linfedenectomia, procedimentos realizados para remoção de câncer mamário esquerdo, portanto claramente não se referem a acidente de trabalho. 3. O art. 109, I, da Constituição Federal estabelece a competência dos juízes federais para processar e julgar causas em que a União seja ré, exceto as referentes a acidente de trabalho. Em consonância, enuncia a Súmula nº 15/STJ, in verbis: Compete à Justiça Estadual processar e julgar os litígios decorrentes de acidente do trabalho. 4. Considerando-se a superveniência de produção de prova técnica, conclui-se que, como não se trata de ação concernente a benefício por acidente de trabalho, faz-se necessária a inclusão da União no polo passivo, atraindo-se a competência da Justiça Federal. 5. Com o reconhecimento da incompetência absoluta da Justiça Estadual para processamento do feito, impõe-se a desconstituição, de ofício, da sentença, consoante o estatuído pelo art. 64, § 1º, do CPC, com a decorrente remessa dos autos à Justiça Federal. 6. Desconstituição, de ofício, da sentença e determinação de remessa do feito à Justiça Federal. Apelação prejudicada. (Apelação Cível - 0005146-97.2019.8.06.0071, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento: 16/10/2024, data da publicação: 17/10/2024) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> DIREITO CONSTITUCIONAL. APELAÇÃO CÍVEL. AÇÃO PREVIDENCIÁRIA. CONCESSÃO DE AUXÍLIO-ACIDENTE. AUSÊNCIA DE ACIDENTE DO TRABALHO. INCOMPETÊNCIA ABSOLUTA DA JUSTIÇA COMUM ESTADUAL. COMPETÊNCIA DA JUSTIÇA FEDERAL. DECLARAÇÃO DE OFÍCIO. SENTENÇA DESCONSTITUÍDA. RECURSO PREJUDICADO. 1. O laudo pericial atesta que a doença/lesão a qual o autor é portador não decorrem de acidente de trabalho. Também traz expressamente, que a causa provável da lesão é em decorrência de doença degenerativa. 2. Nesse contexto, inexistindo sequelas ou lesões de origem acidentárias, carece a Justiça Estadual de competência para processar e julgar o presente feito, a teor do que estatui o art. 109, inciso I, da Constituição Federal. 3. Por se tratar de incompetência absoluta, cabível a declaração de nulidade, de ofício, com fundamento no art. 64, § 1º, do CPC. 4.Sentença desconstituída. Recurso de Apelação prejudicado. (Apelação Cível - 0185552-32.2019.8.06.0001, Rel. Desembargador(a) MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara Direito Público, data do julgamento: 09/10/2024, data

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	da publicação: 09/10/2024) </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Ante o exposto, conheço o recurso de Agravo de Instrumento para negar- lhe proviment o, revogando a liminar concedida e mantendo inalterada a decisão interlocutória agravada.</p><p style="text-indent: 8%; text-align: justify;"> &#160;É como voto.</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	91
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA
Assunto principal	Regime Previdenciário
Polo ativo	ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO
Advogado(s) - Polo ativo	Não informado
Polo passivo	ANA MARIA DE MATOS PEREIRA BARBOSA
Advogado(s) - Polo passivo	PATRICIO WILIAM ALMEIDA VIEIRA - (CE7737-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GIIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/Aglnc08irjnVHz/++68VMZRRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbAShti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;0262702-55.2020.8.06.0001 -&#160;APELAÇÃO / REMESSA NECESSÁRIA (1728)</p><p> APELANTE: ESTADO DO CEARA, PROCURADORIA GERAL DO ESTADO</p><p> APELADO: ANA MARIA DE MATOS PEREIRA BARBOSA</p><p> A4</p><p style="text-align: center;">&#160;</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> EMENTA: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL E REMESSA NECESSÁRIA. PRESCRIÇÃO DO FUNDO DE FUNDO DE DIREITO. RELAÇÃO DE TRATO SUCESSIVO. REJEIÇÃO. SERVIDORAS APOSENTADAS COM PROVENTOS PROPORCIONAIS. PRÊMIO DE DESEMPENHO FISCAL – PDF.&#160; LEI Nº 13.439/2004, COM MODIFICAÇÕES INTRODUZIDAS PELA LEI Nº 14.969/2011. GRATIFICAÇÃO DE CARÁTER GENÉRICO. ATO DE APOSENTAÇÃO ANTERIOR À EC

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	Nº 41/03. PARIDADE COM SERVIDORES DA ATIVA. POSSIBILIDADE. APOSENTADORIA APÓS A REFERIDA EC. PARIDADE . INEXISTÊNCIA DE VÍCIO DE OMISSÃO E/OU OBSCURIDADE. INCIDÊNCIA DO ENUNCIADO DE SÚMULA Nº 18 DO TJCE. PREQUESTIONAMENTO. DESNECESSIDADE DE REFERÊNCIA EXPLÍCITA AOS DISPOSITIVOS LEGAIS. EMBARGOS DE DECLARAÇÃO REJEITADOS.</p><p class="EmentadoAcrdo" style="line-height: 150%;"> &#160; </p><p class="EmentadoAcrdo" style="line-height: 150%;"> I. CASO EM EXAME </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 01. Trata-se de Embargos de Declaração opostos pelo Estado do Ceará em face de acórdão proferido (Id. 14511473), que manteve inalterada a sentença proferida pelo magistrado de primeiro grau, a qual determinou a incorporação do “Prêmio por Desempenho Fiscal” (PDF) nos proventos auferidos por servidora aposentada. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> II. QUESTÕES EM DISCUSSÃO </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 02. A questão em discussão consiste em saber se há omissão e obscuridade que justifiquem o acolhimento dos embargos, sobretudo em relação ao RE 1408525, que aguarda julgamento, (argumento de que a existência de parcela fixa não descaracteriza a natureza geral da gratificação), bem como o fato de que o pagamento do PDF aos inativos detentores de paridade deve se dar nos estritos limites da previsão legal e não no valor mínimo pago aos servidores inativos. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 03. Ao negar provimento ao Apelo, a decisão colegiada examinou os fundamentos considerados essenciais para o desfecho da lide, expondo de forma clara e fundamentada as razões pelas quais afastou a tese atinente à prescrição do fundo de fundo de direito e manteve a determinação de incorporação do “Prêmio por Desempenho Fiscal” (PDF) nos proventos auferidos por servidora inativa.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.1. Todos os pontos relevantes indicados por ocasião do recurso foram devidamente enfrentados no voto condutor do acórdão recorrido, o qual fundamentou devidamente a posição adotada.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.2. Oportuno registrar que, de acordo com a doutrina e jurisprudência, há&#160;vício de obscuridade quando a redação da decisão não é suficientemente clara, dificultando sua compreensão ou interpretação, o que não se amolda ao caso concreto&#160; (STJ - EDcl no AREsp: 1879251 RS 2021/0116050-1, Relator: Ministra ASSUSETE MAGALHÃES, Data de Publicação: DJ 15/02/2022).</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.3. Da mesma forma, não se exige que o julgador enfrente todos os dispositivos legais citados pela parte (prequestionamento numérico), não sendo ele obrigado ainda a responder a todas as questões levantadas ponto a ponto de maneira exaustiva e pormenorizada, bastando a análise das questões necessárias à solução da controvérsia. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 115%;"> IV. DISPOSITIVO E TESE <strong style="text-indent: 42.55pt;"> &#160; </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 04. Omissão e obscuridade não configuradas. Recurso conhecido e desprovido. &#160;</p><p class="EmentadoAcrdo" style="text-

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	align: justify; text-justify: inter-ideograph; line-height: 150%;"> Tese de julgamento: “Diante do que se extrai dos autos, não há fundamento para reconhecer omissão e/ou obscuridade aptas a alterar o julgado. Os aclaratórios, cujo objetivo é a integração da decisão embargada, não servem como meio de rediscussão da matéria já julgada.”. &#160; </p><p class="EmentadoAcrdo" style="margin-top: 3.75pt; margin-right: 0cm; margin-bottom: 3.75pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Dispositivos relevantes citados: CF/88 - art. 40, § 8ª e art. 93, IX; CPC - arts. 1.022, 1.023, 1.024, § 1° e 1.025 do CPC; Lei nº 13.439/04 . &#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Jurisprudência relevante citada: STF, Tema 339 – Repercussão Geral, RE 194662 ED-ED-EDv, Relator(a):&#160; Min. DIAS TOFFOLI, Relator(a) p/ Acórdão: Min. MARCO AURÉLIO, Tribunal Pleno, julgado em 14/05/2015, DJe-151 DIVULG 31-07-2015 PUBLIC 03-08-2015 EMENT VOL-03992-02 PP-00196; STJ, EDcl no AREsp: 1879251 RS 2021/0116050-1, Relator: Ministra ASSUSETE MAGALHÃES, Data de Publicação: DJ 15/02/2022, AgInt nos EDcl no REsp n. 1.787.184/MG, relator Ministro Paulo de Tarso Sanseverino, Terceira Turma, julgado em 23/8/2021, DJe de 26/8/2021, EDcl no REsp 1816628/SE, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 06/05/2020, DJe 14/05/2020; TJCE - Súmula nº 18, ED: 00652653120058060001 CE 0065265-31.2005.8.06.0001, Relator: FRANCISCO BEZERRA CAVALCANTE, Data de Julgamento: 20/08/2019, 4ª Câmara Direito Privado, Data de Publicação: 20/08/2019.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>MERGEFIELD &quot;&Oacute;rg&atilde;o Julgador#Retorna o nome da vara onde est&aacute; o processo=8@PROC&quot;<![endif]--> 3ª Câmara Direito Público<!--[if supportFields]><![endif]--> do Tribunal de Justiça do Estado do Ceará, por unanimidade, em rejeitar os embargos de declaração, nos termos do voto do relator.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph;"> &#160;</p><p class="EmentadoAcrdo" style="text-align: center; line-height: 150%;" align="center"> Fortaleza, data e hora indicadas pelo sistema. &#160;</p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; page-break-after: avoid;" align="center"> &#160;</p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; page-break-after: avoid;" align="center"> &#160;</p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center;" align="center"><!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal">MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;<![endif]--> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES<!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal"><![endif]--> &#160; </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center;" align="center"><!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal">MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC&quot;<![endif]--> Relator<!--[if supportFields]><b style="mso-

Processo	0262702-55.2020.8.06.0001
	bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal"><![endif]--> &#160; </p><p class="MsoNormal" style="margin-top: 2.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 0cm; text-align: center; line-height: normal;" align="center"> &#160;</p><p class="MsoNormal" style="margin-top: 2.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 0cm; text-align: center; line-height: normal;" align="center"> &#160;</p><p class="MsoNormal" style="text-align: center;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Trata-se de Embargos de Declaração opostos pelo Estado do Ceará em face de acórdão proferido (Id. 14511473), que manteve inalterada a sentença proferida pelo magistrado de primeiro grau, a qual determinou a incorporação do “Prêmio por Desempenho Fiscal” (PDF) nos proventos auferidos por servidora aposentada .</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Nas razões recursais (Id. 15368524), o recorrente aduz, em síntese, a existência de omissão e obscuridade no acórdão em relação ao RE 1408525, que aguarda julgamento, (argumento de que a existência de parcela fixa não descaracteriza a natureza geral da gratificação), bem como o fato de que o pagamento do PDF aos inativos detentores de paridade deve se dar nos estritos limites da previsão legal e não no valor mínimo pago aos servidores inativos. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Por derradeiro, sustenta que a oposição dos embargos se presta para fins de prequestionamento da matéria. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Dispensado o parecer da Procuradoria-Geral de Justiça. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Desnecessária a inclusão em pauta (art. 1.024, § 1°, do CPC). </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> É o relatório, do essencial. </p><p class="MsoNormal" style="text-align: center; line-height: 150%;" align="center"> &#160; </p><p class="MsoNormal" style="text-align: center; line-height: 150%;" align="center"> VOTO </p><p class="MsoNormal" style="text-align: center; line-height: 150%;" align="center"> <br /> </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> &#160;Presentes os pressupostos de admissibilidade, conheço do recurso. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Nos termos do art. 1.022 do CPC, os embargos de declaração têm a finalidade de esclarecer obscuridade, eliminar contradição, suprir omissão e corrigir erro material. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Como se sabe, toda e qualquer sentença ou acórdão, independentemente do seu conteúdo, é passível de complementação ou integração pelo manejo de embargos de declaração, caso haja obscuridade, contradição, omissão ou erro material, à luz do disposto no art. 1.022 do CPC, constituindo, pois, espécie recursal com fundamentação vinculada . </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> A parte embargante assevera, em síntese, que a decisão

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	recorrida deve ser modificada em decorrência de ter sido omissa e padecer de obscuridade, em relação ao RE 1408525, que aguarda julgamento, (argumento de que a existência de parcela fixa não descaracteriza a natureza geral da gratificação), bem como pelo fato de que o pagamento do PDF aos inativos detentores de paridade deve se dar nos estritos limites da previsão legal e não no valor mínimo pago aos servidores inativos. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> No entanto, compulsando os autos, verifico, de logo, que os Aclaratórios não comportam provimento, tendo em vista seu evidente objetivo de rediscussão da matéria já julgada. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; Por relevante, consoante se observa no voto condutor, restou clara e manifesta a exposição dos fatos no sentido de enfrentar com clareza todos os fundamentos considerados essenciais para o desfecho da lide, expondo de forma clara e fundamentada as razões pelas quais afastou a tese atinente à prescrição do fundo de fundo de direito e manteve a determinação de incorporação do “Prêmio por Desempenho Fiscal” (PDF) nos proventos auferidos por servidora inativa , de acordo com a legislação e jurisprudência aplicáveis ao caso concreto, conforme trechos abaixo oportunamente colacionados (com destaques):</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> EMENTA: DIREITO ADMINISTRATIVO E CONSTITUCIONAL. APELAÇÃO CÍVEL. PRELIMINAR DE PRESCRIÇÃO DO FUNDO DE FUNDO DE DIREITO. RELAÇÃO DE TRATO SUCESSIVO. REJEIÇÃO. SERVIDORAS APOSENTADAS COM PROVENTOS PROPORCIONAIS. PRÊMIO DE DESEMPENHO FISCAL – PDF.&#160; LEI Nº 13.439/2004, COM MODIFICAÇÕES INTRODUZIDAS PELA LEI Nº 14.969/2011. GRATIFICAÇÃO DE CARÁTER GENÉRICO. ATO DE APOSENTAÇÃO ANTERIOR À EC Nº 41/03. PARIDADE COM SERVIDORES DA ATIVA. POSSIBILIDADE. APOSENTADORIA APÓS A REFERIDA EC. PARIDADE. 01. A relação é de trato sucessivo, renovando-se a cada mês transcorrido, atraindo a aplicação da Súmula nº 85 do Superior Tribunal de Justiça, não incidindo, desta forma, a prescrição do fundo de direito. 02. O PDF foi instituído por meio da Lei nº 13.439/04 (regulamentada pelo Dec. nº 27.439/04) com o objetivo de estimular o aumento da produtividade da Secretaria da Fazenda estadual, sendo a referida gratificação extensível aos servidores ativos e inativos, aposentados e pensionistas, pelo que se infere, de plano, o caráter genérico do PDF1, não havendo falar em vantagem salarial pro labore faciendo. 03. Na hipótese dos autos, a autora implementou as condições à percepção do benefício antes da promulgação da reforma, impondo-se, assim, a paridade de tratamento, conforme o art. 7º da Emenda Constitucional nº 41/2003. 04. Apelação conhecida e desprovida. Remessa Necessária não conhecida. Sentença mantida. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160; (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> De início, observa-se que o magistrado consignou que a sentença estaria sujeita ao reexame necessário (duplo grau de jurisdição obrigatório), com fundamento na Súmula nº 490 do STJ. No entanto, considerando que as informações e os dados da demanda permitem concluir que a condenação não ultrapassa o valor de alçada previsto no art. 496, § 3º, inciso II do CPC, entendo que é o caso de não conhecimento da Remessa Necessária. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> Presentes os pressupostos de admissibilidade, conheço do apelo. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> O caso, já adianto, é de não provimento do recurso. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> <span style="font-size:

Processo	0262702-55.2020.8.06.0001
	x-small;">A priori, antes de adentrar no mérito, convém analisar a judicial de mérito alegada pelo apelante, no tocante a prescrição do fundo de direito. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> Todavia, insta esclarecer que, no caso em exame, a relação é de trato sucessivo, renovando-se a cada mês transcorrido, atraindo a aplicação da Súmula nº 85 do Superior Tribunal de Justiça, in verbis: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Ademais, na hipótese não se busca a revisão da composição do ato de aposentadoria do servidor aposentado, mas seu reajustamento, de modo a receber valor equivalente ao pago como parcela fixa aos servidores em atividade a título de Prêmio por Desempenho Fiscal – PDF. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Desse modo, ausente negativa expressa, no âmbito administrativo, do pleito autoral, deve ser reconhecida somente a prescrição das diferenças relativas aos cinco anos anteriores ao ajuizamento da ação, por se cuidar de relação de trato sucessivo. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Ante o exposto, REJEITO a preliminar de prescrição do fundo de direito. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (…) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Conforme relatado, o cerne da presente controvérsia consiste em examinar o direito à paridade salarial pleiteada pela apelante, servidora aposentada com proventos proporcionais, quanto ao recebimento do Prêmio por Desempenho Fiscal – PDF, com base no piso dos servidores da ativa. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> O PDF foi instituído por meio da Lei nº 13.439/04 (regulamentada pelo Dec. nº 27.439/04) com o objetivo de estimular o aumento da produtividade da Secretaria da Fazenda estadual, sendo a referida gratificação extensível aos servidores ativos e inativos, aposentados e pensionistas, pelo que se infere, de plano, o caráter genérico do PDF1, não havendo falar em vantagem salarial pro labore faciendo. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> &#160;Posteriormente fora editada a Lei nº 14.969/2011, que conforme se depreende dos autos, estabelece uma nova sistemática para a quantificação do valor do PDF pago aos aposentados e pensionistas, correspondendo à quantia proporcional ao percentual do valor dos proventos por eles recebidos. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Impõe-se consignar, neste momento, que a autora se aposentou após a EC 20/1998 e antes da edição da EC nº 41/2003, em 04.10.1993. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Seguindo na análise, destaque-se que o STF possui entendimento pacífico no sentido de que “na hipótese de gratificação dotada de caráter genérico, se impõe a sua extensão aos servidores inativos e pensionistas ainda beneficiados pela regra de paridade.

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	Precedentes.” (RE 719731 AgR/BA, Relator o Ministro Roberto Barroso, Primeira Turma, julgado em07/03/2017, DJe 16/03/2017). </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Não é outro o entendimento adotado por este Tribunal de Justiça, consoante recente julgado proferido pelo Órgão Especial deste Tribunal de Justiça, senão vejamos: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Desse modo, aos servidores aposentados anteriormente à EC 41/2003, cumpre a paridade vencimental em relação aos servidores da ativa, sob pena de ofensa ao art. 40, § 8ª, da CF/88, que, até então, dispunha do seguinte modo: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Observa-se que a redação anterior do § 8º do art. 40 da CF/88 previa a paridade remuneratória entre aposentados/pensionistas e servidores em atividade, que não mais subsiste, tendo em vista a alteração trazida pela EC nº 41/2003, que desconstituiu a obrigatoriedade do tratamento paritário. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Na hipótese dos autos, a autora implementou as condições à percepção do benefício antes da promulgação da reforma, impondo-se, assim, a paridade de tratamento, conforme o art. 7º da Emenda Constitucional nº 41/2003. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Nesse sentido são os julgados deste egrégio tribunal, inclusive, da minha relatoria: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Isso posto, conheço do Recurso de Apelação para DESPROVÊ-LO e não conheço da Remessa Necessária, mantendo a sentença em todos os seus termos. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> &#160; </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Como se sabe, a omissão ocorre quando a decisão deixa de se manifestar sobre ponto ou questão relevante ao deslinde do feito, ainda que não tenham controvertido as partes sobre a questão. Por outro lado, de acordo com a doutrina e jurisprudência, há&#160;vício de obscuridade quando a redação da decisão não é suficientemente clara, dificultando sua compreensão ou interpretação&#160; (STJ - EDcl no AREsp: 1879251 RS 2021/0116050-1, Relator: Ministra ASSUSETE MAGALHÃES, Data de Publicação: DJ 15/02/2022).</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> No caso dos autos não há omissão e nem obscuridade, pois o julgado foi claro ao não aderir a tese da parte embargante em sua totalidade. Nesse contexto, todos os pontos relevantes indicados por ocasião do recurso foram devidamente enfrentados no voto condutor do acórdão recorrido, o qual fundamentou devidamente a posição adotada, inclusive, ficou bem claro e evidente que o direito à paridade, in casu, alcança somente a parcela fixa do Prêmio por Desempenho Fiscal (PDF), isto é, aquela que vem sendo paga, genérica e indistintamente, aos que se encontram em atividade, porque desprovida de caráter proptem laborem.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt;

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	line-height: 150%;"> Ademais, a mera pendência de decisão final no RE nº 1.408.525, em tramitação no Supremo Tribunal Federal, além de retratar inovação recursal, não basta para, de per si, determinar a suspensão de outras causas que versem sobre a matéria similar, não havendo, assim, qualquer óbice ao prosseguimento do feito. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Destarte, o fato de a parte recorrente possuir outra percepção sobre o tema não torna o acórdão omisso, contraditório ou mesmo equivocado, mas apenas contrário ao seu interesse. No caso em tela, verifica-se que o decisum embargado analisou adequadamente a matéria posta em discussão. Portanto, se a parte embargante demonstra inconformismo com os fundamentos utilizados no acórdão atacado, deve, caso queira, insurgir-se por meio dos meios adequados disponíveis no ordenamento jurídico, e não por meio desta via excepcional. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> É oportuno registrar que o julgador não é obrigado a responder a todas as questões levantadas ponto a ponto de maneira exaustiva e pormenorizada, bastando a análise das questões necessárias à solução da controvérsia, não configurando negativa de prestação jurisdicional a ausência de prequestionamento numérico , conforme entendimento pacífico do Superior Tribunal de Justiça (AgInt nos EDcl no REsp n. 1.787.184/MG, relator Ministro Paulo de Tarso Sanseverino, Terceira Turma, julgado em 23/8/2021, DJe de 26/8/2021).</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> No mesmo sentido, o Supremo Tribunal Federal fixou a tese de que " o art. 93, IX, da Constituição Federal, exige que o acórdão ou decisão sejam fundamentados, ainda que sucintamente, sem determinar, contudo, o exame pormenorizado de cada uma das alegações ou provas" (Tema 339 – Repercussão Geral). </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Assim, não havendo o preenchimento dos requisitos estampados no art. 1.023 do CPC, em nada merece reproche o decisum hostilizado, devendo ser mantido por seus próprios fundamentos. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Em verdade, a parte recorrente entende que houve erro de julgamento e conclusão equivocada à luz da jurisprudência pátria e a situação fática dos autos, todavia esses defeitos não se enquadram como omissão, contradição, obscuridade e/ou erro material, que enseja hipótese de revisão da decisão por aclaratórios, o que, por óbvio, deve ser veiculado de outra maneira. &#160;Precedentes&#160;do STF ^{<!--[if !supportFootnotes]--> ^{[1]}<!--[endif]--> } <sup> ST J <a id="_ftnref2" name="_ftnref2" href="file:///C:/Users/katia/Desktop/katiana%20rangel/JUR/DES.%20FCO%20LUCIANO/Katiana/Ac%C3%B3rd%C3%A3o%200262702-55.2020.8.06.0001%20-%20ED%20-

Processo	0262702-55.2020.8.06.0001
	%20omiss%C3%A3o,%20obscuridade%20e%20prequestionamento%20-%20extrapauta%20-%20PJE.rtf#_ftn2"><!--[if !supportFootnotes]--> ^{[2]}<!--[endif]--> STJe </sup> ^{TJC E <!--[if !supportFootnotes]--> ^{[3]}<!--[endif]--> e} ^{TJCE} </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Sendo assim, inexistindo vícios a serem supridos, o pedido de alteração do julgado revela pretensão de reanálise do mérito, não admitida por esta via, conforme já sumulado por esta Corte de Justiça, através da Súmula nº 18, segundo a qual “ São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada”. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Nesse passo, advirta-se que a oposição de incidentes processuais infundados dará ensejo à aplicação de multa por conduta processual indevida. </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Ante o exposto, rejeito os embargos de declaração, mantendo inalterado o acórdão embargado. </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Por derradeiro, oportuno ressaltar que a simples interposição dos Embargos já é suficiente para prequestionar a matéria, “ ainda que os embargos de declaração sejam inadmitidos ou rejeitados" (art. 1.025 do CPC). </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> É como voto. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Fortaleza, data e hora informadas pelo sistema. </p><p class="MsoNormal" style="margin-bottom: 0.0001pt; text-align: center; text-indent: 70.85pt; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0.0001pt; text-align: center; text-indent: 7.1pt; line-height: 150%;"><!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal">MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;<![endif]--> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal"><![endif]--> &#160; </p><p class="MsoNormal" style="margin-right: -29.55pt; text-align: center; text-indent: 7.1pt; page-break-after: avoid;"> <span style="font-size: 12.0pt; line-height: 115%; font-family:

Processo	0262702-55.2020.8.06.0001
	&quot;Arial&quot;,&quot;sans-serif&quot;;"> Relator &#160; </p><p style="text-align: justify;">&#160;</p><div><!--[if !supportFootnotes]--><br /> <hr size="1" /><!--[endif]--> <div id="ftn1"> <p class="MsoFootnoteText" style="text-align: justify; text-justify: inter-ideograph;"> ^{<!--[if !supportFootnotes]-->} [1]<!--[endif]--> EMBARGOS DE DECLARAÇÃO – ERRO DE JULGAMENTO – INADEQUAÇÃO. Os embargos de declaração não se prestam a corrigir erro de julgamento. (RE 194662 ED-ED-EDv, Relator(a):&#160; Min. DIAS TOFFOLI, Relator(a) p/ Acórdão:&#160; Min. MARCO AURÉLIO, Tribunal Pleno, julgado em 14/05/2015, DJe-151 DIVULG 31-07-2015 PUBLIC 03-08-2015 EMENT VOL-03992-02 PP-00196) </p></div><div id="ftn2"> <p class="MsoFootnoteText" style="text-align: justify; text-justify: inter-ideograph;"> ^{STJ (} EDcl no REsp 1816628/SE, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 06/05/2020, DJe 14/05/2020) </p></div><div id="ftn3"> <p class="MsoFootnoteText" style="text-align: justify; text-justify: inter-ideograph;"> ^{e&#160;} ED: 00652653120058060001 CE 0065265-31.2005.8.06.0001, Relator: FRANCISCO BEZERRA CAVALCANTE, Data de Julgamento: 20/08/2019, 4ª Câmara Direito Privado, Data de Publicação: 20/08/2019. </p></div></div><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> <br /> </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	92
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Concessão
Polo ativo	PROCURADORIA GERAL DO ESTADO FUNDACAO DE PREVIDENCIA SOCIAL DO ESTADO DO CEARA - CEARAPREV
Advogado(s) - Polo ativo	CARLOS OTAVIO DE ARRUDA BEZERRA - (CE5207-A)
Polo passivo	MARIA DO LIVRAMENTO PLUTARCO SILVA
Advogado(s) - Polo passivo	JOSE ALEXANDRE GOIANA DE ANDRADE - (CE11160-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA SUPSEC - Sistema Único de Previdência Social dos Servidores Públicos Civis e Militares, dos Agentes Públicos e dos Membros de Poder do Estado do Ceará

Processo	0275005-67.2021.8.06.0001
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong id="docs-internal-guid-1aa0c506-7fff-6391-be33-9b41c40a4dc2" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 0275005-67.2021.8.06.0001 - Embargos de Declaração em Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Embargante: Estado do Ceará</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Embargada: Maria do Livramento Plutarco Silva</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Custos Legis: Ministério Público Estadual</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito processual civil. Embargos de declaração em apelação cível. Omissão. Ausência. Recurso Desprovido.</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame &#160;</p><p style="line-height: 1.38; text-align: justify; background-

Processo	0275005-67.2021.8.06.0001
	color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Embargos de Declaração opostos pelo ente público em face de acórdão que negou provimento à Apelação por ele interposta.</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em verificar se houve omissão na decisão quanto à natureza da gratificação pleiteada, bem como à impossibilidade de sua extensão e&#160; incorporação.</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. O acórdão recorrido apreciou a lide de forma clara e fundamentada, considerando os pontos supostamente omissos. Os argumentos veiculados constituem, em verdade, tentativa de rediscussão do mérito do julgado, o que não é admitido pela presente via recursal. Incidência da Súmula nº 18 do TJCE.</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo &#160;</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Embargos de declaração desprovidos.</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> _________________&#160;</p><p style="line-height: 1.38; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CPC, art. 1.022; Lei Estadual nº 14.255/2008.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; text-align: justify; background-

Processo	0275005-67.2021.8.06.0001
	color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STF, AI nº 791292, Rel. Min. Gilmar Mendes, Tribunal Pleno, j. 23/6/2010; STJ, AgInt no AREsp n. 1.701.614/SC, Rel. Min. Moura Ribeiro, Terceira Turma, j. 29/3/2021; Súmula nº 18 do TJCE.&#160;</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr">&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr">&#160;</p><hr /><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de recurso de EMBARGOS DE DECLARAÇÃO opostos pelo ESTADO DO CEARÁ, em face de acórdão proferido pela 3ª Câmara de Direito Público deste Tribunal de Justiça, nos termos da ementa abaixo transcrita (ID nº 13871971):</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: APELAÇÃO CÍVEL. DIREITO CONSTITUCIONAL, ADMINISTRATIVO E PROCESSUAL CIVIL. AÇÃO ORDINÁRIA. PREJUDICIAL DE MÉRITO. PRESCRIÇÃO DO FUNDO DE DIREITO. INOCORRÊNCIA. RELAÇÃO JURÍDICA DE TRATO SUCESSIVO. SÚMULA Nº 85 DO STJ. PRECEDENTES DO STJ E DO TJCE. MÉRITO. SERVIDORA PÚBLICA APOSENTADA DO EXTINTO TRIBUNAL DE CONTAS DOS MUNICÍPIOS DO ESTADO DO CEARÁ – TCM. PRETENSÃO DE INCORPORAÇÃO DA GRATIFICAÇÃO DE

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	INCENTIVO À PRODUTIVIDADE – GIAP. PREVISÃO NA LEI ESTADUAL Nº 14.255/2008 DE UM PERCENTUAL FIXO PARA TODOS OS SERVIDORES. CARÁTER GENÉRICO E IMPESSOAL. EXTENSÃO AOS INATIVOS. POSSIBILIDADE. APOSENTADORIA ANTERIOR AO ADVENTO DA EC Nº 41/2003. DIREITO ADQUIRIDO AO PRINCÍPIO DA PARIDADE REMUNERATÓRIA. PRECEDENTES DO STF E DAS TRÊS CÂMARAS DE DIREITO PÚBLICO DO TJCE. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Em suas razões (ID nº 14990799), a parte embargante alega a existência de omissão no acórdão, pelo que requer “a expressa manifestação sobre os seguintes pontos: a) a natureza propter laborem da Gratificação de Incentivo à Produtividade (GIAP) e a consequente impossibilidade de sua extensão aos servidores inativos; b) a impossibilidade de incorporação de vantagem sem autorização legal, conforme preceitua o artigo 37, inciso X, da Constituição Federal; c) a impossibilidade de o Poder Judiciário estender vantagens como as referidas, sob pena de violação à Súmula Vinculante 37, à Súmula 339 do Supremo Tribunal Federal e ao artigo 169, §1º, da Constituição Federal.”. Assim, pugna pelo provimento do recurso, com efeitos infringentes e modificação do julgado no ponto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Em sede de contrarrazões (ID nº 15540084), a parte adversa rechaçou as teses recursais, requerendo a manutenção do acórdão.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os pressupostos de admissibilidade, conheço do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Consoante dicção do art. 1.022, do CPC, os Embargos Declaratórios são cabíveis contra qualquer decisão judicial para esclarecer obscuridade ou eliminar contradição, suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz ou corrigir erro material. Tal espécie recursal possui rígidos contornos processuais, exigindo-se, para seu acolhimento, que estejam presentes os pressupostos legais de cabimento, não tendo condão de ensejar pura e simplesmente uma decisão substitutiva do julgado embargado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">No presente caso, a parte embargante alega que o acórdão impugnado foi omisso, porquanto não teria se manifestado sobre os seguintes pontos: “a) a natureza propter laborem da Gratificação de Incentivo à Produtividade (GIAP) e a consequente impossibilidade de sua extensão aos servidores inativos; b) a impossibilidade de incorporação de vantagem sem autorização legal, conforme preceitua o artigo 37, inciso X, da Constituição Federal; c) a impossibilidade de o

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	Poder Judiciário estender vantagens como as referidas, sob pena de violação à Súmula Vinculante 37, à Súmula 339 do Supremo Tribunal Federal e ao artigo 169, §1º, da Constituição Federal.” Requer, ainda, pronunciamento expresso quanto aos referidos dispositivos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">A irresignação, contudo, não comporta provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Analisando o acórdão embargado, vê-se que a contenda foi apreciada de forma clara e fundamentada, considerando os pontos supostamente omissos, qual seja: a de que a GIAP, apesar da nomenclatura, constitui benefício composto de duas partes, a saber, uma variável, condicionada ao cumprimento de meta de produtividade, motivo pelo qual se reveste, quanto a esta parcela, de caráter propter laborem ou pro labore faciendo; e uma fixa, a qual é devida a todos os servidores em atividade, independentemente de avaliação de desempenho, o que elide a natureza especial dessa parcela da gratificação, tornando-a, assim, de caráter geral e impessoal, de modo a permitir a extensão do seu pagamento aos servidores inativos que possuem direito adquirido à paridade remuneratória, como é o caso da autora.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Além do mais, consta na decisão recorrida que o direito autoral encontra amparo nas normas constitucionais, à luz da paridade vencimental, bem como na Lei Estadual nº 14.255/2008, pelo que não haveria que se falar em ausência de autorização legal para incorporação da vantagem ou mesmo em extensão da vantagem a título de isonomia. Por relevante, vejamos trecho elucidativo da decisão, ipsis litteris:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No que tange ao mérito propriamente dito, o cerne da controvérsia cinge-se em aferir se a parte autora, servidora pública aposentada do extinto Tribunal de Contas dos Municípios do Estado do Ceará (TCM), faz jus à incorporação da parte fixa da Gratificação de Incentivo à Produtividade (GIAP) aos seus proventos, prevista na Lei Estadual nº 14.255/2008; bem como à percepção das parcelas não adimplidas nos últimos 5 (cinco) anos, respeitando-se o prazo prescricional quinquenal.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">De início, convém asseverar que o princípio da paridade remuneratória, consagrado pelo constituinte originário no art. 40, § 4º, da CF/88, consistia no direito do servidor público aposentado e do pensionista de terem seus proventos ou pensão reajustados na mesma data, no mesmo índice e na mesma proporção da remuneração dos servidores ativos, bem como

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	de receberem os mesmos benefícios ou vantagens atribuídos aos servidores em atividade. vejamos:</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Art. 40. [...] [...] § 4º - Os proventos da aposentadoria serão revistos, na mesma proporção e na mesma data, sempre que se modificar a remuneração dos servidores em atividade, sendo também estendidos aos inativos quaisquer benefícios ou vantagens posteriormente concedidos aos servidores em atividade, inclusive quando decorrentes da transformação ou reclassificação do cargo ou função em que se deu a aposentadoria, na forma da lei.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Com o advento da EC nº 20/1998, a paridade vencimental foi preservada no § 8º do art. 40 da CFB/88, cujredação assim dispunha, in verbis:</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Art. 40 [...] [...] § 8º Observado o disposto no art. 37, XI, os proventos de aposentadoria e as pensões serão revistos na mesma proporção e na mesma data, sempre que se modificar a remuneração dos servidores em atividade, sendo também estendidos aos aposentados e aos pensionistas quaisquer benefícios ou vantagens posteriormente concedidos aos servidores em atividade, inclusive quando decorrentes da transformação ou reclassificação do cargo ou função em que se deu a aposentadoria ou que serviu de referência para a concessão da pensão, na forma da lei. (Incluído pela Emenda Constitucional nº 20, de 15/12/98)&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por seu turno, a EC nº 41/2003 revogou o princípio da paridade, substituindo-o pelo postulado da preservação do valor real, atualmente ainda vigente, o qual estabelece a revisão geral anual dos proventos de aposentadoria e das pensões, porém não vinculada ao reajuste dos servidores em exercício, assegurando o reajustamento dos benefícios para preservar-lhes, em caráter permanente, o valor real (art. 40, § 8º, da CF/88): [...]</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Sucede, todavia, que a EC nº 41/2003, em seus art. 3º, § 2º e art. 7º, preconiza que os servidores públicos que, na data da publicação da aludida emenda constitucional, já estavam aposentados ou já preenchiam os requisitos para a concessão da aposentadoria, ainda que não a tenham requerido, têm o direito adquirido à paridade remuneratória, senão vejamos:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No caso em apreço, a Lei Estadual nº 14.255/2008, a qual dispõe sobre a reestruturação do Plano de Cargos, Carreira e Remuneração dos servidores do Tribunal de Contas dos Municípios do Estado do Ceará, prevê a Gratificação de Incentivo à Produtividade (GIAP), nos seguintes termos, expressis litteris:</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Art. 14. A remuneração dos servidores de que trata o art. 4o. é composta do vencimento e dos acréscimos pecuniários previstos nesta Lei. Parágrafo único. As tabelas de vencimento dos cargos/funções são as constantes do anexo III desta Lei.</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Art.

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	15. A remuneração do servidor constará de duas partes:</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> I parte fixa, composta pelo vencimento, de acordo com a classe e referência dos cargos/função, de que trata o anexo III desta Lei, e das seguintes vantagens, ora criadas:</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> a) Gratificação de Incentivo à Titulação GIT (art. 16);</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> b) Gratificação de Dedicação Exclusiva GDE (art. 17);</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> c) Parcelas remuneratórias decorrentes do enquadramento (art. 21):</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> 1) Progressão Horizontal PH;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> 2) Gratificações decorrentes de incorporação do exercício de cargo em comissão;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> 3) Vantagem Pessoal Reajustável VPR;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> d) parte fixa da Gratificação de Incentivo à Produtividade GIAP;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> II parte variável, composta pela segunda parte da Gratificação de Incentivo à Produtividade GIAP, prevista no art. 18 desta Lei. (Nova redação dada pela Lei n.º 15.485, de 20.12.13)</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Art. 18. A Gratificação de Incentivo à Produtividade GIAP, tem por objetivo estimular os aumentos de produtividade do Tribunal que impliquem no incremento de metas em nível institucional, setorial e individual, com base em indicadores de desempenho, e será concedida conforme critérios estabelecidos em Resolução, a ser elaborada em até 90 (noventa) dias da data de publicação desta Lei, observando-se o seguinte:</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">I apenas os servidores em efetivo exercício no TCM e que cumpram 8 (oito) horas de trabalho diárias poderão perceber a GIAP;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> II é vedado, para a concessão da parte variável da GIAP, considerar como de efetivo exercício qualquer afastamento, licença ou tempo fictício, ressalvados os períodos de férias, casamento, luto, licença à servidora gestante, licença paternidade, licença para tratamento de saúde, licença especial e as hipóteses previstas no inciso XV do art. 68 e no art. 112 da Lei nº 9.826, de 14 de maio de 1974; nesses casos, a GIAP corresponderá ao valor da gratificação percebido no mês anterior ao início das férias ou da licença;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> III a parte variável da GIAP integrará os proventos da aposentadoria no valor correspondente à média aritmética simples dos valores percebidos pelo servidor nos 12 (doze) meses anteriores ao pedido da aposentadoria, e a parte fixa da GIAP integrará os proventos da aposentadoria no valor percebido na data da concessão; na hipótese do servidor pedir a aposentadoria sem que ainda tenha completado 12 (doze) meses, desde o início da percepção da GIAP, considerar-se-á, para o cálculo da média, a quantidade de meses trabalhados; (Nova redação dada pela Lei n.º 15.485, de 20.12.13)</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> IV caso o servidor faça a opção por aposentadoria pelas regras do art. 40 da Constituição Federal, com proventos calculados de acordo com os seus §§ 3 o. e 17, e nas demais hipóteses de necessária incidência dessas regras constitucionais federais, não será aplicado o disposto no inciso II deste artigo, calculando-se os proventos de acordo com a legislação de regência;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> V ao valor da GIAP, integrado à aposentadoria na forma do inciso II deste artigo, incidirá exclusivamente o índice da revisão geral dos servidores públicos civis do Estado do Ceará, vedada a vinculação de qualquer espécie com a mesma parcela auferida pelos servidores ativos;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VI a GIAP será extensível aos servidores ocupantes de cargos de provimento em comissão, de forma que o valor recebido não poderá exceder, em qualquer hipótese, aos valores estipulados no inciso I do art. 18-A, quanto à parte fixa, e no inciso I do art. 18-B, quanto à parte variável; (Nova redação dada pela lei n.º 15.485, de 20.12.13)</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VII Os critérios referidos no caput serão definidos conjuntamente, por comissão paritária constituída por membros indicados pela Administração Pública e pelos servidores, a ser definida em Resolução.</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Parágrafo único. A GIAP é composta de duas partes:</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> I - uma parte fixa, devida a todos os servidores, inclusive em afastamentos e licenças considerados por lei como tempo de efetivo exercício, concedida em função da titularidade do cargo/função;</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;"

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	dir="ltr"> II - uma parte variável, com valores e regras definidos através de Resolução do Tribunal de Contas dos Municípios do Estado do Ceará, devida a todos os servidores do Tribunal. (Nova redação dada pela Lei n.º 15.485, de 20.12.13)</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em análise acurada dos autos, depreende-se que a requerente já se encontrava na inatividade decorrente da sua aposentadoria desde 06/01/1997 (ID nº 13494282), antes, portanto, da promulgação da EC nº 41/2003, razão pela qual é evidente que goza do direito adquirido à paridade vencimental, na forma dos dispositivos constitucionais supramencionados.</p><p style="line-height: 1.2; margin-left: 141.73228346456693pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ademais, infere-se dos dispositivos legais supracitados da Lei Estadual nº 14.255/2008 que a GIAP, apesar da nomenclatura, constitui benefício composto de duas partes, a saber, uma variável, condicionada ao cumprimento de meta de produtividade, motivo pelo qual se reveste, quanto a esta parcela, de caráter propter laborem ou pro labore faciendo; e uma fixa, a qual é devida a todos os servidores em atividade, independentemente de avaliação de desempenho, o que elide a natureza especial dessa parcela da gratificação, tornando-a, assim, de caráter geral e impessoal, de modo a permitir a extensão do seu pagamento aos servidores inativos que possuem direito adquirido à paridade remuneratória, como é o caso da autora. Além do mais, não se mostra razoável condicionar o pagamento de benefício à servidor inativo, detentor do direito à paridade assegurado constitucionalmente, a carência que não poderia ser por ele cumprida. &#160;(destacou-se)</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Com efeito, sob a roupagem de "omissão", o recorrente almeja a rediscussão do mérito do julgado que lhe foi desfavorável. Como se sabe, o simples descontentamento com o decisum, embora legítimo, não autoriza a utilização da via recursal integrativa, que deve servir essencialmente ao aprimoramento da decisão, não à sua alteração, já que esta não constitui sua finalidade precípua.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Nesse sentido, colaciono julgado do Superior Tribunal de Justiça:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">PROCESSUAL CIVIL. AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO AGRAVO EM RECURSO ESPECIAL. RECURSO MANEJADO SOB A ÉGIDE DO NCPC. AÇÃO COMINATÓRIA E INDENIZATÓRIA. OMISSÃO, CONTRADIÇÃO, OBSCURIDADE OU ERRO MATERIAL NÃO DEMONSTRADOS. VIOLAÇÃO DOS ARTS. 1.022 E 489, § 1º, DO NCPC. NEGATIVA DE PRESTAÇÃO JURISDICIONAL E FALTA DE FUNDAMENTAÇÃO NÃO CONFIGURADAS. ANÁLISE DE CLÁUSULAS CONTRATUAIS. INOBSERVÂNCIA. [...] 2. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant:

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	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Inexistentes as hipóteses do art. 1.022, II, do NCPC (art. 535 do CPC/1973), não merecem acolhimento os embargos de declaração que têm nítido caráter infringente. 3. Os embargos de declaração não se prestam à manifestação de inconformismo ou à rediscussão do julgado. 4. Não há falar em violação dos arts. 489 e 1.022 do NCPC quando a decisão está clara e suficientemente fundamentada, resolvendo integralmente a controvérsia 5. A alteração das conclusões do acórdão recorrido exige interpretação de cláusula contratual e reapreciação do acervo fático-probatório da demanda, o que faz incidir as Súmulas nºs 5 e 7, ambas do STJ. 6. Agravo interno não provido. (AgInt no AREsp n. 1.701.614/SC, relator Ministro Moura Ribeiro, Terceira Turma, julgado em 29/3/2021, DJe de 6/4/2021.) (destacou-se)</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, a Corte Cidadã, julgando Embargos de Declaração em Mandado de Segurança (STJ. 1ª Seção. Edcl no MS 21.315-DF, Rel.. Min. Diva Malerbi, Desembargadora convocada do TRF da 3ª Região, em 8/6/2016, Info 585), pronunciando-se a respeito do disposto no art. 489, § 1º, do CPC/2015, entendeu que o julgador não está obrigado a responder a todas as questões suscitadas pelas partes, quando já tenha encontrado motivo suficiente para proferir a decisão.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">No mesmo sentido, o Supremo Tribunal Federal fixou a tese de que "o art. 93, IX, da Constituição Federal, exige que o acórdão ou decisão sejam fundamentados, ainda que sucintamente, sem determinar, contudo, o exame pormenorizado de cada uma das alegações ou provas" (Tema 339, da sistemática de repercussão geral).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Noutro giro, quanto ao pleito de pronunciamento expresso acerca dos arts.1.022, 489, § 1º, IV, ambos do CPC; art. 2º, 40, caput, §§3º, 4º e 8º, 167, IV e 169, §1º e , 195, §5º da CF; e da Súmula Vinculante 37 e da Súmula 339 do Supremo Tribunal Federal, consigno que, nos termos do art. 1.025, do Códex Processual Civil, consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de prequestionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o Tribunal Superior considere existentes erro, omissão, contradição ou obscuridade.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

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	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Destarte, o acórdão impugnado encontra-se devidamente fundamentado, expondo com clareza as razões do seu convencimento, atraindo a incidência da Súmula nº 18 deste Tribunal de Justiça, segundo a qual "são indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada".</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Isso posto, conheço dos Aclaratórios para negar-lhes provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	93
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Incapacidade Laborativa Permanente
Polo ativo	LIDUINA VIEIRA LOPES DO MONTE
Advogado(s) - Polo ativo	JOSE JOACY BESERRA JUNIOR - (CE20980-A)
Polo passivo	INSTITUTO NACIONAL DO SEGURO SOCIAL - INSS
Advogado(s) - Polo passivo	JULIANA MARIA DE VASCONCELOS LINS MAIA - (PE20588) DANIEL ROFFE DE VASCONCELOS - (PE16760)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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   ACÓRDÃO:
</p><p> O Colegiado, por unanimidade, acordou
em conhecer do recurso para negar-lhe provimento, nos termos do(a) eminente
Relator(a).</p><p>&#160;</p><p>
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	LAUDO PERICIAL DEFASADO.&#160; <strong class="western" style="font-size: 12pt;"> IMPOSSIBILIDADE DE MANIFESTAÇÃO SOBRE MOME NTO DE ORIGEM DA PRESTAÇÃO QUE AINDA NÃO FOI DEFERIDA. PREQUESTIONAMENTO. DESNECESSIDADE DE REFERÊNCIA EXPLÍCITA AOS DISPOSITIVOS LEGAIS. EMBARGOS DE DECLARAÇÃO REJEITADOS. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME </p><p class="western" style="line-height: 150%; margin-bottom: 0.35cm;" align="justify"> 01. Trata-se de Embargos de Declaração <strong class="western">(Id. 15653243) opostos pelo Instituto Nacional do Seguro Social - INSS, contra Ementa/Acórdão de Id. 14575696, apontando omissão no julgado por entender a necessidade de fixação da data do início do benefício (DIB) na data da citação, nos casos em que o benefício foi indeferido/cessado há mais de cinco anos antes do ajuizamento da ação, com base no art. 240 do CPC e do art. 1º do Decreto nº 20.910/32.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> II. QUESTÕES EM DISCUSSÃO </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 02. A questão em discussão consiste em saber se há omissão que justifiquem o acolhimento dos embargos, sobretudo no tocante à análise sobre a necessidade de fixação do início do benefício (DIB) na data da citação, tendo em vista que a ação foi ajuizada há mais de cinco anos do seu indeferimento/cessação, considerando-se o disposto no art. 1º do Decreto nº 20.910/32 e no art.240 do CPC.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 03. Ressalta-se que é impossível a discussão acerca do momento do início de prestação previdenciária quando sequer houve o seu deferimento, ou seja, no decisum embargado não houve o reconhecimento do direito autoral ao re stabelecimento de auxílio-doença nem a sua conversão em aposentadoria por invalidez, o que acarretaria a necessidade de fixação da data de início do referido benefício, por consequência.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 04. Com efeito, a sentença foi declarada nula, em virtude da inexistência da prescrição do fundo de direito, contudo neste momento processual ainda não é possível analisar o mérito da presente ação, diante da inaplicabilidade da Teoria da Causa Madura, desse modo, &#160;não seria plausível a manifestação acerca do momento de início de prestação previdenciária que sequer fora deferida . Logo, não há omissão a ser sanada.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 05. Ademais , é desnecessária a referência explícita, no acórdão, aos dispositivos legais indicados pelo recorrente, uma vez que, em consonância com o art. 1.025, do CPC/2015, “ reputam-se incluídos na decisão os elementos que a parte suscitou para fins de prequestionamento, ainda que os aclaratórios sejam ao final inadmitidos ou rejeitados” , restando admitido pela Lei Processual, portanto, o denominado "prequestionamento ficto".</p><p class="EmentadoAcf3f3rde3e3o" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 06. Omissão não configurada. Embargos Rejeitados.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Tese de julgamento: “Diante do que se extrai dos autos, não há fundamento para reconhecer omissão apta a alterar o julgado, pois é impossível a manifestação sobre data de início de benefício previdenciário que sequer fora deferido .”. </p><p class="western" style="line-height: 150%; margin-bottom: 0.35cm;" align="justify"> <span

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	style="color: #000000;">Dispositivos relevantes citados: arts. 240, 1.022 e 1.023 do CPC; art. 1º do Decreto nº 20.910/32.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada: Embargos de Declaração - 0206766-79.2022.8.06.0064, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA,&#160; <strong class="western"> 1ª Câmara Direito Público , data do julgamento:&#160; 09/ 09 /202 4 , data da publicação:&#160; 10/ 09 /202 4. </p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em rejeitar os embargos de declaração, nos termos do voto do relator.</p><p style="text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> &#160; <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Trata-se de Embargos de Declaração&#160; (Id. 15653243)&#160;opostos pelo Instituto Nacional do Seguro Social - INSS, contra Ementa/Acórdão de Id. 14575696, apontando omissão no julgado por entender a necessidade de fixação da data do início do benefício (DIB) na data da citação, nos casos em que o benefício foi indeferido/cessado há mais de cinco anos antes do ajuizamento da ação, com base no art. 240 do CPC e do art. 1º do Decreto nº 20.910/32. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Por derradeiro, sustenta que a oposição dos embargos se presta para fins de prequestionamento da matéria. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Dispensado o parecer da&#160; Procuradoria-Geral de Justiça. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Desnecessária a inclusão em pauta (art. 1.024, § 1°, do CPC). &#160; </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;">&#160;</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> <span style="font-family: arial, helvetica, sans-

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	serif;">&#160;Presentes os pressupostos de admissibilidade, conheço do recurso. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Nos termos do art. 1.022 do CPC, os embargos de declaração têm a finalidade de esclarecer obscuridade, eliminar contradição, suprir omissão e corrigir erro material. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Como se sabe, toda e qualquer sentença ou acórdão, independentemente do seu conteúdo, é passível de complementação ou integração pelo manejo de embargos de declaração, caso haja obscuridade, contradição, omissão ou erro material, à luz do disposto no art. 1.022 do CPC, constituindo, pois, espécie recursal com fundamentação vinculada . </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; A parte embargante assevera, em síntese, que a decisão vergastada deve ser modificada em decorrência de ter sido omissa , considerando que, no seu entendimento, não houve pronunciamento expresso sobre a necessidade de fixação do início do benefício (DIB) na data da citação, tendo em vista que a ação foi ajuizada há mais de cinco anos do seu indeferimento/cessação, considerando-se o disposto no art. 1º do Decreto nº 20.910/32 e no art. 240 do CPC. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; No entanto, compulsando os autos, verifico, de logo, que os Aclaratórios não comportam provimento , uma vez que não houve pronunciamento a respeito da data de início do benefício no acórdão embargado (Id. 14575696), tendo em vista que a sentença ora em debate foi declarada nula, pois reconheceu-se a inexistência de prescrição de fundo de direito.&#160; </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> Salienta-se que o decisum embargado reconheceu que não seria possível analisar o mérito da presente ação,&#160; pois o laudo pericial acostado aos autos, em Id. 13643442/13643446 e 13643468/13643472, fora realizado em 09/08/2012, tendo se passado, portanto, mais de doze anos desde sua realização, desse modo, esta relatoria entendeu que não há como a concessão do benefício ocorrer com base em laudo defasado, concluindo pela inaplicabilidade da Teoria da Causa Madura, e&#160; assim, determinando a devolução dos autos ao juízo&#160; a quo &#160;para regular prosseguimento do feito. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Ressalta-se que é impossível a discussão acerca do momento do início de prestação previdenciária quando sequer houve o seu deferimento , ou seja, no decisum embargado não houve o reconhecimento do direito autoral ao re stabelecimento de auxílio-doença nem a sua conversão em aposentadoria por invalidez, o que acarretaria a necessidade de fixação da data de início do referido benefício, por consequência. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160;Com efeito, a sentença foi declarada nula, em virtude da inexistência da prescrição do fundo de direito, contudo neste momento processual ainda não é possível analisar o mérito da presente ação, diante da inaplicabilidade da Teoria da Causa Madura. Desse modo, &#160;não seria plausível a manifestação acerca do momento de início de prestação previdenciária que sequer fora deferida .&#160; Logo, não há omissão a ser sanada.</p><p class="western" style="line-height: 150%; text-indent:

Processo	0004519-03.2016.8.06.0135
	2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Nesse sentido, é o entendimento desta Corte de Justiça ao analisar caso similar, com destaques: </p><p class="western" style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent; page-break-before: auto;" align="justify"> EMENTA: EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. T ESE RECURSAL QUE OBJETIVA O SANEAMENTO DE OMISSÃO RELATIVA À NECESSIDADE DE FIXAÇÃO DA DATA DE INÍCIO DE BENEFÍCIO PREVIDENCIÁRIO (DIB). INEXISTÊNCIA DE VÍCIO. ACÓRDÃO IMPUGNADO QUE RECONHECEU A NULIDADE DA SENTENÇA, TENDO EM VISTA A AUSÊNCIA DE REALIZAÇÃO DE PERÍCIA MÉDICA NO SEGURADO. IMPOSSIBILIDADE DE MANIFESTAÇÃO SOBRE O MOMENTO DE ORIGEM DE PRESTAÇÃO QUE NEM SEQUER FORA DEFERIDA. RECURSO&#160;CONHECIDO E DESPROVIDO. </p><p class="western" style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent;" align="justify"> 1.&#160;Alega o INSS, em suma, que o acórdão impugnado&#160;padece de vício de omissão, em virtude da falta de manifestação expressa sobre a obrigatoriedade de fixação da data de início do benefício previdenciário (DIB) no momento da citação válida da parte ré. </p><p class="western" style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent;" align="justify"> 2.&#160;Entretanto, a sobredita tese não merece prosperar, tendo em vista que não houve qualquer pronunciamento a respeito da DIB no&#160; decisum &#160;embargado, em decorrência da anulação da sentença, porquanto o Magistrado de origem não determinou a realização de perícia médica, a&#160;qual constitui requisito primordial ao correto deslinde de controvérsia dessa natureza, para fins de verificação do estado de saúde do segurado, ora embargado. </p><p class="western" style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent;" align="justify"> 3. Ou seja, não houve o reconhecimento, no acórdão combatido, do direito autoral à&#160;implantação de auxílio por incapacidade temporária acidentário, o que acarretaria a necessidade de fixação da data de início do referido benefício, por consequência. Em verdade, declarou-se a nulidade da sentença, em virtude da ausência de submissão do recorrido à perícia técnica, de forma que era impossível manifestar-se acerca do momento de início de prestação previdenciária que nem sequer fora deferida. </p><p class="western" style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent;" align="justify"> 4. Logo,&#160; não há mácula a ser saneada. </p><p class="western" style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent;" align="justify"> 5. Aclaratórios conhecidos e desprovidos. </p><p class="western" style="line-height: 100%; orphans: 0; widows: 0; margin-left: 4cm; background: transparent;" align="justify"> (Embargos de Declaração - 0206766-79.2022.8.06.0064, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA,&#160; <strong class="western"> 1ª Câmara Direito Público , data do julgamento:&#160; 09/ 09 /202 4 , data da publicação:&#160; 10/ 09 /202 4) </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> Assim, não havendo o preenchimento dos requisitos estampados no art. 1.023 do CPC, em nada merece reproche o decisum hostilizado, devendo ser mantido incólume por seus próprios fundamentos.&#160;</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Do mesmo modo, é <strong style="font-family: arial, helvetica, sans-serif; font-size: small; text-indent: 70.85pt;"> <span style="text-decoration:

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	underline;">desnecessária a referência explícita, no acórdão, aos dispositivos legais indicados pelo recorrente, uma vez que, em consonância com o art. 1.025, do CPC/2015, “ <em style="font-family: arial, helvetica, sans-serif; font-size: small; text-indent: 70.85pt;">reputam-se incluídos na decisão os elementos que a parte suscitou para fins de prequestionamento, ainda que os aclaratórios sejam ao final inadmitidos ou rejeitados” , restando admitido pela Lei Processual, portanto, o denominado "prequestionamento ficto".</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Sendo assim, inexistindo vícios a serem supridos, o pedido de alteração do julgado revela pretensão de reanálise do mérito, não admitida por esta via, conforme já sumulado por esta Corte de Justiça, através da Súmula nº 18, segundo a qual “ <em style="font-size: small; text-indent: 70.85pt;">São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada ”. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Nesse passo, <strong style="font-size: small; text-indent: 70.85pt;"> advirta-se que a oposição de incidentes processuais infundados dará ensejo à aplicação de multa por conduta processual indevida.</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Ante o exposto, <strong style="font-size: small; text-indent: 70.85pt;">rejeito os embargos de declaração, mantendo inalterado o acórdão embargado.</p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; É como voto. </p><p class="western" style="line-height: 150%; text-indent: 2.5cm; margin-bottom: 0.35cm;" align="justify"> &#160; Fortaleza, data e hora informadas pelo sistema. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;">&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; text-indent: 70.85pt; line-height: 150%;"> &#160; <strong style="font-size: small;">DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;"> Relator </p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	94
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Servidores Inativos
Polo ativo	MUNICIPIO DE TAUA
Advogado(s) - Polo ativo	Não informado
Polo passivo	COSMO XAVIER DE OLIVEIRA
Advogado(s) - Polo passivo	GEORGE LUIS GONCALVES LOPES - (CE24233-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;0200404-31.2022.8.06.0171 -&#160;AGRAVO INTERNO EM APELAÇÃO CÍVEL&#160;</p><p> AGRAVANTE: COSMO XAVIER DE OLIVEIRA</p><p> AGRAVADO : MUNICIPIO DE TAUA</p><p> <br /> </p><p style="text-align: center;">&#160;</p><p style="line-height: 200%;" align="justify">   Ementa.   Direito processual civil. Agravo interno. Recurso de apelação não conhecido. Honorários advocatícios sucumbenciais. Majoração. Sentença ilíquida.   <span

Processo	0200404-31.2022.8.06.0171
	style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal;"> Fixação. Competência do juízo de origem. Conhecido e desprovido.&#160; i. caso em exame 1. Agravo Interno interposto por Cosmo Xavier de Oliveira contra Decisão Monocrática que não conheceu do Recurso de Apelação do Município de Tauá. 2. O agravante alega omissão no julgado, requerendo que se mencione expressamente a necessidade de majoração da verba sucumbencial em decorrência do não conhecimento do apelo municipal. 3. Em contrarrazões, a parte agravada sustenta o não conhecimento do agravo. &#160; ii. Questão em discussão 4. A questão em discussão consiste em saber se é necessária a determinação para majoração dos honorários de sucumbência em razão do não conhecimento do recurso de apelação em sentença ilíquida. &#160; iii. Razões de decidir 5. Conforme entendimento consolidado, nas sentenças ilíquidas, a fixação dos honorários advocatícios, inclusive os recursais, deve ocorrer na fase de liquidação do julgado, a critério do juízo de origem, conforme disposto no art. 85, § 4º, inciso II, do CPC. 6. O Superior Tribunal de Justiça tem reiterado que, para sentenças ilíquidas, a majoração dos honorários recursais, prevista no art. 85, § 11, do CPC, não é aplicável, devendo o juízo da liquidação definir o quantum, observando o trabalho adicional desempenhado em grau recursal. Cita-se: AgInt no AREsp n. 2.383.182/PE, rel. Ministro Gurgel de Faria, Primeira Turma, julgado em 26/2/2024; e AgInt nos EDcl nos EDcl no AREsp n. 1.307.267/RS, rel. Ministro Og Fernandes, Segunda Turma, julgado em 20/4/2021. 7. Dessa forma, compete ao juízo de origem, na fase de liquidação, observar o acréscimo dos honorários recursais, caso aplicável, considerando a jurisprudência firmada pelo STJ no tema. &#160; iv. Dispositivo e tese 8. Agravo Interno conhecido e desprovido. &#160; Tese de julgamento: "Em sentenças ilíquidas, os honorários sucumbenciais recursais devem ser fixados na fase de liquidação, considerando-se o trabalho adicional realizado em grau recursal, conforme previsto no art. 85, § 4º, inciso II, do CPC, e jurisprudência consolidada pelo STJ." Dispositivos relevantes citados : CPC , art. 85, § 4º, inciso II; art. 85, § 11. Jurisprudência relevante citada: STJ, Tema 1.059 - REsp n. 1.864.633/RS, relator Ministro Paulo Sérgio Domingues, Corte Especial, julgado em 9/11/2023, DJe de 21/12/2023; STJ, AgInt no AREsp n. 2.383.182/PE , rel. Ministro Gurgel de Faria, Primeira Turma, julgado em 26/2/2024; STJ, AgInt nos EDcl nos EDcl no AREsp n. 1.307.267/RS <span style="font-

Processo	0200404-31.2022.8.06.0171
	family: Arial, sans-serif;"> , rel. Ministro Og Fernandes, Segunda Turma, julgado em 20/4/2021.</p><p style="text-align: justify;">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em conhecer e desprover o agravo interno, nos termos do voto do relator. </p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> Cuida-se de Agravo Interno – Id 13919350 interposto por Cosmo Xavier de Oliveira em face da Decisão Monocrática – Id 13702342 que não conheceu do Recurso de Apelação do Município de Tauá. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> Insurge-se o agravante, em suma, apontando omissão no julgado quanto a necessidade de menção expressa no julgado quanto à majoração da verba sucumbencial em razão do não conhecimento do apelo do ente municipal. </p><p style="text-indent: 8%; text-align: justify;"> Contrarrazões em duplicidade nos Ids. 14632732 e 15422012 pugnando, em síntese, pelo não conhecimento do recurso. </p><p style="text-indent: 8%; text-align: justify;"> &#160;É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> <br /> </p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> Cuida-se de Agravo Interno contra Decisão Monocrática que não conheceu do recurso de apelação. </p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> O recorrente alega que houve omissão no julgado, pois entende ser necessário constar expressamente a ordem para majoração dos honorários de sucumbência ante ao não conhecimento do recurso de apelação. </p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> In casu, a Sentença – Id.13666675 que fora mantida, ante ao não conhecimento da apelação, postergou os honorários de sucumbência para a liquidação do julgado, veja-se: </p><p

Processo	0200404-31.2022.8.06.0171
	style="line-height: 115%; text-indent: 0.4cm; margin-left: 4cm; background: transparent;" align="justify"> Deixo para definir o percentual da condenação de honorários advocatícios em favor do advogado da Autora após a liquidação desta sentença (CPC, art. 85, § 4º, inciso II). (grifei) </p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> <br /> <br /></p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> Pois bem! </p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> Conforme relatado se trata de Sentença ilíquida, pelo que, a definição dos honorários deverão ser fixados após a liquidação daquela, pelo que, caberá ao juízo de origem fixar tal verba honorária levando em conta o trabalho adicional realizado em grau recursal, inclusive em observância ao Resp 1.865.553/PR (Tema 1.059) </p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> Nesse sentido, o STJ já se posicionou por suas duas Turmas de Direito Público: </p><p style="line-height: 200%; margin-left: 4cm; background: transparent; break-before: auto;" align="justify"> PROCESSUAL CIVIL. RECURSO ESPECIAL. NEGATIVA DE PRESTAÇÃO JURISDICIONAL. ALEGAÇÃO GENÉRICA. PREQUESTIONAMENTO. AUSÊNCIA. FUNDAMENTOS CONSTITUCIONAL E INFRACONSTITUCIONAL. RECURSO EXTRAORDINÁRIO. AUSÊNCIA. HONORÁRIOS RECURSAIS. CASO CONCRETO. JUÍZO DE LIQUIDAÇÃO. </p><p style="line-height: 200%; margin-left: 4cm; background: transparent;" align="justify"> (…) 4. Segundo entendimento do STJ, "não é devida a fixação do quantum relativo aos honorários recursais, previstos no art. 85, § 11, do CPC/2015, quando a sentença proferida não for considerada líquida pelo julgador, o que inviabiliza a majoração determinada no referido dispositivo legal." (REsp 1.749.892/RS, rel. Ministro Francisco Falcão, Segunda Turma, DJe 24/10/2018). 5. Agravo interno parcialmente provido apenas para determinar que compete ao juízo da liquidação proceder ao acréscimo dos honorários recursais. (AgInt no AREsp n. 2.383.182/PE, relator Ministro Gurgel de Faria, Primeira Turma, julgado em 26/2/2024, DJe de 12/3/2024.) </p><p style="line-height: 200%; margin-left: 4cm; background: transparent;" align="justify"> <br /> <br /></p><p style="line-height: 200%; margin-left: 4cm; background: transparent;" align="justify"> PROCESSUAL CIVIL. AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NOS EMBARGOS DECLARAÇÃO NO AGRAVO EM RECURSO ESPECIAL. SENTENÇA ILÍQUIDA. HONORÁRIOS. MAJORAÇÃO PELO STJ. IMPOSSIBILIDADE. VERBA HONORÁRIA FIXADA NA LIQUIDAÇÃO DA SENTENÇA. JUÍZO DE ORIGEM DEVE DEFINIR O VALOR DOS HONORÁRIOS RECURSAIS. 1. Inviável a esta Corte Superior a majoração dos honorários advocatícios na decisão que não conheceu do agravo em recurso especial, pois a jurisprudência do STJ orienta não ser "[...] devida a fixação do quantum relativo aos honorários recursais, previstos no art. 85, § 11, do CPC/2015, quando a sentença proferida não for considerada líquida pelo julgador" (REsp 1.749.892/RS, Rel. Min. Francisco Falcão, Segunda Turma, DJe 24/10/2018). 2. Por ocasião da liquidação da sentença, o juízo de origem deverá fixar a verba honorária levando em conta o trabalho adicional realizado em grau recursal, observando, conforme o caso, o disposto no art. 85, §§ 2º a 6º, do CPC/2015 e respeitando os limites estabelecidos nos §§ 2º e 3º desse mesmo dispositivo legal. 3. Agravo interno a que se dá parcial provimento. (AgInt nos EDcl nos EDcl no AREsp n. 1.307.267/RS, relator Ministro Og Fernandes, Segunda Turma, julgado em 20/4/2021, DJe de 28/4/2021.) </p><p style="line-height: 200%; margin-left: 4cm; background: transparent;" align="justify"> <br /> <br /></p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent; break-before: auto;" align="justify"> No mesmo sentido: (AgInt nos EDcl no AREsp n. 2.280.773/MS, relator Ministro Gurgel de Faria, Primeira Turma, julgado em 19/6/2023, DJe de 30/6/2023.); (AgInt no AREsp n. 2.383.225/PE, relator Ministro Herman Benjamin, Segunda Turma, julgado em 30/10/2023, DJe de 18/12/2023.) </p><p

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	style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> Neste contexto, por óbvio, o juízo de origem, quando da fixação dos honorários levará em consideração a majoração recursal, inclusive em atenção ao recurso repetitivo supramencionado referente ao Tema 1.059. </p><p style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0cm;" align="justify"> Por fim, advirta-se que a oposição de incidentes processuais infundados dará ensejo à aplicação de multa por conduta processual indevida. </p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> Ante todo o exposto, conheço e nego provimento ao agravo interno. </p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> &#160; É como voto.</p><p style="line-height: 200%; text-indent: 2.5cm; background: transparent;" align="justify"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	95
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	ALENE MORAIS DE AQUINO TEIXEIRA
Advogado(s) - Polo ativo	DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A) ANTONIO FERREIRA BEZERRA - (CE26246-A)
Polo passivo	MUNICIPIO DE ACOPIARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <span style="font-
size: medium;">   <strong
style="font-size: medium;">ESTADO DO CEARÁ   <br />   <strong
style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong
style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong
style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA
MARTINS DO VALE   </p><p style="text-align: center;">

<br />   </p><p>   <span style="font-
family: arial, helvetica, sans-serif;">PROCESSO:&#160;3003688-37.2024.8.06.0000 -
&#160;AGRAVO DE INSTRUMENTO (202) </p><p> <span style="font-
size: medium;">   AGRAVANTE:
ALENE MORAIS DE AQUINO TEIXEIRA. </p><p> <span style="font-
size: medium;">   AGRAVADO:
MUNICIPIO DE ACOPIARA. </p><p align="center"> <span style="font-
size: medium;">   <br />
 </p><p style="line-height: 1.2; text-indent: 113.38582677165354pt; text-
align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-family:
arial, helvetica, sans-serif;">   <br /> </p><p style="line-height: 1.2; margin-left:
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bottom: 0pt;" dir="ltr"> <span
style="font-size: 12pt; color: #000000; background-color: transparent; font-weight: 700;
font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-
space: pre-wrap;">EMENTA: <span style="font-size: 12pt; color: #000000;
background-color: transparent; font-weight: 400; font-style: normal; font-variant: small-caps;
text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Processual Civil.
Agravo de Instrumento. Cumprimento individual de sentença coletiva. Inaplicabilidade do
tema 1.169/STJ. Apuração de valores por simples cálculos aritméticos. Decisão
reformada.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent:
0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">
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700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align:
baseline; white-space: pre-wrap;">   <span style="font-family: arial, helvetica, sans-
serif;">I. Caso em exame </p><p style="line-height: 1.2; margin-left:
113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-
bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; color: #000000; background-color:
transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;
vertical-align: baseline; white-space: pre-wrap;">   <span style="font-family: arial, helvetica,
sans-serif;">1. Agravo de Instrumento interposto contra decisão interlocutória proferida
pelo Juízo da 2ª Vara Cível da Comarca de Acopiara, que determinou a suspensão de
cumprimento individual de sentença coletiva </p><p style="line-height:
1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top:
10pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; color: #000000;
background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps;
text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">   II. Questão em discussão
</p><p style="line-height: 1.2; margin-left: 113pt; text-indent:

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	0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em verificar se incide a determinação de suspensão no cumprimento individual de sentença coletiva ajuizada na origem, nos termos da decisão proferida em afetação de recurso repetitivo REsp nº 1978629/RJ, Tema 1.169/STJ. </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de Decidir </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 3. Na espécie, o título judicial que fundamentou o cumprimento de sentença determinou o pagamento de valores atrasados de parcelas remuneratórias, os quais exigem simples cálculos aritméticos, dispensando a prévia liquidação, nos termos do §9 do art. 509 do CPC. </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 4. O título judicial em questão não se mostra genérico, ante a identificação dos beneficiários, quais sejam, os professores da rede pública do Município de Acopiara; trazendo o seu alcance de maneira clara e precisa ao explicitar o pagamento de diferenças remuneratórias de férias e do terço constitucional no período compreendido entre 2013 a 2017, bem como as demais parcelas que se venceram no andamento do processo. </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 5. Por tais razões, o cumprimento individual de sentença coletiva promovido pela agravante não se amolda à questão a ser submetida a julgamento repetitivo, nos termos definidos pelo Tema 1.169 do STJ. </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 6. Logo, é o caso, então, de ser dado provimento ao recurso, para se reformar o decisum proferido pelo Juízo a quo e determinar o prosseguimento do feito na origem.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 7. Agravo de Instrumento conhecido e provido. Decisão interlocutória reformada.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> _____________ </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; color: #000000; background-color: transparent;

Processo	3003688-37.2024.8.06.0000
	font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> Dispositivos relevantes citados: CPC, art. 509, §2º </p><p style="line-height: 1.26; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Jurisprudência relevante citada: STJ, REsp n. 1.978.629/RJ, relator Ministro Benedito Gonçalves, Corte Especial, j. 11/10/2022</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3003688-37.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em para conhecer e dar provimento ao recurso , reformando a decisão interlocutória ora combatida, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> &#160; Local, data e hora indicados pelo sistema. </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="line-height: 1.2; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom:

Processo	3003688-37.2024.8.06.0000
	0pt;" dir="ltr"> Em evidência, Agravo de Instrumento interposto contra decisão interlocutória proferida pelo Juízo da 2ª Vara Cível da Comarca de Acopiara, que determinou a suspensão de cumprimento individual de sentença coletiva. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> O caso/a ação originária: Alene Morais de Aquino Teixeira requereu o cumprimento individual de sentença coletiva (Processo nº 3000236-29.2024.8.06.0029) em face do Município de Acopiara/CE, aduzindo que, nos autos da ação coletiva nº 0004059-72.2018.8.06.0029, o executado foi condenado ao pagamento de diferenças referentes ao terço constitucional de férias devidos aos professores da rede municipal de ensino, sobre 45 dias de férias anuais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Apresentou planilha atualizada do crédito no valor de R$ 10.992,62 (dez mil novecentos e noventa e dois reais e sessenta e dois centavos). </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Decisão agravada: o Juízo a quo determinou a suspensão do feito (ID 13732964). Confira-se seu dispositivo:</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “ Assim, nos termos do art. 256-I, parágrafo único, do RISTJ, a mencionada questão foi cadastrada como TEMA REPETITIVO N. 1169, na base de dados da C. Corte Cidadã, constando, nas informações complementares, ordem expressa para "suspensão do processamento de todos os processos que versem sobre a mesma matéria e tramitem no território nacional, nos termos do art. 1.037, II, do CPC/2015". </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Ante o exposto, em consonância com o referido julgado, determino a suspensão dos presentes autos até decisão sobre o tema pelo C. Superior Tribunal de Justiça - STJ.” </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Irresignada, a parte autora interpôs o presente recurso de Agravo de Instrumento , afirmando que o Tema 1.169 se aplica somente aos casos de sentença genérica, que não é o caso

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	dos autos, e que o Superior Tribunal de Justiça entende ser desnecessária a liquidação quando o montante a ser apurado depender de meros cálculos aritméticos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Requereu, pois, o provimento do agravo, para fins de determinar que se mantenha o trâmite processual do cumprimento individual da sentença coletiva. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Sem Contrarrazões. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Parecer da Procuradoria-Geral de Justiça (ID 14902792), manifestando pelo conhecimento, mas não adentrando no mérito em razão da questão ser meramente patrimonial.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> É o relatório. <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> VOTO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Preenchido os requisitos legais, conheço do agravo de instrumento, passando, a seguir, ao exame de suas razões. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> A questão em discussão consiste em verificar se incide a determinação de suspensão no cumprimento individual de sentença coletiva ajuizada na origem, nos termos da decisão proferida em afetação de recurso repetitivo REsp nº 1978629/RJ, Tema 1.169/STJ. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> In casu, o cumprimento individual de sentença tem alicerce no trânsito em julgado de ação civil pública interposta pela Associação dos Professores da Rede Municipal de Acopiara em face do Município de Acopiara/CE, a fim de afastar a prática pela edilidade de não pagamento e fruição e remuneração de 45 (quarenta e cinco) dias de férias dos professores públicos municipais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> O Superior Tribunal de Justiça, afetou os recursos REsp nº 1.985.037/RJ e 1.985.491/RJ como representativo da seguinte

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	controvérsia: </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “ PROCESSUAL CIVIL E ADMINISTRATIVO. RECURSO ESPECIAL. PROPOSTA DE AFETAÇÃO PELO RITO DOS RECURSOS ESPECIAIS REPETITIVOS. EXECUÇÃO INDIVIDUAL DE TÍTULO JUDICIAL COLETIVO. NECESSIDADE DE PRÉVIA LIQUIDAÇÃO DO JULGADO COLETIVO. </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 1. Delimitação da controvérsia: " Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento de ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos aos autos ". </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> 2. Recurso especial afetado ao rito do art. 1.036 e seguintes do CPC/2015 (art. 256-I do RISTJ, na redação da Emenda Regimental 24, de 28/09/2016), em conjunto com os REsp 1.985.037/RJ e 1.985.491/RJ. </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> (ProAfR no REsp n. 1.978.629/RJ, relator Ministro Benedito Gonçalves, Corte Especial, julgado em 11/10/2022, DJe de 18/10/2022.)” (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Na espécie, o título judicial que fundamentou o cumprimento de sentença determinou o pagamento de valores atrasados de parcelas remuneratórias, os quais exigem simples cálculos aritméticos, dispensando a prévia liquidação, nos termos do §9 do art. 509 do CPC, in verbis :</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “ Art. 509. Quando a sentença condenar ao pagamento de quantia ilíquida, proceder-se-á à sua liquidação, a requerimento do credor ou do devedor: </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> I - por arbitramento, quando determinado pela sentença, convencionado pelas partes ou exigido pela natureza do objeto da liquidação; </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top:

Processo	3003688-37.2024.8.06.0000
	10pt; margin-bottom: 0pt;" dir="ltr"> II - pelo procedimento comum, quando houver necessidade de alegar e provar fato novo. </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> [...] </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> § 2º Quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover, desde logo, o cumprimento da sentença .” (destacado)</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> O título judicial em questão não se mostra genérico, ante a identificação dos beneficiários, quais sejam, os professores da rede pública do Município de Acopiara; trazendo o seu alcance de maneira clara e precisa ao explicitar o pagamento de diferenças remuneratórias de férias e do terço constitucional no período compreendido entre 2013 a 2017, bem como as demais parcelas que se venceram no andamento do processo. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Por tais razões, o cumprimento individual de sentença coletiva promovido pela agravante não se amolda à questão a ser submetida a julgamento repetitivo, nos termos definidos pelo Tema 1.169 do STJ. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Em situações análogas à dos autos, assim tem decidido este egrégio Tribunal de Justiça: </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “ DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. SUSPENSÃO DO PROCESSO. TEMA REPETITIVO 1.169 DO STJ. SIMPLES CÁLCULOS ARITMÉTICOS. DECISÃO REFORMADA . RECURSO CONHECIDO E PROVIDO. I. Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça.II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado.III. Razões De Decidir: III.1. <span style="color: #000000; background-color:

Processo	3003688-37.2024.8.06.0000
	transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça. (AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024)” (destacado) </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> ***** </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “ EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO EM CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. LIQUIDAÇÃO. TÍTULO EXECUTIVO JUDICIAL. CÁLCULOS ARITMÉTICOS. TEMA REPETITIVO 1.169/ STJ. INAPLICABILIDADE. AGRAVO PROVIDO. I. Caso em exame 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos para a realização dos cálculos. II. Questão em discussão 2. A questão central é definir se o Tema 1.169/STJ é aplicável ao caso, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos. III. Razões de decidir 3. O Tema 1.169/STJ não se aplica ao caso, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos. IV. Dispositivo 4. Recurso conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva . (AGRAVO DE INSTRUMENTO - 30031999720248060000, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)” (destacado) </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> ***** </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> “ EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. DECISÃO QUE DETERMINOU O SOBRESTAMENTO DO FEITO ATÉ O JULGAMENTO DO TEMA 1169/STJ. NÃO CABIMENTO. TÍTULO

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	EXECUTIVO JUDICIAL QUE DEPENDE DE MEROS CÁLCULOS ARITMÉTICOS. POSSIBILIDADE DE SEGUIMENTO DO FEITO . RECURSO CONHECIDO E PROVIDO. DECISÃO REFORMADA. (AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)” (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Logo, é o caso, então , de ser dado provimento ao recurso, para se reformar o decisum proferido pelo Juízo a quo e determinar o prosseguimento do feito na origem.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> DISPOSITIVO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Isto posto, voto por conhecer e dar provimento ao agravo de instrumento, para reformar a decisão interlocutória agravada e determinar o prosseguimento do feito na origem</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> É como voto. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> &#160; Local, data e hora indicados pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p align="center"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> <span

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	style="color: #000000;"> Portaria&#160; 1550 /202 4 </p><p> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> &#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	96
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	MANDADO DE SEGURANÇA CÍVEL
Assunto principal	Competência da Justiça Estadual
Polo ativo	DETRAN-CE
Advogado(s) - Polo ativo	Não informado
Polo passivo	: 11ª VARA DA FAZENDA PÚBLICA DA COMARCA DE FORTALEZA
Advogado(s) - Polo passivo	Não informado
Terceiros	ESTADO DO CEARA MINISTERIO PUBLICO DO ESTADO DO CEARA

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	AgInt no RMS: 66360 SP 2021/0130003-1, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 16/11/2021, T2 - SEGUNDA TURMA, Data de Publicação: DJe 10/12/2021). </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> 3. No caso, o impetrante aduz a incompetência absoluta dos Juizados Especiais da Fazenda Pública para conhecer do pedido de cumprimento de sentença, alegando que o proveito econômico perseguido pela parte ultrapassa o valor de alçada de 60 (sessenta) salários mínimos, definido no art. 2º, da Lei nº 12.153/2009. </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> 4. “ Nos termos do artigo 3º, § 1º, I, da Lei 9.099/95, compete ao Juizado Especial a execução de seus próprios julgados, inexistindo, no preceito legal, restrições ao valor executado, desde que, por ocasião da propositura da ação, tenha sido observado o valor de alçada. (RMS 33.155/MA, Rel. Ministra Maria Isabel Gallotti, Quarta Turma, DJe de 29/08/2011).” (AgInt no AREsp n. 2.138.477/GO, relator Ministro Raul Araújo, Quarta Turma, julgado em 14/8/2023, DJe de 18/8/2023). </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> 5 . Na hipótese, v erifica-se que na propositura da ação ordinária fora observado o teto de sessenta salários mínimos previsto na Lei nº 12.153/2009. Logo, o objetivo da parte autora é tão somente executar julgado da própria 11ª Vara da Fazenda Pública de Fortaleza, nos exatos termos do art. 3º, § 1º, I, da Lei 9.099/95, aplicada subsidiariamente à Lei nº 12.153/2009. </p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> 6. Destarte, a denegação da ordem pleiteada no presente writ é medida que se impõe in casu , ante a ausência de direito líquido e certo violado.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> - Precedentes.</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> &#160; - Segurança denegada. </p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Vistos, relatados e discutidos os presentes autos de Mandado de Segurança nº 3003742-03.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em denegar a segurança requestada no writ , nos termos do voto da Relatora.</p><p style="line-height: 150%; orphans: 0; widows: 0; margin-left: 0.02cm; text-indent: 3.98cm; margin-top: 0.4cm; margin-bottom: 0.4cm"> Local, data e hora informados pelo sistema.</p><p class="western" style="text-transform: uppercase; margin-top: 0.21cm" align="center"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0.3cm" align="center"> R elatora </p><div> <br /> </div><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center"> <br /> </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Trata-se, no presente caso, de Mandado de Segurança, com pedido de medida liminar, impetrado pelo Departamento Estadual de Trânsito do Estado do Ceará – DETRAN/CE contra ato tido por ilegal e abusivo atribuído ao Juiz de Direito da 11ª Vara da Fazenda Pública da Comarca de Fortaleza, que não reconheceu a incompetência do

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	Juizado Especial da Fazenda Pública para processar e julgar o pedido de cumprimento de sentença formulado.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> O caso/a ação originária: Fernando Faria Bezerra ingressou com pedido de Cumprimento de Sentença requerendo o pagamento da quantia de R$ 102.720,93 (cento e dois mil, setecentos e vinte reais e noventa e três centavos) oriundo da decisão de procedência do pedido formulado na ação ordinária de origem.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Irresignado, o Departamento Estadual de Trânsito – DETRAN/CE impetrou o presente mandamus aduzindo a incompetência do Juizado Especial para processar e julgar a ação nº 3003744-67.2024.8.06.0001, tendo em vista que o valor executado extrapolaria o teto de 60 (sessenta) salários mínimos imposto no art. 2º, da Lei nº 12.153/2009.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Daí o pedido liminar de suspensão do cumprimento da sentença e, no mérito, pugnou pela “nulidade da sentença proferida na ação nº 3003744-67.2024.8.06.0001, e, consequentemente, determinar que o feito seja remetido ao juízo competente, ante a incompetência absoluta do juizado especial para processar e julgar a causa” (ID 13769303, fls. 8/9).</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Liminar indeferida (ID 13819755).</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Apesar de devidamente notificada, a autoridade impetrada deixou transcorrer in albis o prazo para apresentar eventual informações .</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Parecer da Procuradoria Geral de Justiça, ID 15510572, opinando pela denegação da ordem requerida no writ.</p><p align="center"> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> É relatório.</p><p align="center"> <br /> </p><p align="center"> &#160;</p><p style="line-height: 150%; margin-top: 0.21cm" align="center"> VOTO </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Como relatado, tratam os autos de Mandado de Segurança impetrado pelo Departamento Estadual de Trânsito do Estado do Ceará questionando a competência do MM. Juiz de Direito da 11ª Vara da Fazenda Pública da Comarca de Fortaleza para processar e julgar o pedido de cumprimento de sentença formulado pela parte, diante do quantum executado superar o teto dos Juizados Especiais.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Inicialmente, convém ressaltar a competência desta Corte de Justiça para processar e julgar o mandamus impetrado contra decisão proferida por Juizado Especial da Fazenda Pública, uma vez que discute a própria competência dos Juizados Especiais, nos termos do entendimento do STJ e Tribunais Pátrios. Confira-se: </p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm; background: transparent;" align="justify"> “ PROCESSUAL CIVIL E ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO EM MANDADO DE SEGURANÇA. WRIT IMPETRADO CONTRA ACÓRDÃO DE TURMA RECURSAL. COMPETÊNCIA DA PRÓPRIA TURMA RECURSAL E NÃO DO TRIBUNAL DE JUSTIÇA. SÚMULA 376/STJ. PRECEDENTES. 1. É admitida a impetração de mandado de segurança perante os Tribunais de Justiça dos Estados para o exercício do controle de competência dos juizados especiais, ficando a cargo das Turmas Recursais, a teor do que dispõe a Súmula 376/STJ, apreciar os mandados de segurança que tenham por objetivo o controle de mérito dos atos

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	de juizado especial. Precedentes. 2. Agravo interno não provido. (STJ - AgInt no RMS: 57285 DF 2018/0094961-1, Relator: Ministro BENEDITO GONÇALVES, Data de Julgamento: 16/09/2019, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 18/09/2019) (destacado). * * * * * PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO EM MANDADO DE SEGURANÇA. COMPETÊNCIA. JUIZADOS ESPECIAIS. SÚMULA 376/STJ. CONTROLE DE MÉRITO DOS ATOS DE JUIZADO ESPECIAL. 1. Trata-se de Agravo Interno contra decisão que negou provimento ao Recurso Ordinário. 2. O Tribunal de origem, examinando a controvérsia e o acervo fático-probatório dos autos, entendeu que não tem competência revisora das decisões proferidas no âmbito dos Juizados Especiais, pelo que remanesce a competência do Juizado Especial para análise do mandamus. 3. Consoante a jurisprudência do STJ, admite-se a impetração de Mandado de Segurança perante os Tribunais de Justiça dos Estados para o exercício do controle de competência dos juizados especiais, ficando a cargo das Turmas Recursais, conforme dispõe a Súmula 376 do STJ, o Writ que tenha por escopo o controle de mérito dos atos de juizado especial. Precedente: RMS 46.955/GO, Rel. Min. Moura Ribeiro, Terceira Turma, DJe 17/8/2015. 4. A necessidade da realização de prova pericial, por si só, não afasta a competência dos Juizados Especiais. Confira-se: RMS 39.071/MG, Rel. Min. Maria Isabel Gallotti, Quarta Turma, DJe 15/10/2018. 5. A averiguação quanto ao mérito (necessidade ou não de prova pericial) remete à solução da competência às Turmas recursais de acordo com a Súmula 376/STJ e com o decidido pelo Tribunal a quo. 6. Agravo Interno não provido. (STJ - AgInt no RMS: 66360 SP 2021/0130003-1, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 16/11/2021, T2 - SEGUNDA TURMA, Data de Publicação: DJe 10/12/2021) (destacado) * * * * * MANDADO DE SEGURANÇA - ACÓRDÃO DE TURMA RECURSAL - INCOMPETÊNCIA DO TRIBUNAL DE JUSTIÇA - SÚMULA N. 376 DO STJ - DISCUSSÃO SOBRE A COMPETÊNCIA DO JUIZADO ESPECIAL - AUSÊNCIA - COMPETÊNCIA DA PRÓPRIA TURMA RECURSAL - REMESSA DOS AUTOS. Nos termos da Súmula 376 do colendo SUPERIOR TRIBUNAL DE JUSTIÇA: 'Compete a turma recursal processar e julgar o mandado de segurança contra ato de juizado especial'. Referido entendimento sumulado se aplica tanto às decisões singulares como às colegiadas, quando a própria Turma Recursal deverá processar e julgar a ação mandamental. Somente se admite a impetração perante o Tribunal de Justiça quando a ação mandamental versar sobre o exercício do controle de competência dos juizados especiais, segundo a definição dada pela Constituição da Republica e disciplinada pelo artigo 3º da Lei n. 9.099/1995. Não versando o Mandado de Segurança sobre a competência da Justiça Especializada, devem os autos ser remetidos à Turma Recursal prolatora do ato impugnado, nos termos do que determina a súmula n. 376 do colendo STJ e do artigo 64, § 3º, do Código de Processo Civil.(TJ-MG - MS: 10000206042731000 MG, Relator: Corrêa Junior, Data de Julgamento: 22/09/2021, Órgão Especial / ÓRGÃO ESPECIAL, Data de Publicação: 18/10/2021) (destacado) Na esteira de tal compreensão, o recente julgado da Terceira Câmara de Direito Público deste Tribunal. Confira-se: MANDADO DE SEGURANÇA. IMPETRAÇÃO QUE TEM COMO CAUSA DE PEDIR A SUPOSTA INCOMPETÊNCIA DO JUIZADO ESPECIAL DA FAZENDA PÚBLICA PARA PROCESSAR E JULGAR A CAUSA. INAPLICABILIDADE DA SÚMULA 376 DO STJ À ESPÉCIE. COMPETÊNCIA DESTE TRIBUNAL DE JUSTIÇA PARA CONHECER DO MANDADMUS QUANDO O WRIT SE VOLTA PARA O CONTROLE DA COMPETÊNCIA DO JUIZADO ESPECIAL. INFORMATIVO 777 DO STJ. ATO APONTADO COMO COATOR QUE TRANSITOU EM JULGADO. PERDA SUPERVENIENTE DO OBJETO. MANDADO DE SEGURANÇA MANIFESTAMENTE PREJUDICADO. Trata-se de Mandado de Segurança impetrado pelo

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	Estado do Ceará em face do acórdão prolatado pela 3ª Turma Recursal dos Juizados Especiais no Recurso Inominado nº 0184501-83.2019.8.06.0001. A tese central que alicerça a causa de pedir da ação mandamental é a incompetência absoluta do juizado especial da fazenda pública para processar e julgar a demanda subjacente ao prefalado Recurso Inominado, uma vez que a causa ultrapassa o valor de 60 (sessenta) salários mínimos previsto na Lei nº 12.153/09. Nas informações prestadas às fls. 459/460 pela autoridade coatora foi devidamente externalizado que o trânsito em julgado da lide ocorreu em 04 de maio de 2023, pouco mais de três meses após o impetrante ajuizar o presente writ. Outrossim, diante do trânsito em julgado do ato apontado como coator, é flagrante a manifesta perda superveniente do objeto. Mandado de segurança prejudicado. (Mandado de Segurança Cível&#160;- 0620700-03.2023.8.06.0000, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 3ª Câmara Direito Público, data do julgamento:&#160; 15/04/2024, data da publicação:&#160; 15/04/2024) (destacado)</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Pois bem. No caso em exame, o impetrante aduz a incompetência absoluta dos Juizados Especiais da Fazenda Pública para conhecer do cumprimento de sentença, posto que o valor cobrado ultrapassa o valor de alçada de 60 (sessenta) salários mínimos, definido no art. 2º, da Lei nº 12.153/2009.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> No caso dos autos, como bem destacou o impetrante, a ação ordinária nº 3003744-67.2024.8.06.0001, tramitou sob o rito do Juizado Especial da Fazenda Pública, tendo recebido a devida prestação jurisdicional, conforme se observa do dispositivo da sentença, verbis: </p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm; background: transparent;" align="justify"> “ Diante do exposto, atento à fundamentação expendida, julgo PROCEDENTES os pedidos requestados na prefacial, com resolução do mérito, o que faço com esteio no art. 487, inciso I, do Código de Processo Civil, para declarar incidenter tantum, pela via do controle difuso, a inconstitucionalidade Emenda à Constituição do Estado do Ceará nº 93/2018, e de outra feita, para determinar ao requerido, a restituir a parte autora as parcelas indevidamente descontadas a título de abate-teto, identificada como “REM MAXIMA”, código 662, e seus reflexos em 13º salário, férias, acrescidas de 1/3, e adicionais pessoais, no interstício de 1º/12/2018 a 1º/12/2020. Deverá incidir correção monetária pelo índice IPCA-E/IBGE desde o devido pagamento, e juros de mora segundo o índice de remuneração da caderneta de poupança, a contar da citação válida, conforme teses assentadas pelo Supremo Tribunal Federal, com Repercussão Geral, no julgamento do RE 870.947 RG / SE (Julg.: 20/09/2017), com eficácia “ex tunc”, considerando não ter havido modulação dos efeitos (Julg.: 03/10/2019, dos Embargos de Declaração RE 870.947 ED / SE).” </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> <br /> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Vale destacar que referida sentença transitou em julgado, tendo a parte vencedora formulado pedido de cumprimento requerendo o pagamento do valor principal de R$ 79.548,46 (setenta e nove mil, quinhentos e quarenta e oito rais e quarenta e seis centavos), somados aos consectários legais no importe de R$ 23.172,47 (vinte e três mil, cento e setenta e dois reais e quarenta e sete centavos), o que totaliza a quantia de R$ 102.720,93 (cento e dois mil, setecentos e vinte reais e noventa e três centavos).</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Assim, o objetivo da parte autora é tão somente executar julgado da própria 11ª Vara da Fazenda Pública de Fortaleza, nos exatos termos do art. 3º, § 1º, I, da Lei 9.099/95, aplicada subsidiariamente à Lei nº 12.153/2009. Confira-se:</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm; background: transparent;" align="justify"> “ Art. 3º O Juizado Especial Cível tem competência para conciliação, processo e julgamento das causas cíveis de menor complexidade, assim consideradas: </p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm; background: transparent;" align="justify"> (…)</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm; background: transparent;" align="justify"> § 1º Compete ao Juizado Especial promover a execução: </p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm; background: transparent;" align="justify"> I - dos seus julgados;” (destacado) </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Como bem observou a

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	douta Procuradoria Geral de Justiça, em seu parecer, " A regra é a competência do Juizado Especial que decidiu a causa para efetuar a execução do próprio julgado. Assim, o juiz prolator da sentença condenatória é competente para fazer o cumprimento da correspondente decisão. Desse modo, se quando da execução, o título ostentar montante superior, em decorrência de encargos posteriores ao ajuizamento (correção monetária, juros e ônus da sucumbência), tal circunstância não alterará a competência para a execução nem implicará a renúncia aos acessórios e consectários da obrigação reconhecida pelo título." (ID 15510572)</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> E, nesse sentido, o Superior Tribunal de Justiça, há muito, firmou entendimento:</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm; background: transparent;" align="justify"> " AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. PROCESSUAL CIVIL. CUMPRIMENTO DE SENTENÇA. ART. 3º, § 1º, I, DA LEI 9.099/95, C/C ART. 516, II, DO CPC/2015. COMPETÊNCIA DO JUIZADO ESPECIAL CÍVEL PARA EXECUTAR O PRÓPRIO JULGADO. AGRAVO INTERNO DESPROVIDO. 1. Nos termos do artigo 3º, § 1º, I, da Lei 9.099/95, compete ao Juizado Especial a execução de seus próprios julgados, inexistindo, no preceito legal, restrições ao valor executado, desde que, por ocasião da propositura da ação, tenha sido observado o valor de alçada (RMS 33.155/MA, Rel. Ministra Maria Isabel Gallotti, Quarta Turma, DJe de 29/08/2011). 2. Embora o parágrafo único do artigo 516 do CPC/2015 autorize o exequente a ajuizar o cumprimento de sentença no juízo do local onde deva ser executada a obrigação de fazer, trata-se de uma faculdade da parte que deve ser devidamente motivada. 3. Agravo interno desprovido." (AgInt no AREsp n. 2.138.477/GO, relator Ministro Raul Araújo, Quarta Turma, julgado em 14/8/2023, DJe de 18/8/2023.)</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm; background: transparent;" align="center"> <br /> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Portanto, tendo em vista que na propositura da ação ordinária fora observado o teto de sessenta salários mínimos previsto na Lei nº 12.153/2009, não há que se falar em incompetência do Juizado Especial da Fazenda Pública para processar e julgar o pedido de cumprimento de sentença formulado nos autos do processo nº 3003744-67.2024.8.06.0001.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Destarte, a denegação da ordem pleiteada no presente writ é medida que se impõe in casu, ante a ausência do direito líquido e certo violado.</p><p class="western" style="line-height: 150%; margin-top: 0.21cm" align="center"> DISPOSITIVO </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Diante do exposto, denego a segurança requestada.</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.21cm;" align="justify"> É como voto.</p><p style="line-height: 150%; orphans: 0; widows: 0; margin-left: 0.02cm; text-indent: 3.98cm; margin-top: 0.4cm; margin-bottom: 0.4cm"> Local, data e hora informados pelo sistema.</p><p class="western" style="text-transform: uppercase; margin-top: 0.21cm" align="center"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0.3cm" align="center"> R elatora </p><div> <br /> </div><p align="center"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	97
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Gratificações Municipais Específicas
Polo ativo	MARCIA MARIA SANTANA
Advogado(s) - Polo ativo	GUSTAVO RIBEIRO DE ARAUJO - (CE16375-A)
Polo passivo	AUTARQUIA DE URBANISMO E PAISAGISMO DE FORTALEZA - URBFOR AUTARQUIA DE URBANISMO E PAISAGISMO DE FORTALEZA - URBFOR MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo passivo	MARIA ANYA MARTINS DE LIMA - (CE16184-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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AAAAAASUVORK5CYII=" alt="" />

</p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;0218897-81.2022.8.06.0001 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MARCIA MARIA SANTANA.</p><p> APELADO: AUTARQUIA DE URBANISMO E PAISAGISMO DE FORTALEZA - URBFOR, MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM <br /> REPRESENTANTE: AUTARQUIA DE URBANISMO E PAISAGISMO DE FORTALEZA - URBFOR <br /> .</p><p align="center"> <br /> </p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: Administrativo. Apelação em ação de cobrança. Servidora da EMLURB. Incorporação de gratificação por cargo comissionado. Possibilidade. Cumprimento dos requisitos legais. Sentença reformada.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Apelação Cível interposta com o objetivo de reformar sentença proferida pelo Juízo da 4ª Vara da Fazenda Pública da Comarca de Fortaleza, que decidiu pela improcedência dos pedidos formulados na inicial.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em verificar se a autora, servidora pública, faz jus à incorporação de verba de cargo comissionado exercido quando era empregada pública, sob o regime celetista.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family:

Processo	0218897-81.2022.8.06.0001
	Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">III. Razões de Decidir</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Nos termos do art. 121 do Estatuto dos Servidores Públicos do Município de Fortaleza, para fazer jus à incorporação de gratificação percebida pelo desempenho de cargo comissionado, o servidor deve comprovar: a) ser servidor efetivo; b) ter exercido cargo em comissão por 08 (oito) anos, sem interrupção, ou 10 (dez) anos consecutivos ou não, até a época do afastamento.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Na espécie, a parte autora juntou certidão, expedida pela autarquia municipal, comprovando que exerceu cargo comissionado no período compreendido entre 01/10/2002 a 01/06/2012, totalizando 09 (nove) anos, 08 (oito) meses e 06 (seis) dias.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. O fato de a apelante estar submetida ao regime celetista durante o período em que ocupou cargo comissionado não desnatura a natureza pública da atividade por ela exercida, uma vez que, desde 1982, ocupou cargos em entidades integrantes da mesma administração municipal, não havendo, durante todo esse período, saído da esfera pública municipal.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">6. Logo, diante dos argumentos apresentados, a reforma da sentença é medida que se impõe, para julgar procedente o pedido inicial e reconhecer o direito de a autora incorporar aos seus proventos a Gratificação em Comissão, simbologia DNI-1, devendo ser ressarcidos todos os meses que deixou de auferir a vantagem, parcelas vencidas e vincendas, com reflexos sobre as demais parcelas vencimentais, a contar do requerimento administrativo, incidindo juros e correção, nos termos do entendimento firmado no item 3.1.1 do Tema 905 STJ.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">7. Apelação Conhecida e provida. Sentença reformada.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ____________</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr"> Dispositivos relevantes citados: Lei Municipal nº 6.794/1990, art. 121; Lei Complementar Municipal nº 214/2015, art. 1º, 8º e 9º</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br />

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	<br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0218897-81.2022.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação interposta e dar-lhe provimento, reformando sentença de origem, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Fortaleza, data e hora indicadas no sistema.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORT. 1550/2024</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-aef1699e-7fff-663e-2057-0c95750432a6" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta com o objetivo de reformar sentença proferida pelo Juízo da 4ª Vara da Fazenda Pública da Comarca de Fortaleza, que decidiu pela improcedência dos pedidos formulados na inicial.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr">O caso/a ação originária: Márcia Maria Santana ajuizou ação de cobrança em face da Autarquia de Urbanismo e Paisagismo – URBFOR e do Município Fortaleza, pleiteando a incorporação e pagamento da gratificação de função comissionada.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Afirmou que ingressou nos quadros da Administração Pública em agosto de 1982, sob o regime celetista, ocupando o cargo de auxiliar de pessoal na Empresa Municipal de Limpeza e Urbanização – EMLURB, e que exerceu por mais de 8 (oito) anos cargo comissionado.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Sustentou que, em janeiro de 2016, houve alteração na estrutura da referida pessoa jurídica, que passou de

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	empresa pública para autarquia municipal e, no ano de 2017, optou pelo regime jurídico estatutário, razão pela qual defende fazer jus à incorporação da gratificação do cargo comissionado, nos termos do art. 121 da Lei Municipal nº 6.794/1990.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em contestação (ID 13874326 e 13874331), o Município de Fortaleza e a Autarquia de Urbanismo e Paisagismo de Fortaleza sustentaram, em suma, a impossibilidade de incorporação de gratificação de cargo comissionado exercido à época em que a requerente era empregada pública.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Sentença proferida pelo magistrado a quo julgando improcedente a demanda (ID 13874395). Transcreve-se o dispositivo, no que interessa:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“Ademais, sublinha-se que, no regime celetista, a parte autora exerceu o cargo comissionado de Chefe de Registro, Encargo e Benefício (simbologia DNI-1), de 01/10/2002 (ID’s nº 37925811 e 37925812) a 01/06/2012 (ID nº 37925813), no qual permaneceu por 9 (nove) anos, 8 (oito) meses e 6 (seis) dias, não reunindo o direito de incorporar a gratificação perseguida e, no regime estatuário, a autora não ocupou nenhum cargo comissionado. Portanto, não há, no ordenamento jurídico, qualquer norma que fundamente os argumentos da parte autora na presente demanda.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Ante o exposto, JULGO IMPROCEDENTES os pedidos iniciais, extinguindo o feito com resolução do mérito, nos moldes do art. 487, I, do Código de Processo Civil.”</p><p style="line-height: 0.03818181818181818; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-

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	weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Inconformada, a requerente interpôs recurso apelatório (ID 13874401), reiterando os argumentos da inicial e requerendo a reforma da sentença, a fim de que os pedidos sejam julgados procedentes,</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Contrarrazões (ID 13874405 e 13874407), pugnando os apelados pelo desprovimento do recurso e a manutenção da sentença de origem.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Parecer da Procuradoria-Geral de Justiça (ID 14104110), opinando pelo conhecimento, mas não se manifestando quanto ao mérito por ausência de interesse público.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 9pt;" dir="ltr">Preenchidos os requisitos legais pertinentes, conheço das apelações cíveis, passando, a seguir, ao exame de suas razões.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">No presente caso, foi devolvida a este Tribunal a controvérsia em torno do direito de a parte autora, servidora pública, incorporar verba de cargo comissionado exercido quando empregada pública, sob o regime celetista.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Trata-se de ação de cobrança e de obrigação de fazer em que a parte autora pleiteia a incorporação de gratificação de cargo em comissão aos seus proventos, ao argumento de ter exercido cargo comissionado por mais de 8 (oito) anos, invocando a incidência do art. 121 do Estatuto dos Servidores Públicos do Município de Fortaleza – Lei Municipal nº 6.794/1990.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Narrou que foi admitida nos quadros da Administração Pública Municipal em agosto de 1982, sob o regime celetista, ocupando cargo de auxiliar de

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	pessoal na Empresa Municipal de Limpeza e Urbanização – EMLURB.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Já em janeiro de 2016, a empresa pública sofreu alteração em sua estrutura, transformando-se em autarquia municipal Autarquia de Urbanismo e Paisagismo de Fortaleza – URBFOR.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Pois bem, a Lei Complementar Municipal nº 214/2015, em seu art. 1º, dispõe que:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> “ Art. 1º. Fica transformada em autarquia a Empresa Municipal de Limpeza e Urbanização (EMLURB), passando a denominar-se Autarquia de Urbanismo e Paisagismo de Fortaleza (URBFOR).”</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Diante da alteração da natureza jurídica da entidade, que passou de empresa pública para autarquia, o referido diploma legal disciplinou o regime jurídico dos funcionários e conversão do regime jurídico. Veja-se:</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “Art. 8º. Os servidores da Autarquia de Urbanismo e Paisagismo de Fortaleza (URBFOR) reger-se-ão ao regime jurídico único ao qual se submetem os servidores públicos do Município de Fortaleza, aplicando-se a eles as disposições da Lei Municipal n° 6.794, de 27 de dezembro de 1990 (Estatuto dos Servidores Públicos do Município de Fortaleza).</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Art. 9º. Os atuais empregados públicos da Empresa Municipal de Limpeza e Urbanização (EMLURB) que tenham ingressado nos quadros da empresa por concurso público, ou ainda que sem concurso público, seu ingresso tenha se dado até a data de promulgação da Constituição Federal de 1988, poderão optar, no prazo de até 30 (trinta) dias contados da publicação desta Lei Complementar, pela mudança de regime jurídico, passando do regime celetista para o estatutário, e, neste caso, permanecerão integrando o quadro de pessoal da Autarquia de Urbanismo e Paisagismo de Fortaleza (URBFOR)”.</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Conforme afirmado na exordial, a autora optou pela mudança de regime, passando a se submeter ao regime estatutário.</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Nessa trilha, sustentou a apelante, em suas razões recursais, que faz jus à incorporação da gratificação de cargo comissionado por ter exercido por mais de 8 (oito) anos consecutivos função comissionada, nos termos do art. 121 da Lei Municipal nº 6.794/1990, in

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	verbis:</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “Art. 121. O servidor investido em cargo em comissão, quando deste afastado depois de 08 (oito) anos sem interrupção ou 10 (dez) anos consecutivos ou não, fica com o direito de continuar a perceber a representação correspondente ao cargo em comissão que ocupava à época do afastamento, garantida a incorporação desta vantagem aos proventos de aposentadoria.”</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Como visto, para fazer jus à incorporação de gratificação percebida pelo desempenho de cargo comissionado, o servidor deve comprovar: a) ser servidor efetivo; e b) ter exercido cargo em comissão por 08 (oito) anos, sem interrupção, ou 10 (dez) anos consecutivos ou não, até a época do afastamento.</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Das provas colacionadas aos autos, especialmente a certidão de ID 13874299, verifica-se que a apelante exerceu cargo comissionado no período compreendido entre 01/10/2002 a 01/06/2012, totalizando 09 (nove) anos, 08 (oito) meses e 06 (seis) dias.</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Daí que, comprovado o vínculo estatutário como servidor público e o exercício do cargo comissionado consecutivo por período superior a 08 (oito) anos, faz a apelante jus à incorporação da representação referente ao cargo em comissão.</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> O fato de a apelante estar submetida ao regime celetista durante o período em que ocupou cargo comissionado não desnatura a natureza pública da atividade por ela exercida, uma vez que, desde 1982, ocupou cargos em entidades integrantes da mesma administração municipal, não havendo, durante todo esse período, saído da esfera pública municipal.</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, o STF, por meio da Súmula 6781, declarou inconstitucionais os dispositivos legais que afastam “ para efeito de anuênio e de licença-prêmio, a contagem do tempo de serviço regido pela consolidação das leis do trabalho dos servidores que passaram a submeter-se ao regime jurídico único” .</p><p style="line-height: 1.656; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Dessarte, a natureza da atividade, e não regime jurídico, é que define se o tempo de serviço prestado anteriormente pode ser incorporado para a concessão da vantagem.</p><p style="line-height: 1.38; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Destaca-se que, em situações análogos, este E. Tribunal de Justiça vem reconhecendo o direito dos servidores à incorporação da sobredita vantagem:</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

Processo	0218897-81.2022.8.06.0001
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">“INCORPORAÇÃO DE GRATIFICAÇÃO POR EXERCÍCIO DE CARGO COMISSIONADO. LEI Nº 6794/90. CUMPRIMENTO DOS REQUISITOS LEGAIS. PRECEDENTES. REMESSA NECESSÁRIA CONHECIDA, MAS DESPROVIDA.1. O cerne da questão circunscreve-se em verificar o direito da parte autora em ter incorporada em seus vencimentos a gratificação por exercício de função comissionada de simbologia DNI-1. 2. Em simples análise do dispositivo legal, é possível perceber que para a incorporação de gratificação é preciso o preenchimento de dois requisitos: ser servidor efetivo e exercer o cargo em comissão por 8 (oito) anos ininterruptos ou 10 (dez) anos consecutivos ou não. 3. Verificando os autos, há nos Ids. 12682656 e 12682663 documentos demonstrando o exercício de cargos em comissão que totalizam tempo superior a 10 anos. Ademais, os diversos documentos acostados à exordial comprovam o vínculo do requerente como servidor efetivo e, portanto, não há o que se questionar quanto ao preenchimento dos requisitos legais para fins de direito à incorporação de gratificação. 4. Remessa necessária conhecida, mas desprovida.(REMESSA NECESSÁRIA CÍVEL - 02176368120228060001, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 25/06/2024)” (destacado)</p><p style="line-height: 1.656; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> *****</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“DIREITO ADMINISTRATIVO. REMESSA NECESSÁRIA. APELAÇÃO CÍVEL. SERVIDOR PÚBLICO MUNICIPAL. INCORPORAÇÃO DE GRATIFICAÇÃO POR EXERCÍCIO DE CARGO COMISSIONADO. LEI Nº 6794/90. CUMPRIMENTO DOS REQUISITOS LEGAIS. PRECEDENTES. REMESSA NECESSÁRIA E RECURSO CONHECIDOS E DESPROVIDOS. SENTENÇA MANTIDA. 1. O cerne da questão circunscreve-se em verificar o direito da parte em ter incorporada em seus vencimentos a gratificação por exercício de função comissionada de simbologia DNS-3. 2. Em simples análise do dispositivo legal, é possível perceber que para a incorporação de gratificação é preciso o preenchimento de dois requisitos: ser servidor efetivo e exercer o cargo em comissão por 8 (oito) anos ininterruptos ou 10 (dez) anos consecutivos ou não. Além disso, em caso de o servidor ter exercido cargos em comissão diferentes, poderá optar pela maior remuneração se tiver permanecido no cargo por mais de 12 (doze) meses. 3. Verificando os autos, há uma certidão de tempo de serviço atestando que a requerente exerceu cargo comissionado pelo período de 11 anos 3 meses e 2 dias. Ademais, há declaração de vínculo comprovando ser a requerente servidora efetiva. 4. Não há na lei nenhum impeditivo para incorporação de gratificações referentes à composição de comissões, ou qualquer outra em específico. Com isso, apenas é colocado como requisito para escolha entre gratificações o lapso temporal mínimo de 12 (doze) meses exercendo o cargo, não havendo nenhuma outra restrição. Assim, conforme declaração, a autora exerceu o cargo referente à gratificação de simbologia DNS-3 no período de 01/06/2017 a 18/01/2021, ou seja, por mais de 3 anos e meio, cumprindo o requisito previsto no §2º do art. 121 da Lei nº 6794/90. Desse modo, não há motivo para indeferir o pleito autoral. 5. Remessa necessária e Recurso de Apelação conhecidos, negando-se provimento. Sentença

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	mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Remessa Necessária e da Apelação para negar-lhes provimento. Fortaleza, 9 de novembro de 2022 MARIA IRANEIDE MOURA SILVA Presidente do Órgão Julgador DESEMBARGADOR RAIMUNDO NONATO SILVA SANTOS Relator (Apelação / Remessa Necessária - 0280280-94.2021.8.06.0001, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 2ª Câmara Direito Público, data do julgamento: 09/11/2022, data da publicação: 09/11/2022) (destacado)</p><p style="line-height: 1.656; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> *****</p><p style="line-height: 1.4400000000000002; margin-left: 113pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr">“ADMNISTRATIVO. APELAÇÃO E REEXAME NECESSÁRIO. SERVIDOR PÚBLICO MUNICIPAL. INCORPORAÇÃO DE GRATIFICAÇÃO. LEI Nº 6.794/1990. REQUISITOS PREENCHIDOS. RECURSO DE APELAÇÃO E REEXAME NECESSÁRIO CONHECIDOS E DESPROVIDOS. 1. O servidor investido em cargo comissionado, quando deste afastado depois de 8 (oito) anos sem interrupção ou 10 (dez) anos consecutivos ou não, fica com o direito de continuar a perceber a representação correspondente ao respectivo cargo que ocupava à época do afastamento, garantida a incorporação desta vantagem aos proventos de aposentadoria. Inteligência da Lei de Regência. 2. No caso, provado ter o servidor exercido por mais de 8 (oito) anos cargos em comissão no âmbito da administração municipal, não se lhe pode negar o direito de incorporar aos seus vencimentos e, posteriormente, aos proventos de aposentadoria, o valor da gratificação relativa à comissão por último exercida (DGA-2), conforme prevê o caput, do art. 121, da Lei nº 6.794/1990. 3. Somente no caso de alteração (facultativa) da gratificação a ser incorporada, é que a Lei de Regência exige o transcurso de percepção mínimo de 12 (doze) meses, à luz do § 2º, do aludido artigo de Lei. 4. Recurso de Apelação e Reexame Necessário conhecidos e desprovidos." (TJCE; APLRN 0120875-42.2009.8.06.0001; Terceira Câmara Cível; Rel. Des. Francisco Gladyson Pontes; DJCE 29/10/2015; Pág. 43)” (destacado</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Diante dos argumentos apresentados, a reforma da sentença é medida que se impõe.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Por tais razões, voto por conhecer da apelação interposta e dar-lhe provimento, reformando a sentença de origem, <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">no sentido de julgar procedente o pedido inicial para reconhecer o direito a incorporação aos proventos da autora da Gratificação em Comissão, simbologia DNI-1, devendo ser ressarcido todos os meses que deixou de auferir a vantagem, parcelas vencidas e vincendas, com reflexos sobre as demais parcelas vencimentais (13º salário, férias, etc), a contar do requerimento administrativo, incindindo juros e correção, nos termos do entendimento firmado no item 3.1.1 do Tema 905 STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Os honorários advocatícios devem ser fixados por ocasião da liquidação do julgado, nos termos do art. 85, §4º, inciso II, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora indicadas no sistema.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORT. 1550/2024</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="text-indent: 8%; text-align: justify;"> 1 Súmula 678 STF: São inconstitucionais os incisos I e III do art. 7º da Lei 8.162/91, que afastam, para efeito de anuênio e de licença-prêmio, a contagem do tempo de serviço regido pela consolidação das leis do trabalho dos servidores que passaram a submeter-se ao regime jurídico único .</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	98
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	JURACI MOREIRA DA SILVA
Advogado(s) - Polo ativo	ANTONIO FERREIRA BEZERRA - (CE26246-A) DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A)
Polo passivo	MUNICIPIO DE ACOPIARA

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Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	dir="ltr"> 3. Na espécie, o título judicial que fundamentou o cumprimento de sentença determinou o pagamento de valores atrasados de parcelas remuneratórias, os quais exigem simples cálculos aritméticos, dispensando a prévia liquidação, nos termos do §9 do art. 509 do CPC.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. O título judicial em questão não se mostra genérico, ante a identificação dos beneficiários, quais sejam, os professores da rede pública do Município de Acopiara; trazendo o seu alcance de maneira clara e precisa ao explicitar o pagamento de diferenças remuneratórias de férias e do terço constitucional no período compreendido entre 2013 a 2017, bem como as demais parcelas que se venceram no andamento do processo.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Por tais razões, o cumprimento individual de sentença coletiva promovido pela agravante não se amolda à questão a ser submetida a julgamento repetitivo, nos termos definidos pelo Tema 1.169 do STJ.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Logo, é o caso, então, de ser dado provimento ao recurso, para se reformar o decisum proferido pelo Juízo a quo e determinar o prosseguimento do feito na origem.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 9. Agravo de Instrumento conhecido e provido. Decisão interlocutória reformada.</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ____________</p><p style="line-height: 1.656; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos relevantes citados: CPC, art. 509, §2º</p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-fc3c43f0-7fff-725f-713b-66ecae6db003" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr"> Jurisprudência relevante citada: STJ, REsp n. 1.978.629/RJ, relator Ministro Benedito Gonçalves, Corte Especial, j. 11/10/2022</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3004087-66.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant:

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	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">para conhecer e dar provimento ao recurso, reformando a decisão interlocutória ora combatida, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 4pt; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.2; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> <br /> <br /></p><p style="line-height: 1.2; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024</p><p style="line-height: 1.2; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Relatora</p><p style="line-height: 2.4; margin-left: 113pt; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Em evidência, Agravo de Instrumento interposto contra decisão interlocutória proferida pelo Juízo da 2ª Vara Cível da Comarca de Acopiara, que determinou a suspensão de cumprimento individual de sentença coletiva.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">O caso/a ação originária: Juraci Moreira da Silva requereu o cumprimento individual de sentença coletiva (Processo nº 3000552-42.2024.8.06.0029 – PJe 1º Grau) em face do Município de Acopiara/CE, aduzindo que, nos autos da ação coletiva nº 0004059-72.2018.8.06.0029, o executado foi condenado ao pagamento de diferenças referentes ao terço constitucional de férias devidos aos professores da rede municipal de ensino, sobre 45 dias de férias anuais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Apresentou planilha atualizada do crédito no valor de R$ 8.606,16 (oito mil seiscentos e seis reais e dezesseis centavos).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial, sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-

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	decoration: underline;">Decisão agravada: o Juízo a quo determinou a suspensão do feito (ID 90246018 – PJe 1º Grau). Confira-se seu dispositivo:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Assim, nos termos do art. 256-I, parágrafo único, do RISTJ, a mencionada questão foi cadastrada como TEMA REPETITIVO N. 1169, na base de dados da C. Corte Cidadã, constando, nas informações complementares, ordem expressa para "suspensão do processamento de todos os processos que versem sobre a mesma matéria e tramitem no território nacional, nos termos do art. 1.037, II, do CPC/2015".</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ante o exposto, em consonância com o referido julgado, determino a suspensão dos presentes autos até decisão sobre o tema pelo C. Superior Tribunal de Justiça - STJ.”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Irresignada, a parte autora interpôs o presente recurso de Agravo de Instrumento, afirmando que o Tema 1.169 se aplica somente aos casos de sentença genérica, que não é o caso dos autos, e que o Superior Tribunal de Justiça entende ser desnecessária a liquidação quando o montante a ser apurado depender de meros cálculos aritméticos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Requereu, pois, o provimento do agravo, para fins de determinar que se mantenha o trâmite processual do cumprimento individual da sentença coletiva.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Sem Contrarrazões.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Parecer da Procuradoria-Geral de Justiça, ID 15292311, manifestando pelo conhecimento, não adentrando no mérito em razão da questão ser meramente patrimonial.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Preenchido os requisitos legais, conheço do agravo de instrumento, passando, a seguir, ao exame de suas razões.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> A questão em discussão consiste em verificar se incide a determinação de suspensão no cumprimento individual de sentença coletiva ajuizada na origem, nos termos da decisão proferida em afetação de recurso repetitivo REsp nº 1978629/RJ, Tema 1.169/STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr">In casu, o cumprimento individual de sentença tem alicerce no trânsito em julgado de ação civil pública interposta pela Associação dos Professores da Rede Municipal de Acopiara em face do Município de Acopiara/CE, a fim de afastar a prática pela edilidade de não pagamento e fruição e remuneração de 45 (quarenta e cinco) dias de férias dos professores públicos municipais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> O Superior Tribunal de Justiça, afetou os recursos REsp nº 1.985.037/RJ e 1.985.491/RJ como representativo da seguinte controvérsia:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “ PROCESSUAL CIVIL E ADMINISTRATIVO. RECURSO ESPECIAL. PROPOSTA DE AFETAÇÃO PELO RITO DOS RECURSOS ESPECIAIS REPETITIVOS. EXECUÇÃO INDIVIDUAL DE TÍTULO JUDICIAL COLETIVO. NECESSIDADE DE PRÉVIA LIQUIDAÇÃO DO JULGADO COLETIVO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Delimitação da controvérsia: " Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento de ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos aos autos ".</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Recurso especial afetado ao rito do art. 1.036 e seguintes do CPC/2015 (art. 256-I do RISTJ, na redação da Emenda Regimental 24, de 28/09/2016), em conjunto com os REsp 1.985.037/RJ e 1.985.491/RJ.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (ProAfR no REsp n. 1.978.629/RJ, relator Ministro Benedito Gonçalves, Corte Especial, julgado em 11/10/2022, DJe de 18/10/2022.)”

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	(destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr">Na espécie, o título judicial que fundamentou o cumprimento de sentença determinou o pagamento de valores atrasados de parcelas remuneratórias, os quais exigem simples cálculos aritméticos, dispensando a prévia liquidação, nos termos do §9 do art. 509 do CPC, in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> “ Art. 509. Quando a sentença condenar ao pagamento de quantia ilíquida, proceder-se-á à sua liquidação, a requerimento do credor ou do devedor:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> I - por arbitramento, quando determinado pela sentença, convencionado pelas partes ou exigido pela natureza do objeto da liquidação;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> II - pelo procedimento comum, quando houver necessidade de alegar e provar fato novo.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">§ 2º Quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover, desde logo, o cumprimento da sentença.” (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> O título judicial em questão não se mostra genérico, ante a identificação dos beneficiários, quais sejam, os professores da rede pública do Município de Acopiara; trazendo o seu alcance de maneira clara e precisa ao explicitar o pagamento de diferenças remuneratórias de férias e do terço constitucional no período compreendido entre 2013 a 2017, bem como as demais parcelas que se venceram no andamento do processo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Por tais razões, o cumprimento individual de sentença coletiva promovido pela agravante não se amolda à questão a ser submetida a julgamento repetitivo, nos termos definidos pelo Tema 1.169 do STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Em situações análogas à dos autos, assim tem decidido este egrégio Tribunal de Justiça:</p><p style="line-height: 1.2; margin-

Processo	3004087-66.2024.8.06.0000
	left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. SUSPENSÃO DO PROCESSO. TEMA REPETITIVO 1.169 DO STJ. SIMPLES CÁLCULOS ARITMÉTICOS. DECISÃO REFORMADA. RECURSO CONHECIDO E PROVIDO. I. Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça.II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado.III. Razões De Decidir: III.1. Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça.(AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024)” (destacado)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> *****</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO EM CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. LIQUIDAÇÃO. TÍTULO EXECUTIVO JUDICIAL. CÁLCULOS ARITMÉTICOS. TEMA REPETITIVO 1.169/ STJ. INAPLICABILIDADE. AGRAVO PROVIDO. I. Caso em exame 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos para a realização dos cálculos. II. Questão em discussão 2. A questão central é definir se o Tema 1.169/STJ é aplicável ao caso, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos. III. Razões de decidir 3. O Tema 1.169/STJ não se aplica ao caso, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos. IV. Dispositivo 4. Recurso conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva<span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">. (AGRAVO DE INSTRUMENTO - 30031999720248060000, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)” (destacado)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> *****</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. DECISÃO QUE DETERMINOU O SOBRESTAMENTO DO FEITO ATÉ O JULGAMENTO DO TEMA 1169/STJ. NÃO CABIMENTO. TÍTULO EXECUTIVO JUDICIAL QUE DEPENDE DE MEROS CÁLCULOS ARITMÉTICOS. POSSIBILIDADE DE SEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. DECISÃO REFORMADA. (AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)” (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Logo, é o caso, então, de ser dado provimento ao recurso, para se reformar o decisum proferido pelo Juízo a quo e determinar o prosseguimento do feito na origem.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Isto posto, voto por conhecer e dar provimento ao agravo de instrumento, para reformar a decisão interlocutória agravada e determinar o prosseguimento do feito na origem</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">

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	Fortaleza, data e hora indicadas no sistema.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024</p><p style="text-indent: 8%; text-align: center;"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	99
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MARIA SONIA TAVEIRA DE ANDRADE
Advogado(s) - Polo ativo	ANTONIO FERREIRA BEZERRA - (CE26246-A) DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A)
Polo passivo	MUNICIPIO DE ACOPIARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"> <span style="font-size: medium;"> <span style="font-family: arial, helvetica, sans-serif;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGb

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Processo	3004088-51.2024.8.06.0000
	12pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em verificar se incide a determinação de suspensão no cumprimento individual de sentença coletiva ajuizada na origem, nos termos da decisão proferida em afetação de recurso repetitivo REsp nº 1978629/RJ, Tema 1.169/STJ. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de Decidir </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 3. Na espécie, o título judicial que fundamentou o cumprimento de sentença determinou o pagamento de valores atrasados de parcelas remuneratórias, os quais exigem simples cálculos aritméticos, dispensando a prévia liquidação, nos termos do §9 do art. 509 do CPC. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. O título judicial em questão não se mostra genérico, ante a identificação dos beneficiários, quais sejam, os professores da rede pública do Município de Acopiara; trazendo o seu alcance de maneira clara e precisa ao explicitar o pagamento de diferenças remuneratórias de férias e do terço constitucional no período compreendido entre 2013 a 2017, bem como as demais parcelas que se venceram no andamento do processo. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 5. Por tais razões, o cumprimento individual de sentença coletiva promovido pela agravante não se amolda à questão a ser submetida a julgamento repetitivo, nos termos definidos pelo Tema 1.169 do STJ. </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 6. Logo, é o caso, então, de ser dado provimento ao recurso, para se reformar o decisum proferido pelo Juízo a quo e determinar o prosseguimento do feito na origem.</p><p style="line-height: 1.2; margin-left: 113pt; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e Tese </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 7. Agravo de Instrumento conhecido e provido. Decisão interlocutória reformada.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ____________ </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos relevantes citados: CPC, art. 509, §2º </p><p style="line-height: 1.26; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 8pt;" dir="ltr"> <span style="font-family: arial,

Processo	3004088-51.2024.8.06.0000
	helvetica, sans-serif;"> Jurisprudência relevante citada: STJ, REsp n. 1.978.629/RJ, relator Ministro Benedito Gonçalves, Corte Especial, j. 11/10/2022</p><p style="line-height:1.2;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: center;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: center;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> ACÓRDÃO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento nº 3004088-51.2024.8.06.0000, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em para conhecer e dar provimento ao recurso , reformando a decisão interlocutória ora combatida, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Local, data e hora indicados pelo sistema. </p><p style="line-height:1.2;text-indent: 113.38582677165354pt;text-align: center;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> <br /> <br /> </p><p style="line-height:1.2;text-indent: 113.38582677165354pt;text-align: center;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024 </p><p style="line-height:1.2;text-indent: 113.38582677165354pt;text-align: center;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Relatora </p><p style="line-height: 1.2; text-indent: 113.38582677165354pt; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: center;margin-

Processo	3004088-51.2024.8.06.0000
	top:3pt;margin-bottom:3pt;" dir="ltr"> RELATÓRIO </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Em evidência, Agravo de Instrumento interposto contra decisão interlocutória proferida pelo Juízo da 2ª Vara Cível da Comarca de Acopiara, que determinou a suspensão de cumprimento individual de sentença coletiva. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> O caso/a ação originária: Maria Sônia Taveira de Andrade requereu o cumprimento individual de sentença coletiva (Processo nº 3000550-72.2024.8.06.0029) em face do Município de Acopiara/CE, aduzindo que, nos autos da ação coletiva nº 0004059-72.2018.8.06.0029, o executado foi condenado ao pagamento de diferenças referentes ao terço constitucional de férias devidos aos professores da rede municipal de ensino, sobre 45 dias de férias anuais.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Apresentou planilha atualizada do crédito no valor de R$ 3.228,98 (três mil duzentos e vinte e oito reais e noventa e oito centavos). </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Decisão agravada: o Juízo a quo determinou a suspensão do feito (ID 13988675). Confira-se seu dispositivo:</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Assim, nos termos do art. 256-I, parágrafo único, do RISTJ, a mencionada questão foi cadastrada como TEMA REPETITIVO N. 1169, na base de dados da C. Corte Cidadã, constando, nas informações complementares, ordem expressa para "suspensão do processamento de todos os processos que versem sobre a mesma matéria e tramitem no território nacional, nos termos do art. 1.037, II, do CPC/2015". </p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Ante o exposto, em consonância com o referido julgado, determino a suspensão dos presentes autos até decisão sobre o tema pelo C. Superior Tribunal de Justiça - STJ.” </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Irresignada, a parte autora interpôs o presente recurso de <span style="font-size: 12pt; color: #000000; background-color: transparent; font-weight:

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	700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">Agravo de Instrumento , afirmando que o Tema 1.169 se aplica somente aos casos de sentença genérica, que não é o caso dos autos, e que o Superior Tribunal de Justiça entende ser desnecessária a liquidação quando o montante a ser apurado depender de meros cálculos aritméticos.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Requereu, pois, o provimento do agravo, para fins de determinar que se mantenha o trâmite processual do cumprimento individual da sentença coletiva. </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Sem Contrarrazões. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Parecer da Procuradoria-Geral de Justiça (ID 15524840), manifestando pelo conhecimento, não adentrando no mérito em razão da questão ser meramente patrimonial.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> É o relatório. </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: center;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> VOTO </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Preenchido os requisitos legais, conheço do agravo de instrumento, passando, a seguir, ao exame de suas razões. </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> A questão em discussão consiste em verificar se incide a determinação de suspensão no cumprimento individual de sentença coletiva ajuizada na origem, nos termos da decisão proferida em afetação de recurso repetitivo REsp nº 1978629/RJ, Tema 1.169/STJ. </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> In casu, o cumprimento individual de sentença tem alicerce no trânsito em julgado de ação civil pública interposta pela Associação dos Professores da Rede Municipal de Acopiara em face do Município de Acopiara/CE, a fim de afastar a prática pela edilidade de não pagamento e fruição e remuneração de 45 (quarenta e cinco) dias de férias dos professores públicos municipais.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> <span style="font-size: 12pt; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline;

Processo	3004088-51.2024.8.06.0000
	white-space: pre-wrap;"> O Superior Tribunal de Justiça, afetou os recursos REsp nº 1.985.037/RJ e 1.985.491/RJ como representativo da seguinte controvérsia: </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> “ PROCESSUAL CIVIL E ADMINISTRATIVO. RECURSO ESPECIAL. PROPOSTA DE AFETAÇÃO PELO RITO DOS RECURSOS ESPECIAIS REPETITIVOS. EXECUÇÃO INDIVIDUAL DE TÍTULO JUDICIAL COLETIVO. NECESSIDADE DE PRÉVIA LIQUIDAÇÃO DO JULGADO COLETIVO. </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 1. Delimitação da controvérsia: " Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento de ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos aos autos ". </p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> 2. Recurso especial afetado ao rito do art. 1.036 e seguintes do CPC/2015 (art. 256-I do RISTJ, na redação da Emenda Regimental 24, de 28/09/2016), em conjunto com os REsp 1.985.037/RJ e 1.985.491/RJ. </p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> (ProAfR no REsp n. 1.978.629/RJ, relator Ministro Benedito Gonçalves, Corte Especial, julgado em 11/10/2022, DJe de 18/10/2022.)” (destacado) </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Na espécie, o título judicial que fundamentou o cumprimento de sentença determinou o pagamento de valores atrasados de parcelas remuneratórias, os quais exigem simples cálculos aritméticos, dispensando a prévia liquidação, nos termos do §9 do art. 509 do CPC, in verbis :</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> “ Art. 509. Quando a sentença condenar ao pagamento de quantia ilíquida, proceder-se-á à sua liquidação, a requerimento do credor ou do devedor: </p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> I - por arbitramento, quando determinado pela sentença, convencionado pelas partes ou exigido

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	pela natureza do objeto da liquidação; </p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> II - pelo procedimento comum, quando houver necessidade de alegar e provar fato novo. </p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> [...] </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> § 2º Quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover, desde logo, o cumprimento da sentença .” (destacado)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> O título judicial em questão não se mostra genérico, ante a identificação dos beneficiários, quais sejam, os professores da rede pública do Município de Acopiara; trazendo o seu alcance de maneira clara e precisa ao explicitar o pagamento de diferenças remuneratórias de férias e do terço constitucional no período compreendido entre 2013 a 2017, bem como as demais parcelas que se venceram no andamento do processo. </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:6pt;margin-bottom:6pt;" dir="ltr"> Por tais razões, o cumprimento individual de sentença coletiva promovido pela agravante não se amolda à questão a ser submetida a julgamento repetitivo, nos termos definidos pelo Tema 1.169 do STJ. </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Em situações análogas à dos autos, assim tem decidido este egrégio Tribunal de Justiça: </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> “ DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. SUSPENSÃO DO PROCESSO. TEMA REPETITIVO 1.169 DO STJ. SIMPLES CÁLCULOS ARITMÉTICOS. DECISÃO REFORMADA . RECURSO CONHECIDO E PROVIDO. I. Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça.II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado.III. Razões De Decidir: III.1. Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples

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	cálculos aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça. (AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024)” (destacado)</p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> ***** </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> “ EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO EM CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. LIQUIDAÇÃO. TÍTULO EXECUTIVO JUDICIAL. CÁLCULOS ARITMÉTICOS. TEMA REPETITIVO 1.169/ STJ. INAPLICABILIDADE. AGRAVO PROVIDO. I. Caso em exame 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos para a realização dos cálculos. II. Questão em discussão 2. A questão central é definir se o Tema 1.169/STJ é aplicável ao caso, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos. III. Razões de decidir 3. O Tema 1.169/STJ não se aplica ao caso, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos. IV. Dispositivo 4. Recurso conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva . (AGRAVO DE INSTRUMENTO - 30031999720248060000, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)” (destacado)</p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> ***** </p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> “ EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. DECISÃO QUE DETERMINOU O SOBRESTAMENTO DO FEITO ATÉ O JULGAMENTO DO TEMA 1169/STJ. NÃO CABIMENTO. TÍTULO EXECUTIVO JUDICIAL QUE DEPENDE DE MEROS CÁLCULOS ARITMÉTICOS. POSSIBILIDADE DE SEGUIMENTO DO FEITO <span style="font-size: 11pt; color: #000000; background-color: transparent; font-weight: 400;

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	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">. RECURSO CONHECIDO E PROVIDO. DECISÃO</p><p style="line-height:1.2;margin-left: 113pt;text-indent: 0.38582677165354085pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> REFORMADA. (AGRAVO DE INSTRUMENTO - 30032484120248060000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)” (destacado) </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Logo, é o caso, então , de ser dado provimento ao recurso, para se reformar o decisum proferido pelo Juízo a quo e determinar o prosseguimento do feito na origem.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: center;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> DISPOSITIVO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Isto posto, voto por conhecer e dar provimento ao agravo de instrumento, para reformar a decisão interlocutória agravada e determinar o prosseguimento do feito na origem</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> É como voto. </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> Local, data e hora indicados pelo sistema. </p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: center;margin-top:3pt;margin-bottom:3pt;" dir="ltr"> <br /> <br /> </p><p style="line-height:1.2;text-indent: 113.38582677165354pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span

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	style="font-family: arial, helvetica, sans-serif;">JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024 </p><p style="line-height:1.2;text-indent: 113.38582677165354pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Relatora </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	100
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA
Assunto principal	ICMS / Incidência Sobre o Ativo Fixo
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	R7 DISTRIBUIDORA DE CALCADOS E COMPONENTES LTDA
Advogado(s) - Polo passivo	ENISIO CORDEIRO GURGEL - (CE2656-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA CEARA SECRETARIA DA FAZENDA COORDENADOR DA ADMINISTRAÇÃO FAZENDÁRIA DA SECRETARIA DA FAZENDA PÚBLICA DO ESTADO DO CEARÁ

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBBu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GznNzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xxF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKGEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuywsFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size:
medium;">PODER JUDICIÁRIO <br /> <strong style="font-size:
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medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA
RODRIGUES</p><p style="text-align: center;">&#160;</p><p>
PROCESSO:&#160;0233517-98.2022.8.06.0001 -&#160;APELAÇÃO /
REMESSA NECESSÁRIA (1728) </p><p> <span style="font-family: arial,
helvetica, sans-serif;">   APELANTE: ESTADO DO
CEARA </p><p>
APELADO: R7 DISTRIBUIDORA DE CALCADOS E
COMPONENTES LTDA </p><p class="western" style="line-height: 150%;
orphans: 0; widows: 0; margin-bottom: 0cm;" align="justify"> <span style="font-family:
arial, helvetica, sans-serif;">   EP1/A2
</p><p style="text-align: center;"> <span style="font-family: arial, helvetica, sans-
serif;">   <br /> </p><p style="text-align: justify;"> <span style="font-family: arial,
helvetica, sans-serif;">   EMENTA: <span style="font-
variant: small-caps;">   <span style="font-size:
small;">   Constitucional e Administrativo. Embargos de Declaração.

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	Alegação de omissão quanto ao tema 1262 do STF. Todavia, restou realizada a devida distinção entre pedido de repetição do indébito tributário realizado pela via do precatório e aquele feito por meio de compensação tributária. Súmula 461 do STJ. Omissão inexistente . Pedido alternativo, que configura inovação recursal. Embargos não conhecidos nesta parte. Aclaratórios opostos com a única finalidade de obter reexame da controvérsia j á apreciada. Súmula nº 18, do TJCE. Prequestionamento. Desnecessidade. Embargos de declaração parcialmente conhecidos, e na parte em que conhecidos, rejeitados. Acórdão mantido. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> I. Caso em exame </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> 1. Trata-se de Embargos de Declaração opostos em face do acórdão que manteve a sentença de primeiro grau, que concedeu a segurança para afastar a cobrança do ICMS sobre a parcela de energia elétrica contratada e não utilizada <strong class="western"> , e <strong class="western"> reconheceu o direito da empresa impetrante de realizar a compensação dos valores indevidamente recolhidos. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> II. Questão em discussão </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> 2. A questão em discussão consiste em saber se há omissão que justifique o acolhimento dos embargos, sob alegação de que o acórdão deixou de considerar a necessidade de observância do regime de precatório, nos termos do art. 100 da CF e do Tema 1262 do STF. Ainda, pleitou que, alternativamente, fosse suprida a omissão, para que o reconhecimento do direito a empresa embargada de eventual valor a ser compensado, deveria se limitar ao crédito inscrito em dívida ativa. </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> III. Razões de decidir </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> 3. Da análise do acórdão embargado, verifica-se a clara distinção feita entre o pedido de restituição do indébito tributário realizado através de precatório e aquele feito por meio de compensação tributária, devendo ser observado o teor da Súmula 461 do STJ, quando o contribuinte optar pela compensação, sendo o eventual indébito tributário a ser restituído pelo meio escolhido pelo contribuinte. </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> 4. Quanto ao pedido alternativo formulado, trata-se de indevida inovação recursal, uma vez que a questão sequer foi objeto do recurso de apelação interposto pelo embargante. </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> 5. Nesse sentido, revela-se que não restou configurado o vício apontado, mas, sim, o descontentamento da recorrente com o resultado do julgamento, porquanto a 3ª Câmara de Direito Público desta Corte enfrentou a demanda, observando as questões relevantes e imprescindíveis à sua resolução. </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> <span style="font-weight:

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	normal;">6. Daí que das razões expendidas sobressai a nítida intenção de rediscutir o mérito do julgado, o que é inviável nesta via estreita, a teor da Súmula 18 do repositório de jurisprudência deste Egrégio Tribunal de Justiça . </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> IV. Dispositivo e tese </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> 7. Embargos de Declaração parcialmente conhecidos, e na parte em que conhecidos, rejeitados. </p><p class="western" style="line-height: 150%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> Tese de julgamento: “São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada”, nos termos da Súmula 18 do TJCE. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> ____________ </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados: art. 1.022, I e II, do CPC/15; Súmula nº 18 do TJCE. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> <strong class="western"> Jurisprudência relevante citada: <strong class="western"> EDcl no AgInt no CC 177.702/SP, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA SEÇÃO, julgado em 18/08/2021, DJe 20/08/2021. </p><p style="text-align: justify;"> <br /> </p><p style="text-align: justify;"> <br /> </p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em conhecer parcialmente os aclaratórios, e na parte em que conhecidos, rejeitados , nos termos do voto do relator. </p><p style="text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;"> <br /> </p><p style="text-align: center;"> <br /> </p><p style="text-align:

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	center;"> <br /> </p><p align="center"> RELATÓRIO </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Trata-se de Embargos de Declaração opostos pelo Estado do Ceará em face do Acórdão da 3ª Câmara de Direito Público, de Id. 14532724, no julgamento do Mandado de Segurança impetrado por <strong class="western"> R7 Distribuidora de Calçados e Componentes Ltda em desfavor do Estado do Ceará. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A irresignação de Id. 13404303, em linhas gerais, consiste em apontar erro de omissão no acórdão, sustentando que eventual valor a ser compensado deve observar o regime de precatório, nos termos do art. 100 da Constituição Federal e do entendimento do STF firmado no Tema 1262, ou, alternativamente, que o reconhecimento do direito a empresa embargada de eventual valor a ser compensado, deveria se limitar ao crédito inscrito em dívida ativa. Ao final, pugna pelo prequestionamento dos dispositivos legais contidos na peça. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Dispensado o parecer da Procuradoria-Geral de Justiça. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> É o relatório necessário. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-align: center;"> <br /> </p><p style="text-align: center;"> <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;"> <br /> </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Presentes os pressupostos de admissibilidade, conheço dos aclaratórios. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A teor do art. 1.022, inc. I a III, do CPC/2015, cabem embargos de declaração para sanar obscuridade, contradição, omissão ou erro material existentes na decisão impugnada. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> É modalidade recursal que não apresenta caráter substitutivo da decisão embargada, mas integrativo ou aclaratório, dissipando obscuridades ou contradições, ou, ainda, corrigindo erro material, nos termos do art. 1.022, do Código de Processo Civil. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Pois bem. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Em síntese, a parte embargante requer que esta C. Câmara sane a suposta omissão, sustentando que o acórdão embargado deixou de considerar a necessidade de observância do regime de

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	precatório, nos termos do art. 100 da Constituição Federal e do Tema 1262 do STF. Ainda, pleitou que alternativamente fosse suprida a omissão, para que o reconhecimento do direito a empresa embargada de eventual valor a ser compensado, deveria se limitar ao crédito inscrito em dívida ativa, nos termos do art. 170 do Código Tributário Nacional. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> <strong class="western"> No presente caso, o que se percebe do embargante não é sua tentativa de integração do acórdão e sim de rediscutir a causa. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> <strong class="western"> Em detida análise aos autos, verifica-se que o Recurso de Apelação (Id. 13993711) interposto pela parte ora Embargante, possuía o mesmo pedido, qual seja, a suposta impossibilidade de compensação na via administrativa, sustentando a necessidade de observância ao Tema 1262 do STF. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> <strong class="western"> Por sua vez, o voto proferido por esta 3ª Câmara de Direito Público solucionou todos os pontos controvertidos. Não subsiste, portanto, razão ao recorrente para pretender seja o <strong class="western"> decisum <strong class="western"> integrado, eis que inexiste contradição. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> <strong class="western"> E, a demonstrar a inexistência de qualquer imperfeição, transcrevo trecho dos fundamentos do acórdão, em que fica caracterizado que a questão fora satisfatoriamente delimitada (com destaques): </p><p class="western" style="line-height: 100%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <strong class="western"> “ <strong class="western"> Não obstante a esse fato, o ente estatal alega, em seu apelo, a impossibilidade de compensação e creditamento de ICMS energia elétrica à autora, alegando a aplicação do atual entendimento do STF, firmado no Tema nº 1262, a saber:&#160; </p><p class="western" style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p class="western" style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Tema n° 1.262, STF: Não se mostra admissível a restituição administrativa do indébito reconhecido na via judicial, sendo indispensável a observância do regime constitucional de precatórios, nos termos do art. 100 da Constituição Federal. </p><p class="western" style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p class="western" style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Pois bem. Inicialmente, é necessário fazer a devida distinção entre o pedido de restituição do indébito tributário realizado através de precatório e aquele feito por meio de compensação tributária, nos exatos termos do pleito formulado pela empresa embargante. </p><p class="western" style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p class="western" style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> De acordo com a jurisprudência do STJ, "o contribuinte pode optar por receber, por meio de precatório ou por compensação, o indébito tributário certificado por sentença declaratória transitada em julgado" (Súmula 461/STJ). </p><p class="western"

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	style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <br /> </p><p class="western" style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Portanto, o pedido de devolução do indébito tributário via compensação não está sujeito ao regime de pagamento por precatório, visto que são procedimentos distintos. Sendo assim, como a empresa impetrante optou pela compensação, o eventual indébito tributário deve ser restituído pelo meio escolhido pela contribuinte, conforme a legislação tributária .” </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> <br /> </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Ou seja, ao contrário do que alega a parte embargante, restou estabelecido no acórdão que, a distinção é bastante clara: quando o contribuinte optar pelo pagamento, deve se curvar ao regime de precatórios/RPV; por outro lado, se opta pela compensação, não se fala em expedição de requisitório de pagamento. A respeito, constou no acórdão o entendimento da Corte Superior e deste Tribunal de Justiça, em caso semelhante, em que se adotou o mesmo entendimento. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Dessa forma, uma detida análise do caso permite concluir que o decisum se utilizou de adequada fundamentação acerca da matéria, valorando os argumentos apresentados pelos litigantes e, mediante desenvolvimento de raciocínio lógico e coerente, empregou à lide solução que pode ser facilmente compreendida mediante simples interpretação literal de suas disposições. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Todavia, o ente estatal opôs os presentes aclaratórios, com o mesmo teor da recurso anterior, em que a tese já havia sido expressamente enfrentada por esta Câmara Julgadora, o que demonstra, portanto, o mero inconformismo. Verifica-se, pois, que a pretensão aclaratória não merece acolhimento, porquanto ausente qualquer vício capaz de justificar a correção do que restou decidido por esta Colenda Câmara Julgadora, tendo a questão sido devidamente apreciada em consonância com os argumentos trazidos aos autos pelas partes e decidido dentro dos limites do objeto do feito.</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Em verdade, os supostos vícios apontados pelo promovido/embargante, nas razões do seu recurso, revelam o único e exclusivo propósito de voltar a discutir o resultado da lide, que foi favorável aos interesses da parte embargada, como visto. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Ademais, quanto a tese suscitada, de forma alternativa, para que o reconhecimento do direito a empresa embargada de eventual valor a ser compensado deve se limitar ao crédito inscrito em dívida ativa, trata-se de indevida inovação recursal, uma vez que a questão sequer foi objeto do recurso de apelação interposto pelo embargante. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Com efeito, como iterativamente decidido pelo STJ, “não podem ser acolhidos embargos de declaração que, a pretexto de alegadas omissões no julgado combatido, traduzem, na verdade, o inconformismo da parte com a decisão tomada, buscando rediscutir o que decidido já foi.” (EDcl no AgInt no CC 177.702/SP, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA SEÇÃO, julgado em 18/08/2021, DJe 20/08/2021).</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Não custa lembrar, ainda, que perquirir acerca do acerto ou desacerto da interpretação adotada por este Tribunal é medida reservada às vias recursais próprias, não cabendo à parte descontente

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	utilizar-se dos embargos de declaração para este fim, ainda que considere que o resultado não se afigura consentâneo a melhor aplicação do direito. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Portanto, o que se observa é que há, in casu , uma tentativa de nova apreciação da matéria, o que não se faz possível nesta via.</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A esse respeito, a Súmula nº 18 do TJCE dispõe que: </p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Súmula nº 18: São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> De outro modo, os embargos de declaração têm o condão de integrar ou aclarar a decisão, sendo inadmissível sua oposição, para rediscussão de matérias apreciadas e resolvidas satisfatoriamente. Em suma, não há que se falar em contradição ou qualquer outro vício no acórdão vergastado, diante de sua fundamentação clara e satisfatória para o deslinde da causa. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Destarte, inexistentes os vícios insertos no art. 1.022 do CPC, o desprovimento dos presentes embargos de declaração é medida que se impõe neste azo, tornando-se, ainda, desnecessária qualquer manifestação para fins de prequestionamento de eventuais recursos à instância especial. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Diante do exposto, conheço parcialmente os embargos, e na parte em que conhecidos, rejeitados. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> &#160; É como voto. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	101
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	JOSE CLAUDENOR DA SILVA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-50faaaa6-7fff-79bf-1a5c-5d57acaeeff8" style="font-weight: normal;"> <br /> </p><p style="line-height: 2.148; text-align: justify; margin-top: 3pt; margin-bottom: 0pt;" dir="ltr">Processo: 3004090-21.2024.8.06.0000 – Agravo de instrumento</p><p style="line-height: 2.148; text-align: justify; margin-top: 3pt; margin-bottom: 0pt;" dir="ltr">Agravante: DEFENSORIA PÚBLICA ESTADUAL</p><p style="line-height: 2.148; text-align: justify; margin-top: 3pt; margin-bottom: 0pt;" dir="ltr">Agravado: MUNICÍPIO DE FORTALEZA</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Ementa: Direito processual civil. Agravo de instrumento. Execução fiscal. Exceção de pré-executividade. Nulidade da citação por edital. Não esgotamento dos meios para localização do executado. Devido processo legal. Recurso provido. Decisão reformada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline;

Processo	3004090-21.2024.8.06.0000
	white-space: pre-wrap;">I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">1. Trata-se de Agravo de Instrumento interposto pela Defensoria Pública do Estado do Ceará contra decisão do Magistrado do 1º Núcleo de Justiça 4.0 – Execuções Fiscais, que, nos autos da Ação de Execução Fiscal que tramita sob o n.º 0400021-07.2016.8.06.0001, rejeitou a exceção de pré-executividade oposta parte ora agravante, curadora especial da parte executada, considerado válida a citação por edital</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">2. Há duas questões em discussão: (i) saber se a citação realizada por edital, após tentativa infrutífera de citação por carta e mandado, é válida; e (ii) saber se, na hipótese de não localização do executado, o juízo deve diligenciar junto a órgãos públicos ou sistemas judiciários para buscar o endereço atualizado da parte antes de determinar a citação por edital.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 3. A jurisprudência do STJ consolidou entendimento no sentido de que a citação por edital na execução fiscal só é válida quando frustradas todas as tentativas anteriores de localização do executado.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">4. No caso dos autos, todavia, o juízo a quo não diligenciou no sentido de localizar o endereço atualizado do executado, utilizando-se das ferramentas e cadastros públicos disponíveis, o que afronta o disposto no art. 256, § 3º, do CPC/15, que determina o esgotamento dos meios para localização do réu antes da citação por edital.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 6. Recurso provido. Decisão reformada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Dispositivos relevantes citados: <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-

Processo	3004090-21.2024.8.06.0000
	color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">CF/88, art. 5º, incisos LIV e LV; CPC/15, art. 256, § 3º; e Lei 6.830/80, art. 8º.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Jurisprudência relevante citada: STJ, REsp nº 1.103.050/BA, Rel. Min. Teori Albino Zavascki, julgado em 25.03.2009, DJe 06.04.2009.&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em conhecer do agravo de instrumento para dar-lhe provimento, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de AGRAVO DE INSTRUMENTO, com pedido de antecipação dos efeitos da tutela recursal, interposto pela DEFENSORIA PÚBLICA DO ESTADO DO CEARÁ em face de decisão proferida pelo Magistrado do 1º Núcleo de Justiça 4.0 – Execuções Fiscais que, nos autos da Ação de Execução Fiscal que tramita sob o n.º 0400021-07.2016.8.06.0001, proposta pelo MUNICÍPIO DE FORTALEZA em desfavor de JOSÉ CLAUDENOR DA SILVA, rejeitou a exceção de pré-executividade oposta pela parte agravante, curadora especial da parte executada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Em suas razões recursais, a Defensoria Pública Estadual, na condição de curadora especial da parte executada, Sr. José Claudenor da Silva, CPF: 549.395.263-72, <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-

Processo	3004090-21.2024.8.06.0000
	space: pre-wrap;">alega, em suma, que apresentou exceção de pré-executividade na Ação de Execução Fiscal nº. 0400021-07.2016.8.06.0001, arguindo que não houve a citação regular da parte executada. Defende que a decisão que rejeitou a exceção de pré-executividade viola o devido processo legal, em razão da ausência de esgotamento dos meios para localização da parte executada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Sustenta que a decisão tomada pelo Juízo a quo configura prejuízo à defesa da parte executada na medida em que, antes da manifestação do curador especial, cujo ingresso se deu sem que o magistrado tenha lhe intimado após a realização da citação por edital, inexistia nos autos qualquer manifestação em favor da parte executada. Aduz, ainda, que a citação por edital deve ser reservada a casos em que realmente não se faz possível a citação por carta ou por oficial de justiça. Por fim, pugna pela antecipação da tutela recursal, a fim de declarar a nulidade dos atos processuais praticados após a citação por mandado da parte executada, desconstituindo-se os atos subsequentes a este momento processual. No mérito, pede o provimento do recurso, reformando-se a decisão agravada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O pedido de antecipação dos efeitos da tutela recursal foi deferido (ID nº 14002258).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Sem contrarrazões recursais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Parecer da Procuradoria-Geral de Justiça (ID nº 15485859).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Conheço do presente Agravo de Instrumento, eis que observo presentes os pressupostos de admissibilidade.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant:

Processo	3004090-21.2024.8.06.0000
	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">A controvérsia discutida no presente recurso consiste em perquirir se a decisão que rejeitou a exceção de pré-executividade e, por conseguinte, considerou válida a citação editalícia ocorrida nos autos executivos nº 0400021-07.2016.8.06.0001, deve ou não ser mantida.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Acerca do tema, a Lei nº. 6.830/80, em seu Art. 8º, inciso III, dispõe que:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Art. 8º – O executado será citado para, no prazo de 5 (cinco) dias, pagar a dívida com os juros e multa de mora e encargos indicados na Certidão de Dívida Ativa, ou garantir a execução, observadas as seguintes normas:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> (…)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> III – se o aviso de recepção não retornar no prazo de 15 (quinze) dias da entrega da carta à agência postal, a citação será feita por Oficial de Justiça ou por edital;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Da análise da legislação acima mencionada, é possível concluir que a citação por edital somente é cabível quando esgotadas as outras modalidades de citação ali previstas, quais sejam, a citação por correio e a citação por oficial de justiça.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> De igual modo, a Súmula nº 414 do STJ orienta que frustradas as modalidades de citação da parte executada por carta e mandado, a citação por edital é medida que se impõe. Vejamos:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Súmula nº 414 do STJ: A citação por edital na execução fiscal é cabível quando frustradas as demais modalidades.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por relevante, colaciono a seguir o precedente do Superior Tribunal de Justiça – STJ que deu origem ao verbete acima mencionado, a saber, REsp nº 1.103.050/BA, submetido ao regime do Art. 543-C do CPC/73 (Atual 1.036 do CPC/15):</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

Processo	3004090-21.2024.8.06.0000
	baseline; white-space: pre-wrap;">PROCESSO CIVIL. RECURSO ESPECIAL. EXECUÇÃO FISCAL. CITAÇÃO POR EDITAL. CONDIÇÃO DE CABIMENTO: FRUSTRAÇÃO DAS DEMAIS MODALIDADES DE CITAÇÃO (POR CORREIO E POR OFICIAL DE JUSTIÇA). LEI 6830/80, ART. 8º. 1. Segundo o art. 8º da Lei 6.830/30, a citação por edital, na execução fiscal, somente é cabível quando não exitosas as outras modalidades de citação ali previstas: a citação por correio e a citação por Oficial de Justiça. Precedentes de ambas as Turmas do STJ. 2. Recurso especial improvido. Acórdão sujeito ao regime do art. 543-C do CPC e da Resolução STJ 08/08. (REsp n. 1.103.050/BA, relator Ministro Teori Albino Zavascki, Primeira Seção, julgado em 25/3/2009, DJe de 6/4/2009).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por outro lado, a parte final do §3º do Art. 256 do CPC/15 determina que o Juízo da causa, como forma de proceder a respectiva citação pessoal (correios ou oficial de justiça), deve buscar o endereço atual do réu nos cadastros de órgãos públicos ou de concessionárias de serviços públicos, antes de autorizar a citação por edital.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Art. 256. (omissis).</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> (…)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">§ 3º O réu será considerado em local ignorado ou incerto se infrutíferas as tentativas de sua localização, inclusive mediante requisição pelo juízo de informações sobre seu endereço nos cadastros de órgãos públicos ou de concessionárias de serviços públicos. (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No caso dos autos, infere-se que a citação da parte executada via carta restou infrutífera, tendo o Aviso de Recebimento – AR sido devolvido com a informação de “endereço insuficiente”. Após, houve a tentativa de citação por mandado, não sendo também frutífera a diligência realizada pelo Oficial de Justiça, considerando que não foi encontrado nenhum imóvel com o número indicado no mandado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Diante disso, poder-se-ia pensar que foram realizadas todas as diligências para tentar localizar a parte executada, sendo válida, portanto, a citação por edital.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Contudo, essa não parece ser a melhor solução jurídica para o caso discutido nos autos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Isso porque, ao analisar o caso com maior profundidade, observa-se que a parte executada deixou de ser citada em função de não existir a numeração no endereço informado nos autos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Em assim sendo,

Processo	3004090-21.2024.8.06.0000
	antes de requerer a citação por edital, deveria a parte exequente ter diligenciado no sentido de identificar o endereço atual da parte executada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">De igual modo, observa-se que o Juízo a quo não se utilizou dos meios que estavam ao seu alcance para descobrir o endereço atualizado da parte executada, afrontando, assim, especificamente o que preconiza o Art. 256, §3º, do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Não se pode olvidar que, em situações dessa natureza, é dever do Juízo processante tentar buscar a localização do atual endereço da parte executada nos cadastros de órgãos públicos, tais como Junta Comercial e Receita Federal, ou ainda através de sistemas à disposição do Poder Judiciário, como por exemplo, RENAJUD, SISBAJUD, INFOJUD, INFOSEG.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Não esgotados, pois, os meios para a localização da parte executada, tenho, in casu, que a nulidade da citação por edital é medida que se impõe.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> A fim de corroborar tal entendimento, trago à colação julgado da 3ª Câmara de Direito Público deste egrégio Tribunal de Justiça: <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 111pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">AGRAVO DE INSTRUMENTO EM EXCEÇÃO DE PRÉ-EXECUTIVIDADE EM EXECUÇÃO FISCAL. NULIDADE DA CITAÇÃO POR EDITAL. AUSÊNCIA DE CITAÇÃO NO ENDEREÇO DO IMÓVEL CONSTANTE DA CDA. APLICABILIDADE DAS DISPOSIÇÕES DO ART. 256, §3º, DO CPC C/C ART. 8º DA LEF. PRECEDENTES DO STJ. DECISÃO REFORMADA. 1. Cinge-se a demanda em analisar o recurso de agravo de instrumento interposto pela Defensoria Pública do Estado do Ceará, em face de decisão proferida pelo juízo da 2ª Vara de Execuções Fiscais da Comarca de Fortaleza, que rejeitou a exceção de pré-executividade, alegando ser válida a citação por edital da parte executada, não sendo, pois, aplicável o CPC à hipótese, mas o rito estabelecido pela Lei de Execuções Fiscais. 2.Apesar de haver diversos sistemas à disposição do Judiciário para buscar

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	por endereço atualizados, o Juízo a quo, em de vez de empreender diligências buscando o endereço da parte, simplesmente determinou a citação por edital. Além disso, verifica-se que a tentativa de citação sequer ocorreu no endereço do imóvel que originou o crédito tributário, consoante se extrai da CDA. 3. A interpretação que se constrói a partir do art. 8º da LEF c/c o art. 256, § 3º, do CPC, é a de que a citação por edital somente será realizada após o esgotamento de todos meios possíveis para localizar o devedor. O Superior Tribunal de Justiça, no julgamento do REsp. 1.103.050/BA, submetido à sistemática dos recursos especiais repetitivos, e através da Súmula 414, firmou a seguinte tese: "a citação por edital na execução fiscal é cabível quando frustradas as demais modalidades". 4. Agravo de instrumento conhecido e provido. ACÓRDÃO Vistos, relatados e discutidos, acordam os integrantes da 3ª Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer do agravo de instrumento para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. Desembargador WASHINGTON LUIS BEZERRA DE ARAÚJO Relator (Agravo de Instrumento – 0620390-31.2022.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento: 16/05/2022, data da publicação: 16/05/2022).&#160; (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">De igual modo: Agravo de Instrumento – 0627188-08.2022.8.06.0000, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 29/08/2022, data da publicação: 29/08/2022; Agravo de Instrumento – 0631246-54.2022.8.06.0000, Rel. Desembargadora MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 29/08/2022, data da publicação: 29/08/2022; e Agravo de Instrumento – 0620349-64.2022.8.06.0000, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 18/04/2022, data da publicação: 18/04/2022.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Diante do exposto, <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant:

Processo	3004090-21.2024.8.06.0000
	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">CONHEÇO do agravo de instrumento e DOU-LHE provimento para, reformando a decisão agravada que rejeitou a exceção de pré-executividade, declarar a nulidade da citação por edital da parte executada e, por conseguinte, tornar sem efeito todos os atos processuais praticados após a tentativa infrutífera de citação da empresa por mandado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> &#160; Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	102
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Indenização / Terço Constitucional
Polo ativo	KATIA REGINA XAVIER DA SILVA GURGEL
Advogado(s) - Polo ativo	DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A) ANTONIO FERREIRA BEZERRA - (CE26246-A)
Polo passivo	MUNICIPIO DE ACOPIARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004133-55.2024.8.06.0000
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	2tra8ee/PPW9cu5MfFJ22uMt1OYscqQgE0i1KWNCJJhZQxQapkY7bBpiphaR8FyhHP9kNP06UynFZgbQKyv4lQWxLFIaUf2FU6WnOjuk8x0pUjNngnQtlNay2YK1lhKIzE58PHn+Uurs8+fDrU3147V1NWhksXwZmTni/+t04vgJ69bW5rsdpM2h4aHy2Wezyj2DfaWmIQ4Xv2BOnSw2YG6QENalaeGbTENsStPDfEZz7PLudwCCd2BVjByWUMDiCqLCmdmc34wRYr8b881eQ/DsM8NHiaoEjDbDeQs+t5WES4z/89bW1qrZX2aVx8aOlTU01KGjveXu6OioNUfc/xpRqJ3X2ta8h3lz4WBH09PTZ08H0G5plrOqBxwTA/GeBYGx3kBCM0ds9P2VZn7VmhC7xVqTvAvRhwoR0r0Pq2NUMZc5AvuDFpnfCFQQWYj9Jiwz5oVTrA9YrBrm7G946tKlhIbmxqcH21pRU1u1h5GNI+Z/n6anp53rG2oH+w/1obGh9t6Th/dbaNG8irrKa7rBdlTRkN95b2efQLG7bgYAm6niIT8yb4jEzMwPHZd/vtmhUur98n3T1zXNJG7mb5pjqS0ftCLskVuef2326Yu8p0+etNCa1/v6e1BZXTl49epVZ45Y/14iQO8O9fXJlpeXXG8k/2xpabo4+/MDlZ+mZwLKm2quKHjo410XEtR1G+ZRlfMWA5SJvGSe2/YYIudY40R4T+7El3HUXzIvuDIaZIAxmvfixkonQci66yKnpvDK9N3pAHIJle7uzosEDmWlxdfa2tpkGRk44vx1dO/e7LKuri7DurraUTKVH7u629sf3r6nPjU1lRGwN+awfIgJ3janiEsVD/NqJfM855MYJXyZuAsfRythCdWXjOmyG1gy7bm22yAXaMic9R2evDyZ8XDmoXpvZ1tNbU3ldGVlyWhzc53hvXv3lnGW/79Lvb3dvgf2Zfa0HWxGe1d7NO2w3ejoiK9VoNNN5h0WLg8edvKez1QnTLHAMMc3mc7lSycZWPjZ3RwZ7GcioV17V0d0c3MTjhw5jIHBviTOMv9viZx9xfj4WPOh4UMoKi16MTFxsXj24S9u3QN9ZxRc9Z4uMucmk6TgweQyhgnk23Y7IOWs9bSpo/nM859/drs8MVFcSPf2DfVjYKC3+Zdnz9Q40//PIAK5+ObNqW1dvV3flpUVo6GxYfrx9AP5mxcnvaMOpNxf5yEPLncetkbfM+dDcEbMz1fPX/Z+PP2TXPPBpinyMbR1dXx7ceriNmYuzrT/M+nYsWPq+QW5VTU11Th39nQNmZ5DbE5S8Zc6AvhqtyBKWFUP6TePSxfP1TDvx7V3tD0dONT71/7r6l9BVTWV4e3tbSgoyKsmQGu7OrtedLa1vaDvPjX1NU3Uh6KhoT6e/pbh3PK/j65enQwZIr8qKS1pJyBRDFeVF1ZTcML4+HgIZ9j/brp//6fAgcF+akKLK9taWRXDw0OU9GcCOZf//6CpqSthpWVFyMvPweTk5f8/NPd7SklLCz956iQFSazm/PQXExfX/wGXuTX16scS8AAAAABJRU5ErkJggg==" alt="" /></p><p style="margin: 0cm; text-align: center;" align="center"> ESTADO DO CEARÁ </p><p style="margin: 0cm; text-align: center;" align="center"> PODER JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;" align="center"> TRIBUNAL DE JUSTIÇA </p><p style="margin: 0cm; text-align: center;" align="center"> GABINETE DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO </p><p style="text-align: center;" align="center"> &#160;</p><p style="text-align: left;">&#160;</p><p style="text-align: left;"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> Processo: &#160;3004133-55.2024.8.06.0000 </p><p style="text-align: left;"> [Indenização / Terço Constitucional] </p><p style="text-align: left;"> AGRAVO DE INSTRUMENTO </p><p style="text-align: left;"> Recorrente:&#160;KATIA REGINA XAVIER DA SILVA GURGEL</p><p style="text-align: left;"> Recorrido:&#160;MUNICIPIO DE ACOPIARA</p><p style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Ementa: Direito processual civil. Agravo de instrumento em cumprimento individual de sentença coletiva. Liquidação. Título executivo judicial. Cálculos aritméticos. Tema repetitivo 1.169/STJ. inaplicabilidade. <span style="font-size: 13.0pt; mso-bidi-font-size: 12.0pt; line-height: 150%; font-family: &quot;Arial&quot;,sans-serif; mso-bidi-font-

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	family: Wingdings; font-variant: small-caps; color: black; letter-spacing: -.3pt;">Agravo provido.</p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> I. Caso em exame </p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A parte autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos necessários para a realização dos cálculos que permitam a liquidação.</p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> II. Questão em discussão </p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 2. Definir se o Tema 1.169/STJ é aplicável ao caso concreto, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos.</p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> III. Razões de decidir </p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3. O Tema 1.169/STJ, não se aplica ao caso sob reexame, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação autônoma prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos.</p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> IV. Dispositivo </p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 4. Recurso conhecido e provido.</p><p class="EmentadoAcf3f3rde3e3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> _______________</p><p class="EmentadoAcf3f3rde3e3o" style="line-height: 150%;"> Dispositivos relevantes citados: &#160;CPC, art. 509, §2º.</p><p class="EmentadoAcf3f3rde3e3o" style="line-height: 150%;"> Jurisprudência relevante citada: &#160;Tema Repetitivo 1.169/STJ.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;">&#160;</p><p class="MsoNormal" style="page-break-before: always; mso-hyphenate: auto;">&#160;</p><p class="Standard" style="text-align: center; line-height: 150%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> ACÓRDÃO </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height:

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	150%;"> Vistos, relatados e discutidos os presentes autos, acordam os membros integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do agravo para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> &#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph;"> &#160;</p><p class="Standard" style="text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;">Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="Standard" style="text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Relator </p><p class="Standard" style="text-align: center;" align="center">&#160;</p><p class="Standard" style="text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> <br /> </p><p class="Standard" style="margin-bottom: 5.65pt; text-align: center; line-height: 150%; page-break-before: always;" align="center"> <strong style="mso-bidi-font-weight: normal;"> RELATÓRIO </p><p class="MsoNormal" style="margin-bottom: 3.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; background: white; text-autospace: none; mso-vertical-align-alt: auto;"> Tem-se agravo de instrumento interposto contra decisão proferida pelo juízo da 2ª Vara Cível da Comarca de Acopiara no âmbito de cumprimento individual de sentença coletiva.</p><p class="MsoNormal" style="margin-bottom: 3.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; background: white; text-autospace: none; mso-vertical-align-alt: auto;"> <strong style="mso-bidi-font-weight: normal;"> Decisão agravada : recebido o cumprimento de sentença, o juízo <em style="mso-bidi-font-style: normal;">a quo sobrestou o feito por ter STJ afetado o REsp 1978629/RJ, REsp 1985037/RJ e REsp 1985491/RJ, relatados pelo Ministro Benedito Gonçalves, com base no § 5º do art. 1.036 do CPC de 2015 e no art. 256-I, parágrafo único, do Regimento Interno da referida Corte, incluído pela Emenda Regimental n. 24, de 28 de setembro de 2016, para uniformizar o entendimento da matéria sobre a seguinte questão:&#160;“Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento de ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos aos autos”.&#160;</p><p class="MsoNormal" style="margin-bottom: 3.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; background: white; text-autospace: none; mso-vertical-align-alt: auto;"> Razões recursais : alega que tese suscitada não se amolda ao contexto fático do presente cumprimento individual de sentença coletiva, pois somente se aplica aos casos de sentenças genéricas. Ao final, requer o prosseguimento do cumprimento individual de sentença coletiva.</p><p class="MsoNormal" style="margin-bottom: 3.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Sem contrarrazões : prazo decorrido em 14/10/2024, às 23:59.</p><p

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	class="MsoNormal" style="margin-bottom: 3.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Manifestação ministerial alheia ao mérito.</p><p class="MsoNormal" style="margin-bottom: 3.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> É o relatório, no essencial.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 8.5pt; text-align: center; mso-line-height-alt: 9.9pt; page-break-before: always; tab-stops: center 216.0pt right 432.0pt;" align="center"> <strong style="mso-bidi-font-weight: normal;"> VOTO </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Conforme relatado, trata-se na origem de cumprimento individual de sentença coletiva decorrente de ação ajuizada pela Associação dos Professores da Rede Municipal de Acopiara em face do Município de Acopiara/CE. Na oportunidade, a parte autora alegou que, enquanto ocupante do cargo de professora da rede municipal de ensino, tem direito a gozar de 45 (quarenta e cinco) dias de férias e a receber o adicional respectivo calculado sobre todo o período, situação que não estaria sendo respeitada pelo Ente requerido, ao limitar o respectivo terço ao período de apenas 30 (trinta) dias (autos nº 0004059-72.2018.8.06.0029 – 2ª Vara Cível da Comarca de Acopiara/CE).</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Na aludida ação coletiva foi proferida sentença que condenou o Município ao “pagamento das diferenças observadas em relação ao adicional de 1/3 de férias dos professores da rede pública municipal que tenham, de fato, gozado o período de 45 (quarenta e cinco) dias de férias nos anos respectivos, relativamente aos anos de 2013, 2014, 2015, 2016, 2017 e as que vencerem no decorrer do andamento deste processo, devendo o referido adicional ser calculado sobre todo o período de férias” .</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> A decisão de primeiro grau foi confirmada por este tribunal, tendo ocorrido o trânsito em julgado. Assim, por força do título executivo judicial mencionado foi necessária a deflagração da fase de cumprimento individual de sentença coletiva.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Após distribuído, o juízo a quo decidiu pela “suspensão dos presentes autos até decisão sobre o tema 1169 pelo C. Superior Tribunal de Justiça – STJ”.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> No presente recurso, a Agravante busca a reforma do mencionado decisum para que seja dado prosseguimento ao feito.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Com razão a Agravante. Explico.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> De fato, verifica-se que a afetação de recursos especiais no Tema&#160;1.169/STJ, houve a determinação de suspensão do processamento de execuções em situação análoga a dos processos paradigmas.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> A questão

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	submetida a julgamento se refere a "Definir se a liquidação prévia do julgado é requisito indispensável para o ajuizamento da ação objetivando o cumprimento de sentença condenatória genérica proferida em demanda coletiva, de modo que sua ausência acarreta a extinção da ação executiva, ou se o exame quanto ao prosseguimento da ação executiva deve ser feito pelo Magistrado com base no cotejo dos elementos concretos trazidos nos autos".</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Ocorre que a hipótese dos autos não se amolda à matéria analisada no âmbito do referido precedente qualificado.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Isso porque o título judicial que deu ensejo ao presente cumprimento de sentença apresenta todos os parâmetros necessários para a elaboração dos cálculos do valor a ser executado, não constituindo, portanto, sentença genérica. Saliente-se que o título coletivo indicou precisamente a correção monetária e os juros de mora incidentes sobre o valor devido.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Nesse sentido, é certo que o caso sob exame tem por objeto o cumprimento de sentença condenatória perfeitamente liquidável por simples cálculos aritméticos - e não o cumprimento de sentença condenatória genérica -, o que não se confunde com a discussão tratada no Tema&#160;1.169/STJ.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Nos termos do art.&#160;509,&#160;§ 2º, do&#160;CPC/15, quando a apuração do valor depender apenas de cálculo aritmético, o credor poderá promover, desde logo, o cumprimento de sentença. Assim, não há falar em sobrestamento do feito, pois inaplicável ao caso o Tema&#160;1.169/STJ.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> A propósito, esse é o posicionamento adotado pelos tribunais pátrios, assim como pelo Tribunal de Justiça do Estado do Ceará, com julgados em casos análogos sob minha relatoria; senão vejamos:</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> CUMPRIMENTO DE SENTENÇA INDIVIDUAL DE AÇÃO COLETIVA. DESNECESSIDADE DE APLICAÇÃO DO TEMA 1.169, DO STJ. &#160; QUANTUM DEBEATUR A SER OBTIDO POR SIMPLES CÁLCULO ARITMÉTICO. RECURSO PROVIDO.&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> CASO EM EXAME:</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Agravante, professora municipal, questiona a decisão monocrática que mandou suspender o cumprimento de sentença até o deslinde do Tema 1.169, do STJ, entendendo que os cálculos para pagamento do terço de férias dependem de liquidação prévia.&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> QUESTÃO EM DISCUSSÃO</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Na espécie, saber se é legal ou não a suspensão do processo de cumprimento de sentença, até decisão definitiva do Superior Tribunal de Justiça sobre o Tema 1.169, pois o título judicial coletivo não é genérico, e todos os elementos necessários para a execução estão devidamente individualizados e claros.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> RAZÕES DE DECIDIR:</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <strong style="mso-bidi-font-weight: normal;"> O Tema 1.169 do STJ se aplica apenas a casos em que há sentença condenatória genérica, o que não é o caso dos presentes fólios. O título judicial, apesar de coletivo, já especifica os beneficiários, a obrigação de fazer e de pagar, assim como os índices de correção monetária e os juros aplicáveis. DISPOSITIVO E TESE: Agravo de Instrumento provido para determinar o prosseguimento do feito com aplicação de simples cálculos aritméticos. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> (AGRAVO DE INSTRUMENTO -

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	30039768220248060000, Relator(a): FRANCISCO GLADYSON PONTES, 2ª Câmara de Direito Público, Data do julgamento: 30/10/2024)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Agravo de instrumento em cumprimento individual de sentença coletiva. Liquidação. Título executivo judicial. Cálculos aritméticos. Tema repetitivo 1.169/STJ. inaplicabilidade. Agravo provido.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> I. Caso em exame</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> 1. Agravo de instrumento interposto contra decisão que suspendeu o cumprimento individual de sentença coletiva, com base no Tema Repetitivo 1.169/STJ, que trata da necessidade de liquidação prévia em ações coletivas. A autora busca o prosseguimento da execução, argumentando que a sentença coletiva já contém todos os elementos para a realização dos cálculos.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> II. Questão em discussão</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> 2. A questão central é definir se o Tema 1.169/STJ é aplicável ao caso, ou seja, se a liquidação prévia é necessária quando o título executivo judicial permite a apuração do valor devido por simples cálculos aritméticos.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> III. Razões de decidir</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> 3. <strong style="mso-bidi-font-weight: normal;">O Tema 1.169/STJ não se aplica ao caso, pois a sentença coletiva em questão não é genérica, mas sim específica, indicando os parâmetros para o cálculo do valor devido. Sendo assim, a liquidação prévia é desnecessária, uma vez que o valor pode ser apurado por simples cálculos aritméticos.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> IV. Dispositivo</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> 4. Recurso conhecido e provido. Decisão recorrida reformada, determinando-se o prosseguimento do cumprimento individual da sentença coletiva.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> (AGRAVO DE INSTRUMENTO - 30031999720248060000, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 22/10/2024)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Ementa: Direito Processual Civil. Agravo De Instrumento. Suspensão Do Processo. Tema Repetitivo 1.169 do STJ. Simples Cálculos Aritméticos. Decisão Reformada. Recurso Conhecido e Provido.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Caso Em Exame: Agravo de instrumento interposto em face de decisão que determinou a suspensão dos autos de cumprimento de sentença individualizada de ação coletiva, com fulcro no Tema Repetitivo nº 1.169 do Superior Tribunal de Justiça.&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> II. Questão Em Discussão: Cinge-se a controvérsia recursal em analisar se o caso está afetado pelo Tema Repetitivo n.º 1.169 do Superior Tribunal de Justiça e se deve, portanto, ser sobrestado.&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <strong style="mso-bidi-font-weight: normal;"> III. Razões De Decidir: III.1. Observa-se que a apuração do crédito exequendo não exige cálculos complexos, mas apenas simples cálculos

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	aritméticos. III.2 Considerando que o título judicial que embasa o cumprimento de sentença permite a individualização dos valores exigidos pelo agravado, que poderão ser aferidos mediante simples cálculos aritméticos, o caso dos autos não se encontra afetado pela decisão de suspensão dos processos estabelecida em razão do Tema 1.169 do Superior Tribunal de Justiça.&#160; </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> (AGRAVO DE INSTRUMENTO - 30032285020248060000, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 21/10/2024)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> Ementa: AGRAVO DE INSTRUMENTO. PROCESSO CIVIL. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA CONTRA A FAZENDA PÚBLICA. SOBRESTAMENTO DO FEITO. PRÉVIA LIQUIDAÇÃO. TEMA 1.169 DO STJ. DISTINÇÃO. ÍNDICE DE CORREÇÃO MONETÁRIA. TÍTULO JUDICIAL. INPC ATÉ A VIGÊNCIA DA EC 113/2021. DECISÃO MANTIDA. 1. Na hipótese, o cumprimento individual de sentença coletiva que consubstancia o processo de referência não se amolda ao Tema n. 1.169/STJ a ensejar a suspensão do feito, pois não se cuida de título genérico que propicie incerteza acerca da necessidade ou não de liquidação prévia. Quando delimitado o alcance subjetivo e objetivo do título judicial exequendo, o valor pode ser apurado por meros cálculos aritméticos. 2. A decisão agravada observou todos os parâmetros estabelecidos no ato decisório passível de cumprimento, ao considerar que deve ser utilizado o INPC até a entrada em vigor da Emenda Constitucional n. 113/2021 e, a partir dessa data, a taxa SELIC. 3. Recurso conhecido e não provido. (TJ-DF 07205861120248070000 1917634, Relator: MAURICIO SILVA MIRANDA, Data de Julgamento: 04/09/2024, 7ª Turma Cível, Data de Publicação: 17/09/2024)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> &#160;</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> EMENTA: AGRAVO DE INSTRUMENTO. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. DESNECESSIDADE DE SUSPENSÃO DO PROCESSAMENTO DO FEITO COM BASE NO TEMA Nº 1169 DO STJ. DISTINÇÃO ENTRE O PARADIGMA E O CASO CONCRETO. LIQUIDAÇÃO DA SENTENÇA DESNECESSÁRIA. VALOR EXEQUENDO OBTIDO POR SIMPLES CÁLCULO ARITMÉTICO. SUSPENSÃO AFASTADA. DECISÃO REFORMADA. RECURSO CONHECIDO E PROVIDO. (TJ-PR 00499834420238160000 Maringá, Relator: Carlos Mansur Arida, Data de Julgamento: 30/10/2023, 5ª Câmara Cível, Data de Publicação: 06/11/2023) – negritei</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Restou claro que a Sentença confirmada pelo Acórdão determinou, nos termos do Resp. 1495146/MG, que por se tratar de condenação judicial referente a servidor público, deverá incidir juros de mora de acordo com a remuneração oficial da caderneta de poupança e correção monetária pelo IPCA-E. A partir de 09/12/2021, caso existente verba pendente de pagamento, incidirá a taxa SELIC para correção monetária e juros de mora, nos termos do artigo 3º da Emenda Constitucional nº 113/2021.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Por conseguinte, impõe-se a reforma da decisão agravada, destravando a fase de cumprimento de sentença deflagrada na origem.</p><p class="Corpodotexto" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Isso posto, conheço do agravo de instrumento para dar-lhe provimento, reformando a decisão interlocutória adversada para determinar o prosseguimento do feito.</p><p class="Corpodotexto" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Oficie-se ao MM. Juiz, comunicando-lhe sobre o teor desta decisão.</p><p class="Corpodotexto" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> É o voto que submeto à consideração de meus

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	pares.</p><p class="Corpodotexto" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p class="Corpodotexto" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> &#160;</p><p class="MsoNormal" style="text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="MsoNormal" style="text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Relator </p><p class="MsoNormal" style="margin-bottom: 2.0pt; text-align: center; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	103
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Reserva de Vagas para Pessoas com Deficiência
Polo ativo	JULIANA ALVES DO NASCIMENTO
Advogado(s) - Polo ativo	JULIANE VIEIRA DE SOUZA - (GO34161-A)
Polo passivo	MUNICIPIO DE CAUCAIA FUNDACAO DE APOIO A CULTURA, A PESQUISA E AO DESENVOLVIMENTO INSTITUCIONAL, CIENTIFICO E TECNOLOGICO - FUNDACAO CETREDE
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	2tra8ee/PPW9cu5MfFJ22uMt1OYscqQgE0i1KWNCJJhZQxQapkY7bBpiphaR8FyhHP9kNP06UynFZgbQKyv4lQWxLFIaUf2FU6WnOjuk8x0pUjNngnQtlNay2YK1lhKIzE58PHn+Uurs8+fDrU3147V1NWhksXwZmTni/+t04vgJ69bW5rsdpM2h4aHy2Wezyj2DfaWmIQ4Xv2BOnSw2YG6QENalaeGbTENsStPDfEZz7PLudwCCd2BVjByWUMDiCqLCmdmc34wRYr8b881eQ/DsM8NHiaoEjDbDeQs+t5WES4z/89bW1qrZX2aVx8aOlTU01KGjveXu6OioNUfc/xpRqJ3X2ta8h3lz4WBH09PTZ08H0G5plrOqBxwTA/GeBYGx3kBCM0ds9P2VZn7VmhC7xVqTvAvRhwoR0r0Pq2NUMZc5AvuDFpnfCFQQWYj9Jiwz5oVTrA9YrBrm7G946tKlhIbmxqcH21pRU1u1h5GNI+Z/n6anp53rG2oH+w/1obGh9t6Th/dbaNG8irrKa7rBdlTRkN95b2efQLG7bgYAm6niIT8yb4jEzMwPHZd/vtmhUur98n3T1zXNJG7mb5pjqS0ftCLskVuef2326Yu8p0+etNCa1/v6e1BZXTl49epVZ45Y/14iQO8O9fXJlpeXXG8k/2xpabo4+/MDlZ+mZwLKm2quKHjo410XEtR1G+ZRlfMWA5SJvGSe2/YYIudY40R4T+7El3HUXzIvuDIaZIAxmvfixkonQci66yKnpvDK9N3pAHIJle7uzosEDmWlxdfa2tpkGRk44vx1dO/e7LKuri7DurraUTKVH7u629sf3r6nPjU1lRGwN+awfIgJ3janiEsVD/NqJfM855MYJXyZuAsfRythCdWXjOmyG1gy7bm22yAXaMic9R2evDyZ8XDmoXpvZ1tNbU3ldGVlyWhzc53hvXv3lnGW/79Lvb3dvgf2Zfa0HWxGe1d7NO2w3ejoiK9VoNNN5h0WLg8edvKez1QnTLHAMMc3mc7lSycZWPjZ3RwZ7GcioV17V0d0c3MTjhw5jIHBviTOMv9viZx9xfj4WPOh4UMoKi16MTFxsXj24S9u3QN9ZxRc9Z4uMucmk6TgweQyhgnk23Y7IOWs9bSpo/nM859/drs8MVFcSPf2DfVjYKC3+Zdnz9Q40//PIAK5+ObNqW1dvV3flpUVo6GxYfrx9AP5mxcnvaMOpNxf5yEPLncetkbfM+dDcEbMz1fPX/Z+PP2TXPPBpinyMbR1dXx7ceriNmYuzrT/M+nYsWPq+QW5VTU11Th39nQNmZ5DbE5S8Zc6AvhqtyBKWFUP6TePSxfP1TDvx7V3tD0dONT71/7r6l9BVTWV4e3tbSgoyKsmQGu7OrtedLa1vaDvPjX1NU3Uh6KhoT6e/pbh3PK/j65enQwZIr8qKS1pJyBRDFeVF1ZTcML4+HgIZ9j/brp//6fAgcF+akKLK9taWRXDw0OU9GcCOZf//6CpqSthpWVFyMvPweTk5f8/NPd7SklLCz956iQFSazm/PQXExfX/wGXuTX16scS8AAAAABJRU5ErkJggg==" alt="" /></p><p style="margin: 0cm; text-align: center;" align="center"> ESTADO DO CEARÁ </p><p style="margin: 0cm; text-align: center;" align="center"> PODER JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;" align="center"> TRIBUNAL DE JUSTIÇA </p><p style="margin: 0cm; text-align: center;" align="center"> GABINETE DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO </p><p style="text-align: center;" align="center"> &#160;</p><p style="text-align: left;">&#160;</p><p style="text-align: left;"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> Processo: &#160;3004224-48.2024.8.06.0000 </p><p style="text-align: left;"> [Reserva de Vagas para Pessoas com Deficiência] </p><p style="text-align: left;"> AGRAVO DE INSTRUMENTO </p><p style="text-align: left;"> Recorrente:&#160;JULIANA ALVES DO NASCIMENTO</p><p style="text-align: left;"> Recorrido:&#160;MUNICIPIO DE CAUCAIA e outros</p><p style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito Administrativo. Agravo De Instrumento. Concurso Público. Diagnóstico Superveniente ao Prazo previsto no edital. Retificação de Inscrição para pleiteante à reserva de vagas para Pessoas com Deficiência (PCD). Impossibilidade. Recurso desprovido.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-

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	bottom: 0pt;" dir="ltr">1. Agravo de Instrumento interposto contra decisão que indeferiu tutela antecipada requerida para obter a reclassificação como candidata PCD e a devida colocação na concorrência reservada.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I I. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão principal em discussão consiste em saber se é plausível o direito do candidato de retificar sua inscrição para PCD, na hipótese em que o diagnóstico de deficiência é superveniente ao prazo do edital para pleitear reserva de vagas.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A segurança jurídica, legalidade e vinculação ao edital impedem a retificação intempestiva do candidato como pessoa com deficiência.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A inscrição como candidato PCD deve ocorrer dentro dos prazos do edital, sob pena de perda do direito de concorrer na lista reservada, ainda que o diagnóstico de deficiência seja superveniente.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Agravo de instrumento desprovido. Agravo interno prejudicado.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ______</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> Dispositivos relevantes citados : CF, art. 37, caput; CPC, art. 300; Lei Federal nº 8.666/93, art. 3º; Lei Federal nº 14.133/2021, art. 5º. &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <span style="font-size: 16pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do agravo de instrumento, para negar-lhe provimento, ficando prejudicado o agravo interno interposto da decisão da relatoria que indeferiu a tutela antecipada recursal, tudo nos termos do voto do relator, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <br /> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO <br /> Relator &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Tem-se agravo de instrumento interposto por Juliana Alves do Nascimento em face de decisão proferida pelo juízo da 1ª Vara da Comarca de Caucaia, na ação de nº 3003750-79.2024.8.06.0064, ajuizada pela agravante em face do Município de Caucaia e da Fundação Cetrede.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">O processo principal (id 90354319 dos autos originais): a autora narrou que é candidata no concurso público do Município de Caucaia para&#160; os cargos de Professor de Educação Básica – Pedagoga e Agente de Suporte em Educação – Auxiliar de Sala. Alegou que foi diagnosticada com fibromialgia,&#160; o que caracteriza deficiência, mas o diagnóstico só foi obtido após a divulgação do resultado preliminar do concurso, razão pela qual a Administração indeferiu seu pedido de reclassificação como PCD. Afirma que, caso reclassificada, passaria a ocupar a primeira posição, entre os candidatos com deficiência. Pediu que seja reclassificada para candidata PCD no concurso público em apreço, sendo-lhe atribuída a devida colocação na concorrência reservada. Requereu a antecipação dos efeitos da tutela ou, subsidiariamente, a reserva de sua vaga.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr"><span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">A decisão agravada (id 90463596 dos autos originais): o juízo de origem indeferiu o pedido de tutela provisória, em razão do princípio da vinculação ao edital.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">&#160;Agravo de instrumento (id 14058892): a autora requereu a tutela antecipada recursal e, no mérito, a reforma da decisão agravada, ao argumento de que, em virtude da razoabilidade e da isonomia, tem o direito de concorrer às vagas reservadas a pessoas com deficiência.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">Decisão de id 14082795 desta relatoria: indeferiu o requerimento de tutela antecipada recursal.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">Agravo interno de id 14631245: a recorrente impugna a decisão da relatoria de indeferimento da tutela antecipada recursal. Alegou “que a legislação vigente não deveria permitir que o prazo para o diagnóstico seja um impedimento para sua inclusão na lista de PCDs. Ela sustenta que a inclusão na categoria adequada deve considerar a data do diagnóstico, uma vez que a deficiência se manifestou antes da realização do concurso, mesmo que o laudo médico tenha sido apresentado posteriormente”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Sem contrarrazões, conforme informações do painel de expedientes do PJe, indicando decurso de prazo:</p><p style="line-height: 1.8; margin-left: -42.5197pt; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Parecer da Procuradoria de Justiça pelo não provimento do recurso (id 15288868).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> É o relatório. &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr"> <span style="font-size: 16pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal; text-

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	decoration: none; vertical-align: baseline; white-space: pre-wrap;">VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Preenchidos os requisitos de admissibilidade, conheço do agravo de instrumento.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> O recurso não comporta provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Os requisitos para a concessão da tutela de urgência em favor da parte autora, ora agravada, não estão presentes (art. 300 do CPC).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> O direito da autora não é plausível, uma vez que seu pedido, aparentemente, contraria regra expressa do edital de que o laudo médico de incapacidade deve ser apresentado no momento da inscrição, sob pena de perda do direito de concorrer à reserva de vagas para PCD (itens 3.1.3, 3.1.4.1, 3.1.6 e 3.1.9 do edital).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Isto é, o pedido, aparentemente, esbarra no princípio da vinculação ao instrumento convocatório (art. 3º da Lei Federal 8.666/93, correspondente ao art. 5º da Lei Federal nº 14.133/2021).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">O período de inscrição foi de 24.10.2023 a 30.11.2023 (id 90354882, p. 1, dos autos de origem).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Porém, o diagnóstico de fibromialgia só foi obtido em momento muito posterior.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">O laudo médico data de 24.06.2024, depois da realização das provas,&#160; em 28.01.2024 (id 90354886 dos autos de origem) e depois até da divulgação do resultado preliminar, em 20.06.2024.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top:

Processo	3004224-48.2024.8.06.0000
	8pt; margin-bottom: 6pt;" dir="ltr"> Em nome da vinculação ao edital, da legalidade (art. 37, caput, da CF) e da segurança jurídica, deve-se privilegiar a norma editalícia, pois a finalidade da política pública de reserva de vagas é a de compensar os obstáculos enfrentados pelos candidatos com deficiência no processo de inserção no mercado de trabalho, sobretudo, durante a preparação para o cargo pretendido.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Salvo melhor juízo, esse fim não será alcançado, se for admitida a apresentação extemporânea de diagnóstico de deficiência, pois não se sabe se a candidata, a exemplo dos pleiteantes com direito às vagas reservadas sofreu, dificuldades em sua trajetória profissional.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Isso é verdade, sobretudo, porque o laudo médico não informa a partir de quando as dores de fibromialgia da requerente se tornaram tão intensas e/ou frequentes a ponto de caracterizar deficiência.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> A recorrente, no agravo interno, até afirma que a deficiência se manifestou antes da realização do concurso. Mas o laudo não embasa essa afirmação.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> De toda forma, ainda que o laudo apontasse a anterioridade da deficiência, a aplicação do edital ainda seria impositiva, pois o prazo para apresentação do laudo é essencial para a segurança jurídica dos demais candidatos pleiteantes à reserva de vagas, que têm a expectativa legítima de estimar as chances de convocação na concorrência reservada.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Quanto à jurisprudência, há divergência entre os tribunais pátrios sobre a matéria.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Todavia, há uma tendência majoritária no sentido de não admitir a apresentação intempestiva do laudo de deficiência. Vejam-se, senão, as seguintes ementas:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. CONCURSO LANÇADO PELO EDITAL N. 01/2019-SAP/SC PARA O CARGO DE AGENTE PENITENCIÁRIO DA SECRETARIA DA ADMINISTRAÇÃO PRISIONAL E SOCIOEDUCATIVA DO ESTADO DE SANTA CATARINA. CANDITADO QUE SE INSCREVEU PARA A LISTA DE AMPLA CONCORRÊNCIA. PRETENSÃO DE ALTERAÇÃO DA SUA INSCRIÇÃO PARA A LISTA DESTINADA À DISPUTA DAS VAGAS RESERVADAS A PESSOAS COM DEFICIÊNCIA. TESE DE QUE TAL DIREITO DECORRERIA DE DIAGNÓSTICO MÉDICO POSTERIOR À FASE DE INSCRIÇÃO NO CERTAME. IMPOSSIBILIDADE. OPÇÃO À CONCORRÊNCIA PELA LISTA ESPECIAL QUE SE ENCERRA NA DATA E NOS TERMOS PREVISTOS NO EDITAL SOB PENA DE VIOLAÇÃO AOS PRINCÍPIOS DA ISONOMIA, DA SEGURANÇA JURÍDICA E DA VINCULAÇÃO AO INSTRUMENTO CONVOCATÓRIO. DIREITO PERSEGUIDO INSUBSISTENTE. SENTENÇA DE IMPROCEDÊNCIA INCÓLUME. RECURSO DESPROVIDO. Como cediço, "o edital é a lei do concurso, de modo que a inscrição no certame implica concordância com as regras nele contidas, que não podem ser dispensadas pelas partes" (STJ - RMS n. 26.630/CE, Rel. Ministro Arnaldo Esteves Lima), daí por que, se o candidato não apresenta a tempo e modo seu requerimento de inscrição específico, expressamente exigido pelo edital para que possa concorrer na condição de pessoa com deficiência, é absolutamente vedada a passagem da sua inscrição da lista de ampla concorrência para a lista destinada à disputa das pessoas com deficiência, sob

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	pena de malferimento aos postulados da legalidade, da isonomia, da segurança jurídica e da vinculação ao instrumento convocatório. (TJ-SC - APL: 50039476420208240023 Tribunal de Justiça de Santa Catarina 5003947-64.2020.8.24.0023, Relator: Jaime Ramos, Data de Julgamento: 18/05/2021, Terceira Câmara de Direito Público)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> AGRAVO DE INSTRUMENTO. MANDADO DE SEGURANÇA. Pretensão de que seja habilitada a concorrer às vagas reservadas a pessoas com deficiência em razão do diagnóstico de hérnia discal e estenose lombar. Candidata que inicialmente inscreveu-se em concurso público em vaga de ampla concorrência, mas posteriormente ao resultado de eliminação em razão de sua nota, pleiteou habilitação para as vagas destinadas a pessoas com deficiência. Liminar indeferida. Manutenção. Previsão da LM nº 13.398/02 e normas editalícias que exigem que no ato da inscrição o candidato deve informar tal condição, demonstrando através de requerimento próprio e laudo médico a ser encaminhado em data anterior à realização da prova. Agravante que não apresenta qualquer motivo pelo qual não se inscrevera para vaga reservada que agora pleiteia. Observância ao princípio da isonomia entre os participantes do certame. Ausência da probabilidade do direito. Agravo de instrumento não provido. (TJ-SP - AI: 20225465420198260000 São Paulo, Relator: Marcelo Semer (Juiz Subst), Data de Julgamento: 11/03/2019, 10ª Câmara de Direito Público, Data de Publicação: 07/03/2019)</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Diante do exposto, conheço do agravo de instrumento, mas para negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Julgo prejudicado o agravo interno (id 14631245) interposto da decisão da relatoria que indeferiu a tutela antecipada recursal, diante do julgamento do recurso principal.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o voto que submeto à consideração de meus pares.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO <br /> Relator</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> <span style="font-

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	size: medium;"> &#160; </p>

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Número de ordem	104
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Paridade Salarial
Polo ativo	MUNICIPIO DE CRATO
Advogado(s) - Polo ativo	CRISTIANA MARIA FERREIRA ESMERALDO - (CE17756-A)
Polo passivo	MONICA DE OLIVEIRA LIMA GINO ALENCAR LEAL
Advogado(s) - Polo passivo	GERUSIANE FERREIRA DE AGUIAR - (CE37328-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	EXPLÍCITA AOS DISPOSITIVOS LEGAIS. EMBARGOS DE DECLARAÇÃO REJEITADOS. &#160; </p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> <br /> </p><p class="EmentadoAcrdo" style="line-height: 150%;"> I. CASO EM EXAME </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 01. Trata-se de Embargos de Declaração opostos Municipio de Crato em face de acórdão proferido (Id. 14659846), que confirmou a sentença de procedência proferida pelo magistrado de primeiro grau, a qual reconheceu o direito da autora à progressão funcional na carreira de Guarda Municipal, mesmo diante da ausência de participação no Teste de Aptidão Física (TAF), bem como ao pagamento de diferenças salariais respectivas. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> II. QUESTÕES EM DISCUSSÃO </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 02. A questão em discussão consiste em identificar se há contradição e/ou obscuridade que justifiquem o acolhimento dos embargos, sobretudo em relação à forma de utilização do princípio da vinculação ao instrumento convocatório, legalidade e isonomia, além da intervenção do Poder Judiciário na esfera da Administração Pública. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 03. Ao negar provimento ao Apelo, a decisão colegiada examinou os fundamentos considerados essenciais para o desfecho da lide, expondo de forma clara e fundamentada as razões pelas quais confirmou a sentença de procedência no sentido de que o Teste de Aptidão Física seria critério de avaliação classificatório para Progressão Funcional na carreira de Guarda Municipal e não eliminatório, discorrendo ainda sobre a (im)possibilidade de intervenção do Poder Judiciário na esfera da Administração Pública, de acordo com a legislação e jurisprudência aplicáveis ao caso concreto.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;">3.1. Oportuno registrar que, de acordo com a doutrina e jurisprudência, há&#160;vício de <strong style="font-size: small;"> obscuridade quando a redação da decisão não é suficientemente clara, dificultando sua compreensão ou interpretação, o que não se amolda ao caso concreto&#160;<em style="font-size: small;">(STJ - EDcl no AREsp: 1879251 RS 2021/0116050-1, Relator: Ministra ASSUSETE MAGALHÃES, Data de Publicação: DJ 15/02/2022).</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.2. Quanto ao outro vício alegado, a parte embargante confunde contradição com eventual discordância interpretativa, sendo certo que a contradição passível de embargos deve ser interna à decisão, e não externa, conforme jurisprudência do STJ (AgInt no REsp 1831451/CE).</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3.3. Da mesma forma, não se exige que o julgador enfrente todos os dispositivos legais citados pela parte (prequestionamento numérico), não sendo ele obrigado ainda a responder a todas as questões levantadas ponto a ponto de maneira exaustiva e pormenorizada, bastando a análise das questões necessárias à solução da controvérsia. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 115%;"> IV. DISPOSITIVO E TESE </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 115%;"> &#160;04. Contradição e obscuridade não configuradas.

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	Recurso conhecido e desprovido.&#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Tese de julgamento: “Diante do que se extrai dos autos, não há fundamento para reconhecer contradição e/ou obscuridade aptas a alterar o julgado. Os aclaratórios, cujo objetivo é a integração da decisão embargada, não servem como meio de rediscussão da matéria já julgada.”.</p><p class="EmentadoAcrdo" style="margin-top: 3.75pt; margin-right: 0cm; margin-bottom: 3.75pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> &#160;<strong style="font-size: small;">Dispositivos relevantes citados: CF/88 - art. 40, § 8ª e art. 93, IX; CPC - arts. 1.022, 1.023, 1.024, § 1° e 1.025 do CPC; Lei nº 13.439/04<em style="font-size: small;"> .</p><p class="EmentadoAcrdo">&#160;<strong style="font-size: small; text-align: justify;"> Jurisprudência relevante citada: STF - Tema 339 – Repercussão Geral, RE 194662 ED-ED-EDv, Relator(a):&#160; Min. DIAS TOFFOLI, Relator(a) p/ Acórdão: Min. MARCO AURÉLIO, Tribunal Pleno, julgado em 14/05/2015, DJe-151 DIVULG 31-07-2015 PUBLIC 03-08-2015 EMENT VOL-03992-02 PP-00196; STJ - AgInt no REsp 1831451/CE, EDcl no AREsp: 1879251 RS 2021/0116050-1, Relator: Ministra ASSUSETE MAGALHÃES, Data de Publicação: DJ 15/02/2022, AgInt nos EDcl no REsp n. 1.787.184/MG, relator Ministro Paulo de Tarso Sanseverino, Terceira Turma, julgado em 23/8/2021, DJe de 26/8/2021, EDcl no REsp 1816628/SE, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 06/05/2020, DJe 14/05/2020; TJCE - Súmula nº 18, ED: 00652653120058060001 CE 0065265-31.2005.8.06.0001, Relator: FRANCISCO BEZERRA CAVALCANTE, Data de Julgamento: 20/08/2019, 4ª Câmara Direito Privado, Data de Publicação: 20/08/2019.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>MERGEFIELD &quot;&Oacute;rg&atilde;o Julgador#Retorna o nome da vara onde est&aacute; o processo=8@PROC&quot;<![endif]--> 3ª Câmara Direito Público<!--[if supportFields]><![endif]--> do Tribunal de Justiça do Estado do Ceará, por unanimidade, em rejeitar os embargos de declaração, nos termos do voto do relator.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph;"> &#160;</p><p class="EmentadoAcrdo" style="text-align: center; line-height: 150%;" align="center"> Fortaleza, data e hora indicadas pelo sistema. &#160;</p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; page-break-after: avoid;" align="center"> &#160;</p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center;" align="center"><!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal">MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;<![endif]--> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES<!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal"><![endif]--> &#160; </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center;" align="center"><!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal">MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC&quot;<span style="mso-element: field-separator"

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	mce_style="mso-element: field-separator"><![endif]--> Relator<!--[if supportFields]><b style="mso-bidi-font-weight:normal" mce_style="mso-bidi-font-weight:normal"><![endif]--> &#160; </p><p class="MsoNormal" style="margin-top: 2.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 0cm; text-align: center; line-height: normal;" align="center"> &#160;</p><p class="MsoNormal" style="margin-top: 2.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 0cm; text-align: center; line-height: normal;" align="center"> &#160;</p><p class="MsoNormal" style="text-align: center;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Trata-se de Embargos de Declaração opostos Municipio de Crato em face de acórdão proferido (Id. 14659846), que confirmou a sentença de procedência proferida pelo magistrado de primeiro grau, a qual reconheceu o direito da autora à progressão funcional na carreira de Guarda Municipal, mesmo diante da ausência de participação no Teste de Aptidão Física (TAF), bem como ao pagamento de diferenças salariais respectivas. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Nas razões recursais (Id. 15587685), o recorrente aduz, em síntese, a existência de contradição e obscuridade no acórdão em relação à forma de utilização do princípio da vinculação ao instrumento convocatório, legalidade e isonomia, além da intervenção do Poder Judiciário na esfera da Administração Pública. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Por derradeiro, sustenta que a oposição dos embargos se presta para fins de prequestionamento da matéria. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Dispensado o parecer da Procuradoria-Geral de Justiça. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Desnecessária a inclusão em pauta (art. 1.024, § 1°, do CPC). </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> É o relatório, do essencial. </p><p class="MsoNormal" style="text-align: center; line-height: 150%;" align="center"> &#160; </p><p class="MsoNormal" style="text-align: center; line-height: 150%;" align="center"> VOTO </p><p class="MsoNormal" style="text-align: center; line-height: 150%;" align="center"> <br /> </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Presentes os pressupostos de admissibilidade, conheço do recurso. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Nos termos do art. 1.022 do CPC, os embargos de declaração têm a finalidade de esclarecer obscuridade, eliminar contradição, suprir omissão e corrigir erro material. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Como se sabe, toda e qualquer sentença ou acórdão, independentemente do seu conteúdo, é passível de complementação ou integração pelo manejo de embargos de declaração, caso haja obscuridade, contradição, omissão ou erro material, à luz do disposto no art. 1.022 do CPC, constituindo, pois, espécie recursal com fundamentação vinculada . </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> A parte embargante assevera, em síntese, que a decisão recorrida deve ser modificada em decorrência de ter sido contraditória e padecer de obscuridade, em relação à forma de utilização do princípio da vinculação

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	ao instrumento convocatório, legalidade e isonomia, além da intervenção do Poder Judiciário na esfera da Administração Pública. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> No entanto, compulsando os autos, verifico, de logo, que os Aclaratórios não comportam provimento, tendo em vista seu evidente objetivo de rediscussão da matéria já julgada. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> &#160; Por relevante, consoante se observa no voto condutor, restou clara e manifesta a exposição dos fatos no sentido de enfrentar com clareza todos os fundamentos considerados essenciais para o desfecho da lide, expondo de forma clara e fundamentada as razões pelas quais confirmou a sentença de procedência no sentido de que o Teste de Aptidão Física seria critério de avaliação classificatório para Progressão Funcional na carreira de Guarda Municipal e não eliminatório, discorrendo ainda sobre a (im)possibilidade de intervenção do Poder Judiciário na esfera da Administração Pública, de acordo com a legislação e jurisprudência aplicáveis ao caso concreto, conforme trechos abaixo oportunamente colacionados:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> EMENTA: ADMINISTRATIVO E CONSTITUCIONAL. APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. SERVIDORA DA GUARDA MUNICIPAL DO CRATO. DESCLASSIFICADA DA AVALIAÇÃO PARA PROGRESSÃO FUNCIONAL, PELA AUSÊNCIA DE PARTICIPAÇÃO NO TAF. CARÁTER MERAMENTE CLASSIFICATÓRIO. PRINCÍPIO DA SEPARAÇÃO DOS PODERES. EXCEPCIONAL INTERVENÇÃO JURISDICIONAL. REMESSA NECESSÁRIA NÃO CONHECIDA. APELAÇÃO CONHECIDA E NÃO PROVIDA. SENTENÇA REFORMADA PARCIALMENTE, EX OFFICIO PARA ADEQUAR OS CONSECTÁRIO LEGAIS. MAJORAÇÃO DA VERBA HONORÁRIA NA FASE DE LIQUIDAÇÃO. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> I. Caso em exame </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> 1. Recurso de Apelação interposto em face de sentença que julgou procedente a ação ordinária, que concedeu o direito à progressão funcional e determinou o adimplemento das verbas retroativas devidas. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> II. Questão em discussão </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> 2. A questão em discussão consiste em verificar se o Teste de Aptidão Física (TAF) constitui critério de avaliação classificatório ou eliminatório para a Progressão Funcional na carreira de Guarda Municipal do Município do Crato, sobretudo no que toca aos dispositivos legais invocados (art. 3º, 27, 31, 62 da Lei nº 3.225/2016 e art. 5º, II, e art. 37, I, da Constituição Federal). </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> III. Razões de decidir </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> 3. Remessa Necessária não conhecida, uma vez que os autos revelam que o valor pretendido pela parte autora, sabidamente, não alcança o valor de alçada, de 100 (cem) salários-mínimos, e, ainda que atualizado à data de hoje, também não atinge o patamar legal, estabelecido pelo art. 496, § 3º, inciso II, do CPC. 4. Restou estabelecido que o Teste de Aptidão Física é critério de avaliação classificatório para Progressão Funcional na carreira de Guarda Municipal, não eliminatório. Tal conclusão é respaldada pelo art. 62 da Lei Municipal nº 3.225/2016, bem como baseado no edital de convocação (item 3.8) que possuí orientação no mesmo sentido da lei supracitada, estabelecendo que “Ao candidato que não fizer os testes físicos, será atribuída a nota 0”. Logo, em obediência ao princípio da legalidade estrita, segundo o qual a Administração está, em toda a sua atividade, adstrita aos ditames da lei, o Município deveria ter atribuído nota 0 (zero) ao autor no Teste de Aptidão Física (TAF) e não o ter eliminado sumariamente. A promovente cumpriu todos os requisitos para obter as progressões funcionais almejadas, sendo-lhe devido o seu enquadramento na 2ª classe de Guarda Civil Metropolitano, com efeitos financeiros a partir de 29/04/2019, concedendo-lhe, também, a progressão para a 1ª Classe de Guarda

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	Civil Metropolitano, com efeitos financeiros a contar de 02/01/2023, conforme disposto na sentença. 5. Não viola o Princípio da Separação dos Poderes o controle de legalidade exercido pelo Poder Judiciário sobre os atos administrativos, devendo a atuação judicial, relativamente à revisão do ato administrativo, restringir-se ao exame de irregularidades formais e ilegalidades manifestas. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> IV. Dispositivo e tese </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> 6. Remessa Necessária não conhecida. Recurso de Apelação conhecido e desprovido. Sentença reformada, ex officio dos consectários legais. Majoração da verba honorária, cujo percentual há de ser fixado em sede de liquidação (art. 85, § 4º, II, CPC). </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160; (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> No mérito, o cerne da questão está em analisar se a parte autora, servidora pública do Município de Crato, faz jus à concessão de progressão funcional na carreira de Guarda Municipal, diante da ausência de participação no Teste de Aptidão Física (TAF), bem como ao pagamento de diferenças salariais respectivas. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> Ao analisar o caso, verifica-se que a recorrida, na condição de servidora pública municipal efetiva, submete-se à Lei Municipal nº 3.225/2016 (Id. 14065257), que instituiu o Plano de Cargos e Carreira dos Servidores do Município do Crato - PCC, fato esse incontroverso. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> A referida norma prevê os requisitos funcionais para obtenção da progressão funcional perseguida, bem como os requisitos para sua obtenção, in verbis: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> Consoante o princípio da estrita legalidade, verifica-se que, no caso, a Administração tem um poder-dever, imposto pela norma legal em questão, no sentido de proceder com a devida progressão funcional ao servidor que tenha implementado os requisitos exigidos. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> Sendo assim, da análise completa da lei, principalmente dos artigos destacados, extrai-se que não há nenhuma previsão de que o TAF possua critério eliminatório. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> In casu, como disposta na sentença, a autora cumpriu todos os requisitos para obter a progressão funcional, pois é servidora pública municipal integrante do quadro efetivo de Guarda Civil Metropolitano desde o dia 04 de junho de 2012 e, como tal, no ano de 2019, participou da Avaliação para Progressão Funcional, nos termos das Leis Municipais nº 3.225/2016 e 3.497/20, concorrendo a uma vaga na 2ª classe. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> A apelada obteve “69,5” pontos no total, pontuação que seria suficiente para progredir da 3ª para a 2ª classe da categoria. Todavia, por não ter participado do Teste de Aptidão Física (TAF), que é de cunho meramente classificatório e não eliminatório, teve a sua progressão negada pelo promovido. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> Inconformada, a promovente apresentou recurso administrativo (Id. 14065265 – p. 01/04) a Comissão de Enquadramento da Guarda Civil Metropolitana da Secretaria de

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	Segurança Pública do Município de Crato, sendo indeferido o recurso em virtude da não realização do TAF ou preexistência de problema de saúde devidamente corroborado por atestado contemporâneo ao período de realização do TAF, fornecido por médico da rede pública de saúde, apto a justificar a impossibilidade de realizá-lo a época, concluindo pela permanência na 3ª classe, por descumprir o normativo do art. 54, VI do PCCR (Id. 14065265 – p. 05/08) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.2pt;"> Ocorre que, o Teste de Aptidão Física (TAF) é critério de avaliação classificatório para Progressão Funcional na carreira de Guarda Municipal, não eliminatório como afirmado pela Comissão, assim vejamos o teor do PCCR: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Logo, em obediência ao princípio da legalidade estrita, segundo o qual a Administração está, em toda a sua atividade, adstrita aos ditames da lei, o Município deveria ter atribuído nota 0 (zero) ao autor no Teste de Aptidão Física (TAF) e não o ter eliminado sumariamente. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Tal conclusão é respaldada pelo art. 62 da Lei Municipal nº 3.225/2016, que estabelece a atribuição de nota 0 (zero) ao candidato que não comparecer ou se recusar a fazer o teste: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Cumpre destacar que o edital de convocação (Id. 14065259), no item 3.8, possuía orientação no mesmo sentido da lei supracitada, estabelecendo: “Ao candidato que não fizer os testes físicos, será atribuída a nota 0”. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Dessa forma, sabe-se que o edital é a lei do concurso, razão pela qual suas regras obrigam tanto a Administração quanto os candidatos, em atenção ao princípio da vinculação ao instrumento convocatório. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Nesse sentido é o entendimento desta Colenda Câmara Julgadora, inclusive em situação semelhante a dos autos, considerando o mesmo Município: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (…) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Importante destacar, que conforme o comparativo feito pelo magistrado singular, ainda que fosse atribuída nota zero, no teste de aptidão física, a Sra. Mônica de Oliveira Lima Gino Alencar, na somatória das notas, continuaria com pontuação mais elevada que seus concorrentes e, por conseguinte, apta para a progressão na carreira. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Portanto, o mérito da decisão a quo não merece reparo, uma vez que, preenchidos todos os requisitos exigidos, a apelada tem direito à progressão funcional da 3ª para a 2ª classe da sua categoria, com efeitos financeiros a partir de 29/04/2019, e concedendo-lhe, também, a progressão para a 1ª classe, com efeitos financeiros a contar de 02/01/2023, sendo-lhe atribuído todos os efeitos legais. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Outrossim, é certo a intervenção do Poder Judiciário na esfera da Administração Pública não pode se dar de maneira indiscriminada. Apenas se verificada circunstância que configure a ilegalidade, inconstitucionalidade ou ilegitimidade

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	do administrador, é autorizado ao Poder Judiciário interferir. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Neste sentido, a muito tempo é pacifica e reiterada a jurisprudência pátria: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> (...) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 14.15pt;"> Ante o exposto, não conheço da remessa necessária e conheço do recurso de apelação, para negar-lhe provimento, impondo-se, todavia, a modificação da sentença ex officio, atinente aos consectários legais, na forma acima disposta. &#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Como se sabe, a contradição, " é a contradição interna, verificada entre os elementos que compõem a estrutura da decisão judicial, e não entre a solução alcançada e a solução que almejava o jurisdicionado". <!--[if !supportFootnotes]--> [1] <!--[endif]--> Por outro lado, de acordo com a doutrina e jurisprudência, há&#160;vício de obscuridade quando a redação da decisão não é suficientemente clara, dificultando sua compreensão ou interpretação&#160; (STJ - EDcl no AREsp: 1879251 RS 2021/0116050-1, Relator: Ministra ASSUSETE MAGALHÃES, Data de Publicação: DJ 15/02/2022). ^{&#160;} </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> No caso dos autos não há contradição e nem obscuridade, pois o julgado foi claro ao não aderir a tese da parte embargante. Nesse contexto, todos os pontos relevantes indicados por ocasião do recurso foram devidamente enfrentados no voto condutor do acórdão recorrido, o qual fundamentou devidamente a posição adotada.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%;"> Destarte, o fato de a parte recorrente possuir outra percepção sobre o tema não torna o acórdão omisso, contraditório ou mesmo equivocado, mas apenas contrário ao seu interesse. No caso em tela, verifica-se que o decisum embargado analisou adequadamente a matéria posta em discussão. Portanto, se a parte embargante demonstra inconformismo com os fundamentos utilizados no acórdão atacado, deve, caso queira, insurgir-se por meio dos meios adequados disponíveis no ordenamento jurídico, e não por meio desta via excepcional. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> É oportuno registrar que o julgador não é obrigado a responder a todas as questões levantadas ponto a ponto de maneira exaustiva e pormenorizada, bastando a análise das questões necessárias à solução da controvérsia, não configurando negativa de prestação jurisdicional a ausência de prequestionamento numérico , conforme entendimento pacífico do Superior Tribunal de Justiça (AgInt nos EDcl no REsp n. 1.787.184/MG, relator Ministro Paulo de Tarso Sanseverino, Terceira Turma, julgado em 23/8/2021, DJe de 26/8/2021).</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> No mesmo sentido, o Supremo Tribunal Federal fixou a tese de que " o art. 93, IX, da Constituição Federal, exige que o acórdão ou decisão sejam fundamentados,

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	ainda que sucintamente, sem determinar, contudo, o exame pormenorizado de cada uma das alegações ou provas" (Tema 339 – Repercussão Geral). </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Assim, não havendo o preenchimento dos requisitos estampados no art. 1.023 do CPC, em nada merece reproche o decisum hostilizado, devendo ser mantido por seus próprios fundamentos. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Em verdade, por todo o enredo tratado, tem-se que a parte embargante entende que houve erro de julgamento e conclusão equivocada à luz da jurisprudência pátria e a situação fática dos autos. Todavia, esse defeito não se enquadra como omissão que enseje hipótese de revisão da decisão por aclaratórios, o que, por óbvio, deve ser veiculado de outra maneira. &#160;Precedentes&#160;do STF <!--[if !supportFootnotes]--> [2] <!--[endif]--> , STJ <!--[if !supportFootnotes]--> [3] <!--[endif]--> &#160;e TJCE <!--[if !supportFootnotes]--> [4] <!--[endif]--> .</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Sendo assim, inexistindo vícios a serem supridos, o pedido de alteração do julgado revela pretensão de reanálise do mérito, não admitida por esta via, conforme já sumulado por esta Corte de Justiça, através da Súmula nº 18, segundo a qual " São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada". </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Nesse passo, advirta-se que a oposição de incidentes processuais infundados dará ensejo à aplicação de multa por conduta processual indevida. </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Ante o exposto, rejeito os embargos de declaração, mantendo inalterado o acórdão embargado. </p><p class="MsoNormal" style="margin-bottom: 8.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Por derradeiro, oportuno ressaltar que a simples interposição dos Embargos já é suficiente para prequestionar a matéria, " ainda que os embargos de declaração sejam inadmitidos ou rejeitados" (art. 1.025 do CPC). </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> É como voto. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> Fortaleza, data e hora informadas pelo sistema. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p class="MsoNormal" style="margin-bottom: 0.0001pt; text-indent:

Processo	3002637-06.2023.8.06.0071
	70.85pt; line-height: 150%; text-align: center;"> &#160; <strong style="font-size: small;"> Relator </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%;"> &#160;</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%;">&#160;</p><div><!--[if !supportFootnotes]--><br /> <hr size="1" /><!--[endif]--> <div id="ftn1"> <p class="MsoFootnoteText"> <!--[if !supportFootnotes]--> [1] <!--[endif]--> REsp 1.250.367/RJ, Rel. Min. Eliana Calmon, Segunda Turma, DJe de 22/8/2013. </p></div><div id="ftn2"> <p class="MsoFootnoteText"> <!--[if !supportFootnotes]--> [2] <!--[endif]--> RE 194662 ED-ED-EDv, Relator(a):&#160; Min. DIAS TOFFOLI, Relator(a) p/ Acórdão: Min. MARCO AURÉLIO, Tribunal Pleno, julgado em 14/05/2015, DJe-151 DIVULG 31-07-2015 PUBLIC 03-08-2015 EMENT VOL-03992-02 PP-00196). </p></div><div id="ftn3"> <p class="sdfootnote" style="text-align: justify; text-justify: inter-ideograph;"> <!--[if !supportFootnotes]--> [3] <!--[endif]--> EDcl no REsp 1816628/SE, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 06/05/2020, DJe 14/05/2020). </p></div><div id="ftn4"> <p class="MsoFootnoteText"> <!--[if !supportFootnotes]--> [4] <!--[endif]--> ED: 00652653120058060001 CE 0065265-31.2005.8.06.0001, Relator: FRANCISCO BEZERRA CAVALCANTE, Data de Julgamento: 20/08/2019, 4ª Câmara Direito Privado, Data de Publicação: 20/08/2019. </p></div></div><div> <div id="ftn2"> <p class="MsoFootnoteText" style="text-align: justify; text-justify: inter-ideograph;">&#160;</p> </div></div><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> <br /> </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	105
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Pagamento
Polo ativo	MUNICIPIO DE URUBURETAMA
Advogado(s) - Polo ativo	RAUL LOIOLA DE ALENCAR SOBRINHO SEGUNDO - (CE23520-A)

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Polo passivo	C. A. LIMA SERVICOS LTDA
Advogado(s) - Polo passivo	KARLANE GASPAR FEITOZA - (CE41736-A) JOANA HYAMARA DA SILVA CABRAL - (CE43381-A) GRACYELE SIQUEIRA NUNES NOGUEIRA - (CE45626-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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00tGvF3uxrQPl3Ppyc9c5h6lh1fTq8JL/JaaBJX2SMqm9lUD21bO2yJCGOwxkGGT3Vm8cZ
kWCdXd/5MnT2hr4lT95hvduxL/rPwBsIby+8UXR44dpVJ8mlr3+dmJE9q7D39++DObDmzF
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qZgFJjaANT/pvZVVUkAdazmo9TfZbCmGOM+J56Tt89y4uZ3+C9NpXWs5LZaO9QjixIVRY
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40fh/s/wXAVOI6dil/bcoparXtDR06ed7d9iwcSO5uXmsW7ueGzd+4uEvD9l3+F1GRXsxeLg
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3aa+bV208+eO8Q+Tm5rJHE/6efftKO+2/4p3+n/K8ApjqrTLTBTK9KUjxr1izKyso4e/aspttUV
auW9+3bR052Nnv36J5/UuVvj/9/Wf5XAWvYqqKmxtWDrSUiDy5fvMSDe/f58PSE5Kkgh
4VNtHZ3W/Met/g2X/6yapyu9BUy9JWrp4MR8eep/szCw+OfzbVPFv/5nW/73y/wnAFFMa2H
LlyhUS4qfg7+MrwC3Rfmsoao//H7D60gCY2u7asZPioqmSf+pkw/+G6f15gf8DLlMncTlWGu
AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p>   PROCESSO:&#160;0050355-88.2021.8.06.0178 - &#160;APELAÇÃO CÍVEL (198) </p><p>   APELANTE: MUNICIPIO DE URUBURETAMA </p><p>   APELADO: C. A. LIMA SERVICOS LTDA </p><p> A3 </p><p>   <br /> </p><p style="text-align: center;">&#160;</p><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0050355-88.2021.8.06.0178
	transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Ementa : Civil e processual civil. Recurso de apelação. Ação monitória. Contrato de fornecimento de oxigênio. F ato impeditivo, modificativo ou extintivo do direito da parte autora. Não comprovado. Sentença de procedência. Recurso de apelação parcialmente conhecido e não provido. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 01 <span

Processo	0050355-88.2021.8.06.0178
	class="NormalTextRun SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">. Recurso de Apelação contra sentença que julgou procedente a Ação Monitória . &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> II. Questão em discussão &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 02 . A controvérsia consiste em a ferir a higidez da sentença apelada que , diante da documentação apresentada por C. A. Lima Serviços Ltda., rejeit ou os embargos monitórios opostos

Processo	0050355-88.2021.8.06.0178
	p elo Município de Uruburetama/CE e julgou procedente a ação monitória, con dena ndo o ente público municipal ao pagamento de valores alusivos ao fornecimento de oxigênio medicinal . &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> II. Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 03. R <span class="TextRun

Processo	0050355-88.2021.8.06.0178
	SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">ecurso não conhecido na parte que argui o defeito de representação da parte autora/recorrida, fundado em irregularidade na outorga de procuração, uma vez que a matéria não foi deduzida no Juízo a quo , configurando verdadeira inovação recursal que impede sua análise nesta instância ad quem . &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 04. A petição inicial está instruída com Contrato de Prestação de Serviços e aditivo (Id 14085994/14085999), que comprovam a relação negocial existente entre as partes, além de Notas Fiscais (14086000/14086001) e Recibos de Vendas (Id 14086002/14086010), que indicam a efetiva prestação e recebimento pelo ente público municipal dos serviços contratados no período indicado na exordial. A ausência das respectivas notas de emprenho não isenta a Administração Pública do pagamento devido, incidindo na espécie a exceção do art. 60 da Lei Federal nº 4.320/64, tendo em vista a natureza do serviço envolvido (fornecimento de oxigênio medicinal) e da situação excepcional (Pandemia do COVID-19) verificada à época dos fatos . <span

Processo	0050355-88.2021.8.06.0178
	class="EOP SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 05. Os recibos de venda (Id 14086002/14086010) encontram-se, todos eles, assinados pelos recebedores do serviço, representantes da municipalidade, cujas assinaturas não foram impugnadas pela parte demandada (embargante/recorrente), que olvidou da regra inserta no inciso II do art. 373 do CPC. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> IV. Dispositivo e tese &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 06. Tese de julgamento: Ausentes elementos capazes de infirmar a o acerto da sentença apelada, sua manutenção é medida que se impõe . <span class="TextRun SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> Recurso de Apelação parcialmente conhecido e, na parte conhecida, não provido . Sentenç a mantida. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; -- &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Dispositivos relevantes citados: Arts. 373, II e 700, I do CPC . Art. 6 0 da Lei Federal nº 4.320/1964. <span class="EOP SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada: TJCE: Apelação/Remessa Necessária&#160;nº 0200027-85.2022.8.06.0098 (Rela. Desa. Maria do Livramento Alves Magalhães, 3ª Câmara Direito Público, data do julgamento:&#160;16/09/2024, data da publicação:&#160;16/09/2024) &#160;e Apelação/Remessa Necessária&#160;nº 0001405-28.2018.8.06.0154 (Rela. Desa. Joriza Magalhães Pinheiro, 3ª Câmara Direito Público, data do julgamento:&#160; 24/06/2024, data da publicação:&#160; 24/06/2024) ; TJMG: Apelação Cível nº 1.0267.14.002400-6/001 (Relator Des. Armando Freire, 1ª CÂMARA CÍVEL, julgamento em 29/09/2021, publicação da súmula em 01/10/2021) e Apelação Cível nº 1.0479.16.005636-8/001 (Relator Des Caetano Levi Lope s, 2ª CÂMARA CÍVEL, julgamento em 31/07/2018, publicação da súmula em 08/08/2018) &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade , em conhecer parcialmente Recurso de Apelação para , na parte conhecida, NEGAR-LHE PROVIMENTO <span class="TextRun

Processo	0050355-88.2021.8.06.0178
	SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">e manter a sentença , nos termos do voto do relator. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza/CE, data e hora indicadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADOR FRANCISCO LUCIANO LIMA

Processo	0050355-88.2021.8.06.0178
	RODRIGUES &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relator &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELAT <span class="TextRun SCXW83568894 BCX0" style="-

Processo	0050355-88.2021.8.06.0178
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 14pt; line-height: 33px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">ÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Trata-se de Recurso de Apelação contra sentença do Juízo de Direito da 2ª Vara da Comarca de Uruburetama/CE , na Ação Monitória ajuizada por C. A. Lima Serviços Ltda., apelada, em face do <span class="TextRun SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; line-height: 27px; font-family: Arial,

Processo	0050355-88.2021.8.06.0178
	Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Município de Uruburetama/CE , apelante. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Decisão recorrida (Id 14086076): rejeitou os Embargos Monitórios opostos pelo Município de Uruburetama/CE e julgou procedentes os pedidos formulados na inicial, para condenar o&#160; ente público municipal n o paga mento , em favor de C. A. Lima Serviços Ltda. , dos valores reclamados na petição inicial, devidamente atualizados, em razão da efetivo fornecimento de oxigênio medicinal, no período indicado.</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0050355-88.2021.8.06.0178
	transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Sentença não submetida ao duplo grau obrigatório, em razão do valor da condenação (art. 496, §3º, inc. III, do CPC). &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Razões da apelação (Id 14086082): aduz, em apertada síntese, ser o caso de indeferimento da exordial ante a ausência de documentos indispensáveis à propositura da ação e de defeito de representação da parte autora. Afirma que, diferentemente do constante na sentença, a recorrida não conseguiu desincumbir-se do seu ônus de comprovar a efetiva realização dos serviços, pois não há qualquer assinatura válida em nota fiscal ou recibo apresentado. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Contrarrazões no Id 14086086. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

Processo	0050355-88.2021.8.06.0178

SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Manifestação da   Procuradoria da Justiça   pelo conhecimento dos Recurso de Apelação, vez que presentes os pressupostos de admissibilidade, porém, deixa de   apreciar o mérito, por desnecessária a sua intervenção, ante a inexistência de interesse público na demanda (Id 15239546).   &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR">   É o relatório.   &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR">   &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">   VOTO   <span class="EOP SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

Processo	0050355-88.2021.8.06.0178
	text; font-size: 14pt; line-height: 33px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Presentes os pressupostos de admissibilidade, conheço parcialmente d a a pelação interpost a por Município de Uruburetama/CE . &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> O caso, já a ntecipo , é de não provimento d o recurso <span class="NormalTextRun SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

Processo	0050355-88.2021.8.06.0178
	user-select: text;">. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> O recurso tem relação com uma Ação Monitória (Id 14085991/14086016 e Id 14086027/ 14086026) , em que a empresa C. A. Lima Serviços Ltda., apelada, busca a condenação do Município de Uruburetama/CE , apelante, no pagamento de valores referentes ao fornecimento de oxigênio medici <span class="NormalTextRun SCXW83568894 BCX0" style="-

Processo	0050355-88.2021.8.06.0178
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">n al, nos meses de maio, junho e julho do ano de 2020, no montante atualizado de R$ 61.064,57 (sessenta e um mil e sessenta e quatro reais e cinquenta e sete centavos) . &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> O município apresenta Embargos Monitórios (Id 14086037/14086036) em que afirma que os valores cobrados não poss uem lastro contratual tem, inexistindo t ítulo e xecutivo capaz de subsidiar a cobrança. Que a parte autora carece de ação, tendo em vista a iliquidez, incerteza e inexigibilidade do título em que se baseia a presente ação, mormente porque a inicial veio desacompanhada de documentos que conferissem legitimidade a

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	ação e qualquer quantia pleiteada. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Impugnação aos embargos no Id 14086051. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Sobreveio a sentença apelada (Id 14086076) . &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> O Município de Uruburetama/CE , irresignado, interpôs apelação em que defende , preliminarmente, ser o caso

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	de indeferimento da p etição inicial, com extinção do feito, sem resolução de mérito, na forma dos arts . 302 e 485, I do CPC, na medida em que o mandato outorgad o ao patrono da parte autora foi assinada por sócio que não detém poderes específicos para a out o rga ou assinar procuração. No mérito, sustenta que a parte autora/recorrida, diferentemente do constante na sentença, não conseguiu desincumbir-se do seu ônus de comprovar a efetiva realização dos serviços, pois não há assinatura válida em nota fiscal ou recibo apresentado. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Inicialmente, não conheço do recurso na parte que argui o defeito de representação da parte autora/recorrida, por irregularidade na outorga de procuração, uma vez que a matéria não foi deduzida no Juízo a quo , configurando

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	verdadeira inovação recursal que impede sua análise nesta instância ad quem . Precedentes desta 3ª Câmara : Apelação/Remessa Necessária&#160;nº 0200027-85.2022.8.06.0098 (Rela. Desa. Maria do Livramento Alves Magalhães , 3ª Câmara Direito Público, data do julgamento:&#160;16/09/2024, data da publicação:&#160;16/09/2024) &#160; e Apelação/Remessa Necessária&#160;nº 0001405-28.2018.8.06.0154 (Rela. Desa. J oriza Magalhães Pinheiro , 3ª Câmara Direito Público, data do julgamento:&#160; 24/06/2024, data da publicação:&#160; 24/06/2024). &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow:

Processo	0050355-88.2021.8.06.0178
	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Passando ao mérito, de acordo com o art. 700, inciso I, do CPC, a ação monitória pode ser proposta por aquele que afirmar, com base em prova escrita sem eficácia de título executivo, ter direito de exigir do devedor capaz, o pagamento de quantia em dinheiro . &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> A inicial encontra-se instruída, no que interessa à presente análise, com o Contrato de Prestação de Serviços e aditivo (Id 14085994 /14085999) , restando comprovada a relação negocial existente entre as partes, e com Notas Fiscais (14086000/14086001) e Recibos de Vendas (Id 14086002 <span class="NormalTextRun SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-

Processo	0050355-88.2021.8.06.0178
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">/14086010), que indic am a efetiva prestação dos serviços contratados, no período indicado na petição inicial, razão pela qual impõe reconhecer como devidos, pelo ente público municipal em favor da empresa demandante, os valores cobrados. </p> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> No contexto, entendo que a ausência das das respectivas notas de emprenho, argumento utilizado pelo município recorrente, não afasta a obrigação da Administração Pública do pagamento devido , incidindo no caso concreto a exceção do º 1º do art. 60 da Lei Federal nº 4.320/64, te ndo em vista a a natureza do serviço envolvido (fornecimento de oxigênio medicinal) e a s ituação excepcional (P andemia d o COVID-19) verificada à época dos fatos . &#160;Pensar em sentido contrário importa em enriquecimento sem causa por parte da Administração Público em detrimento do particular, o que é vedado.</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0"

Processo	0050355-88.2021.8.06.0178
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Nesse sentido, os seguintes julgados, in verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> EMENTA: APELAÇÃO - AÇÃO MONITÓRIA CONTRA FAZENDA PÚBLICA MUNICIPAL - POSSIBILIDADE - CONTRATAÇÃO DE FORNECIMENTO DE GASES MEDICINAIS AOS HOSPITAIS DA REDE PÚBLICA - DOCUMENTAÇÃO SUFICIENTE - AUSÊNCIA DE NEGATIVA DE RECEBIMENTO PELO MUNICÍPIO - ALEGAÇÕES ACERCA DE IRREGULARIDADES ADMINISTRATIVAS NA CONTRATAÇÃO - DÉBITO RECONHECIDO - ENCARGOS - JUROS E CORREÇÃO MONETÁRIA - ORDEM PÚBLICA - TERMO A QUO - VENCIMENTO DA DÍVIDA -PROCEDÊNCIA DO PEDIDO CONFIRMADA - SENTENÇA PARCIALMENTE REFORMADA. <span class="NormalTextRun SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0050355-88.2021.8.06.0178
	padding: 0px; user-select: text;">É cabível a adoção do procedimento monitório contra a Fazenda Pública, nos termos do artigo 700, §6º, do CPC e consoante inteligência da Súmula n. 339, do STJ. Tendo sido apresentada a prova escrita a que alude o artigo 1102a do CPC/73, demonstrando a realização dos serviços contratados de fornecimento de gases medicinais, com cilindros em comodato (notas fiscais assinadas e triplicatas), cuja validade formal e idoneidade não restaram infirmadas, o pagamento da integralidade dos valores é devido à empresa contratada, independentemente da regularidade do contrato celebrado ou prévia necessidade de licitação. A irregularidade do contrato, falta de empenho, ou mesmo desobediência à Lei 8.666/93 ou à Lei de Responsabilidade Fiscal são questões relevantes para a Municipalidade, contudo, não impedem a quitação dos valores relativos aos bens e serviços contratados e consumidos, sob pena de enriquecimento sem causa do apelante. De acordo com o entendimento emanado pelo col. STJ, "os juros de mora, em ação monitória, incidem a partir do vencimento da obrigação" (AgInt no REsp 1810413/AM, Rel. Min. Regina Helena Costa, DJe 26/03/2020). &#160;(TJMG&#160; -&#160; Apelação Cível &#160;1.0267.14.002400 -6/001, Relator(a): Des.(a) Armando Freire , 1ª CÂMARA CÍVEL, julgamento em 29/09/2021, publicação da súmula em 01/10/2021) &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 10pt;

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	line-height: 16.1875px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> EMENTA: APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. PRESTAÇÃO DE SERVIÇOS. ADIMPLEMENTO DA CONTRATADA E INADIMPLEMENTO DO MUNICÍPIO CONTRATANTE. INCONTROVÉRSIA. DÍVIDA EXISTENTE. FALTA DE EMPENHO. BENEFÍCIO DA PRÓPRIA TORPEZA. VEDAÇÃO. PAGAMENTO DEVIDO. RECURSO NÃO PROVIDO. 1. Ainda que não tenha havido prévio empenho do débito, tal irregularidade não afasta a obrigação do Município de adimplir a dívida quando incontroversos a efetiva prestação dos serviços contratados e a falta do pagamento correspondente. 2. O ente público não pode esquivar-se do pagamento da dívida alegando irregularidade que ele deu causa. Entender o contrário permitiria não só o benefício da própria torpeza, mas também o enriquecimento sem causa do Poder Público em detrimento do particular, ambos vedados pela ordem jurídica pátria. 3. Apelação cível conhecida e não provida, mantida a sentença que acolheu a pretensão inicial. &#160;(TJMG&#160; -&#160; Apelação Cível 1.0479.16.005636 -8/001, Relator(a): Des.(a) Caetano Levi Lopes , 2ª CÂMARA CÍVEL, julgamento em 31/07/2018, publicação da súmula em 08/08/2018) &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Destaque-se, no contexto, que os recibos de venda (Id 14086002/14086010) e stão , todos eles, assina dos pelos recebedor es , representante s <span class="NormalTextRun

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	SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">da municipalidade , cujas assinatura s não foram objeto de impugnação específica pe lo Município de Uruburetama/CE , que não se desincumbiu de seu ônus probatório, conforme previsto no inciso II do art. 373 do CPC . &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> No contexto, transcrevo, por pertinente, trecho da sentença apelada, em que o magistrado a quo , assim se pronuncia, in

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	verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Os gastos&#160;públicos&#160;submetem-se a princípios financeiros e orçamentários, sendo que a Administração&#160;Pública&#160;deve orientar-se pelas normas previstas na Lei nº 4.320/1964, a fim de garantir que negócios&#160;públicos&#160;sejam geridos sob a estrita observância dos princípios da legalidade, da impessoalidade, da moralidade e da publicidade. Não se descuida, outrossim, que a legitimidade da despesa empenhada se verifica através da liquidação, que, repito, consiste na verificação do direito adquirido pelo credor tendo por base os títulos e documentos comprobatórios do respectivo crédito (art. 63). &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">

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	A liquidação da despesa por serviços deve ter por base, além do contrato e da nota de empenho, o comprovante da prestação do serviço, como exige o inciso III do § 2º do artigo 63 da Lei 4.320/64. Nesse contexto, menciona-se o disposto no art. 60 da Lei nº 4.320/64, dispondo que toda realização de despesa depende de prévio empenho. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Contudo, embora tenha sido feita essa introdução, há de se ressaltar que o §1º do mesmo dispositivo prevê a possibilidade de dispensa na emissão da nota de empenho em casos especiais. No caso dos autos, a demandante foi contratada em 2019 pela promovida a partir do procedimento licitatório na modalidade pregão n° 09.003/2019-PPRP, tendo como objeto da contratação a&#160; AQUISIÇÃO DE OXIGÊNIO MEDICINAL PARA ATENDER AS DEMANDAS DA SECRETARIA DE SAÚDE DO MUNICÍPIO DE URUBURETAMA-CE , cuja vigência contratual foi prevista até 31/12/2020. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR"

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	xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Art. 60,&#160;§ 1º Em casos especiais previstos na legislação específica será dispensada a emissão da nota de empenho. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Imperioso destacar que embora houvesse contrato administrativo já firmado entre as partes, durante o curso contratual, operou-se a crise sanitária em decorrência do COVID-19, e logo em seguida, em 25 de maio de 2020, houve alteração contratual com a finalidade de acréscimo do objeto global, conforme termo aditivo em anexo. Desta forma, não há como negar que, na época, havia sido firmada obrigação de fornecimento de materiais entre as partes o que foi devidamente demonstrada através da relação contratual. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement

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	Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Resta assente nos fólios que as partes possuíam um vínculo obrigacional, verificando-se, pelos recibos acostados, que houve fornecimento do material por parte do autor, documentação na qual a presente ação monitória se lastreia. Verifico ainda que não houve impugnação das assinaturas do demandado, nem houve negativa quanto aos servidores responsáveis pelo recebimento dos materiais fornecidos, o que nos leva a aplicar a regra do ônus da impugnação específica, pelo qual se impõe ao réu rebater, específica e pontualmente todas as alegações feitas pelo autor, fundamentando suas alegações, sob pena de ser considerado o fato não impugnado como incontroverso. Neste sentido: &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 10pt; line-

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	height: 16.0625px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">Nessa linha de intelecção, a ausência de nota de empenho não é suficiente para afastar as provas de houve efetivo fornecimento de material hospitalar ao ente&#160;público&#160;demandado, sob pena de locupletamento indevido do ente político. Acerca do tema, a jurisprudência já se manifestou no seguinte sentido: &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> É válido ressaltar, por fim, que se deve prezar pelo princípio da vedação do enriquecimento ilícito, que consiste em uma prática coibida diante dos ditames da sistemática cível, com base no disposto no art. 884 do Código Civil. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Diante disso, o Município deve arcar com aquilo que efetivamente foi prestado, não devendo o autor ficar com o prejuízo frente a obrigação assumida pelo ente&#160;público, com base no princípio do direito civil da força obrigatória dos contratos. Assim, com base no disposto no artigo 927 do Código Civil, deve o réu ser condenado a adimplir sua obrigação, qual seja, pagar o valor relativo aos materiais prestados pelo autor. Portanto, por entender como bastantes os fundamentos acima expostos, impõe-se a procedência dos pedidos &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;" lang="PT-BR" xml:lang="PT-BR"> Ausentes elementos capazes de infirmar a o acerto da sentença apelada, sua manutenção é medida que se impõe. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;" lang="PT-BR" xml:lang="PT-BR"> <span class="NormalTextRun SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text;">Diante do exposto, conheço parcialmente do Recurso de Apelação interposto por Município de Uruburetama/C E para , na parte conhecida, NEGAR-LHE PROVIMENTO e manter a sentença recorrida nos termos em que proferida , conforme já explanado. &#160;</p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;

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	direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;" lang="PT-BR" xml:lang="PT-BR"> Custas pelo recorrente, observada a isenção da Lei Estadual nº 16.132/2016 (art. 5º, inc. V). &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Sem majoração da verba honorária. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Expedientes necessários. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family:

Processo	0050355-88.2021.8.06.0178
	&quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relator &#160; </p></div><div class="OutlineElement Ltr SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP

Processo	0050355-88.2021.8.06.0178
	SCXW83568894 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 19.425px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	106
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Acumulação de Proventos
Polo ativo	ANTONIO MARQUES CAVALCANTE FILHO AUDISIO RIBEIRO DE ALENCAR FILHO TIBERIO MACIEL CARVALHO MARIA IZAILDE DE LUNA
Advogado(s) - Polo ativo	JOSE TELES BEZERRA JUNIOR - (CE25238-A)
Polo passivo	MUNICIPIO DE EUSEBIO
Advogado(s) - Polo passivo	LEONARDO FEITOSA ARRAIS MINETE - (CE23110-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004289-43.2024.8.06.0000
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 1pt; margin-bottom: 1pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 1pt; margin-bottom: 1pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 1pt; margin-bottom: 1pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 1pt; margin-bottom: 1pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 1pt; margin-bottom: 1pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-369174c6-7fff-40e6-0e7a-2bd7d2a4fad9" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 3pt; margin-bottom: 0pt;" dir="ltr">Processo: 3004289-43.2024.8.06.0000 – Agravo interno</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 3pt; margin-bottom: 0pt;" dir="ltr">Agravante(s): ANTÔNIO MARQUES CAVALCANTE FILHO e OUTROS</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Agravado: MUNICÍPIO DE EUSÉBIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Ementa: Processo civil. Agravo interno. Pedido de antecipação dos efeitos da tutela recursal. Medida liminar indeferida. Pagamento de honorários advocatícios. Fazenda pública. Pedido que esgota o objeto da ação. Recurso desprovido. Decisão mantida.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-

Processo	3004289-43.2024.8.06.0000
	top: 12pt; margin-bottom: 6pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 1.Trata-se de agravo interno interposto contra decisão monocrática proferida por esta relatora, que, em agravo de instrumento, indeferiu o pedido de antecipação dos efeitos da tutela recursal, em que os agravantes pretendem obter o pagamento do rateio mensal dos honorários advocatícios arrecadados.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">2. A questão em discussão consiste em saber se o indeferimento da liminar deve ser mantido por este Órgão Julgador, considerando que o deferimento da medida requerida importa no esgotamento do objeto da ação.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 3. A pretensão dos agravantes esgota o objeto do pedido inicial e encontra obstáculo nos dispositivos legais que regulam a concessão de medidas liminares contra a Fazenda Pública (Lei nº 9.494/97, art. 1º; CPC/15, art. 1.059; Lei nº 8.437/92, art. 1º, §3º).</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 5. Recurso desprovido. Decisão mantida.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> _________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Dispositivos relevantes citados: CF/1988, art. 100; Lei nº 9.494/97, art. 1º; CPC/2015, art. 1.059; Lei nº 8.437/92, art. 1º, §3º.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Jurisprudência relevante citada: Tutela Antecipada Antecedente – 0628543-58.2019.8.06.0000, Rel. Desembargador Paulo Aírton

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	Albuquerque Filho, 1ª Câmara Direito Público, data do julgamento: 14/09/2020, data da publicação: 14/09/2020; Agravo de Instrumento – 0629628-50.2017.8.06.0000, Rel. Desembargador(a) Maria Iraneide Moura Silva, 2ª Câmara Direito Público, data do julgamento: 20/11/2019, data da publicação: 20/11/2019).</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em conhecer do agravo interno, mas para negar-lhe provimento, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> &#160; Relatora</p><hr /><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <br /> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Trata-se de AGRAVO INTERNO interposto por ANTÔNIO MARQUES CAVALCANTE FILHO e OUTROS contra decisão monocrática proferida por esta relatora que, nos autos do presente agravo de instrumento, indeferiu o pedido de antecipação dos efeitos da tutela recursal requerido pela parte ora agravante (ID nº 14126271).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Em suas razões recursais, os agravantes pugnam pela reconsideração da decisão, ou, em não havendo juízo de retratação, pela submissão do recurso ao julgamento colegiado e posterior provimento, com a reforma da decisão interlocutória, ao argumento de que o deferimento da medida liminar requestada nos autos não importa no exaurimento do objeto da ação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Contrarrazões ao agravo de instrumento (ID nº 15379088).</p><p

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	style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Sem contrarrazões ao agravo interno.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Cinge-se a controvérsia em perquirir se a decisão liminar proferida por esta Relatora, que indeferiu o pedido de antecipação dos efeitos da tutela recursal, deve ou não ser alterada por este Colegiado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Pois bem.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Reexaminando os autos, verifica-se que as razões formuladas no presente recurso não foram capazes de modificar o entendimento exposto na decisão.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Como é sabido, nos termos dos Arts. 1.019, inciso I, e 300, do CPC/15, pode o relator, após o recebimento do agravo de instrumento, antecipar os efeitos da tutela recursal, desde que presentes elementos que demonstrem a probabilidade do direito e o risco de dano grave, de difícil ou impossível reparação, que devem ser claramente e cumulativamente demonstrados pela parte recorrente.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No caso dos autos, tenho que a decisão que indeferiu, em sede recursal, a liminar requerida, afastando, por conseguinte, o pedido de pagamento do rateio mensal dos honorários advocatícios arrecadados pelo Fundo PGM, relativos ao ônus de sucumbência e aos acordos da dívida ativa firmados na SEFIN, deve ser mantida.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Isso porque, no presente caso, a pretensão dos agravantes, ao envolver o pagamento do rateio mensal dos honorários advocatícios aos autores, acaba por se confundir e esgotar o objeto do pedido inicial, encontrando obstáculo no ordenamento jurídico brasileiro, conforme disposto no art. 1º da Lei 9.494/97, no art. 1.059 do CPC/15 e no art. 1º, caput e § 3º, da Lei nº 8.437/1992. Vejamos:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span

Processo	3004289-43.2024.8.06.0000
	style="font-size: 10pt; font-family: &quot;Times New Roman&quot;, serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">Lei 9.494/1997:Art. 1º. Aplica-se à tutela antecipada prevista nos arts. 273 e 461 do Código de Processo Civil o disposto nos arts. 5º e seu parágrafo único e 7º da Lei nº 4.348, de 26 de junho de 1964, no art. 1º e seu § 4º da Lei nº 5.021, de 9 de junho de 1966, e nos arts. 1º, 3º e 4º da Lei nº 8.437, de 30 de junho de 1992. (Destaque-se).</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> CPC/15:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Art. 1.059. À tutela provisória requerida contra a Fazenda Pública aplica-se o disposto nos arts. 1º a 4º da Lei nº 8.437, de 30 de junho de 1992, e no art. 7º, § 2º, da Lei nº 12.016, de 7 de agosto de 2009. (Destaque-se).</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Lei n 8.437/1992:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Art. 1º. Não será cabível medida liminar contra atos do Poder Público, no procedimento cautelar ou em quaisquer outras ações de natureza cautelar ou preventiva, toda vez que providência semelhante não puder ser concedida em ações de mandado de segurança, em virtude de vedação legal.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> (…)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">§3º. Não será cabível medida liminar que esgote, no todo ou em parte. (Destaque-se). <br /></p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Além disso, cumpre pontuar que a pretensão recursal esboçada terminar por violar a

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	ordem cronológica de pagamento de precatórios prevista no Art. 100 da CF/88.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Outro não é o entendimento deste egrégio Tribunal de Justiça: <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">AGRAVO DE INSTRUMENTO. ADICIONAL POR TEMPO DE SERVIÇO. MEMBROS DO MINISTÉRIO PÚBLICO. ACORDO ADMINISTRATIVO. CRONOGRAMA DE PAGAMENTO. RESTABELECIMENTO. PRESCRIÇÃO DO FUNDO DO DIREITO. INOCORRÊNCIA. TUTELA ANTECIPADA. LIMITE ORÇAMENTÁRIO. VEDAÇÃO. RESSALVA DE ENTENDIMENTO DESTA RELATORIA. PRINCÍPIO DA COLEGIALIDADE. ART. 926 CPC/2015. RECURSO CONHECIDO E PROVIDO. 1. A decisão agravada concedeu ao recorrido o restabelecimento do pagamento de gratificação (adicional por tempo de serviço) retirado unilateralmente pelo Estado do Ceará, de sorte que, a interlocutória vergastada vai ao encontro da legislação de regência, isto é, não viola o contido no art. 2-B da Lei nº 9.494/97, que disciplina a aplicação de tutela antecipada contra a Fazenda Pública, não se tratando a hipótese vertente de inclusão em folha de pagamento de qualquer vantagem devida a servidores públicos, o que somente pode ser feito após o trânsito em julgado da sentença que confere o direito, mas de restauração do ATS anteriormente pactuado entre as partes demandantes em procedimento administrativo; 2. Todavia, fulcrado no princípio da colegialidade, expressamente previsto no art. 926 do CPC/2015, a fim de manter uníssono os julgados deste Órgão Camerário, e efetivadas as devidas ressalvas desta relatoria, hei por bem acompanhar os nobres colegas no sentido de prover o presente instrumental, face o não preenchimento dos requisitos para concessão da medida urgente pelo juízo planicial, porquanto há expressa previsão no art. 7º, do Provimento nº 026/2009 de suspensão do pagamento do ATS para fins de restabelecimento financeiro e orçamentário do Estado do Ceará; 3. Agravo de Instrumento conhecido e provido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará,por unanimidade, em conhecer do presente recurso, para lhe dar provimento, nos termos do voto da Relatora. Fortaleza, 20 de novembro de 2019. Presidente do Órgão Julgador DESEMBARGADORA MARIA IRANEIDE MOURA SILVA Relatora (Agravo de Instrumento – 0629628-50.2017.8.06.0000, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 20/11/2019, data da publicação: 20/11/2019). (Destaque-se).</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #0f172a; background-color: transparent; font-weight: 400; font-style: normal; font-

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	variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">AGRAVO DE INSTRUMENTO. ADMINISTRATIVO E PROCESSUAL CIVIL. RECURSO QUE VISA REVERTER A DECISÃO QUE DETERMINOU A EXECUÇÃO PROVISÓRIA DA SENTENÇA E POR CONSEGUINTE, O PAGAMENTO IMEDIATO DOS VALORES – AÇÃO PRINCIPAL QUE DISCUTE O ADICIONAL POR TEMPO DE SERVIÇO (ATS) EM FAVOR DOS MEMBROS DO MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ ATÉ SETEMBRO DE 2006, CONFORME DECISÃO PROFERIDA PELO CNMP NOS AUTOS DO PROCEDIMENTO DE CONTROLE ADMINISTRATIVO Nº 0.00.000.001012/2008-17. ESTIPULAÇÃO DE CRONOGRAMA DE PAGAMENTO AOS INTEGRANTES DO PARQUET ESTADUAL POR MEIO DO PROVIMENTO Nº 26/2009, DA PGJ. POSTERIOR SUSPENSÃO DE TAL ATO PELA NOTA TÉCNICA Nº 001/PGJ/2010 EM VISTA DA NECESSIDADE DE ADEQUAÇÃO À DISPONIBILIDADE FINANCEIRA E ORÇAMENTÁRIA DO ENTE PÚBLICO RECORRENTE. CONCESSÃO DE TUTELA ANTECIPADA PARCIALMENTE, PARA QUE SE SUSPENDA A DETERMINAÇÃO DO PAGAMENTO IMEDIATO – SUBMISSÃO AO REGIME DE PRECATÓRIO, AINDA QUE SE TRATE DE CRÉDITO DE NATUREZA ALIMENTAR.- EXISTÊNCIA DE RESSALVA EXPRESSA NA DECISÃO DO CNMP, E NO PROVIMENTO DA PGJ, QUANTO À NECESSIDADE DE OBSERVÂNCIA ÀS PREVISÕES ORÇAMENTÁRIAS - AUSÊNCIA DE COMPROVAÇÃO DE QUE O PAGAMENTO IMEDIATO DOS VALORES DEVIDOS A TÍTULO DE ATS SEJA IMPRESCINDÍVEL PARA A MANUTENÇÃO DE SUA SUBSISTÊNCIA - PAGAMENTO ANTECIPADO DE QUALQUER NATUREZA E ESGOTA O OBJETO DA AÇÃO. VEDAÇÃO AO DEFERIMENTO DE MEDIDA DESTE JAEZ, CONFORME INTELIGÊNCIA DO ART. 7§º, §2º, DA LEI 12.016/2009; ART. 1º, §3º, DA LEI 8.437/92 E ART. 1.059, DO NCPC. INADMISSIBILIDADE DA EXECUÇÃO PROVISÓRIA CONTRA A FAZENDA PÚBLICA – PRECEDENTES – AGRAVO DE INSTRUMENTO CONHECIDO E PARCIALMENTE PROVIDO. 1 – Ressalto que não se discute neste momento o direito dos autores ao recebimento da verba requestada (ATS). Discute-se acerca do momento em que deve haver o restabelecimento do cumprimento do citado cronograma, o qual, após realizados alguns pagamentos, foi suspenso por ato unilateral, concretizado através da Nota Técnica n. 001/PGJ/2010, suspensão está prevista de modo expresso no art. 7º, do Provimento 026/2009, para fins de equilíbrio financeiro e orçamentário da instituição. 2 – Assim, deve-se ater ao ponto que, embora não se negue a possibilidade de cumprimento provisório de sentença contra a Fazenda Pública, deve-se considerar o comando Constitucional que, em seu art.100, prevê duas formas de satisfazer o credor: a) Precatório; b) Requisição de Pequeno Valor (RPV). O § 1º do art. 100 exige para expedição do precatório o trânsito em julgado e o § 3º do art. 100 exige para expedição do RPV o trânsito em julgado. Logo, as duas formas de executar a Fazenda Pública dependem do trânsito em julgado. 3 – Portanto, em nosso ordenamento jurídico, a sentença que reconhece um direito de crédito (obrigação de pagar quantia certa) não possui força executiva própria, de modo que sua efetivação se acha condicionada a uma fase ulterior de cumprimento. Significa isto que, na prática, o credor da Fazenda Pública não possui direito subjetivo ao pagamento imediato de valores vencidos anteriormente ao ajuizamento da ação, ainda que seu crédito decorra do inadimplemento de verbas de natureza alimentar. 4 – Pontuo ainda que, mesmo que este adicional por tempo de serviço ostentasse natureza remuneratória, ou seja, verba com caráter alimentar, não entrevejo situação de urgência apta a justificar o pagamento dos valores recorridos. É que estes exercem regularmente o cargo de Promotor(a) e Procurador(a) de Justiça e já percebendo mensalmente os respectivos subsídios, cujo valor – ante a inexistência de prova inequívoca em sentido contrário – deve se presumir suficiente para sua mantença. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em dar provimento parcial ao recurso, para determinar a imediata suspensão dos pagamentos decorrentes do restabelecimento do cronograma previsto no Provimento nº 26/2009, da Procuradoria-Geral de Justiça, até ulterior deliberação jurisdicional com caráter definitivo, tudo nos termos do voto do Relator. (Tutela Antecipada Antecedente – 0628543-58.2019.8.06.0000, Rel. Desembargador(a) PAULO AÍRTON ALBUQUERQUE FILHO, 1ª Câmara Direito Público, data do julgamento: 14/09/2020, data da publicação: 14/09/2020). (Destaque-se). <br /></p><p style="line-height: 1.7999999999999998; text-indent:

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	56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Assim, deve ser rejeitada a argumentação da parte agravante, segundo a qual o deferimento da medida liminar requestada não resulta no esgotamento do objeto da ação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Ficou consignado, ainda, que, na ausência do requisito da probabilidade do direito, a análise quanto ao outro pressuposto, a saber, risco de dano, restou prejudicada, porquanto, para o deferimento da medida, faz-se necessário o preenchimento de ambos requisitos cumulativamente.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Desse modo, em que pese os esforços argumentativos, não se visualiza fundamentação que justifique a alteração da decisão vergastada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Pelo exposto, CONHEÇO o agravo interno, mas para NEGAR-LHE provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>

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Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	ACESSIBILIDADE
Polo ativo	MARIA PEREIRA DE SALES
Advogado(s) - Polo ativo	ANDERSON FERNANDES FRANCA - (CE29597-A)
Polo passivo	MUNICIPIO DE AURORA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k2ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/Aglnc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGlI9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYn+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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AAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ   <br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="text-align: center;">   <br /> </p><p>   PROCESSO:&#160;3000403-44.2023.8.06.0041 -&#160;REMESSA NECESSÁRIA CÍVEL (199) </p><p>   AUTOR: MARIA PEREIRA DE SALES </p><p>   RECORRIDO: MUNICIPIO DE AURORA </p><p>   S2 </p><p style="text-align: justify;">&#160;</p><p class="EmentadoAcf3rde3o" style="margin-left: 155.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 200%;">   EMENTA: DIREITO CONSTITUCIONAL E ADMINISTRATIVO. REMESSA NECESSÁRIA EM MANDADO DE SEGURANÇA. CANDIDATA APROVADA EM PROCESSO SELETIVO DE CONTRATAÇÃO SIMPLIFICADA/TEMPORÁRIA. PARENTE DE VEREADOR (IRMÃ). FUNÇÃO JUNTO AO PODER EXECUTIVO MUNICIPAL. ALEGAÇÃO DE

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	NEPOTISMO/NEPOTISMO CRUZADO. NÃO EVIDENCIADO. INAPLICABILIDADE DA SÚMULA VINCULANTE Nº 13 DO STF. PRÉVIO AJUSTE OU PRÁTICA DE NOMEAÇÕES RECÍPROCAS NÃO COMPROVADOS. REMESSA NECESSÁRIA CONHECIDA E DESPROVIDA. SENTENÇA CONFIRMADA. </p><p class="EmentadoAcf3rde3o" style="margin-left: 155.9pt; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> &#160;</p><p class="EmentadoAcf3rde3o" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> ACÓRDÃO: vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Remessa Necessária para desprovê-la, restando confirmada a sentença , nos termos do voto do relator.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Fortaleza, data e hora indicadas pelo sistema. </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> <br /> </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 200%;" align="center"> Relator </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 200%;" align="center"> &#160; </p><p class="EmentadoAcrdo" style="margin-top: 2.0pt; text-align: center; line-height: 200%;" align="center"> &#160; &#160;</p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> RELATÓRIO </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Trata-se de reexame necessário da sentença Id. 14132871, proferida pelo Juízo de Direito da Vara Única da Comarca de Aurora, nos autos do Mandado de Segurança impetrado por Maria Pereira de Sales em face de Marcone Tavares de Luna (Prefeito Municipal de Aurora/CE).</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Aç ão (Id. 14132854): foi impetrado Mandado de Segurança com pedido liminar contra ato praticado pelo Prefeito Municipal de Aurora/CE, por meio do qual se objetivou a renomeação e posse da impetrante no cargo que havia sido aprovada mediante processo seletivo, para exercer função de Diretora Geral da EEIF Leão Sampaio.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Sentença (Id. 14646974): julgamento de parcial concessão da segurança, nos seguintes termos: “ Isto posto, ante os fundamentos fáticos e jurídicos acima explicitados, frisando a teoria dos motivos determinantes, julgo o mérito do&#160;writ&#160;para&#160; CONCEDER a segurança&#160;em seu mérito, determinando a devida (re)nomeação da Impetrante&#160; Maria Pereira de Sales&#160;no cargo Diretora Geral da EEIF Leão Sampaio (Polo 2), conforme Edital nº 006/2022 e Chamada Pública nº 01/2023, no prazo de 5 dias a partir da intimação desta, localizada no Distrito de Santa Vitória, Aurora/CE.”.</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Devidamente intimada para se manifestar, conforme despacho Id. 14146960, a Procuradoria Geral da Justiça se manteve inerte.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> É o relatório.&#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;">&#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;">&#160;</p><p

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	class="Standard" style="text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> VOTO </p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Presentes os pressupostos de admissibilidade, visto não ser o caso de aplicação das ressalvas previstas nos §§ 3º e 4º do art. 496 do CPC, conheço da Remessa Necessária. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Conforme brevemente relatado, o writ impetrado objetivou a renomeação e a posse da impetrante como Diretora Geral da EEIF Leão Sampaio, em decorrência da aprovação no processo seletivo simplificado nº06/2022, resultando na composição da autora no banco de gestores municipal, bem como a declaração de ilegalidade do ato que a exonerou. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Assim, o cerne do presente reexame é analisar o acerto da sentença que declarou como ilegal o ato de exoneração da impetrante dos quadros da administração pública, sob a fundamentação de que ela se enquadraria em situação de nepotismo. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Como se sabe, o termo “nepotismo”, basicamente, se refere ao favorecimento de parentes no preenchimento de um cargo público em detrimento de pessoas mais qualificadas, enquanto o “nepotismo cruzado” ocorre quando dois agentes públicos empregam familiares, um do outro, como forma de troca de favores. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> A vedação ao nepotismo decorre diretamente do próprio texto constitucional, em observância aos princípios dispostos no art. 37 da Carta Magna, especialmente o da “impessoalidade”, da “moralidade administrativa” e da “eficiência”, sedimentada pelo Supremo Tribunal Federal na Súmula Vinculante nº 13, que assim dispõe: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> “A n omeação de cônjuge, companheiro ou parente em linha reta, colateral ou por afinidade, até o terceiro grau, inclusive, da autoridade nomeante ou de servidor da mesma pessoa jurídica investido em cargo de direção, chefia ou assessoramento, para o exercício de cargo em comissão ou de confiança ou, ainda, de função gratificada na administração pública direta e indireta em qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios, compreendido o ajuste mediante designações recíprocas, viola a Constituição Federa.” </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Percebe-se, em julgados mais recentes, como, por exemplo, a Reclamação n. 18.564/SP, de relatoria do Min. Dias Toffoli, Segunda Turma, que a Corte Suprema vem estabelecendo critérios objetivos de configuração do nepotismo, considerando que, a despeito da interpretação literal da súmula, a existência, por si só, de vínculo de parentesco entre ocupantes de cargos comissionados na mesma pessoa jurídica, pode não caracterizar violação aos princípios da Administração Pública, especialmente da impessoalidade, moralidade e eficiência. Veja-se: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> a) ajuste mediante designações recíprocas, quando inexistente a relação de parentesco entre a autoridade nomeante e o ocupante do cargo de provimento em comissão ou função comissionada; </p><p class="MsoNormal" style="margin-top: 0cm;

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	margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> b) relação de parentesco entre a pessoa nomeada e a autoridade nomeante; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> c) relação de parentesco entre a pessoa nomeada e o ocupante de cargo de direção, chefia ou assessoramento a quem estiver subordinada; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> d) relação de parentesco entre a pessoa nomeada e a autoridade que exerce ascendência hierárquica ou funcional sobre a autoridade nomeante. (RE 807.383 AGR/SC, Relator Ministro Dias Toffoli) </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> A ssim, para a configuração do denominado “nepotismo cruzado”, além da existência do parentesco, necessário se faz comprovar o prévio ajuste ou prática de nomeações recíprocas, não sendo suficiente a simples alegação. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Da análise dos autos, verifica-se que, no Id. 14132863, consta que Maria Pereira de Sales foi nomeada para ocupar o cargo de Diretora Geral da EEIF Leão Sampaio, por Marcone Tavares de Luna, Prefeito Municipal de Aurora/CE. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> No entanto, por meio da Recomendação nº 0009/2023/PMJAUR, referente ao Procedimento Administrativo nº 09.2021.00020316-9, o Ministério Público indicou como necessária a exoneração da autora em 48 horas sob pena de ajuizamento de Ação Civil Pública, com a alegação de que a impetrante possuía laços de parentesco de 2º grau (irmã) com Vereador do Município. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Ocorre que não se observa a configuração de nenhuma das hipóteses elencadas pelo STF, uma vez que o nomeante não possui parentesco com a nomeada ou com sujeito que exerça função sobre a autoridade nomeante. Não há, portanto, reciprocidade de designações. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Importante destacar que o simples fato da parte autora, irmã de um vereador, ocupar a referida função junto ao Poder Executivo Municipal, após aprovação em processo seletivo de contratação simplificada, não configura nepotismo, notadamente quando ausente prova de prévio ajuste ou prática de nomeações recíprocas, métodos que, como visto, caracterizam o denominado "nepotismo cruzado", razão pela qual conclui-se que restou configurada violação ao direito líquido e certo da impetrante, como bem reconhecido pelo juízo a quo. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Nesse sentido, os seguintes julgados desta Corte de Justiça e do Supremo Tribunal Federal: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> EM ENTA: CONSTITUCIONAL. ADMINISTRATIVO. PROCESSUAL CIVIL. REMESSA NECESSÁRIA. MANDADO DE SEGURANÇA. CANDIDATA APROVADA EM PROCESSO SELETIVO DE CONTRATAÇÃO SIMPLIFICADA/TEMPORÁRIA. PARENTE DE VEREADOR (IRMÃ). FUNÇÃO DE AUXILIAR ADMINISTRATIVO JUNTO AO PODER EXECUTIVO MUNICIPAL. SUPOSTO NEPOTISMO CRUZADO. NÃO EVIDENCIADO. INAPLICABILIDADE DA SÚMULA VINCULANTE Nº 13 DO STF. PRÉVIO AJUSTE OU PRÁTICA DE NOMEAÇÕES RECÍPROCAS NÃO COMPROVADOS. REEXAME CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. 1.A vedação ao nepotismo decorre

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	diretamente do próprio texto constitucional, em observância aos princípios dispostos no art. 37 da Carta Magna, especialmente o da “impessoalidade”, “moralidade administrativa” e “eficiência”, sedimentada pelo Supremo Tribunal Federal na Súmula Vinculante nº 13, sendo necessária, para configuração do denominado “nepotismo cruzado”, a comprovação do prévio ajuste ou prática de nomeações recíprocas. 2.Na hipótese, o simples fato da parte autora, irmã de um vereador, ocupar a função de Auxiliar Administrativo junto ao Poder Executivo Municipal, após aprovação em processo seletivo de contratação simplificada (temporária), não configura nepotismo, notadamente quando ausente prova de prévio ajuste ou prática de nomeações recíprocas, métodos que caracterizam o denominado "nepotismo cruzado", razão pela qual conclui-se que restou configurada violação ao direito líquido e certo da impetrante. 3.Reexame necessário conhecido e não provido. Sentença ratificada. (Remessa Necessária – 0005217-56.2017.8.06.0108, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 23/05/2022, data da publicação: 23/05/2022) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> EMENTA: DIREITO CONSTITUCIONAL E ADMINISTRATIVO. AGRAVO INTERNO NA RECLAMAÇÃO. SÚMULA VINCULANTE 13. AUSÊNCIA DE VIOLAÇÃO. NEPOTISMO. AUSÊNCIA DE PARENTESCO COM A AUTORIDADE NOMEANTE E INEXISTÊNCIA DE VÍNCULO DE SUBORDINAÇÃO ENTRE ELAS. NÃO CONFIGURAÇÃO. RECURSO DESPROVIDO. 1. A jurisprudência dominante nesta CORTE é no sentido de que para atrair a incidência de nepotismo, prevista na Súmula Vinculante 13, há a necessidade de se configurar a relação de parentesco entre os nomeados e a autoridade nomeante, além do vínculo de subordinação entre eles. Precedentes. 2. Recurso de agravo a que se nega provimento. (STF - Rcl: 58790 SP, Relator: ALEXANDRE DE MORAES, Data de Julgamento: 05/06/2023, Primeira Turma, Data de Publicação: PROCESSO ELETRÔNICO DJe-s/n DIVULG 09-06-2023 PUBLIC 12-06-2023) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> EMENTA: DIREITO ADMINISTRATIVO. AÇÃO CIVIL PÚBLICA POR ATO DE IMPROBIDADE ADMINISTRATIVA. ALEGAÇÃO DA PRÁTICA DE NEPOTISMO. CONFIGURAÇÃO AFASTADA PELA ORIGEM. INEXISTÊNCIA DE SUBORDINAÇÃO HIERÁRQUICA OU DE RECIPROCIDADE DE DESIGNAÇÕES. NÃO CARACTERIZAÇÃO. CONSONÂNCIA DA DECISÃO RECORRIDA COM A JURISPRUDÊNCIA DO SUPREMO TRIBUNAL FEDERAL. COMPREENSÃO DIVERSA. REELABORAÇÃO DA MOLDURA FÁTICA. PROCEDIMENTO VEDADO NA INSTÂNCIA EXTRAORDINÁRIA. AGRAVO NÃO PROVIDO. 1. O entendimento da Corte de origem, nos moldes do assinalado na decisão agravada, não diverge da jurisprudência firmada no Supremo Tribunal Federal. Compreensão diversa demandaria a reelaboração da moldura fática delineada no acórdão de origem, a tornar oblíqua e reflexa eventual ofensa à Constituição, insuscetível, como tal, de viabilizar o conhecimento do recurso extraordinário. 2. As razões do agravo interno não se mostram aptas a infirmar os fundamentos que lastrearam a decisão agravada. 3. Agravo interno conhecido e não provido. (STF, ARE 1352420 AgR, Relator(a): ROSA WEBER, Primeira Turma, julgado em 23-05-2022, PROCESSO ELETRÔNICO DJe-100 DIVULG 24-05-2022, PUBLIC 25-05-2022) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> EMENTA MANDADO DE SEGURANÇA. ATO DO CONSELHO NACIONAL DE JUSTIÇA. COMPETÊNCIA RECONHECIDA PARA FISCALIZAR OS PRINCÍPIOS QUE REGEM A ADMINISTRAÇÃO PÚBLICA. SERVIDOR NÃO EFETIVO OCUPANTE DE CARGO DE NOMEAÇÃO E EXONERAÇÃO “AD NUTUM” QUE É CÔNJUGE, COMPANHEIRO OU PARENTE ATÉ O TERCEIRO GRAU, INCLUSIVE, DE SERVIDOR EFETIVO DO MESMO ÓRGÃO. AUSÊNCIA DE PROVA CONCRETA DE SUBORDINAÇÃO ENTRE OS DOIS SERVIDORES OU ENTRE A AUTORIDADE NOMEANTE E O SERVIDOR DE REFERÊNCIA PARA A CONFIGURAÇÃO OBJETIVA DO NEPOTISMO. NEPOTISMO NÃO CONFIGURADO. SEGURANÇA CONCEDIDA. 1. Competência do Conselho Nacional de Justiça para promover a fiscalização dos princípios constitucionais da Administração Pública consagrados pelo art. 37, caput, da Constituição Federal, entre eles os princípios da moralidade e da impessoalidade, os quais regem a vedação ao nepotismo. 2. A norma depreendida do art. 37, caput, da CF/88 para a definição de nepotismo em especial os princípios da moralidade, da impessoalidade e da eficiência - não tem o condão de diferenciar as pessoas tão somente em razão de relação de matrimônio, união estável ou parentesco com servidor efetivo do poder público, seja para as selecionar para o exercício

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	de cargos de direção, chefia ou assessoramento no âmbito da Administração Pública, seja para excluir sua aptidão para o desempenho dessas funções. 3. Ausência de prova concreta de subordinação entre os dois servidores ou entre a autoridade nomeante e o servidor de referência para a configuração objetiva do nepotismo. 4. Segurança concedida para anular a decisão do CNJ na parte em que determinou a exoneração da impetrante. (STF, MS 28485, Relator(a): DIAS TOFFOLI, Primeira Turma, julgado em 11-11-2014, ACÓRDÃO ELETRÔNICO DJe-238 DIVULG 03-12-2014, PUBLIC 04-12-2014) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%; mso-pagination: none;"> EMENTA RECLAMAÇÃO. SÚMULA VINCULANTE Nº 13. NOMEAÇÃO DE CÔNJUGE DE OCUPANTE DE CARGO EM COMISSÃO NA ADMINISTRAÇÃO DIRETA, PARA EXERCER CARGO DE DIREÇÃO EM ÓRGÃO DA ADMINISTRAÇÃO INDIRETA. OFENSA NÃO CONFIGURADA. AUSÊNCIA DE SUBORDINAÇÃO. RECLAMAÇÃO CONSTITUCIONAL PROCEDENTE. 1. Por atribuição constitucional, presta-se a reclamação para preservar a competência do STF e garantir a autoridade de suas decisões (art. 102, inciso I, alínea l, CF/88), bem como para resguardar a correta aplicação das súmulas vinculantes (art. 103-A, § 3º, CF/88). 2. O enunciado da Súmula Vinculante nº 13 não pretendeu esgotar todas as possibilidades de configuração de nepotismo na Administração Pública, uma vez que a tese constitucional nele consagrada consiste na proposição de que essa irregularidade decorre diretamente do caput do art. 37 da Constituição Federal, independentemente da edição de lei formal sobre o tema. 3. Cuidando- se de nomeação para pessoas jurídicas distintas e inexistindo relação de parentesco entre a autoridade nomeante e o nomeado, a configuração do nepotismo decorrente diretamente da Súmula Vinculante nº 13 exige a existência de subordinação da autoridade nomeante ao poder hierárquico da pessoa cuja relação de parentesco com o nomeado configura nepotismo a qual, no caso dos autos, não é possível ser concebida. 4. Reclamação julgada procedente. (STF, Rcl 9284, Relator(a): DIAS TOFFOLI, Primeira Turma, julgado em 30-09-2014, ACÓRDÃO ELETRÔNICO DJe-227 DIVULG 18-11-2014 PUBLIC 19-11-2014) </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Ainda sobre o tema, oportuno registrar que a questão sob análise, envolvendo, inclusive, o Município de Jaguaruana, em situação idêntica, foi objeto de exame pelo STF, na Reclamação Constitucional n.º 28.099/CE, onde o Min. Gilmar Mendes, acolhendo manifestação da Procuradoria-Geral da República, negou seguimento à irresignação do MP-CE, considerando que a Súmula Vinculante n.º 13/STF veda a nomeação de parentes para cargos comissionados ou de confiança, porém, no caso em apreço, tratou-se de processo seletivo simplificado para a contratação de servidores temporários.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Do mesmo modo, o Min. Celso de Mello, na Reclamação Constitucional n.º 28.100/CE, também foi pela negativa de seguimento à irresignação do MP-CE, sob os mesmos fundamentos expendidos pelo Min. Gilmar Mendes na Rcl nº 28.099/CE, por entender não haver a ocorrência de desrespeito à autoridade da Súmula Vinculante nº 13/STF.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Logo, não há correspondência entre a hipótese de incidência da Súmula Vinculante n.º 13/STF, que trata de nomeações para cargos ou funções de livre nomeação e exoneração, com o que não ocorreu no caso concreto, em que houve um processo seletivo simplificado para contratações temporárias, tampouco restou comprovado ajuste prévio ou prática de nomeações recíprocas, que caracterizassem o denominado "nepotismo cruzado".</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Sendo assim, a sentença proferida pelo juízo a quo se encontra em consonância com o acervo probatório, legislação e jurisprudência atinentes à matéria debatida, razão pela qual não merece reparo.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Isso posto, conheço da Remessa Necessária para desprovê-la, restando confirmada a sentença objeto de reexame. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> É como voto. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%; mso-pagination: none;"> Fortaleza, data e hora indicadas pelo sistema.

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	</p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> Relator </p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3004320-63.2024.8.06.0000
Número de ordem	108
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Assistência Social
Polo ativo	MUNICIPIO DE FORTALEZA
Advogado(s) - Polo ativo	Não informado
Polo passivo	TAINELE SABOIA DA SILVA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004320-63.2024.8.06.0000
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GIIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaAn+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

Processo	3004320-63.2024.8.06.0000

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	color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Agravo de instrumento interposto pelo Município de Fortaleza contra decisão que concedeu tutela de urgência para inclusão da autora em programa de aluguel social. A demandante, desalojada temporariamente por ação de facção criminosa, encontra-se em situação de vulnerabilidade e já estava cadastrada em programa habitacional. Requereu a concessão do benefício de aluguel social com fundamento no direito à moradia e à dignidade humana.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I I. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em definir se estão presentes os requisitos legais para a concessão do aluguel social à parte autora.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Estão presentes os requisitos para a concessão da tutela de urgência conforme o art. 300 do CPC, uma vez que a parte autora atende aos critérios estabelecidos pela Lei Municipal nº 10.328/2015.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. O Município não fez prova de que a exigência de sorteio para a concessão do benefício encontra previsão legal expressa, de modo que é inadequada sua imposição por ato infralegal.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">5. A alegação de impossibilidade financeira do Município não foi comprovada, e o risco de dano à autora é superior ao eventual ônus imposto ao ente público, justificando a manutenção da tutela de urgência.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Agravo de instrumento desprovido.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ______</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

Processo	3004320-63.2024.8.06.0000
	italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Dispositivos relevantes citados : CF/1988, art. 1º, III, e art. 6º; CPC, arts. 300 e 376; Lei Municipal nº 10.328/2015, art. 1º, II e III, e art. 8º. &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do agravo de instrumento, para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <br /> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO <br /> Relator &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160;&#160;&#160;&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Tem-se agravo de instrumento interposto pelo Município de Fortaleza em face de decisão proferida pelo juízo da 4ª Vara da Fazenda Pública, na ação de nº 3016745-22.2024.8.06.0001, ajuizada por Tainele Saboia da Silva em face do agravante.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">O processo principal: a promovente narrou que foi expulsa por facção criminosa no bairro Cajazeiras. Em razão disso, pediu a

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	condenação do Município à obrigação de fornecer aluguel social.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">A decisão agravada (id 89450762 dos autos de origem): o juízo de origem deferiu parcialmente o pedido de tutela provisória, "a fim de determinar que o Município de Fortaleza proceda, dentro do prazo de 5(cinco) dias, com a inclusão da Sra. Tainele Saboia da Silva no Programa Locação Social (PSL), regulamentado pela Lei Municipal n.º10.328/2015, caso esta ainda esteja na condição de vulnerabilidade indicada no relatório social de ID 89389275".</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">Agravo de instrumento (id 14152967): o promovido requereu a atribuição de efeito suspensivo e, no mérito, a reforma da sentença, por entender que ela esgota o objeto da demanda, em inobservância ao art. 1º,&#160; § 3º, da Lei Federal nº 9.494/97, viola o regime de precatório. Arguiu também que a recorrente não preenche os requisitos legais para recebimento de aluguel social e que a decisão ofende a isonomia, os princípios orçamentários e a separação de poderes.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">Decisão de id 14155294 desta relatoria: indeferiu o requerimento de efeito suspensivo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Contrarrazões recursais (id 14944011): requereu o desprovimento do agravo. Defendeu a possibilidade de o Judiciário intervir em políticas públicas, sem que isso represente ofensa à isonomia e à separação de poderes. Rebateu a aplicação da teoria da reserva do possível, citando precedente do STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Parecer da Procuradoria de Justiça (id 15542600): pelo não provimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">É o relatório. &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> <span

Processo	3004320-63.2024.8.06.0000
	style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Preenchidos os requisitos de admissibilidade, conheço do agravo de instrumento.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> O recurso não comporta provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Os requisitos para a concessão da tutela de urgência em favor da parte autora, ora agravada, estão presentes (art. 300 do CPC).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> A pretensão da demandante ao aluguel social é plausível.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Aparentemente, está -se diante de concretização do direito à moradia (art. 6º, caput, da CF) e à dignidade humana (art. 1º, inciso III, da CF), pois a recorrida se encontra, conforme consta na narração da inicial, em situação de desalojamento temporário decorrente da expulsão provocada pela facção criminosa que dominou o grupo habitacional onde residia, conforme relatório social de id 89389275 dos autos de origem.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Ainda segundo o relatório social, a autora “fez inscrição nos programas habitacionais em 08 de agosto de 2022, na Secretaria-Executiva Regional IV” (id 89389275, p. 3), o que, além de não ser contestado pelo Município, foi provado pelos documento de id 89389276 dos autos de origem.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Da mesma maneira, ela é responsável por uma filha de 3 anos de idade (id 89388622, p. 4), é arrimo de família e reside com sua mãe socioafetiva, uma idosa de 79 anos de idade, conforme atesta o mesmo relatório social de id 89389275 e o comprovante de endereço de id 89388622, p. 3.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Em suma, a família da demandante é composta por idoso, mulher arrimo de família e encontra-se em desalojamento temporário, apesar de a agravada estar cadastrada em programa habitacional.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> A recorrida, teoricamente, tem, portanto, direito à aluguel social (locação social), nos termos do art. 1º, II, III, da Lei Municipal nº 10.328/2015:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Art. 1º.&#160; Fica instituído, no âmbito do Município de Fortaleza, o Programa Locação Social, com a finalidade de atender a situações excepcionais e temporárias de:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> I –&#160; famílias que habitem em condições subumanas, em áreas de risco iminente ou que tenham sido atingidas por qualquer espécie de

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	desastre;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> II –&#160; famílias em situação de desalojamento temporário, que já se encontrem cadastradas em programas habitacionais, e estejam em processo de reassentamento para novas unidades habitacionais;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">III –&#160; mulheres em situação de violência sexual, excetuando a advinda de violência doméstica, idosos, pessoas com deficiência, enfermos graves ou arrimos de família. (grifos inexistentes no original)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> IV –&#160; famílias ou pessoas em situação de baixa renda ou em situação de vulnerabilidade social e que se encontrem em situação de moradia de rua;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> V –&#160; famílias removidas em decorrência de vulnerabilidade social;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> VI –&#160; famílias vítimas de infortúnio público (enchentes, conflagrações, desabamentos e outros) que tenham sido removidas de áreas sem condições de retorno imediato, comprovadas por laudo técnico do órgão municipal competente.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> VII –&#160; famílias cuja remoção definitiva ou temporária seja necessária para implantação de obras públicas.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Isto é, diferentemente do que defendeu o Município, a autora encontra-se, sim, no rol de prioridades da Lei de Programa de Locação Social.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">A parte autora, ademais, fez prova de que tem renda per capita inferior a três salários mínimos, pois segundo o relatório social de id 89389275, p. 3 dos autos de origem, sua fonte de renda é o

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	Programa Bolsa&#160; Família no valor de R$ 750,00,00 (setecentos e cinquenta reais) e reside em Fortaleza, há mais de um ano, conforme atesta o mesmo relatório social.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Estão, portanto, preenchidos os requisitos do art. 8º, I e III, da Lei Municipal nº 10.328/2015:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Art. 8º.&#160; Além das hipóteses descritas no art. 1º desta Lei, são requisitos para figurar como beneficiário do Programa Locação Social, cumulativamente:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> I –&#160; residir no município há pelo menos 1 (um) ano ou, excepcionalmente, estar em alojamento/abrigo provisório por interferência de programas/projetos públicos;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> II –&#160; morar em áreas de interesse social delimitadas pelo órgão competente;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> III –&#160; ter renda per capita conforme descrita no art. 5º;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> IV –&#160; não possuir outro imóvel.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> O Município também não demonstrou que a agravada não se enquadra nas hipóteses do art. 8º, II e IV, transcritos acima.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Apesar de afirmar que cabia à agravante o ônus da prova quanto ao preenchimento dos requisitos do art. 8º da Lei Municipal nº 10.328/2015, o relatório social é prova suficiente de que as circunstância sugerem que a autora não tem outro imóvel e que a área onde reside é de interesse social ou deveria ser.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> De qualquer maneira, o ônus da prova, cabe, em verdade, ao Município, pois a Administração rejeitou o benefício ao fundamento de que não existem vagas e não de que os requisitos do art. 8º da Lei Municipal nº 10.328/2015) não foram preenchidos (id 89388624, p. 5).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Por fim, a Lei Municipal nº 10.328/2015 nada dispõe que pagamento de aluguel social depende de sorteio, razão pela qual tampouco se constata ofensa à isonomia.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Ainda que possa haver ato infralegal (portaria, decreto etc.) condicionando o pagamento ao sorteio do beneficiário, trata-se de comando, em tese, ilegal, porque não tem, ao que tudo indica, previsão na lei que rege a matéria.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt;

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	font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Enfim, o Município não fez prova de que a exigência de sorteio para a concessão do benefício encontra previsão legal expressa (art. 376 do CPC), de modo que é inadequada sua imposição por ato infralegal.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Não há tampouco ofensa ao art. 100 da CF (regime de precatórios), pois a decisão determina apenas a inclusão da recorrida a programa de aluguel social, de modo que o desembolso do benefício representa mera consequência indireta.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Não seria o caso de aplicar o regime de precatórios, pois a decisão condena o Município a pagar dívida pré-consubstanciada, nem impõe diretamente o dispêndio de quantia certa.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Apesar de haver possível esgotamento da demanda, nos termos do art. 1º,&#160; § 3º, da Lei Federal nº 9.494/97 e do art. 300, § 3º, do CPC, a irreversibilidade decorrente do não pagamento do aluguel social é muito mais grave à parte adversa do que ônus imposto pela decisão agravada ao Município, haja vista a impossibilidade de acesso à moradia digna.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Por seu turno, o agravante não fez prova da alegada impossibilidade financeira e orçamentária de cumprir a decisão.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> &#160;Quanto à reserva do possível, não é possível constatar que haja risco à consecução de outros serviços públicos de titularidade do Município, muito menos, à própria política habitacional da Administração.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Em verdade, a reforma da decisão impugnada gera risco de perigo reverso, diante da situação de vulnerabilidade social da parte recorrida.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr">Isto é, a não-concessão da liminar esbarra no risco de dano irreversível de vulneração ao direito social à moradia, o que, para todos os fins, confirma o perigo de dano justificante da tutela de urgência (art. 300, caput, do CPC).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Diante do exposto, conheço do agravo de instrumento, mas para negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o voto que submeto à consideração de meus pares.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO <br /> Relator</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	109
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Liminar
Polo ativo	PROCURADORIA GERAL DO ESTADO ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	AGRO COMERCIAL ACACIA LTDA
Advogado(s) - Polo passivo	MARIA IMACULADA GORDIANO OLIVEIRA BARBOSA - (CE8667-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-2278924f-7fff-bedf-283d-f462eabb7075" style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr">Processo: 0237130-97.2020.8.06.0001 – Embargos de declaração</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr">Embargante: ESTADO DO CEARÁ</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:3pt;margin-bottom:3pt;" dir="ltr">Embargado: AGRO COMERCIAL ACÁCIA LTDA.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">Ementa: Constitucional. Processo civil. Embargos de declaração em apelação cível. Omissão. Vício inexistente. Prequestionamento. <span style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-

Processo	0237130-97.2020.8.06.0001
	color:transparent;font-weight:400;font-style:normal;font-variant:small-caps;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">Recurso desprovido. Manutenção do acórdão impugnado.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> I. Caso em exame</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> 1. Trata-se de Embargos de Declaração opostos pelo Estado do Ceará contra acórdão proferido pela 3ª Câmara de Direito Público deste Tribunal de Justiça, que negou provimento ao recurso de apelação interposto pelo ente público ora embargante.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">2. A questão em discussão consiste em saber se a decisão embargada padece de vício de omissão por não ter se pronunciado sobre o Art. 100 da CF/1988.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> 3. Consoante pode ser vislumbrado no teor do provimento jurisdicional ora impugnado, infere-se que a Colenda Câmara Julgadora debruçou-se, de forma clara e expressa, sobre o referido dispositivo, não se verificando, pois, a existência de omissão.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">4. Para fins de prequestionamento, o(s) elemento(s) normativo(s) que a parte embargante suscitou nas razões recursais servem para delimitar a matéria em eventual recurso próprio, conforme Art. 1.025 do CPC/15.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> 5. Recurso desprovido. Manutenção do acórdão impugnado.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> ________________</p><p

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	style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Dispositivos relevantes citados:</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> CF, art. 100; CPC, arts. 1.022 e 1.025.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer dos embargos de declaração, mas para negar-lhes provimento, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> &#160; Relatora</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><hr /><p> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:15pt;margin-bottom:6pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Trata-se de EMBARGOS DE DECLARAÇÃO opostos pelo ESTADO DO CEARÁ contra acórdão proferido pela 3ª Câmara de Direito Público deste Tribunal de Justiça, que negou provimento ao recurso de apelação interposto pelo referido ente público.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Em suas razões, a parte embargante alega que a decisão padece de vício de omissão por não ter se pronunciado sobre o Art. 100 da CF/1988, com o prequestionamento da matéria.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Contrarrazões recursais (ID nº 15527120).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> <span style="font-size:12pt;font-family:'Times New

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	Roman',serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">É o relatório.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Presentes os pressupostos de admissibilidade, conheço do recurso.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Consoante dicção do Art. 1.022 do CPC/15, os embargos declaratórios são cabíveis contra qualquer decisão judicial para esclarecer obscuridade ou eliminar contradição; suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz; ou corrigir erro material, tratando-se, pois, de espécie recursal de fundamentação vinculada.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Com efeito, considera-se omissa a decisão que não se manifestar sobre um pedido, acerca de argumentos relevantes lançados pelas partes e em relação a questões de ordem pública, cognoscíveis de ofício pelo magistrado. Por outro lado, é obscura, quando for ininteligível, faltar clareza e precisão suficiente a não permitir a certeza jurídica a respeito das questões resolvidas. Contraditória é a decisão que contiver proposições inconciliáveis entre si de maneira que a afirmação de uma logicamente significará a negociação da outra. Finalmente, erro material é aquele manifesto, sobre o qual não pode haver dúvida a respeito do desacerto do decisum como, verbi gratia, equívoco na redação.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Como se vê, os embargos de declaração constituem recurso de rígidos contornos processuais, exigindo-se, para seu acolhimento, que estejam presentes os pressupostos legais de cabimento, não tendo condão para ensejar decisão substitutiva do julgado embargado. Sua natureza é integrativa ou aclaratória, pois objetivam complementar ou aclarar a decisão embargada, dissipando-lhe eventuais vícios.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> No presente caso, a parte embargante alega que a decisão padece de vício de omissão por não ter se pronunciado sobre o Art. 100 da CF/1988.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Tal pretensão aclaratória, contudo, não merece provimento.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Isso porque, consoante pode ser vislumbrado no teor do provimento jurisdicional ora impugnado, infere-se que a Colenda Câmara Julgadora debruçou-se, de forma clara e expressa, sobre o referido dispositivo, senão vejamos:</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> <span style="font-size:10pt;font-family:'Times New Roman',serif;color:#000000;background-

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	color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">(…) No caso dos autos, analisando o pleito autoral de não incidência do ICMS sobre a demanda contratada, mas apenas sobre a demanda efetivamente consumida, o Juízo de 1º grau, no dia 23 de maio de 2024, julgou procedente o feito, acolhendo, dentre outros pedidos, o pleito de repetição do indébito, para o fim de condenar a parte promovida a compensar os valores recolhidos a maior nos últimos 5 (cinco) anos.</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Contrapondo-se à determinação suso mencionada, a parte promovida, ora apelante, invoca o julgamento do RE nº 889.173/MS (Tema 831) e do RE nº 1.420.691/SP (Tema 1.262) com o fim de que, reformando em parte o julgamento de 1º grau, o pedido de repetição do indébito tributário seja realizado exclusivamente por meio do regime de precatórios, conforme previsto no Art. 100 da CF/88.</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> (…)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">Como se vê, a aplicação dos temas acima mencionados ao caso discutido nos autos deve ser rechaçada. Isso porque, ao contrário do que foi pedido pela parte autora e determinado no julgamento de 1º grau, o Tema 831 do STF trata da necessidade de observância do regime de precatórios para o pagamento de valores devidos pela Fazenda Pública entre a data da impetração do mandado de segurança e a efetiva implementação da ordem concessiva. Já o Tema 1.262 do STF proíbe a restituição administrativa do indébito tributário, devido à necessidade de submissão do pagamento ao regime de precatórios, conforme o Art. 100 da CF/88. E, conforme relatado anteriormente, o pedido julgado procedente refere-se à compensação de créditos referente aos 05 (cinco) anos anteriores ao ajuizamento da demanda. (…).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Em verdade, parece-me que o intuito da parte embargante se limita a rediscutir a matéria amplamente debatida, contudo, tal finalidade é incompatível com esta estreita via recursal, ainda que para fins de prequestionamento, o que atrai a aplicação compulsória da Súmula nº. 18 deste egrégio Tribunal de Justiça que, a propósito, não perdeu seu fundamento de validade por ocasião da entrada em vigor do CPC/15.</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Súmula nº 18: São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> Dessa forma, infere-se que a pretensão da parte constitui apenas inconformismo com os fundamentos adotados pela decisão recorrida, não se verificando, desse modo, a existência de omissão, devendo, caso queira ver modificada a decisão, utilizar-se das vias adequadas para a reapreciação do seu pleito.</p><p

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	style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> Por fim, cumpre deixar consignado que, para fins de prequestionamento, os elementos normativos que a parte embargante suscitou nas razões recursais servem para delimitar a matéria em eventual recurso próprio, conforme Art. 1.025 do CPC/15.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr">Ante o exposto, CONHEÇO dos aclaratórios, mas para NEGAR-LHES provimento, mantendo inalterado o acórdão embargado.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:2pt;margin-bottom:0pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3004559-67.2024.8.06.0000
Número de ordem	110
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Multas e demais Sanções
Polo ativo	ESTADO DO CEARA

Processo	3004559-67.2024.8.06.0000
Advogado(s) - Polo ativo	Não informado
Polo passivo	BANCO BMG SA
Advogado(s) - Polo passivo	JOSE GUILHERME CARNEIRO QUEIROZ - (CE41111-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004559-67.2024.8.06.0000
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p> <strong id="docs-internal-guid-9708a46e-7fff-9dc3-9539-69b3c1558e7d" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Processo: 3004559-67.2024.8.06.0000 - Agravo de Instrumento</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravante: Estado do Ceará</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravado: Banco BMG S/A</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt;

Processo	3004559-67.2024.8.06.0000
	margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ementa: Direito processual civil. Agravo de instrumento em ação anulatória. Suspensão da exigibilidade de crédito não tributário mediante seguro garantia. Cláusula de renovação automática. Agravo de instrumento desprovido. Agravo interno prejudicado.&#160;&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> I. Caso em exame &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 1. Agravo de Instrumento contra decisão que deferiu o pedido de tutela de urgência da parte autora, determinando a suspensão da exigibilidade da multa administrativa discutida na ação anulatória subjacente, a partir da oferta de seguro garantia.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">2. Consiste em verificar a idoneidade da apólice de seguro garantia apresentada em primeiro grau.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">3. A apólice do seguro garantia apresentada em primeiro grau de jurisdição contempla o acréscimo de 30% (trinta por cento), nos termos do entendimento jurisprudencial e do art. 835, §2º, do CPC.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4. O referido instrumento contratual, apesar de ter prazo determinado, contém cláusula com mecanismo de renovação automática/sucessiva, o que denota sua idoneidade.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <span

Processo	3004559-67.2024.8.06.0000
	style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">IV. Dispositivo &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 5. Agravo de Instrumento desprovido. Agravo Interno prejudicado.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> _________________&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Dispositivos relevantes citados: CTN, art. 151, II; CPC, art. 835, §2º.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Jurisprudência relevante citada: STJ, REsp n. 1.381.254/PR, Rel. Ministro Napoleão Nunes Maia Filho, Primeira Turma, j. 25/6/2019; STJ, REsp n 1.838.837/SP, Rel. Ministra Nancy Andrighi, Rel. para acórdão Ministro Ricardo Villas Bôas Cueva, Terceira Turma, j. 12/5/2020.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do Agravo de Instrumento para negar-lhe provimento, e julgar prejudicado o exame do Agravo Interno, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.7999999999999998; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000;

Processo	3004559-67.2024.8.06.0000
	background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> <br /></p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Cuida-se de AGRAVO DE INSTRUMENTO COM PEDIDO DE EFEITO SUSPENSIVO interposto pelo ESTADO DO CEARÁ contra decisão interlocutória proferida pelo Juízo da 14ª Vara da Fazenda Pública da Comarca de Fortaleza que, em sede de Ação Anulatória de Ato Administrativo com Pedido de Tutela de Urgência (processo nº 3011001-46.2024.8.06.0001) ajuizada pelo BANCO BMG S/A em desfavor do agravante, deferiu o pedido liminar, antecipando-se os efeitos da tutela jurisdicional, nos seguintes termos (id. 90070860 daqueles autos):&#160;</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Diante das razões acima explicitadas, aplico o entendimento do STJ ao presente caso, para DEFERIR a suspensão da exigibilidade da multa oriunda do processo administrativo de número 23.001.001.21-0002821, devendo o promovido se abster de inscrever a autora nos órgãos restritivos de crédito, bem como de qualquer outra medida restritiva e/ou constritiva referente a multa objeto da presente lide, até ulterior deliberação deste juízo.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Intimem-se as partes da presente decisão.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em respeito ao princípio do contraditório, determino a intimação da parte autora para se manifestar, em 15 (quinze) dias, sobre a contestação de id. 90038523, e documentos de id. 89183630.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Decorrido o prazo, com ou sem réplica, sigam os autos com vistas ao representante do Ministério Público, para os fins e prazo legais.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Expedientes SEJUD: 1) intimação do advogado autoral por meio do DJe; 2) intimação do Estado do Ceará pelo portal digital; 3) decorrido o prazo anterior, proceder com a intimação do <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

Processo	3004559-67.2024.8.06.0000
	italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">parquet por meio do portal digital.</p><p style="line-height: 1.728; margin-left: 144pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Em suas razões (id. 14286712),&#160; o ente público defende a reforma da r. decisão, argumentando, em suma, que: (i) a inexistência de prova inequívoca a evidenciar a verossimilhança das alegações, importa em indeferimento da tutela antecipada; (ii) a simples iminência de inscrição em dívida ativa e posterior cobrança executiva não representa, por si só, periculum in mora para deferimento da cautelar; (iii) o oferecimento de apólice de seguro-garantia com prazo de validade determinado, não se presta a garantia do débito, pois, com a longa duração do processo judicial, pode haver o risco de inexistirem efeitos práticos a garantia oferecida. Ao final, requer liminarmente e inaudita altera parte a atribuição de efeito suspensivo ao recurso, a fim de que seja sejam imediatamente sustados os efeitos do decisum liminar a quo, assinalando prazo para que seja substituída garantia no prazo de 5 (cinco) dias, sob pena de reaquisição de exigibilidade do credito não-tributário. No mérito, pugna pelo provimento do agravo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Decisão interlocutória de minha lavra, indeferindo o pedido de efeito suspensivo requerido (id. 14379958).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em contrarrazões (id. 15084766), a parte agravada refuta as teses recursais e pede para que seja negado provimento ao recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravo Interno interposto no documento de id. 15180910.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding:

Processo	3004559-67.2024.8.06.0000
	0pt 0pt 0pt 22.5pt;" dir="ltr"> Instada a se manifestar, a Procuradoria Geral de Justiça opinou pelo conhecimento do recurso, mas deixando de apreciar o mérito, por entender desnecessária a intervenção do Órgão (id. 15556051).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço do Agravo de Instrumento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">O cerne da controvérsia cinge-se a avaliar a higidez da decisão proferida pelo juízo a quo que concedeu a tutela de urgência formulada pela parte autora, deferindo a suspensão da exigibilidade da multa de crédito não tributário, oriunda de processo administrativo instaurado pelo Programa Estadual de Proteção e Defesa do Consumidor (DECON). Não se discute, portanto, o fundo de direito da ação, cujo mérito versa sobre a suposta ilegalidade do procedimento administrativo e a desproporcionalidade da multa aplicada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Não vislumbro, contudo, motivos para modificar a decisão ora atacada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Conforme assentado na decisão recorrida, apesar de o débito ter natureza administrativa, faz-se imperiosa a aplicação, mediante a utilização de técnicas interpretativas e integrativas, do art. 151, inciso II, do CTN, que assegura a suspensão da exigibilidade do crédito caso haja o depósito integral de seu montante, nos termos de entendimento do Superior Tribunal de Justiça:&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ADMINISTRATIVO E PROCESSUAL CIVIL. RECURSO ESPECIAL. MULTA ADMINISTRATIVA. CRÉDITO NÃO TRIBUTÁRIO. NATUREZA JURÍDICA SANCIONADORA. UTILIZAÇÃO DE TÉCNICAS INTERPRETATIVAS E INTEGRATIVAS VOCACIONADAS À PROTEÇÃO DO INDIVÍDUO (GARANTISMO JUDICIAL). AUSÊNCIA DE PREVISÃO LEGAL DE SUSPENSÃO DE EXIGIBILIDADE DE CRÉDITO NÃO TRIBUTÁRIO. MÉTODO INTEGRATIVO POR ANALOGIA. É CABÍVEL A SUSPENSÃO DA EXIGIBILIDADE DO CRÉDITO NÃO TRIBUTÁRIO A PARTIR DA APRESENTAÇÃO DA FIANÇA BANCÁRIA E DO SEGURO GARANTIA JUDICIAL, DESDE QUE EM VALOR NÃO INFERIOR AO DO DÉBITO CONSTANTE DA INICIAL, ACRESCIDO DE TRINTA POR CENTO (ART. 151, INCISO II DO CTN C/C O ART. 835, §

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	2º. DO CÓDIGO FUX E O ART. 9º, § 3º DA LEI 6.830/1980). RECURSO ESPECIAL DA ANTT DESPROVIDO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 1. Consolidou-se o entendimento, pela Primeira Seção desta Corte Superior de Justiça, no julgamento do Recurso Representativo da Controvérsia, nos autos do REsp. 1.156.668/DF, da Relatoria do eminente Ministro LUIZ FUX, Tema 378, DJe 10.12.2010, de que o art. 151, II do CTN é taxativo ao elencar as hipóteses de suspensão da exigibilidade do crédito, não contemplando o oferecimento de seguro garantia ou fiança bancária em seu rol.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">2. O entendimento contemplado no Enunciado Sumular 112 do STJ, segundo o qual o depósito somente suspende a exigibilidade do crédito tributário se for integral e em dinheiro, que se reproduziu no julgamento do Recurso Representativo da Controvérsia, nos autos do REsp. 1.156.668/DF, não se estende aos créditos não tributários originários de multa administrativa imposta no exercício do Poder de Polícia.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 3. Embora a Lei 6.830/1980 seja instrumento processual hábil para cobranças das dívidas ativas da Fazenda Pública, a natureza jurídica sancionadora da multa administrativa deve direcionar o Julgador de modo a induzi-lo a utilizar técnicas interpretativas e integrativas vocacionadas à proteção do indivíduo contra o ímpeto simplesmente punitivo do poder estatal (ideologia garantista).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">4. Inexistindo previsão legal de suspensão de exigibilidade de crédito não tributário no arcabouço jurídico brasileiro, deve a situação se resolver, no caso concreto, mediante as técnicas de integração normativa de correção do sistema previstas no art. 4º da LINDB.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">5. O dinheiro, a fiança bancária e o seguro garantia são equiparados para os fins de substituição da penhora ou mesmo para garantia do valor da dívida ativa, seja ela tributária ou não tributária, sob a ótica alinhada do § 2º do art. 835 do Código Fux c/c o inciso II do art. 9º da Lei 6.830/1980, alterado pela Lei 13.043/2014.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">6. É cabível a suspensão da exigibilidade do crédito não tributário a partir da apresentação da fiança bancária e do seguro garantia judicial, desde que em valor não inferior ao do débito constante da inicial,

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	acrescido de trinta por cento, nos moldes previstos no art. 151, inciso II do CTN c/c o art. 835, § 2º, do Código Fux e o art. 9º, § 3º, da Lei 6.830/1980, uma vez que não há dúvida quanto à liquidez de tais modalidades de garantia, permitindo, desse modo, a produção dos mesmos efeitos jurídicos do dinheiro.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 7. Não há razão jurídica para inviabilizar a aceitação do seguro garantia judicial, porque, em virtude da natureza precária do decreto de suspensão da exigibilidade do crédito não tributário (multa administrativa), o postulante poderá solicitar a revogação do decreto suspensivo caso em algum momento não viger ou se tornar insuficiente a garantia apresentada</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 8. O crédito não tributário, diversamente do crédito tributário, o qual não pode ser alterado por Lei Ordinária em razão de ser matéria reservada à Lei Complementar (art. 146, III, alínea “b”, da CF/1988), permite, nos termos aqui delineados, a suspensão da sua exigibilidade, mediante utilização de diplomas legais de envergaduras distintas por meio de técnica integrativa da analogia.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 9. Recurso Especial da ANTT desprovido.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> (REsp n. 1.381.254/PR, relator Ministro Napoleão Nunes Maia Filho, Primeira Turma, julgado em 25/6/2019, DJe de 28/6/2019) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Nos termos do precedente supra, é possível a apresentação de seguro-garantia para suspensão da exigibilidade de créditos de natureza não tributários, hipótese dos autos, a partir da apresentação de fiança bancária ou seguro garantia judicial, desde que em valor não inferior ao do débito, acrescido de 30% (trinta por cento).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Nesse sentido, no âmbito deste colegiado: Agravo de Instrumento - 0637479-38.2020.8.06.0000, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 09/08/2021, data da publicação:&#160; 09/08/2021; Agravo de Instrumento - 0628679-50.2022.8.06.0000, Rel. Desembargador FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 06/02/2023, data da publicação: 06/02/2023.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Ademais, o art. 835, § 2º, do CPC/2015 equipara expressamente o seguro-garantia a dinheiro, ao definir que “ para fins de substituição da penhora, equiparam-se a dinheiro a fiança bancária e o seguro garantia judicial, desde que em valor

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	não inferior ao do débito constante da inicial, acrescido de trinta por cento ”.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Não obstante, não se pode olvidar que, diante da possibilidade de longa duração de um processo judicial, pode haver o risco de inexistirem efeitos práticos à garantia ofertada quando houver previsão de prazo de vigência determinada situação que, em tese, caracterizaria a idoneidade da garantia ofertada. Todavia, o Superior Tribunal de Justiça aventou possíveis soluções para o prazo de vigência do instrumento, a fim de torná-lo equiparável à penhora em dinheiro, dentre eles, “i) vigência atrelada à efetiva duração do processo, ou previsão de renovação automática da apólice ou, ainda, previsão de conversão automática da garantia em dinheiro se a apólice não for renovada pelo devedor, tomador do seguro, ao final de seu termo” (REsp n 1.838.837/SP, relatora Ministra Nancy Andrighi, relator para acórdão Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 12/5/2020, DJe de 21/5/2020).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Nessa perspectiva, da análise acurada das condições contratuais do seguro garantia, é possível observar que, apesar do prazo de validade determinado (16/05/2024 a 16/05/2029), existe previsão de renovação automática do referido seguro, conforme item 4.5, nos seguintes termos (id. 87607352):</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4. VIGÊNCIA E RENOVAÇÃO&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4.1. O prazo de vigência da garantia concedida nesta Apólice encontra-se definido em seu frontispício.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4.2. A renovação da Apólice deverá ser solicitada pelo Tomador com antecedência mínima de 120 (cento e vinte) dias em relação ao fim de vigência indicado no frontispício.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4.3. O Tomador poderá não solicitar a renovação da Apólice somente se comprovar não haver mais risco a ser coberto pela Apólice ou a substituição da garantia junto ao Segurado .&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4.4. A Seguradora somente poderá se manifestar pela não renovação da Apólice se comprovar não haver mais risco a ser coberto pelo seguro.&#160;</p><p style="line-height:

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	1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">4.5. Nos casos em que o Tomador não tiver tomado as providências necessárias e tempestivas à renovação da Apólice, a Seguradora procederá com a renovação automática por prazo igual ou superior ao originalmente apresentado, enquanto houver risco a ser coberto ou até que ocorra a substituição do Seguro Garantia para Execução Fiscal, de modo a garantir a manutenção da cobertura e os direitos do Segurado, ficando resguardado o direito da Seguradora de receber Prêmio adicional em virtude da renovação.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4.5.1. A Seguradora fica desde já autorizada pelo Tomador a efetuar a emissão de nova Apólice ou Endosso(s) para renovação da garantia, até o término do processo garantido, tantas vezes quantas forem necessárias. &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4.5.2. Na hipótese de não renovação da Apólice e existindo risco a ser garantido, a Seguradora poderá optar pela liquidação do contrato de seguro, mediante depósito judicial do valor correspondente à obrigação garantida, podendo exercer de imediato seu direito de sub-rogação em face do Tomador.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Assim, o pleito de não aceitação da apólice em virtude da existência de prazo determinado não se sustenta, mormente porque existe, no próprio contrato de seguro, mecanismos que visam obstar a perda da garantia.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Perfilhando o entendimento ora esposado, vejamos precedentes da Corte Cidadã e deste colegiado:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">RECURSO ESPECIAL. PROCESSUAL CIVIL. IMPUGNAÇÃO AO CUMPRIMENTO DE SENTENÇA. SEGURO-GARANTIA JUDICIAL. INDICAÇÃO. POSSIBILIDADE. EQUIPARAÇÃO A DINHEIRO. PRINCÍPIO DA MENOR ONEROSIDADE PARA O DEVEDOR E DA MÁXIMA EFICÁCIA DA EXECUÇÃO PARA O CREDOR. COMPATIBILIZAÇÃO. 1. Recurso especial interposto contra acórdão publicado na vigência do Código de Processo Civil de

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	2015 (Enunciados Administrativos nºs 2 e 3/STJ). 2. Cinge-se a controvérsia a saber se o seguro-garantia judicial pode ser recusado como garantia do juízo apenas pelo fato de conter, na respectiva apólice, prazo de validade determinado e cláusula condicionando os efeitos da cobertura ao trânsito em julgado. 3. O § 2º do art. 835 do CPC/2015, para fins de substituição da penhora, equiparou a dinheiro a fiança bancária e o seguro-garantia judicial, desde que em valor não inferior ao do débito constante da inicial, acrescido de 30% (trinta por cento). 4. Em que pese a lei se referir a "substituição", que pressupõe a anterior penhora de outro bem, o seguro-garantia judicial produz os mesmos efeitos jurídicos que o dinheiro, seja para fins de garantir o juízo, seja para possibilitar a substituição de outro bem objeto de anterior penhora, não podendo o exequente rejeitar a indicação, salvo por insuficiência, defeito formal ou inidoneidade da salvaguarda oferecida. 5. A idoneidade da apólice de seguro-garantia judicial deve ser aferida mediante verificação da conformidade de suas cláusulas às normas editadas pela autoridade competente, no caso, pela Superintendência de Seguros Privados - SUSEP, sob pena de desvirtuamento da verdadeira intenção do legislador ordinário. 6. A simples fixação de prazo de validade determinado na apólice e a inserção de cláusula condicionando os efeitos da cobertura ao trânsito em julgado da decisão não implicam, por si só, inidoneidade da garantia oferecida. 7. A renovação da apólice, a princípio automática, somente não ocorrerá se não houver mais risco a ser coberto ou se apresentada nova garantia. Se não renovada a cobertura ou se o for extemporaneamente, caraterizado estará o sinistro, de acordo com a regulamentação estabelecida pela SUSEP, abrindo-se para o segurado a possibilidade de execução da apólice em face da seguradora. 8. Na hipótese de haver cláusula condicionando o sinistro ao trânsito em julgado para fins de execução da garantia (apólice), como forma de harmonizar o instituto com o ordenamento processual como um todo, admite-se a recusa da garantia ou da substituição da penhora, pelo juízo da execução, a partir das especificidades do caso e mediante decisão fundamentada, se a objeção do executado não se mostrar apta, a princípio, à desconstituição total ou parcial do título. 9. Julgada a impugnação, poderá o juiz determinar que a seguradora efetue o pagamento da indenização, ressalvada a possibilidade de atribuição de efeito suspensivo ao recurso interposto pelo tomador, nos moldes do art. 1.019, I, do Código de Processo Civil de 2015. 10. Recurso especial provido. (REsp n. 2.025.363/GO, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 4/10/2022, DJe de 10/10/2022.) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">EMENTA: PROCESSUAL CIVIL. AGRAVO INTERNO CÍVEL. DECISÃO INTERLOCUTÓRIA EM AGRAVO DE INSTRUMENTO. AÇÃO ANULATÓRIA. IDONEIDADE DE SEGURO GARANTIA JUDICIAL COM PRAZO DETERMINADO PARA SUSPENSÃO DE EXIGIBILIDADE DE CRÉDITO NÃO-TRIBUTÁRIO. CLÁUSULA DE RENOVAÇÃO AUTOMÁTICA. AUSÊNCIA DE DEFEITO FORMAL OU INIDONEIDADE DA APÓLICE. AGRAVO INTERNO CONHECIDO E NÃO PROVIDO. DECISÃO INTERLOCUTÓRIA MANTIDA. 01. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal;

Processo	3004559-67.2024.8.06.0000
	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Cinge-se a controvérsia em discutir a possibilidade de suspensão da exigibilidade de crédito não tributário a partir da oferta de seguro garantia com prazo de vigência determinado. 02. No caso concreto, verifica-se que o prazo da apólice do seguro apresentado pela ora agravada apresenta vigência de 17/02/2023 a 17/02/2028, ou seja, pelo prazo de cinco anos (ID 57632255 - PJE 1º Grau). No entanto, existe, na própria apólice, mecanismo de renovação automática/sucessiva. 03. Assim, a não aceitação da apólice em virtude da existência de prazo determinado não se sustenta, mormente porque existe, no próprio contrato de seguro, mecanismos que impedem a perda da garantia, com pagamento do valor segurado para o reclamante em caso de não renovação da apólice. 04. Desse modo, não se vislumbra circunstância que justifique a rejeição da salvaguarda oferecida no presente caso, vez que não evidenciada insuficiência, defeito formal ou inidoneidade, impondo-se a manutenção da liminar outrora deferida. Precedentes STJ. 05. Agravo Interno Cível conhecido e desprovido. Decisão interlocutória mantida. (Agravo Interno Cível - 3000526-23.2023.8.06.0000, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento:&#160; 09/10/2023) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">AGRAVO DE INSTRUMENTO. AÇÃO ANULATÓRIA. PROCEDIMENTO ADMINISTRATIVO. MULTA APLICADA PELO PROCON/CE. CRÉDITO NÃO TRIBUTÁRIO. SUSPENSÃO DA EXIGIBILIDADE. SEGURO-GARANTIA COM PRAZO DETERMINADO. INIDONEIDADE DA SEGURANÇA. JURISPRUDÊNCIA DO STJ. RECURSO CONHECIDO E NÃO PROVIDO. 1. O autor, ora agravante busca a suspensão da exigibilidade da multa aplicada pelo Procon em razão da prestação de seguro-garantia. Não se discute, portanto, o fundo de direito da ação, cujo mérito versa sobre a suposta ilegalidade e desproporcionalidade da multa, mas sim a aplicabilidade, por analogia, do art. 151, inciso II, do CPC, para suspender a exigibilidade de crédito não tributário. 2. Delimitada a questão recursal, cumpre destacar que a jurisprudência do STJ, embora vacilante, tem caminhado no sentido de reconhecer o seguro-garantia como caução apta a suspender a exigibilidade de crédito não tributário, se celebrado no valor integral do débito acrescido de trinta por cento, diferentemente dos créditos tributários, em que o depósito integral é a modalidade preferencial. 3. Todavia, ainda de acordo com a jurisprudência do STJ, o seguro-garantia é inidôneo à segurança da execução fiscal se a apólice tem prazo determinado de vigência, pois, com a longa duração de um processo judicial, pode haver o risco de inexistirem efeitos práticos à garantia oferecida, entendimento este também aplicável às ações anulatórias de créditos não tributários. Precedente da Primeira Turma do STJ. 4. No caso em tela, o seguro-garantia foi firmado com prazo determinado de três anos (fls. 508/520 dos autos originais), encontrando-se, no momento, inclusive expirada a vigência da apólice, uma vez que encerrada no dia 14/12/2021. É, portanto, impossível suspender a exigibilidade da dívida em razão da caução oferecida. 5. Decerto, a apólice ou o bilhete, segundo o art. 760 do Código Civil, devem mencionar o início e fim de sua validade e o art. 8º da Circular Susep nº 477/2013, ao tratar da matéria, menciona que a vigência será regulada por prazos. Todavia, nada impedia que as partes estipulassem o prazo do término de vigência coincidindo com o termo (evento futuro e certo) de trânsito em julgado do

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	processo ou ainda que estipulassem renovações automáticas sucessivas, o que não ocorre no caso, pois, segundo a apólice, a alteração da vigência dependeria de requerimento do segurado e aceite pela Seguradora. 6. Agravo de instrumento conhecido e desprovido. (Agravo de Instrumento - 0635211-11.2020.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 05/09/2022, data da publicação:&#160; 05/09/2022) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> EMENTA: AGRAVO INTERNO. PROCESSUAL CIVIL. DECISÃO INTERLOCUTÓRIA EM AGRAVO DE INSTRUMENTO. TUTELA DE URGÊNCIA DEFERIDA. AÇÃO ANULATÓRIA. SUSPENSÃO DE EXIGIBILIDADE DE CRÉDITO NÃO TRIBUTÁRIO MEDIANTE SEGURO GARANTIA. CLÁUSULA DE RENOVAÇÃO AUTOMÁTICA. POSSIBILIDADE. JURISPRUDÊNCIA DO STJ E DO TJCE. PREENCHIMENTO DOS REQUISITOS LEGAIS. RECURSO CONHECIDO E DESPROVIDO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 1. O cerne da controvérsia cinge-se a avaliar a higidez da decisão interlocutória que deferiu a tutela de urgência, determinando a suspensão da exigibilidade da multa administrativa discutida na ação anulatória subjacente, a partir da oferta de seguro garantia. Não se discute, portanto, o fundo de direito da ação, cujo mérito versa sobre a suposta ilegalidade e desproporcionalidade da multa.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 2. A apólice de seguro garantia apresentada em primeiro grau de jurisdição contempla o acréscimo de 30% (trinta por cento), nos termos do entendimento jurisprudencial e do art. 835, §2º, do CPC. O referido instrumento contratual, apesar de ter prazo determinado, contém cláusula com mecanismo de renovação automática/sucessiva, o que denota sua idoneidade. Precedentes do STJ e TJCE. <br /> 3. Não há, portanto, motivos aptos para infirmar a decisão recorrida.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4. Agravo Interno conhecido e desprovido.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> (AGRAVO DE INSTRUMENTO - 3000605-13.2023.8.06.9000, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 27/05/2024) (destaca-se)</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> E ainda, em data recente, no âmbito de outros tribunais: TJ-SP - Agravo de Instrumento: 2115077-86.2024.8.26.0000 São Paulo, Relator: Rubens Rihl, Data de

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	Julgamento: 14/05/2024, 1ª Câmara de Direito Público, Data de Publicação: 14/05/2024; TJ-SP - Agravo de Instrumento: 2044394-24.2024.8.26.0000 Araraquara, Relator: Maria Fernanda de Toledo Rodovalho, Data de Julgamento: 30/04/2024, 2ª Câmara de Direito Público, Data de Publicação: 30/04/2024; TJ-RJ - AGRAVO DE INSTRUMENTO: 0088884-97.2023.8.19.0000 2023002124514, Relator: Des(a). JEAN ALBERT DE SOUZA SAADI, Data de Julgamento: 09/05/2024, OITAVA CAMARA DE DIREITO PUBLICO.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">No concernente ao perigo de dano, consubstancia-se na efetiva cobrança da multa que se discute, bem como de efeitos adversos, advindos da mora, até o deslinde processual. Além do mais, ao final, caso a sanção pecuniária seja tida como devida, seu quantum restará assegurado, propiciando-se à recorrente a oportunidade de discutir a legalidade ou não da multa aplicada sem sofrer tais prejuízos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ante o exposto, conheço do Agravo de Instrumento, para negar-lhe provimento, restando prejudicado o exame do Agravo Interno interposto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.44; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.44; text-align: center; margin-top: 12pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	111
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Acidente de Trânsito
Polo ativo	MARIA DA ESPECTACAO DANTAS DIAS

Processo	3004512-93.2024.8.06.0000
Advogado(s) - Polo ativo	Não informado
Polo passivo	MUNICIPIO DE FORTALEZA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004512-93.2024.8.06.0000
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Processo: 3004512-93.2024.8.06.0000 - Agravo de Instrumento</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravante: Maria da Espectação Dantas Dias</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravado: Município de Fortaleza&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2;

Processo	3004512-93.2024.8.06.0000
	margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ementa: Direito processual civil. Agravo de instrumento em ação de reparação de danos. Decisão interlocutória que indeferiu o pedido de perícia médica. Ausência de fundamentação. Julgamento citra petita. Questões de ordem pública. Decisão agravada anulada de ofício. Recurso prejudicado.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 1. Agravo de Instrumento interposto contra decisão interlocutória que indeferiu o pedido de prova pericial e que restou omissa quanto ao pedido de exibição de documentos médicos.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 2. Consiste em verificar a nulidade da decisão recorrida.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">3. A decisão recorrida indeferiu a prova pericial requerida, sem, contudo, apresentar qualquer motivação ou fundamento para tanto. Com efeito, embora não se exija do julgador manifestação sobre todas as questões suscitadas, é pacífico o entendimento quanto à necessidade de motivação nos pronunciamentos judiciais, ainda que de forma sucinta, com o fim de assegurar a compreensão, bem como o exercício do direito de defesa pelas partes.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">4. Outrossim, vislumbra-se a ocorrência de omissão na decisão atacada, uma vez que esta deixou de se manifestar quanto ao pedido de exibição de documentos, formulado de forma expressa pela parte agravante, incorrendo, pois, em vício processual de atuação citra petita.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">5. <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-

Processo	3004512-93.2024.8.06.0000
	color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Nessa panorama, faz-se necessário reconhecer, de ofício, a nulidade da decisão objurgada, para que o juízo a quo se manifeste acerca de todos os pedidos formulados pela agravante, bem como para que fundamente, ainda que de forma concisa, a negativa do pedido de produção de provas.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 6. Decisão anulada de ofício. Recurso prejudicado.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> _________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Dispositivos relevantes citados: CF/1988, art. 93, inciso IX.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Jurisprudência relevante citada: STF, AI 791292 QO-RG, Rel. Ministro Gilmar Mendes, Tribunal Pleno, j. 23/06/2010; TJSP, AI nº&#160; 2202071-20.2024.8.26.0000, Rel. Rubens Rihl, 1ª Câmara de Direito Público, j. 19/08/2024; TJMG, AI nº 10518071110549001, Rel. Gilson Soares Lemes, 8ª Câmara Cível,&#160; j. 28/09/2017; TJDF, AI nº 0724324-12.2021.8.07.0000, Rel. Ana Cantarino, 5ª Turma Cível, j. 29/09/2021.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em declarar a nulidade da decisão recorrida, de ofício, julgando prejudicado o Agravo de Instrumento interposto, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.7999999999999998; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 2.16; background-

Processo	3004512-93.2024.8.06.0000
	color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; background-color: #ffffff; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de AGRAVO DE INSTRUMENTO interposto por MARIA DA ESPECTAÇÃO DANTAS DIAS contra a decisão interlocutória proferida pelo Juízo da 7ª Vara da Fazenda Pública da Comarca de Fortaleza que, em sede de Ação de Reparação por Danos Morais (processo n.º 0830055-65.2014.8.06.0001) ajuizada em desfavor do MUNICÍPIO DE FORTALEZA, indeferiu a prova pericial requerida (id. 14303870).&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões (id. 14303868), a agravante argumenta, em suma: (i) nulidade da decisão que indeferiu a prova pericial requerida porquanto não foi devidamente fundamentada; (ii) ausência de manifestação sobre as demais provas pleiteadas; (iii) imprescindibilidade das provas demandadas para demonstrar que a autora sofreu os danos alegados em decorrência de erro médico ocorrido durante o procedimento cirúrgico, bem como para estabelecer o nexo causal entre a conduta dos profissionais de saúde e as sequelas apresentadas pela autora. Ao final, pugna pela reforma da decisão interlocutória&#160; recorrida para deferir a produção de prova pericial médica, bem como determinar ao promovido que forneça cópia integral de todo relatório médico da autora, incluindo o boletim do primeiro atendimento realizado, assim como os relatórios e exames pré e pós operatórios, a fim de que haja melhor compreensão das controvérsias que atingem o objeto da lide.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em contrarrazões (id. 15202610), o agravado pugna, preliminarmente, pelo não conhecimento do recurso, com fundamento no art. 1.015 do CPC. No mérito, refuta as razões recursais e pede pelo desprovimento do recurso.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Instada a se manifestar, a Procuradoria Geral de Justiça opinou pelo conhecimento do recurso, deixando de apreciar o mérito da demanda, por entender desnecessária a intervenção do Órgão (id. 15493927).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p> <strong id="docs-internal-guid-9e26b5ff-7fff-4f5b-ced5-

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	71a9603a3885" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Cuida-se, na origem, de Ação de Reparação por Danos Morais ajuizada pela agravante, em desfavor do ente municipal ora agravado, na qual se busca indenização por suposto erro médico, em razão de cirurgia realizada junto ao Hospital Frotinha de Messejana, em maio de 2013.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Após contestação e réplica nos autos, o juízo a quo intimou as partes para que manifestassem interesse acerca da produção de provas. Na oportunidade, a parte autora pugnou pela (i) produção de prova testemunhal, (ii) produção de prova pericial (perícia médica), bem como pela (iii) exibição de documentos médicos que estariam em posse do hospital vinculado à Secretaria de Saúde do Município de Fortaleza (id. 46117915 daqueles autos).&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O magistrado, em decisão de saneamento e de organização do processo, indeferiu o pedido de prova pericial e deferiu a prova testemunhal, deixando de se manifestar, pois, acerca do pedido de exibição dos documentos.&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Nesse cenário, sobressai, de plano, a existência de matéria de ordem pública, que pode ser examinada a qualquer tempo e de ofício por este Tribunal, qual seja, a nulidade da decisão proferida, por ausência de fundamentação e pela omissão quanto a um dos pedidos formulados pela parte (citra petita).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Analisando a decisão recorrida, observa-se que o juízo em primeiro grau indeferiu a prova pericial requerida, sem, contudo, apresentar qualquer motivação ou fundamento para tanto, senão vejamos (id. 96190428 daqueles autos):&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Indefiro, por ora, a prova pericial requerida e defiro a prova testemunhal.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Diante do exposto, tendo em vista o lapso temporal das petição de id: 46117901 e da petição de id: 46117915

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	e dos dias atuais, intimem-se as partes, para informarem, no prazo de 15 dias, quais as testemunhas pretende arrolar, informando sempre que possível, o nome, a profissão, o estado civil, a idade, o número de inscrição no Cadastro de Pessoas Físicas, o número de registro de identidade e o endereço completo da residência e do local de trabalho, nos termos do art. 450 do CPC/15, atentando-se ao art. 357 § 3º e art. 455 caput e parágrafos do CPC/15. (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Embora não se exija do julgador manifestação sobre todas as questões suscitadas, é pacífico o entendimento quanto à necessidade de motivação nos pronunciamentos judiciais, ainda que de forma sucinta, com o fim de assegurar a compreensão, bem como o exercício do direito de defesa pelas partes.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Nesse sentido, o Supremo Tribunal Federal fixou a tese de que "o art. 93, IX, da Constituição Federal, exige que o acórdão ou decisão sejam fundamentados, ainda que sucintamente, sem determinar, contudo, o exame pormenorizado de cada uma das alegações ou provas" (Tema 339 – Repercussão Geral).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A fim de corroborar com o entendimento, colaciono julgado do Tribunal de Justiça do Estado de São Paulo, acerca da necessidade de fundamentação em decisão que indefere o pedido de produção de provas. Vejamos:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">AGRAVO DE INSTRUMENTO - IMPROBIDADE ADMINISTRATIVA – PRODUÇÃO DE PROVAS – Irresignação da parte requerida em face da r. decisão de primeiro grau que indeferiu pedido de produção de provas testemunhal e pericial contábil - Decisão que deve ser anulada, por ausência de fundamentação - Ofensa aos arts. 93, inciso IX, da Constituição Federal, e 370 do Código de Processo Civil - Impossibilidade de exame da matéria ventilada, sob pena de supressão de um grau de jurisdição - Precedentes desta E. Corte Bandeirante e desta C. Câmara de Direito Público – Decisão anulada – RECURSO PREJUDICADO.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant:

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	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(TJ-SP - Agravo de Instrumento: 22020712020248260000 Sorocaba, Relator: Rubens Rihl, Data de Julgamento: 19/08/2024, 1ª Câmara de Direito Público, Data de Publicação: 19/08/2024) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Outrossim, vislumbra-se omissão na decisão objurgada, uma vez que esta deixou de se manifestar quanto ao pedido de exibição de documentos, formulado de forma expressa pela parte agravante, incorrendo, pois, em vício processual de julgamento citra petita.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Acerca da necessidade de cassação de decisão citra petita, trago à baila precedentes dos tribunais pátrios:&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">AGRAVO DE INSTRUMENTO. DIREITO PROCESSUAL CIVIL. EXCEÇÃO DE PRÉ-EXECUTIVIDADE. PRELIMINAR DE OFÍCIO. JULGAMENTO CITRA PETITA. CASSAÇÃO DA DECISÃO INTERLOCUTÓRIA. É citra petita a decisão que não aborda todos os temas e pedidos feitos pelas partes. Havendo julgamento aquém do pedido, necessária a cassação da decisão interlocutória e o retorno dos autos à comarca de origem, para que outra seja proferida, sendo vedado a esta instância manifestar-se sobre matéria aduzida nos autos e que não foi analisada pelo magistrado singular, sob pena de supressão de instância. Recurso conhecido, Decisão cassada.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (TJ-MG - AI: 10518071110549001 MG, Relator: Gilson Soares Lemes, Data de Julgamento: 28/09/2017, Câmaras Cíveis / 8ª CÂMARA CÍVEL, Data de Publicação: 09/10/2017) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">AGRAVO DE INSTRUMENTO. DECISÃO CITRA PETITA. NULIDADE. NECESSIDADE DE NOVA DECISÃO. 1. É nula a decisão interlocutória citra petita, que deixa de analisar a totalidade dos pedidos da parte. 2. Reconhecida a nulidade da decisão agravada, necessário se faz a remessa da questão de volta ao Juízo de origem para que se manifeste quanto à integralidade dos pedidos da parte. 3. Agravo de instrumento conhecido e provido.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif;

Processo	3004512-93.2024.8.06.0000
	color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(TJ-DF 07243241220218070000 DF 0724324-12.2021.8.07.0000, Relator: ANA CANTARINO, Data de Julgamento: 29/09/2021, 5ª Turma Cível, Data de Publicação: 11/10/2021) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /></p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Nessa panorama, faz-se necessário reconhecer, de ofício, a nulidade da decisão objurgada, para que o juízo a quo se manifeste acerca de todos os pedidos formulados pela agravante, bem como para que fundamente, ainda que de forma concisa, a negativa do pedido de produção de provas.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, declaro, de ofício, a nulidade da decisão proferida pelo juízo a quo, por ausência de fundamentação e por julgamento citra petita, restando prejudicado o exame do Agravo de Instrumento interposto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">É como voto.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

Processo	3004512-93.2024.8.06.0000
	baseline; white-space: pre-wrap;">Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	0008880-50.2015.8.06.0086
Número de ordem	112
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Perdas e Danos
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	Isaac Sabino Lopes
Advogado(s) - Polo passivo	MYKAEL ARRUDA AZEVEDO - (CE27474-A) EDSON MONTEIRO JORGE MAIA - (CE29910-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0008880-50.2015.8.06.0086
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> </p>" alt="" width="73" height="100" /></p>

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	em exame: </p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> 1. A pelação cível interposta contra sentença de procedência proferida pelo juízo da 2ª Vara da Comarca de Horizonte no âmbito de Ação Ordinária de Indenização por Danos Morais.</p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> <strong style="mso-bidi-font-weight:normal"> II. Questão em discussão: </p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> 2. Analisar conduta dos agentes públicos observaram os princípios da legalidade, proporcionalidade e publicidade.</p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> <strong style="mso-bidi-font-weight:normal"> III. Razões de decidir: </p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> 3. Em caso de apreensão indevida, o fundamento indenizatório da responsabilidade do Estado deve ser enfocado sobre o prisma de que a entidade estatal assume o dever de respeitar, integralmente, os direitos subjetivos constitucionais assegurados ao cidadão, especialmente, o de ir e vir.</p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> 4. Demonstrada a conduta abusiva e excessiva dos policiais envolvidos na operação que visava prender assaltantes de banco, sobretudo por inexistir registro de que o autor teria sido conduzido à Delegacia para investigação, como se espera dos agentes públicos, e o Estado do Ceará não conseguiu comprovar a ocorrência de excludente de responsabilidade, apesar de alegar genericamente.</p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> 5. No que tange ao valor fixado na origem, tenho que assiste razão ao ente público, devendo ser reduzido o quantum indenizatório ao patamar de R$ 5.000,00 (cinco mil reais), por se mostrar razoável e proporcional ao dano sofrido.</p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> <strong style="mso-bidi-font-weight:normal"> IV. Dispositivo: </p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> 6. Recurso do Estado do Ceará conhecido e parcialmente provido.</p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%"> ________________</p><p class="MsoNormal">Dispositivos relevantes citados: CF/1988, art. 37, § 6º; CC/2002, art. 43.</p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%">&#160;</p><p class="EmentadoAcrdo" style="text-align:justify;line-height:150%">&#160;</p><p class="MsoNormal" style="page-break-before:always;mso-hyphenate:auto">&#160;</p><p class="EmentadoAcrdo" style="margin-bottom:5.65pt;text-align:center;line-height:150%;tab-stops:515.0pt" align="center"> <strong style="mso-bidi-font-weight:normal"> ACÓRDÃO </p><p class="Standard" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.55pt;line-height:150%"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso de apelação para dar-lhe parcial provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="EmentadoAcrdo" style="margin-bottom:17.0pt;text-align:justify;text-indent:42.55pt;line-height:150%"> Fortaleza, data informada pelo sistema.</p><p class="Standard" style="text-align:center" align="center"> &#160;</p><p class="Standard" style="text-align:center" align="center"> <strong style="mso-bidi-font-weight: normal"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="Standard" style="text-align:center" align="center"> <strong

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	style="mso-bidi-font-weight: normal"> Relator </p><p class="MsoNormal" style="text-align:center;page-break-before:always;mso-hyphenate:auto" align="center"> <strong style="mso-bidi-font-weight:normal"> RELATÓRIO </p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto"> Tem-se apelação cível interposta contra sentença de procedência proferida pelo juízo da 2ª Vara da Comarca de Horizonte no âmbito de ação ordinária de reparação de danos.</p><p class="MsoNormal" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.55pt;line-height:150%;mso-hyphenate:auto;text-autospace:none;mso-vertical-align-alt:auto"> Petição inicial: narra o autor que foi detido e extraído do interior de agência bancária algemado por policiais à paisana e levado para local ermo sob ameaças e xingamentos, possivelmente confundido com assaltante de banco. Acrescenta que sofreu constrangimento ilegal e tortura psicológica por mais de 2 horas, quando foi liberado pelo Delegado responsável pela operação após identificar o equívoco na apreensão. Requer a condenação do Estado do Ceará no pagamento de indenização por danos morais no valor de R$ 100.000,00 (cem mil reais).</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto"> Contestação: argui excludente da responsabilidade estatal, adoção da teoria do risco, conduta pautada no estrito cumprimento do dever legal, inexistência de prova de suposta tortura. Ao final, requer a improcedência do pedido.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto"> Sentença : o juízo da 2ª Vara da Comarca de Horizonte julgou procedente o pedido e condenou o Estado do Ceará ao pagamento de indenização por danos morais no valor de R$ 8.000,00 (oito mil reais).</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto"> Razões recursais : alega que o Boletim de Ocorrência não constitui prova hábil a corroborar com as alegações do apelado; que “não há, salvo, a afirmação do apelado, nenhuma prova ou elemento capaz de levar à conclusão de que, de fato, houve excesso praticado pelos policiais que representam o Estado”; que os policiais estavam cumprindo com o seu dever legal, pois agiram sob a suspeita de assalto à agência bancária; inexistência de dano moral a ser indenizado.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto"> Contrarrazões : pugna pela manutenção da sentença de primeiro grau.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto"> Após vista dos autos, o membro do <em style="mso-bidi-font-style:normal">Parquet deixou transcorrer o prazo <em style="mso-bidi-font-style:normal">in albis.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.8pt;line-height:150%;mso-hyphenate:auto"> Vieram os autos conclusos.</p><p class="Standard" style="margin-bottom:6.0pt;text-align:justify;text-indent:42.5pt;line-height:150%;mso-hyphenate:auto"> É o relatório, no essencial.</p><p class="Standard"

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	style="margin-bottom:17.0pt;text-align:center;line-height:150%;page-break-before:always" align="center"> <strong style="mso-bidi-font-weight:normal"> VOTO </p><p class="MsoNormal" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%;text-autospace:none"> Inicialmente, no que se refere ao juízo de admissibilidade, analisando os pressupostos processuais recursais necessários, tenho que os requisitos intrínsecos (cabimento, interesse e legitimidade, inexistência de súmula impeditiva) e extrínsecos (tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também, os específicos, descritos no art. 1.010 do CPC/2015 <!--[if !supportFootnotes]--> [1]<!--[endif]--> , motivo pelo qual conheço do apelo.</p><p class="MsoNormal" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%;text-autospace:none"> Conforme brevemente relatado, narra o autor que foi detido e extraído do interior de agência bancária algemado por policiais à paisana e levado para local ermo sob ameaças e xingamentos, possivelmente confundido com assaltante de banco. Acrescenta que sofreu constrangimento ilegal e tortura psicológica por mais de 2 horas, quando foi liberado pelo Delegado responsável pela operação após identificar o equívoco na apreensão.</p><p class="MsoNormal" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%;text-autospace:none"> No provimento final de mérito, o juízo <em style="mso-bidi-font-style:normal">a quo reconheceu a responsabilidade civil e condenou o Estado do Ceará ao pagamento de indenização no valor de R$ 8.000,00 (oito mil reais).</p><p class="MsoNormal" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%;text-autospace:none"> Pois bem.</p><p class="MsoNormal" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%;mso-hyphenate:auto;text-autospace:none;mso-vertical-align-alt:auto"> A responsabilidade estatal é, regra geral, objetiva, e tem previsão constitucional, estabelecendo o texto constitucional que:</p><p class="Standard" style="margin-left:4.0cm;text-align:justify"> Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios da legalidade, impessoalidade, moralidade, publicidade e eficiência e, também, o seguinte:</p><p class="Standard" style="margin-left:4.0cm;text-align:justify"> (...)</p><p class="Standard" style="margin-top:0cm;margin-right:0cm;margin-bottom:6.0pt;margin-left:4.0cm;text-align:justify"> §6º. As pessoas jurídicas de direito público e as de direito privado prestadoras de serviços públicos responderão pelos danos que seus agentes, nessa qualidade, causarem a terceiros, assegurado o direito de regresso contra o responsável nos casos de dolo ou culpa” .</p><p class="MsoNormal" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%;mso-hyphenate:auto;text-autospace:none;mso-vertical-align-alt:auto"> O Código Civil de 2002, com tendência a expandir as hipóteses de responsabilidade objetiva, corrobora a previsão constitucional em seu art. 43; <em style="mso-bidi-font-style:normal">in verbis:</p><p class="MsoNormal" style="margin-top:0cm;margin-right:0cm;margin-bottom:5.65pt;margin-left:4.0cm;text-align:justify;line-height:normal;mso-hyphenate:auto;text-autospace:none;mso-vertical-align-alt:auto"> CC/2002, art. 43. As pessoas jurídicas de

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direito público interno são civilmente responsáveis por atos dos seus agentes que nessa qualidade causem danos a terceiros, ressalvado direito regressivo contra os causadores do dano, se houver, por parte destes, culpa ou dolo.</p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%"> Em caso de apreensão indevida, o fundamento indenizatório da responsabilidade do Estado deve ser enfocado sobre o prisma de que a entidade estatal assume o dever de respeitar, integralmente, os direitos subjetivos constitucionais assegurados ao cidadão, especialmente, o de ir e vir. O Estado, ao conduzir ou apreender indevidamente o indivíduo, atenta contra os direitos humanos e provoca dano moral ao paciente, com reflexos em suas atividades profissionais e sociais.</p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%"> No caso sob reexame, milita em favor do autor: i) Boletim de Ocorrência nº 206-773/2015, que apesar de se tratar de prova unilateral, não pode ser simplesmente descartado, devendo ser analisado consoante os demais elementos de prova colacionados aos autos; ii) matéria jornalística impugnada pela parte contrária; iii) inexistência de registro de que o autor foi levado para Delegacia de Roubos e Furtos para averiguação, como determina o rito de uma investigação oficial.</p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%"> No documento de id 14349293, o autor faz o seguinte relato:</p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%"> <span style="font-size:13.0pt;line-height:150%; font-family:&quot;Arial&quot;,sans-serif">   <img

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UVORK5CYII=" alt="" /> </p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%">&#160;</p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%"> A matéria jornalística cuja cópia foi juntada aos autos, apesar de impugnada pela parte ré, evidencia que a notícia diz respeito ao autor, inclusive contendo foto sua, uma vez que a data e hora coincidem com aquelas narradas no Boletim de Ocorrência nº 206-773/2015, qual seja sexta-feira, 6 de fevereiro de 2015, às 10h:30m:</p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%"> <span style="font-size:13.0pt;line-height:150%; font-family:&quot;Arial&quot;,sans-serif">   <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAiQAAAFDCAIAAACFiIJY
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</p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%"> Outra matéria jornalística juntada pelo ente réu corrobora a narrativa do autor e não pode servir para justificar a conduta dos policiais civis e militares, apesar do sucesso da operação que prendeu uma quadrilha que tinha o objetivo de roubar malotes contendo valores em agência bancária do Município de Pacajus; senão vejamos:</p><p class="Textbody" style="margin-bottom:5.65pt;text-align:justify;text-indent:42.5pt;line-height:150%"> <span style="font-size:13.0pt;line-height:150%; font-family:&quot;Arial&quot;,sans-serif"> <img src="data:image/png;base64,

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	font-family:&quot;Times New Roman&quot;,serif;mso-fareast-font-family:&quot;Times New Roman&quot;; color:black;mso-font-kerning:1.5pt;mso-ansi-language:PT-BR;mso-fareast-language: ZH-CN;mso-bidi-language:AR-SA">[1] <!--[endif]--> Art. 1.010. A apelação, interposta por petição dirigida ao juízo de primeiro grau, conterá:</p> <p class="MsoNormal" style="margin-bottom:0cm;margin-bottom:.0001pt;text-align: justify;line-height:normal;mso-hyphenate:auto;mso-vertical-align-alt:auto"> I - os nomes e a qualificação das partes; </p> <p class="MsoNormal" style="margin-bottom:0cm;margin-bottom:.0001pt;text-align: justify;line-height:normal;mso-hyphenate:auto;mso-vertical-align-alt:auto"> II - a exposição do fato e do direito; </p> <p class="MsoNormal" style="margin-bottom:0cm;margin-bottom:.0001pt;text-align: justify;line-height:normal;mso-hyphenate:auto;mso-vertical-align-alt:auto"> III - as razões do pedido de reforma ou de decretação de nulidade; </p> <p class="MsoNormal" style="margin-bottom:0cm;margin-bottom:.0001pt;text-align: justify;line-height:normal;mso-hyphenate:auto;mso-vertical-align-alt:auto"> IV - o pedido de nova decisão. </p></div></div><p>&#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	113
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adicional por Tempo de Serviço
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	MANUELITO MELO MAGALHAES - (CE41127-A) ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A)
Polo passivo	ERICA KARISNA OLIVEIRA MAGALHAES
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	SENTENÇA MANTIDA.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> I. Caso em exame </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 1. Apelação cível interposta pelo Município de Santa Quitéria em face de sentença prolatada pelo Juízo da 2ª Vara Cível da Comarca de Santa Quitéria, que julgou parcialmente procedente ação de cobrança c/c obrigação de fazer, para condenar o ente público à implementação do anuênio em favor da autora, com fundamento no Estatuto dos Servidores, incidente sobre o vencimento-base, além do pagamento das parcelas vencidas, respeitada a prescrição quinquenal.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> II. Questão em discussão </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 2. A questão em discussão consiste em analisar eventual ocorrência de prescrição e decadência do direito da autora à implantação de adicional por tempo de serviço (anuênio).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> III. Razões de decidir </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 3. No que concerne à prescrição, verifica-se que o Juízo a quo agiu acertadamente ao reconhecer, de forma expressa, a prescrição dos débitos anteriores aos 05 (cinco) anos contados do ajuizamento da ação judicial (13/05/2024), nos moldes da Súmula 85 do STJ (“Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação”).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 4. Diferente do instituto da prescrição, que extingue a ação, a decadência extingue o próprio direito, sendo a perda da possibilidade de exercer o direito potestativo (aquele que decorre somente da vontade do titular), porque seu titular não o fez em determinado lapso temporal.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 5. No caso concreto, a promovente busca a implementação do anuênio, além das parcelas vencidas e vincendas não prescritas, com fulcro no art. 68 da Lei Municipal nº 081-A/93, valores não adimplidos pelo promovido. Consoante entendimento do STJ, não se opera o instituto da decadência nos casos em que se busca a implantação de reajuste de remuneração e não tiver sido negado o próprio direito, o que ocorre na espécie.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 5. Assim, a existência de ato omissivo continuado (não implantação do anuênio), envolvendo obrigação de trato sucessivo, faz com que se renove mês a mês o prazo para a interposição da ação, como na hipótese dos autos, não havendo falar, pois, em decadência.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 6. Portanto, deve ser afastada a alegação de decadência, incidindo apenas, no caso em tela, a prescrição quinquenal relativa às parcelas vencidas anteriormente ao quinquênio que antecedeu a data da propositura do feito, como já consignado pelo Magistrado de origem.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> IV. Dispositivo e tese </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> 7. Apelação cível conhecida e desprovida. Sentença mantida.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Tese de julgamento: “A existência de ato omissivo continuado (não implantação do anuênio), envolvendo obrigação de trato sucessivo, faz com que se renove mês a mês o prazo para a interposição da ação, como na hipótese dos autos, não havendo falar, pois, em decadência, incidindo apenas, no caso em tela, a prescrição quinquenal relativa às parcelas vencidas anteriormente ao quinquênio que antecedeu a data da propositura do feito, como já consignado pelo Magistrado de origem”.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 1.0cm; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 1.0cm; line-height: 200%;"> <span

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	style="font-size: medium;"> Dispositivos relevantes citados: art. 54 da Lei nº 9.784/1999. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 1.0cm; line-height: 200%;"> Jurisprudência relevante citada: Súmula 85 do STJ; AgRg no REsp 1.320.586/AM, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, DJe 3/10/2012. </p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em&#160;conhecer da apelação cível para negar-lhe provimento , nos termos do voto do relator.</p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p class="TextbodyWW" style="margin-top: .05pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Trata-se de apelação cível interposta pelo Município de Santa Quitéria em face de sentença prolatada pelo Juízo da 2ª Vara Cível da Comarca de Santa Quitéria.</p><p class="TextbodyWW" style="margin-top: .15pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Ação (Id. 14377197): de cobrança c/c obrigação de fazer ajuizada por Erika Karisma Oliveira Magalhães contra o Município de Santa Quitéria, objetivando a implementação na remuneração da autora do adicional por tempo de serviço no percentual de 1% (um por cento) por ano de serviço público efetivo, na forma de anuênios (art. 68 da Lei Complementar Municipal nº 81-A/1993), com base na remuneração, inclusive sobre o pagamento do décimo terceiro, férias e 1/3 de férias, além do pagamento das parcelas vencidas e vincendas até a efetiva implementação.</p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 6.1pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Sentença (Id. 14377230): proferida nos seguintes termos: JULGO PARCIALMENTE PROCEDENTE a pretensão inaugural, com análise do mérito, na forma do art. 487, I, do CPC, para o fim de condenar a municipalidade requerida a implementar na remuneração da parte autora e efetuar o pagamento do adicional por tempo de serviço à razão de 1% (um por cento) por ano de serviço público efetivo, NA FORMA DE ANUÊNIOS, previsto no art. 68 da Lei Municipal nº 081-A/93, tendo por base de cálculo o vencimento-base, com os reflexos constitucionais, quais sejam, férias, terço constitucional e 13º salário; e ao pagamento da diferença havida entre os quinquênios que vêm sendo pagos com os valores que serão apurados a título de anuênios, parcelas vencidas e vincendas, até a implementação na remuneração da parte&#160;autora, respeitado o prazo da prescrição quinquenal, com correção monetária, devendo os valores ser corrigidos pelo IPCA-E, desde a data em que os pagamentos deveriam ter sido feitos, e acrescidos de juros de mora no percentual estabelecido para a remuneração da caderneta de poupança desde a citação nos termos do art. 1º-F da Lei nº 9.494/97 (Tema 905, STJ), para as parcelas que se venceram anteriormente ao ajuizamento da ação, e desde a data em que se tornaram

exequíveis, para as parcelas vencidas/vincendas em data posterior ao ajuizamento da ação (juros decrescentes), observada, contudo, a incidência do art. 3º da Emenda Constitucional nº 113/2021, a partir de sua publicação, em 09/12/2021, segundo a qual, para fins de atualização monetária e juros, haverá a incidência, uma única vez, até o efetivo pagamento, do índice da taxa referencial do Sistema Especial de Liquidação e de Custódia (SELIC), acumulado mensalmente. Tendo em vista que o reconhecimento da quantia devida depende tão somente de cálculos aritméticos, dispensável a etapa de liquidação de sentença, cabendo ao credor apresentar na etapa de cumprimento a conta respectiva, nos termos do art. 509, § 2º, c/c art. 524, ambos do CPC. Condeno a parte requerida ao pagamento dos honorários advocatícios sucumbenciais à contraparte, entretanto, reservo-me quanto ao arbitramento do percentual apenas para a fase de liquidação, postergando para tal momento a determinação do quantum, nos termos do art. 85, § 4º, II, do CPC. Deixo de condenar o demandado ao pagamento de custas processuais ante a isenção legal do ente público concedida no art. 5º, I, da Lei estadual nº. 16.132/2016. Conquanto ilíquida a sentença, de plano se observa que o valor a ser alcançado nos cálculos aritméticos do credor se distancia em muito do teto inserido no art. 496, § 3º, III, do CPC, razão pela qual deixo de reconhecer a necessidade de remessa necessária”.</p><p class="TextbodyWW" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Razões recursais (Id. 14377233): alega o ente público, em síntese, a prescrição das diferenças vencidas há mais de cinco anos, e a ocorrência de decadência, argumentando que a demandante não obteve êxito em demonstrar nos autos o exercício de seu direito administrativo de requerer o pedido pleiteado durante o período em que teve contrato ativo com o ente público, transcorrendo o prazo decadencial sem a devida exercitação do direito, pelo que requer a reforma da sentença para julgar a ação improcedente.</p><p class="StandardWW" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Contrarrazões (Id. 14377235): pugna pelo desprovimento do recurso.</p><p class="StandardWW" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Parecer da Procuradoria Geral de Justiça (Id. 15144552): deixou de se manifestar acerca do mérito, por entender ausente o interesse público na demanda.</p><p class="StandardWW" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO   </p><p style="text-align: center;">&#160;</p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Presentes os requisitos de admissibilidade, conheço do recurso de apelação.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Conforme relatado, cinge-se a controvérsia em analisar a sentença que julgou parcialmente procedente ação de cobrança c/c obrigação de fazer ajuizada por Erika Karisma Oliveira Magalhães, professora, contra o Município de Santa Quitéria, condenando o ente público à implementação do anuênio em favor da autora, com fundamento no Estatuto dos Servidores, incidente sobre o vencimento-base, além do pagamento das parcelas vencidas, respeitada a prescrição quinquenal.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> A sentença deve ser mantida, conforme será explicitado a seguir.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> No que concerne à prescrição, verifica-se que o Juízo a quo agiu acertadamente ao reconhecer, de forma expressa, a prescrição dos débitos anteriores aos 05 (cinco) anos contados do ajuizamento da ação judicial (13/05/2024), nos moldes da Súmula 85 do STJ (“Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação”).</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Alega o ente público recorrente, ainda, a ocorrência de decadência, sob o argumento de que a recorrida não comprovou nos autos o exercício do seu direito de

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	requerer a vantagem no período legal, fundamentando o pedido de reconhecimento do instituto da decadência na Súmula nº 633 do STJ e no art. 54 da Lei nº 9.784/1999, de seguinte teor, in verbis:</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Súmula 633, STJ: A Lei n. 9.784/1999, especialmente no que diz respeito ao prazo decadencial para a revisão de atos administrativos no âmbito da Administração Pública federal, pode ser aplicada, de forma subsidiária, aos estados e municípios, se inexistente norma local e específica que regule a matéria. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Lei 9.784/1999 &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Art. 54. O direito da Administração de anular os atos administrativos de que decorram efeitos favoráveis para os destinatários decai em cinco anos, contados da data em que foram praticados, salvo comprovada má-fé. &#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;">&#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Todavia, não assiste razão ao insurgente.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Diferente do instituto da prescrição, que extingue a ação, a decadência extingue o próprio direito, sendo a perda da possibilidade de exercer o direito potestativo (aquele que decorre somente da vontade do titular), porque seu titular não o fez em determinado lapso temporal.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> No caso concreto, a promovente busca a implementação do anuênio, além das parcelas vencidas e vincendas não prescritas, com fulcro no art. 68 da Lei Municipal nº 081-A/93, valores não adimplidos pelo promovido.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Consoante entendimento sedimentado do Superior Tribunal de Justiça, não se opera o instituto da decadência nos casos em que se busca a implantação de reajuste de remuneração e não tiver sido negado o próprio direito, o que ocorre na espécie.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Neste sentido, confira-se precedente do Superior Tribunal de Justiça sobre o tema (grifou-se):</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> PROCESSUAL CIVIL E ADMINISTRATIVO. MANDADO DE SEGURANÇA. SERVIDOR PÚBLICO ESTADUAL. ADICIONAL POR TEMPO DE SERVIÇO. ATO OMISSIVO CONTINUADO. OBRIGAÇÃO DE TRATO SUCESSIVO. DECADÊNCIA. NÃOOCORRÊNCIA. 1. A jurisprudência do STJ é firme no sentido de que, em se cuidando de ato omissivo continuado, que envolve obrigação de trato sucessivo, o prazo para o ajuizamento da ação mandamental renova-se mês a mês, não havendo falar em decadência, tampouco em prescrição. Precedentes: REsp 1.273.946/AM, Rel. Ministro Castro Meira, Segunda Turma, DJe 12.3.2012; e REsp 1.188.311/AM, Rel. Ministro Mauro Campbell Marques, Segunda Turma, DJe 13.10.2011. 2. Agravo Regimental não provido. (AgRg no REsp 1.320.586/AM, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, DJe 3/10/2012) &#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;">&#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Assim, a existência de ato omissivo continuado (não implantação do anuênio), envolvendo obrigação de trato sucessivo, faz com que se renove mês a mês o prazo para a interposição da ação, como na hipótese dos autos, não havendo falar, pois, em decadência.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Portanto, deve ser afastada a alegação de decadência, incidindo apenas, no caso em tela, a prescrição quinquenal relativa às parcelas vencidas anteriormente ao quinquênio que antecedeu a data da propositura do

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	feito, como já consignado pelo Magistrado de origem.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Diante do exposto, conheço da apelação para negar-lhe provimento, mantendo a sentença recorrida.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> Tendo em vista a sucumbência do recorrente também nesta segunda instância, a majoração dos honorários advocatícios (art. 85, §11, CPC) deve ser considerada quando da fixação do respectivo percentual na fase de liquidação, nos moldes do art. 85, §4º, II, do CPC.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> &#160; É como voto.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 3.0cm; line-height: 200%;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	114
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Piso Salarial
Polo ativo	SINDICATO DOS ODONTOLOGISTAS DO ESTADO DO CEARA
Advogado(s) - Polo ativo	VANESSA FONTENELE DOS SANTOS - (CE27362-A) VICTOR AGUIAR CIARLINI - (CE36408-A) SERGIO ELLERY SANTOS GIRAO - (CE15154-A) JOSBERTO DOS SANTOS GARCEZ - (CE15672-A) SABRINA RODRIGUES GIRAO NOGUEIRA ELLERY - (CE17055-A)
Polo passivo	MUNICIPIO DE BREJO SANTO
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Processo: 0200420-51.2022.8.06.0052 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Apelante: Sindicato dos Odontologistas do Estado do Ceará</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Apelado: Município de Brejo Santo</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-

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	bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> EMENTA: DIREITO CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO CIVIL PÚBLICA AJUIZADA PELO SINDICATO DOS ODONTOLOGISTAS DO ESTADO DO CEARÁ (SINDIODONTO). SERVIDORES PÚBLICOS MUNICIPAIS OCUPANTES DO CARGO DE CIRURGIÃO-DENTISTA. PISO SALARIAL E CARGA HORÁRIA DA CLASSE PROFISSIONAL. APLICAÇÃO DA LEI FEDERAL Nº 3.999/1961 AOS SERVIDORES ESTATUTÁRIOS DO MUNICÍPIO DE BREJO SANTO. IMPOSSIBILIDADE. PRECEDENTES DO STF E DO TJCE. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA ESCORREITA.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.44; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer da Apelação Cível para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> <br /></p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo SINDICATO DOS ODONTOLOGISTAS DO ESTADO DO CEARÁ –

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	SINDIODONTO em face da sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Brejo Santos que, em sede de Ação Civil Pública ajuizada pelo recorrente em desfavor do MUNICÍPIO DE BREJO SANTO, julgou improcedente a pretensão autoral, extinguindo o feito com resolução do mérito, nos termos do art. 487, inciso I, do CPC (id. 14387715).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Em suas razões (id. 14387721), o recorrente argumenta, em suma, que a jurisprudência do Supremo Tribunal Federal é firme no sentido de que compete à União legislar privativamente sobre normas que estabeleçam condições para o exercício profissional, de modo o ente público municipal deve cumprir o piso salarial profissional previsto em lei federal. Ao final, pugna pela reforma da sentença, a fim de que seja reconhecida a procedência dos pleitos exordiais e, consequentemente, seja compelido o Município Apelado ao cumprimento dos ditames da Lei nº 3.999/1961.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em contrarrazões (id. 14387724), o Município de Brejo Santo refuta as teses recursais e pede para que seja negado provimento ao recurso interposto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Instada a se manifestar, a Procuradoria Geral de Justiça opinou pelo conhecimento e desprovimento do recurso (id. 15551742).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p> <strong id="docs-internal-guid-216c8638-7fff-b541-9820-610de226ee80" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da Apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Cinge-se a controvérsia em aferir o direito dos servidores estatutários do Município de Brejo Santo, ocupantes do cargo de cirurgião-dentista, a laborarem por 20 horas semanais, com salário base não inferior a 03 (três) salários-mínimos, consoante previsto na Lei Federal nº 3.999/1961.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Já adianto que a insurgência recursal não merece prosperar.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Isto porque a Lei Federal nº 3.999/1961, ora invocada pelo recorrente, estabelece, de forma expressa, que o piso salarial fixado em lei refere-se apenas aos profissionais que exercem seus serviços na iniciativa privada, nos seguintes termos:</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-indent: -1.4210854715202004e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 1.4210854715202004e-14pt;" dir="ltr">&#160;</p><p style="line-

Processo	0200420-51.2022.8.06.0052
	height: 1.2; margin-left: 113.38582677165356pt; text-indent: -1.4210854715202004e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 1.4210854715202004e-14pt;" dir="ltr"> Art. 4º É salário-mínimo dos médicos a remuneração mínima, permitida por lei, pelos serviços profissionais prestados por médicos, com relação de emprego, a pessoas físicas ou jurídicas de direito privado.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-indent: -1.4210854715202004e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 1.4210854715202004e-14pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-indent: -1.4210854715202004e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 1.4210854715202004e-14pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A remuneração dos servidores públicos, por sua vez, somente poderá ser fixada ou alterada por lei específica, restando vedada a vinculação ou equiparação de quaisquer espécies remuneratórias, a teor do previsto nos incisos X e XIII do art. 37 da Constituição Federal ^{ 1 } .</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Nessa perspectiva, deverá ser observada a legislação municipal específica, vedando-se qualquer tipo de vinculação ou equiparação da remuneração dos servidores estatutários municipais com o piso salarial previsto na Lei Federal nº 3.999/1961, sob pena de ofensa ao pacto federativo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A fim de corroborar com o exposto, colaciono o entendimento do Supremo Tribunal Federal acerca da temática:</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA Agravo regimental em recurso extraordinário. Constitucional e Administrativo. Ação civil pública. Concurso público municipal. Cirurgião-dentista. Remuneração inicial do cargo prevista no edital. Vinculação de vencimentos de servidores municipais a piso salarial profissional. Impossibilidade. Precedentes. 1. É pacífico na Suprema Corte o "não cabimento de qualquer espécie de vinculação da remuneração de servidores públicos, repelindo, assim, a vinculação da remuneração de servidores do Estado a fatores alheios à sua vontade e ao seu controle; seja às variações de índices de correção editados pela União; seja aos pisos salariais profissionais", conforme consignado pelo Plenário do STF no acórdão da ADI nº 668/AL, de minha relatoria. 2. Agravo

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	regimental não provido, com imposição de multa de 1% (um por cento) do valor atualizado da causa (art. 1.021, § 4º, do CPC). 3. Inaplicável o art. 85, § 11, do CPC, haja vista tratar-se, na origem, de ação civil pública (art. 18 da Lei nº 7.347/85).</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (RE 1361341 AgR, Relator(a): DIAS TOFFOLI, Primeira Turma, julgado em 27-06-2022, PROCESSO ELETRÔNICO DJe-157&#160; DIVULG 08-08-2022&#160; PUBLIC 09-08-2022) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: AGRAVO REGIMENTAL NO RECURSO EXTRAORDINÁRIO. ADMINISTRATIVO. SERVIDOR PÚBLICO ESTADUAL. TÉCNICO EM RADIOLOGIA. APLICAÇÃO DO PISO SALARIAL FIXADO PELA LEI FEDERAL N. 7.394/1985. VINCULAÇÃO DE VENCIMENTOS DE SERVIDORES ESTADUAIS A PISO SALARIAL PROFISSIONAL: IMPOSSIBILIDADE. PRECEDENTES. AGRAVO REGIMENTAL DESPROVIDO, COM APLICAÇÃO DE MULTA DE 1% SOBRE O VALOR ATUALIZADO DA CAUSA, SE UNÂNIME A VOTAÇÃO.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (RE 1405548 AgR, Relator(a): CÁRMEN LÚCIA, Primeira Turma, julgado em 22-02-2023, PROCESSO ELETRÔNICO DJe-s/n&#160; DIVULG 23-02-2023&#160; PUBLIC 24-02-2023) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: AGRAVO INTERNO. RECURSO EXTRAORDINÁRIO. ACÓRDÃO RECORRIDO EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STF. 1. Recurso Extraordinário interposto em face de acórdão proferido pelo Tribunal de Justiça do Estado da Bahia que denegou a segurança e reconheceu a impossibilidade de aplicação do piso salarial fixado pela Lei Federal 7.394/85 ao impetrante, técnico em radiologia servidor público estatutário do referido Estado, em respeito à autonomia político-administrativa dos entes federativos. 2. A jurisprudência desta CORTE é no sentido de ser indevida a vinculação de vencimentos de servidores públicos estaduais a piso salarial profissional da União. 3. Agravo Interno a que se nega provimento. Na forma do art. 1.021, §§ 4º e 5º, do Código de Processo Civil de 2015, em caso de votação unânime, condeno o agravante a pagar ao agravado multa de um por cento do valor atualizado da causa, cujo depósito prévio passa a ser condição para a interposição de qualquer outro recurso (à exceção da Fazenda Pública e do beneficiário de gratuidade da justiça, que farão o pagamento ao final).</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (RE 1339419 AgR, Relator(a): ALEXANDRE DE MORAES, Primeira Turma, julgado em 04-10-2021, PROCESSO ELETRÔNICO DJe-204&#160; DIVULG 13-10-2021&#160; PUBLIC 14-10-2021) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height:

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	1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Nesse mesmo sentido, vem se manifestando as Câmaras de Direito Público deste e. Tribunal de Justiça em demandas análogas à discutida nos presentes autos. Vejamos:&#160;&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: ADMINISTRATIVO. CONSTITUCIONAL. APELAÇÃO CÍVEL EM AÇÃO DE OBRIGAÇÃO DE FAZER C/C COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL. DENTISTA. PISO SALARIAL. OBSERVÂNCIA DO PARÂMETRO DA LEI FEDERAL Nº 3.999/1961. IMPOSSIBILIDADE. NÃO APLICAÇÃO DA LEI A SERVIDORES PÚBLICOS ESTATUTÁRIOS. RECURSO CONHECIDO, MAS DESPROVIDO.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">1. O cerne da controvérsia diz respeito à possibilidade de imposição do piso nacional dos médicos e cirurgiões-dentistas para servidor municipal estatutário à luz da Lei Federal n° 3.999/61 e ADPF nº 325/DF. 2. A Lei Federal nº 3.999/61 é expressa em seu art. 4º ao informar que a remuneração ali prevista se refere a relações privadas. 3. No âmbito do Município de Santa Quitéria, em 11/10/1993, bem antes do ingresso do autor no serviço público municipal, ocorrido em 03/11/2008, foi sancionada a Lei nº 081A/93, disciplinando o Estatuto Jurídico do Regime Único dos Servidores Públicos da Administração Direta, Autarquias e Fundações Públicas do Município. Portanto, o regime jurídico a que pertence o autor é o estatutário, regido pelas regras inerentes ao regime jurídico-administrativo. 4. Outrossim, se extrai do entendimento adotado na ADPF 325/DF, que o Supremo Tribunal Federal tratou da matéria apenas no âmbito privado, não envolvendo a abrangência de sua eficácia aos servidores públicos municipais, hipótese dos autos. 5. Apelação conhecida, mas desprovida.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal;

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	font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(APELAÇÃO CÍVEL - 02006705120228060160, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 02/08/2023) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA MOVIDA POR SERVIDORA PÚBLICA DO MUNICÍPIO DE FORTALEZA/CE. CIRURGIÃ DENTISTA. REDUÇÃO DE CARGA HORÁRIA. EXTENSÃO DA LEI FEDERAL Nº 3.999/1961. IMPOSSIBILIDADE. PRECEDENTES. SENTENÇA MANTIDA.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Trata-se de apelação cível adversando sentença que julgou improcedente o pleito formulado por servidora pública do Município de Fortaleza/CE, pretendendo a redução de sua carga horária para 20 (vinte) horas semanais, com a manutenção da remuneração percebida, além do pagamento pelas horas extras laboradas nos últimos 05 anos.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. De logo, curial ressaltar que a Lei nº 3.999/1961 restringe expressamente sua aplicação às relações privadas. Ademais, em que pese o STF tenha reconhecido a compatibilidade da referida norma à Constituição Federal (ADPF 325), a Suprema Corte já se manifestou sobre a impossibilidade de aplicação/extensão de normas federais a servidores municipais/estaduais.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Ante o exposto, uma vez que a Lei Federal nº 3.999/1961 não pode ser utilizada como parâmetro para conceder o pleito da autora/apelante, em respeito, sobretudo, ao Princípio Separação dos Poderes, o desprovimento do recurso é medida que se impõe.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Recurso conhecido e desprovido.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Sentença mantida.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 30049672620228060001, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 10/09/2024) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: APELAÇÃO. PROCESSUAL CIVIL, ADMINISTRATIVO E CONSTITUCIONAL. AÇÃO CIVIL PÚBLICA. AÇÃO DE

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	OBRIGAÇÃO DE FAZER. SERVIDOR PÚBLICO MUNICIPAL. CIRURGIÃO DENTISTA. CARGA HORÁRIA. PARÂMETRO DA LEI FEDERAL Nº 3.999/1961. IMPOSSIBILIDADE. PRECEDENTES. SENTENÇA MANTIDA. APELAÇÃO CONHECIDA E DESPROVIDA.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">1. Pelo que dos autos consta, trata-se de apelação cível interposta pelo Sindicato dos Odontologistas do Estado do Ceará – SINDIODONTO contra sentença proferida pelo Juízo da 2ª Vara da Comarca de Nova Russas em sede de Ação Civil Pública proposta pelo apelante em face do Município de Nova Russas. Na inicial, a parte promovente alega que a categoria dos cirurgiões dentistas servidores do referido município possui carga horária de 40(quarenta) horas semanais, pretendendo pela via mandamental a redução de carga horária para 20 (vinte) horas semanais com a remuneração no valor de R$ 3.808,91 (três mil, oitocentos e oito reais e noventa e um centavos) que corresponde ao piso salarial da categoria fixado por lei federal.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2.O cerne da questão é saber se restou demonstrado pelo impetrante seu direito líquido e certo à redução de sua carga horária semanal, com base na Lei Federal nº 3.999/1961. Entretanto, referida Lei estabelece, expressamente, que a remuneração ali dispostas diz respeito às relações privadas.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. O Supremo Tribunal Federal em sede de ADPF 325, sob a relatoria da Ministra Rosa Weber, reconheceu a compatibilidade da Lei nº 3.999/1961 com a Constituição Federal de 1988. Contudo, manifestou-se sobre a impossibilidade de aplicação/extensão de normas federais a servidores municipais/estaduais. Ademais, os servidores deste município são regidos pelo regime jurídico estatutário instituído pela Lei Municipal nº 527/2001.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. A Lei Federal n. 3.999/1961 se aplica aos profissionais que atuam na iniciativa privada, e não aos servidores públicos municipais, não sendo possível a alteração da remuneração do cargo para adequá-la ao piso salarial da categoria, uma vez que a remuneração dos servidores públicos só pode ser fixada ou alterada por lei específica, obedecendo, inclusive, às regras de dotação orçamentária. 5. Sentença mantida. Apelação conhecida e desprovida. (APELAÇÃO CÍVEL - 02010558020228060133, Relator(a): LUIZ EVALDO GONCALVES LEITE, 2ª Câmara de Direito Público, Data do julgamento: 19/06/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: PROCESSUAL CIVIL. DIREITO CONSTITUCIONAL E ADMINISTRATIVO. AGRAVO DE INSTRUMENTO. AÇÃO DE OBRIGAÇÃO DE FAZER C/C COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL. REDUÇÃO DA JORNADA DE TRABALHO DE CIRURGIÃO-DENTISTA. APLICAÇÃO DA LEI FEDERAL Nº 3.999/1961. IMPOSSIBILIDADE. AUSÊNCIA DE PROBABILIDADE DO DIREITO. REQUISITOS DO

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	ART. 300 DO CPC NÃO PREENCHIDOS. RECURSO CONHECIDO E DESPROVIDO.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Trata-se de agravo de Instrumento interposto em face de decisão que indeferiu o pedido de tutela de urgência para que fosse determinada a redução da jornada de trabalho de cirurgiões-dentistas servidores municipais para 20 horas semanais, com base na Lei Federal nº 3.999/1961, sem redução de remuneração.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A questão em discussão consiste em saber se preenchidos os requisitos previstos no art. 300 do CPC, possibilitando a concessão da antecipação de tutela para determinar, ao ente público demandado, que reduza a carga horária semanal dos ora agravantes (servidores municipais), bem como que lhes pague o piso nacional definido na Lei Federal nº 3.999/61 e na ADPF 325/DF.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. A Lei Federal nº 3.999/1961 estabelece normas aplicáveis apenas às relações de trabalho privadas, não alcançando servidores públicos municipais, que são regidos por legislação específica.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A Constituição Federal veda a vinculação de remuneração de servidores públicos a pisos salariais de categorias privadas, em observância ao princípio da autonomia dos entes federativos e da separação de poderes.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e tese</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Agravo de Instrumento conhecido e desprovido.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Teses de Julgamento:</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - A Lei Federal nº 3.999/1961 não se aplica a servidores públicos municipais.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - A fixação da jornada de trabalho e da remuneração de servidores públicos

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	depende de legislação específica do ente federado.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes: &#160;CF/88, art. 4º, art. 37, inc. X e XIII; CPC, art. 300; Lei Federal nº 3.999/61.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STF, RE 133419 AgR, Rel. Min. ALEXANDRE DE MORAES, 1ª Turma, julgado em 04/10/2021, DJe 14/10/2021; TJCE, Agravo de Instrumento - 0638854-06.2022.8.06.0000, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento: 06/11/2023, data da publicação: 07/11/2023; TJCE, Apelação Cível - 02010558020228060133, Relator(a): LUIZ EVALDO GONCALVES LEITE, 2ª Câmara de Direito Público, Data do julgamento: 19/07/2024; TJCE, Apelação Cível - 02006705120228060160, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 02/09/2023.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (AGRAVO DE INSTRUMENTO - 0000061-54.2018.8.06.0140, Relator(a): JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara de Direito Público, Data do julgamento: 07/10/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Por fim, imperioso destacar a inaplicabilidade do entendimento contido na APDF 325 ao caso dos autos, uma vez que o Supremo Tribunal Federal tratou da matéria apenas no âmbito privado, nada dispondo acerca da possibilidade de extensão da lei federal aos servidores públicos municipais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço da Apelação, para negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Sem majoração dos honorários advocatícios, na forma do art. 18 da Lei n.º 7.347/85&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998;

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	text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p> 1. Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios de legalidade, impessoalidade, moralidade, publicidade e eficiência e, também, ao seguinte:&#160; &#160; </p><p> [...] </p><p> &#160; X - a remuneração dos servidores públicos e o subsídio de que trata o § 4º do art. 39 somente poderão ser fixados ou alterados por lei específica , observada a iniciativa privativa em cada caso, assegurada revisão geral anual, sempre na mesma data e sem distinção de índices;&#160; </p><p> &#160; [...] &#160; </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> XIII - é vedada a vinculação ou equiparação de quaisquer espécies remuneratórias para o efeito de remuneração de pessoal do serviço público ; &#160;&#160;&#160;&#160;&#160;&#160; &#160; &#160;</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;">

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	   &#160; </p>

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Número de ordem	115
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização Trabalhista
Polo ativo	MUNICIPIO DE IPAUMIRIM
Advogado(s) - Polo ativo	Não informado
Polo passivo	FRANCISCO DE ASSIS DA SILVA
Advogado(s) - Polo passivo	JOSE LIVIO ALMEIDA MOREIRA - (CE47603-A)
Terceiros	Não informado

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	style="mso-bidi-font-family: Arial; mso-bidi-language: #00FF;">declarar extinto o processo, sem resolução de mérito, em razão da litispendência (art. 485, inciso V, CPC), nos termos do voto da Relatora.</p><p class="Standard" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema.</p><p class="Standard" style="line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 </p><p class="Standard" style="line-height: 150%; text-align: center;"> R elatora </p><p class="MsoNormal" style="margin-top: 12pt; line-height: 150%; text-align: justify;">&#160;</p><p class="MsoNormal" style="margin-top: 12pt; line-height: 150%; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de apelação cível, adversando sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação ordinária (Processo 0200474-85.2022.8.06.0094). &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária : Francisco de Assis da Silva ingressou com ação ordinária em face do Município de Ipaumirim/CE, alegando, em suma, que, entre os anos de 2017 e 2020, exerceu o cargo em comissão de “assistente de administração”, lotado no Gabinete do Prefeito, e que, ao ser exonerado, não percebeu as verbas rescisórias a que teria direito, por força de lei (v.g., 13º salário, e férias acrescidas do adicional de 1/3, e FGTS).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Apesar de devidamente citado, o ente público deixou transcorrer <em style="text-decoration-line: underline;">in albis o prazo para contestação (ID 14418315). &#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160; Sentença proferida pelo magistrado de primeiro grau (ID 14418320), dando parcial procedência à ação. Transcrevo abaixo seu dispositivo: &#160; </p><p class="MsoNormal" style="margin-left: 120.45pt; text-align: justify;"> “ Ex positis, julgo PARCIALMENTE&#160;procedentes os pedidos, com resolução do mérito, nos termos do art. 487, I, do CPC/2015, para condenar o MUNICÍPIO DE IPAUMIRIM ao pagamento de férias remuneradas (integrais e proporcionais) simples acrescidas do terço constitucional e 13º salário (integral e proporcional) referente ao período de 01/02/2017 a 31/10/2020, com incidência de correção monetário pelo IPCA-E a partir de cada prestação não paga (Súmula nº 43 do STJ), com juros contra a Fazenda Pública a partir da citação, na forma do art. 1º-F da Lei 9.494/1997.” (sic) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Ipaumirim/CE interpôs Apelação Cível (14418323), sustentando que seria indevida sua condenação ao pagamento das verbas rescisórias (13º salário e férias acrescidas do adicional de 1/3), porque o ex-servidor não teria comprovado seu vínculo, entre os anos de 2017 e 2020.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, ao final, pugnou pela reforma do decisum. &#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;">

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	  Sem contrarrazões (ID 14418327). &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Parecer da Procuradoria Geral de Justiça (ID 14727722), opinando pela manutenção da sentença, em sua totalidade. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foram os autos convertidos em diligência, para manifestação sobre eventual ocorrência de litispendência entre esta ação e a de nº 0200464-41.2022.8.06.0094 (ID’s 14438309/ 15167092).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Apenas o ex-servidor público apresentou <strong style="mso-bidi-font-weight: normal;"> resposta (ID 15511535), reconhecendo a duplicidade ações, com a mesma finalidade.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> VOTO </p><p class="MsoNormal" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Analisando detidamente os autos, é possível se inferir, de plano, a presença de uma matéria de ordem pública, que pode ser analisada a qualquer tempo, e até mesmo de ofício, por parte este Tribunal.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, o fenômeno da litispendência ocorre quando duas ações possuem tríplice identidade (partes, causa de pedir e pedido), fazendo com que existam processos simultâneos, buscando, ao final, um mesmo resultado prático.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Nesse sentido, o CPC/2015 estabelece expressamente que:</p><p style="margin: 5pt 0cm 0cm 4cm; text-align: justify;"> “ Art. 337. </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> [...] </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> § 1º Verifica-se a litispendência ou a coisa julgada quando se reproduz ação anteriormente ajuizada. </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> § 2º Uma ação é idêntica a outra quando possui as mesmas partes, a mesma causa de pedir e o mesmo pedido. </p><p style="margin: 5pt 0cm 0cm 4cm; text-align: justify;"> § 3º Há litispendência quando se repete ação que está em curso. </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> [...] </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> Art. 485. O juiz não resolverá o mérito quando: </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> [...] </p><p style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> V - reconhecer a existência de perempção, de litispendência ou de coisa julgada;” (destacado) </p><p class="MsoNormal" style="margin: 8.5pt 0cm; text-indent: 114pt; line-height: 150%; text-align: justify;"> Merecem destaque, aqui, os ensinamentos sempre precisos do Professor Daniel Amorim Assumpção Neves (vide sua clássica obra Manual de Direito Processual Civil. 8 ed. Salvador: Editora JusPodivm, 2016), <em style="mso-bidi-font-style: normal;">in verbis: <strong style="mso-bidi-font-weight: normal;">&#160;</p><p style="margin: 5pt 0cm 0cm 4cm; text-align: justify;"> “ Um dos significados de litispendência é a existência de dois ou mais processos em trâmite com a mesma ação (teoria da tríplice identidade – mesmos elementos da ação). Interessante registrar hipótese na qual o Superior Tribunal de Justiça entende haver

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	litispendência ainda que não sejam exatamente os mesmos elementos da ação. Tal excepcionalidade se verifica na litispendência entre ação ordinária e mandado de segurança, considerados a mesma ação, ainda que no mandado de segurança figure no polo passivo a autoridade coatora e não na ação ordinária a pessoa jurídica de direito público ao qual essa autoridade pertence.” (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, no presente caso, t raçando um paralelo entre esta ação e a de nº 0200464-41.2022.8.06.0094 , dúvida não há de que são, de fato, idênticas, visando, tecnicamente, o mesmo resultado em cada um dos processos. <strong style="mso-bidi-font-weight: normal;">&#160; &#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Com efeito, as providências requeridas em ambos os processos convergem, efetivamente, para um único fim, isto é, a condenação do Município de Ipaumirim/CE ao pagamento de verbas rescisórias em favor de Francisco de Assis da Silva, ex-servidor público exonerado de cargo em comissão.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Daí que, deve ser reconhecida, por parte deste Tribunal, a ocorrência do fenômeno da litispendência, o que, consequentemente, leva à extinção desta ação, sem resolução do seu mérito, com fulcro no art. 485, inciso V, do CPC, porque a de nº 0200464-41.2022.8.06.0094 foi proposta em data anterior.</p><p class="MsoNormal" style="margin: 5.65pt 0cm; text-indent: 111.75pt; line-height: 150%; text-align: justify;"> Nessa linha, tem se manifestado o STJ, ex vi:</p><p class="MsoNormal" style="margin: 5.65pt 0cm 5.65pt 4cm; text-align: justify;"> “PROCESSUAL CIVIL. ADMINISTRATIVO. LITISPENDÊNCIA. <em style="mso-bidi-font-style: normal;">RATIO ESSENDI. OCORRÊNCIA. ANULAÇÃO DE ATO ADMINISTRATIVO. PROCEDÊNCIA. IRRADIAÇÃO DOS EFEITOS ÀS DEMAIS AÇÕES LITISPENDENTES. 1. A Primeira Seção desta Corte Superior já decidiu que "a <em style="mso-bidi-font-style: normal;">ratio essendi da litispendência é que a parte não promova duas demandas visando o mesmo resultado, o que, frise-se, em regra, ocorre quando o autor formula em face da mesma parte, o mesmo pedido, fundado da mesma causa de pedir. <strong style="mso-bidi-font-weight: normal;">Ressalte-se que esta é a regra, e por sua vez, comporta exceções, pelo que, por força desses princípios depreendidos das normas e da razão de ser das mesmas é possível afirmar-se que há litispendência quando duas ou mais ações conduzem ao mesmo resultado; por isso que: electa una via altera non datur". (MS 8483/DF, Rel. Min. Luiz Fux, DJ: 16.5.2005, p. 205). 2. No caso, observa-se que a parte ré, nos referidos processos no acórdão <em style="mso-bidi-font-style: normal;">a quo, é o MUNICÍPIO DE SÃO PAULO, e as autoras todas licitantes da Concorrência 013/2002 que entraram com o mesmo pedido e causa de pedir, configurando a litispendência, pois percebe-se a relação entre estas, devido a ligação com a referida Concorrência. Assim, utilizando do principio da economia processual, aplica-se tal instrumento observado no art. 301, § 1º, do CPC: "verifica-se a litispendência ou a coisa julgada, quando se reproduz ação anteriormente ajuizada". 3. Observa-se, portanto, correto o entendimento firmado pelo Tribunal <em style="mso-bidi-font-style: normal;">a quo, não existindo qualquer violação do art. 18 da Lei n. 4.717/1965, sendo possível a aplicação do efeito erga omnes aos licitantes. Agravo regimental improvido.” (AgRg no REsp 1154853/SP, Rel. Ministro HUMBERTO MARTINS, SEGUNDA TURMA, julgado em 05/05/2011, DJe 12/05/2011) (destacado). </p><p class="MsoNormal" style="margin: 5.65pt 0cm; text-indent: 111.75pt; line-height: 150%; text-align: justify;"> E outro não poderia ser o posicionamento adotado pelas Câmaras de Direito Público do TJ/CE, em casos como o dos autos, ex vi:</p><p class="MsoNormal" style="margin: 6pt 0cm 12pt 4cm; text-align: justify;"> “AGRAVO DE INSTRUMENTO. DIREITO PROCESSUAL CIVIL. PRELIMINAR DE LITISPENDÊNCIA. MANDADO DE SEGURANÇA ANTERIORMENTE AJUIZADO COM IDENTIDADE JURÍDICA. PRELIMINAR ACOLHIDA.JURISPRUDÊNCIA DO STJ. RECURSO CONHECIDO E PROVIDO. 1. Cuidam-se os presentes autos de Agravo de Instrumento interposto pelo Estado do Ceará, irresignado com decisão antecipatória da tutela que concedeu direito ao autor a título precário de retornar às demais etapas do certame público. 2. Preliminarmente, alega o agravante a ocorrência de litispendência, a qual deve ser acolhida, uma vez que, compulsando os autos, ocorreu a impetração de anterior Mandado de Segurança tratando do mesmo tema. 3. Segundo a jurisprudência do STJ, é possível a ocorrência de litispendência entre mandado de segurança e ação ordinária, entendendo-se que tal fenômeno se caracteriza, quando há identidade jurídica, ou seja, quando as ações intentadas objetivam, ao final, o mesmo resultado, ainda que o polo passivo seja constituído de pessoas distintas; no pedido mandamental, a autoridade

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	administrativa, e na ação ordinária a própria entidade de Direito Público. 4. Recurso conhecido e provido, acolhida a preliminar, determinando a extinção sem julgamento de mérito da ação ordinária. (TJCE, Agravo de Instrumento: 0001775-67.2007.8.06.0000, Relator: Des. PAULO FRANCISCO BANHOS PONTE, Órgão julgador: 1ª Câmara Cível, DJe: 07/11/2013)” (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 12pt 4cm; text-align: center;"> * * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 12pt 4cm; text-align: justify;"> <span style="font-size: 10pt;"> <span style="font-size: small;">“CONSTITUCIONAL. ADMINISTRATIVO. PROCESSUAL CIVIL. REMESSA NECESSÁRIA. APELAÇÕES CÍVEIS. SERVIDORES PÚBLICOS INATIVOS. PLEITO DE IMPLEMENTAÇÃO DE GRATIFICAÇÃO DE TITULAÇÃO. AÇÃO ORDINÁRIA NA ORIGEM. MANDADO DE SEGURANÇA IMPETRADO NESTE SODALÍCIO. IDENTIDADE DE PARTES, CAUSA DE PEDIR E PEDIDO. RECONHECIMENTO, DE OFÍCIO, DE LITISPENDÊNCIA. POSSIBILIDADE. PRECEDENTES DO STJ E DESTE TRIBUNAL. EXTINÇÃO DA DEMANDA DE ORIGEM, SEM RESOLUÇÃO DO MÉRITO (ART. 485, V, CPC/2015). APELOS E REMESSA NECESSÁRIA PREJUDICADOS. 1. Cuidam-se de Remessa Necessária e Apelações Cíveis, autuadas sob o nº. 0030316-68.2011.8.06.00001, interpostas em desfavor da Sentença proferida pela MM Juíza de Direito Titular da 12ª Vara da Fazenda Pública da Comarca de Fortaleza/CE, que nos autos da Ação Ordinária ajuizada por JOSÉ DARLAN BESERRA QUEVEDO E OUTROS em face do ESTADO DO CEARÁ, julgou procedente o pleito inicial de incorporação da gratificação de titulação, nos percentuais respectivos, sobre o vencimento base, de parcelas vencidas e vincendas, tudo devidamente atualizado monetariamente com a incidência de juros de mora. 2. Inicialmente, depreende-se dos autos que os autores da presente Ação Ordinária impetraram Mandado de Segurança contra ato atribuído aos SECRETÁRIOS DA FAZENDA e DE ADMINISTRAÇÃO DO ESTADO DO CEARÁ, consubstanciado no não pagamento da Gratificação de Titulação prevista no art. 25 da Lei nº 13.778/2006, que instituiu o novo Plano de Cargos e Carreiras do Grupo Ocupacional, Tributação, Arrecadação e Fiscalização - TAF, da Secretaria da Fazenda. 3. Pois bem. Compulsando com acuidade o caderno procedimental virtualizado, observa-se que a Ação Ordinária ajuizada na origem (nº. 0030316-68.2011.8.06.0001) em 11 de abril de 2011, possui as mesmas partes, a mesma causa de pedir e o mesmo pedido do Mandado de Segurança ajuizado em 19 de março de 2007, e autuado sob o nº. 0023282-84.2007.8.06.0000, julgado no Eg. Órgão Especial deste Sodalício em 15 de março de 2018, sob a relatoria do Eminente Des. Antônio Aberlado Benevides Morais. 4. Diante disso, a meu sentir, os presentes recursos interpostos em face da ação ordinária não merecem prosseguir, dada a presença de causa de extinção do feito, ocasionando a impossibilidade de apreciação do mérito da lide. Ademais, saliente-se que a Julgadora pode a qualquer tempo conhecer, de ofício, da matéria, ora analisada, por se tratar de questão de ordem pública. 5. Ação Ordinária extinta, sem resolução do mérito, ante o reconhecimento da litispendência. Apelações Cíveis e Reexame Necessários prejudicados. (TJ-CE – APL: 00303166820118060001 CE 0030316-68.2011.8.06.0001, Relator: LISETTE DE SOUSA GADELHA, Data do Julgamento: 17/09/2018, 1ª Câmara Direito Público, Data da Publicação: 17/09/2018)” (destacado) </p><p class="MsoNormal" style="margin: 5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Assim, estando bem evidenciada uma das situações previstas no art. 485, inciso V , do CPC (litispendência), que pode ser conhecida a qualquer tempo e até mesmo de ofício, enquanto matéria de ordem pública, a extinção do processo, sem resolução do mérito, é medida que se impõe a este Tribunal</p><p class="MsoNormal" style="margin-top: 12pt; line-height: 150%; text-align: center;">&#160;</p><p class="MsoNormal" style="margin-top: 12pt; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, com fulcro no art. 485, inciso V, CPC, <strong style="mso-bidi-font-weight: normal;">declaro extinto o processo, sem resolução de mérito, em razão da litispendência.</p><p class="MsoNormal" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Resta, pois, obstado o exame do recurso. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, mediante aplicação do princípio da causalidade (CPC, art. 85, § 10), e considerando o disposto no art. 85, § 2º, do CPC, arbitro os honorários devidos pelo ex-servidor público ao(s) procurador(es) do Município de Ipaumirim/CE, in casu, em 10% (dez por cento) sobre o valor da causa.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Fica, contudo, suspensa a exigibilidade de tal verba, por se tratar, aqui, de beneficiário da gratuidade da Justiça (CPC, art. 98, §3º).</p><p

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	class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160;É como voto.</p><p class="Standard" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema.</p><p class="Standard" style="line-height: 150%; text-align: center;">&#160;</p><p class="Standard" style="line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 </p><p class="Standard" style="line-height: 150%; text-align: center;"> R elatora <strong style="mso-bidi-font-weight: normal;">&#160;</p><p style="text-align: justify;"> &#160; </p><p style="text-align: justify;">&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	116
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Pagamento
Polo ativo	MARIA ESMERALDA GONCALVES DO NASCIMENTO
Advogado(s) - Polo ativo	FRANCISCO JEAN OLIVEIRA SILVA - (CE16190-A)
Polo passivo	MUNICIPIO DE MOMBACA Procuradoria do Município de Mombaça
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0006798-57.2014.8.06.0126

Acordão

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</p><p> O Colegiado, por unanimidade, acordou
em não conhecer do recurso, nos termos do voto do(a) eminente
Relator(a).</p><p>&#160;</p><p>
RELATÓRIO:
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" alt="" /></p><p style="margin: 0cm; text-align: center;" align="center">   ESTADO DO CEARÁ </p><p style="margin: 0cm; text-align: center;" align="center">   PODER JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;" align="center">   TRIBUNAL DE JUSTIÇA </p><p style="margin: 0cm; text-align: center;" align="center">   GABINETE DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO </p><p style="text-align: center;" align="center"> &#160;</p><p style="text-align: left;">&#160;</p><p style="font-family: &quot;Times New Roman&quot;; font-size: medium;">   <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;">   Processo: &#160;0006798-57.2014.8.06.0126 </p><p style="font-family: &quot;Times New Roman&quot;; font-size: medium;"> [Pagamento]</p><p style="font-family: &quot;Times New Roman&quot;; font-size: medium;"> REMESSA NECESSÁRIA CÍVEL</p><p style="font-family: &quot;Times New Roman&quot;; font-size: medium;"> Promovente: MARIA ESMERALDA GONCALVES DO NASCIMENTO</p><p style="font-family: &quot;Times New Roman&quot;; font-size: medium;"> Promovido: MUNICIPIO DE MOMBAÇA</p><p style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;">   Ementa: Direito processual civil e administrativo. Remessa necessária em ação ordinária. Servidora pública efetiva. Direito a férias acrescidas do terço constitucional. Art. 7º, XII, c/c art. 39, § 3º, da CF/1988. &#160;Valor da condenação. Iliquidez. Limite previsto no CPC/2015. Dispensa do reexame necessário. </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;">   I. Caso em exame </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> <span style="font-size: 13.0pt; line-height: 150%; font-family: &quot;Arial&quot;,sans-serif; mso-fareast-font-family: Arial; mso-bidi-

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	font-family: &quot;Times New Roman&quot;; mso-bidi-font-weight: bold;">1. Remessa necessária de sentença em ação de cobrança movida por servidora pública efetiva contra o Município de Mombaça, visando o recebimento de gratificações, férias, 13º salário e FGTS. O juízo de primeiro grau, verificando que as gratificações pleiteadas possuíam previsão apenas na Lei Orgânica do Município, bem como, que o 13º salário havia sido pago e incabível a verba fundiária na relação estatutária, julgou parcialmente procedente o pedido, condenando o ente público apenas ao pagamento das férias acrescidas do terço constitucional, referentes ao período de&#160;2010 a 2012. A sentença, embora ilíquida, possui valor estimado inferior ao limite estabelecido no CPC/2015 para a remessa necessária.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> II. Questão em discussão </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 2. A questão a ser dirimida consiste em saber se, diante da iliquidez da sentença e do valor estimado da condenação estar abaixo do limite legal, é cabível a dispensa do reexame necessário.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> III. Razões de decidir </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3. A jurisprudência pátria, inclusive do Superior Tribunal de Justiça e deste Tribunal, tem admitido a dispensa da remessa necessária em casos de condenação de valor ilíquido, desde que seja possível estimar o valor da condenação e este se situe abaixo do limite legal (art. 496, §3º, do CPC). No caso concreto, a análise dos documentos e a natureza das verbas devidas permitem estimar que o valor da condenação é muito inferior ao limite legal, o que gera a dispensa do duplo grau de jurisdição.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> IV. Dispositivo </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 4. Remessa necessária não conhecida, mantendo-se a sentença.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> ______</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Dispositivos relevantes citados: CPC/2015, art. 496, §3º, III.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Jurisprudência relevante citada: AgInt no REsp n. 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022 e AgInt no AREsp n. 1.969.907/TO, relator Ministro Herman Benjamin, Segunda Turma, julgado em 11/4/2022, DJe de 25/4/2022.&#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="page-break-before: always; mso-hyphenate: auto;">&#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; tab-stops: 380.65pt;" align="center"> ACÓRDÃO </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height:

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	150%;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em não conhecer da remessa oficial, tudo nos termos do voto do relator, parte integrante deste.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height: 150%;"> Fortaleza, data informada pelo sistema. &#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 69.0pt; mso-line-height-alt: 10.0pt;"> &#160;</p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> RELATOR </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always; tab-stops: center 212.6pt 216.0pt right 432.0pt;" align="center">&#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always; tab-stops: center 212.6pt 216.0pt right 432.0pt;" align="center">&#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always; tab-stops: center 212.6pt 216.0pt right 432.0pt;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Tem-se remessa oficial que transfere a este Tribunal o reexame da sentença de parcial procedência proferida pelo juízo da 2ª Vara da Comarca de Mombaça no âmbito de Ação de cobrança.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Petição inicial : narra a Promovente, servidora efetiva (Professora), admitida em 02/02/1998, que no valor pago a título de vencimento básico não está incluída a gratificação pedagógica e a gratificação de pó-de-giz, as quais eram pagas até 31/12/2015. Diz que o Município não está depositando o FGTS, “bem como as férias e o 13º salário”. Requer em juízo o pagamento das citadas gratificações, 13º salários referentes a 2008/2012, férias em dobro de 2008 a 2011 e férias simples de 2012, ambas acrescidas do terço constitucional e FGTS dos 167 meses.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Processo remetido da Justiça do Trabalho à Justiça Comum.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Sem contestação : certidão de decurso de prazo no Id. 14428352.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Sentença : julgou parcialmente procedente o pleito autoral, para condenar o Município de Mombaça/CE a efetivar o depósito&#160;das&#160;férias acrescidas do terço constitucional, referentes ao período de&#160;2010 a 2012.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-

Processo	0006798-57.2014.8.06.0126
	align-alt: auto;"> Sentença remetida para reexame.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Ausência de interposição de recurso (certidão de Id. 14428390).&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> A Procuradoria Geral de Justiça opina pelo conhecimento e desprovimento da remessa oficial.</p><p class="MsoNormal" style="margin-bottom: 3.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> É o relatório, no essencial.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> &#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always;" align="center">&#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always;" align="center"> VOTO </p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Processo oriundo da Justiça do Trabalho.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Analisando os autos do processo, noto que a sentença foi equivocadamente submetida à remessa oficial, quando desnecessário o reexame. Explico.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">Na espécie, a decisão de primeiro grau julgou o pleito autoral parcialmente procedente e condenou o ente público ao pagamento à autora, apenas dos valores referentes a férias acrescidas do terço constitucional referentes ao período de&#160;2010 a 2012, atualizados.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; text-autospace: none;"> Ainda que aparentemente ilíquida a sentença, resta evidente que a condenação ou o proveito econômico pretendido pela autora não excede o&#160;valor de alçada&#160;do CPC de 2015, pois é sabido que as férias são verbas anuais, e sua base de cálculo - os vencimentos da servidora, são bastante diminutos, conforme Fichas Financeiras de Id. 14428373 a 14428375.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; text-autospace: none;"> Assim, n otamos sem muito esforço que o valor da condenação está muito aquém a 100 (cem) salários-mínimos, equivalente a R$ 141.200,00 (cento e quarenta e um mil, e duzentos reais) na data da prolação da sentença (21/03/2024), o que, per si, afasta o duplo grau de jurisdição obrigatório, a teor do art. 496, §3º, inciso III, do Código de Processo Civil/2015; in verbis:</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença:</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span

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	style="font-size: 11.0pt; font-family: &quot;Arial&quot;,sans-serif;">I - proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público;</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> (...)</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> § 3º Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a:</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> (...)</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Neste mesmo sentido tem se manifestado a jurisprudência mais recente do Superior Tribunal de Justiça, que após vigência do novo estatuto processual, tem firmado entendimento de que a elevação do limite para conhecimento da remessa necessária significa uma opção pela preponderância dos princípios da eficiência e da celeridade, “e não obstante a aparente iliquidez das condenações, se houver possibilidade de aferição por simples cálculos aritméticos, forçoso reconhecimento que se trata de verdadeira hipótese de dispensa de reexame” (AgInt no AgInt no REsp n. 1.955.594/MG, relator Ministro Paulo Sérgio Domingues, Primeira Turma, julgado em 29/5/2023, DJe de 6/6/2023). Confira-se outros julgados daquela e. Corte:</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span style="font-size: 11.0pt; font-family: &quot;Arial&quot;,sans-serif;">SERVIDOR PÚBLICO. PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. APLICABILIDADE. SENTENÇA ILÍQUIDA. NOVOS PARÂMETROS DO CPC/2015. CONDENAÇÃO OU PROVEITO ECONÔMICO INFERIOR À MIL SALÁRIOS MÍNIMOS. VALORES AFERÍVEIS POR SIMPLES CÁLCULOS ARITMÉTICOS. DISPENSA DA REMESSA NECESSÁRIA. ARGUMENTOS INSUFICIENTES PARA DESCONSTITUIR A DECISÃO ATACADA. APLICAÇÃO DE MULTA. ART. 1.021, § 4º, DO CÓDIGO DE PROCESSO CIVIL DE 2015. DESCABIMENTO. I - Consoante o decidido pelo Plenário desta Corte na sessão realizada em 09.03.2016, o regime recursal será determinado pela data da publicação do provimento jurisdicional impugnado. In casu, aplica-se o Código de Processo Civil de 2015. II - A Corte Especial, no julgamento do Recurso Especial n. 1.101.727/PR, submetido ao rito do art. 543-C do Código de Processo Civil de 1973, firmou entendimento segundo o qual o reexame necessário de sentença proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público (art. 475, § 2º, do CPC/1973) é regra, admitindo-se sua dispensa nos casos em que o valor da condenação seja certo e não exceda a 60 (sessenta) salários mínimos. III - Tal entendimento foi ratificado com o enunciado da Súmula n. 490/STJ: "a dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas". IV - No entanto, esta Corte, após vigência do novo estatuto processual, tem firmado entendimento de que a elevação do limite para conhecimento da remessa necessária significa uma opção pela preponderância dos princípios da eficiência e da celeridade, e não obstante a aparente iliquidez das condenações, se houver possibilidade de aferição por simples cálculos aritméticos, forçoso reconhecimento que se trata de verdadeira hipótese de dispensa de reexame. V - O Agravante não apresenta, no agravo, argumentos suficientes para desconstituir a decisão recorrida. VI - Em regra, descabe a imposição da multa prevista no art. 1.021, § 4º, do Código de Processo Civil de 2015 em razão do mero desprovimento do Agravo Interno em votação unânime, sendo necessária a configuração da manifesta inadmissibilidade ou improcedência do recurso a autorizar sua aplicação, o que não ocorreu no caso. VII - Agravo Interno improvido. (AgInt no REsp n. 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022.) - negritei</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160;</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-

Processo	0006798-57.2014.8.06.0126
	justify: inter-ideograph;"> PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. DECISÃO MONOCRÁTICA DA PRESIDÊNCIA DO STJ. AFASTAMENTO DE ÓBICE PROCESSUAL. OMISSÃO NÃO CONFIGURADA. REMESSA NECESSÁRIA. SENTENÇA. LIQUIDEZ. REVISÃO DO CONTEXTO FÁTICO-PROBATÓRIO. IMPOSSIBILIDADE. SÚMULA 7/STJ. 1. Trata-se de Agravo Interno contra decisão monocrática da Presidência do Superior Tribunal de Justiça, que não conheceu do Agravo em Recurso Especial ante o óbice da Súmula 182/STJ. 2. Afastado o óbice processual, passa-se ao exame do recurso. 3. Não se configura ofensa ao art. 1.022 do CPC/2015, porquanto o Tribunal de origem julgou integralmente a lide e solucionou, de maneira amplamente fundamentada, a controvérsia, em conformidade com o que lhe foi apresentado. 4. O Tribunal de origem dirimiu a controvérsia, nestes termos: "Em que pese ilíquida a sentença, se somado o valor da indenização por danos morais, fixada em dez mil reais, ao pensionamento vitalício concedido à autora, no montante de meio salário mínimo por mês, por simples cálculo artimético, se chegará a conclusão de que não se alcançará, nem de perto, o piso de quinhentos salários mínimos exigidos para o reexame necessário, previsto no art. 496, §3º do CPC". 5. Alterar as conclusões adotadas pela Corte de origem, como defendido nas razões recursais, demanda novo exame do acervo fático-probatório constante dos autos, providência vedada em Recurso Especial, conforme o óbice previsto na Súmula 7/STJ. 6. Agravo Interno provido para, reconsiderando a decisão das fls. 398-400, e-STJ, conhecer do Agravo para conhecer do Recurso Especial apenas no que diz respeito à alegação de ofensa ao art. 1.022 do CPC/2015, e nessa extensão negar-lhe provimento. (AgInt no AREsp n. 1.969.907/TO, relator Ministro Herman Benjamin, Segunda Turma, julgado em 11/4/2022, DJe de 25/4/2022.) - negritei</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Desta forma, sendo possível estimar que o valor global da condenação não ultrapassa o valor de alçada, mesmo sendo ilíquida a sentença, não obrigatório será o duplo grau de jurisdição. Não é outro o entendimento das Câmaras de Direito Público deste Tribunal de Justiça do Estado do Ceará; Veja:</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> CONSTITUCIONAL E ADMINISTRATIVO. REMESSA NECESSÁRIA E RECURSO DE APELAÇÃO. AÇÃO ORDINÁRIA. CONTRATAÇÃO TEMPORÁRIA. VALOR DA CONDENAÇÃO OU DO PROVEITO ECONÔMICO INFERIOR AO LIMITE DO ART. 496, §3º,III, DO CPC. NÃO CONHECIMENTO DA REMESSA NECESSÁRIA, MESMO SENDO ILÍQUIDA A SENTENÇA. PRECEDENTES DO STJ E TJCE. EXCEPCIONAL INTERESSE PÚBLICO. NÃO DEMONSTRADO. NULIDADE DOS CONTRATOS. CONFIGURADA. EFEITOS JURÍDICOS. DIREITO À PERCEPÇÃO DO FGTS. TEMAS 191 (RE N° 596.478) E 916 (RE Nº 765320/MG) DO STF. ADIMPLEMENTO DA OBRIGAÇÃO POR PARTE DO MUNICÍPIO. NÃO COMPROVADO. REMESSA NECESSÁRIA NÃO CONHECIDA E RECURSO DE APELAÇÃO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. (Apelação / Remessa Necessária&#160;- 0004787-35.2015.8.06.0089, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 13/06/2022, data da publicação:&#160; 14/06/2022)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160;</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span style="font-size: 11pt; font-family: Arial, sans-serif; background-image: initial; background-position: initial; background-size: initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;">CONSTITUCIONAL E ADMINISTRATIVO. RECURSOS DE APELAÇÃO E REMESSA NECESSÁRIA. VALOR DA CONDENAÇÃO OU DO PROVEITO ECONÔMICO INFERIOR AO LIMITE DO ART. 496, I, DO CPC. DISPENSA DA REMESSA, MESMO SENDO ILÍQUIDA A SENTENÇA. PRECEDENTES DO STJ. AÇÃO ORDINÁRIA. AGENTE COMUNITÁRIO DE SAÚDE. IMPLANTAÇÃO DE GRATIFICAÇÃO DE INCENTIVO. POSSIBILIDADE. ASSISTÊNCIA FINANCEIRA COMPLEMENTAR DA UNIÃO. GARANTIA ASSEGURADA PELA CF/1988 E POR LEGISLAÇÃO FEDERAL. REMESSA NECESSÁRIA NÃO CONHECIDA. PROVIMENTO DO RECURSO AUTORAL. IMPROVIMENTO DO APELO DO MUNICÍPIO. I. Nos casos em que a condenação ou o proveito econômico visivelmente não alcança o limite mínimo para submeter a sentença ao duplo grau de jurisdição obrigatório, a Primeira Turma do Superior Tribunal de Justiça tem admitido a dispensa do reexame, ainda que se trate de quantia ilíquida. II. A atividade desenvolvida pelos Agentes Comunitários de Saúde se dá no âmbito do SUS e seu disciplinamento é extraído diretamente da CF/1988, estando os

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	gestores locais autorizados a realizar admissão por meio de processo seletivo público. A Carta Magna, inclusive, remeteu para lei federal o estabelecimento do regime jurídico aplicável, sendo assegurados o piso salarial profissional e a assistência financeira complementar da União para auxiliar as despesas dos demais entes federados com a manutenção do sistema. III. O direito vindicado na inicial não depende de qualquer regulamentação adicional, devendo, portanto, o Município de Guaraciaba do Norte adotar as medidas administrativas para assegurar a implementação dos mecanismos relativos à assistência financeira complementar custeada pela União, a partir da entrada em vigor da Lei Federal nº 12.994/2014, incluindo o pagamento das respectivas diferenças. Precedentes do STJ e do TJCE. IV. Remessa Necessária não conhecida. Apelações conhecidas, para dar provimento ao recurso da autora e negar provimento ao apelo do Município de Guaraciaba do Norte. Sentença reformada, a fim de julgar procedente o pleito autoral. (Apelação / Remessa Necessária&#160;- 0016235-15.2018.8.06.0084, Rel. Desembargador(a) INACIO DE ALENCAR CORTEZ NETO, 3ª Câmara Direito Público, data do julgamento:&#160; 12/04/2021, data da publicação:&#160; 12/04/2021)</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Isso posto, deixo de conhecer da remessa oficial, e, por inexistir pedido remanescente ante a ausência de interposição de recurso voluntário, hei por bem manter a sentença em seus termos.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Deixo de majorar a verba honorária, por inexistir fixação de honorários no caso de remessa necessária uma vez que não há trabalho adicional dos advogados das partes. Inaplicável, portanto, o § 11º do art. 85 do CPC/2015 nos casos de julgamento, pelo tribunal, em função do cumprimento do art. 496. A sucumbência recursal é restrita aos casos de recurso voluntário de qualquer das partes, não incidindo, pois, na espécie.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> É o voto que submeto à consideração de meus pares.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p> <br style="mso-special-character: line-break;" /> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	117
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contribuição sobre a folha de salários
Polo ativo	JOCILENE MOREIRA FERREIRA
Advogado(s) - Polo ativo	RAFAEL RODRIGUES SALDANHA - (CE34796-A)
Polo passivo	MUNICIPIO DE URUOCA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	DESPROVIDA. SENTENÇA MANTIDA. </p><p class="MsoNormal" style="text-align: justify;"> I. Caso em exame &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; line-height: 150%;"> 1. Apelação Cível interposta por&#160; Jocilene Moreira Ferreira, em face da sentença proferida pelo Juízo da Vara Única da Comarca de Uruoca/CE, na Ação Ordinária de Cobrança de Adicional de Insalubridade e Adicional por Tempo de Serviço c/c Danos Morais.</p><p class="MsoNormal" style="text-align: justify;"> II. Questão em discussão &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; line-height: 150%;"> 2. A questão em discussão consiste em analisar o direito da promovente, servidora pública do Município de Uruoca, conforme ficha funcional de Id. 14513679, ao recebimento do adicional de insalubridade, com pagamento de retroativo e seus reflexos, além da percepção de adicional por tempo de serviço (anuênio) previsto na Lei Municipal nº 217/1998 vigente à época, apesar da posterior revogação do dispositivo concessivo, por meio da Lei Municipal nº 110/2013.</p><p class="MsoNormal" style="text-align: justify;"> III. Razões de decidir &#160; </p><p class="MsoNormal" style="text-align: justify;"> 3. Quanto ao adicional por tempo de serviço, este fora revogado pelo art. 1º, da Lei Municipal nº 110/2013. A parte recorrente ingressou no serviço público municipal em 02/05/2007, motivo pelo qual faria jus ao citado adicional do citado período até a revogação da lei. Apesar disso, a presente ação fora interposta em 08/10/2018, mais de cinco anos após a revogação do benefício, ocorrida em 19/08/2013, não havendo que se falar em direito de receber os valores que deixou de fazê-lo, como alegado em sede recursal, uma vez que não postulou tal benefício em tempo hábil. </p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> 4. Em relação ao adicional de insalubridade, verifica-se que, a teor do laudo técnico de condições ambientais, resta comprovada a insalubridade de grau médio da função exercida pela autora, entretanto, a fixação da data de início da insalubridade remonta a data da produção da prova pericial, uma vez que não se pode presumir a ocorrência da insalubridade em datas pretéritas e o laudo não se encontra datado. Assim, a Sentença é correta ao reconhecer a ausência de provas quanto as condições insalubres a que esteja submetida a autora durante o período pleiteado.&#160; </p><p class="MsoNormal" style="text-align: justify;"> IV. Dispositivo e tese &#160; </p><p class="MsoNormal" style="text-align: justify;"> 5. Apelação Cível conhecida e não provida. Sentença mantida. </p><p class="MsoNormal" style="text-align: justify;"> Tese de julgamento : Deve ser mantida a sentença, julgando improcedente a pretensão autoral </p><p class="MsoNormal" style="text-align: justify;"> Dispositivos relevantes citados:&#160; arts. 64 a 67 da Lei Municipal nº 217, de 1998, art. 7, XXIII da CF.</p><p class="MsoNormal" style="text-align: justify;"> Jurisprudência relevante citada:&#160;&#160; TJ-CE -&#160;Remessa Necessária Cível: 0002373-80.2018.8.06.0179&#160;Uruoca, Relator: WASHINGTON LUÍS BEZERRA DE ARAUJO, Data de Julgamento: 05/02/2024, 3ª Câmara Direito Público,&#160;Data de Publicação: 06/02/2024; APELAÇÃO CÍVEL - 00001168220188060179, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 20/03/2024, data da publicação: 21/03/2024; APELAÇÃO CÍVEL - 00001237420188060179, Relator(a): MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara de Direito Público, Data do julgamento: 26/06/2024, data da publicação: 27/06/2024; APELAÇÃO CÍVEL - 00001315120188060179, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 19/04/2023, data de publicação: 19/04/2023; APELAÇÃO CÍVEL - 00001237420188060179, Relator(a): MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara de Direito Público, Data do julgamento: 26/06/2024, data da publicação: 27/06/2024. &#160; &#160;</p><p style="text-align: justify;">&#160;</p><p

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	style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em conhecer e negar provimento ao recurso de apelação cível, nos termos do voto do relator.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> &#160; <strong style="font-size: small;">Relator</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Trata-se de Apelação Cível interposta por&#160; Jocilene Moreira Ferreira, em face da sentença proferida pelo Juízo da Vara Única da Comarca de Uruoca/CE, na Ação Ordinária de Cobrança de Adicional de Insalubridade e Adicional por Tempo de Serviço c/c Danos Morais. &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160;&#160; Ação:&#160;Narra a autora, em síntese, que é servidora pública do Município de Uruoca, ocupando o cargo efetivo de Auxiliar de Serviços Gerais, desde 02 de maio de 2007, exercendo suas funções no Hospital Municipal (Unidade Mista de Saúde), desde junho de 2007, estando sujeita todos os tipos de agentes insalubres, porém sem receber o respectivo adicional, assim como não recebe o adicional por tempo de serviço, previsto no Estatuto dos Servidores Públicos de Uruoca, razão pela qual ajuizou a presente ação com o objetivo de que o Município de Uruoca fosse compelido a implantar o adicional de insalubridade em seu grau máximo (40%), bem como o adicional por tempo de serviço e seus reflexos legais, além de condená-lo ao pagamento de indenização por danos morais no valor de R$ 20.000,00 (vinte mil reais). </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160;&#160; Sentença&#160;(Id. 14514137): &#160;proferida nos seguintes termos:&#160; “Ante o exposto, com fundamento no artigo 487, inciso I do CPC, JULGO IMPROCEDENTE o pedido do autor, extinguindo o feito com resolução de mérito. Condeno a parte autora ao pagamento das custas judiciais e honorários advocatícios no importe de 10% do valor da causa. Todavia, as obrigações decorrentes da sucumbência do requerente ficarão sob condição suspensiva de exigibilidade e somente poderão ser executadas se, nos 5 (cinco) anos subsequentes ao trânsito em julgado da decisão que as certificou, o credor demonstrar que deixou de existir a situação de insuficiência de recursos que justificou a concessão de gratuidade, extinguindo-se, passado esse prazo, tais obrigações do beneficiário.” </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160; &#160; Apelação da parte autora&#160;(Id. 14514140): irresignada, a autora defende o direito adquirido ao adicional por tempo de serviço constituído no período aquisitivo de 2007 a 2013, pois cumpriu os requisitos previsos enquanto o Art. 64 da Lei n° 217/98 estava em vigência. Destacou ainda que é plenamente legal e justo que a Requerente receba todos os valores retroativos, abrangidos entre o período de junho de 2017 a fevereiro de 2020, referentes ao adicional de insalubridade, por ser direito líquido, certo e inerente a Autora que por todos esses anos trabalhou diariamente sob exposição direta de agentes insalubres, sem receber a gratificação legal para tanto. Assim, requer que o presente recurso de apelação seja conhecido e provido para reformar a Sentença recorrida no sentido de acolher o pedido inicial da Autora Apelante, julgando totalmente procedente a ação. Requer ainda que sejam arbitrados os honorários advocatícios em 20% (vinte por cento) sobre o valor da condenação. &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Sem Contrarrazões, conforme certidão de Id. 14514145. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-

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	bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Parecer da Procuradoria-Geral de Justiça opinando pelo conhecimento da apelação, deixando de se manifestar acerca do seu mérito, haja vista a ausência de interesse deste Órgão Ministerial na presente demanda (Id. 15029396). </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 16.5px;"> &#160; É o relatório. </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-indent: 70.9pt; line-height: 150%;"> Presentes os requisitos de admissibilidade, conheço do apelo. &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> O cerne da presente controvérsia consiste em analisar o direito da promovente, servidora pública do Município de Uruoca, conforme ficha funcional de Id. 14513679, ao recebimento do adicional de insalubridade, com pagamento de retroativo e seus reflexos, além da percepção de adicional por tempo de serviço (anuênio) previsto na Lei Municipal nº 217/1998 vigente à época, apesar da posterior revogação do dispositivo concessivo, por meio da Lei Municipal nº 110/2013. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> De início, é necessário verificar se havia uma lei, de iniciativa do Chefe do Poder Executivo, vigente na época dos fatos (tempus regit actum). Além disso, é fundamental confirmar se a parte interessada estava em efetivo exercício durante o período de vigência e se cumpria os requisitos estabelecidos pela norma regulamentadora, interpretando-os de forma sistemática e alinhada ao interesse público. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Compulsando-se os autos, no que diz respeito ao adicional por tempo de serviço, verifica-se que a&#160;apelante, servidora pública municipal ocupante do cargo efetivo de auxiliar&#160;de serviços gerais, foi nomeada&#160;e empossada em&#160;02/05/2007&#160;(Id.&#160;14514002&#160;e 14514003). </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Vigia àquela época – tendo sido revogado em 19/08/2013, pela Lei Municipal nº 110 – o art. 64,&#160; caput&#160;e parágrafo único, da Lei Municipal nº 217, de 1998, o qual dispunha, destaca-se: &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Art. 64. O adicional por tempo de serviço é devido à razão de 1% (um por cento) por ano de serviço público efetivo prestado ao Município de Uruoca, incidente sobre o vencimento do servidor.</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Parágrafo único. O servidor fará jus ao adicional a partir do mês em que completar o anuênio. &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160;Em sede de sentença (Id. 14514137), o juízo do primeiro grau reconheceu a incidência da prescrição quinquenal do fundo de direito, veja-se: </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> No entanto, o aludido artigo 64 foi expressamente revogado pela Lei Municipal nº 110/2013. Sendo assim, o adicional por tempo de serviço perdurou somente até a data de entrada em vigor da nova norma municipal, ou seja, até 19 de agosto de 2013, de maneira que a promovente não faz jus à referida benesse, pois, embora a sua nomeação e posse tenha ocorrido em 02 de maio de

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	2007, o ajuizamento da presente demanda somente se deu em 08 de outubro de 2018, de forma que reconheço a existência de prescrição incidente sobre as parcelas anteriores aos cinco anos que precederam o ajuizamento da demanda, nos termos do Decreto nº 20.910/32 c/c a Súmula 85 do STJ. &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> De fato, tal entendimento se assemelha com a orientação firmada pelo Superior Tribunal de Justiça. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> No presente caso, a suplicante adquiriu o direito à percepção das parcelas atinentes ao adicional por tempo de serviço durante a vigência do art. 64,&#160; caput&#160;e parágrafo único, do Estatuto dos Servidos Públicos Municipais, de 2002&#160;a 19/08/2013, na fração de 1% (um por cento) de seu vencimento-base por ano de serviço público efetivo prestado ao Município. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Entretanto, é sabido não haver direito adquirido a regime jurídico, de sorte que, com a revogação da norma local instituidora do adicional, exsurgiu para a servidora o termo inicial do lapso de 5 (cinco) anos para exigir do Poder Público a sua implementação. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Sendo assim, o adicional por tempo de serviço perdurou somente até a data de entrada em vigor da nova norma municipal, ou seja, até 19/08/2013, de maneira que a promovente, ora apelante, não faz jus à referida benesse, pois, embora a sua nomeação e posse tenha ocorrido em 02/05/2007 (Id. 14514002 e 14514003), o ajuizamento da presente demanda somente se deu em 08/10/2018, após o transcurso de mais de 5 (cinco) anos da revogação da norma local instituidora adicional, de forma que reconheço a existência de prescrição incidente sobre as parcelas anteriores aos cinco anos que precederam o ajuizamento da demanda, nos termos do Decreto nº 20.910/32 c/c a Súmula 85 do STJ. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Nesse sentido, entende esta Corte de Justiça, com destaques: </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> ADMINISTRATIVO E PROCESSUAL CIVIL. REMESSA NECESSÁRIA EM AÇÃO DECLARATÓRIA C/C COBRANÇA. SERVIDORAS PÚBLICAS DO MUNICÍPIO DE URUOCA. ADICIONAL POR TEMPO DE SERVIÇO - ANUÊNIO. PREVISÃO NA LEI MUNICIPAL Nº 217/1998. DIREITO EXPRESSAMENTE REVOGADO PELA LEI Nº 110/2013. CONDENAÇÃO DO MUNICÍPIO AO PAGAMENTO DO ADICIONAL POR TEMPO DE SERVIÇO DEVIDO E NÃO PRESCRITO. IMPOSSIBILIDADE DE VERIFICAÇÃO DO VALOR GLOBAL DA CONDENAÇÃO. REMESSA CONHECIDA, MAS DESPROVIDA. 1. Não é possível estimar o valor global da condenação, visto não terem sido acostadas as fichas financeiras das promoventes; por ter sido atribuído à causa o montante de R$ 100,00 (cem reais) para efeitos meramente fiscais; e por constar na sentença que os valores serão apurados em liquidação, tratando-se de sentença ilíquida na qual há impossibilidade de verificação do valor de alçada previsto no art. 496, § 3º, inciso III, do Código de Processo Civil/2015.&#160;2. O direito autoral se ampara no artigo 64 da Lei nº 217/98, que foi suprimido pela Lei Municipal nº 110/2013, cujo objeto específico foi a revogação do referido dispositivo, sem mais regulamentar a matéria. 3. As servidoras possuem direito ao período não alcançado pela prescrição, de 01/03/2013 a 19/08/2013, considerando os percentuais devidos desde a vigência da Lei Municipal nº 217/1998 ou do ingresso no serviço público, caso esse seja posterior. 4. Remessa necessária conhecida, mas desprovida. (TJ-CE -&#160;Remessa Necessária Cível: 0002373-80.2018.8.06.0179&#160;Uruoca, Relator: WASHINGTON LUÍS BEZERRA DE ARAUJO, Data de Julgamento: 05/02/2024, 3ª Câmara Direito Público,&#160;Data de Publicação: 06/02/2024)&#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <span style="font-size: x-small;"> <em> SERVIDORA PÚBLICA DO MUNICÍPIO DE URUOCA/CE. ADICIONAL POR TEMPO DE SERVIÇO. VERBAS PRESCRITAS. ADICIONAL DE INSALUBRIDADE EM GRAU MÁXIMO. IMPOSSIBILIDADE. EXISTÊNCIA DE LAUDO TÉCNICO ATESTANDO GRAU MÉDIO. TERMO INICIAL. DATA DO LAUDO.

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	PRECEDENTES DESTE TRIBUNAL. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Cuida-se, na espécie, de apelação cível em ação ordinária, por meio da qual servidora pública do Município de Uruoca/CE busca o reconhecimento do seu direto à percepção de adicional de insalubridade em grau máximo desde a data de elaboração do laudo técnico e de adicional por tempo de serviço. 2. Verifica-se que a decisão a quo determinou a data da contestação como o termo inicial para pagamento do adicional de insalubridade à autora sob o fundamento de que o laudo técnico não contém a data de sua elaboração. 3. Contudo, o STJ e esta e. Corte de Justiça possuem firme entendimento no sentido de ser devida essa vantagem desde a elaboração do Laudo Técnico, o qual definiu a classificação da insalubridade da atividade exercida pela autora no percentual de 20% (grau médio).&#160; O fato de o documento não conter a data de elaboração impõe a aferição do período exato em fase de liquidação de sentença, como já se manifestou este Tribunal de Justiça ao julgar casos similares. 4. No que se refere ao adicional por tempo de serviço, o qual estava previsto no art. 64, da Lei Municipal nº 217/1998, impõe-se reconhecer que tal dispositivo foi revogado pela Lei Municipal nº 110/2013, sendo a vigência daquela vantagem encerrada em 19 de agosto de 2013. Assim, uma vez que a apelante apenas ingressou em juízo requerendo o citado adicional em 08 de outubro de 2018, evidencia-se a ocorrência da prescrição da pretensão, nos termos do Decreto-Lei nº 20.910/32. 5. Deve, então, ser parcialmente reformada a sentença recorrida, para reconhecer como termo inicial do adicional de insalubridade devido a data de elaboração do laudo pericial. Precedentes. Recurso conhecido e parcialmente provido. Sentença reformada em parte. (APELAÇÃO CÍVEL - 00001168220188060179, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 20/03/2024, data da publicação: 21/03/2024) </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <em> AÇÃO DE COBRANÇA DE ADICIONAL DE INSALUBRIDADE E ADICIONAL POR TEMPO DE SERVIÇO <span style="font-size: 10pt; font-family: Arial, sans-serif;"> <span style="font-size: x-small;">. SENTENÇA DE PARCIAL PROCEDÊNCIA. ADICIONAL POR TEMPO DE SERVIÇO REVOGADO PELA LEI Nº 110/2013. INCIDÊNCIA DA PRESCRIÇÃO. AÇÃO AJUIZADA APÓS O DECURSO DE 5 ANOS DA REVOGAÇÃO DO BENEFÍCIO. INÉRCIA AUTORAL. ADICIONAL DE INSALUBRIDADE. TERMO INICIAL. DATA DA APRESENTAÇÃO DO LAUDO PERICIAL. IMPOSSIBILIDADE DE AFERIR A INSALUBRIDADE EM DATA ANTERIOR. MAJORAÇÃO DOS HONORÁRIOS. SENTENÇA MANTIDA. &#160;1. A presente controvérsia recursal gira em perquirir a correção da Sentença impugnada, a qual reconheceu parcialmente o direito da parte autora, ora apelante, de receber adicional de insalubridade, nos termos constantes na Sentença, e de considerar prescrito o direito relacionado ao recebimento de adicional por tempo de serviço. &#160;2. Analisando os autos, conforme ficha funcional da parte postulante (ID 10865108), verifica-se que esta é atendente de consultório dentário, admitida como servidora pública em 01.04.2022, motivo pelo qual postula a incorporação de adicional por tempo de serviço, o qual era previsto no art. 64, do Estatuto dos Servidores Públicos do Município de Uruoca, bem como de adicional de insalubridade, pois exerceria atividade de risco. &#160;3. Quanto ao adicional por tempo de serviço, este fora revogado pelo art. 1º, da Lei Municipal nº 110/2013, cujo teor pode ser observado no ID 10865107. A parte recorrente ingressou no serviço público municipal em 01.04.2022, motivo pelo qual faria jus ao citado adicional do citado período até a revogação da lei. Apesar disso, a presente ação fora interposta em 10.10.2018 (ID 57614469), mais de cinco anos após a revogação do benefício, ocorrida em 19.08.2013, não havendo que se falar em direito de receber os valores que deixou de fazê-lo, como alegado em sede recursal, uma vez que não postulou tal benefício em tempo hábil. 4. Em relação ao adicional de insalubridade, verifica-se que, a teor do laudo técnico de condições ambientais (ID 10865111), resta comprovada a insalubridade de grau médio da função exercida pela autora, motivo pelo qual restou correta a Sentença ao deferir o pagamento do benefício na porcentagem de 20% (vinte por cento)&#160;do salário mínimo. O ponto questionado pela recorrente, entretanto, refere-se a data de início do benefício, uma vez que o citado laudo não encontra-se datado. A fixação da data de início da insalubridade remonta a data da produção da prova pericial, uma vez que não se pode presumir a ocorrência da insalubridade em datas pretéritas. Assim, a Sentença é correta ao estabelecer a data de início como a data de apresentação do laudo, pois inexiste prova da existência do requisito para a concessão do benefício em data anterior. 5. Recurso de Apelação conhecido para negar-lhe provimento. Sentença mantida em todos os seus termos. Honorários Advocatícios majorados para 15% do valor da condenação. (APELAÇÃO CÍVEL - 00001237420188060179, Relator(a): MARIA NAILDE PINHEI RO NOGUEIRA, 2ª Câmara de Direito Público, Data do julgamento: 26/06/2024, data da publicação: 27/06/2024) <span

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	style="font-family: Arial, sans-serif;">&#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Desse modo, deve ser mantida a sentença neste ponto, reconhecendo a prescrição quinquenal sobre o adicional por tempo de serviço. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Ademais, quanto o adicional de insalubridade. Com efeito, no âmbito do Município de Uruoca, o adicional de insalubridade está previsto nos artigos 65 a 67 da Lei Municipal nº 217/98 (Estatuto dos Servidores Públicos do Município de Uruoca),&#160; in verbis: &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Art. 65 – São consideradas atividades ou operações insalubres aquelas que, por sua natureza, condições ou métodos de trabalho, exponham os servidores a agente nocivo à saúde acima dos limites de tolerância, fixados em razão da natureza e da intensidade do agente e o tempo de exposição aos seus efeitos.</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Art. 66 – A eliminação ou a neutralização da insalubridade ocorrerá:</p><p class="MsoListParagraph" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; mso-add-space: auto; text-align: justify; text-indent: -4.0cm; mso-text-indent-alt: -18.0pt; line-height: normal; mso-list: l0 level1 lfo1; tab-stops: list 36.0pt;"><!--[if !supportLists]--> &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;I.. &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; <!--[endif]--> com a adoção de medidas que conservem o ambiente de trabalho dentro dos limites de tolerância;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-indent: -4.0cm; mso-text-indent-alt: -18.0pt; line-height: normal; mso-list: l0 level1 lfo1; tab-stops: list 36.0pt;"><!--[if !supportLists]--> &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;II. &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; <!--[endif]--> com a utilização de equipamentos de proteção individual ao servidor que diminuam a intensidade do adente agressivo aos limites de tolerância.</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Parágrafo único.&#160; A insalubridade e periculosidade serão comprovadas por meio de perícia médica.</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Art. 67 O exercício de trabalho em condições insalubres, acima dos limites de tolerância estabelecidos pelo Ministério do Trabalho, assegura a percepção do adicional de insalubridade.</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Parágrafo único. O adicional a que se refere o caput deste artigo se classifica segundo os graus máximo médio e mínimo, com valores de 40% (quarenta por cento), 20% (vinte por cento) e 10% (dez por cento) do salário-mínimo nacional, respectivamente.</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> <span

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	style="line-height: 150%;">&#160;O direito do trabalhador à prot eção contra a insalubridade é consagrado pela própria Constituição Federal, a teor do artigo 7, XXIII. Por sua vez, a Lei Orgânica Municipal de Uruoca dispõe, em seu art. 67, parágrafo único, que “o exercício de trabalho em condições insalubres, acima dos limites de tolerância estabelecidos pelo Ministério do Trabalho, assegura a percepção do adicional de insalubridade”, que se “classifica segundo os graus máximo, médio e mínimo, com valores de 40% (quarenta por cento), 20% (vinte por cento) e 10% (dez por cento) do salário-mínimo nacional, respectivamente”. &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Em sede de apelação, a autora alega que o Ente Municipal em março/2020 incorporou de forma espontânea aos proventos da apelante o adicional de insalubridade, passando a pagar mensalmente a proporção de 20% (vinte por cento) sobre a função exercida, conforme documento de Id. 14513680. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Desse modo, afirma que é plenamente legal e justo que a Requerente receba todos os valores retroativos, abrangidos entre o período de junho de 2017 a fevereiro de 2020, referentes ao adicional de insalubridade, por ser direito líquido, certo e inerente a Autora que, por todos esses anos, trabalhou diariamente sob exposição direta de agentes insalubres, sem receber a gratificação legal para tanto. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Ocorre que o STJ fixou o entendimento de que o pagamento do adicional de insalubridade está condicionado ao laudo que prova efetivamente as condições insalubres a que estão submetidos os servidores. Assim,&#160; não cabe seu pagamento pelo período que antecedeu a perícia e a formalização do laudo comprobatório, devendo ser afastada a possibilidade de presumir insalubridade em épocas passadas, emprestando-se efeitos retroativos a laudo pericial atual&#160;(STJ. 2ª Turma. REsp 1.400.637/RS, Rel. Min. Humberto Martins, DJe 24/11/2015). </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> In casu , a apelante não acostou aos presentes autos qualquer laudo pericial apto a comprovar se estava exposta a condições insalubres e as gradações que permitam o pagamento da vantagem durante o período pleiteado. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Salienta-se que o próprio ente municipal colacionou à sua peça de contestação página do “laudo técnico de análise de insalubridade e periculosidade da unidade mista de saúde – Hospital Municipal”, para o cargo de auxiliar de serviços gerais (id. 14513682), no entanto, sem qualquer indicação de data, sendo, assim, impossível aferir o início do dever da municipalidade de pagar o adicional de insalubridade à servidora. &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Nesse sentido, colaciono precedente deste TJCE, aplicável ao caso em tela, destaca-se: &#160;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <span style="font-size: x-small;">PRETENSÃO DE RECEBIMENTO DE ADICIONAL DE INSALUBRIDADE. ARTS. 65 A 67 DA LEI MUNICIPAL Nº 217/1998. IMPOSSIBILIDADE. NORMA DE EFICÁCIA LIMITADA. AUSÊNCIA DE LAUDO PERICIAL E DE LEI MUNICIPAL ESPECÍFICA REGULAMENTADORA. ANUÊNIO. PREVISÃO NO ART. 64 DO ESTATUTO DOS SERVIDORES MUNICIPAIS DE URUOCA. POSTERIOR REVOGAÇÃO. DIREITO ADQUIRIDO À INCORPORAÇÃO DO BENEFÍCIO, NO VALOR NOMINAL A QUE FAZIA JUS ANTES DA REVOGAÇÃO, RESPEITADA A PRESCRIÇÃO QUINQUENAL QUANTO ÀS VERBAS VENCIDAS. RECURSO CONHECIDO E PARCIALMENTE PROVIDO.1. A controvérsia consiste em verificar o direito da apelante, servidora pública do Município de Uruoca, ocupante do cargo de agente administrativo

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	desde 02/05/2007 conforme Termo de Posse (ID. nº 46868684), ao recebimento de adicional de insalubridade no período em que estava lotada na Secretaria de Saúde Municipal, bem como se possui direito ao adicional por tempo de serviço. 2. Tratando-se de demanda envolvendo servidora pública municipal com vínculo estatutário, deve o adicional de insalubridade por ela reclamado estar regulamentado em lei municipal de iniciativa do Poder Executivo, disciplinando, inclusive, os graus de insalubridade e percentuais cabíveis para cada categoria. 3. Inexistindo legislação complementar, não há falar em pagamento do adicional em observância ao princípio da legalidade, não podendo o Judiciário suprir omissão legislativa, sob pena de violação ao princípio da separação dos poderes, pilar do Estado de Direito (art. 2º da CF/1988). 4. O pagamento do adicional de insalubridade também está condicionado ao laudo que prova efetivamente as condições insalubres a que estão submetidos os servidores, conforme precedente do STJ, não tendo a parte autora juntado qualquer documento apto a comprovar a sua exposição a agentes prejudiciais à saúde. 5. Quanto ao adicional por tempo de serviço, a Lei Municipal nº 110, em 19 de agosto de 2013, revogou expressamente o art. 64 da Lei Municipal nº 217/98 que estipulava o anuênio para os servidores públicos Municipais. Apesar disso, a parte autora estava em exercício quando da vigência do art. 64 do Estatuto Servidores Públicos do Município de Uruoca, de modo que o direito de continuar percebendo os anuênios pelos respectivos períodos aquisitivos anteriores à revogação do benefício já havia se incorporado ao seu patrimônio, não havendo falar em prescrição do fundo de direito.&#160; 6. Lado outro, deve-se determinar que o pagamento dos anuênios se dê no valor nominal que receberia antes da revogação do benefício pela Lei Municipal nº 110/2013, isto é, sem incidência da forma de cálculo prevista na legislação revogada. Isso porque é cediço que não há direito adquirido a regime jurídico remuneratório, ressalvando-se tão somente a irredutibilidade de vencimento ou proventos, de modo que a Administração não está impedida de extinguir ou reduzir vantagens, mas deve respeitar, dentre os direitos adquiridos, o valor literal da remuneração do servidor, preservando-a através de mecanismos como o reenquadramento ou o pagamento de parcela complementar (vantagem de caráter pessoal não restringível ou vantagem pessoal não identificada). 7. Apelação conhecida e provida em parte. (APELAÇÃO CÍVEL - 00001315120188060179, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 19/04/2023, data de publicação: 19/04/2023)&#160;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <span style="font-size: 10pt; font-family: Arial, sans-serif;"> <span style="font-size: x-small;">AÇÃO DE COBRANÇA DE ADICIONAL DE INSALUBRIDADE E ADICIONAL POR TEMPO DE SERVIÇO. SENTENÇA DE PARCIAL PROCEDÊNCIA. ADICIONAL POR TEMPO DE SERVIÇO REVOGADO PELA LEI Nº 110/2013. INCIDÊNCIA DA PRESCRIÇÃO. AÇÃO AJUIZADA APÓS O DECURSO DE 5 ANOS DA REVOGAÇÃO DO BENEFÍCIO. INÉRCIA AUTORAL. ADICIONAL DE INSALUBRIDADE. TERMO INICIAL. DATA DA APRESENTAÇÃO DO LAUDO PERICIAL. IMPOSSIBILIDADE DE AFERIR A INSALUBRIDADE EM DATA ANTERIOR. MAJORAÇÃO DOS HONORÁRIOS. SENTENÇA MANTIDA. 1. A presente controvérsia recursal gira em perquirir a correção da Sentença impugnada, a qual reconheceu parcialmente o direito da parte autora, ora apelante, de receber adicional de insalubridade, nos termos constantes na Sentença, e de considerar prescrito o direito relacionado ao recebimento de adicional por tempo de serviço. 2. Analisando os autos, conforme ficha funcional da parte postulante (ID 10865108), verifica-se que esta é atendente de consultório dentário, admitida como servidora pública em 01.04.2022, motivo pelo qual postula a incorporação de adicional por tempo de serviço, o qual era previsto no art. 64, do Estatuto dos Servidores Públicos do Município de Uruoca, bem como de adicional de insalubridade, pois exerceria atividade de risco. 3. Quanto ao adicional por tempo de serviço, este fora revogado pelo art. 1º, da Lei Municipal nº 110/2013, cujo teor pode ser observado no ID 10865107. A parte recorrente ingressou no serviço público municipal em 01.04.2022, motivo pelo qual faria jus ao citado adicional do citado período até a revogação da lei. Apesar disso, a presente ação fora interposta em 10.10.2018 (ID 57614469), mais de cinco anos após a revogação do benefício, ocorrida em 19.08.2013, não havendo que se falar em direito de receber os valores que deixou de fazê-lo, como alegado em sede recursal, uma vez que não postulou tal benefício em tempo hábil. 4 . Em relação ao adicional de insalubridade, verifica-se que, a teor do laudo técnico de condições ambientais (ID 10865111), resta comprovada a insalubridade de grau médio da função exercida pela autora, motivo pelo qual restou correta a Sentença ao deferir o pagamento do benefício na porcentagem de 20% (vinte por cento)&#160;do salário mínimo. O ponto questionado pela recorrente, entretanto, refere-se a data de início do benefício, uma vez que o citado laudo não encontra-se datado. A fixação da data de início da insalubridade remonta a data da produção da prova pericial, uma vez que não se pode presumir a ocorrência da insalubridade em datas pretéritas. Assim, a Sentença é correta ao estabelecer a data de início como a data de apresentação do laudo, pois inexiste prova da existência do requisito para a concessão do benefício em data anterior.5. Recurso de Apelação

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	conhecido para negar-lhe provimento. Sentença mantida em todos os seus termos. Honorários Advocatícios majorados para 15% do valor da condenação.(APELAÇÃO CÍVEL - 00001237420188060179, Relator(a): MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara de Direito Público, Data do julgamento: 26/06/2024, data da publicação: 27/06/2024) &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Assim, conforme determinado pelo juízo a quo não é devido a parte autora o adicional de insalubridade. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Diante do exposto,&#160; conheço do recurso da autora para negar-lhe provimento, mantendo a sentença recorrida em todos os seus termos. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160; É como voto. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema. </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Padronizado
Polo ativo	PROCURADORIA GERAL DO ESTADO
Advogado(s) - Polo ativo	Não informado
Polo passivo	MINISTERIO PUBLICO DO ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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	  incorporado ao sus . Grupo 1-B do CEAF. Financiamento sob responsabilidade exclusiva da União e aquisição centralizada pelo Ministério da Saúde. Competência da União para processar e julgar o feito. Agravo de instrumento provido. </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> I. Caso em exame <br /> 1. Agravo de Instrumento interposto em face de decisão interlocutória de primeiro grau que deferiu a tutela de urgência requestada que pleiteava o fornecimento do medicamento OCTREOTIDA LAR 30mg . </p><p style="font-variant: small-caps; line-height: 200%; margin-bottom: 0cm;" align="justify"> II. Questão em discussão </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 2. Analisar de quem é a competência para processar e julgar o feito, cujo objeto é o fornecimento de medicamento OCTREOTIDA LAR 30mg . </p><p class="western" style="line-height: 150%; margin-bottom: 0cm;" align="justify"> III. Razões de decidir </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 3. Trata-se, portanto, de medicação incorporada ao Sistema Único de Saúde – SUS, padronizado no Grupo 1- B .

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	          Conforme o art. 49, inciso I, “a”, da Portaria de Consolidação GM/MS n. 2/2017, a responsabilidade pelo financiamento é da União, e a compra centralizada pelo Ministério da Saúde, o que justifica a inclusão da União no polo passivo da demanda. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> IV. Dispositivo </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 4 . Agravo de Instrumento conhecido e provido, para&#160; reconhecer a legitimidade da União para figurar no polo passivo do feito, e determinar a consequente remessa do feito para a Justiça Federal .</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> _______________ </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados: CF, art. 196. CPC, art. 64, §4º. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada: ST F , RE 855178 ED, Relator LUIZ FUX, Relator p/ Acórdão: EDSON FACHIN, julgado em 23/05/2019 </p><p class="western" style="font-weight: normal; line-height: 200%; margin-bottom: 0cm;">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0.6cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso de agravo de instrumento, para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. </p><p class="western" style="line-height:

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	200%; text-indent: 2.43cm; margin-bottom: 0.6cm;" align="justify"> Fortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; text-indent: 2.43cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" lang="pt-PT" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" lang="pt-PT" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0.3cm;" align="center"> RELATÓRIO </p><p class="western" style="font-weight: normal; line-height: 200%; text-indent: 1.51cm;" align="justify"> Trata-se de agravo de instrumento interposto pelo Estado do Ceará , em face de decisão proferida pelo juízo da Vara Única da Comarca de Missão Velha , na ação de obrigação de fazer nº 3000127 - 18 .202 4 .8.06. 0 <span

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	style="color: #000000;"> 125 . </p><p class="western" style="line-height: 200%; text-indent: 1.5cm;" align="justify"> O processo principal: a parte autora requer a condenação do Estado do Ceará na obrigação de fornecer o medicamento OCTREOTIDA LAR 30mg , incorporado ao SUS . </p><p class="western" style="line-height: 200%; text-indent: 1.5cm;" align="justify"> A decisão agravada: o juízo de origem concedeu tutela provisória de urgência e determinou que o Estado do Ceará forneça em benefício da parte autora, o medicamento prescrito . </p><p class="western" style="line-height: 200%; text-indent: 1.5cm;" align="justify"> Agravo de instrumento: o Estado do

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	Ceará requer , sob o argumento de que o medicamento solicitado é incorporado ao SUS no grupo 1-B do CEAF, com financiamento sob responsabilidade exclusiva da União e aquisição centralizada pelo Ministério da Saúde (Portarias de Consolidação GM/MS nº 2 e nº 6 de 2017), que seja reconhecida a incompetência da jurisdição estadual, e sejam os autos remetidos para a Justiça Federal. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm; background: transparent; page-break-before: auto;" align="justify"> De cisão Interlocutória : deferiu a tutela de urgência recursal, para reformar a decisão interlocutória agravada de primeiro grau, apenas para reconhecer a competência da União para atuar no polo passivo do feito e determinar a remessa dos autos para a Justiça Federal , mantendo, contudo, o teor da medida liminar deferida em primeiro grau <span style="font-variant:

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	normal;"> . </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm; background: transparent; page-break-before: auto;" align="justify"> Contrarrazões: Id . 15353450 . </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm; background: transparent;" align="justify"> Agravo Interno : o Ministério Público interpôs agravo interno em face da decisão interlocutória que concedeu efeito suspensivo à decisão agravada . </p><p class="western" style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2; text-indent: 1.51cm;" align="justify"> Vieram os autos conclusos. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify"> É o relatório, no essencial. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm;" align="justify"> <br /> <br /></p><p class="western" style="line-height: 200%;" align="justify"> <br /> <br /></p><p class="western" style="line-height: 200%; orphans: 2;

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	widows: 2; background: transparent; page-break-before: auto;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm; page-break-before: auto;" align="justify"> Presentes os pressupostos extrínsecos (adequação, regularidade formal e inexistência de fato impeditivo, suspensivo ou modificativo do direito de recorrer) e intrínsecos (legitimidade, interesse e cabimento), conheço do agravo de instrumento. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; page-break-before: auto;" align="justify"> Sabe-se que a saúde é direito fundamental assegurado a todos os indivíduos, sendo que ao Estado compete a sua promoção, nos termos do que preconiza o art. 196 da Constituição da República de 1988 , in verbis: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Art. 196. A saúde é direito de todos e dever do Estado, garantido mediante políticas sociais e econômicas que visem à redução do risco de doença e de outros agravos e ao acesso universal e igualitário às ações e serviços para sua promoção, proteção e recuperação. (grifei) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm; page-break-before: auto;" align="justify"> Como é cediço, em sede de repercussão geral (tema 793), o Supremo Tribunal Federal – STF definiu que os entes da federação, em decorrência da competência comum, são solidariamente responsáveis nas demandas prestacionais na área da saúde (art. 196, da Constituição Federal – CF), mas que, diante dos critérios constitucionais de descentralização e hierarquização, compete à autoridade judicial direcionar o cumprimento conforme as regras de repartição de competências e determinar o ressarcimento a quem suportou o ônus financeiro. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0.21cm;" align="justify"> Ementa: CONSTITUCIONAL E ADMINISTRATIVO. EMBARGOS DE DECLARAÇÃO EM RECURSO EXTRAORDINÁRIO COM REPERCUSSÃO GERAL RECONHECIDA. AUSÊNCIA DE OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE. DESENVOLVIMENTO DO PROCEDENTE. POSSIBILIDADE. RESPONSABILIDADE DE SOLIDÁRIA NAS DEMANDAS PRESTACIONAIS NA ÁREA DA SAÚDE. DESPROVIMENTO DOS EMBARGOS DE DECLARAÇÃO. 1. É da jurisprudência do Supremo Tribunal Federal que o tratamento médico adequado aos necessitados se insere no rol dos deveres do Estado, porquanto responsabilidade solidária dos entes federados. O polo passivo pode ser composto por qualquer um deles, isoladamente, ou conjuntamente. 2. A fim de otimizar a compensação entre os entes federados, compete à autoridade judicial, diante dos critérios constitucionais de descentralização e hierarquização, direcionar, caso a caso, o cumprimento conforme as regras de repartição de competências e determinar o ressarcimento a quem suportou o ônus financeiro . 3. As ações que demandem fornecimento de medicamentos sem registro na ANVISA deverão necessariamente ser propostas em face da União. Precedente específico: RE 657.718, Rel. Min. Alexandre de Moraes. 4. Embargos de declaração desprovidos. <br /> (RE 855178 ED, Relator(a): LUIZ FUX, Relator(a) p/ Acórdão: EDSON FACHIN, Tribunal Pleno, julgado em 23/05/2019, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-090 DIVULG 15-04-2020 PUBLIC 16-04-2020) </p><p class="western" style="line-height: 200%; text-indent: 1.51cm;" align="justify"> No caso em tela, o pedido <span style="font-family:

Processo	3004703-41.2024.8.06.0000
	Arial, serif;"> da ação principal, que deu ensejo ao presente agravo de instrumento volta- se ao fornecimento do medicamento OCTREOTIDA LAR 30mg , já regularmente dispensado no âmbito do SUS, constante na lista do RENAME/2022, no grupo 1-B do CEAF, e integra o Protocolo Clínico e Diretrizes Terapêuticas (PCDT) para tratamento da acromegalia . </p><p class="western" style="line-height: 200%; text-indent: 1.51cm;" align="justify"> Trata-se, portanto, de medicação incorporada ao Sistema Único de Saúde – SUS, padronizado no Grupo 1- B . Conforme o art. 49, inciso I, “a”, da Portaria de Consolidação GM/MS n. 2/2017, a responsabilidade pelo financiamento é da União, e a compra centralizada pelo Ministério da Saúde, o que justifica a inclusão da União no polo passivo da demanda. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify"> No mesmo sentido : </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> APELAÇÃO CÍVEL. DIREITO À SAÚDE. RESPONSABILIDADE SOLIDÁRIA DE TODOS OS ENTES DA FEDERAÇÃO. FORNECIMENTO DE MEDICAMENTO PERTENCENTE AO GRUPO 1A, CUJA AQUISIÇÃO É DE RESPONSABILIDADE DO MINISTÉRIO A SAÚDE. CARECIMENTO DA MEDICAÇÃO COMPROVADO. NECESSIDADE DE INCLUSÃO DA UNIÃO. REMESSA DOS AUTOS À JUSTIÇA FEDERAL. MANUTENÇÃO DO FORNECIMENTO PELO ENTE ESTADUAL ATÉ APRECIAÇÃO PELO JUÍZO COMPETENTE. PREVALÊNCIA DOS DIREITOS FUNDAMENTAIS À SAÚDE E À VIDA. RECURSO CONHECIDO E PROVIDO. (TJ-AL - Apelação Cível: 0700042-35.2023.8.02.0013 Igaci, Relator: Des. Alcides Gusmão da Silva, Data de Julgamento: 25/01/2024, 3ª Câmara Cível, Data de Publicação: 29/01/2024) </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2;

Processo	3004703-41.2024.8.06.0000
	margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> EMENTA: AGRAVO DE INSTRUMENTO - PROCESSUAL CIVIL - SAÚDE - STF: REPERCUSSÃO GERAL: TEMA 793 - SUS: REGRAS DE REPARTIÇÃO DE COMPETÊNCIA: OBSERVÂNCIA - POLIATRITE NODOSA: RITUXIMABE - MEDICAMENTO NÃO PADRONIZADO - INOCRPORAÇÃO: RESOPNSBILIDADE: UNIÃO - TRATAMENTO OFF LABEL - ENTE ESTADUAL E MUNICIPAL: OMISSÃO: AUSÊNCIA - TUTELA DE URGÊNCIA: REQUISITOS: AUSÊNCIA. 1. O Supremo Tribunal Federal (STF), no julgamento de recurso submetido à sistemática da repercussão geral, superou a tese de ilegitimidade dos entes públicos para as demandas de saúde, e determinou que o magistrado avalie a pretensão em respeito às regras administrativas de repartição de competência entre os gestores do Sistema Único de Saúde (SUS). 2. Compete à União, por meio do Ministério da Saúde, incorporar medicamentos às listas dos SUS (art. 19-Q da Lei nº 8.080/1990), não havendo como imputar aos entes estaduais e municipais omissão no dever de fornecer medicamentos ainda não padronizados. 3. Nos precedentes obrigatórios firmados tanto pelo STF quanto pelo Superior Tribunal de Justiça (STJ) determinou-se a participação da União Federal nas lides em que se pretende o fornecimento de terapias off label, ou seja, fora dos usos autorizados pela Agência Nacional de Vigilância Sanitária (ANVISA), o que afasta, a princípio, a obrigação de fornecimento liminar pelos entes municipal e estadual. (TJ-MG - AI: 16084332120228130000, Relator: Des.(a) Oliveira Firmo, Data de Julgamento: 04/07/2023, 7ª CÂMARA CÍVEL, Data de Publicação: 10/07/2023) </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; background: transparent; page-break-before: auto;" align="justify"> Por fim, ressalte-se que a remessa dos autos para a Justiça Federal não implica em anulação da decisão de primeiro grau que concedeu os efeitos da tutela antecipada, e determinou o fornecimento do medicamento pleiteado, razão pela qual, até que seja proferida nova decisão pelo juízo competente, deve ser mantida, conforme redação do art. 64, §4º, do CPC. </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; background: transparent; page-break-before: auto;" align="justify">“ Art. 64. A incompetência, absoluta ou relativa, será alegada como questão preliminar de contestação.</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; background: transparent;" align="justify"> § 1º A incompetência absoluta pode ser alegada em qualquer tempo e grau de jurisdição e deve ser declarada de ofício. </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; background: transparent;" align="justify"> § 2º Após manifestação da parte contrária, o juiz decidirá imediatamente a alegação de incompetência. </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; background: transparent;" align="justify"> § 3º Caso a alegação de incompetência seja acolhida, os autos serão remetidos ao juízo competente. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; background: transparent;" align="justify"> § 4º Salvo decisão judicial em sentido contrário, conservar-se-ão os efeitos de decisão proferida pelo juízo incompetente até que outra seja proferida, se for o caso, pelo juízo competente. ” (grifos nossos) </p><p style="line-height: 200%; orphans: 0; widows: 0; text-indent: 1.51cm; margin-bottom: 0.26cm;" align="justify"> No mesmo sentido: </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.26cm; background: transparent; page-break-before: auto;" align="justify"> <span style="font-size: x-small;"> <span style="font-family: Arial, serif;">CONSTITUCIONAL. ADMINISTRATIVO. PROCESSUAL CIVIL. REMESSA NECESSÁRIA. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER. FORNECIMENTO DE MEDICAMENTO ONCOLÓGICO. DIREITO FUNDAMENTAL À

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	SAÚDE. RESPONSABILIDADE DOS ENTES FEDERADOS. TEMA 793 DA REPERCUSSÃO GERAL. TRATAMENTO CUSTEADO COM RECURSOS FEDERAIS. NECESSIDADE DE INCLUSÃO DA UNIÃO NO POLO PASSIVO. REMESSA DOS AUTOS À JUSTIÇA FEDERAL. PRECEDENTES DO STF E DO TJCE. RECURSO CONHECIDO E PROVIDO. REEXAME PREJUDICADO. REMESSA DOS AUTOS À JUSTIÇA FEDERAL. EFEITOS DA SENTENÇA MANTIDOS (ART. 64, § 4º DO CPC). 1. O cerne da questão cinge-se em analisar se é devida a inclusão da União no polo passivo da demanda, eis que o pleito se trata de fornecimento de medicamento oncológico, tratamento custeado com recursos federais, ocasionando na remessa dos autos à Justiça Federal. 2. O STF, ao rejeitar os embargos de declaração opostos em face do Recurso Extraordinário 855.178-RG (Tema n. 793 da Repercussão Geral), fixou a tese no sentido de que "Os entes da federação, em decorrência da competência comum, são solidariamente responsáveis nas demandas prestacionais na área da saúde, e diante dos critérios constitucionais de descentralização e hierarquização, compete à autoridade judicial direcionar o cumprimento conforme as regras de repartição de competências e determinar o ressarcimento a quem suportou o ônus financeiro". 3. Na hipótese vertente, observa-se que a pretensão autoral se trata do fornecimento de fármaco utilizado para tratamento contra o câncer (SUNITINIBE), sendo responsabilidade da União, por meio do Ministério da Saúde, o financiamento dos medicamentos oncológicos. Dessa forma, torna-se necessária a inclusão da referida entidade federativa no polo passivo da presente demanda, devendo os autos serem remetidos à Justiça Federal, diante do reconhecimento da incompetência deste Juízo. Precedentes do STF e deste Tribunal de Justiça. 4. Importa ressaltar que, diante do que estabelece o art. 64, § 4º, do CPC, os efeitos da decisão proferida pelo Juízo de origem devem ser preservados, até nova apreciação pela Justiça Federal. 5. Recurso conhecido e provido. Reexame prejudicado. Remessa dos autos à Justiça Federal. Efeitos da sentença mantidos (art. 64, § 4º, CPC). ACÓRDÃO Vistos, relatados e discutidos os presentes autos da Remessa Necessária e Apelação Cível nº. 0051120-49.2021.8.06.0052, ACORDAM os Desembargadores membros da 1ª Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para dar-lhe provimento, restando prejudicado o reexame, nos termos do voto da Relatora, parte integrante deste. Fortaleza/CE, 05 de setembro de 2022. (TJ-CE - APL: 00511204920218060052 Brejo Santo, Relator: LISETE DE SOUSA GADELHA, Data de Julgamento: 05/09/2022, 1ª Câmara Direito Público, Data de Publicação: 05/09/2022) EMENTA: RECURSO DE AGRAVO DE INSTRUMENTO AÇÃO DE BUSCA E APREENSÃO LIMINAR DEFERIDA POR JUÍZO INCOMPETENTE ART. 64, §4º DO CPC CONSERVAÇÃO DA DECISÃO ATÉ MANIFESTAÇÃO DO JUÍZO COMPETENTE DECISÃO MANTIDA RECURSO DESPROVIDO. A incompetência do juízo prolator da decisão liminar, por si só, não a inquina de nulidade, considerando que o art. 64, §4º do Código de Processo Civil determina a conservação dos efeitos do ato decisório até que outra decisão seja proferida, se for o caso, pelo juízo competente. (TJMT,1018274-51.2019.8.11.0000, CÂMARAS ISOLADAS CÍVEIS DE DIREITO PRIVADO, SERLY MARCONDES ALVES, Quarta Câmara de Direito Privado, Julgado em 12/02/2020,Publicado no DJE 17/02/2020) Isso posto, conheço do agravo de instrumento , para dar <span style="font-size:

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	small;"> - lhe provimento , confirmando a decisão que antecipou os efeitos da tutela recursal, para reformar a decisão interlocutória d e primeiro grau agravada, e reconhecer a legitimidade da União para figurar no polo passivo do feito, e determinar a consequente remessa do feito para a Justiça Federal, mantendo, contudo o teor da medida liminar deferida em primeiro grau. </p><p style="line-height: 200%; orphans: 0; widows: 0; text-indent: 1.51cm; margin-top: 0.21cm;" align="justify"> É o voto que submeto à consideração de meus pares. </p><p class="western" style="line-height: 200%; text-indent: 1.51cm;" align="justify"> Expedientes necessários. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm;" align="left"> Fortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	119
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Promoção
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	ANTONIO MARCOS DA SILVA DE LIMA
Advogado(s) - Polo passivo	EDNALDO RIBEIRO DE OLIVEIRA - (CE44101-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3001374-23.2024.8.06.0064
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;&#160;&#160; </p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-841099af-7fff-c169-b13c-36f2fa72cab6" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo nº 3001374-23.2024.8.06.0064 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Estado do Ceará</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: Antonio Marcos da Silva de Lima</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ementa: Direito administrativo. Apelação cível. Promoção retroativa de militar. PMCE. Art. 31-A da Lei estadual nº 15.797/2015. A comprovação do atendimento aos requisitos de acesso ao posto de 2º Tenente devem ser cumpridos na data de publicação da lei. Maio de 2015. Requisitos não comprovados pelo autor. Recurso provido.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">I. Caso em exame &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> <span

Processo	3001374-23.2024.8.06.0064
	style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação cível interposta pelo ente público contra sentença que deu procedência à pretensão autoral, para determinar o acesso retroativo de militar estadual ao posto de 2º Tenente da PMCE, com a consequente inclusão ao Quadro Geral de Acesso para promoção ao posto de 1º Tenente em 24 de dezembro de 2023 de servidor público, e pagamento de diferença de vencimentos do período em questão.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">2. Estão presentes as seguintes questões em discussão: i) definição da data para comprovar os requisitos de acesso ao posto de 2º Tenente, nos termos do art. 31-A da Lei nº 797/2015; e ii) se o militar comprovou atender aos requisitos para ter direito ao acesso de forma retroativa.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 3. A Lei estadual nº 797/2015 definiu regras excepcionais mais benéficas para a promoção de militares no ano de 2015. Contudo, a regra temporária para acesso ao posto de 2º Tenente foi inserida no normativo a partir da Lei estadual nº 16.023/2016.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 4. O art. 31-A faz referência à data da publicação da Lei estadual nº 797/2015, de forma que a comprovação do preenchimento dos requisitos deve ser feita considerando a data de 25 de maio de 2015, e não da publicação da Lei nº 16.023, de 25 de maio de 2016.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 5. À época da publicação da Lei estadual nº 797/2015, o autor não fazia jus ao direito de acesso, vez que não cumpria com as exigências legais determinadas. Recai a razão sobre os fundamentos do Estado do Ceará.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> IV. Dispositivo e tese</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">5. <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant:

Processo	3001374-23.2024.8.06.0064
	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Apelação cível conhecida e provida, determinando a reforma integral da sentença e a total improcedência da pretensão autoral.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> _________</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Dispositivos relevantes citados: Lei estadual nº 797/2015, arts. 6º e 31-A; Lei estadual nº 16.023/2016, art. 1º.</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, conhecer da Apelação Cível para dar-lhe provimento, nos termos do voto da relatora, parte integrante deste.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo ESTADO DO CEARÁ em face da sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Caucaia que, nos autos da Ação Ordinária proposta por ANTONIO MARCOS DA SILVA DE LIMA em desfavor do ente público, julgou procedente a pretensão autoral, nos termos do dispositivo abaixo transcrito (id. 14634623):</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-indent: 0.75pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-

Processo	3001374-23.2024.8.06.0064
	bottom: 0pt; padding: 12pt 0pt 0pt 0pt;" dir="ltr">Diante do exposto, JULGO PROCEDENTES os pedidos do autor,&#160; o que faço com resolução do mérito, com base no&#160; art. 487, inciso I, do CPC/2015, através do qual determino que o ESTADO DO CEARÁ, proceda com a promoção do autor, ANTONIO MARCOS DA SILVA DE LIMA, ao posto de 2º tenente da PM, a contar de 24 de dezembro de 2020, e o consequente levantamento e pagamento da diferença dos vencimentos a serem reajustados em sede de execução de sentença, com incidência de correção monetária e juros de mora calculados pela Taxa SELIC, nos termos do art. 3º da EC nº 113/2021, a partir da citação, ressalvados, é claro, os valores atingidos pela prescrição quinquenal. Por consequência do deferimento do pedido anterior, que seja o autor incluso no quadro geral de acesso para concorrer a promoção ao posto de 1º tenente retroativamente a conta de 24 de dezembro de 2023 para fins de concorrer a promoção ao posto citado, seja por antiguidade ou merecimento, tudo com a devida avalição pela comissão de promoção de oficiais. No tocante ao pedido do d.2&#160; entendo que se trata de consequência do deferimento do pedido anterior, motivo pelo qual deixo de me manifestar sobre.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-indent: 0.75pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> O promovido é isento de custas na forma do art. 5º, inciso I da Lei Estadual 16.132 de 2016.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-indent: 0.75pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> No tocante aos honorários advocatícios, condeno o promovido a pagar ao advogado do autor, honorários no percentual de 10% sobre o valor da condenação que será apurado em sede de liquidação de sentença.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-indent: 0.75pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões recursais (id. 14613634), o Estado do Ceará alegou, em suma, a impossibilidade de realização antecipada de Curso de Habilitação a Oficiais, que o

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	autor não foi preterido pela Administração Pública e que não demonstrou ter direito à promoção. Requereu, portanto, a reforma da sentença para que seja julgada totalmente improcedente a pretensão do autor.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em sede de contrarrazões (id. 14613636), a parte apelada rebateu os argumentos do recurso, aduzindo ter preenchido os requisitos para a sua promoção ao posto de 2º Tenente, a partir de 24 de dezembro de 2020 e ter sido preterido quanto à regra da antiguidade. Pede, ao fim, pelo não conhecimento e, subsidiariamente, pelo desprovimento do recurso da parte autora.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Instada a se manifestar, a Procuradoria-Geral de Justiça opinou pelo não conhecimento do recurso apelatório, nos termos da Súmula nº 43 deste Tribunal (id. 15428070).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da Apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O cerne da controvérsia está em averiguar se o autor, o militar Antônio Marcos da Silva de Lima faz jus ao direito de ingresso ao posto de 2º Tenente da PMCE, com efeitos retroativos, a contar de 24 de dezembro de 2020, com a possibilidade de inclusão de seu nome no Quadro Geral de Acesso para promoção ao posto de 1º Tenente, também de forma retroativa, na data de 24 de dezembro de 2023.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Compulsando os autos, tem-se que, em sua exordial, o autor fundamenta seu pedido nos seguintes argumentos: que, em 24 de dezembro de 2020, havia completado os requisitos para a promoção a 2º Tenente, nos termos do art. 31-A da Lei nº 15.797/2015, com redação pela Lei nº 16.023/2016; que o Estado deveria oferecer Curso de Habilitação em tempo hábil; e que o autor fora preterido na promoção, em benefício de militares mais modernos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ao sentenciar (id. 14634623), o juízo de origem entendeu que o promovente demonstrou que cumpriu os requisitos previstos em lei, de maneira que estaria apto a participar do CHO/2020, e julgou procedente sua pretensão.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Conforme já relatado, o Estado do Ceará recorreu da decisão, alegando que o autor não teria direito à promoção retroativa, por não cumprir os requisitos legais à época.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

Processo	3001374-23.2024.8.06.0064
	baseline; white-space: pre-wrap;">De início, entendo ser necessário discorrer brevemente sobre a matéria discutida neste feito.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A Lei estadual nº 15.797, de 25 de maio de 2015, dispõe sobre as promoções dos militares estaduais e, em seus artigos 6º a 8º, define os requisitos a serem preenchidos pelos militares visando à promoção por antiguidade ou por merecimento. Vejamos as condições do artigo 6º do normativo.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 6º Para fins de promoção por antiguidade e merecimento, deve o militar figurar no Quadro de Acesso Geral, cujo ingresso requer o preenchimento dos seguintes requisitos, cumulativamente:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">I - interstício no posto ou na graduação de referência;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">II - curso obrigatório estabelecido em lei;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">III - serviço arregimentado;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">IV - mérito.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 1º O interstício de que trata o inciso I deste artigo, a ser completado até a data em que efetivada a promoção, é o tempo mínimo de efetivo serviço considerado em cada posto ou graduação, descontado o tempo não computável, da seguinte forma:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">I – <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-

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	variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">para oficiais:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">a) para o posto de 1° Tenente – 5 (cinco) anos no posto de 2° Tenente;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">b) para o posto de 1º Tenente QOAPM e QOABM – 3 (três) anos no posto de 2º Tenente QOAPM e QOABM;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">c) para o posto de Capitão – 5 (cinco) anos no posto de 1° Tenente;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">d) para o posto de Capitão QOAPM e QOABM – 2 (dois) anos no posto de 1° Tenente QOAPM e QOABM;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">e) para o posto de Major – 6 (seis) anos no posto de Capitão;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">f) para o posto de Major QOAPM e QOABM – 2 (dois) anos no posto de Capitão QOAPM e QOABM;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">g) para o posto de Tenente-Coronel – 5 (cinco) anos no posto de Major;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">h) para o posto de Coronel – 3 (três) anos no posto de Tenente-Coronel;</p><p style="line-height: 1.2; margin-left:

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	113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">II – para praças:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">a) para a graduação de Cabo – 7 (sete) anos na graduação de Soldado;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">b) para a graduação de 3° Sargento – 5 (cinco) anos na graduação de Cabo;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">c) para a graduação de 2° Sargento – 3 (três) anos na graduação de 3° Sargento;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">d) para a graduação de 1° Sargento – 3 (três) anos na graduação de 2° Sargento;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">e) para a graduação de Subtenente – 4 (quatro) anos na graduação de 1° Sargento.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 2° O curso obrigatório de que trata o inciso II, disposto no caput deste artigo, a ser concluído, com aproveitamento, até a data de encerramento das alterações, é o que possibilita o acesso e a promoção do oficial e da praça aos sucessivos

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	postos e graduações de carreira, nas seguintes condições:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">I – para oficiais:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">a) para acesso e para nomeação no posto de 2º Tenente: Curso de Formação de Oficiais – CFO ou Curso de Formação Profissional - CFP, para os integrantes do QOPM, QOSPM, QOCplPM e QOCPM, na Polícia Militar, e QOBM e QOCBM, no Corpo de Bombeiros Militar, sob coordenação da Corporação Militar Estadual, e Curso de Habilitação de Oficiais - CHO, para os integrantes do QOAPM e QOABM, por meio de seleção interna supervisionada pela Academia Estadual de Segurança Pública;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">b) para promoção ao posto de Major QOPM e QOBM: Curso de Aperfeiçoamento de Oficiais - CAO ou curso regular equivalente realizado em Corporação Militar Estadual, supervisionado pela Academia Estadual de Segurança Pública, quando realizado no Estado;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">c) para promoção ao posto de Major QOAPM e QOABM: Curso de Aperfeiçoamento de Oficiais do Quadro Administrativo-CAO/QOA, ou curso regular equivalente realizado em Corporação Militar Estadual, supervisionado pela Academia Estadual de Segurança Pública, quando realizado no Estado;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">d) para promoção ao posto Coronel QOPM e QOBM: Curso Superior de Polícia- CSP, ou Curso Superior de Bombeiro – CSB, ou curso regular equivalente realizado em Corporação Militar Estadual, supervisionado pela Academia Estadual de Segurança Pública, quando realizado no Estado;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">II – <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-

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	variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">para praças:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">a) para ingresso no cargo de Soldado: Curso de Formação de Soldados, ou Curso de Formação Profissional, ou curso regular equivalente realizado em Corporação Militar Estadual, supervisionado pela Academia Estadual de Segurança Pública, quando realizado no Estado;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">b) para promoção à graduação de 3º Sargento: Curso de Habilitação de Sargentos, ou curso regular equivalente realizado em Corporação Militar Estadual, supervisionado pela Academia Estadual de Segurança Pública, quando realizado no Estado;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">c) para promoção à graduação de Subtenente: Curso de Habilitação a Subtenentes, ou curso regular equivalente realizado em Corporação Militar Estadual, supervisionado pela Academia Estadual de Segurança Pública, quando realizado no Estado.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 3º O Estado deverá oferecer o curso obrigatório de que trata o inciso II do caput, em tempo hábil, evitando prejuízo às promoções regulares.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (...)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 12. O militar estadual que for nomeado ao posto de 2º Tenente ou de 1º Tenente ou ao cargo de Soldado, nos quadros QOPM e QOBM, deverá, obrigatoriamente, permanecer todo o período de interstício exigido para

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	promoção ao posto ou à graduação imediata exercendo suas funções em unidade eminentemente operacional, junto a Batalhão, Companhia e Pelotão, na Capital, na Região Metropolitana ou no interior do Estado.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 13. No tempo de serviço arregimentado de que trata o §9º deste artigo, será computado o período de licença à gestante. (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Como se depreende da leitura do dispositivo, o ingresso ao posto de 2º Tenente possui duas peculiaridades: é o único para o qual, além do Curso de Habilitação, dá-se uma seleção interna, e o ato de ingresso é chamado de acesso, e não promoção. Isso se dá pois a passagem de Subtenente para 2º Tenente pressupõe a mudança do militar dos círculos hierárquicos de praça para oficial da PMCE.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A promulgação da Lei estadual nº 15.797/2015 tinha por finalidade promover a continuidade das carreiras militares, possibilitando promoções mais benéficas aos militares estaduais. Em razão disso, em seus artigos 30 a 34, propôs de forma excepcional regras diferenciadas para a promoção que ocorreria no mesmo ano de 2015, após a publicação da lei. Ou seja, a primeira após a publicação do novo normativo.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Contudo, os dispositivos originários da lei não previam regras excepcionais para o acesso ao posto de 2º Tenente, o que foi corrigido pela legislação estadual nº 16.023, de 25/05/2016, que acrescentou o art. 31-A à Lei estadual nº 15.797/2015, o qual determina que:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 31 - A. Aos atuais Subtenentes, na data da publicação desta Lei, fica assegurado, após 20 (vinte) anos de efetivo serviço prestado à respectiva Corporação Militar, com, no mínimo, <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal;

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	font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">5 (cinco) anos na graduação, o ingresso, desde que atendidos os demais requisitos legais, em Curso de Habilitação de Oficiais - CHO, independente de seleção interna, com o consequente acesso ao posto de 2º Tenente, uma vez concluído o curso com aproveitamento. (Redação dada pela Lei n.º 16.023, de 25.05.16)</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Sendo assim, nessa situação específica, foi afastada a exigência da seleção interna aos Subtenentes que cumpriam as demais condições (vinte anos de efetivo serviço prestado, cinco anos na graduação e a conclusão do CHO) para o acesso ao posto de 2º Tenente. É nessa regra de transição que busca inserir-se o autor da demanda.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Analisando o arcabouço probatório apresentado, tem-se que, conforme a informação da Ficha Individual do militar (id. 14634596 - página 5), este foi promovido à graduação de Subtenente, por merecimento, em 30/12/2015, a contar de 24/12/2015 (id. 14634597). Ou seja, a sua promoção para Subtenente foi a primeira regida pelas regras da nova legislação de 2015.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ocorre que, diante da inserção do art. 31-A através da Lei nº 16.023, de 25/05/2016, pretendia o autor valer-se da regra de transição não inserida inicialmente no instituto, alçar o acesso a 2º Tenente, mesmo que Lei nº 16.023/2016 tenha sido publicada apenas cinco meses após a sua última promoção.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Nos termos da inicial (id. 14634592), o militar buscava dar ao dispositivo a interpretação de que os requisitos criados pelo art. 31-A deveriam ser cumpridos em 25/05/2016 e em 25/05/2015, data da publicação da Lei nº 15.797/2015.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">

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	Entendo, porém, que tal entendimento não pode prosperar. Explico.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Os artigos 30 a 34 todos fazem menção a regras de transição que se aplicam especificamente à promoção ocorrida no fim do ano de 2015, como foi a que promoveu o autor de 1º Sargento para Subtenente. O art. 31-A veio a integrar esta legislação, em meio a esses dispositivos, tratando, a seu turno, das regras excepcionais para o acesso a 2º Tenente, que não haviam sido postas na redação original da lei.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Diante disso, compreende-se que o legislador sanou o erro quanto à omissão às regras de transição de acesso para o posto de 2º Tenente no ano de 2015. Portanto, quando o texto legal menciona os Subtenentes que tenham 20 anos de serviço prestado e 5 anos na graduação, na data da publicação da lei, refere-se a lei à qual o dispositivo faz parte, qual seja, Lei estadual nº 15.797/2015, de maio de 2015.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No mesmo sentido:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">MANDADO DE SEGURANÇA. INDEFERIMENTO DA INSCRIÇÃO EM CURSO DE HABILITAÇÃO DE OFICIAIS DO CORPO DE BOMBEIROS MILITARES DO ESTADO DO CEARÁ. NECESSIDADE DE APROVAÇÃO EM PROCESSO DE SELEÇÃO INTERNA, CONFORME PREVISÃO NO ART. 5º, DA LEI ESTADUAL Nº 15.784/2015. EXCEÇÃO DO ART. 31-A DO MESMO DIPLOMA. DIREITO EXCLUSIVO DOS SUBTENENTES QUE JÁ OCUPAVAM A GRADUAÇÃO À ÉPOCA DA LEI ESTADUAL Nº 15.784/2015. AUSÊNCIA DE PROVA PRÉ-CONSTITUÍDA QUANTO À APLICAÇÃO DA NORMA EXCEPCIONAL. SEGURANÇA DENEGADA. 1. Cinge-se o mandado de segurança à discussão sobre o suposto direito líquido e certo dos impetrantes de participarem no Curso de Habilitação de Oficiais do Corpo de Bombeiros Militares do Estado do Ceará - CHO/CBMCE de 2021, sem se submeterem à seleção interna prevista no art. 5º, da Lei Estadual nº 15.797/2015 e art. 20 do Decreto nº 31.804/201, em que a aprovação está condicionada à obtenção de nota mínima de 50% (cinquenta por cento) de acerto na prova escrita. 2. Decerto, o art. 31-A da Lei Estadual nº 15.785/2015 prevê o direito de não submeter a processo seletivo para fins de promoção ao posto de 2º Tenente; todavia, a norma beneficia exclusivamente os Subtenentes que já estavam nessa graduação até a data da publicação da lei, ou seja, 28 de maio de 2015. Dessarte, considerando que os impetrantes não fizeram prova pré-constituída de que reuniam esses requisitos, não há falar em direito líquido e certo à aplicação do art. 31-A, da Lei Estadual nº 15.785/2015. 3. Ressalte-se que, apesar de o art. 31-A, da Lei Estadual nº 15.785/2015, ter sido acrescido àquele diploma pela Lei Estadual nº 16.023, de 25 de maio de 2016, os requisitos devem ser examinados à data da publicação da Lei Estadual nº 15.785/2015, uma vez que o texto normativo foi inserido no diploma mais antigo<span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-

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	weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">. 4. Segurança denegada.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (TJ-CE - Mandado de Segurança Cível: 0629824-78.2021.8.06.0000 Fortaleza, Relator: WASHINGTON LUIS BEZERRA DE ARAUJO, Data de Julgamento: 08/11/2021, 3ª Câmara Direito Público, Data de Publicação: 08/11/2021) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /></p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: EMBARGOS DE DECLARAÇÃO EM FACE DE ACÓRDÃO PROLATADO POR ESTA TURMA RECURSAL QUE NEGOU PROVIMENTO AO RECURSO INTERPOSTO PELO AUTOR E ORA EMBARGANTE. PRETENSÃO AUTORAL DE INCLUSÃO EM CURSO DE HABILITAÇÃO DE OFICIAIS (CHO) DE 2021 E PROMOVIDO A 2º TENENTE QOAPM. CURSO QUE JÁ HAVIA SE INICIADO QUANDO DA PROPOSITURA DA DEMANDA. AUTOR QUE NÃO DEMONSTROU TER CINCO ANOS NA GRADUAÇÃO DE SUBTENENTE NA DATA DE PUBLICAÇÃO DA LEI ESTADUAL Nº 15.797/2015. INEXISTÊNCIA DE OBSCURIDADE, CONTRADIÇÃO, OMISSÃO OU ERRO NA DECISÃO. MERA REDISCUSSÃO DA CAUSA. CONTROVÉRSIA JULGADA. IMPOSSIBILIDADE DE NOVA ANÁLISE. SÚMULA Nº 18 DO TJ/CE. CARÁTER MERAMENTE PROTELATÓRIO NA OPOSIÇÃO DESTES ACLARATÓRIOS. APLICAÇÃO DA MULTA DO ART. 1.026, §2º, DO CPC. FINS DE PREQUESTIONAMENTO. ELEMENTOS SUSCITADOS SÃO CONSIDERADOS INCLUÍDOS. ART. 1.025 DO CPC. EMBARGOS DE DECLARAÇÃO CONHECIDOS E NÃO ACOLHIDOS. (Embargos de Declaração Cível - 0249452-18.2021.8.06.0001, Rel. Desembargador(a) ANDRÉ AGUIAR MAGALHÃES, 3ª TURMA RECURSAL DO ESTADO DO CEARÁ, data do julgamento:&#160; 15/09/2022, data da publicação:&#160; 15/09/2022) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">RECURSO INOMINADO. AÇÃO DE OBRIGAÇÃO DE FAZER. PRETENSÃO AUTORAL DE SER INCLUÍDO EM CURSO DE HABILITAÇÃO DE OFICIAIS (CHO) DE 2021 E PROMOVIDO A 2º TENENTE QOAPM. AUTOR QUE NÃO DEMONSTROU TER CINCO ANOS NA GRADUAÇÃO DE SUBTENENTE NA DATA DE PUBLICAÇÃO DA LEI ESTADUAL Nº 15.797/2015. SENTENÇA DE PROCEDÊNCIA ALTERADA. RECURSO INOMINADO CONHECIDO E PROVIDO.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (Recurso Inominado Cível - 0211632-62.2021.8.06.0001, Rel. Desembargador(a) Daniela Lima da Rocha - Port. 1797/22, 3ª TURMA RECURSAL DO ESTADO DO CEARÁ, data do julgamento:&#160; 06/11/2022, data da publicação:&#160; 06/11/2022) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color:

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	#000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">RECURSO INOMINADO. JUIZADOS ESPECIAIS DA FAZENDA PÚBLICA. DIREITO ADMINISTRATIVO. SUBTENENTE GRADUADO EM 2015. REQUER MATRÍCULA EM CURSO DE HABILITAÇÃO DE OFICIAIS/2021. INTERPRETAÇÃO DO TERMO INICIAL DA APLICAÇÃO DO ART. 1º DA LEI ESTADUAL Nº 16.023/2016, QUE ACRESCENTOU O ART. 31-A À LEI ESTADUAL Nº 15.797/15. DISPOSITIVO QUE FOI INCLUÍDO NO CORPO DA LEI Nº 15.797/15, DEVENDO A DATA DESTA SER CONSIDERADA COMO O TERMO PARA O ADIMPLEMENTO DOS REQUISITOS PELOS MILITARES PARA A ADMISSÃO. REQUISITOS NÃO CUMPRIDOS. PRECEDENTE DO TJCE RECURSO CONHECIDO E NÃO PROVIDO. (Recurso Inominado Cível - 0207986-44.2021.8.06.0001, Rel. Desembargador(a) ANA PAULA FEITOSA OLIVEIRA, 3ª TURMA RECURSAL DO ESTADO DO CEARÁ, data do julgamento:&#160; 29/04/2022, data da publicação:&#160; 29/04/2022) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Outra interpretação não pode ser dada, por duas razões: 1) caso fosse aplicável aos militares que integrassem o posto de 2º Tenente em maio de 2016, o artigo faria referência à promoção de 2016 e não de 2015, como foi definido em lei, do contrário realizar-se-iam duas promoções em um mesmo ano; e 2) os militares promovidos ao posto de Subtenente em 2015 jamais poderiam cumprir o requisito de cinco anos na graduação, visto que só estariam nela há cinco meses.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em vista do exposto é que se percebe óbvio e cristalino que o art. 31-A da Lei estadual nº 15.797/2015 regulamenta as regras excepcionais aos Subtenentes que buscavam cumprir os requisitos para o acesso à 2º Tenente na promoção ocorrida em dezembro de 2015, o que não é o caso do autor, vez que nesse período buscava se adequar aos requisitos da promoção de 1º Sargento para Subtenente, conforme restou demonstrado pelos documentos juntados aos autos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Assim sendo, a fim de almejar o mencionado acesso retroativo ao ano de 2020, o autor deveria, então, comprovar ter atingido os requisitos do 6º, caput, e §2º, I, alínea “a” da Lei nº 15.797/2015 na data de 24 de dezembro de 2020, bem como de ter-se submetido à época à seleção interna prevista em lei e saído exitoso do certame, o que não ocorreu.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, dou razão ao Estado do Ceará em seu recurso e, conforme os fundamentos apresentados acima, <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

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	baseline; white-space: pre-wrap;">conheço da Apelação, para dar-lhe provimento, determinando a reforma integral da sentença de id. 14634621 e reconhecendo a total improcedência da Ação Ordinária ajuizada por Antônio Marcos da Silva de Lima.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Por fim, condeno o autor ao pagamento de honorários advocatícios, os quais arbitro em 10% (dez por cento) sobre o valor atualizado da causa, nos termos do art. 85, §§2º e 3º, do CPC, mantendo-se, entretanto, sua exigibilidade suspensa, a teor do art. 98, §3º, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Equivalência salarial
Polo ativo	MARIA ELIEVANDA BENTO PINHEIRO FERREIRA
Advogado(s) - Polo ativo	EDIL DE CASTRO CAVALCANTE - (CE12150-A)
Polo passivo	MUNICIPIO DE QUIXADA Procuradoria do Município de Quixadá
Advogado(s) - Polo passivo	MARCIA DE SOUSA MARCOLINO - (CE36792-A) GUSTAVO DOUGLAS BRAGA LEITE - (CE30557-A) LEANDRO TEIXEIRA GOMES - (CE27462-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão

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	remuneração com base no mínimo instituído pela Lei Federal nº 11.738/2008, no período compreendido entre janeiro de 2018 a agosto de 2020.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Sobre o tema, o Superior Tribunal de Justiça entendeu que “ a Lei n. 11.738/2008, em seu art. 2º, § 1º, ordena que o vencimento inicial das carreiras do magistério público da educação básica deve corresponder ao piso salarial profissional nacional, sendo vedada a fixação do vencimento básico em valor inferior, não havendo determinação de incidência automática em toda a carreira e reflexo imediato sobre as demais vantagens e gratificações, o que somente ocorrerá se estas determinações estiverem previstas nas legislações locais "</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. Infere-se da análise detida das normas regras acima citadas que o cálculo do piso do magistério deve ser proporcional a sua carga horária, bem como que a legislação federal apenas estabelece o valor mínimo a ser considerado a título de piso, não fazendo referência ao plano de carreiras (níveis e classes), cargos ou vencimentos.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">5. In casu, não poderia a parte autora fazer jus ao recebimento da integralidade do piso nacional do magistério, cabendo ressaltar que o artigo 2º, § 3º, da Lei 11.738/2008, prevê que o referido piso deve ser pago de forma proporcional à jornada de trabalho desempenhada, que no caso, é de 20 (vinte) horas semanais.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. E, da análise das financeiras da parte autora (ID 48118933), conclui-se que o vencimento básico, nos termos da Lei Federal nº 11.738/08, foi respeitado, inexistindo, portanto, diferença remuneratória a ser paga, razão pela qual impõe-se a manutenção da sentença de origem.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e tese</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Recurso conhecido e desprovido. Sentença mantida.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-

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	indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ______________</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos citados relevantes: CF: art. 206, inciso VIII e art. 212-A, inciso XII. Lei Federal nº 11.738/2008, art. 2º.</p><p align="center"> <strong id="docs-internal-guid-2828c81f-7fff-4c3f-f485-8bf535ba47d2" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Jurisprudência relevante citada: TJCE: Apelação 0052277-85.2020.8.06.0151, Rel. Des. JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, Data do julgamento: 29/04/2024</p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p align="center"> ACÓRDÃO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0202207-12.2022.8.06.0151, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para negar-lhe provimento, mantendo a sentença proferida pelo magistrado de primeiro grau, nos termos do voto da e. Relatora.</p><p align="center"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora da assinatura digital.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO <strong style="font-size: small;">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center">

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	 RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Em evidência, apelação cível adversando sentença em que o&#160; Juízo da 1ª Vara Cível da Comarca de Quixadá decidiu pela improcedência dos pedidos formulados na inicial.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">O caso/a ação originária: Maria Elievanda Bento Pinheiro Ferreira, servidora pública, ocupante do cargo de professora nos quadros da Secretaria Municipal de Educação de Quixadá, ingressou com ação ordinária, alegando, em suma, fazer jus ao pagamento e implementação de reajustes salariais do Piso Nacional do Magistério de 2018 (3,81%), 2019 (4,17%) e 2020 (12,84%), com seus reflexos, acrescido de juros e correção monetária à autora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Diante do que, requereu, então, a condenação da Fazenda Pública ao pagamento de tais direitos inadimplidos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Contestação apresentada pelo Município de Quixadá (ID 14647810), aduzindo, preliminarmente a inépcia da inicial. No mérito, sustentou a ausência de comprovação do direito alegado, bem como alegou que a parte autora recebeu vencimentos conforme estabelecido pela legislação municipal e em observância ao Piso Nacional do Magistério.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Por fim, pugnou pela improcedência dos pedidos exordiais.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Sentença proferida pelo magistrado de primeiro grau (ID 14647829), julgando improcedente a ação. Transcreve-se abaixo seu dispositivo:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-indent: -6.614173228346459pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 6.614173228346459pt;" dir="ltr">“Diante do exposto, <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">julgo improcedentes os pleitos autorais, a teor do art. 487, I do CPC, extinguindo o feito com resolução do mérito.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-indent: -6.614173228346459pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 6.614173228346459pt;" dir="ltr"> Condeno a parte autora no pagamento das custas e dos honorários advocatícios que arbitro em 10% (dez por cento) do valor atualizado da causa, restando suspensa a exigibilidade em virtude do deferimento da justiça gratuita (art. 98, § 3º, do Código de Processo Civil).</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-indent: -6.614173228346459pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 6.614173228346459pt;" dir="ltr"> Sem remessa necessária, ante a falta de sucumbência da Fazenda Pública. [...]”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Inconformada, a parte autora interpôs recurso de apelação, sustentando, preliminarmente, a ocorrência de cerceamento de defesa, face o indeferimento do pedido de prova pericial contábil.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">No mérito, reiterou os argumentos exposados na inicial, requerendo o provimento do recurso, para reformar a decisum de origem e condenar o ente requerido ao pagamento das vantagens supostamente suprimidas, por defender a possibilidade legal e constitucional da aplicação dos reajustes para todos os professores.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Contrarrazões apresentadas pela parte apelada (ID 14647839).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria Geral de Justiça (ID 14794111), opinando pelo conhecimento e não provimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400;

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	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">É o relatório.</p><p style="line-height: 1.8; text-indent: 113.386pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO </p><p align="center"> <br /> </p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Preenchidos os requisitos legais, conheço da apelação, passando, a seguir, ao enfrentamento de suas razões.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> A questão em discussão versa sobre se assiste, ou não, à servidora pública titular do cargo de provimento efetivo de professora da educação básica do Município de Quixadá perceber remuneração com base no mínimo instituído pela Lei Federal nº 11.738/2008, no período compreendido entre janeiro de 2018 a agosto de 2020.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Pois bem. A parte autora, servidora pública municipal efetiva, ocupante do cargo de professora junto aos quadros da Secretaria Municipal de Educação de Quixadá, conforme ID 14647796, alegou fazer jus ao recebimento das diferenças dos reajustes do Piso Nacional do Magistério referente a 3,81% do ano de 2018, 4,17% do ano de 2019 e de 12,84% do ano de 2020, com seus reflexos e acrescido dos encargos legais, uma vez que o reajuste do magistério municipal não respeitaria o piso salarial da Lei Federal nº 11.738/2008.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">A Constituição Federal assegurou em seu art. 206, inciso III, “piso salarial profissional nacional para os profissionais da educação escolar pública", sendo previsto no art. 212-A, inciso XII, após alteração da Emenda Constitucional nº 108/2020, que “lei específica disporá sobre o piso salarial profissional nacional para os profissionais do magistério da educação básica pública”.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Por seu turno, cediço que a Lei Federal nº 11.738/2008, em seu art. 2º, instituiu o “piso salarial” do magistério público, para o fomento do sistema de ensino básico vigente no país, mediante valorização dos profissionais atuantes na área, em conformidade com o disposto no art. 206, inciso VIII, da CF/88., in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-indent:

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	0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “Art. 2º. O piso salarial profissional nacional para os profissionais do magistério público da educação básica será de R$ 950,00 (novecentos e cinquenta reais) mensais, para a formação em nível médio, na modalidade Normal, prevista no art. 62 da Lei nº 9.394, de 20 de dezembro de 1996, que estabelece as diretrizes e bases da educação nacional.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 1º. O piso salarial profissional nacional é o valor abaixo do qual a União, os Estados, o Distrito Federal e os Municípios não poderão fixar o vencimento inicial das Carreiras do magistério público da educação básica, para a jornada de, no máximo, 40 (quarenta) horas semanais.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 2º. Por profissionais do magistério público da educação básica entendem-se aqueles que desempenham as atividades de docência ou as de suporte pedagógico à docência, isto é, direção ou administração, planejamento, inspeção, supervisão, orientação e coordenação educacionais, exercidas no âmbito das unidades escolares de educação básica, em suas diversas etapas e modalidades, com a formação mínima determinada pela legislação federal de diretrizes e bases da educação nacional.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 3º. Os vencimentos iniciais referentes às demais jornadas de trabalho serão, no mínimo, proporcionais ao valor mencionado no caput deste artigo.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 4º - Na composição da jornada de trabalho, observar-se-á o limite máximo de 2/3 (dois terços) da carga horária para o desempenho das atividades de interação com os educandos.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 5º - As disposições relativas ao piso salarial de que trata esta Lei serão aplicadas a todas as aposentadorias e pensões dos profissionais do magistério público da educação básica alcançadas pelo art. 7º da Emenda Constitucional nº 41, de 19 de dezembro de 2003, e pela Emenda Constitucional nº 47, de 5 de julho de 2005.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> […]</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 5º – O piso salarial profissional nacional do magistério público da educação básica será atualizado, anualmente, no mês de janeiro, a partir do ano de 2009.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Parágrafo único. A atualização de que trata o caput deste artigo será calculada utilizando-se o mesmo percentual de crescimento do valor anual mínimo por aluno referente aos anos iniciais do ensino fundamental urbano, definido nacionalmente, nos termos da Lei no

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	11.494, de 20 de junho de 2007". (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> A referida lei estabelece que o piso salarial seria atualizado a partir do ano de 2009 e que a União, Estados, Municípios e Distrito Federal deveriam elaborar ou adequar seus Plano de Carreira até o dia 31 de dezembro de 2009.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Anote-se que a lei que versa sobre o piso nacional do magistério se trata de regulamentação geral que não invade a competência legislativa privativa Municipal, em disciplinar especificamente a remuneração ou alteração de vencimentos dos seus servidores. Não havendo afronta a repartição de competências.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Nesse sentido, em sede de Recursos Repetitivos (Tema 911), o Superior Tribunal de Justiça entendeu que "a Lei n. 11.738/2008, em seu art. 2º, § 1º, ordena que o vencimento inicial das carreiras do magistério público da educação básica deve corresponder ao piso salarial profissional nacional, sendo vedada a fixação do vencimento básico em valor inferior, não havendo determinação de incidência automática em toda a carreira e reflexo imediato sobre as demais vantagens e gratificações, o que somente ocorrerá se estas determinações estiverem previstas nas legislações locais.".</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Infere-se da análise detida das normas regras acima citadas que o cálculo do piso do magistério deve ser proporcional a sua carga horária, bem como que a legislação federal apenas estabelece o valor mínimo a ser considerado a título de piso, não fazendo referência ao plano de carreiras (níveis e classes), cargos ou vencimentos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Nessa trilha, inexiste previsão legal específica na ambiência do Município de Quixadá determinando os reajustes automáticos, em sua integralidade, conforme os parâmetros da norma federal.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">In casu, não poderia a parte autora fazer jus ao recebimento da integralidade do piso nacional do magistério, cabendo ressaltar que o artigo 2º, § 3º, da Lei 11.738/2008, prevê que o referido piso deve ser pago de forma proporcional à jornada de trabalho desempenhada, que no caso, é de 20 (vinte) horas semanais, como de fato houve.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Por oportuno, colaciona-se bem esposado entendimento do juízo primevo, o qual incorporo ao presente voto pela técnica da fundamentação per relationem:</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> “Além disso, na ADI nº 4.167/DF, o Supremo Tribunal Federal declarou a constitucionalidade da Lei Federal nº 11.738/08 e entendeu que, no período de 01/01/2009 até 27/04/2011 (período compreendido entre a decisão cautelar e o julgamento do mérito da ação), deve ser considerado como piso nacional a remuneração em sentido global (considerando o vencimento básico, gratificações e adicionais); e, a partir de 27/04/2011 (com o julgamento de mérito), o piso nacional deve ser considerado como o vencimento básico para os professores públicos da educação básica.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Em consulta ao sítio eletrônico do Ministério da Educação, colhe-se a evolução do piso salarial com os seguintes montantes (para uma carga horária de 40 horas semanais): 2009 - R$ 950,00; 2010 – R$ 1.024,67; 2011 - R$ 1.187,08; 2012 - R$ 1.451,00; 2013 - R$ 1.567,00; 2014 - R$ 1.697,00; 2015 – R$ 1.917,78; 2016 – R$ 2.135,64; 2017 – R$ 2.298,80; 2018 - R$ 2.455,35; 2019 - R$ 2.557,74; 2020 - R$ 2.886,24; 2021 – R$ 2.886,24; 2022 – R$ 3.845,63; 2023 – R$ 4.420,55; 2024 - R$ 4.580,57.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Do exposto, tem-se que a demandante deve perceber remuneração em quantia proporcional à carga horária de 20 horas semanais e fazendo-se a devida proporcionalidade para a carga horária temos os seguintes montantes: 2018: R$ 1.227,68; 2019: R$ 1.278,87 e 2020: R$ 1.443,12.</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Analisando as fichas financeiras da promovente (ID 48118933), verifica que no ano de 2018 a 2020 receberam como vencimento básico de acordo com estabelecido pela Lei Federal nº 11.738/08, inexistindo, portanto, diferença remuneratória a ser adimplida.” (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Desta feita, precipuamente da análise das financeiras da parte autora (ID 48118933), conclui-se que o vencimento básico, nos termos da Lei Federal nº 11.738/08, foi respeitado, inexistindo, portanto, diferença remuneratória a ser paga.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Este Egrégio Tribunal já se manifestou sobre demandas análogas oriundas do Município de Quixadá:</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 11pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant:

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	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">“Ementa: CONSTITUCIONAL, ADMINISTRATIVO E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO CÍVEL DAS PARTES. AÇÃO DE COBRANÇA DE DIFERENÇAS DE REAJUSTE DE PISO SALARIAL CONTRA O MUNICÍPIO DE QUIXADÁ. SENTENÇA DE PROCEDÊNCIA PARCIAL EM RELAÇÃO A TRÊS AUTORAS E DE IMPROCEDÊNCIA EM RELAÇÃO A UMA DEMANDANTE. DESNECESSIDADE DO REEXAME OBRIGATÓRIO NO CASO. INTERPOSIÇÃO DE RECURSO TEMPESTIVO PELO MUNICÍPIO. ART. 496, §1º DO CPC. RECURSO DO MUNICÍPIO. PLEITO DE REVOGAÇÃO DA JUSTIÇA GRATUITA. INVIABILIDADE. PRESUNÇÃO DE VERACIDADE DA DECLARAÇÃO DE HIPOSSUFICIÊNCIA. ENTE PÚBLICO QUE NÃO SE DESINCUMBIU DO ÔNUS DE COMPROVAR QUE AS AUTORAS NÃO FAZEM JUS AO BENEFÍCIO. MÉRITO. PISO SALARIAL NACIONAL. MAGISTÉRIO DA EDUCAÇÃO BÁSICA. LEI FEDERAL Nº 11.738/2008. PAGAMENTO DE DIFERENÇAS SALARIAIS. PROCEDÊNCIA PARCIAL EM RELAÇÃO A TRÊS AUTORAS. FICHAS FINANCEIRAS QUE DEMONSTRAM QUE O VENCIMENTO-BASE DE TRÊS DEMANDANTES ESTAVAM AQUÉM DO PISO SALARIAL NACIONAL. PISO SALARIAL OBSERVADO EM RELAÇÃO A UMA DAS AUTORAS. RECURSO DAS AUTORAS. PEDIDO DE APLICAÇÃO DO REAJUSTE EM SUA INTEGRALIDADE, MESMO QUANDO ATENDIDA A BASE LEGAL. IMPOSSIBILIDADE. OBRIGATORIEDADE DE OBSERVÂNCIA TÃO SOMENTE DO VALOR MÍNIMO. PEDIDO DE PAGAMENTO DAS DIFERENÇAS RELATIVAS À PROGRESSÃO HORIZONTAL. INVIABILIDADE. AUTORAS QUE NÃO SE DESINCUMBIRAM DO ÔNUS DO ART. 373, I DO CPC. AUSÊNCIA DE ELEMENTOS SOBRE A CLASSE E A REFERÊNCIA DAS AUTORAS, DE CONTRACHEQUES E DE OUTROS MEIOS DE PROVA. CONSECTÁRIOS LEGAIS. ALTERAÇÃO DE OFÍCIO. REMESSA NECESSÁRIA NÃO CONHECIDA. RECURSOS DE APELAÇÃO CONHECIDOS E DESPROVIDOS. SENTENÇA REFORMADA PARCIALMENTE DE OFÍCIO, APENAS NO QUE PERTINE AOS CONSECTÁRIOS LEGAIS. 1. Busca o ente público a revogação da gratuidade da justiça concedida às autoras e, no mérito, a reforma da sentença, objetivando a improcedência dos pedidos formulados na inicial, ao passo que as autoras requerem a reforma da sentença, visando à concessão da implantação do reajuste conforme requerido na inicial, bem como ao pagamento de diferenças referentes à progressão horizontal. 2. Conforme exegese do art. 496, §1º, do CPC, em regra, não há remessa necessária se houver apelação interposta pela Fazenda Pública. Precedentes. 3. "De acordo com o § 3º, do art. 99, do CPC, presume-se verdadeira a alegação de insuficiência deduzida exclusivamente por pessoa natural. (...). Diante da presunção estabelecida pela lei, o ônus da prova na impugnação à gratuidade é, em regra, do impugnante". Precedentes do STJ e do TJCE. 4. " A Lei Federal nº 11.738/2008, instituidora do piso salarial nacional para os profissionais do magistério público da educação básica, assegura apenas os valores mínimos a serem recebidos pelos professores, inexistindo previsão legal de que o mesmo percentual de reajuste do piso salarial incida também sobre os vencimentos básicos dos profissionais que já recebem valor superior àquele". Precedentes do TJCE <span style="font-size: 11pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">. 5. Em pronunciamento definitivo de mérito, o STF julgou improcedente o pedido formulado na ADI 4.167, restando, assim, estabelecido que o piso salarial dos professores deverá ser observado em relação a todos os professores efetivos da educação básica da União, dos Estados e dos Municípios. 6. "A concessão do reajuste de forma automática e na sua integralidade, mesmo quando já respeitado o piso salarial dos professores, conforme pleiteado na exordial, somente pode ocorrer mediante Lei específica e de acordo com a discricionariedade da Gestão Pública, não podendo o Judiciário atuar como legislador positivo, criando normas que a Lei não prevê, e aumentando vencimentos de servidores públicos, sob pena de afronta à Súmula Vinculante nº 37 e aos Princípios da Legalidade e da Separação dos Poderes". Precedentes. 7. Na hipótese, pelo que se depreende dos autos, três autoras perceberam vencimento-base aquém do piso salarial nos anos de 2018, 2019 e 2020, e uma das demandantes percebia vencimento-base superior ao piso salarial nos mesmos anos. 8. No caso, além da legislação municipal anexada, que prevê genericamente a progressão horizontal, e de algumas poucas fichas financeiras das autoras, nas quais sequer se verifica a classe ou referência destas, não há elementos nos autos que possibilitem a análise da existência, ou não, das diferenças pleiteadas. Acrescente-se que as tabelas demonstrativas acostadas com a inicial não servem como meio de prova do direito alegado, haja vista que são documentos produzidos de forma unilateral. Aplicação do art. 373, I do CPC. 9. A correção monetária e os juros de mora foram corretamente aplicados na espécie, devendo ser mantidos nos termos adotados pela sentença, mas apenas até 08/12/2021, haja vista que em 09/12/2021 passou a incidir, por força da EC 113/2021, a taxa Selic, reformando-se a sentença de ofício nesse ponto. 10. Remessa necessária não

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	conhecida. Recursos de apelação conhecidos e desprovidos. Sentença reformada parcialmente de ofício. (TJCE, Apelação 0052277-85.2020.8.06.0151, Rel. Des. JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, Data do julgamento: 29/04/2024) (destacado)</p><p style="line-height: 1.2; margin-left: 30pt; margin-right: 30pt; text-indent: 83.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ***</p><p style="line-height: 1.2; margin-left: 113pt; text-indent: 0.38582677165354085pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 11pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">“Ementa: RECURSO DE APELAÇÃO CÍVEL. DIREITO CONSTITUCIONAL E ADMINISTRATIVO. PROFESSORES DA REDE MUNICIPAL DE ENSINO DE NOVO ORIENTE. PRETENSÃO DE REAJUSTE SALARIAL NO MESMO ÍNDICE APLICADO AO PISO NACIONAL DA EDUCAÇÃO BÁSICA REFERENTE AO ANO DE 2020. IMPOSSIBILIDADE. AUSÊNCIA DE ILEGALIDADE. APELAÇÃO CÍVEL CONHECIDA E NÃO PROVIDA. 1. O cerne da controvérsia gira em perquirir se existe, ou não, desacerto na sentença oriunda do Juízo de Direito da Vara Única da Comarca de Novo Oriente que julgou improcedente Ação de Cobrança de Reajuste Salarial à base de 12,87%, referente ao ano de 2020, proposta por integrantes do magistério do Município de Novo Oriente. 2. Descendo à realidade dos autos, verifica-se que não há questão controversa a respeito dos fatos, vez que os autores recebiam, em 2020, valores superiores ao piso nacional (fls. 26, 34, 39 e 44), mas apenas quanto a interpretação do complexo normativo. Cumpre assentar, inicialmente, que a Constituição Federal assegura expressamente, em seu art. 206, inciso VIII, como princípio norteador do Direito à Educação, nos termos de lei federal, “piso salarial profissional nacional para os profissionais da educação escolar pública”, o qual restou regulamentado pela Lei nº 11.738, de 16 de julho de 2008. 3. A Corte de Cidadania sufragou entendimento, em sede de Recursos Repetitivos (Tema nº 911), segundo o qual “a Lei n. 11.738/2008, em seu art. 2º, § 1º, ordena que o vencimento inicial das carreiras do magistério público da educação básica deve corresponder ao piso salarial profissional nacional, sendo vedada a fixação do vencimento básico em valor inferior, não havendo determinação de incidência automática em toda a carreira e reflexo imediato sobre as demais vantagens e gratificações, o que somente ocorrerá se estas determinações estiverem previstas nas legislações locais”. 4. No caso vertente, argumenta o recorrente que a Lei Municipal nº 585/2009 possibilitaria, em seu art. 51, na forma prevista na parte final da tese firmada pelo Superior Tribunal de Justiça, a incidência automática dos reajustes do piso nacional em toda a carreira, inclusive nas classes mais elevadas, que recebem valor superior ao vencimento básico inicial, e não somente na classe inicial. Todavia, a Lei Municipal nº 585/2009 não assegura a incidência escalonada dos reajustes, como pretende o recorrente. 5. Com efeito, a redação do art. 51, apesar de prever a possibilidade de reajuste anual, não permite inferir que, aos professores que percebem além do vencimento básico inicial, o reajuste ocorreria mediante utilização do mesmo percentual aplicado àqueles que auferem o piso nacional, o que, inclusive, seria inconstitucional. Não se olvide que o art. 5º da Lei Federal nº 11.738/08 aplica-se somente ao piso nacional profissional do magistério público da educação básica, o que não se confunde com a hipótese de remuneração global. 6. A propósito, eventual intervenção do Poder Judiciário resultaria em violação ao art. 37, inciso X, da Constituição Federal (X - a remuneração dos servidores públicos e o subsídio de que trata o § 4º do art. 39 somente poderão ser fixados ou alterados por lei específica, observada a iniciativa privativa em cada caso, assegurada revisão geral anual, sempre na mesma data e sem distinção de índices). Nesse sentido é a Súmula Vinculante nº 37 do Supremo Tribunal Federal, in verbis: “Não cabe ao Poder Judiciário, que não tem função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia”. 7. Recurso de Apelação Cível conhecido e não provido.” (TJCE, Apelação 0010351-78.2020.8.06.0134, Relª. Desª. MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara Direito Público, Data do julgamento: 21/02/2024) (destacado)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">Por fim, frise-se que não compete ao Poder Judiciário intervir em questão afetas a outros Poderes diante da independência dos Poderes e da indelegabilidade de suas atribuições, bem como em atenção a Súmula Vinculante nº 37 do STF, segundo a qual “ Não cabe ao Poder Judiciário, que não tem função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia".</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Isto posto, conheço da apelação cível, para negar-lhe provimento, mantendo, por seus próprios fundamentos, a sentença proferida pelo juízo de primeiro grau.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Majorando os honorários advocatícios para 12% (doze) do valor da causa, com azo no CPC, art. 85, § 3º, II, em obediência ao art. 85, § 11, do CPC, e considerado o entendimento assente na jurisprudência do E. STJ (AgInt no AREsp 1701211/SP, Rel. Ministro MOURA RIBEIRO, TERCEIRA TURMA, julgado em 12/04/2021, DJe 15/04/2021), suspensa a exigibilidade, por ser a autora/apelante beneficiária da justiça gratuita.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora da assinatura digital.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	121
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Sucumbenciais
Polo ativo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM LUIZ HERNANY SOARES BEZERRA ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	LUIZ HERNANY SOARES BEZERRA ESTADO DO CEARA MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3008434-42.2024.8.06.0001
Acordão	<span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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</p><p> O Colegiado, por unanimidade, acordou
em conhecer dos recursos para dar parcial provimento ao do Município e negar provimento
ao do Ministério Público e ao da Defensoria, nos termos do voto do(a) eminente
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	ybU3nSMMeTrBUntFQ5MUYXCCPoY1/ljPiqZJrB6NUyT6ZVpJm5ROVIxT4CnmGwrzDeRvRnRIM6ez3yAR2S8xMsSdd/bu4v6j+9z4+Qab39lMZlYG73/4vobJ70sjbcFYfW14EFw9Y7Ry+XJKcnI4Igfde/SQu/fvsXbbBhymePK01yDaihmoB7KUENRSiXoz0KKONPj5IidGLphIyYEFLPlqF+OWJPFmhYt0QF/2HSLVQAO9bbqV9vB8hwkm2qPRajlSB389OvgOpoN3fzoFDqJjhD7tJovDTrTWfFQzdR0VjeXaL00bzcjFsVR+tJxZx9bjtCiW7tPGia9V6ZAS1LoIr5mpuJNmGeJP4w1o59eXN31NiC1M4tQXn2vTdD9cucrCZUvIL8zj2Ce/Y1b9Qh1V/rDcSTD7dZWKKjt27SQ/P58Na9dx4+o1+dsTPv3+C1Jr8hjkb0tr9QBqrFrFp9ilJuYkkqq7TBJRXykaSeb+uVx49CO3uM/8L7ahL/Kjsfi0RhpoSvOoTghLlOkqKSIRWAHSSljRSn5rIaau5In2xgD5rLkA5SfTlYRR00tGvF3uxrQPl3Ppyc9c5h6lh1fTq8JL/JaaBJX2SMqm9lUD21bO2yJCGOwxkGGT3Vm8cZkWCdXd/5MnT2hr4lT95hvduxL/rPwBsIby+8UXR44dpVJ8mlr3+dmJE9q7D39++DObDmzFPyuSVzwNaCqZQSvprHYfQEkLGcnGyUZYVQRx+Popvrx1loQtlQKu8i/KbHXs0JipfIyqKlioqqZgFJjaANT/pvZVVUkAdazmo9TfZbCmGOM+J56Tt89y4uZ3+C9NpXWs5LZaO9QjixIVRYg2E5fQZnxfBoc6kjK3mGPffq4R5/bN22zZtIWCgiJWrFihrY9TRf3t9+RpKJpJNhSdWf7m0xqeO/rh2lVWrFxFcVExq2X780/qNXhw/sI55qxfhOMULzq6iPwIHUzb1PownWaIybxgAlZn47kohdFrUgRUCQTClqdU6K/3LRqAimmq1jtl9dorNSmpaSjN1NU+6rOApSYA5FiNaQKaeozHcekk/Fdm4b8sHeflE2kh7FKzLUqctldSw70vb3ibE1OUyO4P9nP7ge5Vy1+c/JIqidBlZeUcOvSbv/o9Yf62/B3DGgBUW+1zw3eph48eY8aMWkqLSzkkIffRgyfayb88fYrqRdOxCh9BO9c+tIwxEM1jwnPFDrRSOWaiMV0LHLQoqXW8/s6zYpiWBCsgNN9nKH7KBOt5kYxem6wp8saJYuLqbwKQCiTaY8j1ea72NhQ5R5cSZ5qLrGieZEaXqfairSQyC+PVurYXxusRlBHF1l2b+fGq7v7o9R+usXzpct1z3CJIL17UvWNflV/7/Q/Kn5rkr+VPjrsq7Nr8zjZKS8uprq7htOSg6gWETyRQfHLyY3LmlwrtHejg0Ys2MUN06zKENU+l6mvz/2r+rIExWrKr8k9hiprteKVoOMZlPsw8so515w9iXxFMj5KxWsagmKZNzTQwTDl07VUwcj5hcyNtgYn4wCkmWuB41nUQLunBLN+2igvn1UvUfuG+5Mq7d+7Q3i00e84scTdH5FedFTW8/upflX8O2O+KGKn2r6F89/1Z1B2nHImkixYt5srFK9r9u1s/3+TDYx+RMTOP3l5iEj6DJZGXNEmAaapeMqTkhnRYS0U0XyQMyhZfk2pE/0pPph1fyfcPr3OVu6z+9oBEvUlaQFA+Te2vjtduVggrFbvUDEkTMcvWSeZalO3iOhDnSe4s3LCUb89/yy8PHvL47gM+Pn6MovISyiqmcfC9A9JO3UvVVHkiYP0zVv2+/FPA1Cl+O42AJWnUL/WZgSqPHt7jqzNfsWjZMtIlrdq8fgvXL1+XRj7hp5s3+ODEYeLLMnjD3Yi2Af1olSDpijJRlY6oKCaMa5QlUSxHGCKAPZNkQ9TaIs7e/5EfuMP8E1t5NcVRWKTMWCcPmitWaQFBbSWTEDNsFW3E0279sYsYyewNC/n27DeaNLpz7wGnPvuKGWXV2hPGu/bv4YerMrD1RVt/r/5XX/+d8m8zTCsNZ9Uu8NsV7gjVjx8/wdzZcyjML2TXzl3aO1kfiej94eaP7PrkICH5cbzqIeYSZEDLeGGFSng1ExXAtDXzRrRKNMd9QzbRqwuJXJFL3P5KOqWoNEuZtfJfaom4sEyOaSVRuH20IZ299TAIHUH5whmc/voU90SlqxkY9azU7LlzNaDe2bKVSxcv1rf2r5X/O8B+Vxqc4++BU6OqlpOrhyJKiqdy6P2DXLmmgHvET5Kfbd6zGZcpfrzsPoT24UPE3yhFLmapZIiAolKcF4tH0y7VVqoNzxU600bErUri1Y1lNYGpWNVisj5Pi0rv521J+owCjn71GT/LtdXzQd9++63kxKvIyMjQtmop1z+Lev+35T8GrKH8me3fFcYdPXKYwqJ8Kqoq+ej9D7l5WSLUgwdcu36JeRsXYR4xgmd99GgdZahJA7XITfko3dvslEBVEVXMUAJCc2Ffa/lbi0QDWocN4RVvE0IKY7X3m6nX3zy8c5/vvz/H+s0qpcnUnpO6cOHCH4D6s3b+J+UvA/b78oeRFEd6+/Ytdu7ZI6lGEXPmzOPjjz/mp1sUzX2pLvPv52UgqJGxTgUGioZYkS6ag/JQCS03ytRSn3zZCjxc9B+E80Y1lO9by0x1R6I8ec+G7s+x4ZztlJSXMmD6dM6fP/B2j/qfAUuV/FLAGE9U1UDVa19Drt26xStKr/nNx8li5ZxqlPJalXr0SWZHfboV24JAaKXhpCO8kZW6aYignqCWB6NBWwWiVLBPQbTF8/O3JmTOWbsyptecKP166xf+9eKirF/Mtl0E7ncbwFJlf9JoBrK/yhgvy8C26//GsrlcxdZXDePitypbFu3kYuXdJNy5y+epah2Kr191QscJbEXjdVSzLFlvBHtPAYwbKInW/fu4MHDRzyUSH3s+CfMqZ1JiXobpjBYTQ6oov5rhP/t8t8DTHDSwrZW1evXfzOT458cpax8GmXi3z748DCCggSG+yzdvgqzqFG09x5AJ78hPOcymKjSJE59o3t28eqla6xZv07zjcsWL9HejK6KOrWaNW540fh/s/wXAVOI6dil/bcoparXtDR06ed7d9iwcSO5uXmsW7ueGzd+4uEvD9l3+F1GRXsxeLgFedOLufLTD9r+Z778iurySu2dEifqXxeqirqCdhlV//t4/fcA+3eLmlYpKy9jujhsLbJJwq/en/rO9m3aa+bV208+eO8Q+Tm5rJHE/6efftKO+2/4p3+n/K8ApjqrTLTBTK9KUjxr1izKyso4e/aspttUVauW9+3bR052Nnv36J5/UuVvj/9/Wf5XAWvYqqKmxtWDrSUiDy5fvMSDe/f58P0PSE5Kkgh4VNtHZ3W/Met/g2X/6yapyu9BUy9JWrp4MR8eep/szCw+OfzbVPFv/5nW/73y/wnAFFMa2HLlyhUS4qfg7+MrwC3Rfmsoao//H7D60gCY2u7asZPioqmSf+pkw/+G6f15gf8DLlMncTlWGuAAAAAASUVORK5CYII=" alt="" /> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; PROCESSO:&#160;3008434-42.2024.8.06.0001 -&#160;APELAÇÃO CÍVEL (198) APELANTE: MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM, PROCURADORIA GERAL DE JUSTICA, LUIZ HERNANY SOARES BEZERRA APELADO: LUIZ HERNANY SOARES BEZERRA, ESTADO DO CEARA, MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM A4/A5 &#160; E <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-

Processo	3008434-42.2024.8.06.0001
	position: normal; font-variant-emoji: normal;"> menta : P rocessual civil. A pelaç ões cív eis . A ção de obrigação de fazer c/c tutela de urgência. Discussão quanto à ausência de intimação do ministério público em sede de primeiro grau de jurisdição. Interesse público configurado. Proteção ao direito à saúde. Vista obrigatória ao órgão ministerial. Nulidade reconhecida. Recurso do ministério público do estado do ceará conhecido e provido. Sentença anulada. Retorno dos autos à origem. A nálise prejudicada das apelações cíveis do município de fortaleza e da defensoria pública do estado do ceará. I. Caso em exame 1 . <span style="font-variant-numeric:

Processo	3008434-42.2024.8.06.0001
	normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;"> Trata-se de Apelações Cíveis interpostas em face de sentença proferida pelo Juízo de Direito da 15ª Vara da Fazenda Pública da Comarca de Fortaleza nos autos da Ação de Obrigação de Fazer proposta em desfavor do Estado do Ceará e do Município de Fortaleza. II. Questão em discussão 2. A questão em discussão proposta pelo recurso do órgão ministerial consiste em aferir se a ausência de intimação do Ministério Público no 1º Grau constitui fato ensejador d e nulidade da sentença. III. Razões de decidir 3.1. A pós a regular manifestação das partes, foi proferida sentença sem abrir vista obrigatória ao órgão ministerial, desrespeitando a sua prerrogativa institucional de participação processual como fiscal da ordem jurídica. 3.2. Forçoso concluir que o magistrado a quo incorreu em error in procedendo , na medida em que se descuidou de assegurar a efetiva participação do Ministério Público no acompanhamento do feito 3.3. I naplicável ao caso o entendimento jurisprudencial de que, via de regra, a atuação do Ministério Público em segunda instância tem o condão de suprir a nulidade decorrente de sua ausência em primeiro grau , uma vez que houve arguição expressa de prejuízo por parte do Parquet ao recorrer da sentença em análise no escopo de sua atuação como fiscal da lei. 3.4. A nte a ausência de intimação do Ministério Público de primeiro grau, o processo deve ser declarad o nul o a partir do momento em que o órgão ministerial deveria ter sido intimado, por cristalino vício insanável. IV. Dispositivo 4. Apelação Cível do Ministério Público do Estado do Ceará conhecida e provida. Sentença anulada. 5. Análise prejudicada das Apelações Cíveis do Município de Fortaleza e da Defensoria Pública do Estado do Ceará. Tese de julgamento : “Nulidade processual declarada a partir do momento em que o Ministério Público deveria ter sido intimado em primeira instância. Determinação de remessa dos autos à origem, para

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	regular processamento do feito e prolação de nova sentença”. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> ___________________________</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados: Arts. 178, 179 e 279 do CPC.</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada: TJCE - Apelação Cível - 0202326-70.2022.8.06.0151, Rel. Desembargador(a) DURVAL AIRES FILHO, 1ª Câmara Direito Público, data do julgamento: 03/06/2024, data da publicação: 14/06/2024; TJCE - Apelação Cível - 0256996-57.2021.8.06.0001, Rel. Desembargador(a) WASHINGTON LUÍS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento: 17/06/2024, data da publicação: 05/07/2024.</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> <br /> </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e dar provimento à Apelação Cível do Ministério Público do Estado do Ceará , para decretar a nulidade da sentença e determinar o retorno dos autos ao juízo de origem, e em julgar prejudicada a análise dos recursos de apelação interpostos pelo Município de Fortaleza e pela Defensoria Pública do Estado do Ceará.</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> <br /> </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> Fortaleza/CE, data e hora indicadas pelo sistema. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> <br /> </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 16.5pt;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 16.5pt;" align="center"> Relator </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 16.5pt;" align="center"> <br /> <!--[if !supportLineBreakNewLine]--> <br /> <!--[endif]--> </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 16.5pt;" align="center"> RELATÓRIO <br /> <!--[if !supportLineBreakNewLine]--> <br /> <!--[endif]--> </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Trata-se de Recursos de Apelações Cíveis interpostos em face da sentença Id 14714470, proferida pelo Juízo de Direito da 15ª Vara da Fazenda Pública da Comarca de Fortaleza, nos autos da Ação de Obrigação de Fazer proposta em desfavor do Estado do Ceará e do Município de Fortaleza.</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Sentença&#160;(Id 13401528):&#160;após regular trâmite, o feito foi&#160;julgado, nos seguintes termos: “ Face o exposto, ratifico a decisão liminar e julgo procedente o pedido autoral, extinguindo o processo com julgamento do mérito (art. 487, I, CPC), condenando ESTADO DO CEARÁ e o MUNICÍPIO DE FORTALEZA a fornecer a internação em LEITO DE UNIDADE DE TRATAMENTO INTENSIVO UTI – PRIORIDADE 2 para LUIS HERNANI SOARES BEZERRA. Defiro a gratuidade de justiça. Sem condenação em custas (art. 5º, lei estadual nº 16.132/16). Condeno, de forma rateada em partes iguais, o Estado do Ceará e o Município de Fortaleza ao pagamento, pro rata, dos honorários advocatícios, a serem apurados no cumprimento de sentença, visto que restou superada a Súmula nº 421 do STJ pelo julgado do STF, Plenário. RE 1.140.005/RJ, Rel. Min. Roberto Barroso, julgado em 26/06/2023 (Repercussão Geral – Tema 1.002), a qual vedava a condenação do Estado do Ceará em demandas propostas pela Defensoria Pública Estadual. Diante do caráter ilíquido da condenação na obrigação de fazer, pois não se pode atestar o valor do proveito econômico, número de dias que a parte fruirá do bem jurídico visado, leito, deixo de arbitrar a percentagem dos honorários a incidir sobre o proveito econômico, o que deve ser definido em liquidação, quando do&#160; cumprimento de sentença, nos termos do inc. II do §4º do art. 85 do CPC (...).”.</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Razões recursais do Ministério Público&#160;(Id 14714475): &#160;sustenta, em síntese, que o magistrado, ao sentenciar a contenda sem a prévia manifestação obrigatória do Parquet, incorreu em error in procedendo. Ao final, pugna pelo

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	conhecimento e provimento do recurso, para anular a sentença.&#160;</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Razões recursais do Município&#160;(Id 14714477): &#160;irresignado, o município apelante requer a exclusão da condenação em honorários advocatícios por não incidência do princípio da causalidade; alternativamente, pugna pelo arbitramento dos honorários advocatícios no valor de R$ 1.000,00 (mil reais).</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Razões recursais da Defensoria Pública&#160;(Id 14714481): &#160;irresignada, a apelante requer a reforma da sentença impugnada no sentido de estabelecer a fixação dos honorários advocatícios no percentual de 10% sobre o valor atualizado da causa (R$ 84.725,00), nos termos do §2°, art. 85, do CPC.&#160;</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Contrarrazões&#160;do Município e Estado do Ceará junto ao &#160;Id 14714485 e Id 14714488, respectivamente.</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Parecer&#160;da&#160; Procuradoria-Geral de Justiça&#160;pela ausência de necessidade de intervenção (Id 14931765).</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Diante da Apelação do agente ministerial,&#160; despacho&#160;determinando nova abertura de vistas à PGJ para que confirme o interesse no processamento que fora alegado anteriormente&#160; (Id 14966734).</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Novo Parecer&#160;da&#160; Procuradoria-Geral de Justiça&#160;pelo conhecimento e não provimento do recurso (Id 15521536).</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: .0001pt; text-align: justify; text-indent: 2.0cm; line-height: 150%;">&#160;</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> É o relatório.&#160;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: .0001pt; text-align: justify; text-indent: 2.0cm; line-height: 16.5pt;"> <br /> <!--[if !supportLineBreakNewLine]--> <br /> <!--[endif]--> </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 16.5pt;" align="center"> VOTO </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: .0001pt; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> <br /> </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Presentes os requisitos de admissibilidade, conheço da apelação interposta pelo Ministério Público do Estado do Ceará .</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Tem-se que o citado recurso visa anular a sentença proferida pelo Juiz de Direito da 15ª Vara da Fazenda Pública da Comarca de Fortaleza que, nos autos da Ação de Obrigação de Fazer, julgou procedente o pedido requestado na exordial, contudo, sem abrir vistas ao Ministério Público .</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Já adianto que o julgado ora em debate deverá ser anulado , com o consequente retorno dos autos a origem para regular processamento, pelas razões de fato e de direito a seguir expostas. </p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Em que pese se tratar de demanda que discute questão de evidente interesse público, por versar sobre a proteção do direito à saúde , verifica-se da análise dos autos que o Ministério Público em nenhum momento foi instado ou intimado a se manifestar acerca do mérito processual durante o trâmite do feito em primeiro grau.</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Ora, é cediço não apenas que a intervenção do Ministério Público se revela obrigatória nas ações que envolvam interesse público ou social, mas também que a falta da sua intimação para o acompanhamento do feito constitui vício insanável, eivando de nulidade o processo.</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> <span style="color:

Processo	3008434-42.2024.8.06.0001
	#000000;">Nesse sentido, o Código de Processo Civil assim estabelece, com destaques : </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Art. 178. O Ministério Público será intimado para, no prazo de 30 (trinta) dias, intervir como fiscal da ordem jurídica nas hipóteses previstas em lei ou na Constituição Federal e nos processos que envolvam: </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> I - interesse público ou social; </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> II - interesse de incapaz; </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> III - litígios coletivos pela posse de terra rural ou urbana. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Art. 179. Nos casos de intervenção como fiscal da ordem jurídica, o Ministério Público : </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> &#160; <strong style="font-size: 10pt; font-family: Arial, sans-serif;">I - terá vista dos autos depois das partes, sendo intimado de todos os atos do processo;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <strong style="font-size: 10pt; font-family: Arial, sans-serif;">&#160; II - poderá produzir provas, requerer as medidas processuais pertinentes e recorrer.</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Art. 279. É nulo o processo quando o membro do Ministério Público não for intimado a acompanhar o feito em que deva intervir . </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> § 1º Se o processo tiver tramitado sem conhecimento do membro do Ministério Público, o juiz invalidará os atos praticados a partir do momento em que ele deveria ter sido intimado . </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> § 2º A nulidade só pode ser decretada após a intimação do Ministério Público, que se manifestará sobre a existência ou a inexistência de prejuízo. </p><p style="margin-left: 4cm; margin-top: 0.18cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="margin-left: 4cm; margin-top: 0.18cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Com efeito, após a regular manifestação das partes, foi proferida sentença sem abrir vista obrigatória ao órgão ministerial , desrespeitando a sua prerrogativa institucional de participação processual como fiscal da ordem jurídica , ao passo em que deixou de ser intimado para se manifestar sobre o mérito do feito, em claro confronto às citadas disposições dos arts. 178, I, e 179, I, do CPC.</p><p

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	style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Forçoso concluir que o magistrado a quo incorreu em error in procedendo , na medida em que se descuidou de assegurar a efetiva participação do Ministério Público no acompanhamento do feito, para atuar na promoção de justiça que visa à proteção do direito à saúde. Nessa perspectiva, inaplicável ao caso o entendimento jurisprudencial de que, via de regra, a atuação do Ministério Público em segunda instância tem o condão de suprir a nulidade decorrente de sua ausência em primeiro grau , uma vez que houve arguição expressa de prejuízo por parte do Parquet ao recorrer da sentença em análise no escopo de sua atuação como fiscal da lei. No mesmo sentido, seguem julgados desta Corte de Justiça Estadual, in verbis : <br /> APELAÇÕES CÍVEIS EM AÇÃO DE OBRIGAÇÃO DE FAZER C/C TUTELA DE URGÊNCIA. PROCESSO CIVIL. SAÚDE. INTERESSE PÚBLICO NOS TERMOS DO ART. 178, I, DO CPC. AUSÊNCIA DE INTIMAÇÃO DO MINISTÉRIO PÚBLICO DE PRIMEIRO GRAU. CUSTOS LEGIS. OBRIGATORIEDADE. NULIDADE APONTADA. ERRO IN PROCEDENDO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA <span style="color: #000000;"> <span style="font-family: Arial, sans-serif;"> <span style="font-size: 10pt;">. 1. Trata-se de Apelação Cível interposta pela 2ª Promotoria de Justiça de Quixadá (id. 10834139), em face de sentença de id. 10834134, proferida pelo d. juízo da 1ª Vara Cível da Comarca de Quixadá, em sede de Ação de Obrigação de Fazer ajuizada por MARIA OSANEA DE ARAUJO em desfavor do INSTITUTO DE SAÚDE DOS SERVIDORES DO ESTADO DO CEARA – ISSEC, a qual julgou parcialmente procedente os pedidos da exordial. 2. A autora, igualmente irresignada interpôs recurso de apelação (id.10834141), requer o conhecimento e provimento da apelação para que seja: "… conferindo integral provimento a presente apelação, determinando, via de consequência, a reforma parcial da sentença ID n.º 71436931, tão somente para fins de que seja reconhecido e autorizado por este douto Juízo a concessão em favor da apelante de assistência de técnico de enfermagem 24 h/dia." 3. Por fim, o INSTITUTO DE SAÚDE DOS SERVIDORES DO ESTADO DO CEARA – ISSEC, interpôs o recurso de apelação (id. 10834145), pugnando em suma pelo conhecimento e provimento da apelação para que seja julgado totalmente improcedente o pleito autoral. 4. A douta 32ª Procuradoria de Justiça do Estado do Ceará lançou parecer acostado aos autos sob o id. 11888645, opina pelo conhecimento e provimento do recurso apelatório interposto pelo Ministério Público, in verbis: "manifesta-se pelo conhecimento e provimento do Recurso Apelatório interposto pelo Ministério Público, restando prejudicado Recurso de Apelação interposto pelo Instituto de Saúde dos Servidores do Ceará – ISSEC e por Maria Osanea de Araújo, em razão da nulidade avençada pelo Parquet." 5. Adianto que se faz prejudicada a análise dos recursos de apelação interpostos pelas partes, posto que, com efeito, o Código de Processo Civil estabelece que compete ao Ministério Público atuar na defesa da ordem jurídica, do regime democrático e dos interesses e direitos sociais e individuais indisponíveis, intervindo em todas as causas em que há interesse público ou social, art. 176 e art. 178, I, do CPC; 6. Nesse contexto, o art. 279, caput, do CPC, estabelece ser nulo o processo quando o membro do Ministério Público não for intimado a acompanhar o feito em que deva intervir, devendo haver a anulação da sentença; 7. Destarte, a intervenção do Ministério Público na presente demanda, a meu sentir e ver, se faz primordial, nos moldes preconizados no art. 178, caput, do CPC, o que foi inobservado pelo judicante primevo, impondo-se a decretação de nulidade da sentença, à luz do disposto no art. 279 do CPC, devendo os autos retornarem à primeira instância para manifestação do Órgão Ministerial;

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	8. Apelação do Ministério Público conhecida e provida. Demais recursos prejudicados. 9. Sentença anulada. Retorno dos autos à origem para regular processamento, com a consequente manifestação do MP. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em votação unânime, conhecer e dar provimento ao recurso apelatório, julgando prejudicado os demais recursos, tudo em conformidade com os termos do voto do e. Desembargador Relator. Fortaleza/CE, data registrada no sistema. (Apelação Cível - 0202326-70.2022.8.06.0151, Rel. Desembargador(a) DURVAL AIRES FILHO, 1ª Câmara Direito Público , data do julgamento: 03/06/2024, data da publicação: 14/06/2024) (destacou-se) <br /> <br /> PROCESSO CIVIL. APELAÇÃO CÍVEL EM AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. SENTENÇA DE IMPROCEDÊNCIA. PRESENÇA DE MENOR IMPÚBERE NO POLO ATIVO. AUSÊNCIA DE PARTICIPAÇÃO DO MINISTÉRIO PÚBLICO EM PRIMEIRA INSTÂNCIA. EXISTÊNCIA DE PREJUÍZO NO CASO CONCRETO, APONTADO PELO MINISTÉRIO PÚBLICO ATUANTE EM SEGUNDO GRAU. ERROR IN PROCEDENDO. NULIDADE PROCESSUAL COM DETERMINAÇÃO DE RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROCESSAMENTO DO FEITO. RECURSO PREJUDICADO . 1. Compulsando os autos, constata-se existência de error in procedendo, porquanto olvidou a magistrada de primeiro grau intimar o Ministério Público para intervir no feito na condição de custos legis, nos termos do art. 178, II, do CPC (ausência de intimação de todos os atos do processo). 2. Embora haja entendimento jurisprudencial no sentido que a atuação do Ministério Público em sede recursal possa suprir sua ausência no juízo da origem, importante salientar que, no caso em tela, além de não ter havido pronunciamento de mérito, houve arguição expressa de prejuízo por parte do Parquet nesta instância. Precedentes do STJ e do TJCE . 3. Reconhecimento da nulidade aventada pelo Ministério Público, com a desconstituição da sentença e determinação de retorno dos autos ao juízo de origem para regular tramitação. Exame do recurso de apelação prejudicado. ACÓRDÃO Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em declarar a nulidade processual absoluta por falta de intimação do Órgão Ministerial, determinando o retorno dos autos à origem para o regular processamento do feito e posterior prolação de nova sentença, restando prejudicada a análise da apelação, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. (Apelação Cível - 0256996-57.2021.8.06.0001, Rel. Desembargador(a) WASHINGTON LUÍS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público , data do julgamento: 17/06/2024, data da publicação: 05/07/2024) (destacou-se) &#160; RECURSO APELATÓRIO EM AÇÃO DE REPARAÇÃO DE DANOS MORAIS E MATERIAIS. INTERESSE DE MENORES INCAPAZES. AUSÊNCIA DE INTERVENÇÃO

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	DO MINISTÉRIO PÚBLICO NO JUÍZO DE PRIMEIRO GRAU. SENTENÇA ANULADA. INTELIGÊNCIA DOS ARTS. 178, INCISO II, E 279, §§ 1º E 2º, AMBOS DO CÓDIGO DE PROCESSO CIVIL. PREJUDICADA A ANÁLISE DO RECURSO DAS APELANTES. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em reconhecer a nulidade indicada pelo Parquet, determinando a cassação da sentença e o retorno dos autos ao juízo de origem, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data e hora indicadas no sistema. FRANCISCO GLADYSON PONTES Relator (Apelação Cível - 0003830-69.2015.8.06.0142, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público , data do julgamento: 17/03/2021, data da publicação: 17/03/2021) (destacou-se) &#160; E de minha relatoria: Apelação Cível 0009569-58.2018.8.06.0064 , data do julgamento: 07/08/2023, data da publicação: 24/06/2023. Desta feita, tendo em vista a configuração da nulidade por erro de procedimento, ante a ausência de intimação do Ministério Público de primeiro grau, o processo deve ser declarad o nul o a partir do momento em que o órgão ministerial deveria ter sido intimado , por cristalino vício insanável, a teor do disposto no art. 279, § 1º, do CPC. Ademais, considerando a concessão de tutela provisória de urgência por meio da decisão interlocutória de Id. 14714444, ressalta-se que, a princípio, a nulidade do referido ato judicial não trará nenhum prejuízo direto a parte autora, uma vez que resta assegurada a manutenção do direito à saúde pleiteado em sede liminar. Desse modo, em consonância com a legislação pertinente à matéria, conheço e dou provimento à Apelação Cível interposta pelo Ministério Público do Estado do Ceará , declarando a nulidade do feito a partir do momento em que o órgão ministerial deveria ter sido intimado em primeira instância, de modo a determinar o retorno dos autos a origem para regular processamento e prolação de nova sentença , motivo pelo qual julgo como prejudicada a análise dos recursos de apelação interpostos pelo Município de Fortaleza e pela Defensoria Pública do Estado do Ceará. Por fim, adverte-se que a almejada celeridade processual não pode se confundir com o desenvolvimento acelerado do feito, de modo que um eventual esforço concentrado da unidade judiciária para o adimplemento das Metas Nacionais estabelecidas pelo Conselho Nacional de Justiça não pode suprimir o devido processo legal. É imperiosa a observância às prerrogativas ministeriais legalmente estabelecidas, especialmente considerando que a intimação do Ministério Público em primeira instância vem sendo reiteradamente suprimida pelo juízo de origem, mesmo diante das hipóteses de obrigatória intervenção do Parquet como fiscal da ordem jurídica, a exemplo dos processos nº 3013411-77.2024.8.06.0001, nº 3025852-90.2024.8.06.0001, nº 3026014-85.2024.8.06.0001 e nº 3023742-21.2024.8.06.0001. <span

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	style="font-size: medium;">É como voto.</p><p style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Fortaleza/CE, data e hora indicadas no sistema.</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: .0001pt; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> <br /> </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: .0001pt; text-align: center; line-height: 16.5pt;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: .0001pt; text-align: center; line-height: 16.5pt;" align="center"> Relator </p><p style="text-align: justify;">&#160;</p><p class="MsoNormal"> &#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> <br /> </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	122
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adicional por Tempo de Serviço
Polo ativo	MUNICIPIO DE CAMOCIM
Advogado(s) - Polo ativo	Não informado
Polo passivo	DIANA FONTENELE DOS SANTOS
Advogado(s) - Polo passivo	NADJALA KAROLINA DA SILVA RODRIGUES OLIVEIRA E SANTOS - (CE26510-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3001005-62.2024.8.06.0053
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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	exame </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 1. Apelação interposta contra a sentença que julgou procedente ação de servidor público municipal visando o pagamento de adicional por tempo de serviço (anuênio), em desacordo com o percentual previsto em lei. A municipalidade alega prejudicial de prescrição quinquenal (já reconhecida na sentença), que o Estatuto dos Servidores (Lei nº 537/1993) só teria entrado em vigor na data da publicação, em 2008 e lesão grave e de difícil reparação.</p><p class="Textbody" style="margin-bottom: 0cm; line-height: 150%;"> II. Questão em discussão </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 2. A questão em discussão consiste em saber se a servidora faz jus ao adicional por tempo de serviço após a revogação da lei que o instituiu, considerando que os efeitos do direito contido na norma revogada atingiram a esfera jurídico-patrimonial da servidora enquanto aquela esteve em vigor.</p><p class="Textbody" style="margin-bottom: 0cm; line-height: 150%;"> III. Razões de decidir </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 3. A lei municipal que instituiu o adicional por tempo de serviço é clara e autoaplicável, não exigindo norma complementar para produzir seus efeitos, logo, a servidora faz jus ao correto percentual do anuênio, pois os efeitos do direito contido na norma revogada atingiram sua esfera jurídico-patrimonial enquanto a Lei nº 527/1993 esteve em vigor, devendo a contabilização do percentual cessar em 15/05/2021, quando o direito foi revogado. A revogação posterior não retroage, não atingindo os direitos já incorporados.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 4. A publicação da lei, realizada por meio de afixação na sede da prefeitura, é válida. Precedentes do STJ e deste TJCE.</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> 5. O Superior Tribunal de Justiça possui iterativa jurisprudência no sentido de que empecilhos de ordem financeira ou orçamentária não podem ser utilizados com vistas a afastar direito de servidores públicos quanto à percepção de vantagem legitimamente assegurada por lei.&#160;</p><p class="Textbody" style="margin-bottom: 0cm; line-height: 150%;"> IV. Dispositivo </p><p class="Textbody" style="margin-bottom: 0cm; line-height: 150%;"> 6. Apelação conhecida, mas desprovida.</p><p class="Textbody" style="margin-bottom: 0cm; line-height: 150%;"> ______</p><p class="Textbody" style="margin-bottom: 0cm; line-height: 150%;"> Dispositivos relevantes citados: CF, art. 37; CPC, art. 373; Lei Municipal nº 537/1993, art. 69.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160; </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> <span style="font-size: 16pt; line-height: 150%; font-family: Arial, sans-

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	serif;">ACÓRDÃO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, mas para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 68.9pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> RELATOR </p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: center 216.0pt right 432.0pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Tem-se Apelação Cível interposta contra sentença de procedência proferida pelo juízo da 2ª Vara da Comarca de Camocim no âmbito de Ação de obrigação de fazer c/c cobrança.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Petição inicial: narra a Promovente, servidora pública efetiva (Auxiliar de enfermagem), desde 07/2007, que em razão do tempo de serviço, lhe é devido um adicional à razão de 1% (um por cento) por ano de efetivo exercício, porém, até a data do ajuizamento da ação, a municipalidade só lhe paga 8% (oito por cento), em desconformidade com o disposto no art. 69 do Estatuto dos Servidores do Município de Camocim, pois o anuênio deveria ser corretamente computado até o ano de 2021, quando revogado. Requer o reconhecimento do seu direito à incorporação do percentual correto do adicional e o adimplemento dos valores retroativos relativos às diferenças sonegadas não prescritas.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Contestação : argui prescrição quinquenal de parte das verbas pretendidas e diz que o Regime Jurídico dos Servidores de Camocim foi alterado pela Lei Municipal n°1528/2021, restando revogado o adicional por tempo de serviço, inexistindo direito adquirido a regime jurídico, além de necessidade de observância à Lei de Responsabilidade Fiscal, pelo que requer a improcedência do pedido autoral.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Sentença : julgou procedente&#160;o pleito autoral para condenar &#160;a municipalidade a incorporar ao salário da autora o adicional por

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	tempo de serviço (anuênios) à razão de 1% por ano de efetivo exercício no serviço público, perfazendo o percentual de 13%, considerando a extinção/revogação do adicional em maio/2021 e a pagar as parcelas vencidas não prescritas, a partir de julho de 2019, atualizadas.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Sentença não remetida para reexame.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Recurso : o ente político reitera a ocorrência da prescrição quinquenal (já reconhecida na sentença), e que o Estatuto dos Servidores do Município, Lei nº 537/1993, só teria entrado em vigor a partir de sua publicação, em agosto de 2008. Alega lesão grave e de difícil reparação e pede a reforma da decisão&#160; in totum, visando a preservação do interesse público.&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Contrarrazões : pugna pela manutenção da sentença.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Manifestação da Procuradoria Geral de Justiça indiferente ao mérito.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> É o relatório, no essencial.</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> VOTO </p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;">No que se refere ao juízo de admissibilidade ou de prelibação, analisando os pressupostos processuais recursais necessários, vê-se que os requisitos intrínsecos ou subjetivos (cabimento, interesse recursal, legitimidade para a interposição do recurso, inexistência de fatos extintivos ou impeditivos do direito de recorrer) e extrínsecos ou objetivos (tempestividade, preparo, regularidade formal) estão devidamente preenchidos, como também, os específicos descritos no artigo 1.010 do Código de Processo Civil, razão pela qual conheço da apelação, ressalvada a tese a respeito da prescrição quinquenal arguida, uma vez que já reconhecida na origem em favor do ente recorrente.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">Conforme brevemente relatado, a causa de pedir remota versa sobre a implantação de adicional por tempo de serviço em percentual incorreto, pago sob a forma de anuênio, na remuneração de servidora do Município de Camocim, bem como o adimplemento das diferenças retroativas não prescritas, a partir de julho de 2019, atualizadas .</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-

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	alt: auto;"> Podemos extrair da documentação acostada aos autos que a suplicante foi admitida e entrou em exercício em 19/07/2007, sob vínculo efetivo, conforme Termo de Posse (pág. 5 do Id. 14765950), existindo parcela remuneratória em seu contracheque sob a rubrica “anuênio”, no mês de abril de 2024 (pág. 10 do mesmo Id.), no percentual de 8% (oito por cento) o que corrobora a tese apresentada na inicial.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Por se tratar de direito de servidor público, é necessário, para o deslinde da causa, identificar a existência de lei de iniciativa do Chefe do Poder Executivo, vigente à época dos fatos (tempus regit actum), além, por óbvio, de verificar se a parte interessada se encontrava em efetivo exercício no período de vigência e se preencheu os requisitos exigidos na norma regulamentadora.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> O art. 69 e seu parágrafo único, da Lei Municipal nº 537/1993, que instituiu o Regime Jurídico Único dos Servidores Públicos do Município de Camocim, dispõe sobre o adicional por tempo de serviço e sua forma de pagamento; vejamos:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Art. 69. O adicional por tempo de serviço é devido à razão de 1% (um por cento) por ano de serviço público efetivo, incidente sobre o vencimento de que trata o Art. 471.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Parágrafo Único. O servidor fará jus ao adicional a partir do mês em que completar o anuênio. - negritei</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Observo que o dispositivo que regulamenta o direito é autoaplicável e de eficácia plena, ou seja, prescinde da edição de qualquer outro diploma normativo para produzir seus efeitos, e não estabelece condições especiais ou subjetivas ao servidor para perceber o referido adicional.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> In casu, a autora tomou posse no serviço público municipal em 19/07/2007, quando já estava em vigor a Lei Municipal nº 537/1993, que previa o direito ao adicional por tempo de serviço, fazendo jus, portanto, ao recebimento de 13 (treze) anuênios até a revogação do benefício pela Lei Municipal nº 1.528/2021.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Assim, não merece prosperar a alegação do recorrente, no sentido de que, apesar da Lei Municipal nº 537 ter sido sancionada no ano de 1993, somente teria sido publicada em agosto de 2008, haja vista a plena validade da publicação de leis e dos atos administrativos municipais através da afixação na sede da prefeitura, tratando-se de Município que não possui órgão de imprensa oficial.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Nesse sentido é a jurisprudência do Superior Tribunal de Justiça, senão vejamos:&#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> PROCESSUAL CIVIL E TRIBUTÁRIO. IPTU. PUBLICAÇÃO DA LEI. VALIDADE. SÚMULAS 7 DO STJ E 280 DO STF. SITUAÇÃO DO IMÓVEL. NOTIFICAÇÃO AO INCRA

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	SOBRE ALTERAÇÃO DO PERÍMETRO URBANO. DISPOSITIVO LEGAL VIOLADO. AUSÊNCIA. SÚMULA 284 DO STF. [...] 2. Não possuindo a edilidade órgão de imprensa oficial, é válida a publicação das leis e dos atos administrativos municipais por meio de afixação dos seus termos na sede da prefeitura. Precedentes. [...] 5. Agravo interno não provido. (AgInt no AREsp n. 761.867/PR, relator Ministro Gurgel de Faria, Primeira Turma, julgado em 12/9/2017, DJe de 16/10/2017.) - negritei</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Ademais, reiteradamente vem decidindo esta e. Corte de Justiça quando da análise de casos idênticos, envolvendo o próprio Município de Camocim:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> REEXAME NECESSÁRIO AVOCADO E APELAÇÃO CÍVEL. CONSTITUCIONAL. ADMINISTRATIVO. SERVIDORES PÚBLICOS MUNICIPAIS. PARCELA REMUNERATÓRIA CALCULADA COM BASE NO TEMPO DE SERVIÇO. ANUÊNIO. PREVISÃO NO ESTATUTO DOS SERVIDORES PÚBLICOS DO MUNICÍPIO DE CAMOCIM. FIXAÇÃO DA NORMA NO ÁTRIO DA PREFEITURA. VALIDADE. SENTENÇA MANTIDA. 1. Trata o caso de reexame necessário e apelação cível em ação de cobrança por meio da qual os autores pugnam pela condenação do Município de Camocim à implementação e respectivo pagamento de adicional por tempo de serviço (anuênio) previsto na Lei Municipal nº 537/1993. 2. Tratando-se de Município que não possui órgão de imprensa oficial, é válida a publicação das leis e dos atos administrativos municipais através da afixação na sede da prefeitura. […]. (TJCE - Apelação Cível - 0011814-80.2015.8.06.0053, Rel. Desembargadora MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 08/11/2021, data da publicação: 08/11/2021) - negritei</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Desse modo, não procede o argumento do recorrente de que a Lei municipal nº 537/1993 teria entrado em vigor apenas em 2008, sendo exigível o adicional por tempo de serviço tão somente a partir deste lapso temporal, tendo plena validade desde a sua afixação na sede da Prefeitura de Camocim.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Desta maneira, a municipalidade Ré não se desincumbiu do ônus de demonstrar fato impeditivo, modificativo ou extintivo do direito da parte Autora, nos termos do inciso II do art. 373 do NCPC, ressalvada a alegação de revogação do direito após a vigência da Lei Municipal nº 1.528/2021.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Aos fatos contemporâneos à vigência da Lei Municipal nº 537/1993 devemos aplicar a lei revogada, com a finalidade de garantir os direitos que já integram o patrimônio jurídico da parte autora, por força do princípio da legalidade, insculpido no art. 37 da CF/1988.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Apesar da revogação expressa do art. 69 da Lei Municipal nº 537/1993 pelo art. 1º da Lei Municipal nº 1.528/2021, os efeitos do direito contido na norma revogada atingiram a esfera jurídico-patrimonial da servidora enquanto aquela esteve em vigor, devendo, contudo, a contabilização do percentual para efeitos de anuênio cessar em 15/05/2021, sendo-lhe assegurado o benefício obtido até a sua revogação, inclusive o direito ao recebimento das diferenças vencidas e não prescritas.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Esta Câmara de Direito Público vem assim decidindo em casos análogos e com mesma causa de pedir; se não, veja:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <span style="font-size: 11pt; font-family: Arial, sans-serif;">DIREITO ADMINISTRATIVO. APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA DE COBRANÇA. SERVIDORA PÚBLICA DO MUNICÍPIO DE CAMOCIM. ADICIONAL POR TEMPO DE

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	SERVIÇO. PUBLICAÇÃO DA LEI INSTITUIDORA MEDIANTE AFIXAÇÃO NO ÁTRIO DOS PRÉDIOS PÚBLICOS. POSSIBILIDADE. BENEFÍCIO PECUNIÁRIO CUJA IMPLANTAÇÃO PRESCINDE DE NORMA COMPLEMENTAR. DIFICULDADE FINANCEIRA DO ENTE FEDERADO NÃO AFASTA O DIREITO DE SERVIDOR À PERCEPÇÃO DE VERBAS LEGAIS. PRECEDENTES DO SUPERIOR TRIBUNAL DE JUSTIÇA E DESTA CORTE ESTADUAL. RECURSO DESPROVIDO. DE OFICIO, RECONHECIMENTO DA PRESCRIÇÃO QUINQUENAL DE PARTE DAS PARCELAS. SENTENÇA PARCIALMENTE REFORMADA. 1. Caso em que o município apelante refuta sentença que o condenou ao pagamento de adicional por tempo de serviço incidente sobre o vencimento da ora recorrida, ao argumento de que a Lei Municipal instituidora dessa verba (Lei de nº 537/93) é inválida por ausência de publicação em órgão oficial. 2. (...) 4. Ao contrário do que afirma o apelante, o artigo 69 da Lei Municipal nº 537/93 já contempla o percentual a ser concedido a título de adicional por tempo de serviço aos servidores, qual seja, 1% (um por cento) por ano de serviço público efetivo, não havendo que se falar, dessarte, em necessidade de regulamentação deste direito através de norma superveniente. 5. A situação financeira deficitária do Município de Camocim não pode ser utilizada para elidir o direito de servidores públicos ao percebimento de vantagem legitimamente assegurada por lei. Precedentes do Superior Tribunal de Justiça e desta Corte de Justiça. 6. Outrossim, não obstante a nova informação, trazida no apelo da municipalidade, acerca da revogação do art. 69 da Lei Municipal nº 537/1993 pela Lei Municipal nº 1.528/2021, verifica-se que tal fato em nada altera a decisão recorrida, uma vez que o direito reconhecido foi incorporado à esfera jurídica da servidora enquanto esteve vigente, devendo cessar sua incidência na forma da lei, porém, sendo-lhe assegurado o benefício obtido até a sua revogação, inclusive com direito ao recebimento de todos valores vencidos e não prescritos. 7. Forçoso reconhecer, de ofício, estarem prescritas as parcelas vencidas antes dos 05 (cinco) anos que precedem a propositura da vertente ação, elucidando que a prescrição não alcança o percentual dos anuênios a serem incorporados, mas somente as parcelas das diferenças salariais devidas. 8. Recurso conhecido e desprovido. Modificação da sentença, de ofício, para aplicar a prescrição quinquenal. (Apelação Cível&#160;- 0050632-28.2020.8.06.0053, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento:&#160; 26/01/2022, data da publicação:&#160; 26/01/2022) - negritei</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> DIREITO ADMINISTRATIVO. PROCESSO CIVIL. REMESSA NECESSÁRIA AVOCADA. RECURSO DE APELAÇÃO. ADICIONAL POR TEMPO DE SERVIÇO. PRESCRIÇÃO. NÃO OCORRÊNCIA. PRINCÍPIO DA LEGALIDADE. ARTIGO 69, DA LEI MUNICIPAL Nº 537/1993 (ESTATUTO DOS SERVIDORES DO MUNICÍPIO DE CAMOCIM/CE) GRATIFICAÇÃO A CADA ANUÊNIO DE EFETIVO SERVIÇO. AUSÊNCIA DE DEMONSTRAÇÃO PELA MUNICIPALIDADE DE ALGUM FATO IMPEDITIVO, MODIFICATIVO OU EXTINTIVO DO DIREITO AUTORAL. CONSECTÁRIOS LEGAIS EM DESACORDO COM O ENTENDIMENTO FIRMADO PELO SUPERIOR TRIBUNAL DE JUSTIÇA. TEMA Nº 905 (RESP. 1.495.146, 1.492.221 E 1.495.144). SENTENÇA ILÍQUIDA. HONORÁRIOS DE SUCUMBÊNCIA. POSTERGADOS PARA A FASE DE LIQUIDAÇÃO. REMESSA NECESSÁRIA AVOCADA E PARCIALMENTE PROVIDA. RECURSO DE APELAÇÃO CONHECIDO E NÃO PROVIDO. (Apelação Cível&#160;- 0029021-87.2018.8.06.0053, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 06/12/2021, data da publicação:&#160; 06/12/2021) - negritei</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> REEXAME NECESSÁRIO AVOCADO E APELAÇÃO CÍVEL. CONSTITUCIONAL. ADMINISTRATIVO. SERVIDORES PÚBLICOS MUNICIPAIS. PARCELA REMUNERATÓRIA CALCULADA COM BASE NO TEMPO DE SERVIÇO. ANUÊNIO. PREVISÃO NO ESTATUTO DOS SERVIDORES PÚBLICOS DO MUNICÍPIO DE CAMOCIM. FIXAÇÃO DA NORMA NO ÁTRIO DA PREFEITURA. VALIDADE. SENTENÇA MANTIDA. 1. Trata o caso de reexame necessário e apelação cível em ação de cobrança por meio da qual os autores pugnam pela condenação do Município de Camocim à implementação e respectivo pagamento de adicional por tempo de serviço (anuênio)

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	previsto na Lei Municipal nº 537/1993. 2. Tratando-se de Município que não possui órgão de imprensa oficial, é válida a publicação das leis e dos atos administrativos municipais através da afixação na sede da prefeitura. 3. Nos termos do art. 69 do Estatuto dos Servidores Públicos do Município de Camocim, o direito ao recebimento do adicional surge a partir do mês subsequente àquele em que o servidor completar cada ano de serviço público. Referida norma afigura-se plenamente aplicável, prescindindo da edição de qualquer outro diploma normativo para que possa produzir seus efeitos. - Reexame Necessário conhecido. - Apelação conhecida e não provida. - Sentença mantida. (Apelação Cível&#160;- 0011814-80.2015.8.06.0053, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 08/11/2021, data da publicação:&#160; 08/11/2021) - negritei</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> No que concerne ao alegado impacto financeiro que poderia causar o pagamento do adicional por tempo de serviço à promovente, não merece respaldo, haja vista que o Superior Tribunal de Justiça possui iterativa jurisprudência no sentido de que empecilhos de ordem financeira ou orçamentária não podem ser utilizados com vistas a afastar o direito dos servidores públicos quanto à percepção de vantagem legitimamente assegurada por lei.&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Além disso, não comprova o apelante, de forma aritmética e clara, o potencial colapso financeiro capaz de inviabilizar a consecução do interesse público primário e, consequentemente, gerar grave lesão à economia pública municipal.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Isto posto, conheço do apelo, mas para negar-lhe provimento.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Deixo de majorar no presente momento os honorários advocatícios recursais, vez que se depara com sentença ilíquida em que a definição do percentual dos honorários advocatícios somente ocorrerá posteriormente, ocasião em que o juízo de origem levará em consideração o trabalho adicional realizado em sede recursal para fins de fixação da verba honorária, conforme disposição do art. 85, §§ 2º, 3º, 4º e 11, do CPC/2015, entendimento que adoto em consonância com a jurisprudência do Superior Tribunal de Justiça (EDCL no Resp 1785364/CE, 06/04/2021).</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> É o voto que submeto à consideração de meus pares.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema.</p><p> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	0056870-93.2021.8.06.0064
Número de ordem	123
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público

Processo	0056870-93.2021.8.06.0064
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	MUNICIPIO DE CAUCAIA
Advogado(s) - Polo ativo	Não informado
Polo passivo	COMTRAC COMERCIO SERVICOS E LOGISTICA LTDA
Advogado(s) - Polo passivo	RENATO ALBUQUERQUE SOARES - (CE18172-A) RAFAELLY ALBUQUERQUE SOARES PINHEIRO - (CE21786-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0056870-93.2021.8.06.0064
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p>   PROCESSO:&#160;0056870-93.2021.8.06.0064 - &#160;APELAÇÃO / REMESSA NECESSÁRIA (1728) </p><p>   APELANTE: MUNICIPIO DE CAUCAIA </p><p>   APELADO: COMTRAC COMERCIO SERVICOS E LOGISTICA LTDA </p><p>   A3 </p><p>   <br /> </p><p style="text-align: center;">&#160;</p><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;

Processo	0056870-93.2021.8.06.0064
	background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Ementa : Civil e processual civil. Remessa necessária e Recurso de apelação . A ção monitória. Contrato de prestação de serviços de manutenção preventiva e corretiva em veículos . Despesas inseridas em relatório de restos a pagar. Ausência de prova de fato impeditivo, modificativo ou extintivo do direito da parte autora. Sentença ilíquida. Fixação do s h onorários de sucumbência postergad a para a fase de liquidação. Reexame necessário conhecido e parcialmente provido. Sentença reformada em parte. Recurso de apelação conhecido e não pro vido. &#160;&#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear:

Processo	0056870-93.2021.8.06.0064
	both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 01 . Trata-se de Aç ã o Monitória, em que a empresa recorrida busca o pagamento de valores referentes à contraprestação de serviços a o Município de Caucaia/CE, de <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

Processo	0056870-93.2021.8.06.0064
	text;">manutenção mecânica, preventiva e corretiva, incluindo a reposição de peças, na frota de veículos pertencentes à Secretaria de Educação do ref erido m unicípio. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> II. Questão em di scussão &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 2 . A controvérsia consiste em analisar a higidez da sentença apelada que <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

Processo	0056870-93.2021.8.06.0064
	text;">, rejeit ando os embargos monitórios opostos pelo Município de Caucaia/CE , julgou procedente a ação monitória, para conden á-lo a o paga mento , em favor de COMTRAC Comércio, Serviços e Logística Ltda., d e valores alusivos à serviços de manutenção preventiva e corretiva na sua frota de veículos . &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-

Processo	0056870-93.2021.8.06.0064
	variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 24.45px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">III. Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 3 . A petição inicial (Id 14778112), encontra-se instruída com o Contrato de Prestação de Serviços e a respectiva Ata de Registro de Preços (Id 14778117/14778121), relatório “Pagamento de Restos a Pagar” e Relatório “Liquidação” , ambos do período reclamado, ficando devidamente comprovado o vínculo jurídico existente entre as partes e que os serviços foram efetivamente prestados e reconhecidos pela Administração Pública Municipal , destacando-se, no contexto, que, de acordo co m o art. 36 da Lei nº 4.320/64, consideram-se re s tos a

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	pagar, as empenhadas mas não pagas até o final do exercício, constituindo compromissos financeiros exigíveis da Administração Pública. Precedentes TJCE. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 04. O município recorrente, por sua vez, não se desincumbiu do ônus de fazer prova da existência de fato impeditivo, modificativo ou extintivo do direito do autor (inciso II do art. 373 do CPC), na medida em que trouxe aos autos prova da quitação do débito reclamado, nem da existência de pendências e/ou irregularidades que , na forma contratualmente prevista, impede m o pagamento pretendido . &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 24.45px; font-family: Arial,

Processo	0056870-93.2021.8.06.0064
	Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">05. E m se tratando em decisão ilíquida, como no caso, a fixação dos honorários de sucumbência deve ser postergada para a fase de liquidação de sentença (art. 85 , II, § 4º do CPC) , devendo a sentença ser corrigida nessa parte. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> IV. Dispositivo e tese &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-

Processo	0056870-93.2021.8.06.0064
	user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">6 . Remessa N ecessária conhecida e parcialmente provida, apenas para reformar a sentença em relação a verba honorária , postergando sua fixação para a fase de liquidação. Recurso de Apelação conhecido e não provido. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 07. Tese de julgamento: " os restos a pagar representam dívidas pendentes de pagamento, reconhecidas pelo próprio Município, referente a serviço efetivamente prestado, valendo destacar que, segundo o art. 36 da Lei nº 4.320/64, consideram-se restos a pagar as despesas empenhadas <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0056870-93.2021.8.06.0064
	padding: 0px; user-select: text;">mas não pagas até o final do exercício, constituindo compromissos financeiros exigíveis da Administração Pública. Desse modo, cumpria ao&#160;Município de Caucaia/CE fazer prova da quitação do débito reclamado pela empresa apelada ou da existência de pendências e/ou irregularidades que, na forma contratualmente estabelecida, impede m o pagamento pretendido (art. 373, II do CPC) , ônus do qual não se desincumbiu. Por fim, em se tratando de decisão ilíquida, como no caso, a fixaç ã o da verba hono rária deve ser postergada para a fase de liquidação de sentença, na forma do inciso II do § 4º do art. 85 do CPC, conforme reiteradamente decidido por esta Corte Estadual de Justiça , devendo a sentença ser corrigida nesse ponto " . &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color:

Processo	0056870-93.2021.8.06.0064
	transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> -- &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Dispositivos relevantes citados: Arts. 85, § 4º, II e art. 700, I do CPC e arts . 62 e 63 da Lei Federal nº 4.320/1964. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada: Apelação Cível&#160;nº 0008222-83.2015.8.06.0164 (Rela. Desa. JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160; 06/03/2023, data da publicação:&#160; 06/03/2023); Apelação Cível&#160;nº 0012727-92.2014.8.06.0119 (Rel. Des . <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-

Processo	0056870-93.2021.8.06.0064
	select: text;">WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 22/11/2021, data da publicação:&#160; 22/11/2021) ; Agravo Interno Cível nº 0013369-13.2019.8.06.0112 (Rel. Des. FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 11/05/2022, data da publicação: 11/05/2022); Apelação Cível n º 0002737-25.2017.8.06.0167 (Rel a . Des a. MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 23/02/2022, data da publicação: 23/02/2022) . &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag:

Processo	0056870-93.2021.8.06.0064
	none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade , em conhecer d a Remessa Necessária para DAR-LHE PARCIAL PROVIMENTO e <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-

Processo	0056870-93.2021.8.06.0064
	select: text;">conhecer do Recurso de Apelação para NEGAR-LHE PROVIMENTO, nos termos do voto do relator. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza/CE, data e hora indicadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 11px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 11px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW252370746 BCX0" style="-webkit-user-

Processo	0056870-93.2021.8.06.0064
	drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 19.425px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 11px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relator &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELAT <span class="TextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0056870-93.2021.8.06.0064
	padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 14pt; line-height: 33px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">ÓRIO &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Tratam os autos de Remessa Necessária , encaminhada pelo Juízo de Direito da 1ª Vara Cível da Comarca de Caucaia/CE, e Recurso de Apelação, interposto por Município de Caucaia/CE, <span class="TextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-

Processo	0056870-93.2021.8.06.0064
	BR">contra sentença na Ação Monitória ajuizada por Comtrac – Comércio e Serviços de Locação Ltda – ME, recorrida, em desfavor do Município apelante. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Decisão recorrida (Id 14778227): Rejeitou os embargos monitórios e julgou totalmente procedente o pedido autoral, para declarar constituído de pleno direito o título executivo judicial no valor de R$ 1.003.911,44 (um milhão, três mil, novecentos e onze reais e quarenta e quatro centavos), corrigido monetariamente com base no IPCA-E e juros de mora computados consoante o índice de remuneração da caderneta de poupança (Tema 905 do Superior Tribunal de Justiça), observando-se, a partir do dia 09/12/2021, a taxa SELIC, de uma única vez, a tí tulo de correção monetária e juros de mora (Emenda Constitucional nº 113/2021).&#160; Sentença sujeita ao duplo grau de jurisdição obrigatório, nos termos do artigo 496, inciso I, do Código de Processo Civil. Empós o decurso do prazo para recurso voluntário, remetam-se os autos ao c. Tribunal de Justiça do Ceará, em remessa necessária. <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text;">Considerando a sucumbência do embargante/réu, condenou ao pagamento de honorários advocatícios à ordem de 8% (oito por cento) sobre o valor da condenação, nos termos do artigo 85, §§ 2º e 3º, inciso II, do Código de Processo Civil.&#160; (Id nº 14778227) . &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Razões da apelação (Id nº 14778232): aduz, em síntese, que se tratando de Ação Monitória, é imperioso que os documentos apresentados sejam aptos à conversão em título executivo, o que efetivamente, não ocorreu. Pede pela reforma da sentença, com a improcedência do pedido autoral. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Contrarrazões no Id 14778238. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear:

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	both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Manifestação da Procuradoria da Justiça pelo conhecimento dos Recurso de Apelação, vez que presentes os pressupostos de admissibilidade, porém, deixa de apreciar o mérito, por desnecessária a sua intervenção, ante a inexistência de interesse público na demanda (Id nº 14882617). &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> É o relatório. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0"

Processo	0056870-93.2021.8.06.0064
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Presentes os pressupostos de admissibilidade, conheço do recurso. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> O caso, já adianto, é de não provimento da Remessa Necessária e d o Recurso de A pelação. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Os autos versam sobre Ação Monitória, ajuizada por COMTRAC Comércio, Serviços e Locação Ltda. <span class="TextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px;

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	font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> (apelada) e m face do Mu nicípio de Caucaia/CE (apelante), em que aduz, em síntese, ser credora do promovido da importância original de R$ 1.003.911,44 (um milhão, três mil, novecentos e onze reais e quarenta e quatro centavos), dívida oriunda de licitação para contratação de serviços especializados em manutenção mecânica, preventiva e corretiva, incluindo a reposição de peças, para a frota de veículos pertencentes à Secretaria de Educação do Município de Caucaia, cujo montante atualizado da dívida perfaz o montante de R$ 1.728.069,59 (um milhão, setecentos e vinte e oito mil, sessenta e nove reais e cinquenta e nove centavos) . Afirma que t entou, por diversas vezes, receber o valor que lhe é devido , sem obter êxito. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Com efeito, de acordo com o art. 700 , inciso I, do CPC, <span class="NormalTextRun SCXW252370746 BCX0" style="-

Processo	0056870-93.2021.8.06.0064
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">a &#160;ação monitória pode ser proposta por aquele que afirmar, com base em prova escrita sem eficácia de título executivo, ter direito de exigir do devedor capaz , o pagamento de quantia em dinheiro . &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> A inicial (Id 14778112), encontra-se instruída, no que interessa à presente análise, com os documentos de Id 14778115 / 14778197, com especial destaque para o Contrato de Prestação de Serviços e respectiva Ata de Registro de Preços (Id 14778117/ 14778121) , o r elatório “Pagamento de Restos a Pagar” do período 01/01/2017 a 31/12/2017 (Id 14778115 <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

Processo	0056870-93.2021.8.06.0064
	user-select: text;">) , no valor de R$ 1.003.911,44 (um milhão três mil novecentos e onze reais e quarenta e quatro centavos) e o Relatório “Liquidação” (Id 14778122) , também do período 01/01/2017 a 31/12/2017, no valor de R$ 3.026.704,40 (três milhões vinte e seis mil setecentos e quatro reais e quarenta centavos, que comprovam o vínculo jurídico existente entre as partes e indicam que os serviços foram efetivamente prestados e reconhecid os pela Administração Pública Municipal . &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> O s Embargos Monitórios <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0056870-93.2021.8.06.0064
	transparent; margin: 0px; padding: 0px; user-select: text;">apresentados pelo Município de Caucaia/C E (Id 14778217) estão fundados , basicamente, n a deficiência da prova documental apresentada pela parte embargada, apelada, afirma ndo o ente público que “a Embargada se limitou a anexar as notas fiscais, sem apresentar os demais documentos, que também deveriam ter sido apresentados ao tempo da emissão da nota. Demais disso também não se vê nos documentos anexados, as autorizações de fornecimento/ordens de serviço expedidas, de conformidade com as notas fiscais/faturas devidamente atestadas pelo Gestor da despesa, acompanhadas sempre de tabelas de tempo padrões de serviço da concessionária autorizada para peças, além das Certidões Federais, Estaduais, Municipais e Certidão Negativa de Débitos junto ao FGTS, todas atualizadas ” . &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Nas razões de apelação, sustenta o Município que <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0056870-93.2021.8.06.0064
	transparent; margin: 0px; padding: 0px; user-select: text;">, de acordo com os arts . 62 e 63 da Lei nº4.320/1964, a simples inscrição em restos a pagar, não é suficiente para evidenciar a existência de qualquer débito em desfavor do Município, no caso concreto, de vez que teria sido necessário que tivesse havido a liquidação do suposto débito . &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Sem razão o recorrente. </p> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> C omo pontuado pelo Juízo a quo, o s "restos a pagar" <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0056870-93.2021.8.06.0064
	transparent; margin: 0px; padding: 0px; user-select: text;">representam dívida s pendente s de pagamento, reconhecidas pelo próprio Município de Caucaia, referente a um serviço efetivamente prestado , valendo destacar, no contexto, que, de acordo com o art. 36 da Lei nº 4.320/64, consideram-se restos a pagar as despesas empenhadas mas não pagas até o final do exercício, constituindo compromissos financeiros exigíveis da Administração Pública. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Nesse sentido, julgados desta 3ª Câmara de Direito Público , <span class="NormalTextRun SCXW252370746 BCX0" style="-

Processo	0056870-93.2021.8.06.0064
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">in v erbis : &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> APELAÇÃO CÍVEL. ADMINISTRATIVO. PROCESSUAL CIVIL. AÇÃO MONITÓRIA. PROVA ESCRITA. NOTA DE EMPENHO SEM ASSINATURA. POSSIBILIDADE. VÍNCULO OBRIGACIONAL NÃO ILIDIDO PELA FAZENDA MUNICIPAL. PROVA SUFICIENTE PARA APARELHAR A PRETENSÃO. CONTRAPRESTAÇÃO PECUNIÁRIA DEVIDA. VEDAÇÃO AO ENRIQUECIMENTO SEM CAUSA DO ENTE PÚBLICO. PRECEDENTES DO TJCE. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA. 1. O cerne da questão consiste em analisar se o autor faz jus ao recebimento da quantia de R$ 8.977,26 (oito mil, novecentos e setenta e sete reais e vinte e seis centavos), referente à contraprestação pelos serviços prestados em prol do Município de São Gonçalo do Amarante, referentes à carga, transporte e descarga de lixo, e retirada de poda em algumas localidades. 2. A parte autora, aduzindo ser credora da quantia indicada, acostou à inicial notas de empenho emitidas pela prefeitura, referentes aos serviços prestados nos meses de agosto, setembro e outubro de 2012. A própria municipalidade ré afirmou que as referidas notas se encontravam insertas no livro ¿Restos a Pagar¿ da sua contabilidade. 3. O ente público, por seu turno, deixou de juntar aos autos qualquer prova de que o autor não prestara os

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	serviços alegados ou mesmo que houvera o cancelamento dos aludidos empenhos, pontos que poderiam ter sido facilmente demonstrados pela Administração Pública. Quanto à alegada falta de assinatura, a jurisprudência desta Corte é no sentido de que a mera ausência de assinatura na nota de empenho não lhe exaure, por si só, o valor probatório quanto ao dever de pagar. 4. À míngua da prova de quitação dos valores pela municipalidade, e sendo possível apurar a liquidez das obrigações contratadas pela Administração junto ao particular, devido o reconhecimento do crédito em favor do autor, sob pena de enriquecimento sem causa da parte adversa (art. 884 do CC/02). Precedentes do TJCE. 5. Apelação conhecida e desprovida. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste. Fortaleza, data e hora informadas pelo sistema. DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO Relatora (Apelação Cível&#160;- 0008222-83.2015.8.06.0164, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160; 06/03/2023, data da publicação:&#160; 06/03/2023) &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 144px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> APELAÇÃO. AÇÃO MONITÓRIA. ALUGUEL DE MÁQUINAS MOTONIVELADORAS (PATROL). INADIMPLÊNCIA DO MUNICÍPIO COMPROVADA. DOCUMENTAÇÃO QUE ATESTA PRESTAÇÃO DE SERVIÇOS. JUNTADA DO CONTRATO, NOTAS FISCAIS ASSINADAS E NOTAS DE EMPENHO SUBSCRITAS PELO SECRETÁRIO DE INFRAESTRUTURA. RESTO A PAGAR NÃO PROCESSADO. CIRCUNSTÂNCIA QUE DEMONSTRA A IRRESOLUÇÃO DO PROCEDIMENTO DE LIQUIDAÇÃO, MAS NÃO NECESSARIAMENTE A AUSÊNCIA DE PRESTAÇÃO DE SERVIÇO. SENTENÇA DE PROCEDÊNCIA MANTIDA. RECURSO CONHECIDO E NÃO PROVIDO. <span class="NormalTextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -

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	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Cinge-se a lide a averiguar se o Município de Maranguape deve à parte adversa a contraprestação pecuniária correspondente à prestação dos serviços de aluguel de máquinas motoniveladoras (patrol), e a resposta é positiva: a edilidade deve pagar o que deve à autora. 3. No que tange à aplicação do art. 1º, §1º, parte final, da Lei Complementar Federal nº 101/2000 (Lei de Responsabilidade Fiscal) e no art. 37, da Lei Federal nº 4.320/64, que tratam da inscrição das dívidas processadas e não processadas em Restos a Pagar e do seu pagamento à conta de dotação específica, a discussão é irrelevante, uma vez que a dívida aqui reconhecida será paga mediante precatório ou RPV, com a previsão orçamentária respectiva. 4. A circunstância de a dívida se encontrar como "não processada" não significa necessariamente que a parte contrária deixou de prestar serviços, mas apenas que o procedimento de liquidação não foi finalizado. Nesse azo, considerando que, no caso em tela, a documentação sugere que a inércia do Poder Público em liquidar a dívida foi injustificada, impõe-se a consolidação do crédito exigido, condenando-se o ente municipal ao pagamento da dívida. 5. Apelo conhecido e não provido. ACÓRDÃO Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO Relator (Apelação Cível&#160;- 0012727-92.2014.8.06.0119, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 22/11/2021, data da publicação:&#160; 22/11/2021) &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Ademais, o&#160; <span class="TextRun SCXW252370746 BCX0" style="-

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	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Município de Caucaia/CE não fez prova da quitação do débito reclamado pela empresa apelada, nem da existência de pendências e/ou irregularidades que, na forma contratualmente estebelcida, impendem o pagamento pretendido, não se desincumbindo do ônus de fazer quanto a existência de fato impeditivo, modificativo ou extintivo do direito do autor (art. 373, II, do CPC. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Também não tem razão o recorrente quando pretende a reforma da sentença na parte alusiva aos consectários legais, uma vez que a decisão observou, nesta parte, a orientação firmada pelo Superior Tribunal de Justiça, sob a sistemática dos recursos repetitivos (Tema nº 905), com as adequações da Emenda Constitucional nº 113/2021. &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Assim, não trazendo a parte recorrente elementos

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	capazes de infirmar o acerto da decisão recorrida, sua manutenção é medida que se impõe. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> A sentença, todavia, deve ser corrigida em relação a verba h o norária , uma vez que, em se tratando, como no caso, de decisão ilíquida, su a fixação deve ser postergada para a fase de liquidação de sentença, na forma do inciso II do § 4 º do art. 85 do CPC, conforme reiteradamente decidido por esta Corte Estadual de Justiça, senão vejamos, in verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI

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	Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> CONSTITUCIONAL E ADMINISTRATIVO. AGRAVO INTERNO EM EMBARGOS DE DECLARAÇÃO EM APELAÇÃO EM AÇÃO ORDINÁRIA. OBRIGATORIEDADE DO PODER PÚBLICO DE FORNECER MEDICAMENTOS NÃO INCORPORADOS EM ATOS NORMATIVOS DO SUS. TEMA REPETITIVO 106. PRECLUSÃO CONSUMATIVA. HONORÁRIOS ADVOCATÍCIOS. ARBITRAMENTO APENAS NA LIQUIDAÇÃO DO JULGADO. PREVISÃO LEGAL. RECURSO PARCIALMENTE CONHECIDO E PROVIDO, EM PARTE. 1. O argumento deduzido pelo agravante, tangente à obrigação de fornecer a medicação requestada pela agravada, somente foi suscitado pelo recorrente neste recurso, e não após a sentença, contra a qual nada impugnou o agravante. 2. É vedado à parte discutir no curso do processo as questões já decididas a cujo respeito se operou a preclusão. Previsão legal. 3. No tocante ao capítulo dos honorários advocatícios, tem-se que o STJ tem reafirmado a validade da Súmula 421, inexistente precedente vinculante da Corte Suprema em sentido contrário; assim, não cabe mesmo condenar o Estado do Ceará a pagar honorários quando, como ocorre no caso, a Defensoria Pública atua contra o próprio Estado do Ceará, pessoa jurídica de direito público à qual pertence. 4. Diferentemente é o tratamento relativamente ao agravante, que deve ser condenado a pagar honorários, visto ter sucumbido, no processo. De acordo com o&#160;princípio da causalidade, aquele que deu causa à propositura da ação deve ser condenado ao pagamento de honorários advocatícios (art. 85, do CPC). 5. Porém, visto a sentença recorrida ser ilíquida, o arbitramento dos honorários somente deve ser feito por ocasião da liquidação do julgado, nos termos do art. 85, § 4º, II, do CPC. 6. Agravo Interno parcialmente conhecido e provido, em parte. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer parcialmente do Agravo Interno, dando-lhe parcial provimento, nos termos do voto do Relator que faz parte desta decisão. Fortaleza, data registrada no sistema. Francisco Gladyson Pontes Relator (Agravo Interno Cível- 0013369-13.2019.8.06.0112, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 11/05/2022, data da publicação: 11/05/2022) &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> EMENTA: APELAÇÃO CÍVEL. PREVIDENCIÁRIO. APOSENTADORIA POR INVALIDEZ. LAUDO PERICIAL COMPROBATÓRIO DA INCAPACIDADE PARCIAL E DEFINITIVA. CONSIDERAÇÕES DE OUTROS ASPECTOS ALÉM DOS ELEMENTOS PREVISTOS NO ART. 42 DA LEI Nº 8.213/91. PRECEDENTES

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	DO SUPERIOR TRIBUNAL DE JUSTIÇA E DESTA CORTE DE JUSTIÇA. APELO CONHECIDO E DESPROVIDO. Trata-se de Apelação Cível interposta pelo Instituto Nacional de Seguro Social - INSS contra sentença que deferiu o pedido inaugural, no sentido de condená-lo na concessão do benefício de aposentadoria por invalidez, bem como ao pagamento do valor retroativo, considerando como termo inicial o dia seguinte à cessação do benefício anteriormente concedido, qual seja: auxílio-doença. Pela documentação acostada, verifica-se que a autora Antonia Imaculada de Sousa Rocha foi acometida de dores crônicas e de limitação da mobilidade dos punhos, cotovelos e ombros e é portadora de Síndrome do manguito rotador (CID M75.1), de Epicondilite lateral (CID:M77.1) e de Tenossinovite do punho (CID: M65.8), situação que lhe incapacitou para o exercício de suas atividades laborais. Por tal motivo, requereu a concessão de vários benefícios de auxílio-doença (NB: 602.015.704-4; NB: 607.242.169-9 e NB: 612.903.180-0), pleitos deferidos, mas posteriormente cessado, em 24/11/2016, o último benefício. 4. Considerando que a demanda versa sobre sentença ilíquida, a definição do percentual alusivo aos honorários advocatícios deverá observar o disposto no art. 85, § 4º, II, do CPC, ou seja, deve ser fixado pelo juízo da liquidação. Altero, de ofício, a sentença nesse capítulo. 5. Apelo conhecido e desprovido em consonância com o parecer da douta PGJ. Sentença alterada, de ofício, no que pertine aos honorários sucumbenciais. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do Apelo, mas para negar-lhe provimento, nos termos do voto da relatora. Fortaleza, dia e hora registrados no sistema. MARIA IRANEIDE MOURA SILVA Presidente do Órgão Julgador e Relatora RELATÓRIO Trata-se de Apelação Cível interposta pelo Instituto Nacional de Seguro Social - INSS contra sentença que deferiu o pedido inaugural, no sentido de condená-lo na concessão do benefício de aposentadoria por invalidez, bem como ao pagamento do valor retroativo, considerando como termo inicial o dia seguinte à cessação do benefício anteriormente concedido, qual seja: auxílio-doença. (Apelação Cível - 0002737-25.2017.8.06.0167, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 23/02/2022, data da publicação: 23/02/2022) &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;" lang="PT-BR" xml:lang="PT-BR"> Diante do exposto, conheço d a Remessa Necessária para DAR -LHE PARCIAL PROVIMENTO e reformar a sentença , apenas para determinar que os honorários sejam fixados na fase de liquidação (art. 85, § 4º, II, do CPC), ficando <span class="TextRun SCXW252370746 BCX0" style="-webkit-user-

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	drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> mantida a decisão nos demais termos, e conhecer do Recurso de Apelação para NEGAR -LHE PROVIMENTO , conforme explanado . &#160;</p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;" lang="PT-BR" xml:lang="PT-BR"> Custas pelo recorrente, observada a isenção da Lei Estadual nº 16.132/2016 (art. 5º, inc. V). &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> <span class="TextRun SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont,

Processo	0056870-93.2021.8.06.0064
	Arial_MSFontService, sans-serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Sem majoração da verba honorária . &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Expedientes necessários. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> &#160; </p></div><div class="OutlineElement

Processo	0056870-93.2021.8.06.0064
	Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; </p></div><div class="OutlineElement Ltr SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW252370746 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relator &#160; </p></div><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	124
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Posse e Exercício
Polo ativo	BRUNO TAVARES DE ANDRADE
Advogado(s) - Polo ativo	JOAO CARLOS DE MENSURADO FERREIRA - (CE27168-A)
Polo passivo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM Procuradoria do Município de Fortaleza INSTITUTO DR JOSE FROTA INSTITUTO DR. JOSÉ FROTA - IJF
Advogado(s) - Polo passivo	ANDRE DIEGO DE LIMA LEITE - (CE30491-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

Processo	0211495-46.2022.8.06.0001

Acordão

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</p><p> O Colegiado, por unanimidade, acordou
em conhecer parcialmente do recurso para dar-lhe parcial provimento, nos termos do voto
do(a) eminente Relator(a).</p><p>&#160;</p><p>   <span style="font-
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	NO EDITAL. IMPOSSIBILIDADE. EXIGÊNCIA EDITALÍCIA RAZOÁVEL. VINCULAÇÃO AO INSTRUMENTO CONVOCATÓRIO. PEDIDO DE FINAL DE FILA. VIABILIDADE. RECURSO PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. No caso, apelação interposta em face de sentença que denegou a segurança no âmbito de mandado de segurança impetrado, no sentido de que as autoridades coatoras se abstivessem de exigir a comprovação da residência médica exigida no edital do concurso público para provimento do cargo de médico intensivista no IJF.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. De início, não há que se falar em ilegitimidade passiva das autoridades coatoras, vez que os Editais de abertura foram subscritos pelos impetrados.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Esta Corte de Justiça tem posicionamento firme no sentido de que a Administração Pública goza de discricionariedade para estabelecer os critérios para a seleção de seu pessoal, desde que o faça nos limites da razoabilidade, devendo ser observada a publicidade e a isonomia.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Ora, é lição comezinha que o edital é a lei do concurso e suas regras obrigam tanto a Administração quanto os candidatos, em clara atenção ao princípio da vinculação ao edital.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Quanto ao pedido subsidiário de reposicionamento do apelante para o final da fila de aprovados, observa-se que referido pedido se revela medida que não traz qualquer prejuízo ao erário, nem importa em ofensa a direito de terceiros ou vilipêndio ao interesse público e aos postulados da legalidade, da vinculação ao edital, da isonomia ou da impessoalidade</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Recurso parcialmente conhecido e provido em parte.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; - Sentença reformada em parte.</p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="text-align: justify;"> Vistos, relatados e discutidos o presente de Apelação Cível nº 0211495-46.2022.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer parcialmente do apelo, para afastar a preliminar suscitada e, no mérito, dar-lhe parcial provimento <span style="font-size: 12pt; font-family: Arial, sans-serif; background-color: transparent; font-

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	variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; vertical-align: baseline; white-space-collapse: preserve;">, reformando em parte a sentença a quo, nos termos do voto da Relatora.</p><div> <br /> </div><p style="text-indent: 8%; text-align: justify;"> &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO <strong style="font-size: small;">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Trata-se de apelação cível em face de sentença proferida pelo Juízo da 12ª Vara da Fazenda Pública da Comarca de Fortaleza, que denegou a segurança requestada em sede de mandado de segurança.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">O writ: Bruno Tavares de Andrade impetrou Mandado de Segurança em face de suposto ato ilegal e abusivo atribuído ao Secretário Municipal do Planejamento, Orçamento e Gestão e ao Superintendente do Instituto Doutor José Frota – IJF.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Para tanto, aduziu o impetrante que participou do concurso público realizado pelo IMPARH, fundação pública municipal vinculada à Secretaria de Planejamento, Orçamento e Gestão (SEPOG) de Fortaleza, Edital nº 24/2020, para provimento de cargos integrantes do quadro de pessoal efetivo do Instituto Doutor José Frota (IJF), tendo logrado a 15ª classificação dentro das 18 vagas disponibilizadas para o cargo de médico intensivista, sendo então convocado para apresentação de diversos documentos inerentes à profissão, dentre eles o certificado de residência.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;"

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	dir="ltr">Ocorre que o impetrante possui residência em Cirurgia Geral, especialidade não incluída no rol de certificados de conclusão de residência aceitos pelo edital. Sustentou que a exigência de tal documento no instrumento editalício configura a criação de requisito não previsto em lei para exercício da profissão. Nesse contexto, impetrou mandamus pleiteando, inclusive, a concessão de liminar para “impossibilitar as autoridades coatoras de exigirem documentos não previstos em lei como requisitos de exercício da profissão/cargo, garantindo-se assim o direito subjetivo de nomeação e posse do autor, vez que logrou êxito no concurso público dentro das vagas e atende todos os requisitos legais para exercício da profissão/cargo”.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Informações prestadas pela autoridade coatora (ID 14845256) sustentando a ilegitimidade passiva do Instituto Dr. José Frota – IJF, bem como a impossibilidade de concessão da pretensão do impetrante, uma vez que não teria atendido às regras do edital.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">A sentença: o magistrado de primeiro grau proferiu sentença denegando a segurança pleiteada, nos seguintes termos (ID 14845288):</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “Ante o exposto, denego a segurança requestada, por reconhecer que o impetrante não obedeceu aos critérios impostos pelo edital.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Sem custas e sem honorários nos moldes do artigo 25 da Lei 12.016/2009. ”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Inconformado, o impetrante interpôs a presente Apelação (ID 14845329) basicamente sob os mesmos fundamentos da inicial, requerendo a declaração incidental de inconstitucionalidade do art. 7º, parágrafo único, da Lei Municipal nº 9.370 (com redação dada pelo art. 1º Lei Municipal nº 10.401), na parte em que delega ao edital a possibilidade

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	de estabelecer requisitos adicionais, além da reforma da sentença para que seja concedida a segurança requestada e, subsidiariamente, que seja deferido o pedido de reposicionamento do apelante para o final da fila de aprovados, possibilitando-lhe obter a qualificação exigida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Contrarrazões apresentadas pelo IJF (ID 14845337), argumentando que não haveria probabilidade do direito, já que o autor confessa a desobediência à regra editalícia, e que a reforma da decisão faria com que o candidato fosse nomeado e empossado sem cumprir os requisitos do cargo, exercendo cargo público sem a qualificação exigida e atendendo ao público fortalezense de forma temerária, razão pela qual deve o recurso ser improvido.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Contrarrazões apresentadas pelo Município de Fortaleza (ID 14845341) nas quais alega, preliminarmente, a ilegitimidade do Secretário Municipal do Planejamento, Orçamento e Gestão para figurar no polo passivo da presente demanda, uma vez que não teria competência para dar posse em concurso público. No mérito, defende a vinculação ao instrumento editalício e a inexistência de óbice ao exercício da profissão, bem como a impossibilidade da intervenção do poder judiciário no mérito do ato administrativo, pugnando, ao fim, pelo desprovimento do recurso interposto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria Geral de Justiça (ID 15121053), opinado pelo conhecimento do recurso, mas pelo seu não provimento, devendo ser preservada incólume a sentença recorrida.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Trata-se de apelação contra sentença que denegou segurança no bojo do Mandado de Segurança impetrado no intuito de assegurar que o candidato, ora impetrante, não seria eliminado do certame em razão de não possuir residência médica em uma das áreas aceitas para o cargo ao qual concorreu.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> De logo, impõe-se registrar a impossibilidade de conhecimento do apelo quanto ao pleito formulado pelo recorrente, tão somente em apelação, de que fosse declarada incidentalmente a inconstitucionalidade do art. 7º, parágrafo único, da Lei Municipal nº 9.370 (com redação dada pelo art. 1º Lei Municipal nº 10.401), na parte em que delega ao edital a possibilidade de estabelecer requisitos adicionais, por se tratar de evidente inovação recursal.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Passo a analisar, em tópicos, os demais argumentos ventilados no recurso em exame.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Da preliminar de ilegitimidade passiva.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> De acordo com o relatado, em suas contrarrazões, o Município de Fortaleza sustenta a ilegitimidade passiva do Secretário do Planejamento, Orçamento e Gestão do Município, uma vez que este não teria competência para dar posse em concurso público.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Contudo, verifico não haver azo para o acolhimento da referida preliminar. Explico.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Conforme se extrai do Edital de Convocação Nº 56/2018 (fls. 96/100) e Edital nº 60/2015 (fls. 28/78), estes foram subscritos pelo Secretário Municipal do Planejamento, Orçamento e Gestão de Fortaleza, o que atrai sua legitimidade para figurar no polo passivo da demanda, uma vez que a autoridade foi um dos responsáveis pela definição das imposições ali estabelecidas e que agora são questionadas pelo recorrente. Nesse sentido:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> PROCESSUAL CIVIL. ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO EM MANDADO DE SEGURANÇA. CONCURSO PÚBLICO. EXAME PSICOTÉCNICO. PREVISÃO LEGAL. CRITÉRIOS DO EDITAL. LEGITIMIDADE PASSIVA. AUTORIDADE ADMINISTRATIVA SUBSCRITORA DO ATO. 1. A legitimidade passiva em mandado de segurança é da autoridade que pratica ou ordena, de forma específica e concreta, o ato tido por coator ou detém a capacidade de corrigir-lhe a ilegalidade. 2. Hipótese em que a impetração se volta contra a previsão de exame psicotécnico e seus critérios de avaliação, a atrair a legitimidade passiva do Secretário de Estado subscritor do edital, em detrimento da banca examinadora que, em tese, apenas segue seus parâmetros. 3. Agravo interno a que se nega provimento. (STJ - AgInt no RMS: 52514 GO 2016/0304299-3, Data de Julgamento: 03/05/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 17/05/2022)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Dessarte, rejeito a presente preliminar.</p><p align="center"> <strong id="docs-internal-guid-d0e13281-7fff-0a11-c565-3a81dc3a8e12" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Do mérito</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Da leitura atenta aos termos do Edital nº 24/2020, que rege o concurso em debate, verifica-se que, no Anexo I, item 4, constam os seguintes requisitos para ingresso no cargo de médico intensivista:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 11pt; font-family:

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	Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">“1. Curso de graduação completo em Medicina fornecido por Instituição de Ensino Superior, reconhecido pelo Ministério da Educação 2. Registro profissional no Conselho competente 3. Certificado de conclusão de Residência Médica em Medicina Intensiva, reconhecida pela Comissão Nacional de Residência Médica, ou Certificado de conclusão de Residência Médica nas seguintes especialidades: Clínica Médica, Cardiologia, Neurologia, Anestesiologia e Pneumologia, reconhecidas pela Comissão Nacional de Residência Médica, e Título de Especialista em Medicina Intensiva, reconhecido pela Associação Médica Brasileira.”</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Constata-se, portanto, que o edital estabelece, expressamente, a obrigatoriedade de que o candidato que concorre a uma vaga de médico intensivista possua residência médica em medicina intensiva ou em clínica médica, cardiologia, neurologia, anestesiologia ou pneumologia.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Nota-se que não se trata de requisito que fuja à razoabilidade, sendo imprescindível destacar, nesse ponto, a discricionariedade da Administração Pública de definir critérios razoáveis na seleção de pessoal, desde que os faça com respeito à publicidade e à isonomia.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr">Vale ressaltar que a própria Lei Complementar municipal nº 272, de 21 de novembro de 2019, que dispôs sobre a criação de cargos de provimento efetivo no quadro de pessoal do IJF, traz a seguinte disposição sobre os requisitos para ingresso naquela instituição, in verbis:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> “ Art. 2º. Os cargos criados na forma do Anexo I desta Lei Complementar passam a integrar o Plano de Cargos, Carreiras e Salários (PCCS) dos servidores municipais Médicos do Instituto Dr. José Frota, instituído pela Lei nº 9.370, de 22 de abril de 2008.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Parágrafo único. Os requisitos para ingresso nos cargos a que se refere o caput deste artigo, bem como as respectivas descrições e atribuições estão discriminadas nos Anexos 3 e 4 da Lei nº 9.370, de 22 de abril de 2008, bem como no instrumento regulador do concurso público .” (grifamos)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify;

Processo	0211495-46.2022.8.06.0001
	margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Observa-se, no excerto mencionado, que a própria lei alude à possibilidade de que o instrumento regulador do certame disponha sobre os requisitos a serem preenchidos pelos profissionais que pretendam compor o quadro de funcionários do IJF.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr">Ademais, o RE 898450 – Tema 838 do STF, suscitado pelo impetrante, possui como tese que “Editais de concurso público não podem estabelecer restrição a pessoas com tatuagem, salvo situações excepcionais em razão de conteúdo que viole valores constitucionais”, não se relacionado com o caso dos autos em que é exigido requisito razoável. Veja-se:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> <span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">EMENTA: RECURSO EXTRAORDINÁRIO. CONSTITUCIONAL E ADMINISTRATIVO. REPERCUSSÃO GERAL RECONHECIDA. TEMA 838 DO PLENÁRIO VIRTUAL. TATUAGEM. CONCURSO PÚBLICO. EDITAL. REQUISITOS PARA O DESEMPENHO DE UMA FUNÇÃO PÚBLICA. AUSÊNCIA DE PREVISÃO EM LEI FORMAL ESTADUAL. IMPOSSIBILIDADE. OFENSA AO ART. 37, I, DA CONSTITUIÇÃO DA REPÚBLICA. REAFIRMAÇÃO DA JURISPRUDÊNCIA PACÍFICA DA CORTE. IMPEDIMENTO DO PROVIMENTO DE CARGO, EMPREGO OU FUNÇÃO PÚBLICA DECORRENTE DA EXISTÊNCIA DE TATUAGEM NO CORPO DO CANDIDATO. REQUISITO OFENSIVO A DIREITOS FUNDAMENTAIS DOS CIDADÃOS. VIOLAÇÃO AOS PRINCÍPIOS CONSTITUCIONAIS DA IGUALDADE, DA DIGNIDADE DA PESSOA HUMANA, DA LIBERDADE DE EXPRESSÃO, DA PROPORCIONALIDADE E DO LIVRE ACESSO AOS CARGOS PÚBLICOS. INCONSTITUCIONALIDADE DA EXIGÊNCIA ESTATAL DE QUE A TATUAGEM ESTEJA DENTRO DE DETERMINADO TAMANHO E PARÂMETROS ESTÉTICOS. INTERPRETAÇÃO DOS ARTS. 5º, I, E 37, I E II, DA CRFB/88. SITUAÇÕES EXCEPCIONAIS. RESTRIÇÃO. AS TATUAGENS QUE EXTERIORIZEM VALORES EXCESSIVAMENTE OFENSIVOS À DIGNIDADE DOS SERES HUMANOS, AO DESEMPENHO DA FUNÇÃO PÚBLICA PRETENDIDA, INCITAÇÃO À VIOLÊNCIA IMINENTE, AMEAÇAS REAIS OU REPRESENTEM OBSCENIDADES IMPEDEM O ACESSO A UMA FUNÇÃO PÚBLICA, SEM PREJUÍZO DO INAFASTÁVEL JUDICIAL REVIEW. CONSTITUCIONALIDADE. INCOMPATIBILIDADE COM OS VALORES ÉTICOS E SOCIAIS DA FUNÇÃO PÚBLICA A SER DESEMPENHADA. DIREITO COMPARADO. IN CASU, A EXCLUSÃO DO CANDIDATO SE DEU, EXCLUSIVAMENTE, POR MOTIVOS ESTÉTICOS. CONFIRMAÇÃO DA RESTRIÇÃO PELO ACÓRDÃO RECORRIDO. CONTRARIEDADE ÀS TESES ORA DELIMITADAS. RECURSO EXTRAORDINÁRIO A QUE SE DÁ PROVIMENTO. 1. O princípio da legalidade norteia os requisitos dos editais de concurso público. 2. O artigo 37, I, da Constituição da República, ao impor, expressamente, que “os cargos, empregos e funções públicas são acessíveis aos brasileiros que preencham os requisitos estabelecidos em lei”, evidencia a frontal inconstitucionalidade de toda e qualquer restrição para o desempenho de uma função pública contida em editais, regulamentos e portarias que não tenham amparo legal. (Precedentes: RE 593198 AgR, Relator Min. Dias Toffoli, Primeira Turma, julgado em 06/08/2013, DJe 01-10-2013; ARE 715061 AgR, Relator Min. Celso de Mello, Segunda Turma, DJe 19-06-2013; RE 558833 AgR, Relatora Min. Ellen Gracie, Segunda Turma, DJe 25-09-2009; RE 398567 AgR, Relator Min. Eros Grau, Primeira Turma, DJ 24-03-2006; e MS 20.973, Relator Min. Paulo Brossard, Plenário, julgado em 06/12/1989, DJ 24-04-1992). 3. O Legislador não pode escudar-se em uma pretensa discricionariedade para criar barreiras legais arbitrárias e desproporcionais para o acesso às funções públicas, de modo a ensejar a sensível diminuição do número de possíveis competidores e a impossibilidade de escolha, pela Administração, daqueles que são os melhores. 4. Os requisitos legalmente previstos para o desempenho de uma função pública devem ser compatíveis com a natureza e

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	atribuições do cargo. (No mesmo sentido: ARE 678112 RG, Relator Min. Luiz Fux, julgado em 25/04/2013, DJe 17-05-2013). 5. A tatuagem, no curso da história da sociedade, se materializou de modo a alcançar os mais diversos e heterogêneos grupos, com as mais diversas idades, conjurando a pecha de ser identificada como marca de marginalidade, mas, antes, de obra artística. 6. As pigmentações de caráter permanente inseridas voluntariamente em partes dos corpos dos cidadãos configuram instrumentos de exteriorização da liberdade de manifestação do pensamento e de expressão, valores amplamente tutelados pelo ordenamento jurídico brasileiro (CRFB/88, artigo 5°, IV e IX). 7. É direito fundamental do cidadão preservar sua imagem como reflexo de sua identidade, ressoando indevido o desestímulo estatal à inclusão de tatuagens no corpo. 8. O Estado não pode desempenhar o papel de adversário da liberdade de expressão, incumbindo-lhe, ao revés, assegurar que minorias possam se manifestar livremente. 9. O Estado de Direito republicano e democrático, impõe à Administração Pública que exerça sua discricionariedade entrincheirada não, apenas, pela sua avaliação unilateral a respeito da conveniência e oportunidade de um ato, mas, sobretudo, pelos direitos fundamentais em um ambiente de perene diálogo com a sociedade. 10. A democracia funda-se na presunção em favor da liberdade do cidadão, o que pode ser sintetizado pela expressão germânica “Freiheitsvermutung” (presunção de liberdade), teoria corroborada pela doutrina norte-americana do primado da liberdade (preferred freedom doctrine), razão pela qual ao Estado contemporâneo se impõe o estímulo ao livre intercâmbio de opiniões em um mercado de idéias (free marktplace of ideas a que se refere John Milton) indispensável para a formação da opinião pública. 11. Os princípios da liberdade e da igualdade, este último com esteio na doutrina da desigualdade justificada, fazem exsurgir o reconhecimento da ausência de qualquer justificativa para que a Administração Pública visualize, em pessoas que possuem tatuagens, marcas de marginalidade ou de inaptidão física ou mental para o exercício de determinado cargo público. 12. O Estado não pode considerar aprioristicamente como parâmetro discriminatório para o ingresso em uma carreira pública o fato de uma pessoa possuir tatuagens, visíveis ou não. 13. A sociedade democrática brasileira pós-88, plural e multicultural, não acolhe a idiossincrasia de que uma pessoa com tatuagens é desprovida de capacidade e idoneidade para o desempenho das atividades de um cargo público. 14. As restrições estatais para o exercício de funções públicas originadas do uso de tatuagens devem ser excepcionais, na medida em que implicam uma interferência incisiva do Poder Público em direitos fundamentais diretamente relacionados ao modo como o ser humano desenvolve a sua personalidade. 15. A cláusula editalícia que cria condição ou requisito capaz de restringir o acesso a cargo, emprego ou função pública por candidatos possuidores de tatuagens, pinturas ou marcas, quaisquer que sejam suas extensões e localizações, visíveis ou não, desde que não representem símbolos ou inscrições alusivas a ideologias que exteriorizem valores excessivamente ofensivos à dignidade dos seres humanos, ao desempenho da função pública pretendida, incitação à violência iminente, ameaças reais ou representem obscenidades, é inconstitucional. 16. A tatuagem considerada obscena deve submeter-se ao Miller-Test, que, por seu turno, reclama três requisitos que repugnam essa forma de pigmentação, a saber: (i) o homem médio, seguindo padrões contemporâneos da comunidade, considere que a obra, tida como um todo, atrai o interesse lascivo; (ii) quando a obra retrata ou descreve, de modo ofensivo, conduta sexual, nos termos do que definido na legislação estadual aplicável, (iii) quando a obra, como um todo, não possua um sério valor literário, artístico, político ou científico. 17. A tatuagem que incite a prática de uma violência iminente pode impedir o desempenho de uma função pública quando ostentar a aptidão de provocar uma reação violenta imediata naquele que a visualiza, nos termos do que predica a doutrina norte-americana das “fighting words”, como, v.g., “morte aos delinquentes”. 18. As teses objetivas fixadas em sede de repercussão geral são: (i) os requisitos do edital para o ingresso em cargo, emprego ou função pública devem ter por fundamento lei em sentido formal e material, (ii) editais de concurso público não podem estabelecer restrição a pessoas com tatuagem, salvo situações excepcionais em razão de conteúdo que viole valores constitucionais. 19. In casu, o acórdão recorrido extraordinariamente assentou que “a tatuagem do ora apelado não atende aos requisitos do edital. Muito embora não cubra todo o membro inferior direito, está longe de ser de pequenas dimensões. Ocupa quase a totalidade lateral da panturrilha e, além disso, ficará visível quando utilizados os uniformes referidos no item 5.4.8.3. É o quanto basta para se verificar que não ocorreu violação a direito líquido e certo, denegando-se a segurança”. Verifica-se dos autos que a reprovação do candidato se deu, apenas, por motivos estéticos da tatuagem que o recorrente ostenta. 19.1. Consectariamente o acórdão recorrido colide com as duas teses firmadas nesta repercussão geral: (i) a manutenção de inconstitucional restrição elencada em edital de concurso público sem lei que a estabeleça; (ii) a confirmação de cláusula de edital que restringe a participação, em concurso público, do candidato, exclusivamente por ostentar tatuagem visível, sem qualquer simbologia que justificasse, nos termos assentados pela tese objetiva de repercussão geral, a restrição de participação no concurso público. 19.2. Os parâmetros adotados pelo edital impugnado, mercê de não possuírem fundamento de validade em lei, revelam-se preconceituosos, discriminatórios e são desprovidos de razoabilidade, o que afronta um dos objetivos fundamentais do País consagrado na

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	Constituição da República, qual seja, o de “promover o bem de todos, sem preconceitos de origem, raça, sexo, cor, idade e quaisquer outras formas de discriminação” (art. 3º, IV). 20. Recurso Extraordinário a que se dá provimento.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> (RE 898450, Relator(a): LUIZ FUX, Tribunal Pleno, julgado em 17-08-2016, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-114 DIVULG 30-05-2017 PUBLIC 31-05-2017).</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 5pt; margin-bottom: 5pt;" dir="ltr"> Acresça-se, ainda, que esta Corte de Justiça tem posicionamento firme no sentido de que a Administração Pública goza de discricionariedade para estabelecer os critérios para a seleção de seu pessoal, desde que o faça nos limites da razoabilidade, devendo ser observado o princípio da vinculação ao instrumento convocatório, inclusive em casos semelhantes, senão vejamos:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“CONSTITUCIONAL. AGRAVO DE INSTRUMENTO EM MANDADO DE SEGURANÇA. CONCURSO PÚBLICO PARA CARGO DE MÉDICO INTENSIVISTA DO INSTITUTO DR. JOSÉ FROTA - IJF. EXIGÊNCIA DO TÍTULO DE ESPECIALISTA COMO REQUISITO DE INVESTIDURA NO CARGO. LEGALIDADE DA IMPOSIÇÃO. PREVISÃO NA LEGISLAÇÃO FEDERAL E MUNICIPAL. RECURSO CONHECIDO E DESPROVIDO. DECISÃO DE ORIGEM MANTIDA. 1. O cerne da controvérsia reside em analisar se é cabível a exigência de titulação específica para a investidura no cargo efetivo de Médico Intensivista do Instituto Dr. José Frota (IJF), nos termos do Anexo I do Edital nº 24/2020 (SEPOG), a saber, Residência Médica em Medicina Intensiva reconhecida pela Comissão Nacional de Residência Médica ou Certificado de conclusão de Residência Médica ¿ alternativamente, em Clínica Médica, Cardiologia, Neurologia, Anestesiologia ou Pneumologia ¿ cumulada com Título de Especialista em Medicina Intensiva, reconhecido pela Associação Médica brasileira. 2. Segundo a jurisprudência do Superior Tribunal de Justiça, o edital que rege o concurso público poderá exigir do candidato formação específica para a área escolhida, porquanto a Administração é livre para estabelecer as bases do concurso, desde que respeitada a igualdade entre os concorrentes, devendo selecionar profissionais adequados ao cargo público em questão, em atendimento aos princípios da moralidade, eficiência e interesse público. 3. Considerando o exposto, não se vislumbra existir qualquer ilegalidade, tendo em vista que todos os critérios utilizados para avaliar os candidatos foram expressamente e previamente especificados no edital regente do certame, em observância à determinação constitucional do art. 37 e incisos I e II, da CRFB, as legislações infraconstitucionais citadas e jurisprudência pátria. 4. Recurso conhecido e desprovido. Decisão de origem mantida.” (Agravo de Instrumento - 0631888-27.2022.8.06.0000, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 17/04/2023, data da publicação: 17/04/2023) (destacado)</p><p style="line-height: 1.38; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> * * *</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“<span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant:

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	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">AGRAVO DE INSTRUMENTO. CONCURSO PÚBLICO PARA CARGO DE MÉDICO DO INSTITUTO DOUTOR JOSÉ FROTA (IJF). EXIGÊNCIA DO TÍTULO DE ESPECIALISTA COMO REQUISITO DE INVESTIDURA NO CARGO. LEGALIDADE DA IMPOSIÇÃO. DECISÃO DENEGATÓRIA DO PEDIDO DE LIMINAR EM MANDADO DE SEGURANÇA MANTIDA. RECURSO CONHECIDO E NÃO PROVIDO. 1. O certificado de especialista em medicina intensivista, exigido expressamente pelo edital do concurso como requisito de investidura, tem previsão legal (art. 37, caput e incisos I e II, da CRFB), uma vez que a Lei Municipal nº 9310/2007 institui como requisito de ingresso no cargo de médico do quadro de pessoal efetivo do Instituto Doutor José Frota (IJF) título de especialista reconhecido pela Associação Médica Brasileira (AMB) ou título de especialização reconhecido pelo Ministério da Educação ou Residência Médica e que, em todos os casos, a formação deverá ser em área correlata ao cargo. Bem assim, a Lei Complementar Municipal nº 272/2019 acena com a possibilidade de o instrumento regulador do certame instituir outros requisitos para ingresso nos cargos de médicos do IJF. 2. A exigência, ademais, é adequada à luz dos princípios da razoabilidade e proporcionalidade, por garantir à Administração Pública maior segurança acerca da aptidão do profissional, mesmo porque o art. 17 da Lei Federal nº 3.268/57 preceitua que, para o exercício da medicina em determinado ramo ou especialidade, faz-se necessário o registro do título correspondente. 3. Recurso conhecido e desprovido. ACÓRDÃO Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do agravo de instrumento, para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO Relator” (Agravo de Instrumento - 0620986-15.2022.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 18/07/2022, data da publicação: 18/07/2022) (destacado)</p><p style="line-height: 1.38; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> * * *</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“PROCESSO CIVIL. ADMINISTRATIVO E CONSTITUCIONAL. CONCURSO PÚBLICO PARA PROVIMENTO DO CARGO DE MÉDICO DO IJF AUSÊNCIA DE APRESENTAÇÃO DO TÍTULO DE RESIDÊNCIA MÉDICA EXIGIDO PELO EDITAL. PRINCÍPIO DA VINCULAÇÃO AO EDITAL. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 01. O cerne da presente questão cinge-se em examinar o acerto de sentença que entendeu pela improcedência do pleito autoral, uma vez que a parte autora deixou de comprovar requisito essencial para assumir cargo público. 02. O autor participou de concurso público para o cargo de médico intensivista, tendo logrado 7º lugar na colocação geral na primeira etapa do certame. No entanto, quando da convocação para apresentação dos documentos necessários para posse, o autor apresentou o Título de Especialista em Medicina Intensiva, obtido junto a AMIB - Associação de Medicina Intensiva Brasileira, o qual não foi aceito pela banca examinadora. 03. Defende o recorrente que o requisito da exigência do título de residência médica para concorrer ao cargo de médico do IJF é abusivo, tendo em vista que possui especialização em medicina intensiva, obtido junto a Associação de Medicina Intensiva Brasileira - AMIB, a qual é reconhecida pelo Conselho Federal de

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	Medicina, com registro junto ao Conselho Regional de Medicina na especialidade de Medicina Intensiva (RQE n. 4412). 04. Todavia, examinando o Edital nº 60/2015, verifica-se que ficou determinado que, como condição para a investidura no cargo efetivo, o "curso de graduação completo em Medicina e Residência Médica com Registro Profissional e conhecimento específico na área de atuação", requisito este não atendido pela parte autora/recorrente. 05. Como ressaltado pela Procuradoria Geral de Justiça, "(...) é indene de dúvidas que, diferentemente do alegado pelo apelante, existe previsão legal expressa para a cobrança do Título de Residência que o recorrente pretende afastar." Conclui-se, pois, que o princípio da vinculação ao edital ampara a decisão da parte demandada. 06. Recurso de Apelação conhecido e desprovido.” (Apelação Cível - 0156870-04.2018.8.06.0001, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 2ª Câmara Direito Público, data do julgamento: 20/07/2022, data da publicação: 20/07/2022) (destacado)</p><p style="line-height: 1.38; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">* * *</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“PROCESSO CIVIL. ADMINISTRATIVO E CONSTITUCIONAL. MANDADO DE SEGURANÇA. CONCURSO PÚBLICO PARA PROVIMENTO DO CARGO DE MÉDICO DO IJF (EDITAL Nº 60/2015). AUSÊNCIA DE APRESENTAÇÃO DO TÍTULO DE RESIDÊNCIA MÉDICA EXIGIDO PELO EDITAL. PRINCÍPIO DA VINCULAÇÃO AO EDITAL. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 01. O cerne da presente questão cinge-se em examinar o acerto de sentença que entendeu pela improcedência do pleito autoral, uma vez que a parte autora deixou de comprovar requisito essencial para assumir cargo público. 02. In casu, a parte autora prestou concurso público para o cargo de médico do Instituto Doutor José Frota – IJF, na especialidade radiologia, Edital nº 60/2015, com vista ao preenchimento de 05 (cinco), sendo classificada na 12ª (décima segunda) colocação. 03. A tese do recorrente é que o requisito da exigência do título de residência médica para concorrer ao cargo de médico do IJF se ressoa abusivo porque, no seu caso, o mesmo tem especialização radiologia e diagnóstico por imagem, com RQE nº 9913, certificado expedido pelo Conselho Regional de Medicina do Estado do Ceará e pela Secretaria de Estado de Saúde do Estado de São Paulo – Conjunto Hospitalar do Mandaqui, pelo qual comprova o cumprimento da especialização médica na qualidade de Aprimoramento na área de Radiologia e Diagnóstico por Imagem, no período de 01/02/2010 a 31/01/2013, com reconhecimento do Colégio Brasileiro de Radiologia e Diagnóstico por Imagem. 04. Todavia, examinando o Edital nº 001/2017-CPMGEF/PMCE, verifica-se que ficou determinado que, como condição para a investidura no cargo efetivo, o "curso de graduação completo em Medicina e Residência Médica com Registro Profissional e conhecimento específico na área de atuação" (pgs. 55/56). Requisito este não atendido pela parte autora/recorrente. 05. Percebe-se, assim, que o princípio da vinculação ao edital ampara incondicionalmente a atitude da edilidade não havendo nada a corrigir ou alterar, não sendo a questão passível de controle pelo Poder Judiciário. 06.

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	Recurso de Apelação conhecido e desprovido. Sem custas ou honorários (art. 25 da Lei 12.016/2009).” (Apelação Cível- 0198634-33.2019.8.06.0001, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento: 04/10/2021, data da publicação: 05/10/2021).</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portanto, nesse ponto, correta a sentença de primeiro grau de jurisdição.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Quanto ao pedido subsidiário de reposicionamento do apelante para o final da fila de aprovados, observa-se que referido pedido se revela medida que não traz qualquer prejuízo ao erário, nem importa em ofensa a direito de terceiros ou vilipêndio ao interesse público e aos postulados da legalidade, da vinculação ao edital, da isonomia ou da impessoalidade. Nesse sentido:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">“REMESSA NECESSÁRIA. DIREITO CONSTITUCIONAL E ADMINISTRATIVO. MANDADO DE SEGURANÇA. CONCURSO PÚBLICO PARA AUDITOR FISCAL DE TRIBUTOS. MUNICÍPIO DE EUSÉBIO. PEDIDO DE RECLASSIFICAÇÃO DO CANDIDATO PARA O FINAL DA FILA DE APROVADOS. POSSIBILIDADE. PRINCÍPIOS DA PROPORCIONALIDADE, DA RAZOABILIDADE E DA EFICIÊNCIA. PRECEDENTES DO TJCE. REMESSA NECESSÁRIA CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA. 1. O cerne da controvérsia cinge-se em aferir se a parte impetrante goza do direito líquido e certo à reclassificação para o final da fila de aprovados no concurso público para o provimento de cargo efetivo de Auditor Fiscal de Tributos do Município de Eusébio. 2. In casu, a documentação colacionada aos autos evidencia cabalmente que o Edital nº 001/2020 ofertou 3 (três) vagas imediatas destinadas à ampla concorrência e 2 (duas) vagas para cadastro de reserva para o cargo efetivo de Auditor Fiscal de Tributos e que o impetrante foi aprovado na 2ª (segunda) colocação para o aludido cargo, tendo sido convocado para assumir a função. Todavia, a parte impetrante manejou administrativamente pretensão de reclassificação para o final da fila de aprovados, tendo sido informado a respeito da impossibilidade do atendimento de tal pleito ante a ausência de previsão editalícia quanto à recolocação para o fim da lista de classificados. 3. Nada obstante a ausência de cláusula editalícia, revela-se juridicamente possível o remanejamento do candidato aprovado para que passe a figurar no último lugar da lista dos classificados, na medida em que tal providência não implica em absolutamente nenhum prejuízo aos demais certamistas, tampouco à Administração Pública, a qual, no âmbito de sua discricionariedade, poderá ou não convocar o candidato novamente. 4. Ao revés, o reposicionamento para o final da fila de aprovados do candidato que logrou êxito em certame público afigura-se medida consentânea com os princípios da proporcionalidade, da razoabilidade e da eficiência, favorecendo os concorrentes classificados em posição subsequente, uma vez que subirão uma colocação e serão beneficiados com a antecipação da convocação, e a própria Administração Pública, tendo em vista que poderá convocar em momento ulterior candidato que se mostrou qualificado para exercer a função pública, sem necessidade de deflagração de novo concurso público. Ademais, a recolocação para o fim da fila de candidato aprovado não traz qualquer prejuízo ao erário, nem importa em ofensa a direito de terceiros ou vilipêndio ao interesse público e aos postulados da legalidade, da vinculação ao edital, da isonomia ou da impessoalidade. Precedentes do TJCE. 5. Remessa Necessária conhecida, mas desprovida. Sentença mantida.” (Remessa Necessária Cível - 0200212-95.2022.8.06.0075, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160; 24/04/2023, data da publicação:&#160; 24/04/2023) (destacamos)</p><p style="line-height: 1.7999999999999998; margin-left: 1pt; text-indent: 112.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;"

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	dir="ltr">Ante o exposto, deve ser reformada a sentença a quo, apenas no que tange ao reposicionamento do apelante para o final da fila de aprovados, o que é viável, tendo em vista o Edital nº 24/2020 continuar válido, consoante o Ato n° 4585/2022 – SEPOG, publicado no diário oficial do município de Fortaleza nº 17.471, que prorrogou o prazo por mais 2 (dois) anos.</p><h3 style="line-height: 1.7999999999999998; text-align: center; margin-top: 14pt; margin-bottom: 0pt;" dir="ltr"> DISPOSITIVO </h3><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Isto posto, conheço parcialmente da apelação cível, para afastar a preliminar suscitada e, no mérito, dar-lhe parcial provimento, reformando a sentença de primeiro grau de jurisdição apenas para conceder em parte a segurança, tão somente quanto ao pedido subsidiário de reposicionamento do apelante para o final da fila de aprovados.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Sem honorários, tendo em vista sua incompatibilidade com o rito mandamental. STJ. 2ª Turma. RMS 52.024-RJ, Rel. Min. Mauro Campbell Marques, julgado em 6/10/2016 (Info 592).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.</p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <span style="font-size:

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	medium;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	125
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Administrativos
Polo ativo	SERVNAC SOLUCOES CORPORATIVAS LTDA
Advogado(s) - Polo ativo	JOAO MARCOS SALES - (CE28252-A)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	ANTONIA SIMONE MAGALHAES OLIVEIRA - (CE16945-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0251910-71.2022.8.06.0001

Acordão

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Processo	0251910-71.2022.8.06.0001
	transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Ementa: Civil e Processual civil . Contrato administrativo. Ação anulatória de clá usula contratual. Vício de consentimento. Não comprovado. Repactuação com base em convençã o coletiv a da categoria. Não cabimento. P recedentes STJ e TJCE.&#160; Recurso conhecido e não provido. Decisão mantida. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> I. Caso em exame : <span class="EOP SCXW36775047 BCX0"

Processo	0251910-71.2022.8.06.0001
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 24.75px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 1 . Recurso de Apelação em Ação de Procedimento Comum , com Pedido de Tutela de Urgência , em que se busca a anulação de trecho d e cláusula d e termo aditivo que limitou o valor da repactuação ao teto da variação do IPCA – Índice Nacional de Preços ao Consumidor Amplo e a condenação do ente público no pagamento da diferença entre o efetivamente dispendido pela empresa em razão da nova CCT e o valor <span class="NormalTextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -

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webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">pago
pela Administração Pública.</span></span>  <span class="EOP SCXW36775047 BCX0"
style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;
padding: 0px; user-select: text; font-size: 12pt; line-height: 24.75px; font-family: Arial,
Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160;</span></p></div><div
class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-
tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both;
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UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;">  <p
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break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;
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text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-
caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji:
normal; font-size: 12pt; line-height: 24.75px; font-family: Arial, Arial_EmbeddedFont,
Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">
<span class="NormalTextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -
webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:
text;">0</span>    <span class="NormalTextRun SCXW36775047 BCX0" style="-webkit-
user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-
select: text;">2</span>  </span>  <span class="TextRun SCXW36775047 BCX0" style="-
webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;
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caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-
emoji: normal; font-size: 12pt; line-height: 24.75px; font-family: Arial, Arial_EmbeddedFont,
Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">.</span>   <span
class="TextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-
highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-
ligatures: none !important; font-size: 12pt; line-height: 24.75px; font-family: Arial,
Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">
<span class="NormalTextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -
webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Aduz
a parte autora (apelante), em apertada síntese, que com a superveniência da Convenção
Coletiva de Trabalho (CCT) de 2021, solicitou a repactuação do contrato firmado com o
ente público,</span>   <span class="NormalTextRun SCXW36775047 BCX0" style="-
webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;
user-select: text;">porém</span>   <span class="NormalTextRun SCXW36775047 BCX0"
style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;
padding: 0px; user-select: text;">não foi atendida pelo</span></span>   <span
class="TextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-
highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-
ligatures: none !important; font-size: 12pt; line-height: 24.75px; font-family: Arial,
Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR"
xml:lang="PT-BR">ESTADO DO CEARÁ</span>  <span class="TextRun SCXW36775047
BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;
padding: 0px; user-select: text; font-size: 12pt; line-height: 24.75px; font-family: Arial,
Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none
!important;" lang="PT-BR" xml:lang="PT-BR">  <span class="NormalTextRun
SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:
transparent; margin: 0px; padding: 0px; user-select: text;">, que impôs
repactuação</span>  <span class="NormalTextRun SCXW36775047 BCX0" style="-
webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;
user-select: text;">, em evidente vício de consentimento,</span>   <span
class="NormalTextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-
tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">limitada ao
teto da variação do IPCA</span>  <span class="NormalTextRun SCXW36775047 BCX0"
style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;
padding: 0px; user-select: text;">.</span>  <span class="NormalTextRun SCXW36775047
BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;
padding: 0px; user-select: text;">&#160;</span></span>   <span class="EOP
SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:
transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height:
24.75px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-
serif;">&#160;</span></p></div><div class="OutlineElement Ltr SCXW36775047 BCX0"
style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;
padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;
direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial,
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Processo	0251910-71.2022.8.06.0001
	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> II. Questão em discussão : &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 3 . Averiguar a presença de vício de consentimento n a formalização do Termo Aditivo ao contrato celebrado entre as partes e, em consequência, a abusividade da cláusula contratual que , desconsiderando o índice de reajuste previsto em Convenção Coletiva de Trabalho (CCT), limita a repactuação do valor contratado ao teto da variação do IPCA . &#160; </p></div><div class="OutlineElement

Processo	0251910-71.2022.8.06.0001
	Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> III. Razões de decidir : &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 4 . Nos contratos celebrados com a Administração Pública, a comprovação de vício de consentimento exige uma análise criteriosa, tanto pela relevância do interesse público quanto pela necessidade de resguardar a moralidade administrativa. Nesses casos, aplica-se o princípio do ônus da prova, conforme disposto no artigo 373, inciso I, do Código de Processo Civil, que estabelece que cabe ao autor da ação comprovar os fatos constitutivos de seu direito , ônus do qual a apelante não se desincumbiu. &#160;</p></div><div class="OutlineElement

Processo	0251910-71.2022.8.06.0001
	Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 0 5 . Em se tratando de pedido de repactuação, conforme afirmado no recurso de apelação (Id 14845931), a jurisprudência do STJ e do TJCE é no sentido de que a repactuação não se aplica a situações previsíveis , a exemplo d o reajuste salarial previsto em convenção coletiva de trabalho, hipótese dos autos . &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap:

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	break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> IV. Dispositivo e tese &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 06 . Recurso de apelação conhecido e não provido. Decisão mantida. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 07 . Tese de julgamento: Não comprova do o

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	alegado vício de consentimento, impõe reconhecer hígido o Termo Aditivo firmado entre as partes. Ademais, em se tratando de pedido de repactuação, a jurisprudência dominante é no sentido de que esta não se aplica a situações previsíveis como a do reajuste salarial determinado por convenção coletiva de trabalho. &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> -- &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Dispositivos relevantes citados: Arts . 138 e 171, II do CCB. Art. 59 da Lei nº 8.666/1993. Art. 373, I do CPC. &#160;</p></div><div class="OutlineElement

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	Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada:&#160; STJ: AgInt no RMS n º 65.937/MT e AgInt no REsp n º 1.797.714/DF; TJCE: Apelação/Remessa Necessária&#160; nº 0217904-09.2020.8.06.0001 e Apelação/Remessa Necessária&#160; nº 0216871-81.2020.8.06.0001 . <span class="EOP SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height:

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	24.75px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO : Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade , em conhecer do recurso para NEGAR-LHE PROVIMENTO , nos termos do voto do relator. &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p

Processo	0251910-71.2022.8.06.0001
	class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGES <span class="EOP SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-

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	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATOR &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELAT ÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Trata-se de Recurso de Apelação, interposto por Servnac <span class="NormalTextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0251910-71.2022.8.06.0001
	transparent; margin: 0px; padding: 0px; user-select: text;">Soluções Corporativas Ltda., contra sentença do Juízo de Direito da 13ª Vara da Fazenda Pública da Comarca de Fortaleza/CE, na Ação de Procedimento Comum com Pedido de Tutela de Urgência, ajuizada pela apelante desfavor do Estado do Ceará , apelado, em que se busca anular trecho da cláusula do termo aditivo firmado que limitou o valor da repactuação ao teto da variação do IPCA – Índice Nacional de Preços ao Consumidor Amplo, com a condenação do ente público no pagamento da diferença entre o que foi efetivamente dispe ndido pela empresa em razão da nova CCT e o efetivamente pago pela Administração Públic a . &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Decisão recorrida (Id 14845923): <span class="TextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none

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	!important;" lang="PT-BR" xml:lang="PT-BR"> julgou improcedentes os pedidos autorais, para reconhecer a inexistência de violação ao equilíbrio econômico-financeiro do contrato administrativo, na limitação da repactuação aos índices do IPCA e condenar a parte autora ao pagamento de custas e honorários advocatícios, arbitrados em 10% sobre o valor atualizado da causa. &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Razões da apelação (Id 14845931): afirma a empresa recorrente, em apertada síntese, que tanto o Estado do Ceará quanto o Juízo de 1º Grau cometeram atecnia ao confundir os institutos legais para a Restauração do Equilíbrio Econômico-Financeiro dos Contratos Administrativos, quais sejam: o Reajuste em Sentido Estrito, a Repactuação e o Reestabelecimento do Equilíbrio Econômico-Financeiro. &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Contrarrazões no Id 14854695. &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

Processo	0251910-71.2022.8.06.0001
	SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Manifestação da Procuradoria da Justiça pelo conhecimento dos Recurso de Apelação, vez que presentes os pressupostos de admissibilidade, porém, deixa de apreciar o mérito, por desnecessária a sua intervenção, ante a inexistência de interesse público na demanda (Id nº 15302515). &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> É o relatório. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> V OTO <span class="EOP SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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user-select: text; font-size: 14pt; line-height: 33px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;">   Presentes os pressupostos de admissibilidade, conheço do recurso.   &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> O caso, já adianto, é de não provimento da apelação.   &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR">   O cerne da controvérsia cinge em verificar se houve vício de consentimento quando da   assinatura   d   o   <span class="NormalTextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text;">Termo Aditivo ao contrato de prestação de serviços celebrados com a Administra ção Estadual e a legalidade, que l imitou o valor da repactuação ao teto da variação do IPCA – Índice Nacional de Preços ao Consumidor Amplo . &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> O recurso tem relação com uma Ação de Procedimento Comum com Pedido de Tutela de Urgência (Id 14845785) , ajuizada por SERVNAC SOLUÇÕES CORPORATIVAS LTDA. , apelante, em face do ESTADO DO CEARÁ , apelado , em que pretende a anulação de “ <span class="TextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; line-

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	height: 27px; font-family: &quot;Liberation Serif&quot;, &quot;Liberation Serif_EmbeddedFont&quot;, sans-serif;" lang="PT-BR" xml:lang="PT-BR"> trecho da cláusula do termo aditivo firmado que indevidamente limitou o valor da repactuação ao teto da variação do IPCA – Índice Nacional de Preços ao Consumidor Amplo, de forma que a diferença seria remida pela empresa, em razão da ilegalidade da referida cláusula e do vício de consentimento existente ” e, “como consectário lógico do pedido acima, roga para que o Estado do Ceará seja condenado ao pagamento da diferença entre o que foi efetivamente dispendido pela empresa em razão da nova CCT e o que recebeu da Administração. Conforme se verifica da planilha apresentada na síntese dos fatos da presente exordial, este valor corresponde a R$ 22.734,68 (vinte e dois mil, setecentos e trinta e quatro reais e sessenta e oito centavos) . ” &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Aduz, em apertada síntese, que, com a superveniên cia da Convenção Coletiva de Trabalho (CCT) de 2021, solicitou a repactuação do contrato firmado com o ente público , não foi atendida pelo ESTADO DO CEARÁ , que impôs repactuação limitada ao teto da variação do IPCA, em conformidade com a Resolução COGERF nº 005/2018, devendo a diferença ser remida pela empresa , agravando os prejuízos que já vinham sendo indevidamente suportados . <span class="EOP SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-

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	color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family: &quot;Liberation Serif&quot;, &quot;Liberation Serif_EmbeddedFont&quot;, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> O ESTADO DO CEARÁ apresenta contestação (Id 14845911) em que assevera que “O aditivo contratual foi regularmente celebrado, razão pela qual rechaça se completamente a alegação falaciosa da demandante de “coação”, o que se revela hipótese completamente absurda, ainda mais se considerando que a Resolução do COGERF foi direcionada para todo o execut i vo estadual, e não para determinado contrato ou contratada, perfazendo, ademais, uma quanta ínf i ma o valor cobrado em relação ao valor global do contrato. ” &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Afirma que “a Administração Estadual atuou dentro da legalidade ao aplicar aos Contratos celebrados com a demandante a restrição prevista na Resolução nº 005/2008 do COGERH, a qual prevê que a repercussão do resultado de convenções coletivas de trabalho, deverá ter como limitação Índice Nacional de Preços ao Consumidor Amplo - IPCA, índice que reflete a inflação do período.” &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Réplica do Id 14845915. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Manifestação do Ministério Público de primeiro grau pela inexistência de interesse público primário ou interesse de incapazes, opinando pelo prosseguimento do feito sem sua intervenção, salvo superveniência de causa que venha justificá-la. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Sobreveio a sentença apelada (Id 14845923), em que o magistrado a quo assim de cide, in <span class="NormalTextRun SpellingErrorV2Themed SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Sustenta o requerente, a ilegalidade da conduta estatal, considerando que o ente público, ao efetivar a repactuação dos preços do contrato administrativo em vigor, limitou-se ao Índice Nacional de Preços ao Consumidor Amplo - IPCA, não atendendo ao pleito autoral de que a reformulação desses valores incluísse todo o impacto financeiro promovido pela convenção coletiva de trabalho.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ... &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color:

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	transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Sendo medida excepcional, a repactuação não se aplica a situações previsíveis, como no caso concreto, de reajuste salarial determinado por convenção coletiva de trabalho. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> O aumento salarial dos empregados da empresa contratada se trata de situação previsível, que deveria ter sido considerada pela autora quando da apresentação da sua proposta, de modo que resta impossibilitado o incremento do preço do contrato administrativo no mesmo patamar do pacto celebrado no âmbito trabalhista, o qual, inclusive, ocorre sem participação da Administração Pública. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> .... &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Diante do exposto,&#160; <span class="TextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 10pt; line-height: 22.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-

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	serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">JULGO IMPROCEDENTE &#160;os pedidos autorais, reconhecendo a inexistência de violação ao equilíbrio econômico-financeiro do contrato administrativo, na limitação da repactuação aos índices do IPCA. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Em relação a alegação de vício de consentimento , sua comprovação é medida essencial para garantir a segurança jurídica e a boa-fé nas relações contratuais, conforme estabelece o Código Civil Brasileiro. O artigo 138 e seguintes tratam especificamente dos vícios de consentimento, que incluem erro, dolo, coação, lesão e estado de perigo. Esses vícios comprometem a liberdade e a vontade genuína de uma das partes ao celebrar o contrato, tornando-o passível de anulação. Contudo, para que a anulação seja efetivada, é indispensável a demonstração de provas concretas que evidenciem que o consentimento foi obtido de forma viciada, afetando a validade do ato jurídico. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p

Processo	0251910-71.2022.8.06.0001
	class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> A exigência de comprovação busca evitar abusos e assegurar a justiça nos contratos, promovendo o equilíbrio entre as partes. O artigo 171 , II do Código Civil destaca que os negócios jurídicos podem ser anulados por defeitos que os tornem inválidos, como os vícios de consentimento. Para tanto, cabe à parte interessada demonstrar, por meio de documentos, testemunhas ou perícias, que o vício existiu no momento da contratação. Ao estabelecer essa obrigação, o Código Civil não apenas protege os direitos de quem sofreu o vício, mas também assegura que a outra parte não seja prejudicada injustamente, reforçando a estabilidade e a confiança nas relações jurídicas. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Nos contratos celebrados com a Administração Pública, a comprovação de vício de consentimento exige uma análise criteriosa, tanto pela relevância do interesse público quanto pela necessidade de resguardar a moralidade administrativa. Nesses casos, aplica-se o princípio do ônus da prova, conforme disposto no artigo 373, inciso I, do Código de Processo Civil , que estabelece que cabe ao autor da ação comprovar os fatos constitutivos de seu direito. Assim, a parte que alegar a existência de vícios como dolo, erro ou coação deverá apresentar provas robustas e fundamentadas, capazes de demonstrar que o consentimento foi obtido de maneira viciada, comprometendo a validade do contrato administrativo. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 27px; font-family:

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	&quot;Liberation Serif&quot;, &quot;Liberation Serif_EmbeddedFont&quot;, sans-serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Essa regra reforça a segurança jurídica e evita alegações infundadas que possam prejudicar a continuidade e eficácia dos contratos administrativos, cuja execução está voltada para atender ao interesse público. No âmbito da Administração Pública, a nulidade de contratos com vícios de consentimento encontra respaldo também no artigo 59 da Lei nº 8.666/1993 , mas exige que a parte interessada comprove de forma inequívoca os atos que deram origem ao vício. Dessa maneira, a aplicação do artigo 373, I, do CPC, em conjunto com a legislação administrativa, assegura um equilíbrio entre os direitos das partes e a preservação dos princípios constitucionais, como a moralidade e a eficiência. Isso garante que eventual anulação de contratos seja respaldada por elementos probatórios consistentes e alinhada ao devido processo legal. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Nesse raciocínio, cumpria a parte autora, apelada, fazer prova do alegado , ônus do qual não se desincumbiu , razão pela qual importa reconhecer hígido o Termo Aditivo firmado entre as partes. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Ademais, tratando o pleito de repactuação, conforme afirmado <span class="NormalTextRun SCXW36775047 BCX0" style="-

Processo	0251910-71.2022.8.06.0001
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">no recurso de apelação (Id 14845931), a jurisprudência dominante é no sentido de que a repactuação não se aplica a situações previsíveis como a do reajuste salarial determinado por convenção coletiva de trabalho , hipótese dos autos . &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Nesse sentido os seguintes julgados do STJ, in verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

Processo	0251910-71.2022.8.06.0001
	user-select: text; font-size: 10pt; line-height: 22.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> PROCESSO CIVIL. AGRAVO INTERNO NO RECURSO EM MANDADO DE SEGURANÇA. CONTRATO ADMINISTRATIVO. PRESTAÇÃO DE SERVIÇOS TERCEIRIZADOS. PRETENSÃO DE REPACTUAÇÃO DECORRENTE DE CONVENÇÃO COLETIVA DE TRABALHO. FATO PREVISÍVEL. PREVISÃO EM CLÁUSULA CONTRATUAL. FIXAÇÃO DE REQUISITOS. POSSIBILIDADE. NÃO CUMPRIMENTO PELO IMPETRANTE. ALEGADO DIREITO LÍQUIDO E CERTO NÃO COMPROVADO. 1. Considerado que o recurso foi interposto contra decisão publicada na vigência do Código de Processo Civil de 2015, devem ser exigidos os requisitos de admissibilidade na forma nele previsto, conforme Enunciado Administrativo n. 3/2016/STJ. 2. Os autos são oriundos de mandado de segurança impetrado contra ato que deferiu o pleito administrativo de repactuação dos custos do contrato firmado entre as partes, em face de convenção coletiva de trabalho, porém, limitando os seus efeitos à data do requerimento protocolizado pelo impetrante, em face da previsão contida na cláusula contratual 9.2. 3. A jurisprudência desta Corte é firme no sentido de que o aumento salarial dos empregados em razão de convenção coletiva de trabalho não configura fato imprevisível a justificar a repactuação contratual. Precedentes: AgInt no REsp 1.797.714/DF, Rel. Min. Benedito Gonçalves, Primeira Turma, DJe 30/09/2021; REsp 1.824.099/GO, Rel. Min. Herman Benjamin, Segunda Turma, DJe 29/10/2019; AgInt no REsp 1.484.581/PE, Rel. Min. Assusete Magalhães, Segunda Turma, <span class="NormalTextRun SpellingErrorV2Themed SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--

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	urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">DJe 11/04/2019. 4. No caso dos autos, verifica-se que, embora haja expressa previsão contratual de repactuação decorrente de convenção coletiva, a impetrante não cumpriu os requisitos nela previstos para fins de aplicação dos efeitos retroativos, os quais, diferentemente do alegado, não se mostram eivados de ilegalidade, porquanto não evidenciam qualquer abusividade ou vício de consentimento. 5 . Agravo interno não provido. (AgInt no RMS n. 65.937/MT, relator Ministro Benedito Gonçalves, Primeira Turma, julgado em 3/10/2022, DJe de 5/10/2022.) &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> PROCESSUAL CIVIL E ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO ESPECIAL. CONTRATO ADMINISTRATIVO EMERGENCIAL FIRMADO COM DISPENSA DE LICITAÇÃO. LIMPEZA URBANA. CONVENÇÃO COLETIVA DE TRABALHO DA CATEGORIA PROFISSIONAL RESPONSÁVEL PELA MÃO-DE-OBRA.

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	PRETENSÃO DE REPACTUAÇÃO DO PREÇO. ACÓRDÃO RECORRIDO PELA IMPROCEDÊNCIA DO PEDIDO. MANUTENÇÃO. 1. Conforme pacífica orientação jurisprudencial deste Tribunal Superior e à luz do art. 65, inc. II, alínea "d", da Lei n. 8.666/1993, por ser previsível o advento de sua ocorrência, convenções ou acordos coletivos de trabalho não autorizam a repactuação dos valores referentes à mão-de-obra da respectiva categoria profissional; por isso, à míngua de previsão contratual, não há necessidade de recomposição do equilíbrio econômico-financeiro em razão de convenção coletiva de trabalho celebrada após o contrato administrativo. Precedentes. 2. No caso dos autos, está em conformidade com esse entendimento jurisprudencial o acórdão proferido pelo Tribunal de Justiça do Distrito Federal, o qual se apóia no fundamento de que: "porque previsível a superveniência de nova convenção coletiva de trabalho durante a vigência do contrato celebrado entre as partes, vez que previamente conhecida a data-base das categorias profissionais envolvidas, e, ademais, ensejando sua ocorrência incremento de custos em montante igualmente previsível, vez que, no caso, a CCT que sobreviera ensejara reajustes salariais em importes compatíveis com as que a antecederam, a circunstância, porquanto desqualificada a natureza extraordinária do evento, não legitima a revisão do contrato". 3. No contexto, o recurso especial não se revela adequado para a revisão do acórdão recorrido, porquanto eventual conclusão em sentido contrário dependeria do exame de provas, providência inadequada nessa via recursal, consoante enuncia a Súmula 7 do STJ. 4. Agravo interno não provido. (AgInt no REsp n. 1.797.714/DF, relator Ministro Benedito Gonçalves, Primeira Turma, julgado em 27/9/2021, DJe de 30/9/2021.) &#160;</p></div><div class="OutlineElement

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	Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Nessa premissa, forçoso concluir que eventuais Convenções, Acordos ou Dissídios Coletivos de Trabalho não configuram situações excepcionais capazes de transferir o custo adicional, em sua integralidade, para a Administração. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Isso porque, como visto, o aumento salarial dos empregados da contratada se trata de situação previsível, que deveria ter sido considerada pelo licitante quando da apresentação da sua proposta, de modo que resta impossibilitado o aumento do preço do contrato administrativo no mesmo patamar do pacto celebrado no âmbito trabalhista, o qual, ressalte-se, ocorre sema participação da Administração Pública. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Nesse sentido, julgados desta Corte de Justiça, <span class="TextRun SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; font-style: italic; line-height: 27px; font-family: &quot;Liberation Serif&quot;, &quot;Liberation Serif_EmbeddedFont&quot;,

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	sans-serif;" lang="PT-BR" xml:lang="PT-BR"> in verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ADMINISTRATIVO. REEXAME NECESSÁRIO E APELAÇÃO CÍVEL EM MANDADO DE SEGURANÇA. PREGÃO PRESENCIAL. CONTRATAÇÃO DE SERVIÇOS DE MÃO DE OBRA TERCEIRIZADA. PREVISÃO EDITALÍCIA DE REPACTUAÇÃO DO CONTRATO COM BASE NOS ACORDOS OU CONVENÇÕES COLETIVAS DE TRABALHO, LIMITADA AO ÍNDICE IPCA. AUSÊNCIA DE ILEGALIDADE. REAJUSTE SALARIAL QUE CONFIGURA SITUAÇÃO PREVISÍVEL. PRECEDENTES DO STJ E DESTE SODALÍCIO. IMPOSSIBILIDADE DE TRANSFERÊNCIA INTEGRAL DOS CUSTOS DE ACORDOS TRABALHISTAS PARA A ADMINISTRAÇÃO. REEXAME NECESSÁRIO E APELAÇÃO CÍVEL CONHECIDOS E PROVIDOS. SENTENÇA REFORMADA. 1. O cerne da questão controvertida reside em analisar a legalidade do item 5.2, do Anexo V, do Pregão Presencial Nº 20190001/SRH, o qual dispõe que ¿Será admitida a repactuação dos preços dos serviços com base nos acordos ou convenções coletiva de trabalho limitando-se ao Índice Nacional de Preços ao Consumidor Amplo ¿ IPCA, a contar da data do orçamento a que a proposta se referir, desde que observado o interregno mínimo de 01(um) ano e demonstrada a variação dos componentes dos custos efetivamente ocorridos e comprovados¿. 2. A matéria se encontra regida pelo art. 65, II, ¿d¿, da Lei nº 8.666/1993, e art. 124, II, ¿d¿, da Lei nº 14.133/2021, sendo a repactuação medida excepcional. 3. O Superior Tribunal de Justiça possui entendimento pacífico no sentido de que a repactuação não se aplica a situações previsíveis como, no caso concreto, a do reajuste salarial determinado por acordo ou convenção coletiva de trabalho. 4. Forçoso concluir, portanto, que eventuais Convenções, Acordos ou Dissídios Coletivos de Trabalho não configuram situações excepcionais capazes de transferir o custo adicional, em sua integralidade, para a Administração Pública, pois se trata de situação

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	que deveria ter sido considerada pelo licitante quando da apresentação da sua proposta. 5. Dessarte, mostra-se imperiosa a reforma da sentença, uma vez que não se revela arbitrária nem ilegal a regra editalícia sub examine. 6. Reexame Necessário e Apelação Cível conhecidos e providos. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do reexame necessário e do recurso de apelação, para dar-lhes provimento, nos termos do voto do Relator. Fortaleza, data e hora indicadas pelo sistema Presidente do Órgão Julgador DESEMBARGADOR LUIZ EVALDO GONÇALVES LEITE Relator (Apelação / Remessa Necessária&#160;- 0217904-09.2020.8.06.0001, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento:&#160; 18/10/2023, data da publicação:&#160; 18/10/2023) &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÃO CÍVEL E REEXAME NECESSÁRIO. MANDADO DE SEGURANÇA. LICITAÇÃO. EQUILÍBRIO ECONÔMICO-FINANCEIRO DO CONTRATO ADMINISTRATIVO. REPACTUAÇÃO. TRANSFERÊNCIA INTEGRAL DOS CUSTOS DE ACORDOS TRABALHISTAS PARA ADMINISTRAÇÃO. IMPOSSIBILIDADE. FATO PREVISÍVEL. PROVIMENTO. SENTENÇA REFORMADA. 1.A Lei nº 8.666/1993 (art. 65, II, "d") prevê a possibilidade de alterações no contrato administrativo para fins de repactuação quando sobrevierem fatos imprevisíveis, ou previsíveis de consequências incalculáveis, bem como casos fortuitos, de força maior ou fato do príncipe, que possam comprometer o equilíbrio econômico-financeiro inicial do contrato. Entretanto, eventuais Convenções/Acordos/Dissídios Coletivos de Trabalho não configuram situações excepcionais capazes de transferir o custo adicional, em sua integralidade, para o contrato administrativo celebrado com o ente público. 2.O STJ possui entendimento firmado no sentido de que o reajuste salarial das categorias é acontecimento previsível, que deveria ser considerado pelo licitante quando da apresentação de sua

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	proposta, não sendo elemento que possibilite aumentar o preço do contrato administrativo no mesmo patamar do pacto celebrado no âmbito trabalhista, sem a participação da Administração Pública. Precedentes da Corte Superior. 3.Apelo e Reexame conhecidos e providos. Sentença reformada e segurança denegada. ACÓRDÃO: Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da remessa necessária e do recurso de apelação para dar-lhes provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO Relator (Apelação / Remessa Necessária&#160;- 0216871-81.2020.8.06.0001, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 01/03/2021, data da publicação:&#160; 01/03/2021) &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;" lang="PT-BR" xml:lang="PT-BR"> Diante do exposto, conheço do Recurso de Apelação para NEGAR-LHE PROVIMENTO. &#160;</p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial,

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	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Custas pel a recorrente , já recolhidas . &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Honorários de advogado majorados , na forma do § 11 do art. 85 do CPC, em 2% (dois por cento), tornando-os definitivos em 12% (doze por cento) , conforme estipulado na sentença apelada . &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Expedientes necessários. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow:

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	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 93px;"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; </p></div><div class="OutlineElement Ltr SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW36775047 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relator

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	&#160; </p></div><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	126
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Fornecimento de Energia Elétrica
Polo ativo	COMPANHIA ENERGETICA DO CEARA
Advogado(s) - Polo ativo	ANTONIO CLETO GOMES - (CE5864-A)
Polo passivo	MUNICIPIO DE ICO
Advogado(s) - Polo passivo	ANGELICA VIDAL LANDIM - (CE35412-A)
Terceiros	Não informado

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-e1404390-7fff-3bd0-7265-76a66f3f0c41" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 3000195-73.2024.8.06.0090 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Companhia Energética do Ceará - ENEL</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: Município de Icó</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Custos Legis: Ministério Público Estadual</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito constitucional e processual civil. Apelação cível. Ação de obrigação de fazer. Declaração de inexistência de débito. Comprovação de pagamento. Ônus da prova. Suspensão do fornecimento de energia elétrica em razão de inadimplência do ente público. Supremacia do interesse público. Apelação parcialmente provida.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: small-caps; text-

Processo	3000195-73.2024.8.06.0090
	decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação cível interposta em face de sentença que julgou procedente a pretensão, declarando a inexistência do débito e confirmando a tutela&#160; de urgência, a qual determinou que a requerida se abstenha de suspender o fornecimento de energia elétrica nas unidades consumidoras da Prefeitura de Icó.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. A questão em discussão consiste em saber se: (i) há dialeticidade recursal; (ii) houve vício de julgamento extra petita; (iii) há prova da efetiva quitação do débito objeto da discussão; (iv) há possibilidade, ainda que constatado o débito, de suspensão do fornecimento de energia elétrica de pessoa jurídica de direito público.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. As razões recursais guardam pertinência com o abordado na sentença, demonstrando os motivos do inconformismo, ostentando dialeticidade recursal.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. A sentença acolheu a pretensão autoral nos limites pleiteados, não havendo vício de julgamento extra petita.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Analisando a prova coligida, constata-se que o ente público não se desincumbiu do ônus de comprovar satisfatoriamente o fato constitutivo do seu direito quanto à efetiva quitação da dívida objeto de discussão (art. 373, I, do CPC), de forma que o pleito de declaração de inexistência do referido débito não merece prosperar. Precedente deste colegiado.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Quanto à suspensão/corte do serviço de energia elétrica, inobstante haja dispositivo legal autorizando-a em caso de inadimplemento, a própria norma ressalva a necessidade de se considerar o interesse da coletividade, não podendo se dar de forma irrestrita.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000;

Processo	3000195-73.2024.8.06.0090
	background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">7.&#160; Em atenção aos princípios da supremacia do interesse público sobre o privado e da continuidade dos serviços públicos, não se mostra adequada a suspensão do serviço em unidades essenciais como forma de coação ao pagamento, porquanto a concessionária pode lançar mão de outros meios judiciais e/ou administrativos para a satisfação dos eventuais créditos existentes. Precedentes do STJ e do TJCE.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 8. Apelação parcialmente provida. Sentença reformada para afastar a declaração de inexistência do débito, julgando parcialmente procedente a pretensão.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ________________</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CPC, arts. 141, 373 e 492; CC, art. 476; Lei nº 8.987/95, art. 6º, §3º, II.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgInt no REsp n° 1.883.824/PI - 2020/0171848-9, Rel. Min. Mauro Campbell Marques, 2ª Turma,&#160; j. 01/03/2021; STJ, AgInt no AREsp nº 893.273/RJ, Rel. Min. Humberto Martins, 2ª Turma, j. 04/08/2016; TJCE, AC nº 0200274-90.2022.8.06.0090, Rel. Desa. Maria do Livramento Alves Magalhães, 3ª Câmara Direito Público, j. 07/10/2024; TJCE, Ag, de Ins. nº 0634512-83.2021.8.06.0000, Rel. Desa. Maria Iracema Martins do Vale, 3ª Câmara Direito Público, j. 28/02/2022; AC nº 0206338-89.2022.8.06.0293, Rel. Des. Francisco Luciano Lima Rodrigues, 3ª Câmara Direito Público, j. 10/07/2023; AC nº 0050320-42.2021.8.06.0045, Rel. Desa. Lisete de Sousa Gadelha, 1ª Câmara Direito Público, j. 12/12/2022.</p><p> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer da Apelação, para dar-lhe parcial provimento, nos termos do voto da relatora, parte integrante deste.&#160;</p><p style="line-height: 1.2; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-

Processo	3000195-73.2024.8.06.0090
	weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Trata-se de APELAÇÃO CÍVEL interposta pela COMPANHIA ENERGÉTICA DO CEARÁ - ENEL contra sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Icó que, nos autos da Ação de Obrigação de Não Fazer ajuizada pelo MUNICÍPIO DE ICÓ em desfavor do ora apelante, julgou procedente a pretensão autoral, nos termos do dispositivo abaixo (ID nº 14846858):</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Ante o exposto, julgo PROCEDENTE a pretensão autoral, extinguindo o processo com resolução de mérito, nos termos do art. 487, I, do Código de Processo Civil, o que faço para confirmar a decisão interlocutória de ID 78960320, tornando definitiva a tutela, o que faço para declarar a inexistência do débito objeto da notificação de ID 78950609, uma vez que foi devidamente quitado (ID 78950606) e condeno a requerida na obrigação de fazer consistente em suspender o corte de fornecimento de energia elétrica referente à Prefeitura Municipal de Icó.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Sucumbente, condeno a parte ré ao pagamento das custas, despesas processuais e honorários advocatícios, que fixo em 10% sobre o valor da condenação, atualizado pelo INPCA a partir da citação, nos termos do artigo 85, § 2º, do CPC.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Publique-se. Registre-se. Intimem-se.</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Após o trânsito em julgado, caso não haja pendências, arquivem-se os autos com as baixas devidas.&#160;</p><p style="line-height: 1.7999999999999998;

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	text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões recursais (ID nº 14846863), a recorrente aduz, preliminarmente, a necessidade de adequação da decisão aos limites do pedido, porquanto a decisão teria sido extra petita. No mérito, alega a ausência de comprovação da quitação do débito objeto de discussão, bem como defende a legalidade do condicionamento da quitação dos débitos para o atendimento de nova ligação de energia, pois amparado na legislação de regência, além de ser o município inadimplente contumaz. Invoca a exceção do contrato não cumprido. De forma subsidiária, requer a delimitação da situação jurídica, tendo em vista a impossibilidade de determinação genérica, bem como a diminuição dos honorários fixados. Ao final, pugna pelo provimento do recurso, com a reforma integral da sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Preparo recolhido (ID nº 14846864/14846865).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em sede de contrarrazões (ID nº 14846867), a parte adversa requer, de forma preliminar, o não conhecimento do recurso. No mais, rechaça as teses recursais e defende o acerto da sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Instado a manifestar-se, o Parquet deixou de apresentar parecer de mérito por entender desnecessária sua intervenção (ID nº 15406726).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O cerne da controvérsia cinge-se a avaliar a (in)existência de efetiva quitação do débito objeto de discussão, bem como a (i)legalidade da suspensão do fornecimento de energia elétrica para o Município de Icó, ainda que constatada dívida junto a empresa concessionária ré.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Conforme brevemente relatado, a recorrente aduz, em suma: i) <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

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	vertical-align: baseline; white-space: pre-wrap;">ocorrência de julgamento extra petita, pois não teria havido a limitação dos efeitos da decisão aos pedidos contido na exordial; ii) ausência de comprovação de quitação do débito, uma vez que os documentos apresentados pelo autor se tratam de planilhas unilaterais; iii) legalidade do corte de energia, nos termos da legislação de regência e da inadimplência contumaz do ente municipal; iv) incidência da regra da exceção do contrato não cumprido; v) necessidade de delimitação da situação jurídica, bem como da diminuição dos honorários fixados.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> De pronto, rejeito a preliminar aventada pelo ente público em suas contrarrazões quanto à ausência de dialeticidade recursal, pois observo que a recorrente, ao elaborar a apelação, trouxe em suas razões conteúdo que guarda pertinência com o abordado na sentença, demonstrando os motivos do inconformismo.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Do mesmo modo, não prospera a preliminar trazida pelo recorrente quanto à ocorrência de julgamento extra petita. Com efeito, a sentença acolheu a pretensão autoral nos limites pleiteados, com a declaração de inexistência do débito e a confirmação da tutela provisória de urgência, com referência expressa ao pleito de&#160; abstenção do corte dos serviços nas unidades consumidoras do município abrangidas pela notificação mencionada na exordial. Vejamos trechos da decisão que concedeu a tutela e da sentença, respectivamente:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Determino que a ENEL se abstenha de cortar o fornecimento de energia elétrica nas unidades mencionadas na peça exordial, devendo ocorrer a suspensão da notificação de corte do fornecimento de energia elétrica de nº 400053257185, <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-

Processo	3000195-73.2024.8.06.0090
	weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">sob pena de multa diária no montante de R$1.000,00 (mil reais), limitada a R$ 10.000,00. (ID nº 14846776).</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, julgo PROCEDENTE a pretensão autoral, extinguindo o processo com resolução de mérito, nos termos do art. 487, I, do Código de Processo Civil, o que faço para confirmar a decisão interlocutória de ID 78960320, tornando definitiva a tutela, o que faço para declarar a inexistência do débito objeto da notificação de ID 78950609, uma vez que foi devidamente quitado (ID 78950606) e condeno a requerida na obrigação de fazer consistente em suspender o corte de fornecimento de energia elétrica referente à Prefeitura Municipal de Icó. (ID nº 14846858).</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ultrapassadas tais questões, passo à análise do mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Como se sabe, nos termos do art. 373 do CPC, o ônus da prova do fato constitutivo do seu direito incumbe ao autor da demanda, enquanto ao réu compete demonstrar a existência de fato impeditivo, modificativo ou extintivo do direito autoral. No caso dos autos, portanto, incumbe à parte promovente a prova do pagamento do débito cuja declaração de inexistência se almeja.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">No afã de comprovar a inexistência de débitos, o Município se limitou a acostar aos autos planilhas contábeis (ID nº 14846774) referentes ao ano de 2023. Tais documentos, elaborados unilateralmente pelo ente público, não se mostram suficientes para comprovar que houve a efetiva quitação do débito discutido nesta ação, uma vez que não há como atestar que os pagamentos ali listados se referem aos valores cobrados pela promovida na Notificação nº 400053257185 (ID nº 14846775). O fato de terem sido emitidas notas de empenho - ali tão somente declaradas em sua numeração - não tem o condão de, por si só, atestar o pagamento das faturas elencadas na cobrança objeto da contenda. Nos termos da Lei nº 4.320/64, os estágios da despesa compreendem o empenho, a liquidação e o pagamento e, <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">in casu, a comprovação da efetiva quitação capaz de extinguir o débito ora cobrado não restou devidamente comprovada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Além do mais, consta nos autos o valor líquido de cada fatura objeto da cobrança, bem como outras informações (tais como os números das faturas, referências, vencimentos, etc) capazes de identificar os pagamentos correspondentes por parte do município - o que, todavia, não ocorreu. Não se vislumbra, quanto a isso, maiores impedimentos que impossibilitem o ente público de assim proceder, colacionando aos autos a documentação respectiva de forma a permitir o cotejo dos comprovantes dos valores pagos com aqueles cobrados.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Perfilhando esse entendimento, colaciono recente precedente deste colegiado, envolvendo o mesmo ente público e causa de pedir, senão vejamos:</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÃO. DECLARAÇÃO DE INEXISTÊNCIA DO DÉBITO. COMPROVAÇÃO DO PAGAMENTO. ÔNUS DA PROVA. SUSPENSÃO DO FORNECIMENTO DE ENERGIA ELÉTRICA EM RAZÃO DE INADIMPLÊNCIA DO ENTE PÚBLICO. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA.</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">I. Caso em exame: Apelação interposta pela Companhia Energética do Ceará contra sentença que julgou procedente a ação, declarando a inexistência do débito e confirmando a tutela provisória de urgência, a qual determinou que a ENEL se abstenha de suspender o fornecimento de energia elétrica nas unidades consumidoras do Município de Icó.</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">II. Questão em discussão: A questão em discussão consiste em analisar: (i) a efetiva comprovação de quitação do débito discutido na ação; (ii) a possibilidade de suspensão do fornecimento de energia elétrica de pessoa jurídica de direto público, ainda que constatado o débito.</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">III. Razões de decidir: 3.1. A prova dos fatos constitutivos do direito incumbe à parte promovente, nos termos do artigo 373, I, do Código de Processo Civil, de modo que lhe impõe o dever de comprovar os elementos mínimos de seu direito, sob pena de se configurar a insubsistência do direito reclamado. Cabendo ao autor a prova do pagamento do débito, verifica-se que não se desincumbiu de

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	tal ônus. 3.2. A orientação firmada pelo Superior Tribunal de Justiça é no sentido de que a suspensão indiscriminada do fornecimento de energia elétrica no caso de inadimplência de pessoa jurídica de direito público, como forma de compeli-la ao pagamento do débito, mostra-se ilegítima. 3.3 Tratando-se de serviços públicos essenciais, ainda que existente o débito, deve prevalecer o interesse da coletividade sobre o econômico da concessionária de energia, cabendo a esta se utilizar de outros meios adequados para a cobrança do débito.</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">IV. Dispositivo e tese: Apelação conhecida e parcialmente provida. Sentença reformada para afastar a declaração de inexistência do débito, julgando-se procedente em parte a ação.&#160;</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">(Apelação Cível - 0200274-90.2022.8.06.0090, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara Direito Público, data do julgamento:&#160; 07/10/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 142pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> E ainda, no mesmo sentido, em feito no qual se discutia a efetiva comprovação de quitação de numerário por parte de ente público em situação similar: Apelação Cível - 0028642-46.2018.8.06.0151, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 12/12/2022, data da publicação:&#160; 12/12/2022.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Assim, não comprovada a devida quitação da dívida objeto da presente discussão, o pleito de declaração de inexistência do débito não merece prosperar, pelo que deve a sentença ser reformada no ponto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Dando seguimento, quanto à possibilidade de corte ou suspensão do serviço, pontuo que não desconheço o dispositivo legal segundo o qual a existência de débitos pendentes sujeita a unidade consumidora à suspensão do fornecimento de energia elétrica, após o devido aviso prévio. Nesse sentido, o art. 6º, §3º, II, da Lei nº. 8.987/95, autoriza a interrupção do serviço público pela concessionária, caso não tenha havido o pagamento da tarifa correspondente pelo usuário, sem que tal configure descontinuidade do serviço. Confira-se:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr"> Art. 6º Toda concessão ou permissão pressupõe a prestação de serviço adequado ao pleno atendimento dos usuários, conforme estabelecido nesta Lei, nas normas pertinentes e no respectivo contrato.</p><p style="line-height: 1.2; margin-left: 113pt; text-align:

Processo	3000195-73.2024.8.06.0090
	justify; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr"> § 1º Serviço adequado é o que satisfaz as condições de regularidade, continuidade, eficiência, segurança, atualidade, generalidade, cortesia na sua prestação e modicidade das tarifas.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr"> § 2º A atualidade compreende a modernidade das técnicas, do equipamento e das instalações e a sua conservação, bem como a melhoria e expansão do serviço.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr">§ 3º Não se caracteriza como descontinuidade do serviço a sua interrupção em situação de emergência ou após prévio aviso, quando:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr"> I - motivada por razões de ordem técnica ou de segurança das instalações; e,</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr">II - por inadimplemento do usuário, considerado o interesse da coletividade.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr">§ 4º&#160; A interrupção do serviço na hipótese prevista no inciso II do § 3º deste artigo não poderá iniciar-se na sexta-feira, no sábado ou no domingo, nem em feriado ou no dia anterior a feriado. <br /> <br /></p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No tocante aos serviços públicos facultativos, quais sejam, oferecidos aos usuários para que os utilizem quando oportunamente desejarem, o Poder Público, ou quem lhe faça às vezes, pode suspender a prestação em caso de não pagamento da tarifa. Nestas hipóteses, aplica-se a regra da "exceção de contrato não cumprido", pois num contrato bilateral, como é o caso de contratos de adesão entre a concessionária de serviço público e o particular, nenhum dos contratantes, antes de cumprida sua obrigação, pode exigir o cumprimento da do outro, consoante prevê o art. 476, do CC/2002.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Entretanto, apesar de ser possível a interrupção de energia elétrica a consumidor inadimplente, deve ser considerado o interesse da coletividade, avaliando as consequências práticas da sua suspensão, consoante preceitua a norma supra transcrita.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: italic; font-variant: normal; text-

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	decoration: none; vertical-align: baseline; white-space: pre-wrap;">In casu, o autor afirma que recebeu notificação da ENEL acerca da suspensão de fornecimento de energia elétrica de diversos imóveis do Município de Icó, como a Secretaria de Educação, Assistência Social, Secretaria de Saúde, pelo inadimplemento de R$ 356.527,44 (trezentos e cinquenta e seis quinhentos e vinte e sete mil e quarenta e quatro centavos). Nesse contexto, o corte no fornecimento de energia elétrica em várias unidades ligadas à Prefeitura de Icó teria o condão de afetar diretamente a população, uma vez que ali são desempenhados vários serviços essenciais que não podem sofrer interrupção de prestação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em atenção aos princípios da supremacia do interesse público sobre o privado e da continuidade dos serviços públicos, não se mostra adequada a suspensão de relevante serviço como forma de coação ao pagamento, porquanto a concessionária pode – e deve – lançar mão de outros meios judiciais e/ou administrativos para a satisfação dos eventuais créditos existentes. Nesse sentido se posiciona a jurisprudência do Superior Tribunal de Justiça, senão vejamos:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">[...] o Superior Tribunal de Justiça tem entendimento consolidado no sentido de ser ilegítima a suspensão do fornecimento de energia elétrica como forma de compelir o Município ao pagamento do débito e em prejuízo do interesse da coletividade. Cumpre asseverar que não se desconhece a possibilidade suspensão do fornecimento de energia elétrica das pessoas jurídicas de direito público (Lei n° 9.427/96, art. 17), entretanto, esta Corte já se manifestou no sentido de que não aconteça de forma indiscriminada, preservando-se as unidades públicas essenciais e a sede municipal. (STJ – AgInt no Recurso Especial n° 1.883.824/PI - 2020/0171848-9, 2ª Turma, Rel. Min. Mauro Campbell Marques, Publicado em: 01/03/2021) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">ADMINISTRATIVO. FORNECIMENTO DE ENERGIA ELÉTRICA. AUSÊNCIA DE OMISSÃO NO ACÓRDÃO REGIONAL. INADIMPLÊNCIA. PRÉDIO PÚBLICO. SERVIÇO ESSENCIAL. INTERRUPÇÃO. FORMA DE COMPELIR O MUNICÍPIO AO PAGAMENTO DO DÉBITO. INTERESSE DE TODA A COLETIVIDADE. ILEGITIMIDADE. ACÓRDÃO EM CONSONÂNCIA COM JURISPRUDÊNCIA DO STJ. SÚMULA 568/STJ. 1. Não cabe falar em ofensa ao art. 535 do Código de Processo Civil quando o Tribunal de origem pronuncia-se de forma clara e suficiente sobre a questão colocada nos autos. 2. Verifica-se que

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	o Tribunal a quo decidiu de acordo com jurisprudência desta Corte, no sentido de que é ilegítimo a suspensão do fornecimento de energia elétrica como forma de compelir o Município ao pagamento do débito e em prejuízo do interesse da coletividade. Súmula 568/STJ. Agravo interno improvido. (AgInt no AREsp 893.273/RJ, Rel. Ministro HUMBERTO MARTINS, SEGUNDA TURMA, julgado em 04/08/2016, DJe 17/08/2016) (destaca-se)</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Perfilhando o mesmo entendimento, colaciono precedentes deste Tribunal de Justiça em casos análogos:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">CONSTITUCIONAL. ADMINISTRATIVO. AGRAVO DE INSTRUMENTO EM AÇÃO ORDINÁRIA DE OBRIGAÇÃO DE FAZER. NEGATIVA DE FORNECIMENTO DE ENERGIA ELÉTRICA PELA CONCESSIONÁRIA EM RAZÃO DE INADIMPLÊNCIA DO ENTE MUNICIPAL. DECISÃO AGRAVADA QUE DETERMINOU À PARTE PROMOVIDA O FORNECIMENTO DE ENERGIA ELÉTRICA PARA REALIZAR LIGAÇÕES DOS SISTEMAS DE ABASTECIMENTO DE ÁGUA DO MUNICÍPIO. SERVIÇO PÚBLICO ESSENCIAL. INTERESSE DA COLETIVIDADE. Preenchimento dos requisitos legais do art. 300 do CPC. VALOR DE ASTREINTES ADEQUADO. NECESSIDADE DE FIXAÇÃO DE UM TETO MÁXIMO. AGRAVO CONHECIDO E PARCIALMENTE PROVIDO SOMENTE PARA DETERMINAR A FIXAÇÃO DE UM TETO MÁXIMO DAS ASTREINTES. DECISÃO INTERLOCUTÓRIA REFORMADA EM PARTE. 1. Tratam os autos de agravo de instrumento em ação ordinária de obrigação de fazer, interposto pela Companhia Energética do Ceará – ENEL, contra decisão que deferiu a tutela de urgência requestada na inicial, determinando que a agravante "retome o fornecimento de energia elétrica para fins de realizar as ligações dos Sistemas de Abastecimento de Água das Localidade de Lanza Velha, Ilha do Rato, Ilha do Coqueiro, Cauassú, Vila Cazuza e Curral Velho, todas nesta urbe, no prazo de 05 (cinco) dias, sob pena de aplicação de multa diária de R$ 5.000,00 (cinco mil reais).". 2. Para a concessão da tutela provisória de urgência, deve ser observado o disposto no art. 300, caput, do Código de Processo Civil de 2015, isto é, a probabilidade do direito (fumus boni iuris), bem como o perigo de dano e/ou o risco ao resultado útil do processo (periculum in mora). 4. O art. 6º, § 3º, inciso II, da Lei nº 8.987/97, apesar de autorizar a suspensão do serviço público por inadimplemento do usuário após prévio aviso, ressalva a observância ao interesse da coletividade. 5. Tratando-se o presente caso de serviço público essencial, deve prevalecer o interesse da coletividade sobre o econômico da concessionária de energia, de sorte que a esta cabe utilizar outros meios adequados para a cobrança do débito ora discutido do Município, em observância ao princípio da prevalência do interesse da coletividade e da continuidade dos serviços públicos. 6. Diante de tal panorama, afigura-se perfeitamente possível e razoável, ainda que em sede de cognição sumária, a concessão de medida antecipatória da tutela de urgência deferida pelo juiz de primeiro grau de jurisdição, razão pela qual a manutenção da decisão interlocutória recorrida é medida que se impõe. [...] Agravo de Instrumento conhecido e parcialmente provido. - Decisão interlocutória reformada, tão somente para a fixação de um teto máximo das astreintes. (Agravo de Instrumento - 0634512-83.2021.8.06.0000, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 28/02/2022, data da publicação:&#160; 28/02/2022) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">ADMINISTRATIVO. APELAÇÃO CÍVEL. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color:

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	#000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">CONCESSIONÁRIA DE ENERGIA ELÉTRICA. PEDIDOS DE LIGAÇÕES NOVAS. NEGATIVA DE FORNECIMENTO DE SERVIÇO ESSENCIAL A PESSOA JURÍDICA DE DIREITO PÚBLICO. IMPOSSIBILIDADE. PREVALÊNCIA DO INTERESSE DA COLETIVIDADE. EXISTÊNCIA DE OUTRAS FORMAS PARA COBRANÇA DO DÉBITO. PRECEDENTES. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA. 01. Cuida-se de Remessa Necessária e Recurso de Apelação contra sentença nos autos do Mandado de Segurança, impetrado por Município de Sobral/CE contra ato, dito ilegal e abusivo, imputado a Francisco Adriano dos Santos Sampaio, Executivo Especialista da Área Governo da Companhia Energética do Ceará ¿ ENEL. 02. Atualmente, consagrou-se o entendimento no sentido de ser ilícita a negativa, por parte da concessionária, dos serviços de fornecimento de energia elétrica por dívida pretérita, a título de recuperação de consumo, uma vez que existem outros meios legítimos de cobrança de débitos antigos não pagos. Precedentes do STJ e do TJCE. 03. Remessa Necessária e Apelação conhecidas e não providas. Sentença mantida. Apelação Cível - 0206338-89.2022.8.06.0293, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 10/07/2023, data da publicação:&#160; 11/07/2023) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">ADMINISTRATIVO. PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER. INTERRUPÇÃO DE ENERGIA EM RAZÃO DE INADIMPLEMENTO PELO USUÁRIO (MUNICÍPIO DE BARRO). POSSIBILIDADE DE SUSPENSÃO DO SERVIÇO COM EXCEÇÃO DAS UNIDADES QUE PRESTAM SERVIÇOS ESSENCIAIS. OBSERVÂNCIA DO INTERESSE DA COLETIVIDADE (ART. 6º, § 3º, II, DA LEI N. 8.987/95) PRECEDENTES DO STJ E DESTE TRIBUNAL. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. HONORÁRIOS MAJORADOS (ART. 85, § 11, CPC). 1. O cerne da questão trazida à apreciação cinge-se em analisar se a concessionária em questão poderá condicionar a realização do serviço solicitado pela edilidade, qual seja, nova ligação de energia em unidades básicas de saúde e areninha de futebol, ao pagamento de débitos relativos ao consumo de energia elétrica da municipalidade. 2. Acerca da possibilidade do corte da energia elétrica, o artigo 6º, parágrafo 3º, inciso II, da Lei nº. 8.987/95, autoriza a interrupção do serviço público pela concessionária, caso não tenha havido o pagamento da tarifa correspondente pelo usuário, sem que tal configure descontinuidade do serviço. Contudo, o referido dispositivo ressalva a observância ao interesse da coletividade. 3. Assim, considerando o interesse público, a essencialidade e a continuidade que norteiam o fornecimento de energia elétrica em prédios e repartições públicas, que se destinam à prestação de serviços essenciais, não pode a recorrente suspender o fornecimento do serviço por ela prestado à unidade essencial de atendimento à população, como as áreas apontadas na exordial, quando inadimplente o Município. Precedentes do STJ e deste Tribunal de Justiça. 4. Dessa forma, prevalecendo o interesse público sobre o econômico da concessionária de energia, imperiosa se torna a manutenção do decisum hostilizado em todos os seus termos, para que a concessionária de energia requerida não se abstenha de realizar novas ligações em prédios públicos que prestem serviços públicos, considerando a essencialidade dos serviços prestados, os

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	interesses da coletividade e a ausência de atualidade do débito inadimplido, assegurando-se à concessionária requerida outros meios judiciais e/ou administrativos para a satisfação dos eventuais créditos existentes. 5. Recurso conhecido e desprovido. Sentença mantida. Honorários majorados (art. 85, § 11, CPC). (Apelação Cível - 0050320-42.2021.8.06.0045, Rel. Desembargador(a) LISETE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento:&#160; 12/12/2022, data da publicação:&#160; 12/12/2022) (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> E ainda: Apelação Cível - 0050066-57.2021.8.06.0049, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 19/09/2022, data da publicação: 19/09/2022; Apelação Cível - 0003355-55.2015.8.06.0129, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 14/02/2022, data da publicação:&#160; 15/02/2022; Apelação Cível - 0000693-86.2019.8.06.0159, Rel. Desembargador(a) MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara Direito Público, data do julgamento:&#160; 26/07/2023, data da publicação:&#160; 27/07/2023.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ademais, quanto ao pedido subsidiário – no sentido de delimitar a extensão da da sentença – tenho-o por descabido ou mesmo desnecessário, pois, conforme já exposto, a lide foi decidida nos estreitos limites em que proposta, nos termos do art. 141 e 492, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço da Apelação, para dar-lhe parcial provimento, reformando a sentença para julgar procedente em parte a ação, determinando assim que a promovida se abstenha de realizar o corte no fornecimento do serviço de energia elétrica nas unidades consumidoras do Município abrangidas pela notificação anexa à inicial, julgando improcedente o pedido de declaração de inexistência do débito.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Com o presente resultado, redistribuo o ônus da sucumbência (art. 86, do CPC), na proporção de 50% (cinquenta) para cada parte, ficando ambas condenadas ao pagamento de honorários advocatícios sucumbenciais na proporção ora referida, os quais fixo em 10% (dez por cento) sobre o valor da causa.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto. &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 2pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal; text-

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	decoration: none; vertical-align: baseline; white-space: pre-wrap;">DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	127
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	1/3 de férias
Polo ativo	ANTONIO IVANILDO ALENCAR DA SILVA
Advogado(s) - Polo ativo	EDUARDO CERQUEIRA DA CUNHA MASCARENHAS - (CE14359-A)
Polo passivo	MUNICIPIO DE ACARAPE
Advogado(s) - Polo passivo	RAIMUNDO AUGUSTO FERNANDES NETO - (CE6615-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span class="SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 141px; height: 141px; transform: rotate(0deg);"> <img class="WACImage SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 141px; height: 141px; text-wrap-mode: nowrap !important;" 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class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-
tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both;
cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe
UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p
class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-
highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap:
break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;
background-color: transparent; color: windowtext; text-align: center;">   <span
class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-
highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-
numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-
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Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New
Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-
BR">ESTADO DO CEARÁ   <span class="EOP SCXW54780251 BCX8" style="-
webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;
user-select: text; font-size: 14pt; line-height: 22px; font-family: &quot;Times New
Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New
Roman_MSFontService&quot;, serif;">&#160; </p></div><div
class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-
tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both;
cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe

Processo	0200654-12.2022.8.06.0156
	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: #0f4761; text-align: center;"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; <br class="SCXW54780251 BCX8" style="-webkit-user-

Processo	0200654-12.2022.8.06.0156
	drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> Processo nº 0200654-12.2022.8.06.0156 &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelação cível &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Recorrente: Antônio Ivanildo Alencar da Silva <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 23.7417px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-

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	BR">&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Recorrido: Município de Redenção &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-

Processo	0200654-12.2022.8.06.0156
	height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> EMENTA: APELAÇ ÃO CÍVE L . DIREITO ADMINISTRATIVO E CONSTITUCIONAL. PROCEDIMENTO COMUM. AÇÃO DE COBRANÇA DE VERBAS TRABALHISTAS . CONTRATO DE TRABALHO TEMPORÁRIO. GUARDA MUNICIPAL. AUSÊNCIA DE PRÉVIA APROVAÇÃO EM CONCURSO PÚBLICO. CONTRATO NULO DESDE A ORIGEM. APLICAÇÃO TEMA 916/STF. INAPLICABILIDADE DO TEMA 551/STF. APELAÇÃO CONHECIDA E NÃO PROVIDA. SENTENÇA MANTIDA. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 01. Conforme asseverado pelo autor, desde 10 / 11 /2015 teria sido celebrado contrato temporário com o requerido, passando o autor a laborar na guarda municipal. &#160;</p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both;

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	cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 02. O cerne da questão consiste em analisar a (ir)regularidade do ato administrativo que extinguiu o vínculo da parte autora em 08/05/2019, contratada, supostamente, sob vínculo de regime temporário de trabalho, pelo Município de Acarape, para exercer a função de guarda municipal. Além disso, cumpre analisar se seria devido o pagamento de férias proporcionais acrescidas do terço constitucional e de 13º salário, com juros e correção monetária . &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 03. Quanto à alegação de existência de contrato temporário de trabalho, é imperioso aduzir, que o contrato não se deu mediante tempo determinado, uma vez que a Lei Municipal não fixou previamente limite temporal para o serviço prestado, configurando, dessa forma, contrato nulo desde a origem. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;"

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	lang="PT-BR" xml:lang="PT-BR">04. Passando a apreciar o vínculo da relação de trabalho entre as partes litigantes, em especial diante da determinação constitucional, é possível perceber que a contratação se deu de maneira fraudulenta, pois não houve a realização devida de concurso público. Com efeito, a própria Administração Pública reconheceu a inconstitucionalidade da Lei 504/2015, anulando-a por meio do Decreto Municipal nº 05/2019, publicado em 8 de maio de 2019. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 05. O Pretório Excelso entendeu que a declaração de nulidade da contratação temporária realizada em desconformidade com a ordem constitucional em vigor gera para o Município réu o dever de efetuar o pagamento das verbas relativas ao FGTS e de eventual saldo dos salários pelos serviços prestados, sob pena de locupletamento ilícito da Administração Pública. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 06. A pelaç ão conhecida e não provida. Sentença mantida. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text;

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	overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer da apelação, mas para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0200654-12.2022.8.06.0156
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Fortaleza, data e hora informadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relatora <span class="EOP SCXW54780251 BCX8" style="-

Processo	0200654-12.2022.8.06.0156
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 23.7417px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-

Processo	0200654-12.2022.8.06.0156
	BR">RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;"> Tratam os presentes autos de recurso de apelação interposto em face de sentença proferida pelo juízo da 2ª Vara da Comarca de Redenção , que, analisando ação de cobrança ajuizada por <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 23.7417px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;

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font-weight: bold;" lang="ES-ES" xml:lang="ES-ES"> Antônio Ivanildo   Alencar da Silva   em face do   Município   de   Redenção , julgou improcedente o pleito autoral, consoante dispositivo abaixo (ID 14858005):&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">   <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-

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	variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">"Ante o exposto e por tudo mais que se consta nos autos, EXTINGO O FEITO COM RESOLUÇÃO DE MÉRITO, o que faço com arrimo no artigo 487, inciso I, CPC, julgando TOTALMENTE IMPROCEDENTE o pleito autoral. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> No ensejo, condeno a parte AUTORA a pagar honorários em favor da parte vencedora, estes arbitrados em 10% (dez por cento) da condenação com suspensão imediata da cobrança em vista a gratuidade da justiça. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Sem custas, conforme o art. 5º da Lei nº 16.132/2016. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Sentença não sujeita ao reexame necessário (art. 496, §3º, CPC). <span class="EOP SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

Processo	0200654-12.2022.8.06.0156
	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Em havendo interposição de recurso de apelação, intime-se a parte recorrida para apresentar as contrarrazões no prazo legal, nos termos do art. 1.010, § 1º do Código de Processo Civil. Após o decurso de prazo, com ou sem contrarrazões, encaminhem-se os presentes autos ao Eg . Tribunal de Justiça do Estado do Ceará, mediante as cautelas de estilo e com nossas homenagens, considerando o disposto no § 3º do artigo mencionado. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Após o trânsito em julgado desta sentença e cumpridas as formalidades legais, arquivem-se os presentes autos com as cautelas de praxe. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Publique-se, Registre-se e Intimem-se os litigantes, através dos seus respectivos patronos da presente sentença. <span class="EOP SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;

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	font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Expedientes Necessários."&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;"> Nas razões recursais (ID 14858010), a parte recorrente, em apertada síntese, aduziu que o ingresso teria se dado de modo regular, sendo devidas as verbas pleiteadas, salientando alteração da jurisprudência do Supremo.&#160;&#160;&#160;&#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;"> Nas contrarrazões (ID 15171712), a parte

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	recorrida pugnou, em suma, pela manutenção da sentença recorrida.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;"> Instado a manifestar-se, o parquet opinou pelo conhecimento e não provimento recursal. (ID 15369299).&#160;&#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;"> É o relatório. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

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	Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Presentes os pressupostos de admissibilidade, conheço do recurso de apel a ção . <span class="EOP SCXW54780251 BCX8" style="-webkit-user-

Processo	0200654-12.2022.8.06.0156
	drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Tratam os presentes autos de ação de cobrança ajuizada em face do Município de Acarape. Conforme asseverado pelo autor, desde 10 / 11 /2015 teria sido celebrado contrato temporário com o requerido, passando o autor a laborar na guarda municipal. De acordo com a Lei Municipal nº 504/2015 e com a Portaria nº 04/2017, teria sido publicado edital em 09/01/2017, acerca do "concurso público" para inspetor patrimonial, cargo/função pública relevante, sem remuneração, responsável por auxiliar nos eventos da prefeitura e por exercer vigilância dos prédios públicos em caso de falta de vigia. &#160;</p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Ocorre que, em 08/05/2019, foi expedido decreto municipal nº 05/2019, determinando a anulação do processo seletivo simplificado (chamado erroneamente de concurso público) e o cancelamento da identidade funcional dos inspetores patrimoniais. &#160;</p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial,

Processo	0200654-12.2022.8.06.0156
	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Sobre a função de inspetor patrimonial, conforme consta nos documentos, o declarante asseverou que recebia remuneração. Quanto às atividades desempenhadas, foi declarado que essas eram as mesmas, independente da denominação utilizada, seja guarda municipal, seja inspetor patrimonial. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Destaque-se, por oportuno, que a própria Administração Pública, exercendo o seu poder de autotutela, por meio do Decreto nº 05/2019, anulou referido processo seletivo simplificado, cancelando a identidade funcional dos inspetores, bem como os demais atos decorrentes dele. B uscou a Administração anular o ato prévio que instituiu a seleção pública, pois eivada e sta de inconstitucionalidade, usando-se de seu poder de autotutela, nos moldes da Súmula 473 do STF, a qual preceitua que a administração pode anular seus próprios atos, quando eivados de vícios que os tornam ilegais, porque deles não se originam direitos.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-

Processo	0200654-12.2022.8.06.0156
	wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Tendo em vista que o autor não era servidor estável ocupante de cargo público, não há que se falar em necessidade de prévio processo administrativo, no qual lhe fosse garantido contraditório e ampla defesa. Seja como inspetor patrimonial, seja como guarda municipal, a contratação temporária também não é dotada de estabilidade, não há falar em necessidade de processo administrativo prévio para demissão. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Assim, o cerne da questão sob enfoque consiste em analisar a (ir)regularidade do ato administrativo que extinguiu o vínculo da parte autora em 08/05/2019, contratada, supostamente, sob vínculo de regime temporário de trabalho, pelo Município de Acarape, para exercer a função de guarda municipal. Além disso, cumpre analisar se seria devido o pagamento de férias proporcionais acrescidas do terço constitucional e 13º salário, com juros e correção monetária . &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian:

Processo	0200654-12.2022.8.06.0156
	normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> Já adianto que a insurgência recursa l não merece prosperar. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Quanto à alegação de existência de contrato temporário de trabalho, é imperioso aduzir, que o contrato não se deu mediante tempo determinado, uma vez que não houve lei municipal a fixar previamente o limite temporal para o serviço prestado, configurando, dessa forma, contrato nulo desde a origem.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Sobre essa temática, o Supremo Tribunal Federal, em julgado submetido à sistemática de repercussão geral, assentou a seguinte tese quanto aos requisitos de validade de tais contratações: &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-

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	collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> TEMA 612/STF, Leading case RE nº 658.026/MG - Nos termos do art. 37, IX, da Constituição Federal, para que se considere válida a contratação temporária de servidores públicos, é preciso que: a) os casos excepcionais estejam previstos em lei; b) o prazo de contratação seja predeterminado; c) a necessidade seja temporária; d) o interesse público seja excepcional; e) a contratação seja indispensável, sendo vedada para os serviços ordinários permanentes do Estado que estejam sob o espectro das contingências normais da Administração.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Pois bem, a Lei Municipal 504/2015, ao deixar de prever o prazo de contratação, que indicasse a data inicial, bem como a data em que findariam os serviços prestados, desobedeceu aos requisitos elencados no entendimento supracitado, excluindo, de tal modo, a caracterização de contrato de trabalho temporário, como fora alegado, para, assim, configurar contrato por prazo indeterminado. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> <span

Processo	0200654-12.2022.8.06.0156
	class="NormalTextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Como se sabe, a teor do que dispõe o art. 37, II, da Carta Magna, “ a investidura em cargo ou emprego público depende de aprovação prévia em concurso público de provas ou de provas e títulos”. Vejamos: &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios de legalidade, impessoalidade, moralidade, publicidade e eficiência e, também, ao seguinte: &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New

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	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> II - a investidura em cargo ou emprego público depende de aprovação prévia em concurso público de provas ou de provas e títulos, de acordo com a natureza e a complexidade do cargo ou emprego, na forma prevista em lei, ressalvadas as nomeações para cargo em comissão declarado em lei de livre nomeação e exoneração;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...]&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> IX - a lei estabelecerá os casos de contratação por tempo determinado para atender a necessidade temporária de excepcional interesse público;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-

Processo	0200654-12.2022.8.06.0156
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Passando a apreciar o vínculo da relação de trabalho entre as partes litigantes, em especial diante da determinação constitucional acima, é possível perceber que a contratação deu-se de maneira fraudulenta, pois não houve a realização devida de concurso público. Com efeito, a própria Administração Pública reconheceu a inconstitucionalidade da Lei 504/2015, anulando-a por meio do Decreto Municipal nº 05/2019, publicado em 8 de maio de 2019. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Na documentação juntada aos autos, o autor não conseguiu comprovar o seu ingresso aos quadros de serviço público do Município, por meio da feitura de concurso público de provas e títulos.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe

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	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> O Plenário do Supremo Tribunal Federal, em julgamento de Recurso Extraordinário (RE 705140) com repercussão geral reconhecida, firmou tese no sentido de que as contratações sem concurso pela administração pública não geram quaisquer efeitos jurídicos válidos a não ser o direito à percepção dos salários do período trabalhado e ao levantamento dos depósitos efetuados no FGTS. Vejamos: &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> CONSTITUCIONAL E TRABALHO. CONTRATAÇÃO DE PESSOAL PELA ADMINISTRAÇÃO PÚBLICA SEM CONCURSO. NULIDADE. EFEITOS JURÍDICOS ADMISSÍVEIS EM RELAÇÃO A EMPREGADOS: PAGAMENTO DE SALDO SALARIAL E LEVANTAMENTO DE FGTS (RE 596.478 - REPERCUSSÃO GERAL). INEXIGIBILIDADE DE OUTRAS VERBAS, MESMO A TÍTULO INDENIZATÓRIO. 1. Conforme reiteradamente afirmado pelo Supremo Tribunal Federal, a Constituição de 1988 reprova severamente as contratações de pessoal pela Administração Pública sem a observância das normas referentes à indispensabilidade da prévia aprovação em concurso público, cominando a sua nulidade e impondo sanções à autoridade responsável (CF , art. 37, § 2º). 2. No que se refere a empregados, essas contratações ilegítimas não geram quaisquer efeitos jurídicos válidos, a não ser o direito à percepção dos salários referentes ao período trabalhado e, nos termos do art. 19-A da Lei 8.036/90, ao levantamento dos depósitos efetuados no Fundo de Garantia por Tempo de Serviço - FGTS. 3. Recurso extraordinário desprovido. (STF - RE: 705140 RS, Relator: TEORI ZAVASCKI, Data de Julgamento: 28/08/2014, Tribunal Pleno, Data de Publicação: 05/11/2014). &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text;

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	overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Assim, o único efeito jurídico válido, nessas circunstâncias, é o direito aos salários correspondentes aos serviços efetivamente prestados e a possibilidade de recebimento dos valores depositados na conta vinculada do trabalhador no FGTS. Este último, inclusive, só passou a ser admitido após a introdução, em 2001, do artigo 19-A na Lei 8.036/1990, que regulamenta o FGTS, contendo previsão expressa nesse sentido. Confira-se: &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Art. 19-A. É devido o depósito do FGTS na conta vinculada do trabalhador cujo contrato de trabalho seja declarado nulo nas hipóteses previstas no art. 37, § 2º, da Constituição Federal, quando mantido o direito ao salário. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Nesse mesmo sentido, a Súmula nº 466 do STJ, prevê da seguinte forma: <span class="EOP SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px;

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	font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Súmula 466 STJ - O titular da conta vinculada ao FGTS tem o direito de sacar o saldo respectivo quando declarado nulo seu contrato de trabalho por ausência de prévia aprovação em concurso público. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Ainda sobre a mesma premissa, o Pretório Excelso entendeu que a declaração de nulidade da contratação temporária realizada em desconformidade com a ordem constitucional em vigor gera para o Município réu o dever de efetuar o pagamento das verbas relativas ao FGTS e de eventual saldo dos salários pelos serviços prestados, sob pena de locupletamento ilícito da Administração Pública. Confira-se:&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">TEMA 916/STF, Leading case RE nº 765320/MG - A contratação por tempo determinado para atendimento de necessidade temporária de excepcional interesse público realizada em desconformidade com os preceitos do art. 37, IX, da Constituição Federal não gera quaisquer efeitos jurídicos válidos em relação aos servidores contratados, com exceção do direito à percepção dos salários referentes ao período trabalhado e, nos termos do art. 19-A da Lei 8.036/1990, ao levantamento dos depósitos efetuados no Fundo de Garantia do Tempo de Serviço - FGTS.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Importante destacar, a título de reforço argumentativo, a inaplicabilidade, ao caso, da compreensão exarada no Recurso Extraordinário nº 1.066.677/MG, abaixo transcrito: &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> TEMA 551/STF, Leading case RE nº 1066677/MG - Servidores temporários não fazem jus a décimo terceiro salário e férias remuneradas acrescidas do terço constitucional, salvo (I) expressa previsão legal e/ou contratual em sentido contrário, ou (II) comprovado desvirtuamento da contratação temporária pela Administração Pública, em razão de sucessivas e reiteradas renovações e/ou prorrogações. <span class="EOP SCXW54780251 BCX8" style="-webkit-user-

Processo	0200654-12.2022.8.06.0156
	drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Isso porque o referido julgado trata de contratação regular que se tornou irregular em razão de sucessivas e reiteradas renovações e/ou prorrogações, o que não é a situação dos autos, que versa sobre contrato nulo desde a origem. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Acrescento a isso, ainda, o entendimento de que a aplicação simultânea de ambos os temas às situações jurídicas que envolvam contrato temporário malfere a Constituição Federal, seja porque o contrato temporário nulo desde a origem seria tratado como se regular fosse, convalidando , assim, uma nulidade; seja em razão da concessão de direito social celetista (FGTS) a servidor regido pelo regime jurídico-administrativo, indo de encontro à disciplina do art. 39, §3º, da CF. <span class="EOP SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt;

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	line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Esse tem sido o entendimento adotado por este Órgão Colegiado, senão vejamos: &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA DE COBRANÇA. CONTRATAÇÃO TEMPORÁRIA IRREGULAR. MANIFESTA VIOLAÇÃO À EXIGÊNCIA DE PRÉVIA APROVAÇÃO EM CONCURSO PÚBLICO. CONTRATOS NULOS, DELES NÃO DECORRENDO EFEITOS JURÍDICOS VÁLIDOS, RESSALVADO O RECOLHIMENTO DA VERBA FUNDIÁRIA E SALDOS DE SALÁRIO, SE HOUVER. IMPOSSIBILIDADE DE APLICAÇÃO SIMULTÂNEA DOS TEMAS 551 E 916, AMBOS DO STF. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. 1. Nos termos do art. 37, IX, da Constituição Federal/1988, para que se considere válida a contratação temporária de servidores públicos, é preciso que: a) os casos excepcionais estejam previstos em lei; b) o prazo de contratação seja predeterminado; c) a necessidade seja temporária; d) o interesse público seja excepcional; e) a contratação seja indispensável, sendo vedada para os serviços ordinários permanentes do Estado que estejam sob o espectro das contingências normais da Administração. 2. Sendo irregular a contratação, dela não decorrerão efeitos jurídicos válidos em relação aos empregados contratados, com exceção do direito à percepção dos salários referentes ao período trabalhado, e, nos termos do art. 19-A da Lei 8.036/1990, ao levantamento dos depósitos efetuados no FGTS, portanto, devem ser afastadas as condenações das verbas referentes a férias acrescidas do terço constitucional e 13º salário. 3. Apelação conhecida e parcialmente provida. (Apelação Cível - 0005358- 98.2017.8.06.0068, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 27/06/2022, data da publicação: 27/06/2022)&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"

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	lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> CONSTITUCIONAL. ADMINISTRATIVO. RECURSO DE APELAÇÃO. AÇÃO ORDINÁRIA DE COBRANÇA. AUSÊNCIA DE SUBMISSÃO A CONCURSO PÚBLICO. REGIME DE CONTRATAÇÃO TEMPORÁRIA. INEXISTÊNCIA DE DEMONSTRAÇÃO DE EXCEPCIONAL INTERESSE PÚBLICO. NULIDADE DO CONTRATO. SENTENÇA DE IMPROCEDÊNCIA DOS PEDIDOS AUTORAIS. AUSÊNCIA DE DIREITO À DÉCIMO TERCEIRO SALÁRIO, FÉRIAS E TERÇO CONSTITUCIONAL. PRECEDENTES. APELAÇÃO CONHECIDA E DESPROVIDA. 01. Trata-se de APELAÇÃO interposta por Cristiane Gomes Barbosa em face da Sentença prolatada pelo Juízo da 2.ª Vara da Comarca de Cascavel-CE nos autos da Ação de nº 0013069-80.2014.8.06.0062. 02. Importante registrar que a parte autora foi contratada temporariamente pelo Ente Público demandado para exercer a função de Agente Administrativo. 03. a questão jurídica foi apreciada em sede de repercussão geral (RE 658.026 – TEMA 612), momento em que restou decidido que, para que se considere a validade da contratação temporária, devem estar presentes os seguintes requisitos: a) os casos excepcionais estejam previstos em lei; b) o prazo de contratação seja predeterminado; c) a necessidade seja temporária; d) o interesse público seja excepcional; e) a necessidade de contratação seja indispensável, sendo vedada a contratação para os serviços ordinários permanentes do Estado, e que devam estar sob o espectro das contingências normais da Administração. 04. No caso, a documentação acostada aponta que a autora laborou para o Município de Cascaval (CE) durante os seguintes períodos: 02/02/2009 e 31/12/2012, 21/03/2013 a 31/12/2013, bem como em 02/01/2014 e 01/04/2014. Observa-se que os contratos tiveram por objeto o exercício da função de Agente Administrativo, bem como não houve demonstração alguma de necessidade de atendimento a interesse público excepcional para a contratação da autora nas funções indicadas, cujas necessidades são de natureza permanente e rotineira em qualquer Município, ficando, pois, configurada a nulidade da contratação, por manifesta violação à regra do concurso público (CF/88, art. 37, II). 05. Tem-se o entendimento do Plenário do STF, firmado no recente julgado sob o rito da repercussão geral, segundo o qual "Servidores temporários não fazem jus ao décimo terceiro salário e férias remuneradas acrescidas do terço constitucional, salvo (I) expressa previsão legal e/ou contratual em sentido contrário, ou (II) comprovado desvirtuamento da contratação temporária pela Administração Pública, em razão de sucessivas e reiteradas renovações e/ou prorrogações." (Tema 551). 06. Sentença mantida. (Apelação Cível - 0013069-80.2014.8.06.0062, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 27/06/2022, data da publicação: 28/06/2022)&#160; <span class="EOP SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Superando esse ponto, vale ressaltar novamente que o contrato "temporário" de trabalho em comento, é nulo desde a origem, tendo em vista a desobediência aos requisitos legais para a sua configuração, qual seja: a ausência de previsão do prazo que determinasse o início e o fim da relação de trabalho. Assim, consoante entendimentos colacionados anteriormente, a parte autora só possuía direito a perceber eventual saldo de salário, acaso existente, e as verbas devidas a título de FGTS.&#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Assim, por todo o exposto, melhor sorte não socorre ao recorrente, pois andou bem o juízo a quo ao adotar o posicionamento do STF, nos moldes do tema 916. &#160;</p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p

Processo	0200654-12.2022.8.06.0156
	class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Quanto à fixação de honorários, majoro esses para 12% do valor da causa, restando suspensa a exigibilidade, dada a gratuidade judiciária deferida. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> Diante do exposto e fundamentado , conheço da apelação, mas para negar-lhe provimento, mantendo inalterada a sentença recorrida.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New

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	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 96px;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW54780251 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap:

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	break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	128
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE SOBRAL
Advogado(s) - Polo ativo	Não informado
Polo passivo	JOSE MARIA RIBEIRO LINHARES DEFENSORIA PÚBLICA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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	Eletrônico).</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 4. Inaplicável a súmula 240 do STJ ao caso, uma vez que demonstrado o desinteresse no prosseguimento do feito por parte do réu revel, citado por edital e representado em juízo pela curadoria especial da Defensoria Pública. Entendimento firmado pelo Superior Tribunal de Justiça.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Precedentes do STJ e desta egrégia Corte de Justiça.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Apelação conhecida e desprovida.</p><p style="line-height: 1.38; margin-left: 112pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> - Sentença mantida.</p><h3 style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height: 1.7999999999999998; margin-left: 1pt; text-indent: 112.38582677165354pt; text-align: justify; margin-top: 11pt; margin-bottom: 11pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0067448-39.2017.8.06.0167, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação interposta, para negar-lhe provimento, mantendo inalterada a sentença recorrida, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> Fortaleza, 18 de novembro de 2024. <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portaria 1550/2024</p><p align="center"> <strong id="docs-internal-guid-38997b28-7fff-1709-9032-f950d1ff92b3" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 0.03818181818181818; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta, em ação de execução fiscal, com o objetivo de desconstituir sentença proferida

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	pelo Juízo do 1º Núcleo de Justiça 4.0 - Execuções Fiscais que decidiu pela extinção do processo sem resolução de mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">O caso/a ação originária: o Município de Sobral ajuizou Ação de Execução Fiscal em face de José Maria Ribeiro Linhares com base em certidões da dívida ativa, oriundas de débitos de IPTU, no valor total de R$ 4.549,00 (quatro mil, quinhentos e quarenta e nove reais).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Frustrada a citação por carta (ID 14866183) e por mandado (ID 14866198), fora realizado a citação editalícia do exequido (ID 14866206) e, após a ausência de qualquer manifestação (certidão de ID 14866207), o Juízo a quo proferiu decisão interlocutória (ID 14866209) ordenando a nomeação de curador especial para representar os interesses do exequido na demanda.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ao ID 14866212, a Defensoria Pública, na condição de curadora especial, apresentou manifestação aduzindo que “ ainda não possibilita a apresentação de Embargos à Execução, haja vista ainda não ter ocorrido a penhora ou arresto de bens da parte executada suficientes para a garantia integral da execução, consoante a previsão do art. 16, inc. III, da Lei nº 6.830/80 ”, requerendo, ao final, o prosseguimento do feito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">O Juízo a quo proferiu despacho (ID 14866217), determinando a intimação do o ente municipal para que acostasse aos autos o valor atualizado do débito no prazo de 30 dias, bem como requeresse o que entender de direito. Todavia, decorrido o prazo legal, nada foi apresentado ou requerido.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Novo despacho <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-

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	variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(ID 14866221) determinando a intimação do exequente para renovar a “intimação da Fazenda Exequente (via sistema PJE) para, em 05 dias, manifestar se ainda nutre interesse na continuidade do feito, oportunidade em que deverá suprir a sua omissão nos autos, atendendo ao que determinado no despacho de id: 39303923, sob pena de extinção do processo sem solução de mérito nos termos do art. 485, "III", do Código de Processo Civil”, contudo, sem resposta.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">A Sentença: o Juízo do 1º Núcleo de Justiça 4.0 - Execuções Fiscais decidiu pela extinção do processo sem resolução de mérito, por abandono da causa (ID 14866222). Transcrevo o dispositivo da sentença:</p><p style="line-height: 1.38; margin-left: 114pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“Pelas razões expostas, EXTINGO O PRESENTE FEITO SEM JULGAMENTO DE MÉRITO, o que faço sob os auspícios do art. 485, "II" e “III”, do Código de Processo Civil.”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Apelação: irresignado, o Município de Sobral interpôs recurso (ID 14866224) aduzindo que não haveria ocorrido sua prévia intimação pessoal, bem como que a súmula 240 do STJ seria aplicável ao caso e, por isso, não poderia a demanda ter sido extinta por abandono da causa sem a provocação do polo adverso. Pugnou, ao final, pela regular continuidade de tramitação do feito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Contrarrazões: ID 14866228, suplicando pela manutenção do decisum<span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-

Processo	0067448-39.2017.8.06.0167
	weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">, por seus próprios e jurídicos fundamentos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desnecessária a intervenção do Ministério Público , nos termos da súmula 189 do STJ.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta, em ação de execução fiscal, com o objetivo de desconstituir sentença proferida pelo Juízo do 1º Núcleo de Justiça 4.0 - Execuções Fiscais que decidiu pela extinção do processo sem resolução de mérito, nos termos do art. 485, inciso III do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Aduz o apelante ser a sentença nula, uma vez que não teria sido intimado pessoalmente para requerer o que entendesse necessário no caderno processual e, por isso, inexistiria abandono da causa. Entretanto, há que se ressaltar, desde logo, que não assiste razão ao ente municipal.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Isso porque, consoante o art. 485, inciso III do Código de Processo Civil, caso os fólios processuais fiquem paralisados por mais de 30 (trinta) dias sem que o autor tenha promovido os atos e diligências que lhe competiam, o processo será extinto sem resolução de mérito, desde que realizada a respectiva intimação pessoal para tanto. Tal previsão normativa tem a finalidade de oportunizar o contraditório e a ampla defesa, bem como evitar decisão surpresa e assegurar a primazia do julgamento de mérito. Confira-se:</p><p style="line-height: 1.2; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“Art. 485. O juiz não resolverá o mérito quando:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> III - por não promover os atos e as diligências que lhe incumbir, o autor abandonar a causa por mais de 30 (trinta) dias;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2;

Processo	0067448-39.2017.8.06.0167
	margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">§ 1º Nas hipóteses descritas nos incisos II e III, a parte será intimada pessoalmente para suprir a falta no prazo de 5 (cinco) dias.” (destacamos)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Outrossim, quando a Fazenda Pública compõe a relação processual, a citação e as intimações deverão ocorrer necessariamente de forma pessoal, pois assim determina o art. 183, § 1º, do Código de Processo Civil. Vejamos:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“Art. 183. A União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público gozarão de prazo em dobro para todas as suas manifestações processuais, cuja contagem terá início a partir da intimação pessoal.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">§ 1º A intimação pessoal far-se-á por carga, remessa ou meio eletrônico.” (destacamos)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Percebe-se, portanto, que a intimação pessoal da Fazenda Pública é aquela que poderá ser realizada por carga, remessa dos autos ou por meio eletrônico.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Em detida análise dos autos, constata-se que o Juízo a quo determinou a intimação do ente municipal por duas vezes para se manifestar no processo, sendo ambas realizadas por meio do portal eletrônico, quais sejam:</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">1) em 30 de agosto de 2023, a fim de que

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	apresentasse o valor atualizado do débito executado (ID 14866217), todavia, decorrido o prazo legal, nada foi apresentado ou requerido; e</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">2) em 22 de novembro de 2022, para manifestar se ainda possuía interesse no prosseguimento da demanda, sob pena de extinção do feito por abandono da causa (ID 14866221). Entretanto, deixou transcorrer in albis o prazo destinado à sua manifestação.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Com efeito, resta evidente que a legislação processual civil equipara a intimação eletrônica à pessoal. Não é outro o raciocínio que se extrai da análise do art. 5º, § 6º c/c art. 9º § 1º, ambos da Lei nº 11.419/2006 (Lei do Processo Judicial Eletrônico). In verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“Art. 5º As intimações serão feitas por meio eletrônico em portal próprio aos que se cadastrarem na forma do art. 2º desta Lei, dispensando-se a publicação no órgão oficial, inclusive eletrônico.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> […]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">§ 6º As intimações feitas na forma deste artigo, inclusive da Fazenda Pública, serão consideradas pessoais para todos os efeitos legais.”</p><p style="line-height: 1.7999999999999998; text-indent: 4pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> * * * * *</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“Art. 9º No processo eletrônico, todas as citações, intimações e notificações, inclusive da Fazenda Pública, serão feitas por meio eletrônico, na forma desta Lei.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">§ 1º <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none;

Processo	0067448-39.2017.8.06.0167
	vertical-align: baseline; white-space: pre-wrap;">As citações, intimações, notificações e remessas que viabilizem o acesso à íntegra do processo correspondente serão consideradas vista pessoal do interessado para todos os efeitos legais.” (destacamos)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desse modo, não há que se falar em ausência de intimação pessoal, pois, conforme demonstrado, houve intimação da Fazenda Pública Municipal por meio do portal eletrônico, sendo esta uma das modalidades permitidas pela norma de regência.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Neste sentido, a linha de raciocínio esposada por esta egrégia Corte de Justiça:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. EXTINÇÃO DO FEITO SEM RESOLUÇÃO DO MÉRITO. INTIMAÇÃO PESSOAL DA FAZENDA PÚBLICA VIA PORTAL ELETRÔNICO. POSSIBILIDADE. ABANDONO DA CAUSA. INTELIGÊNCIA DO ART. 485, § 1º DO CPC/2015. INÉRCIA DA FAZENDA PÚBLICA. SENTENÇA MANTIDA. RECURSO CONHECIDO E DESPROVIDO. 1. Trata-se de Apelação Cível interposta pelo Município de Sobral, com o objetivo de reformar sentença que, decretando o abandono da causa pelo autor, extinguiu a ação de execução fiscal proposta. 2. O art. 485, inciso III, do Código de Processo Civil de 2015 prevê a extinção do feito sem resolução de mérito quando o autor abandona a causa por mais de 30 (trinta) dias. Ademais, a extinção deve ser precedida de intimação pessoal da parte, nos termos do § 1º do citado dispositivo legal. 3. No caso concreto, houve duas intimações da Fazenda Pública para que: a) apresentasse o valor atualizado da dívida exequenda e b) manifestasse interesse no prosseguimento do feito, ambas disponibilizadas à Procuradoria do Município através do portal eletrônico eSAJ. Ressalte-se que as intimações da Fazenda Pública devem ser pessoais, sendo assim consideradas as eletrônicas, conforme dispõe o art. 5º, § 6º da Lei 11.419/06. 4. Compulsando os fólios, observa-se que a recorrente foi intimada para manifestar interesse no prosseguimento do feito, sendo o expediente disponibilizado por meio do portal eletrônico eSAJ em 30/03/2021, todavia, não respondeu ao chamamento judicial, circunstância que motivou a extinção do processo, sem resolução do mérito, na forma do art. 485, III, do CPC. 5. Quando a relação processual não é angularizada, devido à falta de efetividade na citação do executado, a jurisprudência dos tribunais superiores e deste Sodalício reconhece a possibilidade do magistrado declarar, de ofício, a extinção do processo, sem julgamento de mérito, por inércia do autor, sem a necessidade de requerimento da parte adversa. Precedentes. 6. Recurso conhecido e desprovido.” (APC nº 0105717-21.2015.8.06.0167; Relator (a): LUIZ EVALDO GONÇALVES LEITE; Comarca: Sobral; Órgão julgador: 2ª Câmara Direito Público ; Data do julgamento: 11/08/2021; Data de registro: 11/08/2021) (destacamos)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> * * * *

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	*</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“APELAÇÃO. EXECUÇÃO FISCAL. AUSÊNCIA DE CITAÇÃO. INTIMAÇÃO DA FAZENDA PÚBLICA VIA ELETRÔNICA. ABANDONO DA CAUSA POR MAIS DE 03 (TRÊS) ANOS APÓS A ÚLTIMA MANIFESTAÇÃO NOS AUTOS. EXTINÇÃO SEM RESOLUÇÃO DO MÉRITO. RECURSO CONHECIDO E DESPROVIDO. 1.Trata-se de Apelação Cível oriunda de Ação de Execução Fiscal interposta pelo Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis - IBAMA, em cujos autos pretende o ente ver-se ressarcido da quantia de R$ 4.172,83 (quatro mil, cento e setenta e dois reais e oitenta e três centavos), relativa a dívida de natureza não tributária. 2. Conforme restou certificado nos autos, a disponibilização do último expediente à Procuradoria Federal do Estado do Ceará ocorreu através do Portal Eletrônico e-SAJ. Nesse aspecto, é de bom alvitre registrar que a intimação dos Procuradores pode se dar por meio eletrônico, porquanto equiparada à pessoal, como assim estabelece o art. 5º, § 3º, da Lei nº 11.419/06. 3. Destarte, muito embora arguido pelo ente recorrente o não cumprimento do disposto no art. 485, §1º, do CPC, porquanto, "(…) não houve intimação do exequente, o que se diz para maior argumentação, entende-se que deveria haver sido respeitado o prazo de mais 05 dias (…)" (fl. 28), considero que o expediente fora efetivado pela via eletrônica, tendo sido concedido muito mais do que esse prazo, porquanto, afora o prazo de 10 (dez) dias para as providências cabíveis, da data da certidão de decorrência de prazo - em 13.08.2020 - até a prolatação da sentença - em 25.11.2020 -, fluiu mais de 03 (três) meses, não podendo o Judiciário aguardar indefinidamente a iniciativa da parte interessada na adoção de providências a seu cargo. 4. Recurso conhecido e desprovido.” (APC nº 0009885-58.2014.8.06.0049; Relator (a): MARIA IRANEIDE MOURA SILVA; Comarca: Beberibe; Órgão julgador: 2ª Câmara Direito Público; Data do julgamento: 02/06/2021; Data de registro: 02/06/2021) (destacamos)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Não é outro o posicionamento adotado pelos demais Tribunais da Federação:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“APELAÇÃO CÍVEL - Execução fiscal – Município de Capão Bonito – Débitos ISSQN vencidos em 2014 – Sentença de extinção do feito, por abandono da causa, nos termos do artigo 485, III do Código de Processo Civil – Insurgência do Município – Não acolhimento – Execução fiscal não embargada – Município que, depois de intimado através de ato ordinatório a se manifestar sobre a falta de pagamento voluntário do débito pela contribuinte, ficou inerte – <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">Despacho posterior, intimando o Município a dar andamento ao feito no prazo de 05 dias, sob pena de extinção, que foi igualmente desatendido - Intimação da Fazenda Pública através do portal eletrônico deste Tribunal que equivale à intimação pessoal, e se deu de forma regular, bem atendendo ao pressuposto do artigo 485, § 1º do Código de Processo Civil – Precedentes do C. Superior Tribunal de Justiça e deste Colegiado, nesse sentido – Execução fiscal não embargada que dispensa o prévio requerimento da parte contrária para que a extinção por abandono tenha cabimento – Abandono da causa configurado - Sentença mantida – RECURSO DESPROVIDO.” (TJSP; Apelação Cível 1501388-19.2019.8.26.0123; Relator (a): Tania Mara Ahualli; Órgão Julgador: 15ª Câmara de Direito Público; Foro de Capão Bonito - SEF - Setor das Execuções Fiscais; Data do Julgamento: 03/08/2021; Data de Registro: 03/08/2021) (destacamos)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> * * * * *</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. EXTINÇÃO SEM RESOLUÇÃO DO MÉRITO. ABANDONO. INTIMAÇÃO PESSOAL. NÃO PROVIMENTO. 1. Trata-se de apelação cível interposta contra sentença proferida nos autos de ação de monitória, na qual a sentença extinguiu o feito sem julgamento de mérito, sob o fundamento de abandono da causa. 2. De acordo com o art. 485, III e § 1º, do CPC, a causa é tida como abandonada na hipótese em que, intimado pessoalmente, o autor não suprir a falta no prazo de 5 (cinco) dias, após não ter promovido, por mais de 30 (trinta) dias, os atos e diligências que lhe incumbir. Está claro que, a fim de assegurar o princípio da economia processual, da primazia do julgamento de mérito, do contraditório e ampla defesa, o ordenamento impôs amarras à declaração de abandono pelo juiz. 3. Compulsando os autos, nota-se que o juiz de primeiro grau intimou a autora para "apresentar o demonstrativo de débito objeto da demanda, uma vez que o apresentado às fls. 24/27 se referea contrato diverso". Transcorridos mais de 30 (trinta) dias da sua ciência, intimou-se eletronicamente a autora para dar andamento ao feito no prazo de 5 (cinco) dias. Diante de novo vencimento, prolatou-sesentença terminativa do feito. 4. A legislação processual civil é clara ao equiparar a intimação eletrônica à pessoal. Trata-se de norma expressamente prevista no art. 5º, § 6º, da Lei nº 11.419/2006. A regra foi reforçada pelo novo CPC, ao dispor que a intimação pessoal da Fazenda Pública poderá ser feita por meio eletrônico (CPC, art. 183, § 1º). Portanto, se a parte for intimada eletronicamente para suprir, no prazo de 5 (cinco) dias, a diligência requerida, observa-se com rigor os termos do art. 485, § 1º, do CPC.

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	5. Apelação conhecida e não provida.” (TRF-2 - AC: 00725460620184025117 RJ 0072546-06.2018.4.02.5117, Relator: GUILHERME CALMON NOGUEIRA DA GAMA, Data de Julgamento: 01/02/2019, 6ª TURMA ESPECIALIZADA, Data de Publicação: 06/02/2019) (destacamos)</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, a alegação de que a súmula 240 do STJ deveria ser aplicada ao caso em apreço não merece prosperar, pois o Superior Tribunal de Justiça possui entendimento pacificado no sentido de que quando resta demonstrado o desinteresse no prosseguimento do feito por parte do réu revel, que fora citado por edital e está sendo representado em juízo pela Defensoria Pública, não há que se falar em sua observância.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> No caso, extrai-se dos autos que a curadoria especial não embargou a execução, nem mesmo se opôs à extinção do feito em suas contrarrazões, requerendo, inclusive, a manutenção da sentença. Sendo assim, mais uma vez descabida a alegação do ente público recorrente.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Este é entendimento esposado pela Corte Superior de Justiça. Confira-se:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. SÚMULA 182/STJ. NÃO INCIDÊNCIA. RECONSIDERAÇÃO DA DECISÃO AGRAVADA. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. REVELIA. CITAÇÃO POR EDITAL. EMBARGOS DO DEVEDOR APRESENTADOS POR CURADOR ESPECIAL. EXTINÇÃO DA EXECUÇÃO POR ABANDONO DA CAUSA PELO AUTOR. REQUERIMENTO DO RÉU. DESNECESSIDADE NO CASO. AGRAVO INTERNO PROVIDO. RECURSO ESPECIAL NÃO PROVIDO. 1. "A extinção prevista no artigo 485, inciso III, do CPC, ante o abandono da causa, tem aplicação subsidiária ao processo de execução (art. 771, parágrafo único, do CPC)" (AgInt no AREsp 1.427.832/SP, Rel. Ministro MARCO BUZZI, QUARTA TURMA, julgado em 24/06/2019, DJe de 1º/07/2019). 2. "A extinção do processo por abandono da causa pelo autor, necessita de requerimento do réu apenas nos casos em que o réu passou a integrar a lide, justificando, assim, sua manifestação acerca da extinção" (AgInt no AREsp 989.329/RJ, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 21/02/2017, DJe de 24/02/2017). 3. Inaplicabilidade da Súmula 240/STJ ao caso, por se tratar de réu revel, citado por edital e defendido pela Defensoria Pública, na condição de curadora especial, que também não se opôs à extinção da demanda. 4. Agravo interno provido para reconsiderar a decisão agravada e, em novo julgamento, conhecer do agravo para negar provimento ao recurso especial.” (STJ - AgInt no AREsp: 1534585 RJ 2019/0192508-0, Relator: Ministro RAUL ARAÚJO, Data de Julgamento: 10/03/2020, T4 - QUARTA TURMA, Data de Publicação: DJe 01/04/2020) (destacamos)</p><p style="line-height: 1.7999999999999998; margin-left: -3pt; text-indent: 116.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Por tudo isso, o desprovimento da apelação interposta, consequente manutenção da sentença recorrida, é medida que se impõe.</p><p style="line-height: 0.03818181818181818; text-align: center; margin-top: 12pt; margin-

Processo	0067448-39.2017.8.06.0167
	bottom: 12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr">Por tais razões, conheço da apelação interposta, para negar-lhe provimento, confirmando a sentença recorrida, por seus próprios e jurídicos fundamentos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> Fortaleza, 18 de novembro de 2024. <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Portaria 1550/2024</p><div> <br /> </div><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	129
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Padronizado
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	JOAO PAULO AVELINO ALVES DE SOUSA - (CE41057-A) MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	MINISTERIO PUBLICO DO ESTADO DO CEARA ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA Valneide Protásio da Silva

Processo	0800031-81.2022.8.06.0160
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-f629c687-7fff-2854-2b3a-d05228726c2d" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 6pt; margin-bottom: 3pt;" dir="ltr">Processo: 0800031-81.2022.8.06.0160 – Apelação cível</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 6pt; margin-bottom: 3pt;" dir="ltr">Apelante: MUNICÍPIO DE SANTA QUITÉRIA</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 6pt; margin-bottom: 3pt;" dir="ltr">Apelado: MINISTÉRIO PÚBLICO ESTADUAL</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 6pt; margin-bottom: 3pt;" dir="ltr">Ementa: Constitucional. Apelação cível. Ação civil pública. Fornecimento de medicamento registrado na anvisa, mas não incorporado ao sus. Súmulas vinculantes 60 e 61. Temas 6 e 1234 do stf Sentença anulada de ofício. Recurso prejudicado.</p><p style="line-height:

Processo	0800031-81.2022.8.06.0160
	1.7999999999999998; text-align: justify; margin-top: 6pt; margin-bottom: 3pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 1. Trata-se de Apelação Cível interposta pelo município demandado contra a sentença proferida pelo Juízo da 1ª Vara Cível de Santa Quitéria, que, em Ação Civil Pública movida pelo Ministério Público Estadual, condenou o Estado do Ceará e a municipalidade recorrente a fornecerem, em favor da parte substituída, medicamentos registrados na ANVISA, mas não incorporados ao SUS.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 2. A despeito do julgamento e das razões expostas no apelo da municipalidade, há duas questões em discussão: (i) saber se a sentença vergastada encontra-se em conformidade com as exigências recentemente estabelecidas pelo STF para a concessão judicial de medicamentos registrados na ANVISA, mas não incorporados ao SUS, conforme teses firmadas nos Temas 6 e 1234 da Repercussão Geral, bem como nas alterações promovidas no Direito à Saúde com a edição das Súmulas Vinculantes 60 e 61; (ii) saber se , à luz dos precedentes vinculantes, a sentença deve ser anulada por não atender aos requisitos probatórios exigidos.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 3. O julgamento de 1º grau deve ser anulado, tendo em vista não atender aos requisitos fixados pelo STF nos Temas 6 e 1.234, de aplicação imediata, que exigem a análise detalhada da documentação administrativa e médica, além da necessidade de consulta a entidades técnicas como o NATJUS para a verificação dos critérios de dispensação.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 4. Não se aplica ao presente caso a teoria da causa madura. Isso porque, antes da prolação do novo provimento jurisdicional, o demandante deve ser intimado para acostar lastros probatórios aptos a comprovar o preenchimento dos requisitos exigidos pelos Temas 6 e 1234 e, seguidamente, ser oportunizado à parte contrária o exercício do contraditório, garantindo, assim, o devido processo legal e a ampla defesa.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 5. Sentença anulada de ofício. Retorno dos autos à origem. Recurso Prejudicado.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-

Processo	0800031-81.2022.8.06.0160
	decoration: none; vertical-align: baseline; white-space: pre-wrap;">Dispositivos relevantes citados: CPC, arts. 927, incisos II e III, 1.013, §3º.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Jurisprudência relevante citada: STF, Tema 6 da Repercussão Geral, RE 566.471/RN, Redator do Acórdão. Min. Luís Roberto Barroso, j. 26.09.2024; Tema 1.234 da Repercussão Geral, RE 1.366.243/SC, Relator Min. Gilmar Mendes, j. 16.09.2024, pub. 11.10.2024.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em anular, de ofício, a sentença objurgada, o que torna prejudicado o conhecimento do recurso interposto, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE SANTA QUITÉRIA contra a sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Santa Quitéria que, em Ação Civil Pública cumulada com Pedido Liminar, ajuizada pelo MINISTÉRIO PÚBLICO ESTADUAL,

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	na qualidade de substituto processual de VALNEIDE PROTÁSIO DA SILVA, em face da parte recorrente e do ESTADO DO CEARÁ, julgou procedente a pretensão autoral, para obrigar os entes públicos demandados a fornecerem, em favor da parte substituída, os medicamentos requeridos na exordial. Não houve a condenação dos promovidos ao pagamento de honorários sucumbenciais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões recursais, a parte recorrente defende, preliminarmente, a necessidade de remessa dos autos à Justiça Federal, ante a necessidade de inclusão da União no polo passivo da lide. Meritoriamente, aduz que o tratamento pleiteado mais se assemelha às atribuições do ente estadual. Ao final, pugna pelo conhecimento e provimento do apelo para, caso não seja acolhida a preliminar suscitada, anular a sentença ora guerreada, a fim de que seja incluído no polo passivo da demanda o Estado do Ceará, de modo que o cumprimento da obrigação de fazer apenas recairia sobre o município de forma subsidiária.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Sem contrarrazões recursais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> Parecer da Procuradoria-Geral de Justiça, opinando pelo parcial conhecimento do recurso para, na parte conhecida, desprovê-lo (ID nº 15516548).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 6pt; margin-bottom: 6pt;" dir="ltr"> É o relatório.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> VOTO <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De plano, entendo que a sentença deve ser cassada. Explico.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">No caso em análise, é possível inferir que a presente ação foi proposta com o objetivo de obter dos entes públicos demandados o fornecimento dos medicamentos a seguir relacionados, em seus princípios ativos: Duloxetina e Buspirona, por tempo indeterminado, como forma de tratamento das enfermidades que lhe acometem, quais sejam: transtorno misto ansioso e depressivo (CID 10 F41.2) e fibromialgia (CID 10 M79.7).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Por sua vez, na origem, o magistrado entendeu por bem determinar o fornecimento dos medicamentos requeridos na exordial (não incorporado ao SUS), considerando, para tanto, que os argumentos do órgão ministerial e os documentos acostados são provas robustas do direito alegado, sendo certo que decorrem dos direitos sociais, tais como à saúde e à assistência aos desamparados, previstos no Art. 6º e, ainda, no princípio da dignidade da pessoa humana, que fundamenta a República Federativa do Brasil.</p><p style="line-height: 1.7999999999999998; text-indent:

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	56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">A despeito do julgamento mencionado e das razões expostas no apelo da municipalidade, faz-se necessário trazer à baila o que foi decidido pelo STF, no julgamento do Tema 6 da Repercussão Geral (RE 566.471/RN), bem como as alterações promovidas no Direito à Saúde com a edição da Súmula Vinculante 61.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Vejamos, inicialmente, o que estabelece o Enunciado Vinculante nº 61: “A concessão judicial de medicamento registrado na Anvisa, mas não incorporado às listas de dispensação do Sistema Único de Saúde, deve observar as teses firmadas no julgamento do Tema 6 da Repercussão Geral (RE 566.471).”.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Com efeito, as teses estabelecidas no Tema 6 da Repercussão Geral são as seguintes:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 1. A ausência de inclusão de medicamento nas listas de dispensação do Sistema Único de Saúde – SUS (RENAME, RESME, REMUME, entre outras) impede, como regra geral, o fornecimento do fármaco por decisão judicial, independentemente do custo.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> 2. É possível, excepcionalmente, a concessão judicial de medicamento registrado na ANVISA, mas não incorporado às listas de dispensação do Sistema Único de Saúde, desde que preenchidos, cumulativamente, os seguintes requisitos, cujo ônus probatório incumbe ao autor da ação:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (a) negativa de fornecimento do medicamento na via administrativa, nos termos do item '4' do Tema 1234 da repercussão geral;</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (b) ilegalidade do ato de não incorporação do medicamento pela Conitec, ausência de pedido de incorporação ou da mora na sua apreciação, tendo em vista os prazos e critérios previstos nos artigos 19-Q e 19-R da Lei nº 8.080/1990 e no Decreto nº 7.646/2011;</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (c) impossibilidade de substituição por outro medicamento constante das listas do SUS e dos protocolos clínicos e diretrizes terapêuticas;</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (d) comprovação, à luz da medicina baseada em evidências, da eficácia, acurácia, efetividade e segurança do fármaco, necessariamente respaldadas por evidências científicas de alto nível, ou seja, unicamente ensaios clínicos randomizados e revisão sistemática ou meta-análise;</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-

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	bottom: 0pt;" dir="ltr"> (e) imprescindibilidade clínica do tratamento, comprovada mediante laudo médico fundamentado, descrevendo inclusive qual o tratamento já realizado; e</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (f) incapacidade financeira de arcar com o custeio do medicamento.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160; 3. Sob pena de nulidade da decisão judicial, nos termos do artigo 489, § 1º, incisos V e VI, e artigo 927, inciso III, § 1º, ambos do Código de Processo Civil, o Poder Judiciário, ao apreciar pedido de concessão de medicamentos não incorporados, deverá obrigatoriamente:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (a) analisar o ato administrativo comissivo ou omissivo de não incorporação pela Conitec ou da negativa de fornecimento da via administrativa, à luz das circunstâncias do caso concreto e da legislação de regência, especialmente a política pública do SUS, não sendo possível a incursão no mérito do ato administrativo;</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (b) aferir a presença dos requisitos de dispensação do medicamento, previstos no item 2, a partir da prévia consulta ao Núcleo de Apoio Técnico do Poder Judiciário (NATJUS), sempre que disponível na respectiva jurisdição, ou a entes ou pessoas com expertise técnica na área, não podendo fundamentar a sua decisão unicamente em prescrição, relatório ou laudo médico juntado aos autos pelo autor da ação; e</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (c) no caso de deferimento judicial do fármaco, oficiar aos órgãos competentes para avaliarem a possibilidade de sua incorporação no âmbito do SUS. <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Se não bastasse isso, cumpre pontuar o que dispõe a Súmula Vinculante 60 do STF: “O pedido e a análise administrativos de fármacos na rede pública de saúde, a judicialização do caso, bem ainda seus desdobramentos (administrativos e jurisdicionais), devem observar os termos dos 3 (três) acordos interfederativos (e seus fluxos) homologados pelo Supremo Tribunal Federal, em governança judicial colaborativa, no tema 1.234 da sistemática da repercussão geral (RE 1.366.243).”.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Como se vê, o referido enunciado tratou do pedido e da análise administrativa dos medicamentos da rede pública de saúde, fazendo menção ao Tema 1.234.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">

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	Por relevante, colaciono, a seguir, as teses firmadas no referido precedente:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> I. COMPETÊNCIA</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 1) Para fins de fixação de competência, as demandas relativas a medicamentos não incorporados na política pública do SUS, mas com registro na ANVISA, tramitarão perante a Justiça Federal, nos termos do art. 109, I, da Constituição Federal, quando o valor do tratamento anual específico do fármaco ou do princípio ativo, com base no Preço Máximo de Venda do Governo (PMVG – situado na alíquota zero), divulgado pela Câmara de Regulação do Mercado de Medicamentos (CMED - Lei 10.742/2003), for igual ou superior ao valor de 210 salários-mínimos, na forma do art. 292 do CPC.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 1.1) Existindo mais de um medicamento do mesmo princípio ativo e não sendo solicitado um fármaco específico, considera-se, para efeito de competência, aquele listado no menor valor na lista CMED (PMVG, situado na alíquota zero).</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 1.2) No caso de inexistir valor fixado na lista CMED, considera-se o valor do tratamento anual do medicamento solicitado na demanda, podendo o magistrado, em caso de impugnação pela parte requerida, solicitar auxílio à CMED, na forma do art. 7º da Lei 10.742/2003.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 1.3) No caso de cumulação de pedidos, para fins de competência, será considerado apenas o valor do(s) medicamento(s) não incorporado(s) que deverá(ão) ser somado(s), independentemente da existência de cumulação alternativa de outros pedidos envolvendo obrigação de fazer, pagar ou de entregar coisa certa.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> II. DEFINIÇÃO DE MEDICAMENTOS NÃO INCORPORADOS</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 2.1) Consideram-se medicamentos não incorporados aqueles que não constam na política pública do SUS; medicamentos previstos nos PCDTs para outras finalidades; medicamentos sem registro na ANVISA; e medicamentos off label sem PCDT ou que não integrem listas do componente básico.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 2.1.1) Conforme decidido pelo Supremo Tribunal Federal na tese fixada no tema 500 da sistemática da repercussão geral, é mantida a competência da Justiça Federal em relação às ações que demandem fornecimento de medicamentos sem registro na Anvisa, as quais deverão necessariamente ser propostas em face da União, observadas as especificidades já definidas no aludido tema.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> III. CUSTEIO</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-

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	align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 3) As ações de fornecimento de medicamentos incorporados ou não incorporados, que se inserirem na competência da Justiça Federal, serão custeadas integralmente pela União, cabendo, em caso de haver condenação supletiva dos Estados e do Distrito Federal, o ressarcimento integral pela União, via repasses Fundo a Fundo (FNS ao FES), na situação de ocorrer redirecionamento pela impossibilidade de cumprimento por aquela, a ser implementado mediante ato do Ministério da Saúde, previamente pactuado em instância tripartite, no prazo de até 90 dias.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 3.1) Figurando somente a União no polo passivo, cabe ao magistrado, se necessário, promover a inclusão do Estado ou Município para possibilitar o cumprimento efetivo da decisão, o que não importará em responsabilidade financeira nem em ônus de sucumbência, devendo ser realizado o ressarcimento pela via acima indicada em caso de eventual custo financeiro ser arcado pelos referidos entes.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 3.2) Na determinação judicial de fornecimento do medicamento, o magistrado deverá estabelecer que o valor de venda do medicamento seja limitado ao preço com desconto, proposto no processo de incorporação na Conitec (se for o caso, considerando o venire contra factum proprium/tu quoque e observado o índice de reajuste anual de preço de medicamentos definido pela CMED), ou valor já praticado pelo ente em compra pública, aquele que seja identificado como menor valor, tal como previsto na parte final do art. 9º na Recomendação 146, de 28.11.2023, do CNJ. Sob nenhuma hipótese, poderá haver pagamento judicial às pessoas físicas/jurídicas acima descritas em valor superior ao teto do PMVG, devendo ser operacionalizado pela serventia judicial junto ao fabricante ou distribuidor.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 3.3) As ações que permanecerem na Justiça Estadual e cuidarem de medicamentos não incorporados, as quais impuserem condenações aos Estados e Municípios, serão ressarcidas pela União, via repasses Fundo a Fundo (FNS ao FES ou ao FMS). Figurando somente um dos entes no polo passivo, cabe ao magistrado, se necessário, promover a inclusão do outro para possibilitar o cumprimento efetivo da decisão.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 3.3.1) O ressarcimento descrito no item 3.3 ocorrerá no percentual de 65% (sessenta e cinco por cento) dos desembolsos decorrentes de condenações oriundas de ações cujo valor da causa seja superior a 7 (sete) e inferior a 210 (duzentos e dez) salários mínimos, a ser implementado mediante ato do Ministério da Saúde, previamente pactuado em instância tripartite, no prazo de até 90 dias.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 3.4) Para fins de ressarcimento interfederativo, quanto aos medicamentos para tratamento oncológico, as ações ajuizadas previamente a 10 de junho de 2024 serão ressarcidas pela União na proporção de 80% (oitenta por cento) do valor total pago por Estados e por Municípios, independentemente do trânsito em julgado da decisão, a ser implementado mediante ato do Ministério da Saúde, previamente pactuado em instância tripartite, no prazo de até 90 dias. O ressarcimento para os casos posteriores a 10 de junho de 2024 deverá ser pactuado na CIT, no mesmo prazo.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> IV. ANÁLISE JUDICIAL DO ATO ADMINISTRATIVO DE INDEFERIMENTO DE MEDICAMENTO PELO SUS</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">4) Sob pena de nulidade do ato jurisdicional (art. 489, § 1º, V e VI, c/c art. 927, III, §1º, ambos do CPC), o Poder Judiciário, ao apreciar pedido de concessão de medicamentos não incorporados, deverá obrigatoriamente analisar o ato administrativo comissivo ou omissivo da não incorporação pela Conitec e da negativa de fornecimento na via administrativa, tal como acordado entre os Entes Federativos em autocomposição no Supremo Tribunal Federal.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 4.1) No exercício do controle de legalidade, o Poder Judiciário não pode substituir a vontade do administrador, mas tão somente verificar se o ato administrativo específico daquele caso concreto está em conformidade com as balizas presentes na Constituição Federal, na legislação de regência e na política pública no SUS.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 4.2) A análise jurisdicional do ato administrativo que indefere o fornecimento de medicamento não incorporado restringe-se ao exame da regularidade do procedimento e da legalidade do ato de não incorporação e do ato administrativo questionado, à luz do controle de legalidade e da teoria dos motivos determinantes, não sendo possível incursão no mérito administrativo, ressalvada a cognição do ato administrativo discricionário, o qual se vincula à existência, à veracidade e à legitimidade dos motivos apontados como fundamentos para a sua adoção, a sujeitar o ente público aos seus termos.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 4.3) Tratando-se de medicamento não incorporado, é do autor da ação o ônus de demonstrar, com fundamento na Medicina Baseada em Evidências, a segurança e a eficácia do fármaco, bem como a inexistência de substituto terapêutico incorporado pelo SUS.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 4.4) Conforme decisão da STA 175-AgR, não basta a simples alegação de necessidade do medicamento, mesmo que acompanhada de relatório médico, sendo necessária a demonstração de que a opinião do profissional encontra respaldo em evidências científicas de alto nível, ou seja, unicamente ensaios clínicos randomizados, revisão sistemática ou meta-análise.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> V. PLATAFORMA NACIONAL.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 5) Os Entes Federativos, em governança colaborativa com o Poder Judiciário, implementarão uma plataforma nacional que centralize todas as informações relativas às demandas administrativas e judiciais de acesso a fármaco, de fácil consulta e informação pelo cidadão, na qual constarão dados básicos para possibilitar a análise e eventual resolução administrativa, além de posterior controle judicial.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 5.1) A porta de ingresso à plataforma será via prescrições eletrônicas, devidamente certificadas, possibilitando o controle ético da prescrição posteriormente, mediante ofício do Ente Federativo ao respectivo conselho profissional.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 5.2) A plataforma nacional visa a orientar todos os atores ligados ao sistema público de saúde, possibilitando a eficiência da análise pelo Poder Público e compartilhamento de

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	informações com o Poder Judiciário, mediante a criação de fluxos de atendimento diferenciado, a depender de a solicitação estar ou não incluída na política pública de assistência farmacêutica do SUS e de acordo com os fluxos administrativos aprovados pelos próprios Entes Federativos em autocomposição.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 5.3) A plataforma, entre outras medidas, deverá identificar quem é o responsável pelo custeio e fornecimento administrativo entre os Entes Federativos, com base nas responsabilidades e fluxos definidos em autocomposição entre todos os Entes Federativos, além de possibilitar o monitoramento dos pacientes beneficiários de decisões judiciais, com permissão de consulta virtual dos dados centralizados nacionalmente, pela simples consulta pelo CPF, nome de medicamento, CID, entre outros, com a observância da Lei Geral de Proteção da Dados e demais legislações quanto ao tratamento de dados pessoais sensíveis.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 5.4) O serviço de saúde cujo profissional prescrever medicamento não incorporado ao SUS deverá assumir a responsabilidade contínua pelo acompanhamento clínico do paciente, apresentando, periodicamente, relatório atualizado do estado clínico do paciente, com informações detalhadas sobre o progresso do tratamento, incluindo melhorias, estabilizações ou deteriorações no estado de saúde do paciente, assim como qualquer mudança relevante no plano terapêutico.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> VI. MEDICAMENTOS INCORPORADOS</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 6) Em relação aos medicamentos incorporados, conforme conceituação estabelecida no âmbito da Comissão Especial e constante do Anexo I, os Entes concordam em seguir o fluxo administrativo e judicial detalhado no Anexo I, inclusive em relação à competência judicial para apreciação das demandas e forma de ressarcimento entre os Entes, quando devido.</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 6.1) A(o) magistrada(o) deverá determinar o fornecimento em face de qual ente público deve prestá-lo (União, Estado, Distrito Federal ou Município), nas hipóteses previstas no próprio fluxo acordado pelos Entes Federativos, integrantes do presente acórdão.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Há de se observar que tanto as súmulas vinculantes quanto os referidos precedentes são de observância obrigatória por juízes e Tribunais (Art. 927, incisos II e III, do CPC/15), tendo, pois, a plicação imediata sobre os casos ainda não definitivamente julgados.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Registre-se, outrossim, que, até o presente momento, não se tem notícias acerca de eventual modulação dos efeitos do Tema 6.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Desse modo, considerando a necessidade de atender a novos requisitos

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	probatórios estabelecidos por comandos vinculantes, que atribuem o ônus da prova ao autor, entendo ser o caso de anular a sentença quanto ao pleito para fornecimentos dos medicamentos requeridos na exordial, uma vez que, na hipótese dos autos, o magistrado fundamenta a sua decisão exclusivamente no relatório médico acostado aos autos pelo autor da ação, sem, contudo, aferir a presença dos requisitos de dispensação dos medicamentos previsto no item 2 do Tema 6, a partir da prévia consulta ao Núcleo de Apoio Técnico do Poder Judiciário - NATJUS, ou analisar o ato administrativo comissivo ou omissivo de não incorporação pela CONITEC quanto ao medicamento não incorporado ou da negativa de fornecimento da via administrativa.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por derradeiro, urge ressaltar que ao caso não se aplica a teoria da causa madura (Art. 1.013, §3º, do CPC/15). Isso porque, antes da prolação do novo provimento jurisdicional, o demandante deve ser intimado para acostar lastros probatórios aptos a comprovar o preenchimento dos requisitos exigidos pelos Temas 6 e 1234 e, seguidamente, ser oportunizado à parte contrária o exercício do contraditório, garantindo, assim, o devido processo legal e a ampla defesa.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Pelo exposto, voto no sentido de ANULAR, de ofício, a sentença recorrida em relação ao pleito para fornecimento dos medicamentos requeridos na inicial, determinando o retorno dos autos à origem para seguimento da contenda nos termos indicados acima, ficando prejudicado, pois, o julgamento do recurso do Município de Santa Quitéria.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> &#160; Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	130
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Fraldas

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Polo ativo	PROCURADORIA GERAL DO ESTADO DO CEARÁ MUNICIPIO DE QUIXERE ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA DA CONCEICAO DA CUNHA
Advogado(s) - Polo passivo	MARIA JESSICA DA SILVA PAZ - (CE42493-A) FRANCISCA MICAELE SANTIAGO LIMA - (CE43593-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTlkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjen6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MllGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kzE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGlI9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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align: center;" align="center">   <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">ESTADO DO CEARÁ </p><p
style="margin: 0cm; text-align: center;" align="center">   <span style="font-size:
13.0pt; font-family: &quot;Arial&quot;,sans-serif; color: black;">PODER
JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;"
align="center">   <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">TRIBUNAL DE JUSTIÇA
</p><p style="margin: 0cm; text-align: center;" align="center">   GABINETE
DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO
</p><p style="text-align: center;" align="center"> <span style="font-size: 8.5pt;
font-family: &quot;Arial&quot;,sans-serif; color: black;">&#160;</p><p style="text-
align: left;">&#160;</p><p style="text-align: left;"> <span style="font-size: 13.5pt; font-
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Verdana, sans-serif; font-size: 11px;">   <span style="font-size: 13.5pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">Processo: <span
style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">&#160;3000837-05.2023.8.06.0115 </p><p style="text-align:
left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">   <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">[Fraldas] </p><p style="text-align: left;"> <span style="font-size:
13.5pt; font-family: &quot;Arial&quot;,sans-serif; color: black;">   <span style="font-size:
13.5pt; font-family: &quot;Arial&quot;,sans-serif; color: black;">REMESSA NECESSÁRIA
CÍVEL </p><p style="text-align: left;"> <span style="font-size: 13.5pt;
font-family: &quot;Arial&quot;,sans-serif; color:
black;">Recorrente:&#160;PROCURADORIA GERAL DO ESTADO DO CEARÁ e
outros</p><p style="text-align: left;"> <span style="font-size: 13.5pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">Recorrido:&#160;MARIA DA CONCEICAO DA
CUNHA</p><p style="text-align: left;">&#160;</p><p class="MsoNormal"
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widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt:
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ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-
autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 200%;
orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify">
    <span style="color:
#000000;">   <span style="font-family: Arial,
serif;">
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                       <span style="text-
decoration: none;">   <span style="font-
size: small;">
menta
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none;">

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	   : Direito Processual civil. Direito à saúde. Reexame necessário. Ação ordinária para compelir o Estado do Ceará e o Município de Quixeré a fornecer suplemento enteral e insumos de saúde . D ispensa do duplo grau de jurisdição. Art. 496, §3º, inciso II, do cpc. Não conhecimento do reexame. Sentença mantida. <span style="color:

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	#000000;"> I. Caso em exame <br /> 1. R emessa necessária de sentença que condenou o Estado do Ceará e o Município de Quixeré no fornecimento de suplemento nutricional enteral e insumos e equipos de saúde. </p><p style="font-variant: small-caps; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> II. Questão em discussão </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 2. A questão a ser dirimida consiste em saber se, diante da iliquidez da sentença e do valor estimado da condenação estar abaixo do limite legal, é cabível a dispensa do reexame necessário. </p><p class="western" style="font-variant: small-caps; line-height: 150%; margin-bottom: 0cm;" align="justify"> III. Razões de decidir </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> 3 . Atualmente, ainda se encontra em vigor a Súmula nº 490 do STJ, pela qual “a dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas”. Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC,

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	permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. <br /> IV. Dispositivo </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 4. Remessa necessária não conhecida, mantendo-se a sentença. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> ________ </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Dispositivos relevantes citados: CPC/2015, art. 496, §3º, III. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Jurisprudência relevante citada: AgInt no REsp n. 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022 e AgInt no AREsp n. 1.969.907/TO, relator Ministro Herman Benjamin, Segunda Turma, julgado em 11/4/2022, DJe de 25/4/2022. </p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0.6cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em não conhecer do reexame necessário, tudo nos termos do voto do relator, parte integrante deste. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> F ortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> <br /> <br /></p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p

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	class="western" style="font-variant: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm; page-break-before: auto;" align="justify"> Tem-se reexame necessário da sentença que julgou parcialmente procedente prolatada pelo juízo da 2 ª Vara Cível da Comarca de Limoeiro do Norte em Ação de Obrigação de Fazer c/c Pedido de Tutela Provisória de Urgência , que confirmou a tutela antecipada concedida, para determinar que o Estado do Ceará e o Município de Quixerê forneçam à parte autora fórmula enteral polimérica, hiperproteica com densidade calórica de 1,5 Kcal/ml, isenta da lactose, sacarose e glúten, com volume de 130ml, sem necessidade de marca específica . </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm; background: transparent; page-break-before: auto;" align="justify"> Sentença: julgou parcialmente procedente o pleito autoral , considerando que restou comprovada a necessidade da autora quanto à utilização da alimentação enteral e insumos para administração da dieta pleiteados e o dever dos entes públicos de fornecer <span

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	style="font-style: normal;"> . </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm;" align="justify"> Parecer da PGJ: manifesta-se pe lo conhecimento e não provimento do reexame necessário. </p><p style="letter-spacing: 0.6pt; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> É o relatório, no essencial. </p><p style="letter-spacing: 0.6pt; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0.21cm; background: transparent;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify"> Conforme se observa o juízo a quo consignou: “ Sentença sujeita à Remessa Necessária, nos termos do art. 496 do CPC ” . </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify"> Todavia, não obstante o entendimento do juízo a quo , a demanda não alcança o valor de alçada para reexame obrigatório que, na situação, dos autos é de 5 <span

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	style="color: #000000;"> 00 (quinhentos) salários mínimos para o Estado do Ceará e 100 (cem) salários mínimos para o Município de Quixeré , inclusive este é posicionamento das três câmaras de Direito Público deste e.TJCE, explico. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> I - proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> § 3º Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> II - 500 (quinhentos) salários-mínimos para os Estados , o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Em se tratando de sentença ilíquida, poder-se-ia pensar, a princípio, ser o caso de aplicação, no caso concreto, da Súmula 490 do STJ, cujo enunciado prevê que “ A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas ”. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o <span style="text-

Processo	3000837-05.2023.8.06.0115
	decoration: none;">decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Nesse sentido, os seguintes precedentes do STJ, in verbis : </p><p class="western" style="line-height: 200%; text-indent: 2.49cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> PROCESSUAL CIVIL. RECURSO ESPECIAL. ENTE ESTADUAL. REEXAME NECESSÁRIO. VALOR DE ALÇADA. PROVEITO ECONÔMICO DA DEMANDA. PARÂMETRO PARA AFASTAMENTO DA ILIQUIDEZ. POSSIBILIDADE . 1. "Aos recursos interpostos com fundamento no CPC/1973 (relativos a decisões publicadas até 17 de março de 2016) devem ser exigidos os requisitos de admissibilidade na forma nele prevista, com as interpretações dadas, até então, pela jurisprudência do Superior Tribunal de Justiça" (Enunciado Administrativo n. 2 - STJ). 2. De acordo com o disposto no art. 475, I, § 2º, do CPC/1973, a sentença cuja condenação, ou o direito controvertido, não ultrapasse o valor correspondente a 60 (sessenta) salários-mínimos, não está sujeita ao reexame necessário. 3. O entendimento consolidado na Súmula 490 do STJ pode ser relativizado nas hipóteses em que o proveito econômico buscado na demanda servir como parâmetro balizador ao afastamento da iliquidez da sentença. 4. Hipótese em que o Tribunal de origem ratificou que o direito controvertido na ação de cobrança não supera, de forma manifesta, o patamar de 60 (sessenta) salários-mínimos, quantia tida como alçada pela legislação processual para tornar obrigatória a remessa necessária da sentença proferida em desfavor do ente estatal. 5. Agravo interno não provido. GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) </p><p class="western" style="font-weight: normal; line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> No mesmo sentido, é o entendimento das três Câmaras de Direito Público deste e.TJCE: </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> CONSTITUCIONAL E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO. PROVEITO ECONÔMICO DECORRENTE DA CONDENAÇÃO INFERIOR AOS VALORES DO ARTIGO 496, INCISO II DO CPC. REEXAME NECESSÁRIO NÃO CONHECIDO. FORNECIMENTO DE LEITO. DEMANDA AJUIZADA CONTRA O ESTADO DO CEARÁ. HONORÁRIOS ADVOCATÍCIOS. PAGAMENTO EM FAVOR DA DEFENSORIA PÚBLICA ESTADUAL. NÃO CABIMENTO. INCIDÊNCIA DA SÚMULA 421 E DO RECURSO ESPECIAL Nº 1199715/RJ, JULGADO NA SISTEMÁTICA DOS RECURSOS REPETITIVOS (TEMA 433), AMBOS DO SUPERIOR TRIBUNAL DE JUSTIÇA. SENTENÇA EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ E DESTA CORTE ESTADUAL.

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	MANUTENÇÃO. REMESSA NECESSÁRIA NÃO CONHECIDA. APELO CONHECIDO E DESPROVIDO. 1. Revela-se dispensável a remessa necessária quando o proveito econômico decorrente da condenação é inferior ao valor expresso no inciso II do § 3º do artigo 496 do CPC, que constitui exceção ao duplo grau de jurisdição obrigatório. Precedentes. 2. São indevidos honorários sucumbenciais pelo Estado do Ceará à Defensoria Pública Estadual. Inteligência da Súmula 421 do Superior Tribunal de Justiça e do Recurso Especial nº 1199715/RJ, repetitivo (Tema 433), do STJ. 3. Os arestos proferidos após a Lei Complementar Federal nº 132/2009 mostram-se atualizados e estão baseados na tese de que a Defensoria Pública é parte integrante da estrutura orgânica do Estado e com ele se confunde. As autonomias funcional e administrativa tratadas no art. 4º, XXI, da Lei Orgânica Nacional da Defensoria Pública e no art. 134, § 2º, da Constituição Federal não possuem aptidão para afastar a sua qualidade de órgão vinculado ao Poder Executivo do ente federativo que a instituiu, não lhe sendo permitido cobrar honorários a este, sob pena de confusão entre devedor e credor. 4. Remessa necessária não conhecida. Apelação conhecida e desprovida. ACÓRDÃO Vistos, relatados e discutidos estes autos, acordam os Desembargadores integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por julgamento de Turma e decisão unânime, em não conhecer da remessa necessária e conhecer da apelação para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 08 de novembro de 2021. DESEMBARGADOR FERNANDO LUIZ XIMENES ROCHA Relator (Apelação / Remessa Necessária - 0000833-80.2018.8.06.0119, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 08/11/2021 , data da publicação: 08/11/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> RECURSOS OFICIAL E APELATÓRIO EM AÇÃO DECLARATÓRIA C/C OBRIGAÇÃO DE PAGAR QUANTIA CERTA. VENCIMENTOS INFERIORES AO MÍNIMO NACIONAL. IMPOSSIBILIDADE. CONDENAÇÃO INFERIOR A 100 (CEM) SALÁRIOS-MÍNIMOS. APURAÇÃO POR SIMPLES CÁLCULO ARITMÉTICO. REMESSA NECESSÁRIA NÃO CONHECIDA. RECURSO APELATÓRIO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O Código de Processo Civil, em seu art. 496, § 3º, inciso III, estabelece que não há reexame necessário quando o valor da condenação for inferior a 100 (cem) salários-mínimos, tratando-se dos Municípios e respectivas autarquias e fundações de direito público. 2. Assim, diante dos precisos parâmetros indicados para a apuração do valor da condenação, é possível concluir, por simples cálculo aritmético, que será muito inferior ao patamar legal previsto para dispensa da remessa necessária, impondo a aplicação da respectiva norma (art. 496, § 3º, inciso III, do CPC). 3. Recurso apelatório conhecido e provido. Remessa Necessária não conhecida. Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, conhecer do Recurso Apelatório, para dar-lhe provimento, não conhecendo da Remessa Necessária, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data registrada no sistema. FRANCISCO GLADYSON PONTES Relator(Apelação / Remessa Necessária - 0008365-65.2019.8.06.0121, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 15/12/2021 , data da publicação: 16/12/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <span

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	style="font-size: x-small;"> REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. PROCESSUAL CIVIL. CONSTITUCIONAL. AÇÃO DE OBRIGAÇÃO DE FAZER. FORNECIMENTO DE MEDICAÇÃO EM QUANTIDADE PREVIAMENTE DETERMINADA. CONDENAÇÃO EM VALOR INFERIOR A 500 SALÁRIOS-MÍNIMOS. OBSERVÂNCIA DO ART. 496, §3º, II E III DO CPC. NÃO CONHECIMENTO DO REEXAME NECESSÁRIO. <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-weight: normal;">APELAÇÃO CÍVEL. PROCESSUAL CIVIL. AÇÃO DE OBRIGAÇÃO DE FAZER. CONDENAÇÃO DO ENTE MUNICIPAL EM HONORÁRIOS ADVOCATÍCIOS. POSSIBILIDADE. APRECIAÇÃO EQUITATIVA. VALOR INESTIMÁVEL DA CAUSA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Trata o caso de apelação cível em ação ordinária por meio da qual se busca a realização do fornecimento de injeções intravítrea de BEVACIZUMAB e fotocoagulação a laser, conforme prescrição médica. 2. Fornecimento de medicamento em quantidade previamente determinada, não alcançando 500 (quinhentos) salários-mínimos, razão pela qual o não conhecimento do reexame necessário é medida que se impõe. 3. Nesse contexto, tendo em vista tratar-se de causa de valor inestimável (direito à saúde), é imperioso ajustar a verba honorária a patamares razoáveis, com fulcro no mencionado §8º do art. 85 do CPC, na medida em que a fixação de honorários no montante de R$ 200,00 (duzentos reais) não valora adequadamente o trabalho desenvolvido. 4. Destarte, merece acolhimento a pretensão de majoração dos honorários advocatícios arbitrados, razão pela qual arbitro o valor de R$ 800,00 (oitocentos reais), porquanto razoável e adequado à remuneração do serviço prestado. - Precedentes do STF, STJ e desta egrégia Corte de Justiça. - Reexame Necessário não conhecido. - Apelação conhecida e parcialmente provida. - Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0001031-18.2019.8.06.0173, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do reexame necessário e conhecer da apelação interposta, para dar parcial provimento a esta última, reformando em parte a sentença, tão somente para reformar a sentença no tocante aos honorários sucumbenciais, nos termos do voto da Relatora. Fortaleza, 31 de janeiro de 2022 DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora(Apelação / Remessa Necessária - 0001031-18.2019.8.06.0173, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE , 3ª Câmara Direito Público, data do julgamento: 31/01/2022, data da publicação: 31/01/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nesse sentido ainda, o seguinte precedente da relatoria do iminente Desembargador FRANCISCO LUCIANO LIMA RODRIGUES: (Apelação/Remessa Necessária - 0000044-89.2014.8.06.0194, 3ª Câmara Direito Público, data do julgamento: 07/02/2022, data da publicação: 08/02/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A matéria é, inclusive, objeto de exame na Corte Superior, sob o regime dos Recursos Repetitivos, Tema 1081 (REsp 1882236/RS, REsp 1893709/RS e REsp 189466/SC), ainda pendente de julgamento, que tem por objetivo “Definir se a demanda previdenciária cujo valor da condenação seja aferível por simples cálculos aritméticos deve ser dispensada da remessa necessária, quando for possível estimar que será inferior ao montante previsto no artigo 496, § 3º, inc. I do Código de Processo Civil” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Dos precedentes acima citados, transcrevo, por pertinente, trecho do voto do Ministro Og Fernandes em que o magistrado destaca "Importante frisar que não se propõe o cancelamento da Súmula nº 490/STJ, mas

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	sim a delimitação da sua aplicação ou não à demanda presente e às similares” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Deste modo, embora a condenação do Município e do Estado não tenha sido em valor líquido, certamente não ultrapassará o valor de 5 00 (quinhentos) salários-mínimos, levando-se em conta o proveito econômico obtido. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Em outras palavras, o proveito econômico obtido, ainda que ilíquido, é mensurável, de modo que não se alcançará valor superior a 500 (quinhentos) salários-mínimos (referente ao teto previsto no art. 496, § 3º, inciso II, do CPC). </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nestes termos, não conheço do reexame necessário, mantendo a sentença de primeiro grau em todos os seus termos, com fulcro no art. 932, III , do Código de Processo Civil/2015 </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> É como voto. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent; page-break-before: auto;" align="justify"> Fortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent;" align="justify"> <br /> <br /></p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify">&#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	131
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Posturas Municipais
Polo ativo	ANN CELLY SAMPAIO CAVALCANTE MINISTERIO PUBLICO DO ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MUNICIPIO DE FORTALEZA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	Ministério Público do Estado do Ceará contra decisão que deferiu o pedido do Município de Fortaleza para migrar do polo passivo para o ativo em ação civil pública.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A ação principal visa a interdição de estabelecimento de particular, também demandado, que, segundo a parte autora, opera sem alvará de localização e registro sanitário. <br /> 3. O Ministério Público alega que a permanência do Município no polo passivo é essencial para garantir a efetividade das medidas administrativas exigidas.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I I. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Há duas questões em discussão: (i) definir se o Município de Fortaleza pode migrar do polo passivo para o ativo da ação civil pública; (ii) estabelecer se tal migração atende ao interesse público, conforme exigido pela legislação aplicável.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. A habilitação do ente público como litisconsorte ativo pressupõe que o ente ainda não seja parte na demanda. O Município, ora agravado, porém, já figura como réu desde a citação.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. A atuação do ente público ao lado do autor, nos termos da Lei de Ação Popular, é permitida, desde que demonstrada a utilidade ao interesse público, o que não foi demonstrado pelo Município.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. A jurisprudência do Superior Tribunal de Justiça admite a migração de entes públicos do polo passivo para o ativo em ações civis públicas apenas quando o ente público comprovar que exerceu sua autotutela administrativa e adotou medidas efetivas para sanar as ilegalidades. Todavia, o Município não apresentou provas de tais medidas. <br /> 8. A ausência dos requisitos para a responsabilização do Município é questão de mérito e não pode ser decidida neste agravo de instrumento.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-

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	weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">9. Recurso provido.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ______</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos relevantes citados : CPC, art. 1.015, IX; Lei nº 7.347/85, art. 5º, § 2º; Lei nº 4.717/65, art. 6º, § 3º.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> Jurisprudência relevante citada : STJ, Tema 988 de recursos repetitivos; STJ, REsp nº 1.391.263/SP, rel. Min. Herman Benjamin, Segunda Turma, julgado em 6/5/2014, DJe de 7/11/2016. &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do agravo de instrumento, para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <br /> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO <br /> Relator &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Tem-se agravo de instrumento interposto pelo Ministério Público do Estado do Ceará contra decisão proferida pelo juízo da 14ª Vara da Fazenda Pública da Comarca de Fortaleza, na ação civil pública de nº 0172594-48.2018.8.06.0001, ajuizada pelo agravante em face do Município de Fortaleza e de Edmeire Alves Tavares.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">O processo principal (id 14951275 dos autos originais): o Ministério Público pede a condenação do Município de Fortaleza a realizar a interdição do estabelecimento da segunda demandada, por não apresentar o alvará de localização e funcionamento, nem o registro sanitário. Pede ainda a condenação de Edmeire Alves Tavares à obrigação de apresentar alvará de localização e funcionamento.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr"> Em sede de contestação, o Município sustentou sua ilegitimidade passiva e requereu sua habilitação como litisconsorte ativo.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">A decisão agravada (id 14951276): o juízo de origem deferiu o pedido formulado pelo Município de Fortaleza, no sentido de incluí-lo no polo ativo desta demanda.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr">&#160;Agravo de instrumento (id 14951274): a Promotoria de Justiça requereu a reforma da decisão, não se permitindo a migração do Município para o polo ativo da lide, por entender que a Fazenda Pública deve figurar no polo passivo da demanda, a fim de ser obrigada a adotar as medidas administrativas que lhe competem no exercício do poder de polícia.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 5pt;" dir="ltr"> Despacho de id 14956766 : ante a inexistência de pedido de efeito suspensivo, determinou a formação do contraditório e, em seguida, vista à Procuradoria de Justiça.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Contrarrazões (id 15151169): o Município de Fortaleza defendeu a sua faculdade de migrar do polo passivo para o ativo, pois “o interesse do Município não é confrontante com o <span style="font-size: 13pt; font-family: Arial,sans-serif; color:

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	#000000; background-color: #ffffff; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Parquet, mas coincidente”. Sustentou que não estão preenchidos os requisitos da responsabilidade civil da Administração, apenas dos particulares. Requereu o não provimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Parecer da Procuradoria de Justiça ratificando as razões recursais (id 15493912).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> É o relatório. &#160; </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 2pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Preenchidos os requisitos de admissibilidade, conheço do agravo de instrumento, com base no art. 1.015, IX do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Admito o recurso também, em razão da tese firmada pelo STJ quanto ao Tema 988 de recursos repetitivos de que o rol do art. 1.015 do CPC é de taxatividade mitigada, “por isso admite a interposição de agravo de instrumento quando verificada a urgência decorrente da inutilidade do julgamento da questão no recurso de apelação”.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Há urgência no caso, pois, depois da causa já sentenciada, será inútil decidir sobre em qual polo da demanda o Município deve atuar.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> A condição sob a qual a Fazenda Pública litiga neste processo informa qual é o objeto da lide e qual será a dinâmica da linha de defesa das partes, inclusive quanto à produção de provas, razão pela qual a controvérsia deve ser dirimida de imediato, tamanha é a sua capacidade de impactar o julgamento da ação.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Admitido o agravo de instrumento, passo à análise do seu mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> O recurso comporta provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Sim, o Município tem a liberdade de requerer sua habilitação como litisconsorte de qualquer das partes, por força do art. 5º, § 2º, da Lei Federal nº 7.347/85 (Lei da Ação Civil Pública).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-

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	variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Mas a habilitação pressupõe que o Município ainda não é parte do processo, o que não é o caso do recorrido, pois, ao ser citado, já passou a figurar como réu na demanda.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Também é verdade que a Lei de Ação Popular, aplicável com base no microssistema de tutela coletiva, permite que a pessoa jurídica de direito público cujo ato seja objeto de impugnação possa atuar ao lado do autor.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Contudo, a lei impõe uma condição: isso deve se afigurar útil ao interesse público, a juízo do respectivo representante legal ou dirigente (art. 6º, § 3º, da Lei Federal nº 4.717/65).</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> O Município, portanto, teria que demonstrar a utilidade ao interesse público primário na sua migração para o polo ativo, e não apenas à sua defesa.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> A Fazenda Pública municipal, porém, não se desincumbiu de mostrar que pode somar forças ao Ministério Público.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> A jurisprudência do Superior Tribunal de Justiça admite a possibilidade do Poder Público migrar do polo passivo para o ativo da demanda nas ações civis públicas, desde que prove que exerceu a autotutela administrativa e corrigiu o ato ilegal que lhe foi atribuído. Confira-se, senão a seguinte ementa, do STJ:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> AÇÃO CIVIL PÚBLICA. NULIDADE DE AUTORIZAÇÃO E LICENÇA AMBIENTAL. RESPONSABILIDADE DO ESTADO. LITISCONSÓRCIO PASSIVO FACULTATIVO. MIGRAÇÃO DE ENTE PÚBLICO PARA O POLO ATIVO. INTERESSE PÚBLICO. POSSIBILIDADE.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Trata-se, na origem, de Ação Civil Pública ajuizada pelo Ministério Público do Estado de São Paulo contra a Fazenda Pública do mesmo Estado para discutir a declaração de nulidade de licenças ambientais expedidas pelo DEPRN que autorizaram, ilegalmente, a intervenção em Área de Preservação Permanente.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. A jurisprudência do STJ é no sentido de que o deslocamento de pessoa jurídica de Direito Público do polo passivo para o ativo na Ação Civil Pública é possível quando presente o interesse público, a juízo do representante legal ou do dirigente, nos moldes do art. 6º, § 3º, da Lei 4.717/1965, combinado com o art. 17, § 3º, da Lei de Improbidade Administrativa.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. O Estado responde - em regime jurídico de imputação objetiva e solidária, mas de execução subsidiária - pelo dano ambiental causado por particular que se valeu de autorização ou licença ilegalmente expedida, cabendo ao autor da Ação Civil Pública, como é próprio da solidariedade e do litisconsórcio passivo facultativo, escolher o réu na relação processual em formação. Se a ação é

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	movida simultaneamente contra o particular e o Estado, admite-se que este migre para o polo ativo da demanda. A alteração subjetiva, por óbvio, implica reconhecimento implícito dos pedidos, sobretudo os de caráter unitário (p. ex., anulação dos atos administrativos impugnados), e só deve ser admitida pelo juiz, em apreciação ad hoc, quando o ente público demonstrar, de maneira concreta e indubitável, que de boa-fé e eficazmente tomou as necessárias providências saneadoras da ilicitude, bem como medidas disciplinares contra os servidores ímprobos, omissos ou relapsos.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. No presente caso ficou assentado pelo Tribunal de Justiça que o Estado de São Paulo embargou as obras do empreendimento e instaurou processo administrativo para apurar a responsabilidade dos agentes públicos autores do irregular licenciamento ambiental. Também está registrado que houve manifesto interesse em migrar para o polo ativo da demanda.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Recurso Especial provido.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (REsp n. 1.391.263/SP, relator Ministro Herman Benjamin, Segunda Turma, julgado em 6/5/2014, DJe de 7/11/2016, grifo inexistente no original)</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Somente nessas condições, pode-se dizer que a migração atende ao interesse público.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Essa baliza é necessária, pois a possibilidade de atuar como litisconsorte ativo tem como finalidade ajudar o demandante, e não prejudicá-lo. O instituto não serve como estratégia para que o Poder Público escape a uma condenação na ação coletiva, mas para incrementar as chances de sucesso da parte autora.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Se o Município deseja atuar ao lado do Ministério Público, é porque concorda com o pedido; cabia, portanto, ao agravado provar que adotou alguma medida, a exemplo da interdição.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Todavia, o Município nada apresentou nesse sentido e requereu apenas de forma genérica sua migração.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Há notícia de que a Administração municipal expediu notificação em desfavor da particular, mas não foi apenas isso que o Ministério Público pediu. O que o demandante quer é que o Município não apenas notifique, mas aja sobre o patrimônio da particular, a fim de obrigá-la a se ajustar à lei aplicável.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Por fim, eventual ausência dos requisitos da responsabilização do Município diz respeito ao mérito da causa.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13pt; font-family: Arial,sans-serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-

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	decoration: none; vertical-align: baseline; white-space: pre-wrap;">A questão deve ser apreciada no julgamento da demanda, e não neste recurso, que se presta apenas a decidir se a Fazenda Pública é autora ou ré.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Somente na sentença, é que se decidirá se o Município, na condição de réu, deve ou não ser condenado por eventual omissão no exercício do poder de polícia.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 8pt; margin-bottom: 6pt;" dir="ltr"> Diante do exposto, conheço do agravo de instrumento, para dar-lhe provimento e indeferir o pedido de migração do Município de Fortaleza do polo passivo para o ativo.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o voto que submeto à consideração de meus pares.</p><p style="line-height: 1.7999999999999998; text-indent: 43pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data informada pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO <br /> Relator</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	132
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Registro de Empresa
Polo ativo	WERMITE DE SOUSA SILVA TRANSPORTES
Advogado(s) - Polo ativo	FRANCISCA MICHELE DA SILVA FELIX - (CE42448-A) RONIERE VIEIRA PASSOS - (CE42379-A)
Polo passivo	MUNICIPIO DE MARACANAU Procuradoria do Município de Maracanaú
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<img style="font-size: medium;" 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	size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">questão em discussão consiste na possibilidade de não conhecimento da Remessa Necessária quando aferível o valor da condenação ou do proveito econômico.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">3. Em homenagem aos princípios da eficiência e da celeridade, que sempre devem pautar a atuação do Poder Judiciário na busca pela razoável duração do processo, tem sido admitida a relativização da aplicação da Súmula nº 490 do STJ, quando, apesar de aparentemente ilíquido, o valor da condenação ou do proveito econômico, in concreto, puder ser aferido sem maior esforço e, indiscutivelmente, não alcançar o teto apontado pelo CPC/2015, para fins de submissão da sentença ao duplo grau de jurisdição.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">4. No presente caso, o proveito, econômico obtido pela autora se mostra perfeitamente mensurável, até mesmo pelo valor da causa (R$ 5.000,00) e, com absoluta certeza, será inferior a 100 (cem) salários-mínimos (CPC/2015, art. 496, § 3º, inciso II), ainda que corrigido e atualizado monetariamente.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">IV. Dispositivo e Tese</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">5. Remessa Necessária não conhecida. Sentença mantida.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> _________</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Dispositivo relevante citado: CPC, art. 496, §3.</p><p style="line-height:1.38;margin-left:

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	128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgInt no REsp 1542426/MG; Rel. Min. Gurgel de Faria, Primeira Turma, j. 08/10/2019; STJ, REsp 1735097/RS, Rel. Min. Gurgel de Faria, Primeira Turma, j. 08/10/2019; Apelação Cível e Remessa Necessária 0008365-65.2019.8.06.0121, Rel. Desembargador(a) Francisco Gladyson Pontes, 2ª Câmara Direito Público, j. 15/12/2021.</p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p align="center"> &#160;</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Reexame Necessário nº 3001737-45.2024.8.06.0117, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do reexame necessário, mantendo inalterada a sentença, por seus próprios fundamentos, nos termos do voto da e. Relatora.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO <strong style="font-size: small;">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Cuida-se, na espécie, de reexame necessário, adversando sentença proferida pelo magistrado de primeiro grau, que deu total procedência a ação ordinária (Processo nº 3001737-

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	45.2024.8.06.0117).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">O caso/a ação originária: WS Transportes ME moveu ação anulatória com pedido liminar em face do município de Maracanaú/CE, aduzindo ser microempresário inscrito no Simples Nacional desde 21/02/2022 e que, em 31/01/2024, foi comunicado sobre a exclusão de sua empresa do Simples Nacional por estar com pendências junto ao Município de Maracanaú.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Relata, contudo, que as pendências foram sanadas em 11/01/2024, no valor de R$ 176,82 (cento e setenta e seis reais e oitenta e dois centavos), antes mesmo do prazo final para regularização, razão pela qual não existiria motivo para sua exclusão do Simples Nacional.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Assim, pugna pelo deferimento da liminar para suspender o ato administrativo que excluiu sua empresa do Simples Nacional. Ao final, requer a procedência da ação.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr">Apesar de devidamente citado, o Município de Maracanaú deixou transcorrer in albis o prazo para apresentar contestação, consoante certidão (ID 14960769).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">A Sentença (ID 14960770): o Juízo a quo concluiu pela total procedência da ação ordinária. Transcrevo seu dispositivo, no que interessa:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">"Diante do exposto e à luz das demais regras e princípios atinentes à espécie, julgo procedente o pedido autoral, para declarar a nulidade do ato administrativo que excluiu a empresa autora do Simples Nacional, determinando a extinção do feito com resolução de mérito, nos termos do artigo 487, I, do Código de Processo Civil.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Sem custas, face o condenado ser a Fazenda Pública Municipal.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Condeno o Município de Maracanaú/CE ao pagamento de honorários advocatícios no valor de dez por cento sobre o valor atualizado da causa..” (sic).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 9pt;" dir="ltr">Não houve interposição de recursos .</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria-Geral de Justiça (ID 15406705) opinando pelo não conhecimento do reexame necessário e, na hipótese de conhecimento, pela manutenção da sentença recorrida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">É o relatório.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">No presente caso, o Juízo a quo, em seu decisum, concluiu pela total procedência da ação de ordinária, declarando a nulidade do ato administrativo que excluiu a empresa autora do Simples Nacional.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Ora, esta Relatora

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	não desconhece que, atualmente, ainda se encontra em vigor a Súmula nº 490 do STJ, segundo a qual: “A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas”.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">Sucede que o CPC/2015 elevou, e muito, os limites mínimos estabelecidos para se impor a obrigatoriedade da confirmação da sentença pelo Tribunal, em caso de condenação da Fazenda Pública, ex vi:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> (...)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">§ 3 o Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> I - 1.000 (mil) salários-mínimos para a União e as respectivas autarquias e fundações de direito público;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> II - 500 (quinhentos) salários-mínimos para os Estados, o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público. ” (destacado)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align:

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	justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Daí por que, em homenagem aos princípios da eficiência e da celeridade, que sempre devem pautar a atuação do Poder Judiciário na busca pela razoável duração do processo, tem sido admitida a relativização da aplicação da Súmula nº 490 do STJ, quando, apesar de aparentemente ilíquido, o valor da condenação ou do proveito econômico, in concreto, puder ser aferido sem maior esforço e, indiscutivelmente, não alcançar o teto apontado pelo CPC/2015, para fins de submissão da sentença ao duplo grau de jurisdição, in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">“PROCESSUAL CIVIL. RECURSO ESPECIAL. ENTE ESTADUAL. REEXAME NECESSÁRIO. VALOR DE ALÇADA. PROVEITO ECONÔMICO DA DEMANDA. PARÂMETRO PARA AFASTAMENTO DA ILIQUIDEZ. POSSIBILIDADE. 1. "Aos recursos interpostos com fundamento no CPC/1973 (relativos a decisões publicadas até 17 de março de 2016) devem ser exigidos os requisitos de admissibilidade na forma nele prevista, com as interpretações dadas, até então, pela jurisprudência do Superior Tribunal de Justiça" (Enunciado Administrativo n. 2 - STJ). 2. De acordo com o disposto no art. 475, I, § 2º, do CPC/1973, a sentença cuja condenação, ou o direito controvertido, não ultrapasse o valor correspondente a 60 (sessenta) salários-mínimos, não está sujeita ao reexame necessário. 3. O entendimento consolidado na Súmula 490 do STJ pode ser relativizado nas hipóteses em que o proveito econômico buscado na demanda servir como parâmetro balizador ao afastamento da iliquidez da sentença. 4. Hipótese em que o Tribunal de origem ratificou que o direito controvertido na ação de cobrança não supera, de forma manifesta, o patamar de 60 (sessenta) salários-mínimos, quantia tida como alçada pela legislação processual para tornar obrigatória a remessa necessária da sentença proferida em desfavor do ente estatal. 5. Agravo interno não provido.” (STJ - AgInt no REsp 1542426/MG; Relatro: Min. GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) (destacado)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> * * * * *</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">PROCESSUAL CIVIL E PREVIDENCIÁRIO. NEGATIVA DE PRESTAÇÃO JURISDICIONAL. INEXISTÊNCIA. SENTENÇA ILÍQUIDA. CPC/2015. NOVOS PARÂMETROS. CONDENAÇÃO OU PROVEITO ECONÔMICO INFERIOR A MIL SALÁRIOS MÍNIMOS. REMESSA NECESSÁRIA. DISPENSA. [...] 3. A controvérsia cinge-se ao cabimento da remessa necessária nas sentenças ilíquidas proferidas em desfavor da Autarquia Previdenciária após a entrada em vigor do

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	Código de Processo Civil/2015. 4. A orientação da Súmula 490 do STJ não se aplica às sentenças ilíquidas nos feitos de natureza previdenciária a partir dos novos parâmetros definidos no art. 496, § 3º, I, do CPC/2015, que dispensa do duplo grau obrigatório as sentenças contra a União e suas autarquias cujo valor da condenação ou do proveito econômico seja inferior a mil salários mínimos. 5. A elevação do limite para conhecimento da remessa necessária significa uma opção pela preponderância dos princípios da eficiência e da celeridade na busca pela duração razoável do processo, pois, além dos critérios previstos no § 4º do art. 496 do CPC/15, o legislador elegeu também o do impacto econômico para impor a referida condição de eficácia de sentença proferida em desfavor da Fazenda Pública (§ 3º). 6. A novel orientação legal atua positivamente tanto como meio de otimização da prestação jurisdicional - ao tempo em que desafoga as pautas dos Tribunais - quanto como de transferência aos entes públicos e suas respectivas autarquias e fundações da prerrogativa exclusiva sobre a rediscussão da causa, que se dará por meio da interposição de recurso voluntário. 7. Não obstante a aparente iliquidez das condenações em causas de natureza previdenciária, a sentença que defere benefício previdenciário é espécie absolutamente mensurável, visto que pode ser aferível por simples cálculos aritméticos, os quais são expressamente previstos na lei de regência, e são realizados pelo próprio INSS. 8. Na vigência do Código Processual anterior, a possibilidade de as causas de natureza previdenciária ultrapassarem o teto de sessenta salários mínimos era bem mais factível, considerado o valor da condenação atualizado monetariamente. 9. Após o Código de Processo Civil/2015, ainda que o benefício previdenciário seja concedido com base no teto máximo, observada a prescrição quinquenal, com os acréscimos de juros, correção monetária e demais despesas de sucumbência, não se vislumbra, em regra, como uma condenação na esfera previdenciária venha a alcançar os mil salários mínimos, cifra que no ano de 2016, época da propositura da presente ação, superava R$ 880.000,00 (oitocentos e oitenta mil reais). 9. Recurso especial a que se nega provimento.” (STJ - REsp 1735097/RS, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) (destacado)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">É exatamente esta a situação ora retratada nos autos, porque, muito embora o magistrado de primeiro grau não tenha condenado o Município de Maracanaú/CE em quantia certa, o proveito econômico obtido pela autora se mostra perfeitamente mensurável, até mesmo pelo valor da causa (R$ 5.000,00) e, com absoluta certeza, será inferior a 100 (cem) salários-mínimos (CPC/2015, art. 496, § 3º, inciso II), ainda que corrigido e atualizado monetariamente.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Logo, não precisa a sentença, obrigatoriamente, passar pelo crivo deste Tribunal para que possa produzir efeitos, estando evidenciada, in casu, uma das hipóteses de dispensa do duplo grau de jurisdição.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Na mesma linha, há recentes precedentes desta Corte:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr">“CONSTITUCIONAL E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO. <span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700;

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	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">PROVEITO ECONÔMICO DECORRENTE DA CONDENAÇÃO INFERIOR AOS VALORES DO ARTIGO 496, INCISO II DO CPC. REEXAME NECESSÁRIO NÃO CONHECIDO. FORNECIMENTO DE LEITO. DEMANDA AJUIZADA CONTRA O ESTADO DO CEARÁ. HONORÁRIOS ADVOCATÍCIOS. PAGAMENTO EM FAVOR DA DEFENSORIA PÚBLICA ESTADUAL. NÃO CABIMENTO. INCIDÊNCIA DA SÚMULA 421 E DO RECURSO ESPECIAL Nº 1199715/RJ, JULGADO NA SISTEMÁTICA DOS RECURSOS REPETITIVOS (TEMA 433), AMBOS DO SUPERIOR TRIBUNAL DE JUSTIÇA. SENTENÇA EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ E DESTA CORTE ESTADUAL. MANUTENÇÃO. REMESSA NECESSÁRIA NÃO CONHECIDA. APELO CONHECIDO E DESPROVIDO. 1. Revela-se dispensável a remessa necessária quando o proveito econômico decorrente da condenação é inferior ao valor expresso no inciso II do § 3º do artigo 496 do CPC, que constitui exceção ao duplo grau de jurisdição obrigatório. Precedentes. 2. São indevidos honorários sucumbenciais pelo Estado do Ceará à Defensoria Pública Estadual. Inteligência da Súmula 421 do Superior Tribunal de Justiça e do Recurso Especial nº 1199715/RJ, repetitivo (Tema 433), do STJ. 3. Os arestos proferidos após a Lei Complementar Federal nº 132/2009 mostram-se atualizados e estão baseados na tese de que a Defensoria Pública é parte integrante da estrutura orgânica do Estado e com ele s e confunde. As autonomias funcional e administrativa tratadas no art. 4º, XXI, da Lei Orgânica Nacional da Defensoria Pública e no art. 134, § 2º, da Constituição Federal não possuem aptidão para afastar a sua qualidade de órgão vinculado ao Poder Executivo do ente federativo que a instituiu, não lhe sendo permitido cobrar honorários a este, sob pena de confusão entre devedor e credor. 4. Remessa necessária não conhecida. Apelação conhecida e desprovida." (Apelação / Remessa Necessária - 0000833-80.2018.8.06.0119, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 08/11/2021, data da publicação: 08/11/2021). (destacado)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> * * * * *</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">"RECURSOS OFICIAL E APELATÓRIO EM AÇÃO DECLARATÓRIA C/C OBRIGAÇÃO DE PAGAR QUANTIA CERTA. VENCIMENTOS INFERIORES AO MÍNIMO NACIONAL. IMPOSSIBILIDADE. CONDENAÇÃO INFERIOR A 100 (CEM) SALÁRIOS-MÍNIMOS. APURAÇÃO POR SIMPLES CÁLCULO ARITMÉTICO. REMESSA NECESSÁRIA NÃO CONHECIDA. <span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">RECURSO APELATÓRIO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O Código de Processo Civil, em seu art. 496, § 3º, inciso III, estabelece que não há reexame necessário quando o valor da condenação for inferior a 100 (cem) salários-mínimos, tratando-se dos Municípios e respectivas autarquias e fundações de direito público. 2. Assim, diante dos precisos parâmetros indicados para a apuração do valor da condenação, é possível concluir, por simples cálculo aritmético, que será muito inferior ao patamar legal previsto para dispensa da remessa necessária, impondo a aplicação da respectiva norma (art. 496, § 3º, inciso III, do CPC). 3. Recurso apelatório conhecido e provido. Remessa Necessária não conhecida. Sentença reformada em parte.” (Apelação/Remessa Necessária - 0008365-65.2019.8.06.0121, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 15/12/2021, data da publicação: 16/12/2021) (destacado)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> * * * *</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“PROCESSUAL CIVIL. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO DE OBRIGAÇÃO DE FAZER C/C COBRANÇA EM FACE DO MUNICÍPIO DE CATUNDA. REMESSA NECESSÁRIA E APELAÇÕES CÍVEIS. PRELIMINAR DE INOVAÇÃO RECURSAL RECONHECIDA DE OFÍCIO QUANTO AO RECURSO DE APELAÇÃO DA PARTE AUTORA. PROFESSORA DO MUNICÍPIO DE CATUNDA. FIXAÇÃO DO PISO SALARIAL NACIONAL DO MAGISTÉRIO. LEI FEDERAL Nº 11.738/2008 E LEI MUNICIPAL Nº 240/2011. DIFERENÇAS SALARIAIS DEVIDAS. OBRIGAÇÃO DE FAZER. IMPLEMENTAÇÃO NA REMUNERAÇÃO DA REQUERENTE CABÍVEL APENAS APÓS O TRÂNSITO EM JULGADO. ADICIONAL POR TEMPO DE SERVIÇO E GRATIFICAÇÃO PÓ DE GIZ DEVEM INTEGRAR A BASE DE CÁLCULO PARA O DÉCIMO TERCEIRO SALÁRIO. CONSTITUIÇÃO FEDERAL. ART. 7º, VIII E ART. 39, § 3º. HONORÁRIOS ADVOCATÍCIOS. DECISÃO ILÍQUIDA. FIXAÇÃO DO PERCENTUAL POSTERGADA PARA A FASE DE LIQUIDAÇÃO. CONDENAÇÃO INDEVIDA DO ENTE PÚBLICO AO PAGAMENTO DE CUSTAS PROCESSUAIS. ISENÇÃO PREVISTA NA LEI ESTADUAL Nº 16.132/2016. CONHECIMENTO DE OFÍCIO. REMESSA NECESSÁRIA NÃO CONHECIDA. HIPÓTESE DE DISPENSA. ART. 496, § 3º, III, CPC. APELAÇÃO DO MUNICÍPIO IMPROVIDA E DA PARTE AUTORA PARCIALMENTE PROVIDA. SENTENÇA REFORMADA EM PARTE. 1. In casu, o valor do piso salarial dos profissionais do magistério do Município de Catunda foi adequado ao nacional através da Lei Municipal nº 302/2017, sendo, portanto, devidas as diferenças salariais relativas ao piso salarial nacional do magistério nos moldes preconizados na Lei Federal nº 11.738/2008, respeitada a prescrição quinquenal, como determinado em sentença. Entretanto, o juízo a quo deixou de vincular referida condenação ao art. 62 da Lei Municipal nº 240/2011, o qual dispõe acerca das titulações aos profissionais da área, de modo que merece reforma a sentença nesse tocante. Implementação cabível apenas após o trânsito em julgado do decisum, de acordo com o art. 2-B da Lei nº 9.494/97. 2. Ademais, o adicional por tempo de serviço e a gratificação pó de giz devem integrar a base de cálculo para o décimo terceiro salário, nos termos dos arts. 39, § único, e 7º, VIII, da Constituição Federal. 3. Apelo do Município de Catunda conhecido e desprovido. Apelação da parte autora conhecida em parte e, nessa extensão, provida para determinar o pagamento das diferenças salariais nos moldes da Lei Federal nº 11.738/2008 c/c com o

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	art. 62 da Lei Municipal nº 240/2011. Reexame Necessário não conhecido, dispensado nos termos do art. 496, § 3º, inc. III, do CPC. 4. Por fim, reformada a sentença, ex officio, para postergar à fase de liquidação o arbitramento do percentual referente aos honorários advocatícios sucumbenciais (art. 85, § 4º, inciso II, do CPC/2015), e isentar o ente público do pagamento das custas do processo (art. 5º, inciso I, da Lei Estadual nº 16.132/2016). (Apelação / Remessa Necessária - 0000149-76.2017.8.06.0189, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 07/03/2022, data da publicação:&#160; 10/03/2022). (destacado)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Por tudo isso, o não conhecimento do reexame necessário e, ipso facto, a manutenção da sentença, é medida que se impõe a este Tribunal.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> DISPOSITIVO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Isto posto, com fulcro no art. 496, § 3º, inciso II, do CPC/2015, não conheço do reexame necessário, mantendo inalterada a sentença, por seus próprios fundamentos.</p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; <span

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	style="font-size: 12pt;"> 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	133
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Classificação e/ou Preterição
Polo ativo	JOSE LUCAS DE QUEIROZ BATISTA
Advogado(s) - Polo ativo	JEANE DA SILVA FERREIRA - (CE17002-A)
Polo passivo	MUNICIPIO DE CASCAVEL
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3000049-19.2024.8.06.0062
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfVGdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jDP2Qr+jJs5HWai3owvT+n/AgIc08irjnVHz/++68VMZRRRN954I9587XVzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7R7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	CARGOS EFETIVOS PROVIDOS DE FORMA PRECÁRIA. REQUISITOS CUMULATIVOS. PRECEDENTES DO STF E DESTE TJCE. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I. Caso em exame </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 1. Apelação cível interposta por José Lucas de Queiroz Batista em face de sentença prolatada pelo Juízo da 2ª Vara da Comarca de Cascavel, que denegou a segurança requerida em sede de mandamus impetrado por candidato de concurso público realizado pelo Município de Cascavel, objetivando a nomeação e posse do autor no cargo de Educador Social, sob a alegação de ter sido preterido.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II. Questão em discussão </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 2. A questão em discussão consiste em analisar se a impetrante/apelante, candidata aprovado fora do número de vagas previstas no edital, tem direito subjetivo à nomeação, em face de suposta preterição praticada pelo ente municipal.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> III. Razões de decidir </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 3. Registro, de início, que não houve ofensa ao princípio da dialeticidade recursal como aventado pela parte recorrida em sede de contrarrazões, uma vez que as razões do apelo impugnaram de forma satisfatória os fundamentos da decisão em debate, o que permitiu, inclusive, o pleno exercício do contraditório pelo ente impetrado.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 4. Ultrapassado esse ponto, o recorrente, aprovado fora do número de vagas, não se desincumbiu do ônus de comprovar a existência de cargos efetivos vagos em número suficiente para a sua convocação e a ilegalidade das contratações precárias apontadas durante a validade do concurso em questão.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 5. O STF consolidou entendimento de que o candidato aprovado além do número de vagas ofertadas no edital possui mera expectativa de direito à nomeação e posse, exceto quando restar demonstrado, por comportamento tácito ou expresso da Administração Pública, a necessidade inequívoca da nomeação, a existência de vaga e a preterição de candidatos aprovados em cadastro de reserva, por nomeações realizadas em caráter precário.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 6. Ausente prova documental pré-constituída da ocorrência de preterição, capaz de convolar a mera expectativa do direito à nomeação em direito subjetivo, não merece reparo a sentença denegatória da segurança. Precedentes deste TJCE.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> IV. Dispositivo e tese </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 7. Apelação cível conhecida e desprovida. Sentença mantida.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Tese de julgamento: “ Ausente prova documental pré-constituída da ocorrência de preterição, capaz de convolar a mera expectativa do direito à nomeação em direito subjetivo, deve ser denegada a segurança”. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Dispositivos relevantes citados: art. 5º, inciso LXIX, da CF/88; art. 1º da Lei nº 12.016/2009. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Jurisprudência relevante citada: STF,RE 837311, Relator(a): LUIZ FUX, Tribunal Pleno, julgado em 09-12-2015, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-072 -&#160; DIVULG 15-04-2016&#160; PUBLIC 18-04-2016.</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em&#160;conhecer da apelação cível para negar-lhe provimento, &#160;nos termos do voto do

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	relator.</p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p class="TextbodyWW" style="margin-top: .05pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Trata-se de apelação cível interposta por José Lucas de Queiroz Batista em face de sentença prolatada pelo Juízo da 2ª Vara da Comarca de Cascavel.</p><p class="TextbodyWW" style="margin-top: .15pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ação (Id. 15042969): mandado de segurança com pedido de liminar impetrado por José Lucas de Queiros Batista contra ato atribuído ao Prefeito do Município de Cascavel, objetivando a concessão da segurança, com o fim de que seja nomeado e empossado no cargo de Educador Social.</p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Sentença (Id. 15043003): proferida nos seguintes termos: “ DENEGO A SEGURANÇA&#160;pleiteada por &#160;JOSÉ LUCAS DE QUEIROZ BATISTA, e, com esteio no art. 487, inciso I, do CPC,&#160; JULGO EXTINTO&#160;o processo com apreciação do mérito, ante a ausência de direito líquido e certo. Sem condenação em custas ou em honorários advocatícios (art. 25 da Lei nº 12.016/09)”.</p><p class="TextbodyWW" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Razões recursais (Id. 15043008): alega o insurgente, em resumo, que: o impetrante foi aprovado dentro do número de vagas, mas durante o prazo de validade do concurso não foi nomeado, seja por inércia da Administração Pública ou pelo fato de esta manter a quantidade exorbitante de contratados sem se atentar para os candidatos aprovados; existem 14 vagas preenchidas no serviço público sem que tenham sido submetidos a concurso público, comprovando assim, a existência de vaga a ser preenchida pelo Impetrante, haja vista que foram chamados 10 candidatos e ele está na posição de número 20; das 14 vagas ociosas, por direito líquido e certo, uma delas seria do impetrante, pois, conforme consta no edital no item 35, o autor concorreria com outros candidatos com Ensino Superior, em nível de graduação, em Pedagogia, Educação, Psicologia, Ciências Sociais, Artes Cênicas, ou outro curso de ensino compatível com as atribuições do cargo, em cursos devidamente reconhecidos pelo Ministério da Educação. Ao final, requer a reforma da sentença para conceder a segurança, a fim de que seja nomeado e empossado para o cargo de Educador Social.</p><p class="TextbodyWW" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Contrarrazões (Id. 15043013): preliminarmente, suscita a ofensa ao princípio da dialeticidade; no mérito, requer o desprovimento do recurso, com a manutenção da sentença.</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p class="StandardWW" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Parecer da Procuradoria Geral de Justiça (Id. 15443597): opinou pelo conhecimento e desprovimento da apelação.</p><p class="StandardWW" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <span style="font-size:

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	small;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> De início, afasta-se a preliminar suscitada nas contrarrazões, uma vez que, da leitura da peça recursal, verifica-se a observância ao princípio da dialeticidade, pois o recorrente efetivamente impugnou os fundamentos da decisão de primeiro grau, indicando os fatos e os argumentos jurídicos que fundamentam sua tese, relacionando-os com o conteúdo presente no decisório adversado, objetivando demonstrar ser devido seu acolhimento.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Ademais, ao contrário do que alega o ente público apelado, a repetição, no recurso, dos argumentos deduzidos pelo autor na inicial não impede, por si só, o conhecimento da insurgência, notadamente quando suas razões estão condizentes com a causa de pedir e deixam claro o interesse pela reforma da decisão. Nesse sentido, do STJ: AgRg no Ag 990.643/RS, Terceira Turma, Rel. Min. NANCY ANDRIGHI DJ de 23/5/2008. &#160; </p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Presentes os requisitos de admissibilidade, conheço da apelação cível interposta por José Lucas de Queiroz Batista.</p><p class="Standard" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Conforme relatado, cinge-se a controvérsia em analisar a sentença que denegou a segurança requerida em sede de mandamus impetrado por candidato de concurso público realizado pelo Município de Cascavel, objetivando a nomeação e posse do autor no cargo de Educador Social, sob a alegação de ter sido preterido.</p><p class="Standard" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> A sentença deve ser mantida, conforme será explicitado a seguir.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> O mandado de segurança consiste em uma ação de natureza constitucional, de viés eminentemente civil, consagrado no art. 5º, inciso LXIX, da CRFB/88 e regulamentado pela Lei nº 12.016/2009, que tem por escopo a tutela de direito líquido e certo, não amparado por habeas corpus ou habeas data, quando o responsável pela ilegalidade ou abuso de poder for autoridade pública ou agente de pessoa jurídica no exercício de atribuições do Poder Público. Ressalte-se que por direito líquido e certo, entende-se aquele que pode ser demonstrado de plano, mediante prova pré-constituída, independente de dilação probatória.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> Da análise do edital do certame, acostado ao processo de origem, verifica-se que o edital de abertura 001/2020 (Id. 15042975) previu 8 (oito) vagas imediatas e 24 (vinte e quatro) de cadastro de reserva para o cargo de Educador Social, tendo o apelante alcançado a 20ª posição, figurando, portanto, entre os classificáveis, fora do número de vagas imediatas.</p><p class="MsoNormal" style="text-indent: 3cm; line-height: 200%; text-align: justify;"> &#160; Nesse contexto, como referido anteriormente, o STF, no julgamento do RE 837.311/PI, em sede de repercussão geral, consolidou entendimento de que o candidato aprovado além do número de vagas ofertadas no edital possui mera expectativa de direito à nomeação e posse, exceto quando restar demonstrado, por comportamento tácito ou expresso da Administração Pública, a necessidade inequívoca da nomeação, a existência de vaga e a preterição de candidatos aprovados em cadastro de reserva, por nomeações realizadas em caráter precário. Confira-se a ementa do julgado do Pretório Excelso: &#160; </p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;">RECURSO EXTRAORDINÁRIO. CONSTITUCIONAL E ADMINISTRATIVO. REPERCUSSÃO GERAL RECONHECIDA. TEMA 784 DO PLENÁRIO VIRTUAL. CONTROVÉRSIA SOBRE O DIREITO SUBJETIVO À NOMEAÇÃO DE CANDIDATOS APROVADOS ALÉM DO NÚMERO DE VAGAS PREVISTAS NO EDITAL DE CONCURSO PÚBLICO NO CASO DE SURGIMENTO DE NOVAS VAGAS DURANTE O PRAZO DE VALIDADE DO CERTAME. MERA EXPECTATIVA DE DIREITO À NOMEAÇÃO. ADMINISTRAÇÃO PÚBLICA. SITUAÇÕES EXCEPCIONAIS. IN CASU, A ABERTURA DE NOVO CONCURSO PÚBLICO FOI ACOMPANHADA DA DEMONSTRAÇÃO INEQUÍVOCA DA NECESSIDADE PREMENTE E INADIÁVEL DE PROVIMENTO DOS CARGOS. INTERPRETAÇÃO DO ART. 37, IV, DA CONSTITUIÇÃO DA REPÚBLICA DE 1988. ARBÍTRIO. PRETERIÇÃO. CONVOLAÇÃO EXCEPCIONAL DA MERA EXPECTATIVA EM DIREITO SUBJETIVO À NOMEAÇÃO. PRINCÍPIOS DA EFICIÊNCIA, BOA-FÉ,

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	MORALIDADE, IMPESSOALIDADE E DA PROTEÇÃO DA CONFIANÇA. FORÇA NORMATIVA DO CONCURSO PÚBLICO. INTERESSE DA SOCIEDADE. RESPEITO À ORDEM DE APROVAÇÃO. ACÓRDÃO RECORRIDO EM SINTONIA COM A TESE ORA DELIMITADA. RECURSO EXTRAORDINÁRIO A QUE SE NEGA PROVIMENTO. 1. O postulado do concurso público traduz-se na necessidade essencial de o Estado conferir efetividade a diversos princípios constitucionais, corolários do merit system, dentre eles o de que todos são iguais perante a lei, sem distinção de qualquer natureza (CRFB/88, art. 5º, caput). 2. O edital do concurso com número específico de vagas, uma vez publicado, faz exsurgir um dever de nomeação para a própria Administração e um direito à nomeação titularizado pelo candidato aprovado dentro desse número de vagas. Precedente do Plenário: RE 598.099 - RG, Relator Min. Gilmar Mendes, Tribunal Pleno, DJe 03-10-2011. 3. O Estado Democrático de Direito republicano impõe à Administração Pública que exerça sua discricionariedade entrincheirada não, apenas, pela sua avaliação unilateral a respeito da conveniência e oportunidade de um ato, mas, sobretudo, pelos direitos fundamentais e demais normas constitucionais em um ambiente de perene diálogo com a sociedade. 4. O Poder Judiciário não deve atuar como “ Administrador Positivo ” , de modo a aniquilar o espaço decisório de titularidade do administrador para decidir sobre o que é melhor para a Administração: se a convocação dos últimos colocados de concurso público na validade ou a dos primeiros aprovados em um novo concurso. Essa escolha é legítima e, ressalvadas as hipóteses de abuso, não encontra obstáculo em qualquer preceito constitucional. 5. Consectariamente, é cediço que a Administração Pública possui discricionariedade para, observadas as normas constitucionais, prover as vagas da maneira que melhor convier para o interesse da coletividade, como verbi gratia, ocorre quando, em função de razões orçamentárias, os cargos vagos só possam ser providos em um futuro distante, ou, até <span style="font-

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	size: 10pt; line-height: 200%; font-family: Arial, sans-serif;">mesmo, que sejam extintos, na hipótese de restar caracterizado que não mais serão necessários. 6. A publicação de novo edital de concurso público ou o surgimento de novas vagas durante a validade de outro anteriormente realizado não caracteriza, por si só, a necessidade de provimento imediato dos cargos. É que, a despeito da vacância dos cargos e da publicação do novo edital durante a validade do concurso, podem surgir circunstâncias e legítimas razões de interesse público que justifiquem a inocorrência da nomeação no curto prazo, de modo a obstaculizar eventual pretensão de reconhecimento do direito subjetivo à nomeação dos aprovados em colocação além do número de vagas. Nesse contexto, a Administração Pública detém a prerrogativa de realizar a escolha entre a prorrogação de um concurso público que esteja na validade ou a realização de novo certame. 7. A tese objetiva assentada em sede desta repercussão geral é a de que o surgimento de novas vagas ou a abertura de novo concurso para o mesmo cargo, durante o prazo de validade do certame anterior, não gera automaticamente o direito à nomeação dos candidatos aprovados fora das vagas previstas no edital, ressalvadas as hipóteses de preterição arbitrária e imotivada por parte da administração, caracterizadas por comportamento tácito ou expresso do Poder Público capaz de revelar a inequívoca necessidade de nomeação do aprovado durante o per í odo de validade do certame, a ser demonstrada de forma cabal pelo candidato. Assim, a discricionariedade da Administração quanto à convocação de aprovados em concurso público fica reduzida ao patamar zero (Ermessensreduzierung auf Null), fazendo exsurgir o direito subjetivo à nomeação, verbi gratia, nas seguintes hipóteses excepcionais: i) Quando a aprovação ocorrer dentro do número de vagas dentro do edital (RE 598.099); ii) Quando houver preterição na nomeação por não observância da ordem de classificação (S ú mula 15 do STF); iii) Quando surgirem novas vagas, ou for aberto novo concurso durante a validade do certame anterior, e ocorrer a

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	preterição de candidatos aprovados fora das vagas de forma arbitrária e imotivada por parte da administração nos termos acima. 8. In casu, reconhece-se, excepcionalmente, o direito subjetivo à nomeação aos candidatos devidamente aprovados no concurso público, pois houve, dentro da validade do processo seletivo e, também, logo após expirado o referido prazo, manifestações inequívocas da Administração piauiense acerca da existência de vagas e, sobretudo, da necessidade de chamamento de novos Defensores Públicos para o Estado. 9. Recurso Extraordinário a que se nega provimento. (RE 837311, Relator(a): LUIZ FUX, Tribunal Pleno, julgado em 09-12-2015, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-072&#160; DIVULG 15-04-2016&#160; PUBLIC 18-04-2016. Grifei)</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> Portanto, considerando ter sido aprovado fora do número de vagas imediatas ofertadas pelo edital do concurso em crivo, o direito do candidato à nomeação só ocorreria caso restasse devidamente comprovada a preterição, e que esta alcançasse a sua classificação, o que, porém, o impetrante não logrou demonstrar, pela documentação acostada à inicial do mandamus.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> No Id. 15042977, não consta o nome do impetrante no resultado final (prova objetiva mais títulos) dentre os aprovados. Nos documentos de Id. 15042978 e 15042979, verifica-se apenas que cinco candidatos foram nomeados e empossados, e posteriormente um deles foi exonerado.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> No documento de Id. 15042980, observa-se somente que os orientadores sociais contratados são todos profissionais de nível médio, diferentemente dos cargos ofertados no concurso público do qual participou o autor, de nível superior.</p><p class="MsoNormal" style="text-align: justify; text-indent: 3.0cm; line-height: 200%; mso-layout-grid-align: none; text-autospace: none;"> No Id. 15042986, o resultado final de seleção simplificada para a Secretaria de Assistência Social do Município mostra que os cargos preenchidos naquele certame não englobaram o de Educador Social, para o qual concorreu o autor no concurso público (Edital 001/2020).</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Destarte, não houve comprovação da preterição alegada pelo autor, ora recorrente, deve ser denegada a segurança, especialmente considerando que o mandamus tem como requisito o direito líquido e certo, demonstrado por prova pré-constituída, o que não ocorreu no caso em tela.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Nesse sentido, os seguintes precedentes deste TJCE: &#160; </p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">APELAÇÃO CÍVEL. DIREITO CONSTITUCIONAL E ADMINISTRATIVO. MANDADO DE SEGURANÇA. CONCURSO PÚBLICO PARA O CARGODE PROFESSOR. MUNICÍPIO DE CASCAVEL. CANDIDATO APROVADO NAS VAGAS DE CADASTRO RESERVA. CONTRATAÇÃO DE TEMPORÁRIOS. AUSÊNCIA DE COMPROVAÇÃO SOBRE A EXISTÊNCIA DE CARGOS VAGOS. REQUISITOS CUMULATIVOS NÃO PREENCHIDOS. PRETERIÇÃO NÃO CARACTERIZADA. MERA EXPECTATIVA NÃO CONVOLADA EM DIREITO SUBJETIVO À NOMEAÇÃO. PRECEDENTES DO STF, DO STJ E DO TJCE. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA. 1. O cerne da controvérsia cinge-se em aferir se o apelante faz jus à nomeação para o provimento do cargo efetivo de Professor PEB II - 1º ao 5º ano do Município de Cascavel, em virtude de aprovação para cadastro reserva em concurso público, fora, portanto, das vagas de provimento imediato, mas com preterição ante a contratação de servidores temporários, cujo vínculo é de natureza precária. 2. O Supremo Tribunal Federal decidiu, pelo regime da repercussão geral (Tema 784, leading case RE nº 837.311), que “o surgimento de novas vagas ou a abertura de novo concurso para o mesmo cargo, durante o prazo de validade do certame anterior, não gera automaticamente o direito à nomeação dos candidatos aprovados fora das vagas previstas no edital, ressalvadas as hipóteses de preterição arbitrária e imotivada por parte da administração, caracterizada por comportamento tácito ou expresso do Poder Público capaz de revelar a inequívoca necessidade de nomeação do aprovado durante o período de validade do certame, a ser demonstrada de forma cabal pelo candidato”. 3. O Superior Tribunal de Justiça, quanto à temática, assentou que “a paralela contratação de servidores temporários, ou ainda, como no caso, o emprego de servidores comissionados, terceirizados ou estagiários, só por si,

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	não caracterizam preterição na convocação e nomeação dos impetrantes ou autorizam a conclusão de que tenham automaticamente surgido vagas correlatas no quadro efetivo, a ensejar o chamamento de candidatos aprovados em cadastro de reserva ou fora do número de vagas previstas no edital condutor do certame” (STJ, AgInt no RMS nº 52.353/MS, DJe de 03/02/2017). 4. Destarte, o candidato aprovado em concurso público fora do número de vagas oferecidas no edital tem mera expectativa de direito à nomeação, incumbindo-lhe a demonstração de existência de vagas durante o prazo de validade do certame e a preterição arbitrária e imotivada por parte da Administração Pública, nos moldes do art. 373, I, do CPC. Precedentes do TJCE. 5. Sob esse prisma, depreende-se que o apelante não demonstrou o surgimento ou criação de novas vagas durante o prazo de validade do certame em número suficiente para chegar à sua posição e, por conseguinte, para a sua convocação. 6. Portanto, meras alegações acerca da existência da contratação de servidores temporários não são suficientes para caracterizar a pretendida preterição, mormente diante da ausência de prova da vacância de cargos, não se desincumbindo o impetrante de comprovar os fatos constitutivos de seu direito, na forma do art. 373, I, do CPC. 7. Apelação conhecida, mas desprovida. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Apelação, a fim de negar-lhe provimento, tudo nos termos do voto da relatora, parte integrante deste. Fortaleza, data e hora informadas pelo sistema. DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO Relatora (Apelação Cível - 3000157-82.2023.8.06.0062, Rel. Desembargador(a) JORIZA MAGALHAES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 08/07/2024, data da publicação: 18/07/2024)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> APELAÇÃO E REMESSA NECESSÁRIA. MANDADO DE SEGURANÇA. CONCURSO PÚBLICO PARA PROFESSOR DO MUNICÍPIO DE RERIUTABA. CANDIDATO APROVADO ALÉM DO NÚMERO DE VAGAS DO EDITAL. PRETENSO DIREITO À NOMEAÇÃO. CARGOS VAGOS. INEXISTÊNCIA DE COMPROVAÇÃO. SENTENÇA CONCESSIVA DA SEGURANÇA REFORMADA. REEXAME AVOCADO E RECURSOCONHECIDO, COM O PROVIMENTO DE AMBOS. 1. A parte autora, apesar de alegar preterição para o cargo de Professor, não fez prova da existência de vagas, requisito indispensável à configuração do direito subjetivo à nomeação. Com efeito, o impetrante insiste que houve a contratação de servidores temporários, bem como a admissão de servidores comissionados para exercer a mesma função de Professor. Contudo, a mera demonstração de contratação precária ou desvio de função de comissionados não é suficiente à configuração do direito, também devendo ser demonstrada a existência de cargo vago. 2. A existência de cargos efetivos desocupados ocorre com a edição de lei criadora de novos cargos ou ainda com desistências de candidatos aprovados nas vagas ofertadas, além de exonerações e aposentadorias de servidores efetivos etc. Nesse trilhar, a contratação precária de servidores ou desvio de função de comissionados demonstraria, no máximo, a necessidade do serviço, o que não é suficiente à caracterização do direito subjetivo à nomeação, na forma do art. 37, inciso II, da CRFB/88. 3. Apelo conhecido e reexame avocado, com o provimento de ambos. (Apelação Cível - 0050313-05.2021.8.06.0157, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento: 10/10/2022, data da publicação: 10/10/2022)</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> E desta Relatoria: Mandado de Segurança nº 0628438-18.2018.8.06.0000, Órgão Especial, data do julgamento: 26/10/2023, data da publicação: 28/10/2023; Apelação/Remessa Necessária nº 0200156- 90.2022.8.06.0098, 3ª Câmara Direito Público, data do julgamento: 16/10/2023, data da publicação: 17/10/2023; Apelação Cível&#160;nº 0627865-04.2023.8.06.0000, 3ª Câmara Direito Público, data do julgamento:&#160; 14/10/2024, data da publicação:&#160; 17/10/2024.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Diante do exposto, conheço da apelação para negar-lhe provimento, mantendo a sentença recorrida.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É como voto.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; <span style="font-size:

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	medium;">Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	134
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	EDSON MERQUIADES DA SILVA
Advogado(s) - Polo ativo	Não informado
Polo passivo	ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARÁ MINISTERIO PUBLICO DO ESTADO DO CEARA MINISTÉRIO PÚBLICO DO ESTADO DO CEARÁ

Processo	0200872-03.2022.8.06.0136
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTlkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EeEjXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOIqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNbIIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmlu
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	2tra8ee/PPW9cu5MfFJ22uMt1OYscqQgE0i1KWNCJJhZQxQapkY7bBpiphaR8FyhHP9kNP06UynFZgbQKyv4lQWxLFIaUf2FU6WnOjuk8x0pUjNngnQtlNay2YK1lhKIzE58PHn+Uurs8+fDrU3147V1NWhksXwZmTni/+t04vgJ69bW5rsdpM2h4aHy2Wezyj2DfaWmIQ4Xv2BOnSw2YG6QENalaeGbTENsStPDfEZz7PLudwCCd2BVjByWUMDiCqLCmdmc34wRYr8b881eQ/DsM8NHiaoEjDbDeQs+t5WES4z/89bW1qrZX2aVx8aOlTU01KGjveXu6OioNUfc/xpRqJ3X2ta8h3lz4WBH09PTZ08H0G5plrOqBxwTA/GeBYGx3kBCM0ds9P2VZn7VmhC7xVqTvAvRhwoR0r0Pq2NUMZc5AvuDFpnfCFQQWYj9Jiwz5oVTrA9YrBrm7G946tKlhIbmxqcH21pRU1u1h5GNI+Z/n6anp53rG2oH+w/1obGh9t6Th/dbaNG8irrKa7rBdlTRkN95b2efQLG7bgYAm6niIT8yb4jEzMwPHZd/vtmhUur98n3T1zXNJG7mb5pjqS0ftCLskVuef2326Yu8p0+etNCa1/v6e1BZXTl49epVZ45Y/14iQO8O9fXJlpeXXG8k/2xpabo4+/MDlZ+mZwLKm2quKHjo410XEtR1G+ZRlfMWA5SJvGSe2/YYIudY40R4T+7El3HUXzIvuDIaZIAxmvfixkonQci66yKnpvDK9N3pAHIJle7uzosEDmWlxdfa2tpkGRk44vx1dO/e7LKuri7DurraUTKVH7u629sf3r6nPjU1lRGwN+awfIgJ3janiEsVD/NqJfM855MYJXyZuAsfRythCdWXjOmyG1gy7bm22yAXaMic9R2evDyZ8XDmoXpvZ1tNbU3ldGVlyWhzc53hvXv3lnGW/79Lvb3dvgf2Zfa0HWxGe1d7NO2w3ejoiK9VoNNN5h0WLg8edvKez1QnTLHAMMc3mc7lSycZWPjZ3RwZ7GcioV17V0d0c3MTjhw5jIHBviTOMv9viZx9xfj4WPOh4UMoKi16MTFxsXj24S9u3QN9ZxRc9Z4uMucmk6TgweQyhgnk23Y7IOWs9bSpo/nM859/drs8MVFcSPf2DfVjYKC3+Zdnz9Q40//PIAK5+ObNqW1dvV3flpUVo6GxYfrx9AP5mxcnvaMOpNxf5yEPLncetkbfM+dDcEbMz1fPX/Z+PP2TXPPBpinyMbR1dXx7ceriNmYuzrT/M+nYsWPq+QW5VTU11Th39nQNmZ5DbE5S8Zc6AvhqtyBKWFUP6TePSxfP1TDvx7V3tD0dONT71/7r6l9BVTWV4e3tbSgoyKsmQGu7OrtedLa1vaDvPjX1NU3Uh6KhoT6e/pbh3PK/j65enQwZIr8qKS1pJyBRDFeVF1ZTcML4+HgIZ9j/brp//6fAgcF+akKLK9taWRXDw0OU9GcCOZf//6CpqSthpWVFyMvPweTk5f8/NPd7SklLCz956iQFSazm/PQXExfX/wGXuTX16scS8AAAAABJRU5ErkJggg==" alt="" /></p><p style="margin: 0cm; text-align: center;" align="center"> ESTADO DO CEARÁ </p><p style="margin: 0cm; text-align: center;" align="center"> PODER JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;" align="center"> TRIBUNAL DE JUSTIÇA </p><p style="margin: 0cm; text-align: center;" align="center"> GABINETE DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO </p><p style="text-align: center;" align="center"> &#160;</p><p style="text-align: left;">&#160;</p><p style="text-align: left;"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> Processo: &#160;0200872-03.2022.8.06.0136 </p><p style="text-align: left;"> [Obrigação de Fazer / Não Fazer] </p><p style="text-align: left;"> REMESSA NECESSÁRIA CÍVEL </p><p style="text-align: left;"> Recorrente:&#160;EDSON MERQUIADES DA SILVA</p><p style="text-align: left;"> Recorrido:&#160;ESTADO DO CEARA</p><p style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> E menta

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	   : Direito Processual civil. Direito à saúde. Reexame necessário. Ação ordinária para compelir o Estado do Ceará a fornecer consulta com médico ortopedista/traumatologista . D ispensa do duplo grau de jurisdição. Art. 496, §3º, inciso II, do cpc. Não conhecimento do reexame. Sentença mantida. I. Caso em exame <br /> 1. R <span

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	style="font-style: normal;"> emessa necessária de sentença que condenou o Estado do Ceará a realizar atendimento de urgência com médico ortopedista/traumatologista, em benefício da parte autora. </p><p style="font-variant: small-caps; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> II. Questão em discussão </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 2. A questão a ser dirimida consiste em saber se, diante da iliquidez da sentença e do valor estimado da condenação estar abaixo do limite legal, é cabível a dispensa do reexame necessário. </p><p class="western" style="font-variant: small-caps; line-height: 150%; margin-bottom: 0cm;" align="justify"> III. Razões de decidir </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> 3 . Atualmente, ainda se encontra em vigor a Súmula nº 490 do STJ, pela qual “a dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas”. Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. <br /> IV. Dispositivo </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 4. Remessa necessária não conhecida, mantendo-se a sentença. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> <span style="font-size:

Processo	0200872-03.2022.8.06.0136
	small;">________ </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Dispositivos relevantes citados: CPC/2015, art. 496, §3º, III. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Jurisprudência relevante citada: AgInt no REsp n. 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022 e AgInt no AREsp n. 1.969.907/TO, relator Ministro Herman Benjamin, Segunda Turma, julgado em 11/4/2022, DJe de 25/4/2022. </p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0.6cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em não conhecer do reexame necessário, tudo nos termos do voto do relator, parte integrante deste. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> F ortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> <br /> <br /></p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p class="western" style="font-variant: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm; page-break-before: auto;" align="justify"> Tem-se reexame necessário da sentença de procedência prolatada pelo juízo da 2 ª Vara da Comarca de Pacajus em Ação de Obrigação de Fazer c/c Pedido de Tutela Provisória de

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	Urgência , que confirmou a tutela antecipada concedida, para determinar que o Estado do Ceará agende a avaliação com médico ortopedista/traumatologista em favor do autor, no prazo máximo de dez dias, com entrega do laudo no prazo de quinze dias . </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm; background: transparent; page-break-before: auto;" align="justify"> Sentença: julgou procedente o pleito autoral , considerando a urgência e gravidade do caso que impede a espera em fila, devendo ser avaliado por médico ortopedista/traumatologista que confirme ou não a necessidade de cirurgia. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm;" align="justify"> Parecer da PGJ: manifesta-se pe lo não conhecimento do reexame necessário. </p><p style="letter-spacing: 0.6pt; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> É o relatório, no essencial. </p><p style="letter-spacing: 0.6pt; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0.21cm; background: transparent;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify"><span style="color:

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	#000000;"> Conforme se observa o juízo a quo consignou: “ Decorrido o prazo para recurso recursal, sem a interposição de recurso voluntário , remetam-se os autos ao Egrégio Tribunal de Justiça para fins de exame de remessa necessária, sobretudo por se tratar de condenação com valor ilíquido, com base na súmula 490 do Superior Tribunal de Justiça ” . </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify"> Todavia, não obstante o entendimento do juízo a quo , a demanda não alcança o valor de alçada para reexame obrigatório que, na situação, dos autos é de 5 00 (quinhentos) salários mínimos, inclusive este é posicionamento das três câmaras de Direito Público deste e.TJCE, explico. </p><p class="western" style="line-height: 200%; text-indent:

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	1.5cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> I - proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> § 3º Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> II - 500 (quinhentos) salários-mínimos para os Estados , o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Em se tratando de sentença ilíquida, poder-se-ia pensar, a princípio, ser o caso de aplicação, no caso concreto, da Súmula 490 do STJ, cujo enunciado prevê que “ A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas ”. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Nesse sentido, os seguintes precedentes do STJ, in verbis : </p><p class="western" style="line-height: 200%; text-indent: 2.49cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> <span style="font-family:

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	Arial, serif;"> PROCESSUAL CIVIL. RECURSO ESPECIAL. ENTE ESTADUAL. REEXAME NECESSÁRIO. VALOR DE ALÇADA. PROVEITO ECONÔMICO DA DEMANDA. PARÂMETRO PARA AFASTAMENTO DA ILIQUIDEZ. POSSIBILIDADE . 1. "Aos recursos interpostos com fundamento no CPC/1973 (relativos a decisões publicadas até 17 de março de 2016) devem ser exigidos os requisitos de admissibilidade na forma nele prevista, com as interpretações dadas, até então, pela jurisprudência do Superior Tribunal de Justiça" (Enunciado Administrativo n. 2 - STJ). 2. De acordo com o disposto no art. 475, I, § 2º, do CPC/1973, a sentença cuja condenação, ou o direito controvertido, não ultrapasse o valor correspondente a 60 (sessenta) salários-mínimos, não está sujeita ao reexame necessário. 3. O entendimento consolidado na Súmula 490 do STJ pode ser relativizado nas hipóteses em que o proveito econômico buscado na demanda servir como parâmetro balizador ao afastamento da iliquidez da sentença. 4. Hipótese em que o Tribunal de origem ratificou que o direito controvertido na ação de cobrança não supera, de forma manifesta, o patamar de 60 (sessenta) salários-mínimos, quantia tida como alçada pela legislação processual para tornar obrigatória a remessa necessária da sentença proferida em desfavor do ente estatal. 5. Agravo interno não provido. GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) </p><p class="western" style="font-weight: normal; line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> No mesmo sentido, é o entendimento das três Câmaras de Direito Público deste e.TJCE: </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> CONSTITUCIONAL E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO. PROVEITO ECONÔMICO DECORRENTE DA CONDENAÇÃO INFERIOR AOS VALORES DO ARTIGO 496, INCISO II DO CPC. REEXAME NECESSÁRIO NÃO CONHECIDO. FORNECIMENTO DE LEITO. DEMANDA AJUIZADA CONTRA O ESTADO DO CEARÁ. HONORÁRIOS ADVOCATÍCIOS. PAGAMENTO EM FAVOR DA DEFENSORIA PÚBLICA ESTADUAL. NÃO CABIMENTO. INCIDÊNCIA DA SÚMULA 421 E DO RECURSO ESPECIAL Nº 1199715/RJ, JULGADO NA SISTEMÁTICA DOS RECURSOS REPETITIVOS (TEMA 433), AMBOS DO SUPERIOR TRIBUNAL DE JUSTIÇA. SENTENÇA EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ E DESTA CORTE ESTADUAL. MANUTENÇÃO. REMESSA NECESSÁRIA NÃO CONHECIDA. APELO CONHECIDO E DESPROVIDO. 1. Revela-se dispensável a remessa necessária quando o proveito econômico decorrente da condenação é inferior ao valor expresso no inciso II do § 3º do artigo 496 do CPC, que constitui exceção ao duplo grau de jurisdição obrigatório. Precedentes. 2. São indevidos honorários sucumbenciais pelo Estado do Ceará à Defensoria Pública Estadual. Inteligência da Súmula 421 do Superior Tribunal de Justiça e do Recurso Especial nº 1199715/RJ, repetitivo (Tema 433), do STJ. 3. Os arestos proferidos após a Lei Complementar Federal nº 132/2009 mostram-se atualizados e estão baseados na tese de que a Defensoria Pública é parte integrante da estrutura orgânica do Estado e com ele se confunde. As autonomias funcional e administrativa

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	tratadas no art. 4º, XXI, da Lei Orgânica Nacional da Defensoria Pública e no art. 134, § 2º, da Constituição Federal não possuem aptidão para afastar a sua qualidade de órgão vinculado ao Poder Executivo do ente federativo que a instituiu, não lhe sendo permitido cobrar honorários a este, sob pena de confusão entre devedor e credor. 4. Remessa necessária não conhecida. Apelação conhecida e desprovida. ACÓRDÃO Vistos, relatados e discutidos estes autos, acordam os Desembargadores integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por julgamento de Turma e decisão unânime, em não conhecer da remessa necessária e conhecer da apelação para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 08 de novembro de 2021. DESEMBARGADOR FERNANDO LUIZ XIMENES ROCHA Relator (Apelação / Remessa Necessária - 0000833-80.2018.8.06.0119, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 08/11/2021 , data da publicação: 08/11/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> RECURSOS OFICIAL E APELATÓRIO EM AÇÃO DECLARATÓRIA C/C OBRIGAÇÃO DE PAGAR QUANTIA CERTA. VENCIMENTOS INFERIORES AO MÍNIMO NACIONAL. IMPOSSIBILIDADE. CONDENAÇÃO INFERIOR A 100 (CEM) SALÁRIOS-MÍNIMOS. APURAÇÃO POR SIMPLES CÁLCULO ARITMÉTICO. REMESSA NECESSÁRIA NÃO CONHECIDA. RECURSO APELATÓRIO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O Código de Processo Civil, em seu art. 496, § 3º, inciso III, estabelece que não há reexame necessário quando o valor da condenação for inferior a 100 (cem) salários-mínimos, tratando-se dos Municípios e respectivas autarquias e fundações de direito público. 2. Assim, diante dos precisos parâmetros indicados para a apuração do valor da condenação, é possível concluir, por simples cálculo aritmético, que será muito inferior ao patamar legal previsto para dispensa da remessa necessária, impondo a aplicação da respectiva norma (art. 496, § 3º, inciso III, do CPC). 3. Recurso apelatório conhecido e provido. Remessa Necessária não conhecida. Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, conhecer do Recurso Apelatório, para dar-lhe provimento, não conhecendo da Remessa Necessária, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data registrada no sistema. FRANCISCO GLADYSON PONTES Relator(Apelação / Remessa Necessária - 0008365-65.2019.8.06.0121, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 15/12/2021 , data da publicação: 16/12/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. PROCESSUAL CIVIL. CONSTITUCIONAL. AÇÃO DE OBRIGAÇÃO DE FAZER. FORNECIMENTO DE MEDICAÇÃO EM QUANTIDADE PREVIAMENTE DETERMINADA. CONDENAÇÃO EM VALOR INFERIOR A 500 SALÁRIOS-MÍNIMOS. OBSERVÂNCIA DO ART. 496, §3º, II E III DO CPC. NÃO CONHECIMENTO DO REEXAME NECESSÁRIO. <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-weight: normal;">APELAÇÃO CÍVEL. PROCESSUAL CIVIL. AÇÃO DE OBRIGAÇÃO DE FAZER. CONDENAÇÃO DO ENTE MUNICIPAL EM HONORÁRIOS ADVOCATÍCIOS. POSSIBILIDADE. APRECIAÇÃO EQUITATIVA. VALOR INESTIMÁVEL DA CAUSA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Trata o caso de apelação cível em ação ordinária por meio da qual se busca a realização do fornecimento de injeções intravítrea de BEVACIZUMAB e fotocoagulação a laser, conforme prescrição médica. 2. Fornecimento de medicamento em quantidade previamente determinada, não alcançando 500 (quinhentos) salários-mínimos, razão pela qual o não conhecimento do reexame necessário é medida que se impõe. 3. Nesse contexto, tendo em vista tratar-se

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	de causa de valor inestimável (direito à saúde), é imperioso ajustar a verba honorária a patamares razoáveis, com fulcro no mencionado §8º do art. 85 do CPC, na medida em que a fixação de honorários no montante de R$ 200,00 (duzentos reais) não valora adequadamente o trabalho desenvolvido. 4. Destarte, merece acolhimento a pretensão de majoração dos honorários advocatícios arbitrados, razão pela qual arbitro o valor de R$ 800,00 (oitocentos reais), porquanto razoável e adequado à remuneração do serviço prestado. - Precedentes do STF, STJ e desta egrégia Corte de Justiça. - Reexame Necessário não conhecido. - Apelação conhecida e parcialmente provida. - Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0001031-18.2019.8.06.0173, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do reexame necessário e conhecer da apelação interposta, para dar parcial provimento a esta última, reformando em parte a sentença, tão somente para reformar a sentença no tocante aos honorários sucumbenciais, nos termos do voto da Relatora. Fortaleza, 31 de janeiro de 2022 DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora(Apelação / Remessa Necessária - 0001031-18.2019.8.06.0173, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE , 3ª Câmara Direito Público, data do julgamento: 31/01/2022, data da publicação: 31/01/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nesse sentido ainda, o seguinte precedente da relatoria do iminente Desembargador FRANCISCO LUCIANO LIMA RODRIGUES: (Apelação/Remessa Necessária - 0000044-89.2014.8.06.0194, 3ª Câmara Direito Público, data do julgamento: 07/02/2022, data da publicação: 08/02/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A matéria é, inclusive, objeto de exame na Corte Superior, sob o regime dos Recursos Repetitivos, Tema 1081 (REsp 1882236/RS, REsp 1893709/RS e REsp 189466/SC), ainda pendente de julgamento, que tem por objetivo “Definir se a demanda previdenciária cujo valor da condenação seja aferível por simples cálculos aritméticos deve ser dispensada da remessa necessária, quando for possível estimar que será inferior ao montante previsto no artigo 496, § 3º, inc. I do Código de Processo Civil” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Dos precedentes acima citados, transcrevo, por pertinente, trecho do voto do Ministro Og Fernandes em que o magistrado destaca "Importante frisar que não se propõe o cancelamento da Súmula nº 490/STJ, mas sim a delimitação da sua aplicação ou não à demanda presente e às similares” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Deste modo, embora a condenação do Estado não tenha sido em valor líquido, certamente não ultrapassará o valor de 5 00 (quinhentos) salários-

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	mínimos, levando-se em conta o proveito econômico obtido. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Em outras palavras, o proveito econômico obtido, ainda que ilíquido, é mensurável, de modo que não se alcançará valor superior a 500 (quinhentos) salários-mínimos (referente ao teto previsto no art. 496, § 3º, inciso II, do CPC). </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nestes termos, não conheço do reexame necessário, mantendo a sentença de primeiro grau em todos os seus termos, com fulcro no art. 932, III , do Código de Processo Civil/2015 </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> É como voto. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent; page-break-before: auto;" align="justify"> Fortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent;" align="justify"> <br /> <br /></p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify">&#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	135
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	ANTONIA LUCILENE LIAL NOBRE
Advogado(s) - Polo ativo	Não informado
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GIIIgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7R7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0hKTi0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1OTRv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDlIns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	class="MsoNormal" style="text-align: justify;"> I. Caso em exame &#160; </p><p style="text-align: justify; line-height: 150%;"> 1. Apelação Cível interposta por Antônia Lucilene Lial Nobre em face de sentença proferida nos autos da Ação de Obrigação de Fazer com Preceito Cominatório proposta pela apelante em face do Estado do Ceará.</p><p class="MsoNormal" style="text-align: justify;"> II. Questão em discussão &#160; </p><p style="text-align: justify; line-height: 150%;"> 2. Analisar a sentença que julgou improcedente a ação ajuizada por&#160;Antônia Lucilene Lial Nobre, objetivando a realização de cirurgia de fixação com placa anatômica bloqueada, além de qualquer outro procedimento anexo necessário ao tratamento, em virtude de quadro de fratura-luxação de úmero proximal direito, após queda da própria altura.</p><p class="MsoNormal" style="text-align: justify; line-height: 150%;"> III. Razões de decidir &#160; </p><p style="text-align: justify; line-height: 150%;"> 3. Não obstante a Constituição vigente estabeleça que a saúde é um direito de todos e dever do Estado (CF, art. 196) a judicialização deste direito constitucional não pode ser realizada à margem do também constitucional princípio da isonomia, sob pena de causar injusto privilégio de alguns em prejuízo de outros que permanecem em "fila de espera" para realização de cirurgia, em especial, quando o tratamento requerido não é urgente nem de emergência.</p><p style="margin-bottom: 0cm; text-align: justify; line-height: 150%;"> 4. Obrigar o recorrido a realizar a transferência sem qualquer observância a fila de espera, por certo impactará na vaga de outro paciente, inserido anteriormente no sistema de saúde e que se encontra em situação clínica igual ou mais agravada.</p><p style="margin-bottom: 0cm; text-align: justify; line-height: 150%;"> 5. Conclui-se, por conseguinte, que não há prova idônea de urgência e excepcionalidade necessária à pretensão, que implicaria em passar a apelante à frente na fila de espera, em detrimento dos demais usuários do sistema público de saúde, nessa linha, não prospera a alegação de que o princípio da isonomia não poderia comprometer o exercício de direito fundamental. &#160;</p><p class="MsoNormal" style="text-align: justify;"> IV. Dispositivo e tese &#160; </p><p class="MsoNormal" style="text-align: justify;"> 6. Apelação Cível conhecida e desprovida. Sentença mantida. </p><p class="MsoNormal" style="text-align: justify;"> &#160; </p><p class="MsoNormal" style="text-align: justify;"> Tese de julgamento : Deve ser mantida a sentença julgou improcedente a Ação de Obrigação de Fazer com Preceito Cominatório, devido à ausência de prova de urgência e excepcionalidade necessária à pretensão. </p><p class="MsoNormal" style="text-align: justify;"> Dispositivos relevantes citados:&#160; CF, art. 196. </p><p class="MsoNormal" style="text-align: justify; line-height: 115%;"> Jurisprudência relevante citada:&#160; RE nº 657718 (Tema 500 – STF); APELAÇÃO CÍVEL - 02008096320228060043, Relator(a): MARIA VILAUBA FAUSTO LOPES, 3ª Câmara de Direito Público, Data do julgamento: 30/10/2023, data da publicação: 31/10/2023; APELAÇÃO CÍVEL - 02067303720228060064, Relator(a): MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara de Direito Público, Data do julgamento: 04/09/2024; APELAÇÃO CÍVEL - 30001096120238060115, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 12/08/2024, data da publicação: 14/08/2024. &#160; &#160; </p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em conhecer e negar provimento ao recurso de apelação cível, nos termos do voto do relator.</p><p style="text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <span style="font-size:

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	small;">Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> &#160; <strong style="font-size: small;">Relator</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Trata-se de&#160; Apelação Cível&#160;interposta por Antônia Lucilene Lial Nobre em face de sentença proferida nos autos da Ação de Obrigação de Fazer com Preceito Cominatório proposta pela apelante em face do Estado do Ceará.</p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Ação:&#160;Narra a inicial, em apertada síntese, que o demandado seja compelido a fornecer leito para realização de cirurgia de fixação com placa anatômica bloqueada, além de qualquer outro procedimento anexo necessário ao tratamento, em virtude de quadro de fratura-luxação de úmero proximal direito, após queda da própria altura. Relata que a autora é pessoa hipossuficiente, não possui plano de saúde e não tem condições de arcar com seus gastos de forma particular, tendo que ser assistido pelo Sistema Único de Saúde que não pode se escusar de fornecer todo o tratamento necessário à manutenção da sua vida digna. Assim, requer a concessão de antecipação dos efeitos da tutela para que o Estado do Ceará seja compelido a fornecer, gratuitamente e com urgência, a cirurgia. No mérito, requer a confirmação da tutela.</p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Sentença (Id. 1511329):&#160;O Juízo da 1ª Vara da Comarca de Quixadá julgou improcedente a pretensão autoral, extinguindo o processo com resolução do mérito, nos termos do art. 487, I do CPC. Além disso, condenou a parte autora ao pagamento das custas e honorários advocatícios, que fixou em 10% do valor da causa, nos termos do art. 85, § 2º do Código de Processo Civil, observando-se a concessão da gratuidade da justiça.</p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Razões Recursais (Id. 15113344):&#160; a parte autora ,&#160;apresenta o vertente recurso sustentando, que a) os próprios documentos médicos juntados a lide, por si só, convalidam a sua pretensão, mormente porque demonstram a necessidade urgente de realização do procedimento indicado; b) seu quadro clínico é delicado e sua família não dispõe de recursos financeiros para custear seu tratamento de forma particular. Assim, o ente público deve custear o tratamento cirúrgico indicado; c) a Constituição Federal garante a todos o acesso universal e igualitário às ações e serviços para a promoção, proteção e recuperação da saúde, conforme estabelece em seu artigo 196, incumbindo aos entes federativos o dever de prestar tal garantia através de políticas sociais e econômicas, visando à redução do risco de doença e demais agravos; d) aguarda pela realização do procedimento há mais de dois anos, sentindo fortes dores que ocasionam além do sofrimento físico, problemas de ordem psicológica e emocional; e) o laudo médico acostado no ID nº 88395491 informa, detalhadamente, que corre risco acentuado de osteonecrose da cabeça umeral.</p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Sem contrarrazões (Id. 15113346). </p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160; <strong style="font-size: small; text-indent: 48.95pt;">Manifestação da Procuradoria de Justiça (Id. 15186995):&#160; opinando pelo conhecimento do recurso de Apelação, porque preenchidos os requisitos de admissibilidade recursal, e pelo provimento, devendo ser reformada a peça guerreada, para que o Estado do Ceará, ora Apelado, providencie com urgência a marcação da cirurgia de fixação com placa anatômica bloqueada, bem como quaisquer outros procedimentos complementares necessários ao tratamento da fratura da Apelante. Na hipótese de inexistência de vagas, que seja determinado à Fazenda Pública Estadual o custeio da internação e da realização do procedimento em hospital da rede privada, considerando a limitação de unidades de saúde que dispõem desse material.</p><p style="text-align: justify; text-indent: 70.9pt; line-height: 16.5px;"> &#160; É o relatório. </p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;" align="center"> &#160;</p><p style="text-align: justify; text-indent:

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	70.9pt; line-height: 150%;"> Presentes os requisitos de admissibilidade, conheço da apelação cível. O cerne da presente controvérsia consiste em analisar a sentença que julgou improcedente a ação ajuizada por&#160;Antônia Lucilene Lial Nobre, objetivando a realização de cirurgia de fixação com placa anatômica bloqueada, além de qualquer outro procedimento anexo necessário ao tratamento, em virtude de quadro de fratura-luxação de úmero proximal direito, após queda da própria altura. A sentença deve ser mantida, conforme será explicitado a seguir. In casu, observa-se que foram acostados aos autos um laudo médico (Id. 15113203 – p.01), bem como&#160;Comprovante de Encaminhamento à Fila de Espera (Id. 15113203 – p.08/11) com solicitação&#160;de leito para realização de consulta especializada, cujo cadastro data de&#160;25/10/2021, no qual não consta afirmação de que a cirurgia requerida é de urgência e/ou emergência, por risco de vida ou de agravamento do quadro. Assim, infere-se que a referida cirurgia é eletiva. Ademais, em sede de informações enviadas pelo requerido, Estado do Ceará em Id. 15113232, de acordo com pesquisa nos registros, verificou-se que a autora teve pedido de transferência realizado em 27/11/2021, contudo, a paciente foi avaliada e orientou-se o tratamento conservador (não cirúrgico), para manter a tipoia, vindo a ter alta hospitalar no dia 28/12/2021. Salienta-se que a autora intimada para apresentar resposta acerca das informações enviadas pelo promovido, Estado do Ceará, nada apresentou, conforme certidão de Id. 15113238. Pois bem. Não obstante a Constituição vigente estabeleça que a saúde é um direito de todos e dever do Estado (CF, art. 196) a judicialização deste direito constitucional não pode ser realizada à margem do também constitucional princípio da isonomia, sob pena de causar injusto privilégio de alguns em prejuízo de outros que permanecem em "fila de espera" para realização de cirurgia, em especial, quando o tratamento requerido não é urgente nem de emergência. A propósito, os Tribunais Superiores já se posicionaram por diversas vezes que o direito constitucional à saúde não garante todo e qualquer tratamento indistintamente, a exemplo do julgado do RE nº 657718 (Tema 500 – STF): &#160; Tese - I - O Estado não pode ser obrigado a fornecer medicamentos experimentais; II - A ausência de registro na ANVISA impede, como regra geral, o fornecimento de medicamento por decisão judicial; III – É possível, excepcionalmente, a concessão judicial de medicamento sem registro sanitário, em caso de mora irrazoável da ANVISA em apreciar o pedido (prazo superior ao previsto na Lei nº 13.411/2016), quando preenchidos três requisitos: (i) a existência de pedido de registro do medicamento no Brasil (salvo no caso de medicamentos órfãos para doenças raras e ultrarraras); (ii) a existência de registro do medicamento em renomadas agências de regulação no exterior; e (iii) a inexistência de substituto terapêutico com registro no Brasil; IV - As ações que demandem fornecimento de medicamentos sem registro na ANVISA deverão necessariamente ser propostas em face da União. &#160;Nesse raciocínio, entendo que permitir que a recorrente fure a “fila de espera” se mostra altamente temerário, sob pena de inviabilizar o sistema como um todo e negar atendimento adequado a quem realmente necessita. Outrossim, em que pese a alegada “urgência” em sede de Comprovante de Encaminhamento à Fila de Espera (Id. 15113203 – p.08/11), tem-se que o motivo da transferência seria para “agilizar a transferência e realização de procedimento”, tampouco consta no referido relatório médico a menção do quadro clínico de risco imediato, consoante preceitua Enunciado n°51 da II Jornada de Direito à saúde do Conselho Nacional de Justiça, in verbis: &#160; <span style="font-size: x-

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	small;">ENUNCIADO Nº 51 Nos processos judiciais, a caracterização da urgência/emergência requer relatório médico circunstanciado, com expressa menção do quadro clínico de risco imediato. &#160; Desta forma, obrigar o recorrido a realizar a transferência sem qualquer observância a fila de espera, por certo impactará na vaga de outro paciente, inserido anteriormente no sistema de saúde e que se encontra em situação clínica igual ou mais agravada. Conclui-se, por conseguinte, que não há prova idônea de urgência e excepcionalidade necessária à pretensão, que implicaria em passar a apelante à frente na fila de espera, em detrimento dos demais usuários do sistema público de saúde, nessa linha, não prospera a alegação de que o princípio da isonomia não poderia comprometer o exercício de direito fundamental. Nessa perspectiva, assinalo arestos desta Egrégia Corte de Justiça a respeito do tema, com destaques: <span style="font-size: x-small;"> APELAÇÃO CÍVEL EM AÇÃO DE OBRIGAÇÃO DE FAZER. REALIZAÇÃO DE EXAME. DEMORA. URGÊNCIA. NÃO DEMONSTRAÇÃO. NECESSIDADE DE OBSERVÂNCIA DA LISTA DE ESPERA. RESPEITO AO PRINCÍPIO DA ISONOMIA. PRECEDENTES DO TJCE. IMPROCEDÊNCIA DO PEDIDO. RECURSO DE APELAÇÃO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA.1. O direito à saúde se encontra no rol dos direitos fundamentais do cidadão, inerente à própria existência humana e cuja relevância levou o Constituinte a alçá-lo à categoria de Direito Constitucional, como forma de prestação positiva do Estado.&#160;2. No caso em apreço, a parte autora requer que os réus (Estado do Ceará e Município de Barbalha) sejam compelidos a fornecer, de forma imediata, o estudo eletrofisiológico com ablação por cateter de taquicardia paroxística supraventricular, necessário para o tratamento da enfermidade grave que lhe acomete. No entanto, não consta dos documentos juntados por ela a urgência necessária para o deferimento do pedido, demonstrando, por consequência, que se trata de procedimento eletivo.&#160;3. A judicialização do direito constitucional à saúde não pode ser realizada à margem do, também constitucional, princípio da isonomia, sob pena de causar injusto privilégio de alguns em prejuízo de outros que permanecem em fila de espera para cirurgias/exames eletivos.4. Assim, uma vez não comprovado que o Poder Público foi omisso em prestar o atendimento a paciente e ante a ausência de prova da urgência na realização do exame prescrito pelo médico assistente, a legitimar a inobservância de lista de espera segundo os protocolos usuais do SUS, a improcedência do pedido se faz de rigor.&#160;&#160;5. Recurso de Apelação conhecido e desprovido. Sentença mantida. (APELAÇÃO CÍVEL - 02008096320228060043, Relator(a): MARIA VILAUBA FAUSTO LOPES, 3ª Câmara de Direito Público, Data do julgamento: 30/10/2023, data da publicação: 31/10/2023) <span style="font-size: x-small;"> <span style="font-family: arial, helvetica, sans-serif;">EMENTA: APELAÇÃO CÍVEL. CONSTITUCIONAL. OBRIGAÇÃO DE FAZER. SAÚDE. CIRURGIA DE ARTROPLASTIA TOTAL PRIMÁRIA DO QUADRIL. AUSÊNCIA DA PROVA DE URGÊNCIA OU DE EMERGÊNCIA. DESRESPEITO INJUSTIFICADO À FILA DE ESPERA DO SISTEMA DE SAÚDE. SENTENÇA DE IMPROCEDÊNCIA MANTIDA. APELAÇÃO CÍVEL CONHECIDA E IMPROVIDA.1. O cerne do presente recurso reside na análise da correção da Sentença que indeferiu pleito autoral de condenação do Estado do Ceará a realização imediata de artroplastia total primária do quadril, em favor da parte autora, ora recorrente, em razão de que seria possível a paciente aguardar pelo andamento normal da fila de procedimentos realizados pelo SUS. Segundo o julgador, adotar entendimento contrário implicaria em tratamento favorecido da apelante em relação aos demais cidadãos e da atuação judicial “imiscuir na alteração da lista de espera que é elaborada pelos setores competentes, mormente considerando-se o grau de urgência aferido por quem de direito, sob pena de implicar prejuízo ao direito de outros pacientes que igualmente estão na lista de espera e que podem apresentar quadro mais grave do que o autor”. &#160;2. Analisando os autos, constata-se que resta incontroverso que a parte autora é portadora de coxartrose grave direita, necessitando da realização de cirurgia ortopédica, motivo pelo qual fora incluída na fila de procedimentos, conforme atesta documento de ID 13293998, fl. 02. &#160;3. Como amplamente sabido, o direito à saúde deve ser garantido pelo Estado (sentido amplo) de forma irrestrita, inclusive com a determinação de procedimentos médicos, fornecimento gratuito de insumos e medicamentos, a portadores de doenças que deles necessitem, desde que prescrito por profissional habilitado. Atender a essas necessidades é cumprir a expressa disposição constitucional. &#160;4. In casu, o documento apresentado pela requerente nos IDs 13293997 e 13293998 indica que inexiste urgência no caso concreto, podendo a parte aguardar o andamento normal da fila em que já se encontra sem que a

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	situação induza em risco ao seu quadro de saúde. Além disso, a promovente não apresentou nenhuma outra prova que fosse suficiente para indicar alteração de seu quadro ou que desse motivos para o julgador entender pela impossibilidade do tempo de espera para a realização do devido tratamento, burlando a fila existente.&#160; &#160;5. Ressalto ainda que a falta de uma descrição detalhada da urgência para a realização do procedimento cirúrgico viola o que estabelece o Enunciado 51, da II Jornada de Direito à Saúde, do CNJ, que dispõe que “nos processos judiciais, a caracterização da urgência/emergência requer relatório médico circunstanciado, com expressa menção do quadro clínico de risco imediato”. Precedentes deste TJCE. &#160;6. Apelação conhecida e não provida. &#160;(APELAÇÃO CÍVEL - 02067303720228060064, Relator(a): MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara de Direito Público, Data do julgamento: 04/09/2024) <span style="font-size: x-small;"> <span style="font-family: arial, helvetica, sans-serif;">RECURSO DE APELAÇÃO. AÇÃO DE OBRIGAÇÃO DE FAZER C/C PEDIDO DE TUTELA DE URGÊNCIA. FORNECIMENTO DE SERVIÇO DE CONSULTA MÉDICA. NÃO CABIMENTO. AUSÊNCIA DE COMPROVAÇÃO DE SITUAÇÃO EXCEPCIONAL OU URGÊNCIA. SERVIÇO OFERTADO PELO SUS. DEVE SER SEGUIDA A ORDEM ESTABELECIDA NA FILA DE ESPERA PARA O PROCEDIMENTO. RELATÓRIO MÉDICO QUE NÃO INDICA URGÊNCIA NEM RISCO DE COMPLICAÇÕES GRAVES IMINENTES. PRINCÍPIO DA ISONOMIA. EFEITO SUSPENSIVO SENTENÇA. AFASTADA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA.&#160;1 - Insurge-se o apelante contra a sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Limoeiro do Norte que julgou improcedente a Ação de Obrigação de Fazer em face do Estado do Ceará e do Município de Limoeiro do Norte.&#160;2 - Com efeito, o funcionamento do Sistema Único de Saúde – SUS é de responsabilidade solidária da União, Estados-Membros, Distrito Federal e Municípios, de maneira que quaisquer dessas entidades possuem legitimidade ad causam para figurar no polo passivo em demandas que objetivem a garantia do acesso a tratamento médico para pessoas carentes de recursos financeiros.&#160;3- Da análise dos autos, observa-se que o menor E. G. R. T. apresenta quadro clínico de Transtorno do Déficit de Atenção e Hiperatividade (TDAH), necessitando de avaliação médica com especialista (neuropediatria) fornecida pelo SUS para diagnóstico do autor, pois não tem condições financeiras de custear a consulta por ser pessoa hipossuficiente. Contudo, em consonância com o entendimento do juízo primevo, deve o menor esperar sua colocação na fila, em respeito à organização da ordem da fila do SUS e ao princípio da isonomia, vez que além de inexistir relatório especificando a urgência do atendimento, o autor foi intimado para apresentar laudos complementares a fim de comprovar seu direito, porém quedou-se inerte.4 - No contexto das políticas públicas, o Judiciário só pode intervir excepcionalmente para garantir a proteção indispensável aos cidadãos, quando ficar evidente que a ação ou omissão da Administração é completamente desarrazoada, prejudicando o mínimo necessário para a dignidade humana.5 - No caso em tela não se verifica risco à vida e à saúde do paciente, ainda que comprometa sua qualidade de vida, configura-se demanda recorrente no Sistema Único de Saúde – SUS. Tal fato, a existência de fila de espera, que demonstra a deficiência estrutural do SUS, não obriga, por si só, a prestação jurisdicional, notadamente quando não são atendidos os critérios que justificam a prioridade do paciente para um tratamento diferenciado.&#160;6 - Recurso conhecido e desprovido. Sentença mantida. (APELAÇÃO CÍVEL - 30001096120238060115, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 12/08/2024, data da publicação: 14/08/2024) E sob a minha Relatoria:&#160; Apelação Cível&#160;nº 0055078-41.2020.8.06.0064, data do julgamento:&#160; 16/12/2022, data da publicação:&#160; 16/12/2022;&#160; Apelação Cível nº 0004248-21.2018.8.06.0071, data do julgamento: 02/05/2022, data da publicação: 02/05/2022; Apelação Cível&#160;nº 0201119-22.2022.8.06.0091, data do julgamento: 22/07/2024, data da publicação: 23/07/2024. Diante disso, não se ignora o direito do apelante à saúde por meio do tratamento necessário, tampouco a garantia de receber a referida pretensão do poder público. No entanto, no presente caso não restou demonstrado qualquer fato que justifique a premência de imediato atendimento do paciente apelante, haja vista que devem existir pessoas à frente da apelante na lista de espera do SUS para o recebimento do serviço ou, até mesmo, pessoas em situações mais urgentes. Portanto, uma vez não demonstrada a urgência dos procedimentos solicitados, impõe-se a improcedência do pedido e, por conseguinte, a não merece reforma a sentença

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	recorrida. </p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Ante o exposto , CONHEÇO e NEGO PROVIMENTO ao Recurso de Apelação, mantendo-se a sentença inalterada, por seus próprios e jurídicos fundamentos.&#160; </p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160; É como voto.</p><p style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	136
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tratamento da Própria Saúde
Polo ativo	ESTADO DO CEARA MUNICIPIO DE MONSENHOR TABOSA
Advogado(s) - Polo ativo	Não informado
Polo passivo	RODRIGO DE ALMEIDA FERREIRA MINISTERIO PUBLICO DO ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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...

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 20.7px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> : Constitucional. Apelação. Fixação de honorários em favor do Ministério Público em sede de Ação Civil Pública. Ausência de manifesta má-fé. Simetria. Impossibilidade de fixação de honorários. Apelo conhecido e provido. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I . Caso em exame &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Apelação em face de sentença que determinou o fornecimento de medicamento <span class="NormalTextRun

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	SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">para Rodrigo de Almeida Ferreira em sede de Ação Civil Pública movida pelo órgão ministerial . O juízo de primeiro grau julgou procedente o pleito fixou honorários advocatícios em favor do órgão ministeria l .&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II . Questão em discussão &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 12pt; line-height: 20.7px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-

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	BR">2. Avaliar se a condenação em honorários advocatícios ao caso em espécie encontra respaldo no ordenamento jurídico. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III . Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. O pagamento de honorários advocatícios em sede de ação civil pública é cabível apenas em caso de má-fé comprovada, o que não foi demonstrado nos autos. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal;

Processo	0800018-84.2022.8.06.0127
	font-variant-position: normal; font-size: 12pt; line-height: 20.7px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> IV . Dispositivo&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Apelo conhecido e provido. &#160;</p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; &#160; &#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px

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	10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ACÓRDÃO &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso, para dar provimento integral ao pleito da parte apelante, tudo nos termos do voto do relator, parte integrante deste. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Fortaleza, data informada pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px

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	10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATOR &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Tem-se apelação interposta pelo Estado do Ceará, em relação à sentença proferida pelo juízo da Vara Única da Comarca de Monsenhor Tabosa, que julgou procedente o pedido formulado por Rodrigo de Almeida Ferreira, determinando que o Município de Monsenhor Tabosa e o Estado do Ceará fornecessem os fármacos e o atendimento por equipe multidisciplinar que o autor necessita.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-

Processo	0800018-84.2022.8.06.0127
	collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Petição Inicial (ID 15166156) : Ação Civil Pública ajuizada pelo Ministério Público Estadual em face do município de Monsenhor Tabosa e o Estado do Ceará, solicitando que os entes públicos fornecessem para Rodrigo de Almeia Ferreira diversos medicamentos, instrumentos e tratamento fisioterápico, uma vez que são necessários para o reestabelecimento da sua saúde, em virtude de acidente de trânsito ao qual foi acometido. Em decorrência do acidente o autor sofreu Trauma Crânio-Encefálico e Trauma Torácico (CID 10:S06/S29) necessitando das medicações descritas na inicial, mas que não recebeu prontamente em virtude da omissão do Estado e do Município.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Sentença (ID 15166566) : Determinou que o Estado e o Município procedessem ao fornecimento dos medicamentos almejados, bem como condenou a par t e requerida ao pagamento de honorários advocatícios no valor de R$ 800,00 (oitocentos) reais .&#160; <span class="EOP SCXW41329389 BCX0" style="-

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	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 13pt; line-height: 31.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Apelação (ID 15166579): O Estado do Ceará apelou argumentando pela impossibilidade de fixação de honorários advocatícios em prol do Ministério Público em sede de Ação Civil Pública .&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Parecer ministerial (ID 15485854) : <span

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	class="NormalTextRun SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Propugnou que o recurso seja conhecido, mas, no mérito, desprovido.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Vieram-me os autos conclusos. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> É o relatório no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> <span

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	class="TextRun SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 13pt; line-height: 31.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">No que se refere ao juízo de admissibilidade, analisando os pressupostos processuais recursais necessários, tenho que os requisitos intrínsecos (cabimento, interesse e legitimidade, inexistência de súmula impeditiva) e extrínsecos (tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também, os específicos, descritos no art. 1.010 do CPC motivo pelo qual conheço do apelo.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> O apelo visa que seja reformada a determinação de honorários advocatícios ao Ministério Público em sede da Ação Civil Pública para o fornecimento de medicamentos.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> O apelo deve ser provido em relação a tal ponto. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;

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	background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Acerca da impossibilidade de condenação em custas e honorários advocatícios n esse contexto , deve-se levar em consideração o que dispõem os arts . 17 e 18 da Lei nº 7.347/85: &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 17. Em caso de litigância de má-fé, a associação autora e os diretores responsáveis pela propositura da ação serão solidariamente condenados em honorários advocatícios e ao décuplo das custas, sem prejuízo da responsabilidade por perdas e danos. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 18. Nas ações de que trata esta lei, não haverá adiantamento de custas, emolumentos, honorários periciais e quaisquer outras despesas, nem condenação da associação autora, salvo comprovada má-fé, em honorários de advogado, custas e despesas processuais. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Destarte, nota-se que a referida condenação só é possível quando comprovada má-fé por parte do promovente . A partir de sta perspectiva, aplica -se o princípio da simetria de tratamento das <span class="NormalTextRun SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	transparent; margin: 0px; padding: 0px; user-select: text;">p artes em âmbito processual, corroborado pelo art. 7º do CPC:&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 7º . É assegurada às partes paridade de tratamento em relação ao exercício de direitos e faculdades processuais, aos meios de defesa, aos ônus, aos deveres e à aplicação de sanções processuais, competindo ao juiz zelar pelo efetivo contraditório. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 56px;"> Assim , o pagamento de honorários em favor do Ministério Público

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	deve seguir a mesma lógica. V ários julgados pelo Superior Tribunal de Justiça corroboram que a condenação em honorários só pode ser imposta quando comprovada a adoção de má-fé em sua conduta no processo, o que não ocorrera nos autos. Vejamos julgados no teor referido: &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. OMISSÃO. EXISTÊNCIA. AÇÃO CIVIL PÚBLICA. DEVOLUÇÃO À ORIGEM. DESNECESSIDADE. HONORÁRIOS. MÁ-FÉ. AUSÊNCIA. DES CABIMENTO. 1. Os embargos de declaração têm por escopo sanar decisão judicial eivada de obscuridade, contradição, omissão ou erro material. 2. Caso em que, embora o contexto não estivesse suficientemente detalhado no acórdão do Tribunal de Justiça (tal como constou no acórdão do agravo interno), realmente o cenário fático-probatório tinha sido esmiuçado na sentença, situação não observada na decisão ora embargada, pelo que não era necessária a devolução dos autos à origem. 3. Em relação à alegada violação do art. 18 da Lei n. 7.347/1985, tal como reconhece a própria parte contrária, houve o prequestionamento ficto da matéria, na forma do art. 1.025 do CPC, já que reconhecida a omissão do acórdão da origem quanto ao tema (honorários em sede de ACP), a parte havia oposto <span class="NormalTextRun SpellingErrorV2Themed SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">aclaratórios no momento oportuno e, no apelo especial, indicou a violação ao art. 1.022, II, do CPC. 4. O Superior Tribunal de Justiça entende que não há condenação em honorários advocatícios na Ação Civil Pública, salvo em caso de comprovada má-fé, sendo certo que o referido entendimento é aplicado tanto para o autor quanto para o réu da ação, em obediência ao princípio da simetria 5. Embargos de declaração acolhidos, para conhecer do apelo especial e dar-lhe parcial provimento, somente para afastar a condenação do Município de Angra dos Reis ao pagamento de honorários. (STJ - EDcl no AgInt no REsp: 2021185 RJ 2022/0258990-8, Relator: Ministro GURGEL DE FARIA, Data de Julgamento: 25/09/2023, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 02/10/2023) (grifei) &#160;</p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> PROCESSUAL CIVIL. ADMINISTRATIVO. AÇÃO CIVIL PÚBLICA. AGRAVO INTERNO NO RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. APLICABILIDADE. ART. 18 DA LEI N. 7.347/1985. INCIDÊNCIA. ARGUMENTOS

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	INSUFICIENTES PARA DESCONSTITUIR A DECISÃO ATACADA. APLICAÇÃO DE MULTA. ART. 1.021, § 4º, DO CÓDIGO DE PROCESSO CIVIL DE 2015. DESCABIMENTO. I - Consoante o decidido pelo Plenário desta Corte na sessão realizada em 09.03.2016, o regime recursal será determinado pela data da publicação do provimento jurisdicional impugnado. In casu , aplica-se o Código de Processo Civil de 2015. II - Este Tribunal Superior firmou entendimento segundo o qual, em prestígio ao princípio da simetria, a isenção da parte autora do pagamento de honorários sucumbenciais, prevista no art. 18 da Lei n. 7.347/1985, deve ser estendida à parte ré, revelando-se cabível a condenação apenas diante da comprovação de má-fé. Precedentes.III - O Agravante não apresenta, no agravo, argumentos suficientes para desconstituir a decisão recorrida.IV - Em regra, descabe a imposição da multa prevista no art. 1.021, § 4º, do Código de Processo Civil de 2015 em razão do mero desprovimento do Agravo Interno em votação unânime, sendo necessária a configuração da manifesta inadmissibilidade ou improcedência do recurso a autorizar sua aplicação, o que não ocorreu no caso.V - Agravo Interno improvido. (STJ - AgInt no REsp: 1972619 RS 2021/0352188-4, Relator: Ministra REGINA HELENA COSTA, Data de Julgamento: 20/03/2023, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 22/03/2023) (grifei) <span class="EOP SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-

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	color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 20.7px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> PROCESSUAL CIVIL E ADMINISTRATIVO. AÇÃO CIVIL PÚBLICA. CONDENAÇÃO EM HONORÁRIOS ADVOCATÍCIOS. DESCABIMENTO. 1. O Superior Tribunal de Justiça entende que, nos termos do art. 18 da Lei 7.347/1985, não há condenação em honorários advocatícios na Ação Civil Pública, salvo em caso de comprovada má-fé, sendo certo que o referido entendimento é aplicado tanto para o autor quanto para o réu da ação, em obediência ao princípio da simetria. Precedentes. 2. Agravo interno desprovido. (STJ - AgInt nos EDcl no REsp: 1892244 SP 2020/0219379-8, Data de Julgamento: 26/09/2022, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 03/10/2022) &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="EOP SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 13pt; line-height:

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	31.5px; font-family: Arial, Arial_EmbeddedFont, Arial_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> AÇÃO CIVIL PÚBLICA. ART. 18 DA LEI DA AÇÃO CIVIL PÚBLICA (LEI 7.347/1985). HONORÁRIOS ADVOCATÍCIOS EM FAVOR DO MINISTÉRIO PÚBLICO. IMPOSSIBILIDADE. PRINCÍPIO DA SIMETRIA. REGRA INAPLICÁVEL ÀS ASSOCIAÇÕES E FUNDAÇÕES PRIVADAS. 1. Por conta do princípio da simetria, a previsão do art. 18 da Lei 7.347/1985 deve ser interpretada também em favor do réu, quando se tratar de demanda ajuizada pelo Parquet ou outro colegitimado estatal, ressalvadas associações e fundações privadas, que recebem tratamento privilegiado e diferenciado no domínio da ação civil pública .&#160; 2. O espírito de facilitação do acesso à justiça, que informa e orienta o processo civil coletivo, vem cabalmente realçado no art. 18 da Lei da Ação Civil Pública: "Nas ações de que trata esta lei, não haverá adiantamento de custas, emolumentos, honorários periciais e quaisquer outras despesas, nem condenação da associação autora, salvo comprovada má-fé, em honorários de advogado, custas e despesas processuais." 3. Nos termos da jurisprudência do STJ, a vedação de condenação do Ministério Público ou entidades estatais em honorários advocatícios - salvo comprovada má-fé - impede que sejam beneficiados quando vencedores na ação civil pública. Evidentemente, tal orientação não se deve aplicar a demandas propostas por associações e fundações privadas, pois, do contrário, barrado de fato estaria um dos objetivos mais nobres e festejados da Lei 7.347/1985, ou seja, viabilizar e ampliar o acesso à justiça para a sociedade civil organizada. Tudo com o agravante de que não seria razoável, sob enfoque ético e político, equiparar ou tratar como "simétricos" grandes grupos econômicos/instituições do Estado e organizações não governamentais (de moradores, ambientais, de consumidores, de pessoas com necessidades especiais, de idosos, etc). 4. Assim, dessume-se que o acórdão recorrido está em sintonia com o atual entendimento do STJ, razão pela qual não merece prosperar a irresignação. Incide,

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	in casu , o princípio estabelecido na Súmula 83/STJ: "Não se conhece do Recurso Especial pela divergência, quando a orientação do Tribunal se firmou no mesmo sentido da decisão recorrida". 5. Recurso Especial não provido, (REsp 1796436/RJ, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 09/05/2019, DJe 18/06/2019)&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ADMINISTRATIVO. APELAÇÃO CÍVEL EM AÇÃO CIVIL PÚBLICA. PRELIMINAR DE AUSÊNCIA DE INTERESSE PROCESSUAL REJEITADA. FALHA NA PRESTAÇÃO DO SERVIÇO DE FORNECIMENTO DE ÁGUA PELA CAGECE . MÁ QUALIDADE DA ÁGUA. COMPROVAÇÃO. SUFICIÊNCIA DE PROVAS. DIREITO FUNDAMENTAL À SAÚDE E AO MEIO AMBIENTE SADIO E EQUILIBRADO. ARTS . 196 e 225 DA CF/1988. IMPOSSIBILIDADE DE FIXAÇÃO DE HONORÁRIOS SUCUMBENCIAIS EM AÇÃO CIVIL PÚBLICA (ART. 18 DA LEI Nº 7.347/85). APELO CONHECIDO E PARCIALMENTE PROVIDO. 1. Afasta-se a preliminar de ausência de interesse processual suscitada pela recorrente, pois a simples menção acerca do cumprimento parcial das medidas necessárias ao regular fornecimento da água não implica perda superveniente do objeto tampouco falta de interesse de agir. 2. A controvérsia cinge-se a discutir o acerto da sentença prolatada nos autos de ação civil pública que condenou a Companhia de Água e Esgoto do Estado do Ceará (CAGECE) a manter o fornecimento regular e ininterrupto de água tratada e de qualidade para a população do Município de Itapipoca/CE. 3. O acesso à água potável é direito fundamental, indispensável para a qualidade de vida e para a saúde da população,

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	sendo dever do Poder Público o fornecimento desse serviço público essencial, diretamente ou por meio de concessão. 4. O caso sub oculi relaciona-se intrinsecamente aos direitos fundamentais à saúde (art. 196 da CF) e ao meio ambiente sadio e equilibrado (art. 225 da CF). Cabe à concessionária operar e manter os serviços de abastecimento de água potável, de modo a zelar pela sua qualidade e seu fornecimento contínuo e regular. 5. As provas coligidas ao caderno processual evidenciam a má qualidade da água e os problemas em seu fornecimento, dentre as quais se destacam: a) os prints em que constam as insurgências de populares/consumidores externadas em páginas de redes sociais; e b) o resultado da análise de amostras de água formalizado pelo Núcleo de Vigilância Sanitária e Ambiental da Secretaria Municipal de Itapipoca-CE a partir dos resultados dos exames laboratoriais realizados no Laboratório Central de Saúde Pública ¿ LACEN. 6. A jurisprudência do Superior Tribunal de Justiça é no sentido de que, em sede de ação civil pública, a vedação à condenação ao pagamento de honorários advocatícios aplica-se tanto ao autor quanto ao réu, em obediência ao princípio da simetria. 7. Desse modo, a sentença merece reforma apenas para afastar a condenação da promovida ao pagamento de honorários advocatícios, à luz do art. 18 da Lei nº 7.347/85 e do princípio da simetria. Precedentes do STJ. 8. Apelação conhecida e parcialmente provida. (TJ-CE - Apelação Cível: 0028389-14.2018.8.06.0101 Itapipoca, Relator: FERNANDO LUIZ XIMENES ROCHA, Data de Julgamento: 05/02/2024, 1ª Câmara Direito Público, Data de Publicação: 05/02/2024) &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 47px;"> Assim, conheço da apelação, para

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	DAR -LHE provimento ao apelo do Estado do Ceará uma vez que não se mostra cabível a fixação de honorários advocatícios ao caso em exame. &#160;</p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 47px;"> &#160;É o voto que submeto à consideração de meus pares. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 8px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; Fortaleza, data informada pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 11.3333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-

Processo	0800018-84.2022.8.06.0127
	collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 94px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAUJO &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relator &#160; </p></div><div class="OutlineElement Ltr SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW41329389 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	137
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Multas e demais Sanções
Polo ativo	BRISANET SERVICOS DE TELECOMUNICACOES LTDA
Advogado(s) - Polo ativo	JULIANA DE ABREU TEIXEIRA - (CE13463-A)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0263662-40.2022.8.06.0001
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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	REFORMADA. </p><p class="EmentadoAcrdo" style="line-height: 150%;"> I. CASO EM EXAME </p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 01. Trata-se, na espécie, de recurso de apelação contra sentença que julgou improcedente os pedidos formulados em ação anulatória de ato administrativo, ajuizada, pela recorrente, visando desconstituir o processo administrativo nº 23.004.001.20-0000039, instaurado em seu desfavor no âmbito do Programa Estadual de Proteção e Defesa do Consumidor - DECON, e tornar nula a multa administrativa contra si aplicada ou a redução do valor arbitrada em 3.000 (três mil) URFICES a patamar razoável às circunstâncias do caso concreto. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> II. QUESTÕES EM DISCUSSÃO </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; line-height: 150%; vertical-align: baseline;"> 02. Verificar a regularidade do procedimento administrativo instaurado pelo DECON/CE, que resultou na aplicação de multa em desfavor da empresa apelante por infração à legislação consumerista ao aplicar penalidade rescisória no valor de R$ 688,00 a consumidor. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 03. Restou evidenciado nos autos que foi observado o devido processo legal no âmbito do DECON e que a decisão ora atacada se encontra fundamentada no CDC, o qual prevê a possibilidade de aplicação de sanções a fornecedores que, no desempenho de suas atividades, violem direitos dos consumidores, não havendo, nessa medida, nenhuma nulidade a ser afastada.</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 3.1. Quanto ao valor da multa aplicada, este se mostra fora dos parâmetros estabelecidos pelo art. 57 do CDC, devendo ser reduzido pelo Poder Judiciário, para atender aos princípios da razoabilidade e da proporcionalidade.</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 3.2. Como é assente, a atuação da Administração Pública deve sempre se pautar na razoabilidade e proporcionalidade, sendo passível de controle pelo Poder Judiciário todo ato que não se atenha a tais parâmetros, por desbordar dos limites da discricionariedade e, por conseguinte, violar a ordem legal em vigor.</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 3.3. Assim, considerando tais circunstâncias, deve o valor da multa aplicada, na hipótese dos autos, ser reduzido de 3.000 (três mil) para 1.500 (mil e quinhentos) URFICES, o qual se afigura mais condizente com a gravidade da infração, a vantagem auferida e a condição econômica da infratora, além de manter seu caráter punitivo e pedagógico. &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 115%;"> IV. DISPOSITIVO <strong style="text-indent: 42.55pt;"> &#160; </p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 04. Apelação conhecida e parcialmente provida. Sentença reformada em parte.</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> Dispositivos relevantes citados: CF/88 - art. 5º, inciso LV; CDC - arts. 6º IV, 39, III e VI; arts. 55, 56 e 57; art. 4º, inciso II, da Lei Complementar Estadual nº 30/2002; art. 12 IV e VII do Decreto 2181/97 e art. 57, parágrafo primeiro da Resolução 632/2014; CPC, arts. 85 e 86.</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> Jurisprudência relevante citada: STF, RE 1103448 AgR/PB, Relator(a): Min. EDSON FACHIN. Julgamento: 11/10/2019. Órgão Julgador Segunda Turma. Publicação: PROCESSO ELETRÔNICO. Dje-230 DIVULG 22-10-2019 PUBLIC 23-10-2019; STJ- AgInt no REsp n. 1.983.070/CE, relator Ministro Mauro Campbell Marques, Segunda Turma, julgado em 27/6/2022, DJe de 30/6/2022; TJCE, Apelação Cível - 3011722-32.2023.8.06.0001, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento: 29/07/2024, data da publicação: 07/08/2024 e Apelação Cível - 3026390-08.2023.8.06.0001, Rel. Desembargador(a) JORIZA MAGALHÃES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 15/07/2024, data da publicação: 31/07/2024.</p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: justify; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-

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	align: justify; line-height: 150%;"> ACÓRDÃO: &#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160;em conhecer do Recurso de Apelação, para DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do relator. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 150%;" align="center"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; text-indent: 48.95pt; line-height: 150%;" align="center"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 150%;" align="center"> Relator &#160;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 150%;" align="center"> &#160; </p><p class="MsoNormal" style="mso-margin-top-alt: auto; mso-margin-bottom-alt: auto; text-align: center; line-height: 150%;" align="center"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 28.5pt; text-align: center; text-indent: -28.5pt; line-height: 150%; vertical-align: baseline;" align="center"> RELAT ÓRIO &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 69.75pt; line-height: 150%; vertical-align: baseline;"> &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 69.75pt; line-height: 150%; vertical-align: baseline;"> Tratam os autos de Recurso de Apelação, interposto pela Brisanet Serviços de Telecomunicações LTDA, contra sentença do Juízo de Direito da 12ª Vara da Fazenda Pública da Comarca de Fortaleza/CE, na Ação Anulatória com pedido de tutela antecipada ajuizada pela recorrente em face do Estado do Ceará, ora recorrido, visando à anulação de multa imposta pelo Programa Estadual de Proteção e Defesa do Consumidor – DECON, no Processo Administrativo nº 23.004.001.20-0000039.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 69.75pt; line-height: 150%; vertical-align: baseline;"> Decisão recorrida: julgou improcedente o pleito autoral, ante a inexistência de prova robusta nestes autos, capaz de elidir a presunção de veracidade e legalidade do processo administrativo em questão, notadamente, por estar garantido o contraditório e a ampla defesa, bem como a legitimidade do órgão sancionador para instaurar procedimento administrativo em defesa do consumidor, entendendo inexistir irregularidade capaz de ensejar a suspensão e/ou alteração/nulidade da decisão administrativa questionada (Id 15178371).&#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 69.75pt; line-height: 150%; vertical-align: baseline;"> Recurso de apelação (Id 15178375): irresignada, a parte autora, defende ter havido ofensa aos princípios do contraditório, ampla defesa e devido processo legal, pois o PROCON teria aplicado uma multa desproporcional, sem qualquer fundamentação fática e demonstração da fórmula a ser utilizada, motivos pelos quais requer a reforma do julgado, com a anulação da multa ou, subsidiariamente, para que esta seja reduzida.&#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 69.75pt; line-height: 150%; vertical-align: baseline;"> Contrarrazões pelo Estado do Ceará (Id 15178376).&#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 69.75pt; line-height: 150%; vertical-align: baseline;"> Manifestação da Procuradoria da Justiça pelo conhecimento e parcial provimento do recurso, com redução da multa para 1.500 UFIR-CE (Id 15401948).&#160; </p><p class="MsoNormal" style="margin-bottom:

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	.0001pt; text-align: justify; text-indent: 69.75pt; line-height: 150%; vertical-align: baseline;"> É o relatório.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 69.75pt; line-height: 150%; vertical-align: baseline;"> &#160;&#160; &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: 150%; vertical-align: baseline;" align="center"> VOTO &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: 150%; vertical-align: baseline;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 73.5pt; line-height: 150%; vertical-align: baseline;"> Presentes os pressupostos de admissibilidade, conheço do recurso.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 73.5pt; line-height: 150%; vertical-align: baseline;"> A controvérsia consiste em verificar a regularidade de multa imposta pelo DECON-CE em face da ora recorrente, após o devido processo administrativo. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 73.5pt; line-height: 150%; vertical-align: baseline;"> Relata a inicial que o autor registrou uma queixa, afirmando que tinha um contrato de serviços com a BRISANET e que, em outubro de 2019, pediu o cancelamento do seu plano. No entanto, ele foi surpreendido posteriormente com uma cobrança de R$ 688,00.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 73.5pt; line-height: 150%; vertical-align: baseline;"> Em sua defesa, a recorrente alega que o autor mantinha um contrato de internet consigo desde o ano de 2016, com fidelização até março de 2017. Após o fim do término do dito período, a relação continuou, quando então foi procurada, no ano de 2019, para fins de renovação e mudança para o plano com velocidade de 50 Mbps. Nessa ocasião, foram oferecidos dois preços, sendo que o mais atrativo era condicionada à nova fidelização por 12 meses, na forma de contrato de adesão previsto no art. 54 do CDC. Como o consumidor resolveu extinguir a relação jurídica antes dos 12 meses, foi-lhe cobrada a multa proporcional no valor de R$ 688,00. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 73.5pt; line-height: 150%; vertical-align: baseline;"> Diante deste contexto, sobreveio a sentença apelada, que julgou improcedentes os pedidos autorais.&#160;&#160;&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 73.5pt; line-height: 150%; vertical-align: baseline;"> Com razão, em parte, a recorrente.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.9pt; line-height: 150%; mso-pagination: none;"> Pois bem. De início, faz-se necessário pontuar que os órgãos de defesa do consumidor têm como atribuição legal a aplicação de multas aos fornecedores de produtos ou serviços sempre que porventura venham a infringir normas consumeristas, observada, obviamente, a proporcionalidade e razoabilidade, mediante ponderação sobre a gravidade da infração, vantagem auferida e condição econômica do fornecedor. É o que se depreende dos arts. 55, 56 e 57 do Código de Defesa do Consumidor. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.85pt; line-height: 150%; mso-pagination: none;"> É assente o entendimento de que os atos da Administração Pública, desde que respeitem o princípio da legalidade, gozam de presunção de legitimidade e veracidade, somente podendo ser objeto de revisão mediante prova de que foram praticados em desacordo com as leis ou princípios constitucionais. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.85pt; line-height: 150%; mso-pagination: none;"> Nesse diapasão, a lei consumerista autoriza ao DECON a lavratura de multa administrativa, cabendo ao Judiciário apenas o controle da legalidade do procedimento administrativo. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Ademais, consoante a matéria, salienta-se que o Programa Estadual de Proteção e Defesa do Consumidor - PROCON/DECON detém competência, no exercício regular do poder de polícia, para impor sanções administrativas relacionadas às transgressões dos preceitos estabelecidos

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	pelo Código de Defesa do Consumidor, consoante dispõe o art. 4º, inciso II, da Lei Complementar Estadual nº 30/2002. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.85pt; line-height: 150%; mso-pagination: none;"> Assim sendo, em conformidade com o ordenamento jurídico, aplicada a penalidade pelo DECON, é vedado ao Poder Judiciário a análise do mérito do processo administrativo, devendo averiguar, tão somente, acerca da legalidade da sua condução, em respeito ao princípio da separação dos poderes. Todavia, não se afasta o controle judicial do ato administrativo a fim de que impeça que a administração exerça poder exacerbado, além dos limites legais que lhe foram outorgados. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.85pt; line-height: 150%; mso-pagination: none;"> Nesse sentido, entende iterativamente o Superior Tribunal de Justiça que “ O controle de legalidade exercido pelo Poder Judiciário sobre os atos administrativos diz respeito ao seu amplo aspecto de obediência aos postulados formais e materiais presentes na Carta Magna, sem, contudo, adentrar ao mérito administrativo. Para tanto, a parte dita prejudicada deve demonstrar, de forma concreta, a mencionada ofensa aos referidos princípios” (STJ; AgInt no RMS 58.391/SP, Rel. Ministro Francisco Falcão, Segunda Turma, julgado em 24/08/2020, DJe 28/08/2020). </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.9pt; line-height: 150%; mso-pagination: none;"> Estabelecidas tais premissas, verifico que, no caso em apreço, o Juízo de primeiro grau, corretamente, restringiu a sua análise aos parâmetros da legalidade do ato/processo administrativo, atento aos documentos juntados, restando constatada a devida observância aos meios de provas admitidos em direito, além do respeito aos direitos constitucionais da ampla defesa e do contraditório (art. 5º, inciso LV, CF), aliado ao princípio do devido processo legal. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.9pt; line-height: 150%; mso-pagination: none;"> Nesse contexto, caberia à recorrente provar que o DECON não obedeceu ao princípio da legalidade no procedimento administrativo em apreço, ônus do qual efetivamente não se desincumbiu. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Importante rememorar que foi instaurado, em desfavor da empresa recorrente, o procedimento administrativo nº 23.004.001.20-0000039 que versa sobre reclamação de consumidor que alegou falha na prestação dos serviços, esclarecendo que mantinha contrato de prestação de serviços com a BRISANET, e que, em outubro de 2019, solicitou o cancelamento do seu plano, sendo surpreendido posteriormente com uma multa rescisória no valor de R$ 688,00.</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> &#160;Observado o trâmite legal, após julgamento de recurso administrativo, foi confirmada multa no valor de 3.000 (três mil) UFIRCE, por violação aos arts. 6º IV, 39, III e VI do CDC c/c art. 12 IV e VII do Decreto 2181/97 e art. 57, parágrafo primeiro da Resolução 632/2014.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> À luz da conjuntura supra, concordo com o entendimento fixado na origem, segundo o qual o processo administrativo em análise, presente nos autos, demonstra que foi oportunizado à Requerente o exercício dos direitos fundamentais à ampla defesa e contraditório, bem como que todas as decisões exaradas no referido procedimento foram motivadas, contextualizando os fatos específicos da demanda aos ditames da lei consumerista e o seu impacto na coletividade. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.9pt; line-height: 150%; mso-pagination: none;"> Por outro lado, no que concerne à verificação da razoabilidade do valor da multa, trata-se de controle também possível ao Judiciário, por ser considerado modalidade de sindicância da legalidade do ato, vejamos: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify; line-height: normal; vertical-align: baseline;"> “[…] Quanto à alegação de ofensa ao art. 2º da Constituição Federal, esta Corte tem decidido que o controle jurisdicional do ato administrativo considerado ilegal ou abusivo não viola o

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	princípio da separação dos Poderes, sendo permitido, inclusive, ao Judiciário sindicar os aspectos relacionados à proporcionalidade e à razoabilidade [...]" - RE 1103448 AgR / PB PARAÍBA AG.REG. NO RECURSO EXTRAORDINÁRIO. Relator(a): Min. EDSON FACHIN. Julgamento: 11/10/2019. Órgão Julgador Segunda Turma. Publicação: PROCESSO ELETRÔNICO. Dje-230 DIVULG 22-10-2019 PUBLIC 23-10-2019)&#160;&#160; &#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> No caso concreto, relativamente à fixação da multa pelo DECON-CE, compreendo que esta deve ser minorada. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Do exame atento da decisão administrativa, verifica-se que a sanção arbitrada pelo julgador se demonstra desproporcional à infração apurada, uma vez que este fixou a multa em 3.000 (três mil) UFIRCE, correspondente a quantia de R$ 14.049,99 (quatorze mil e quarenta e nove reais e noventa e nove centavos), considerando como circunstância agravante o fato de que a empresa reclamada não teria adotado providências pertinentes para minimizar as irregularidades constatada, bem como a reincidência. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> De fato, embora o art. 57 do CDC estabeleça que a multa por infração aos direitos dos consumidores possa variar entre 200 (duzentas) e 3.000.000 (três milhões) URFICES, não há motivo para que seu valor tenha sido fixado em montante tão elevado in casu, na medida em que os danos não extrapolaram os limites de relação individual de consumo, havendo a prestação do serviço, ainda que com defeito.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Nesse contexto, destaco trecho do parecer da Procuradoria de Justiça em que consigna que "ainda que não se possa discordar do mérito da aplicação da sanção pecuniária, o seu quantum mostra-se injustificadamente elevado, pois da cobrança indevida de uma multa rescisória no valor de R$ 688,00 (seiscentos e oitenta e oito reais), aplicou-se sanção de 3.000 UFIR-CE (cujo valor unitário era de R$ 4,66333, no ano de 2021), que correspondiam R$ 14.049,99 (quatorze mil e quarenta e nove reais e quarenta e nove centavos), ou seja, 20,42 (vinte inteiros e quarenta e dois centésimos) vezes o valor da multa rescisória.".&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Rematou a Procuradora de Justiça afirmando que, "em precedentes envolvendo danos incidentes sobre produtos de maior valor e com repercussão bem mais significativa na esfera patrimonial dos consumidores, o e. Tribunal de Justiça entendeu por bem em reduzir a condenação para valores que variaram de 7.000 a 20.000 UFIRCE. No caso em comento, foi aplicada multa de 20 vezes o valor do dano ao consumidor. Compreendemos como razoável sua redução pela metade, ou seja, para 1.500 UFIR-CE, que representa valor aproximado de 10 vezes o valor da cobrança irregular efetuada ao consumidor.".&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Nesse sentido, seguem decisões proferidas por esta 3ª Câmara de Direito Público, in verbis (com destaques):&#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 108.0pt; text-align: justify; line-height: normal; vertical-align: baseline;"> <span style="font-size: x-small;"> ADMINISTRATIVO. CONSUMIDOR. APELAÇÃO CÍVEL. DESCUMPRIMENTO DA LEI Nº 8.078/90. MULTA APLICADA PELO PROCON/FORTALEZA. AÇÃO ANULATÓRIA DO ATO ADMINISTRATIVO. PROCEDIMENTO REGULAR. VIOLAÇÃO À PROPORCIONALIDADE E À RAZOABILIDADE DO VALOR DA MULTA ADMINISTRATIVA, AS QUAIS SÃO LIGADAS À LEGALIDADE DO ATO ADMINISTRATIVO. INTERVENÇÃO DO PODER JUDICIÁRIO QUE NÃO CONFIGURA VIOLAÇÃO AO PRINCÍPIO DA SEPARAÇÃO DE PODERES. REDUÇÃO DA MULTA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO <em>. 1. Tem-se apelação interposta pela LG Eletronics do Brasil LTDA contra a sentença de improcedência proferida nos autos de Ação Anulatória com Pedido de Tutela de Urgência Antecipada que confirmou o valor da multa imposta no procedimento administrativo, no montante de 1.000 (um mil) UFIRCE's. O recurso objetiva a anulação da multa aplicada pelo Departamento Municipal de Proteção e Defesa dos Direitos do Consumidor – Decon/Ceará, derivada da reclamação administrativa n° 23.001.001.19-0008312. 2. O DECON é regulamentado pela Lei Complementar 39 de 2002 e detém atribuição para apurar as infrações à legislação consumerista e aplicar as penalidades

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	administrativas correspondentes, conforme o artigo 23 da mencionada Lei combinada com os artigos 105 e 106 do CDC o qual dispõe sobre a organização do Sistema Nacional de Defesa do Consumidor e visa à aplicação das normas estabelecidas na Lei nº 8.078/90; e, nesta senda, detém atribuição para apurar as infrações à legislação consumerista e aplicar as penalidades administrativas correspondentes. 3. Em que pese seja excepcional a intervenção do Poder Judiciário nas questões atinentes ao mérito administrativo, é possível o controle judicial do ato administrativo sem implicar em violação ao princípio da separação dos poderes, quando a atuação do Judiciário se refere a aspectos ligados à legalidade, à razoabilidade e à proporcionalidade. 4. No que concerne à verificação da razoabilidade do valor da multa, trata-se de controle também possível ao Judiciário, por ser considerado modalidade de sindicância da legalidade do ato, razão pela qual mostra-se correta e razoável a redução do valor da multa administrativa de 1.000 (um mil) para 250 (duzentas e cinquenta) UFIRCE's. 5. Apelo conhecido e parcialmente provido. ACÓRDÃO Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso, para dar parcial provimento ao pleito da parte autora, tudo nos termos do voto do relator, parte integrante deste Fortaleza, data informada pelo sistema. Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO RELATOR (Apelação Cível&#160;- 3011722-32.2023.8.06.0001, Rel. Desembargador(a) WASHINGTON LUÍS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento:&#160;29/07/2024, data da publicação: 07/08/2024)&#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 108.0pt; text-align: justify; line-height: normal; vertical-align: baseline;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 108.0pt; text-align: justify; line-height: normal; vertical-align: baseline;"> <span style="font-size: small;"> <span style="font-size: x-small;"> APELAÇÃO CÍVEL. DIREITO ADMINISTRATIVO, DO CONSUMIDOR E PROCESSUAL CIVIL. AÇÃO ORDINÁRIA. PRELIMINAR DE OFENSA AO PRINCÍPIO DA DIALETICIDADE REJEITADA. PLEITO DE ANULAÇÃO DE MULTA APLICADA PELO PROCON. INFRAÇÃO AO CÓDIGO DE DEFESA DO CONSUMIDOR. CONTROLE DE LEGALIDADE PELO PODER JUDICIÁRIO. INEXISTÊNCIA DE VÍCIOS QUE JUSTIFIQUEM A NULIDADE DO PROCESSO ADMINISTRATIVO. MULTA ARBITRADA EM VALOR EXCESSIVO. POSSIBILIDADE DE REDUÇÃO, EM OBSERVÂNCIA AOS PRINCÍPIOS DA PROPORCIONALIDADE E RAZOABILIDADE. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA PARA REDUZIR O VALOR DA MULTA. SENTENÇA PARCIALMENTE REFORMADA <em>. 1. Preliminar de ofensa ao princípio da dialeticidade afastada. 2. Cinge-se a controvérsia em aferir a higidez do processo administrativo instaurado pelo Departamento Municipal de Proteção e Defesa dos Direitos do Consumidor - PROCON que culminou com a aplicação da multa administrativa no valor de 12.000 (doze mil) UFIRCE em desfavor do apelante, por violação ao art. 51, inciso IV, do Código de Defesa do Consumidor. 3. Cumpre destacar que, em se tratando de controle jurisdicional no processo administrativo, cabe ao Poder Judiciário verificar a legalidade dos atos praticados pela Administração Pública, devendo examinar matérias relativas à ampla defesa, ao contraditório e ao rito procedimental, bem como aos princípios e mandamentos constitucionais. 4. No caso dos autos, não se vislumbra qualquer ilegalidade no procedimento administrativo, uma vez que este observou o devido processo legal, oportunizando à litigante momento para apresentação de defesa, restando, devidamente fundamentadas todas as decisões proferidas na esfera administrativa. Não obstante, do exame atento da decisão administrativa, verifica-se que a sanção arbitrada pelo julgador se demonstra desproporcional à infração apurada, uma vez que este fixou a multa em 12.000 (doze mil) UFIRCE, considerando como circunstância agravante o fato de que a empresa reclamada não teria adotado providências pertinentes para minimizar as irregularidades constatada. Contudo, da análise dos documentos acostados aos autos, observa-se que a empresa apelante apresentou, em resposta a demanda oferecida, propostas de acordo para a consumidora, não se mostrando justo ou razoável aplicar a circunstância agravante ao presente caso. 5. Assim sendo, em atenção ao valor da cobrança que ensejou a apuração administrativa, a atenuante que foi considerada na decisão, bem como a condição econômica do fornecedor, entende-se como razoável e proporcional a redução da pena de multa de 12.000 (doze mil) UFIRCE para 5.000 (cinco mil) UFIRCE, considerando o valor do UFIR do Ceará à época da decisão administrativa. 6. Recurso conhecido e parcialmente provido. Sentença parcialmente reformada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer da Apelação Cível para dar-lhe parcial provimento, nos termos do voto da relatora, parte integrante deste. Fortaleza, data e hora informadas pelo sistema. DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO Relatora (Apelação Cível&#160;- 3026390-08.2023.8.06.0001, Rel. Desembargador(a) JORIZA MAGALHÃES PINHEIRO, 3ª Câmara Direito Público, data do julgamento:&#160;15/07/2024, data da publicação: 31/07/2024)&#160;

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	 &#160;</p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Considerando tais circunstâncias, entendo que o valor da multa deve ser reduzido de 3.000 (três mil) para 1.500 (mil e quinhentos) UFIRs/CE, montante que se mostra mais condizente com a gravidade da infração, a vantagem auferida e a condição econômica da empresa infratora, além de manter seu caráter punitivo e pedagógico.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Diante do exposto, conheço da apelação cível interposta, para, em consonância com o parecer do Ministério Público, dar-lhe parcial provimento, reformando em parte a sentença de primeiro grau e reduzir o valor da multa aplicada para 1.500 (mil e quinhentos) URFICES. </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Considerando a sucumbência recíproca, devem as partes ratearem os honorários sucumbenciais, na proporção de 70% (setenta por cento) para a parte promovente, e 30% (trinta por cento) para a parte promovida, nos termos do art. 86, CPC, observando-se que os honorários foram arbitrados na origem em 10% (dez por cento) sobre o valor da causa, sendo vedada a compensação (art. 85, §14, do CPC). </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Expedientes necessários.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> É como voto.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: justify; text-indent: 70.5pt; line-height: 150%; vertical-align: baseline;"> Fortaleza, data e hora informadas pelo sistema.&#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: 150%; vertical-align: baseline;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: 150%; vertical-align: baseline;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES &#160; </p><p class="MsoNormal" style="margin-bottom: .0001pt; text-align: center; line-height: 150%; vertical-align: baseline;" align="center"> Relator &#160; &#160; </p><p style="text-align: center;">&#160;</p><p class="MsoNormal" style="line-height: 150%;"> &#160;</p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;">&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	138
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	MUNICIPIO DE QUIXADA
Advogado(s) - Polo ativo	Não informado
Polo passivo	TEREZINHA FERREIRA SOUZA CIDADE
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	0201411-21.2022.8.06.0151
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GIIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kzE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	em exame </p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; line-height: 150%;"> 1. Trata-se de recurso de Apelação interposto pela 2ª Promotoria de Justiça de Quixadá em face da sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Quixadá, em sede de Ação de Obrigação de Fazer ajuizada por Terezinha Ferreira Souza Cidade em desfavor do Município de Quixadá, a qual julgou procedente o pedido da exordial.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; line-height: 150%;"> II. Questões em discussão </p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 2. Necessário aferir se a ausência de intimação do Ministério Público no 1º Grau constitui fato ensejador de nulidade da sentença.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; line-height: 150%;"> III. Razões de decidir </p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 3.1. Compulsando os autos, verifica-se que o Juízo de origem não intimou o Parquet Ministerial a se manifestar sobre o mérito do feito, proferindo a sentença sem abrir vista obrigatória ao órgão ministerial, o que vem sendo reiteradamente praticado pelo referido Juízo em feitos similares, conforme noticiado pelo parquet de 2º grau.</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 3.2. Constata-se existência de error in procedendo, uma vez que não houve abertura de vistas ao parquet, inobservando norma de regência.</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 3.3. Embora haja entendimento jurisprudencial no sentido que a atuação do Ministério Público em sede recursal possa suprir sua ausência no juízo da origem, importante salientar que, no caso em tela, além de não ter havido pronunciamento de mérito, houve arguição expressa de prejuízo por parte do Parquet nesta instância, que noticiou, inclusive, a reiteração dessa conduta pelo referido Juízo em feitos similares.</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> 3.4. Nesse contexto, o art. 279, caput, do CPC, estabelece ser nulo o processo quando o membro do Ministério Público não for intimado a acompanhar o feito em que deva intervir, devendo ocorrer a remessa dos autos à origem, para regular processamento do feito e prolação de nova sentença.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; line-height: 150%;"> IV. Dispositivo </p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; line-height: 150%;"> 4. Apelação conhecida e provida. Sentença anulada.</p><p class="EmentadoAcrdo" style="margin-top: 12.0pt; text-align: justify; line-height: 150%;"> Tese de julgamento: “Nulidade processual declarada a partir do momento em que o Ministério Público deveria ter sido intimado em primeira instância. Determinação de remessa dos autos à origem, para regular processamento do feito e prolação de nova sentença”.</p><p class="MsoNormal" style="text-align: justify;"> Dispositivos relevantes citados :&#160;CPC - artigos 177, 178, e art. 279. </p><p class="EmentadoAcrdo" style="margin-bottom: 10.0pt; text-align: justify; line-height: 150%;"> Jurisprudência relevante citada: TJCE - Apelação Cível - 0202326-70.2022.8.06.0151, Rel. Desembargador(a) DURVAL AIRES FILHO, 1ª Câmara Direito Público, data do julgamento: 03/06/2024, data da publicação: 14/06/2024; Apelação Cível - 0256996-57.2021.8.06.0001, Rel. Desembargador(a) WASHINGTON LUÍS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público, data do julgamento: 17/06/2024, data da publicação: 05/07/2024 e Apelação Cível - 0003830-69.2015.8.06.0142, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 17/03/2021, data da publicação: 17/03/2021.</p><p style="text-align: justify; line-height: 150%;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em conhecer e dar provimento ao Apelo , para decretar a nulidade da sentença e determinar o retorno dos autos ao juízo de origem.</p><p style="text-align: center; line-height: 150%;"> &#160;Fortaleza/CE,&#160;data e hora do sistema.</p><p style="text-align: center; text-indent: 48.95pt; line-height: 150%;" align="center"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center; text-indent: 48.95pt; line-height: 150%;" align="center"> Relator </p><p style="text-align: center; line-height: 150%;" align="center"> &#160; </p><p style="text-align: center; line-height: 150%;" align="center">&#160;</p><p style="text-align: center; line-height:

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	150%;" align="center"> RELATÓRIO </p><p style="text-align: center; line-height: 150%;" align="center"> &#160;</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Trata-se de Apelação Cível interposta pela 2ª Promotoria de Justiça de Quixadá em face da sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Quixadá, em sede de Ação de Obrigação de Fazer ajuizada por Terezinha Ferreira Souza Cidade em desfavor do Município de Quixadá, a qual julgou procedente o pedido da exordial (Id 15185335).</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Razões recursais:&#160;Irresignada, a Douta 2ª Promotoria de Justiça de Quixadá, ora apelante, interpôs recurso de apelação (Id 15185339), alegando, em suma, que: “ O magistrado incorreu em error in procedendo ao afastar a intervenção do Ministério Público, decidindo o feito com julgamento de mérito, sem prévia manifestação ministerial, embora o Parquet atue neste processo como fiscal da ordem jurídica, inclusive com atuação obrigatória, haja vista os direitos individuais indisponíveis discutidos.”</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Contrarrazões junto ao I d 15185344.</p><p style="text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Parecer da Procuradoria-Geral de Justiça no sentido de que diante da ausência da intimação obrigatória do Ministério Público na demanda em questão, por se tratar de interesse público, a nulidade da sentença de piso é a medida que se impõe, devendo se proceder com o retorno dos autos a origem para regular processamento com a devida intimação do Parquet de 1º grau, mediante o conhecimento e provimento do Apelo (I d 15493913).</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> É o relatório.</p><p style="text-align: center; line-height: 150%;" align="center"> VOTO </p><p style="text-align: center; line-height: 150%;" align="center"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 150%;"> Presentes os requisitos de admissibilidade, conheço da apelação.</p><p style="text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Tem-se que o presente recurso visa anular a sentença proferida pelo Juiz de Direito da 1ª Vara Cível da Comarca de Quixadá que, nos autos da Ação de Obrigação de Fazer, julgou procedente o pedido requestado na exordial, sem contudo abrir vistas ao Ministério Público de 1º Grau.</p><p style="text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Já adianto que o julgado ora em debate, deverá ser anulado com o consequente retorno dos autos a origem para regular processamento, pelas razões de fato e de direito a seguir exposta.</p><p style="text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Diante disso e conforme bem evidenciado pela D. 36ª Procuradoria Geral de Justiça atuante em segundo grau de jurisdição em seu parecer, verifica-se que a demanda trata de interesse público, conforme o art. 178, I, do CPC, especialmente por se tratar de demanda que visa promoção de justiça à proteção do direito à saúde , sem que o Ministério Público em nenhum momento fosse instado ou intimado a se manifestar acerca do mérito processual durante o trâmite do processo em primeiro grau.</p><p style="text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Compulsando os autos, verifica-se que o Juízo de origem não intimou o Parquet Ministerial a se manifestar sobre o mérito do feito, proferindo a sentença sem abrir vista obrigatória ao órgão ministerial, o que vem sendo reiteradamente praticado pelo referido Juízo em feitos similares , conforme noticiado pelo parquet de 2º grau, a exemplo dos processos 0051483-30.2021.8.06.0151, 0202326-70.2022.8.06.0151, 0202706-93.2022.8.06.0151 e 0201081-24.2022.8.06.0151.</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Ora, é cediço que a intervenção do Ministério Público se revela obrigatória nas ações que envolvam interesse público ou social (Art. 178, I, do CPC) e que a falta da intimação deste para o acompanhamento do feito constitui vício insanável, eivando de nulidade o processo (art. 279, do CPC).</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Com efeito, o Código de Processo Civil assim estabelece,&#160; in verbis:</p><p style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 4.0cm; text-align: justify;"> Art. 177. O Ministério Público exercerá o direito de ação em conformidade com suas atribuições constitucionais.

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	    Art. 178. O Ministério Público será intimado para, no prazo de 30 (trinta) dias, intervir como fiscal da ordem jurídica nas hipóteses previstas em lei ou na Constituição Federal e nos processos que envolvam: I - interesse público ou social; II - interesse de incapaz; III - litígios coletivos pela posse de terra rural ou urbana. Art. 279. É nulo o processo quando o membro do Ministério Público não for intimado a acompanhar o feito em que deva intervir. § 1º Se o processo tiver tramitado sem conhecimento do membro do Ministério Público, o juiz invalidará os atos praticados a partir do momento em que ele deveria ter sido intimado. § 2º A nulidade só pode ser decretada após a intimação do Ministério Público, que se manifestará sobre a existência ou a inexistência de prejuízo. A Procuradoria-Geral de Justiça, em sua manifestação,&#160;confirmou a necessidade de declaração de nulidade ao afirmar que “ Assim, como bem defendeu o membro do Ministério Público na peça recursal, a sentença monocrática padece de vício de nulidade, posto que fora prolatada sem a prévia oitiva do Parquet. Dessa forma, diante da ausência da intimação obrigatória do Ministério Público na demanda em questão, por se tratar de interesse público, a nulidade da sentença de piso é a medida que se impõe, devendo se proceder como retorno dos autos a origem para regular processamento com a devida intimação do Parquet de 1º grau. Arremata acerca da ausência de prejuízo às partes ao asseverar que “Por fim, no caso em tela, a princípio, a nulidade da Sentença não trará nenhum prejuízo direto a parte autora, tendo em vista que nos presentes autos foi concedido a tutela jurisdicional de urgência determinando que o Município de Quixadá proceda com a marcação e realização do serviço de tratamento domiciliar de fisioterapia, conforme entendimento médico pela quantidade indicada para o seu tratamento, pelo período necessário ao tratamento (id nº 0015185290)”. Da análise dos autos,&#160;forçoso concluir que o magistrado&#160; a quo&#160;incorreu&#160;em&#160; error in procedendo, na medida em que,&#160;não obstante a intimação do Ministério Público para se manifestar sobre a possibilidade de bloqueio das verbas públicas (Id 15185327),&#160;descuidou&#160;de assegurar a efetiva participação do&#160;Ministério Público&#160;no&#160;acompanhamento do feito,&#160;para atuar&#160;na promoção de justiça que visa à proteção do direito à saúde. Nessa perspectiva, inaplicável ao caso o entendimento jurisprudencial de que, via de regra, a atuação do Ministério Público em segunda instância tem o condão de suprir a nulidade decorrente de sua ausência em primeiro grau, uma vez que, além de não ter havido pronunciamento de mérito, houve arguição expressa de prejuízo por parte do Parquet nesta instância. No mesmo sentido, seguem julgados desta Corte de Justiça Estadual,&#160; in verbis, inclusive, em relação ao mesmo Juízo (com destaques): APELAÇÕES CÍVEIS EM AÇÃO DE OBRIGAÇÃO DE FAZER C/C TUTELA DE URGÊNCIA. PROCESSO CIVIL. SAÚDE. INTERESSE PÚBLICO NOS TERMOS DO ART. 178, I, DO CPC. AUSÊNCIA DE INTIMAÇÃO DO MINISTÉRIO PÚBLICO DE PRIMEIRO GRAU. CUSTOS LEGIS. OBRIGATORIEDADE. NULIDADE APONTADA. ERRO IN PROCEDENDO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA . 1. Trata-se de Apelação Cível interposta pela 2ª Promotoria de Justiça de Quixadá (id. 10834139), em face de sentença de id. 10834134, proferida pelo d. juízo da 1ª Vara Cível da Comarca de Quixadá <strong> <em> <span style="font-weight: normal;">, em sede de Ação de Obrigação de Fazer ajuizada por MARIA OSANEA DE ARAUJO em desfavor do INSTITUTO DE SAÚDE DOS SERVIDORES DO ESTADO DO CEARA – ISSEC, a qual julgou parcialmente procedente os pedidos da exordial. 2. A autora, igualmente irresignada interpôs recurso de apelação (id.10834141), requer o conhecimento e provimento da

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	apelação para que seja: “… conferindo integral provimento a presente apelação, determinando, via de consequência, a reforma parcial da sentença ID n.º 71436931, tão somente para fins de que seja reconhecido e autorizado por este douto Juízo a concessão em favor da apelante de assistência de técnico de enfermagem 24 h/dia.” 3. Por fim, o INSTITUTO DE SAÚDE DOS SERVIDORES DO ESTADO DO CEARA – ISSEC, interpôs o recurso de apelação (id. 10834145), pugnando em suma pelo conhecimento e provimento da apelação para que seja julgado totalmente improcedente o pleito autoral. 4. A douta 32ª Procuradoria de Justiça do Estado do Ceará lançou parecer acostado aos autos sob o id. 11888645, opina pelo conhecimento e provimento do recurso apelatório interposto pelo Ministério Público, in verbis: “manifesta-se pelo conhecimento e provimento do Recurso Apelatório interposto pelo Ministério Público, restando prejudicado Recurso de Apelação interposto pelo Instituto de Saúde dos Servidores do Ceará – ISSEC e por Maria Osanea de Araújo, em razão da nulidade avençada pelo Parquet.” 5. Adianto que se faz prejudicada a análise dos recursos de apelação interpostos pelas partes, posto que, com efeito, o Código de Processo Civil estabelece que compete ao Ministério Público atuar na defesa da ordem jurídica, do regime democrático e dos interesses e direitos sociais e individuais indisponíveis, intervindo em todas as causas em que há interesse público ou social, art. 176 e art. 178, I, do CPC; 6. Nesse contexto, o art. 279, caput, do CPC, estabelece ser nulo o processo quando o membro do Ministério Público não for intimado a acompanhar o feito em que deva intervir, devendo haver a anulação da sentença; 7. Destarte, a intervenção do Ministério Público na presente demanda, a meu sentir e ver, se faz primordial, nos moldes preconizados no art. 178, caput, do CPC, o que foi inobservado pelo judicante primevo, impondo-se a decretação de nulidade da sentença, à luz do disposto no art. 279 do CPC, devendo os autos retornarem à primeira instância para manifestação do Órgão Ministerial; 8. Apelação do Ministério Público conhecida e provida. Demais recursos prejudicados. 9. Sentença anulada. Retorno dos autos à origem para regular processamento, com a consequente manifestação do MP. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em votação unânime, conhecer e dar provimento ao recurso apelatório, julgando prejudicado os demais recursos, tudo em conformidade com os termos do voto do e. Desembargador Relator. Fortaleza/CE, data registrada no sistema. (Apelação Cível - 0202326-70.2022.8.06.0151, Rel. Desembargador(a) DURVAL AIRES FILHO, 1ª Câmara Direito Público , data do julgamento: 03/06/2024, data da publicação: 14/06/2024) PROCESSO CIVIL. APELAÇÃO CÍVEL EM AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. SENTENÇA DE IMPROCEDÊNCIA. PRESENÇA DE MENOR IMPÚBERE NO POLO ATIVO. AUSÊNCIA DE PARTICIPAÇÃO DO MINISTÉRIO PÚBLICO EM PRIMEIRA INSTÂNCIA. EXISTÊNCIA DE PREJUÍZO NO CASO CONCRETO, APONTADO PELO MINISTÉRIO PÚBLICO ATUANTE EM SEGUNDO GRAU. ERROR IN PROCEDENDO. NULIDADE PROCESSUAL COM DETERMINAÇÃO DE RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROCESSAMENTO DO FEITO. RECURSO PREJUDICADO . 1. Compulsando os autos, constata-se existência de error in procedendo, porquanto olvidou a magistrada de primeiro grau intimar o Ministério Público para intervir no feito na condição de custos legis, nos termos do art. 178, II, do CPC (ausência de intimação de todos os atos do processo). 2. Embora haja entendimento jurisprudencial no sentido que a atuação do Ministério Público em sede recursal possa suprir sua ausência no juízo da origem, importante salientar que, no caso em tela, além de não ter havido pronunciamento de mérito, houve arguição expressa de prejuízo por parte do Parquet nesta instância. Precedentes do STJ e do TJCE. 3. Reconhecimento da nulidade aventada pelo Ministério Público, com a desconstituição da sentença e determinação de retorno dos autos ao juízo de origem para regular tramitação. Exame do recurso de apelação prejudicado. ACÓRDÃO Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em declarar a nulidade processual absoluta por falta de intimação do Órgão Ministerial, determinando o retorno dos autos à origem para o regular processamento do feito e posterior prolação de nova sentença, restando prejudicada a análise da apelação, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. (Apelação Cível - 0256996-57.2021.8.06.0001, Rel. Desembargador(a) WASHINGTON LUÍS BEZERRA DE ARAÚJO, 3ª Câmara Direito Público , data do julgamento: 17/06/2024, data da publicação: 05/07/2024) &#160; <span

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	style="font-size: small;"> &#160; RECURSO APELATÓRIO EM AÇÃO DE REPARAÇÃO DE DANOS MORAIS E MATERIAIS. INTERESSE DE MENORES INCAPAZES. AUSÊNCIA DE INTERVENÇÃO DO MINISTÉRIO PÚBLICO NO JUÍZO DE PRIMEIRO GRAU. SENTENÇA ANULADA. INTELIGÊNCIA DOS ARTS. 178, INCISO II, E 279, §§ 1º E 2º, AMBOS DO CÓDIGO DE PROCESSO CIVIL. PREJUDICADA A ANÁLISE DO RECURSO DAS APELANTES.&#160;ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em reconhecer a nulidade indicada pelo Parquet, determinando a cassação da sentença e o retorno dos autos ao juízo de origem, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data e hora indicadas no sistema. FRANCISCO GLADYSON PONTES Relator (Apelação Cível - 0003830-69.2015.8.06.0142, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público , data do julgamento: 17/03/2021, data da publicação: 17/03/2021) </p><p style="text-align: justify; text-indent: 71.75pt; line-height: 150%;"> E de minha relatoria: Apelação Cível 0009569-58.2018.8.06.0064, data do julgamento: 07/08/2023, data da publicação: 24/06/2023.</p><p style="text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Desta feita, tendo em vista que a sentença padece de nulidade por erro de procedimento, ante a ausência de intimação do Ministério Público de primeiro grau, entendo que a mesma deve ser declarada nula, a partir do momento em que o Ministério Público deveria ter sido intimado , a teor do disposto no art. 279, §1º do CPC, como apontado pelos membros do Parquet, tanto em sede de Apelo, como em parecer, por cristalino vício insanável.</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> Por tais razões, em consonância com a legislação pertinente à matéria e alinhado ao Parecer Ministerial, conheço e dou provimento ao recurso de apelação interposto pelo Ministério Público, para declarar a nulidade do feito a partir do momento em que o Ministério Público deveria ter sido intimado em primeira instância, determinando o retorno dos autos a origem para o regular processamento e posterior prolação de nova sentença.</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> É como voto.</p><p style="margin-bottom: .0001pt; text-align: justify; text-indent: 71.75pt; line-height: 150%;"> &#160;Fortaleza/CE,&#160;data e hora do sistema.</p><p style="text-indent: 8%; text-align: center;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	139
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Gratificação Extraordinária - GE
Polo ativo	MUNICIPIO DE IBICUITINGA
Advogado(s) - Polo ativo	HERBSTHER LIMA BEZERRA - (CE36621-A)
Polo passivo	FRANCISCO MARCIO DE FREITAS FALCAO
Advogado(s) - Polo passivo	EMANUELE FERREIRA NOBRE - (CE26038-A) FRANCISCO NELSON SILVA COSTA - (CE30595-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3001068-21.2023.8.06.0151
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-e9c80042-7fff-8ecd-7884-ab166852b497" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 3001068-21.2023.8.06.0151</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelação Cível</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Município de Ibicuitinga-CE&#160;</p><p style="line-height: 1.44; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: Francisco Marcio de Freitas Falcão</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> CONSTITUCIONAL E ADMINISTRATIVO. AÇÃO DE COBRANÇA. APELAÇÃO CÍVEL. MUNICÍPIO DE IBICUITINGA. PISO SALARIAL NACIONAL DO MAGISTÉRIO PÚBLICO BÁSICO. LEI FEDERAL Nº 11.738/2008. CONSTITUCIONALIDADE - ADI Nº 4.167/DF. SALÁRIO BASE – PARÂMETRO PARA AFERIÇÃO DO PISO. DIFERENÇAS REMUNERATÓRIAS DEVIDAS. PRECEDENTES DO TJCE. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA PARCIALMENTE MODIFICADA DE OFÍCIO.&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. O cerne da controvérsia cinge-se em aferir se a parte autora, servidor público titular do cargo de provimento efetivo de professor do ensino fundamental do Município de Ibicuitinga, recebeu remuneração condizente com o parâmetro salarial mínimo instituído pela Lei Federal nº 11.738/2008, no período compreendido entre janeiro de 2018 a junho de 2023.&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt;

Processo	3001068-21.2023.8.06.0151
	text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Aplica-se o piso salarial nacional para os profissionais do magistério público da educação básica, a teor do disposto na Lei Federal nº 11.738/2008, sobre o vencimento base, com efeitos financeiros a contar de 27/04/2011. ADI nº 4.167/DF.&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Compulsando os fólios, percebe-se que o salário-base do servidor público, nos meses de janeiro a julho de 2018, de janeiro a maio de 2019 e de janeiro a julho de 2022, foi efetivamente inferior ao piso salarial estabelecido para a jornada de 20 (vinte) horas semanais, o que gera a necessidade de ressarcimento dos valores pagos a menor. Precedentes do TJCE.</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Em se tratando de sentença ilíquida imposta à Fazenda Pública, a fixação do percentual a título de verba honorária sucumbencial e a sua majoração proveniente da etapa recursal (art. 85, § 11, do CPC) devem ser realizadas na fase de liquidação do julgado, a teor do disposto no art. 85, § 4º, inciso II, do CPC.&#160;</p><p style="line-height: 1.2; margin-left: 113.3858267716535pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Apelação conhecida e desprovida. Sentença parcialmente modificada de ofício, tão somente quanto à fixação da verba honorária.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Apelação, a fim de negar-lhe provimento, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 42.8pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><hr /><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO </p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE IBICUITINGA,

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	em face de sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Quixadá-CE, que, nos autos da AÇÃO ORDINÁRIA DE OBRIGAÇÃO DE FAZER C/C COBRANÇA DE VALORES RETROATIVOS E INDENIZAÇÃO POR DANOS MORAIS proposta por FRANCISCO MARCIO DE FREITAS FALCÃO, julgou parcialmente procedente a demanda, nos termos do dispositivo abaixo transcrito (Id. 15185901):</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">Diante do exposto, julgo parcialmente procedente os pleitos autorais, extinguindo o feito com resolução de mérito com fulcro no art. 487, I, do CPC, tão somente para CONDENAR o Município de Ibicuitinga ao pagamento das</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt; padding: 0pt 0pt 0pt 157.5pt;" dir="ltr"> (i) diferenças salariais decorrentes da não observância do piso nacional do magistério da requerente, correspondente a 20 horas semanais em exercício de cargo efetivo, durante os períodos (i.1) janeiro a julho de 2018; (i.2)&#160; janeiro a maio de 2019; (i.3) janeiro a julho de 2022, e (ii) as repercussões salariais decorrentes dessas diferenças cujos valores tenham como base de cálculo o vencimento-base do professor, tais como 13º salário, férias e adicional de férias, a serem liquidadas em cumprimento de sentença.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Em relação às parcelas atrasadas devidos, incidirá juros de mora com base no índice de remuneração oficial da caderneta de poupança, a partir da citação, e correção monetária pelo IPCA-E, a partir da data em que a parcela deveria ter sido paga, tudo conforme entendimento dos Tribunais Superiores, em sede de recursos repetitivos (STF, RE 870947, TEMA 810; e STJ, REsp 1495146/MG, TEMA 905). A partir da vigência da Emenda Constitucional nº 113/2021 (DOU 09/12/2021), haverá a incidência, uma única vez, até o efetivo pagamento, do índice da taxa referencial do Sistema Especial de Liquidação e de Custódia (Selic), acumulado mensalmente, vedada a cumulação com outros índices de juros ou correção.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> &#160;Condeno o MUNICÍPIO ao pagamento de honorários advocatícios, que fixo em 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, § 3º, I, do Código de Processo Civil, em favor do causídico da parte autora.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> &#160;Deixo de condenar a parte requerida em custas processuais em razão da isenção concedida pela Lei Estadual nº. 16.132/2016.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> A presente sentença não sujeita à remessa necessária, por não superar o montante fixado no art. 496, § 3º, III, na forma do art. 509, § 2º, ambos do Código de Processo Civil.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr"> Publique-se.

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	Registre-se. Intimem-se. Com o trânsito em julgado, intime-se a autora para execução da condenação no prazo de 15 (quinze) dias, observando o art. 534 do CPC, de modo que, em eventual inércia, arquive-se.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 0pt; margin-bottom: 8pt;" dir="ltr">Expedientes Necessários.</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Em suas razões (Id. 15185905), a Apelante alega, em síntese, que não houve descumprimento do piso salarial, uma vez que a remuneração da parte autora supera o valor mínimo estabelecido para a categoria. Diante disso, requer a reforma da sentença para julgar improcedente a ação, com o consequente provimento do recurso. Subsidiariamente, caso o recurso não seja provido, pleiteia a redução dos honorários advocatícios para o percentual mínimo.</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> Em suas Contrarrazões (Id. 15185909), o Apelado sustenta, em síntese, o desprovimento do apelo e consequente manutenção da sentença adversada.</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr">Instado a se manifestar, o Parquet deixou de se manifestar sobre o mérito da demanda, por inexistir interesse público apto a ser amparado (Id. 15406719).</p><p style="line-height: 1.7999999999999998; text-indent: 42.5pt; text-align: justify; margin-top: 0pt; margin-bottom: 5.65pt;" dir="ltr"> É o relatório, no essencial.</p><p><strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O cerne da controvérsia cinge-se em aferir se a parte autora, servidor público titular do cargo de provimento efetivo de professor do ensino fundamental I do Município de Ibicuitinga, vem recebendo da Administração Pública Municipal remuneração condizente com o referido parâmetro salarial mínimo instituído pela Lei Federal nº 11.738/2008.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Ao apreciar o mérito da ação, o juízo de primeiro grau julgou parcialmente procedente o pleito autoral,

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	condenando a Municipalidade ré ao pagamento das diferenças salariais decorrentes da não observância do piso nacional do magistério da requerente, referente a 20 horas semanais em exercício de cargo efetivo, nos períodos de janeiro a julho de 2018, janeiro a maio de 2019 e janeiro a julho de 2022, bem como as repercussões salariais decorrentes dessas diferenças, cujos valores têm como base de cálculo o vencimento-base do professor, incluindo 13º salário, férias e adicional de férias.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Convém salientar, preliminarmente, que a Constituição Federal de 1988, em seu art. 206, inciso VIII, consagra o " piso salarial profissional nacional para os profissionais da educação escolar pública, nos termos de lei federal ", como princípio norteador do ensino. O aludido piso salarial foi regulamentado pela Lei Federal nº 11.738/2008, a qual, em seu art. 2º, §§ 1º e 3º, assim dispõe:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Art. 2º O piso salarial profissional nacional para os profissionais do magistério público da educação básica será de R$ 950,00 (novecentos e cinqüenta reais) mensais, para a formação em nível médio, na modalidade Normal, prevista no art. 62 da Lei no 9.394, de 20 de dezembro de 1996, que estabelece as diretrizes e bases da educação nacional.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> § 1o O piso salarial profissional nacional é o valor abaixo do qual a União, os Estados, o Distrito Federal e os Municípios não poderão fixar o vencimento inicial das Carreiras do magistério público da educação básica, para a jornada de, no máximo, 40 (quarenta) horas semanais.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> [...]&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> § 3o Os vencimentos iniciais referentes às demais jornadas de trabalho serão, no mínimo, proporcionais ao valor mencionado no caput deste artigo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Portanto, infere-se dos dispositivos normativos acima transcritos que aos profissionais do magistério público da educação básica que laborem em regime de carga horária de 40 (quarenta) horas semanais, fica assegurado o direito ao piso salarial nacional, de forma integral; ao passo que os docentes que exercem as suas funções em jornada de trabalho inferior farão jus à percepção de vencimentos proporcionais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Insta destacar que a Lei nº 11.738/2008 foi objeto de controle concentrado de constitucionalidade, oportunidade em que o Supremo Tribunal Federal, no julgamento da ADI nº 4.167/DF, reconheceu a sua constitucionalidade, em acórdão que ficou assim ementado:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">CONSTITUCIONAL. FINANCEIRO. PACTO FEDERATIVO E REPARTIÇÃO DE COMPETÊNCIA. PISO NACIONAL PARA OS PROFESSORES DA EDUCAÇÃO BÁSICA. CONCEITO DE PISO: VENCIMENTO OU REMUNERAÇÃO GLOBAL. RISCOS FINANCEIRO E ORÇAMENTÁRIO. JORNADA DE TRABALHO: FIXAÇÃO DO TEMPO MÍNIMO PARA DEDICAÇÃO A ATIVIDADES EXTRACLASSE EM 1/3 DA JORNADA. ARTS. 2º, §§ 1º E 4º, 3º, CAPUT, II E III E 8º, TODOS DA LEI 11.738/2008. CONSTITUCIONALIDADE. PERDA PARCIAL DE OBJETO. 1. Perda parcial do objeto desta ação direta de inconstitucionalidade, na medida em que o cronograma de aplicação escalonada do piso de vencimento dos professores da educação básica se exauriu (arts. 3º e 8º da Lei 11.738/2008). 2. É constitucional a norma geral federal que fixou o piso salarial dos professores do ensino médio com base no vencimento, e não na remuneração global. Competência da União para dispor sobre normas gerais relativas ao piso de vencimento dos professores da educação básica, de modo a utilizá-lo como mecanismo de fomento ao sistema educacional e de valorização profissional, e não apenas como instrumento de proteção mínima ao trabalhador. 3. É constitucional a norma geral federal que reserva o percentual mínimo de 1/3 da carga horária dos docentes da educação básica para dedicação às atividades extraclasse. Ação direta de inconstitucionalidade julgada improcedente. Perda de objeto declarada em relação aos arts. 3º e 8º da Lei 11.738/2008 (STF, ADI nº 4.167, Relator Ministro Joaquim Barbosa, Tribunal Pleno, Julgamento: 27/04/2011, Publicação: 24/08/2011) (destaca-se).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Nesse contexto, depreende-se do julgado que o Pretório Excelso firmou compreensão no sentido de que é constitucional norma geral federal que fixa o piso salarial nacional para categoria profissional do magistério público da educação básica com esteio no vencimento base, e não na remuneração global.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Frise-se que por ocasião do julgamento dos Embargos de Declaração opostos contra o referido acórdão, o STF procedeu à modulação temporal dos efeitos da decisão de constitucionalidade, a fim de definir como termo inicial para a incidência da Lei nº 11.738/2008 e, por via de consequência, para a materialização do piso salarial nacional do ensino básico pelos Entes Federados a data de 27/04/2011, senão vejamos:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">EMBARGOS DE DECLARAÇÃO. PROPÓSITO MODIFICATIVO. MODULAÇÃO TEMPORAL DOS EFEITOS DE DECLARAÇÃO DE CONSTITUCIONALIDADE. ACOLHIMENTO PARCIAL. AGRAVO REGIMENTAL. EFICÁCIA DAS DECISÕES PROFERIDAS EM CONTROLE CONCENTRADO DE CONSTITUCIONALIDADE QUE FOREM OBJETO DE RECURSO DE EMBARGOS DE DECLARAÇÃO. PERDA DE OBJETO. PISO NACIONAL DO MAGISTÉRIO DA EDUCAÇÃO BÁSICA. 1. A Lei 11.738/2008 passou a ser aplicável a partir de 27.04.2011, data do julgamento de mérito desta ação direta de inconstitucionalidade e em que declarada a constitucionalidade do piso dos professores da educação básica. Aplicação do art. 27 da Lei 9.868/2001. 2. Não cabe estender o prazo de adaptação fixado pela lei, nem fixar regras específicas de reforço do custeio devido pela União. Matéria que deve ser apresentada a tempo e modo próprios aos órgãos competentes. 3. Correções de erros materiais. 4. O amicus curie não tem legitimidade para interpor recurso de embargos de declaração. Embargos de declaração opostos pelo Sindifort não conhecidos. 5. Com o julgamento dos recursos de embargos de declaração, o agravo regimental interposto da parte declaratória do despacho que abriu vista dos autos à União e ao Congresso Nacional perdeu seu objeto. Recursos de embargos de declaração interpostos pelos Estados do Rio Grande do Sul,

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	Ceará, Santa Catarina e Mato Grosso parcialmente acolhidos para (1) correção do erro material constante na ementa, para que a expressão “ensino médio” seja substituída por “educação básica”, e que a ata de julgamento seja modificada, para registrar que a “ação direta de inconstitucionalidade não foi conhecida quanto aos arts. 3º e 8º da Lei 11.738/2008, por perda superveniente de seu objeto, e, na parte conhecida, ela foi O julgada improcedente”, (2) bem como para estabelecer que a Lei 11.738/2008 passou a ser aplicável a partir de 27.04.2011. Agravo regimental interposto pelo Estado do Rio Grande do Sul que se julga prejudicado, por perda superveniente de seu objeto (STF, ADI nº 4.167 ED, Relator Ministro Joaquim Barbosa, Tribunal Pleno, Julgamento: 27/02/2013, Publicação: 09/10/2013) (destaca-se).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Desta feita, tendo em vista o efeito vinculante da declaração de constitucionalidade, aplica-se o piso salarial nacional para os profissionais do magistério público da educação básica, a teor do disposto na Lei Federal nº 11.738/2008, sobre o vencimento base, com efeitos financeiros a contar de 27/04/2011.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Com efeito, em consulta ao sítio eletrônico do Ministério da Educação (https://www.gov.br/mec/pt-br), percebe-se que, para os professores que possuem jornada de 40 (quarenta) horas semanais, em 2009 o piso salarial era de R$ 950,00 (novecentos e cinquenta reais); em 2010 passou a ser R$ 1.024,67 (mil e vinte e quatro reais e sessenta e sete centavos); em 2011 foi fixado em R$ 1.187,14 (mil cento e oitenta e sete reais e catorze centavos); em 2012 foi estabelecido em R$ 1.451,00 (mil quatrocentos e cinquenta e um reais); em 2013 foi reajustado para R$ 1.567,00 (mil quinhentos e sessenta e sete reais); em 2014 passou a ser R$ 1.697,00 (mil seiscentos e noventa e sete reais); em 2015 foi atualizado para R$ 1.917,78 (mil novecentos e dezessete reais e setenta e oito centavos); em 2016 fora majorado para R$ 2.135,64 (dois mil cento e trinta e cinco reais e sessenta e quatro centavos); em 2017 foi fixado em R$ 2.298,80 (dois mil duzentos e noventa e oito reais e oitenta centavos); em 2018 foi consignado o montante de R$ 2.455,35 (dois mil quatrocentos e cinquenta e cinco reais); em 2019 fora reajustado para R$ 2.557,74 (dois mil quinhentos e cinquenta e sete reais e setenta e quatro centavos); em 2020 aumentou para R$ 2.886,24 (dois mil oitocentos e oitenta e seis reais e vinte e quatro centavos); em 2021 não teve aumento, permanecendo no mesmo patamar definido para o ano anterior; e, em 2022 foi reajustado para R$ 3.845,63 (três mil oitocentos e quarenta e cinco reais e sessenta e três centavos).</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No caso em apreço, observo que o autor é servidor público ocupante do cargo efetivo de Professor do Ensino Fundamental I do Município de Ibicuitinga, em regime de trabalho de 20 (vinte) horas semanais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Compulsando os fólios, percebo que o salário-base do servidor público, nos meses de janeiro a julho de 2018 – R$ 1.149,64 (mil cento e quarenta e nove reais e sessenta e quatro centavos), de janeiro a maio de 2019 – R$ 1.227,93 (mil duzentos e vinte e sete reais e noventa e três centavos) e de janeiro a julho de 2022 <span style="font-size: 12pt; font-

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	family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">– R$ 1.443,37 (mil quatrocentos e quarenta e três reais e trinta e sete centavos), foi efetivamente inferior ao piso salarial estabelecido para a jornada de 20 (vinte) horas semanais, o que gera a necessidade de ressarcimento dos valores pagos a menor (Id. 15185733/15185735).</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">A fim de corroborar os fundamentos acima esposados, trago a lume os seguintes julgados desta Colenda 3ª Câmara de Direito Público, in verbis:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">CONSTITUCIONAL. ADMINISTRATIVO. APELAÇÃO CÍVEL. PISO SALARIAL PROFISSIONAL NACIONAL DO MAGISTÉRIO PÚBLICO DA EDUCAÇÃO BÁSICA. LEI FEDERAL Nº 11.738/2008. REAJUSTE. DIFERENÇAS DEVIDAS REFERENTES AO PISO SALARIAL. PROPORCIONALIDADE À CARGA HORÁRIA. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">EDITAL NÃO PODE SE SOBREPOR A LEI FEDERAL. RECURSO DESPROVIDO. SENTENÇA CONFIRMADA. 1. Trata-se de apelação cível interposta pelo Município de Boa Viagem em face de sentença que decidiu pela procedência do pleito formulado na inicial, condenando a edilidade a pagar ao autor a quantia de R$ 5.703,29 (cinco mil, setecentos e três reais e vinte e nove centavos), correspondente à diferença do piso salarial nacional do magistério que não lhe foi repassado, durante o período de janeiro de 2020 a maio de 2021, com os respectivos reflexos (13º salário, adicional de férias e triênio). 2. A Lei Federal nº 11.738/2008, que trata do Piso Salarial Nacional, estabelece alguns critérios para o seu pagamento, quais sejam: a proporcionalidade entre a jornada de trabalho e o piso, a progressividade de sua implementação e atualização do valor. É importante destacar que o Supremo Tribunal Federal, no julgamento da ADI nº. 4.167/2011, reconheceu a constitucionalidade da norma que fixou o Piso Salarial. Todavia, quando do julgamento dos embargos de declaração opostos em face do acórdão proferido na ADI 4167, o Tribunal, por maioria e nos termos do voto do Relator, Ministro Joaquim Barbosa, acolheu os embargos para assentar que a Lei nº 11.738/2008 teria eficácia a partir da data do julgamento definitivo sobre a norma, ou seja, 27 de abril de 2011. 3. Em atenção aos autos, como já asseverado pelo juízo de piso e atestado pela documentação acostada, o servidor exerce cargo de professor, em virtude de aprovação em concurso público, com jornada de 40 (quarenta) horas semanais após ampliação de carga horária, sendo-lhe assegurado o pagamento proporcional ao piso nacional, o que de fato não foi observado pelo Município em sua íntegra. 4. Ademais, o edital do concurso público não pode se sobrepor à Lei que estabelece o piso nacional do magistério e nem de qualquer lei que enseja o ajuste remuneratório aos ocupantes do referido cargo público. Não há como justificar o descumprimento de um preceito legal para tentar manter a regularidade fiscal, conforme a legalidade administrativa. - Apelo conhecido e desprovido. - Sentença confirmada. (Apelação Cível - 0050747-21.2021.8.06.0051 , Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 03/10/2022, data da publicação: 03/10/2022) (destaca-se).</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÃO CÍVEL. PROFESSORA MUNICIPAL DE BOA VIAGEM/CE. PISO SALARIAL NACIONAL DO MAGISTÉRIO PÚBLICO DA EDUCAÇÃO BÁSICA. LEI FEDERAL Nº 11.378/2008. REAJUSTE. DIFERENÇAS DEVIDAS REFERENTES AO PISO SALARIAL.

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	CONSTITUCIONALIDADE DECLARADA PELO PLENO DO STF - ADI 4.167. VIGÊNCIA A PARTIR DO 27/04/2011. PRECEDENTES TJCE. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA. 01. Cinge-se a controvérsia na análise da decisão a quo que condenou a municipalidade a implementar o piso nacional fixado para os profissionais do magistério público no vencimento base da parte requerente, bem como ao pagamento das diferenças devidas em relação à aplicação do referido piso nos vencimentos da autora. 02. Em preliminar, alega o recorrente a impossibilidade de julgamento antecipado do feito, tendo em vista a necessidade de dilação probatória. Acontece que, a questão posta em deslinde embora seja de direito e de fato, já encontra-se suficientemente comprovada por meio da prova documental produzida. Além disso, o apelante defende, ainda preliminarmente, a necessidade de suspensão do feito em razão da existência de Ação Coletiva em trâmite. Não merecer acolhimento a tese ventilada pela defesa, pois a ação coletiva visa a tutela de interesses metaindividuais dos servidores municipais, enquanto que nesta ação individual se pretende defender interesse particularizado da autora. Preliminares rejeitadas, portanto. 03. A Lei Federal nº 11.738/2008, que trata do Piso Salarial Nacional, estabelece alguns critérios para o seu pagamento. 04. O Supremo Tribunal Federal, no julgamento da ADI nº. 4.167/2011, reconheceu a constitucionalidade da norma que fixou o Piso Salarial. Contudo, os artigos 2º, 3º e 5º, da Lei nº 11.738/2008, apenas devem ser aplicados a partir de 27 de abril de 2011. 05. No que tange à apuração do valor do piso, deve ser avaliada a proporcionalidade com a jornada de trabalho do professor, pois, no âmbito do Município de Boa Viagem, a Lei nº 995/2008, que dispôs sobre o Plano de Cargos, Carreiras e Vencimentos do Magistério, assim estipulou sobre a carga horária de trabalho dos professores. 06. Precedentes TJCE. 07. Desta feita, correta a sentença de piso. Apelação conhecida e desprovida. (Apelação Cível - 0050153-07.2021.8.06.0051 , Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 19/09/2022, data da publicação: 20/09/2022) (destaca-se).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Dentro dessa perspectiva, concluo que as diferenças salariais pleiteadas pela parte autora apenas são devidas nos períodos de janeiro a julho de 2018, de janeiro a maio de 2019 e de janeiro a julho de 2022, o que gera a necessidade de ressarcimento dos valores pagos a menor,&#160; não subsistindo qualquer fundamento para alteração da decisão recorrida neste aspecto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por fim, merece reparo a sentença em relação aos honorários sucumbenciais advocatícios, pois em se tratando de sentença ilíquida, tal verba deve ser apurada apenas na fase de liquidação do julgado, nos termos do art. 85, §4º, inciso II, do CPC.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço do recurso de apelação para negar-lhe provimento; e, de ofício, reformo a sentença para determinar que os honorários sucumbenciais sejam apurados após a liquidação do julgado, em obediência ao art. 85, §4º, inciso II, do

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	CPC.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Enfatizo, ainda, que o fato de a parte sucumbente ter insistido em sua pretensão, sem êxito, deve ser considerado pelo Juízo da liquidação no momento em que for definir o percentual da verba honorária (art. 85, § 11, CPC).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582675pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	140
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Multas e demais Sanções
Polo ativo	AGENCIA NACIONAL DE TELECOMUNICACOES PROCURADORIA-GERAL FEDERAL
Advogado(s) - Polo ativo	Não informado
Polo passivo	FUNDACAO CULTURAL COMUNITARIA DOS TREMEMBES
Advogado(s) - Polo passivo	Anna Iracy Araujo Moura Martins - (CE21050-A)
Terceiros	Não informado

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Acordão	<p style="text-align: center;"> <img style="font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yDrwkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmtqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwPhP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3TaQ+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

Processo	0004507-29.2010.8.06.0028
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size: medium;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br />
 <strong style="font-size: medium;">PODER JUDICIÁRIO <br />
<strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong
style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA
MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p>
PROCESSO:&#160;0004507-29.2010.8.06.0028 -&#160;APELAÇÃO CÍVEL
(198) </p><p>
APELANTE: AGENCIA NACIONAL DE TELECOMUNICACOES. <br />
 </p><p> APELADO:
FUNDACAO CULTURAL COMUNITARIA DOS TREMEMBES. </p><p
align="center"> <br /> </p><p style="line-
height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;"
dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-
serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-
variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-
space:pre-wrap;">EMENTA: PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO
FISCAL. DECISÃO PROFERIDA POR JUÍZO ESTADUAL INVESTIDO DE JURISDIÇÃO
FEDERAL. COMPETÊNCIA RECURSAL DA JUSTIÇA FEDERAL. ART. 109, I, §§3º e 4º
DA CF/88 C/C ART. 15, I DA LEI Nº 5.010/66. REMESSA DOS AUTOS AO TRIBUNAL
REGIONAL FEDERAL DA 5ª REGIÃO.</p><p style="line-height:1.38;margin-left:
128pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> <span style="font-
size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-
weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-
align:baseline;white-space:pre;white-space:pre-wrap;">- Tratam os autos de apelação cível
interposta com o objetivo de anular ou reformar decisão que extinguiu a execução fiscal,
para afastar a satisfação da obrigação até ulterior quitação integral.</p><p
style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-
bottom:12pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-
serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-
variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-
space:pre-wrap;">- Nos termos das disposições contidas no art. 109, inciso I, §§3º e 4º da
CF/88 c/c art. 15, inciso I da Lei nº 5.010/66, nas Comarcas do interior onde não funcionar
Vara da Justiça Federal, compete aos Juízes Estaduais, por delegação, processar e julgar
os executivos fiscais da União e de suas autarquias, ajuizados contra devedores
domiciliados nas respectivas Comarcas, cujos recursos deverão ser remetidos para o TRF
na área de jurisdição do juiz de 1º grau.</p><p style="line-height:1.38;margin-left:
128pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> <span style="font-
size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-
weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-
align:baseline;white-space:pre;white-space:pre-wrap;">- Apelação cível não conhecida,
com a consequente remessa dos autos ao Tribunal Regional Federal da 5ª
Região.</p><h3 style="line-height:1.7999999999999998;text-align: center;margin-
top:0pt;margin-bottom:4pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-
serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-
variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-
space:pre-wrap;">ACORDÃO</h3><p style="line-

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	height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos da Apelação Cível na Execução Fiscal de nº 0004507-29.2010.8.06.0028, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer da apelação interposta, ante a incompetência absoluta desta Corte de Justiça para apreciar o recurso, determinando, ato contínuo, a remessa dos autos ao Tribunal Regional Federal da 5ª Região, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> Fortaleza, 18 de novembro de 2024.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> &#160;Portaria 1550/2024</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> <br /> </p><h3 style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> RELATÓRIO</h3><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> Tratam os autos de apelação cível interposta contra decisão proferida pelo Juízo da 2ª Vara da Comarca de Acaraú que julgou extinta a execução fiscal.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr">O caso/a ação originária: a Agência Nacional de Telecomunicações – ANATEL ajuizou Ação de Execução Fiscal em face de Fundação Cultural Comunitária dos Tremembés, com base em certidão da dívida ativa, oriunda de débito decorrente de multa, no valor de R$ 3.205,33 (três mil, duzentos e cinco reais e trinta e três centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr">A sentença apelada: o Magistrado da 2ª Vara da Comarca de Acaraú julgou extinta a execução fiscal (ID 15209753). Transcrevo abaixo o seu dispositivo, no que

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	interessa:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> “A parte peticionante informa cumprimento da obrigação de pagar.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Ante o exposto, configurada está a hipótese descrita no art. 924, II, do CPC/15.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">Diante disso, JULGO EXTINTA A EXECUÇÃO FISCAL, art. 924, II, do CPC.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr">Irresignada, Agência Nacional de Telecomunicações – ANATEL interpôs a presente apelação (ID 15209755) pugnando pela reforma da sentença, consequente continuidade de tramitação do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:9pt;margin-bottom:9pt;" dir="ltr"> É o relatório.</p><h3 style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> VOTO</h3><p style="line-height:1.7999999999999998;margin-left: 3pt;text-indent: 110.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Tratam os autos de apelação cível em execução fiscal promovida pela Agência Nacional de Telecomunicações – ANATEL com base em crédito regularmente inscrito em dívida ativa.</p><p style="line-height:1.7999999999999998;margin-left: 3pt;text-indent: 110.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Antes, porém, de se adentrar na análise da controvérsia, cumpre a esta relatora verificar a competência desta egrégia Corte de Justiça para apreciar e julgar o recurso interposto.</p><p style="line-height:1.7999999999999998;margin-left: 3pt;text-indent: 110.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Com efeito, tratando-se de causa ajuizada por ente público federal, há que incidir na espécie as disposições contidas no art. 109, inciso I, §§3º e 4º da Constituição Federal c/c art. 15, inciso I da Lei nº 5.010/66, que assim dispunham, respectivamente:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;background-color:#ffffff;margin-top:12pt;margin-bottom:0pt;padding:0pt 0pt 12pt 0pt;" dir="ltr">“Art.

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	109. Aos juízes federais compete processar e julgar:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 12pt 0pt;" dir="ltr">I - as causas em que a União, entidade autárquica ou empresa pública federal forem interessadas na condição de autoras, rés, assistentes ou oponentes, exceto as de falência, as de acidentes de trabalho e as sujeitas à Justiça Eleitoral e à Justiça do Trabalho;</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 12pt 0pt;" dir="ltr"> (...)</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 12pt 0pt;" dir="ltr">§ 3º Serão processadas e julgadas na justiça estadual, no foro do domicílio dos segurados ou beneficiários, as causas em que forem parte instituição de previdência social e segurado, sempre que a comarca não seja sede de vara do juízo federal, e, se verificada essa condição, a lei poderá permitir que outras causas sejam também processadas e julgadas pela justiça estadual.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;background-color:#ffffff;margin-top:0pt;margin-bottom:0pt;padding:0pt 0pt 12pt 0pt;" dir="ltr">§ 4º Na hipótese do parágrafo anterior, o recurso cabível será sempre para o Tribunal Regional Federal na área de jurisdição do juiz de primeiro grau.” (destacamos)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;background-color:#ffffff;margin-

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	top:0pt;margin-bottom:0pt;padding:1pt 0pt 12pt 0pt;" dir="ltr">“Art. 15. Nas Comarcas do interior onde não funcionar Vara da Justiça Federal (artigo 12), os Juízes Estaduais são competentes para processar e julgar:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr">I - os executivos fiscais da União e de suas autarquias, ajuizados contra devedores domiciliados nas respectivas Comarcas;” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> Decerto que se poderia afirmar que o dispositivo legal acima transcrito (inciso I do art. 15 da Lei nº 5.010/66) fora revogado em novembro de 2014, por meio da Lei nº 13.043/14.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">Entretanto, referido diploma normativo, em seu art. 75, foi expresso ao estabelecer que “A revogação do inciso I do art. 15 da Lei n o 5.010, de 30 de maio de 1966, constante do inciso IX do art. 114 desta Lei, não alcança as execuções fiscais da União e de suas autarquias e fundações públicas <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:italic;font-variant:normal;text-decoration:none;vertical-align:baseline;white-

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	space:pre;white-space:pre-wrap;">ajuizadas na Justiça Estadual antes da vigência desta Lei”.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">É exatamente a hipótese dos autos.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> A execução fiscal em análise fora proposta em maio de 2010 (ID 15209513), de maneira que, mesmo após a sanção da Lei nº 13.043/14, persistiu a competência da Justiça Estadual de 1ª instância para, por delegação, processar e julgar o feito, devendo os recursos contra as decisões proferidas serem dirigidos ao Tribunal Regional Federal da 5ª Região, Corte a quem compete, por disposição constitucional, apreciar as eventuais medidas de inconformismo.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> É esta a linha de raciocínio adotada pelos Tribunais da Federação, consoante disposto nos julgados que seguem:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">“PROCESSUAL CIVIL. TRIBUTÁRIO. AGRAVO INTERNO NO AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. APLICABILIDADE. EXECUÇÃO FISCAL. COMPETÊNCIA. DOMICÍLIO DO RÉU. DECLINAÇÃO DE OFÍCIO. JUSTIÇA ESTADUAL. ART. 15, I, DA LEI N. 5.010/66. SÚMULA N. 83/STJ. INCIDÊNCIA. ARGUMENTOS INSUFICIENTES PARA DESCONSTITUIR A DECISÃO ATACADA. I - Consoante o decidido pelo Plenário desta Corte na sessão realizada em 09.03.2016, o regime recursal será determinado pela data da publicação do provimento jurisdicional impugnado. Assim sendo, in casu, aplica-se o Código de Processo Civil de 2015. II - É pacífico o entendimento no Superior Tribunal de Justiça no sentido da inaplicabilidade da Súmula n. 33/STJ na hipótese de decisão proferida por Juiz Federal declinando da competência do executivo fiscal, em razão da inobservância do art. 15, I, da Lei n. 5.010/66, na redação que possuía anteriormente à sua revogação pelo art. 114, IX, da Lei n. 13.043/2014. III - Apesar da revogação da delegação de competência prevista no art. 15, I, da Lei n. 5.010/66, manteve-se a competência delegada em relação às Execuções Fiscais da União e de suas autarquias e fundações públicas ajuizadas antes da vigência da Lei n. 13.043/2014, conforme o disposto em seu art. 75. IV - O recurso especial, interposto pelas alíneas a e/ou c do inciso III do art. 105 da Constituição da República, não merece prosperar quando o acórdão recorrido encontra-se em sintonia com a jurisprudência desta Corte, a teor da Súmula n. 83/STJ. V - O Agravante não apresenta, no agravo, argumentos suficientes para desconstituir a decisão recorrida. VI - Agravo Interno improvido.” (STJ, AgInt no AgRg no AREsp 460.491/RJ, Rel. Ministra REGINA HELENA COSTA, PRIMEIRA TURMA, julgado

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	em 21/03/2017, DJe 30/03/2017) (destacamos)</p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: center;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">“PROCESSUAL CIVIL. CONFLITO DE COMPETÊNCIA EXECUÇÃO FISCAL AJUIZADA NA JUSTIÇA FEDERAL. EXECUTADO DOMICILIADO EM MUNICÍPIO QUE NÃO É SEDE DE VARA FEDERAL. DECLINAÇÃO, DE OFÍCIO, DA COMPETÊNCIA. IMPOSSIBILIDADE. APLICAÇÃO IMEDIATA DA LEI Nº 13.043/2014 AOS PROCESSOS EM CURSO NA JUSTIÇA FEDERAL. 1. Conflito Negativo de Competência Suscitado pelo Juiz da Vara Única da Comarca de Barreiros-PE - em Execução Fiscal ajuizada, originariamente, perante a Justiça Estadual, entendendo ser Competência da 26a Vara Federal de Pernambuco, sediada em Palmares-PE. 2. A Lei nº 13.043, de 13 de novembro de 2014, ao revogar o artigo 15, inciso I, da Lei nº 5.010/66, retirou da Justiça Estadual a Competência, por delegação da jurisdição Federal, para processar e julgar as execuções fiscais promovidas pela União e suas Autarquias contra devedores domiciliados em comarcas que não sejam sede de Vara Federal. Os efeitos da revogação são imediatos, comportando uma única ressalva, a do art. 75 daquele diploma legal, no sentido de que as novas disposições não alcançam as execuções fiscais ajuizadas na Justiça Estadual antes da vigência da Lei nº 13.043/2014. 3. Caso em que a execução fiscal se enquadra na exceção do art. 75 da Lei nº 13.043/2014, por ter sido inicialmente ajuizada na Justiça Estadual, não sendo o caso de envio dos autos à Justiça Federal. 4. Conflito de Competência conhecido e provido para fixar a Competência do Juízo da Vara Única da Comarca de Barreiros-PE, Suscitado.” (TRF5; CC - Conflito de Competencia - 2952 0000912-93.2015.4.05.0000, Desembargador Federal Alexandre Costa de Luna Freire, TRF5 - Pleno, DJE - Data::13/06/2016 - Página::31.) (destacamos)</p><p style="line-height:1.38;margin-left: 113pt;text-align: center;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> * * * * *</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">“Direito Constitucional.

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	Execução fiscal. Competência. Agravo de instrumento que se volta contra decisão do juízo federal da 27ª Vara da Seção Judiciária de Pernambuco, em Ouricuri, que, em execução fiscal, indeferiu o pedido de declaração de incompetência absoluta do juízo federal. 1 - Com o advento da Lei 13.043/2014, foi revogado o inc. I, do art. 15, da Lei 5.010/1966, passando as execuções fiscais da União e de suas autarquias e fundações públicas à competência exclusiva da Justiça Federal, nos termos do inc. I, do art. 109, da Constituição Federal, inexistindo, doravante, a delegação prevista no parágrafo 3º, do mencionado art. 109, no que se refere aos executivos fiscais. 2 - O art. 75, da Lei 13.043, excepcionou, apenas, as execuções fiscais ajuizadas na Justiça Estadual antes de sua vigência, ou seja, antes de 14 de novembro de 2014. 3 - É de se reconhecer a competência do juízo federal, uma vez que o feito foi ajuizado em 19 de novembro de 2014, após a vigência da Lei 13.043. 4 - Agravo de instrumento improvido.” (TRF5, AG - Agravo de Instrumento - 143268 0003060-77.2015.4.05.0000, Desembargador Federal Vladimir Carvalho, TRF5 - Segunda Turma, DJE - Data::25/04/2016 - Página::53.) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> Desta maneira, o não conhecimento do recurso e a consequente remessa dos autos ao Tribunal Regional Federal competente é medida que se impõe.</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">Por tais razões, não conheço da apelação interposta, determinando, ato contínuo, a remessa dos autos ao Tribunal Regional Federal da 5ª Região, Corte a quem compete, consoante disposição constitucional expressa (art. 109, §4º da CF/88), processar e julgar a presente medida de inconformismo.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-

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	top:11pt;margin-bottom:11pt;" dir="ltr"> Fortaleza, 18 de novembro de 2024. <br /> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO &#160;</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> &#160;Portaria 1550/2024</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	141
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	ICMS/Importação
Polo ativo	GRECA TRANSPORTES DE CARGAS LTDA. GRECA DISTRIBUIDORA DE ASFALTOS LTDA.
Advogado(s) - Polo ativo	NELSON WILIANS FRATONI RODRIGUES - (CE16599-A)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	COORDENADOR DE ADMINISTRAÇÃO TRIBUTÁRIA DA SEFAZ/CE MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	&#160; &#160; <div class="OutlineElement Ltr SCXW6792986 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);"> <img class="WACImage SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 89px; height: 120px; text-wrap-mode: nowrap !important;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAFkAAAB4CAIAAAAWmclrAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAACxMAAAsUAU/bCt8AAFFrSURBVHhevb0HgB1luTc+feb0sr1vNtmSHtJJSEJCCTUUQQgdFVAEFcu13U/RT6+9N6SoKAhESggkQAikkd77Znvvp9fp/98zuyD3Kv5v/K73ze7ZOXNm3vd9fk/7Pe/MnLC2bTP/RLNsm2NZm7FYm2Xwwxm6qus6Z3OMIsk8Z9nc3p1bu04ciUYj2dioaeXVTDoxNuIvn/KJL3+7tLIM4/7wC59W9E6324vuBFYyWW14zFx+w8eXXnIp5vTKU09uefExv9sjuoKSR+YFj8sfrqqsWXLVtcXFxThd1/K6YYkCx4iSxPHYg/kwHIve8GdinufS/kkscJKl5ZPZnJHND/Z2dfe0DXd3D7Q1501t3tLLlq26uKim+lsPfmRGVaKyslJWeNHllV3SmWOtZ4/3GJ6aG+7/0qSmpq/dt/aOm5aWVFXouikIAsvpG9a9EZh80VU33fT0Y48MH3ndxajLL1/kCSj5VFKD5Fltx96eFbd+ed6ipQf37nzzpefjfa1F1fWVkyaXVk0uq5tUFC5QFMXl85ssIzAA5dzauWNhmwzLWoz9+vMv7H3jGVYd83BqZVWoqsI3OJRM5z1FpSVv72g+b/X1p3bvvPGKysraUs20GFOEtPt2H2o/2aN45dYhpnLylFTfmbV3XhkoLrVNlkMTrB2vbT3RHHW53bGRzimloVQ6dvkNlwZCAVM3eJ7lGfXllw+o4XmRng6/Ndg4raqnuXX67NJsOtPbkxyJG2lDKa2bddenvhgsLGCAxjm2c8YCYnEMjz8/+MpDMws6G2YWsCymqfA8f/Rw+7HDsalzage6h4aGx9xu+fKrFxUUhCxBYGxB5uVUKtvX1+dSPOHisCjiDNkXLGLwCQ9DZzRD1VRVTybgUNlsdmQ45vWLpWUVDKtaps7Bhaz8sf1nDx9u9bnEyprqXN5IR4ZWXzvH53PZlmVbuVxae2Pr0DUP/qS6birHT0z4v9/+CbvAP7K/n339i02FzZPqwnnV4lhBkqR02hruGRI8YmlJSag4KHoUQ+UsmiVnMrxp6gKnCLxiQDLTZE3JZGzITBMAmizCji1KtiQqAmczPCfJHGuZmq5SNOERlgye5WQBg1upRHZ0aDQyHHX5lNJyn2Uxlq5xPM9xxltvDV75wE9q66dOzPZc2rnbhWUgPsE0Hv/ZT7zxNxctrrQpUPEkMwP18smMkctqmbSazehqOp/WdAxhGjpj2Jqlmjjb5jjbMngal7MQgDnsMsntWHxkchZHTkixmRNgPOhUYiVOtjnFJcuy6EHk8XFuj4ygKwoaojgrGJauwwcTkfTzm4Y/95M/+UJFwPZc2zlj4RxN8+7v7vrtV+5cPq8gkcmkk2Y2b+f0vKZpPAu5BE7QEd1ZAfYiYq6iIAuSybEyC+FYXeQk6sWyOBKWEzgePRq2CTw5S4A3ABkIqcOAMKJhWjqPXxUeZFisxpg6Y1Le4EX0KMtuFwBSCoNi31AmIsz/1De/zQJNmue5tXP3kYmEBbtkv/OVz+Zb3wwXu2zeRO4TRNEtUxQ0bZ5DnrHgFoymW4LNZnKWAYgsC3aBEeE5UDtjw6ctnheBILQq8jAS1jBg8oDGRJYERjAbxEy3S6EELtoiz0gUaETWzhuMYBgG0ouZMvKGbulc17Dw2V8+W1lVRRGNkuu5tXPHgsDAj4CXoeH+n33lM2VKV/UkdyKhxyP5rArhTR5gsDzULSlyYaG3vycRCMglWHII8suQYbbyzYvICgILCMJ8r49J2omlVZUlOZxsqkDNs3WOd3Oa0Y+n+dt68TxroqyMD5KpXXIj1/AKHE27xKDfiEcciP47js4PO2iB267976JaZ57+2d8hB23DYqJTCoeee6xR/o6TqZ6W2Y0eUMhl9vr8vjccGy34uJso6NrdNf21ksumz51TpNBtgEpbUgBZgRoLOJJ/JZXdjXMqK2ZUmHkdRvGwekWIqGJQMLwghUZiz39x11NU0rmLpvEMqKW0UDqEghIaQ3bew52i6XTeZZZsPKaq268hdCdaOdMt/5JLBAvcR4CPfwcztJ6+sSGn3x67e1NasqGseagVg2hXd29s6OguNoX9p093lxWovCyYmm6lsGHliiLFDZZGxY/OprxehWXIuqmAVcwDU43NcUlgqTBSvqHk43Tpmv59EBf78L5k9wBnmNFt0sAY3F5pDMnuoeFS66/4yPYhn+CAdMMnVmeaztnLODJjghAgPIgYzIw3d/+8D+43tf8YTkR00ARIafPL5843r1s9WpO1pOjyfLa6m0bt6y5dr7sFs8e70PGmLegEfw5NhLtOdOfylscx5SUBSc1lHm8vs72rrbTPVNnT/IGlPVP71mwYlk8FgVtFUXf2xs2zZhZYahGLK0pMhf0SYpL2H9G/fqTG0P+oM2iJIA4CM/GP8G1ztmQkPKoAkHCI/OwENhi8UjP8c31jWU1k0rq6osDQWXV6qmXr5lTP3VSuDj06os7tm89hGhXXhYsryoNFQRFUeREzh3wpCPR00cHPFWTp8yaXTtzZiYnHt/fLkqcy+UBy0QCLS0pDBf63F739m271z+/w+Nhp06vWrG66fo7FtZNLiop8c2YXVk2KTyjVtj++iswBHJaAEHqhRefcztnLGBKxIrAuGwTXgpK/tbG9YtnB+qnFxWX+vI50zB5NW+dOdWDjJDPJhEIS4sLkBeHBmKHdh3fveVwV9fIYOfwW6/u2vzq4frZs9vPnH38N0N+u//MrPhwm+5965NVTR9tGRpKH97Xs3HJweCCWU7XSomKO03KZrGmxJ49293bHYJ6pTJZXhOqq8KILave/9jz8C+oxoSAUjQzl7HNt/MMPPzyx+d9rMApgAWNEiAMsyJF/+O6/V/m1jq5IV/vo0GBGM/R0PNfRMsKLnkDYf+JQa0lFqLQsnE2MNkyv8fq8U6ZVzJrXlEml/QWlY6OJt97eJ9hCPJkd6h+avXBGPptasnJa08zagpgJgOOxPJTMury+bTHX1jjQ2TQLvLHukZyub0VCybSeujg/HBnkQynh7pHfaUNlTV1hEOUBRVz+ccMM4ZC/BigyizkwYYZue2t7KtbxSW+TyKXFLkb5xRMmNO6YyZtbILE/Jkc9rZU61zz5vOiVLQw8xZMEVWBMXlRkDp6x4pKK44fORMJp5gwUw4kMd8ZXlRKOx2C1ww6GUFKxAOo9DPZBmvO3D2VFt1RXmw0Dt5irLkoum1Ne

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91LsrUWOwYclGAQGjIDgY5H8jm6JbHAxLlLz0fbcQCF5powSDBZlcuz4rV3nX8mvWXLiip
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/itP/PFZVdVtW0dIRh3kdPWvbf9PPvLfbzTSuFXbdk63Hvnto8OR+Gc+fk9BcQGiZiKd8Siy8
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Km5Vxq/Ze3f/kY7wHxHujQ9vhflFGQ9YF773tt05bzpk8vr6D/nNtJzCjTkVixMc4tKWI4p/xr27/
cLqh3Z4j/YhpwEkhJ1b3NHTl2vG5ybcDnHv8aHuyaSBwOSfkgs/ofbgzz/wH6OTEHS42Nvg

Processo	3039121-36.2023.8.06.0001
	AAAABJRU5ErkJggg==" alt="" /> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ESTADO DO CEARÁ &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-

Processo	3039121-36.2023.8.06.0001
	variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Processo: 3039121-36.2023.8.06.0001 – Apelação Cível. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelantes: Greca Transportes de Cargas LTDA e outra. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-

Processo	3039121-36.2023.8.06.0001
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Apelado: Estado do Ceará. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Custos Legis: Ministério Público Estadual. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> EMENTA: APELAÇÃO CÍVEL. CONSTITUCIONAL E PROCESSO CIVIL. MANDADO DE SEGURANÇA. SENTENÇA DENEGA TÓRIA.&#160; DESNECESSIDADE DE SOBRESTAMENTO DO PROCESSO ATÉ O JULGAMENTO FINAL DO TEMA REPETITIVO Nº 1.223. <span class="NormalTextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	3039121-36.2023.8.06.0001
	padding: 0px; user-select: text;">ORDEM DE SUSPENSÃO - NÃO INCLU SÃ O DO RECURSO DE APELAÇÃO .&#160; EXCLUSÃO DO&#160;PIS&#160;E DA COFINS NA BASE DE CÁLCULO DO ICMS. IMPOSSIBILIDADE. INTEGRA O VALOR DA OPERAÇÃO. PRECEDENTES DO STJ E DOS TRIBUNAIS PÁTRIOS. INAPLICABILIDADE DO TEMA DE REPERCUSSÃO GERAL Nº 69 . PRECEDENTES DOS TRIBUNAIS PÁTRIOS. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse:

Processo	3039121-36.2023.8.06.0001
	preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer o recurso para negar-lhe provimento, nos termos do voto da Relatora, parte integrante deste.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -

Processo	3039121-36.2023.8.06.0001
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relatora &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <hr /> <p>&#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 16pt; line-height: 37.5px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	3039121-36.2023.8.06.0001
	Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">RELATÓRIO &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de Apelação Cível interposta por GRECA TRANSPORTES DE CARGAS LTDA E OUTRA em face de sentença proferida pelo Juízo da 13ª Vara da Fazenda Pública da Comarca de Fortaleza que, nos autos de Mandado de Segurança impetrado pelas apelantes contra ato praticado pelo COORDENADOR DE ADMINISTRAÇÃO TRIBUTÁRIA DA SECRETARIA DA FAZENDA DO ESTADO DO CEARÁ, denegou a segurança requestada, por não verificar ilegalidade na inclusão do PIS/COFINS na base de cálculo do ICMS (ID nº 15293233). &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais (ID nº 15293292), as apelantes pugnam pela reforma da sentença, no sentido de reconhecer o seu direito líquido e certo à incidência do ICMS apenas nas hipóteses expressamente previstas na Constituição Federal e na Lei Kandir, afastando-se o ato coator que exige a inclusão do PIS e da COFINS na base de cálculo do referido tributo estadual e resguardando-se o direito à constituição de crédito para compensação ou restituição, no quinquênio prescricional. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em sede de contrarrazões (ID nº 15293298), o ente estatal sustenta, preliminarmente, a necessidade de suspensão do processo até o julgamento do Tema Repetitivo nº 1.223 e de inaplicabilidade do Tema de Repercussão Geral nº 69. No mérito, impugna as teses recursais e defende a manutenção do julgado.&#160; <span class="EOP

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	SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Instada a manifestar-se, a Procuradoria Geral de Justiça apresenta o Parecer de ID nº 15428047, opinando pelo conhecimento e desprovimento do recurso.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório, no essencial. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New

Processo	3039121-36.2023.8.06.0001
	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Presentes os requisitos de admissibilidade, conheço o Recurso de Apelação.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> De início, rejeito a preliminar argui da pelo ente estatal, em suas contrarrazões, atinente ao sobrestamento do processo até o julgamento do Tema Repetitivo nº 1.223 , pois &#160; a decisão de suspensão dos feitos de mesma matéria não incluiu os recursos de apelação. <span class="EOP SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New

Processo	3039121-36.2023.8.06.0001
	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Prosseguindo, no mérito, a controvérsia submetida à apreciação desta instância revisora consiste em aferir se o impetrante possui o direito líquido e certo de excluir&#160; o valor destinado a o Programa de Integração Social (PIS) e a Contribuição para o Financiamento da Seguridade Social (COFINS) d a base de cálculo do Imposto sobre Circulação de Mercadorias e Prestação de Serviços de Transporte Interestadual e Intermunicipal e Comunicação &#160;(ICMS). Pois bem. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px;

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	font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Sobre a temática, dispõe o art. 155, da CF, in verbis : &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Art. 155. Compete aos Estados e ao Distrito Federal instituir impostos sobre: &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...] &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	3039121-36.2023.8.06.0001
	Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> II - operações relativas à circulação de mercadorias e sobre prestações de serviços de transporte interestadual e intermunicipal e de comunicação, ainda que as operações e as prestações se iniciem no exterior; &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...] &#160; <br class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> § 2º O imposto previsto no inciso II atenderá ao seguinte: &#160; <br class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> [...] &#160; <br class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt;

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	line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">XII - cabe à lei complementar: &#160; <br class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> [...] &#160; <br class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> i) fixar a base de cálculo, de modo que o montante do imposto a integre, também na importação do exterior de bem, mercadoria ou serviço. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 77px;" lang="PT-BR" xml:lang="PT-BR"> E a lei complementar à qual alude o Texto Constitucional fixou como base de cálculo do ICMS o valor da operação de saída de mercadoria do estabelecimento do contribuinte. Se não, vejamos: &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	3039121-36.2023.8.06.0001
	Roman_MSFontService&quot;, serif; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Lei Complementar Federal nº 87/96 (Lei Kandir) &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Art. 12. Considera-se ocorrido o fato gerador do imposto no momento: &#160; <br class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> I - da saída de mercadoria de estabelecimento de contribuinte; &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...] &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR"

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	xml:lang="PT-BR"> Art. 13. A base de cálculo do imposto é: &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> I - na saída de mercadoria prevista nos incisos I, III e IV do art. 12, o valor da operação ; &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...] &#160; <br class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;,

Processo	3039121-36.2023.8.06.0001
	&quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> §1º Integra a base de cálculo do imposto, inclusive na hipótese do inciso V do caput deste artigo: &#160; <br class="SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-wrap-mode: nowrap !important;" /> § 1º Integra a base de cálculo do imposto, inclusive nas hipóteses dos incisos V, IX e X do &#160; caput &#160; deste artigo: &#160; &#160; &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">

Processo	3039121-36.2023.8.06.0001
	I - o montante do próprio imposto, constituindo o respectivo destaque mera indicação para fins de controle; &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> II - o valor correspondente a: &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> a) seguros, juros e demais importâncias pagas , recebidas ou debitadas, bem como descontos concedidos sob condição; <span class="EOP SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	3039121-36.2023.8.06.0001
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> b) frete, caso o transporte seja efetuado pelo próprio remetente ou por sua conta e ordem e seja cobrado em separado. (destaca-se). &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 77px;" lang="PT-BR" xml:lang="PT-BR"> Da leitura atenta dos citados dispositivos legais, conclui-se que a base de cálculo do ICMS é o valor da operação que decorre da saída da mercadoria do estabelecimento . &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 77px;" lang="PT-BR" xml:lang="PT-BR"> É cediço n a jurisprudência do <span

Processo	3039121-36.2023.8.06.0001
	class="NormalTextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Superior Tribunal de Justiça o entendimento de que os valores relativos ao PIS e à COFINS fazem parte do preço da mercadoria/serviço contratados, e, nessa qualidade, in tegram o valor da operação, base de cálculo do ICMS. Transcreve-se : &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> TRIBUTÁRIO. EMBARGOS DE DECLARAÇÃO. ERRO MATERIAL. PREMISSA EQUIVOCADA RECONHECIDA. NOVO EXAME DO RECURSO ESPECIAL. PIS E COFINS NA BASE DE CÁLCULO DO ICMS. REPASSE ECONÔMICO. LEGALIDADE. I - Tendo o acórdão embargado apreciado questão diversa daquela sob a qual gravita a demanda, de rigor a corrigenda, passando-se à análise do tema entelado , qual seja, a exigibilidade da inclusão do PIS e da Cofins na base de cálculo do ICMS. II - A jurisprudência do STJ está pacificada no sentido da legitimidade da inclusão do PIS e da Cofins na base de cálculo do ICMS, por se tratar de mero repasse econômico que integra o valor da operação. <span

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	class="NormalTextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Precedentes: AgInt no REsp n. 1.805.599/SP, relator Ministro Og Fernandes, Segunda Turma, julgado em 15/6/2021, DJe de 21/6/2021 e EDcl no AgRg no REsp n. 1.368.174/MG, relator Ministro Herman Benjamin, Segunda Turma, julgado em 19/5/2016, DJe de 1º/6/2016.III - Embargos de declaração acolhidos e, em novo exame recursal, recurso especial improvido. (STJ - EDcl no AgInt no AREsp : 2085293 SP 2022/0066527-2, Relator: FRANCISCO FALCÃO, Data de Julgamento: 15/05/2023, T2 - SEGUNDA TURMA, Data de Publicação: DJe 17/05/2023) (destaca-se). <span class="EOP

Processo	3039121-36.2023.8.06.0001
	SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> PROCESSO CIVIL E TRIBUTÁRIO. AGRAVO INTERNO NO RECURSO ESPECIAL. VIOLAÇÃO DO ART. 1.022 DO CPC/2015. INEXISTÊNCIA. INCLUSÃO DO PIS E DA COFINS NA BASE DE CÁLCULO DO ICMS. POSSIBILIDADE. REPASSE ECONÔMICO. 1. Não há omissão no acórdão quando o Tribunal local julga integralmente a lide, apenas não adotando a tese defendida pela recorrente, tampouco se pode confundir julgamento desfavorável ao interesse da parte com negativa ou ausência de prestação jurisdicional. 2. É legítima a inclusão do PIS e da Cofins na base de cálculo do ICMS, por se tratar de mero repasse econômico, que integra o valor da operação. Precedentes: EDcl no AgRg no REsp 1.368.174/MG, Rel. Min. Herman Benjamin, Segunda Turma, DJe 1º/6/2016; EDcl no REsp 1.336.985/MS, Rel. Min. Mauro Campbell Marques, Segunda Turma, <span class="NormalTextRun SpellingErrorV2Themed SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--

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	urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">DJe 13/5/2013. 3. Agravo interno a que se nega provimento. (AgInt no REsp 1.805.599/SP, Rel. Ministro Og Fernandes, Segunda Turma, DJe 21/06/2021) (destaca-se). &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;" lang="PT-BR" xml:lang="PT-BR"> E ainda: EDcl no AgRg no REsp 1.368.174/MG, Rel. Min. Herman Benjamin, Segunda Turma, DJe 1º/6/2016; EDcl <span class="NormalTextRun

Processo	3039121-36.2023.8.06.0001
	SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">no REsp 1.336.985/MS, Rel. Min. Mauro Campbell Marques, Segunda Turma, DJe 13/5/2013. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;" lang="PT-BR" xml:lang="PT-BR"> No mesmo sentido é a compreensão assentada pelos Tribunais de Justiça Pátrios: &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> APELAÇÃO CÍVEL. MANDADO DE SEGURANÇA. ICMS. Exclusão dos valores referentes à contribuição do PIS e da COFINS da base de cálculo. Segurança denegada. Recurso do impetrante. No Tema nº 69, julgado pelo STF no RE nº 574.706, invocado pelo impetrante, restou fixada a seguinte tese: "O ICMS não compõe a base de cálculo para fins de incidência do PIS/COFINS". Hipótese inversa à dos autos, onde se pretende a exclusão dos valores relativos ao PIS/COFINS da base de cálculo do ICMS. No caso do ICMS sobre a circulação de mercadoria, a base de cálculo do referido tributo é o "valor da operação", abarcando o valor do imposto, e o valor correspondente a seguros, juros e demais importâncias pagas, recebidas ou debitadas, nada tendo a ver com a base de cálculo das contribuições de PIS/COFINS. Artigo 13, I, c/c § 1º, I e II, alínea a, da LC 87/96. A jurisprudência do STJ está consolidada no sentido da legitimidade da inclusão das referidas contribuições (PIS e COFINS) na base de cálculo do ICMS, por se tratar de mero repasse econômico que integra o valor da operação. Ausência de ilegalidade no ato administrativo de constituição do crédito tributário impugnado pelo impetrante, não existindo, portanto, direito líquido e certo a amparar sua pretensão. <span class="TextRun SCXW201343849 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Precedentes. NEGADO PROVIMENTO AO RECURSO. (TJ-RJ - APELAÇÃO: 0146334-63.2021.8.19.0001 202300185224, Relator: Des(a). JDS MARIA AGLAE TEDESCO VILARDO, Data de Julgamento: 21/02/2024, QUARTA CAMARA DE DIREITO PUBLICO (ANTIGA 7ª CÂMARA, Data de Publicação: 26/02/2024) (destac a -se). &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> EMENTA: TRIBUTÁRIO - APELAÇÃO CÍVEL - MANDADO DE SEGURANÇA - PIS E COFINS - BASE DE CÁLCULO DO ICMS - RE 574.706 - INAPLICABILIDADE - PRECEDENTES DOS TRIBUNAIS SUPERIORES. É legítima a inclusão do PIS e da COFINS na base de cálculo do ICMS, nos termos da Lei Complementar n. 87/1996, que são repassados economicamente ao consumidor e integram o valor da operação. O Supremo Tribunal Federal no RE 574.706 (Tema 69) fixou a tese de que "O ICMS não compõe a base de cálculo para a incidência do PIS e da Cofins ", e não o inverso, sendo incabível a aplicação analógica ao caso dos autos. (TJ-MG - AC: 50097554120208130707, Relator: Des.(a) Edilson Olímpio Fernandes, Data de Julgamento: 23/05/2023, 6ª CÂMARA CÍVEL, Data de Publicação: 29/05/2023) (destaca-se). &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align:

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	baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;" lang="PT-BR" xml:lang="PT-BR"> Lado outro, urge salientar que o pleito de deduzir os valores do PIS e da COFINS da base de cálculo do ICMS reclama ria autorização legal expressa, nos termos d o&#160;art. 150 , §6º 1 , da CF , o que inexiste no caso. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;" lang="PT-BR" xml:lang="PT-BR"> <span class="NormalTextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text;">Por derradeiro, insta destac ar que o Supremo Tribunal Federa l , no Tema de Repercussão Geral nº 69, tratou do conceito de receita/faturamento previsto no art. 195, inciso I, alín e a “b” , da CF, base de cálculo do PIS e da COFINS, concluindo pela dedução do ICMS desse conceito, intelecção que não se aplica ao presente caso que trata da base de cálculo do ICMS que , nos termos do art. 13 e respectivos incisos e parágrafos, corresponde ao valor da operação relativa à circulação da mercadoria/serviço tributável. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;" lang="PT-BR" xml:lang="PT-BR"> Inclusive, o próprio Supremo Tribunal Federal, ao julgar os Embargos de Declaração no Recurso Extraordinário nº 574.706/PR, nos quais foi alegado possível contradição entre este julgado e o Recurso Extraordinário nº 582.461/SP (Tema nº 214), esclareceu que tais casos não se confundem, porquanto trataram de tributos diversos quanto à natureza, estrutura normativa e finalidades. Ressalto, por sua relevância, um excerto do voto vencedor do aludido julgado: &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> [...] Especificamente sobre o alegado, a dizer, não ter sido observado

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	precedente deste Supremo Tribunal sobre a inclusão de tributos na base de cálculo de outros tributos (Recursos Extraordinários ns . 212.209 e 582.461), diferente do afirmado erroneamente pela embargante, a questão foi considerada. Foi expressamente cuidada nos debates, tendo sido mencionada nos votos vencidos em razão do fundamento neles acolhidos. Tanto não significa omissão no julgado. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> O não acolhimento da tese posta naqueles precedentes decorreu do entendimento de que neles não se cuidava da mesma matéria nem haveria de se adotar igual solução. Naqueles julgados se cuidou de possibilidade constitucional de inclusão do valor pago como ICMS na base de cálculo do próprio ICMS. [...] A discussão posta no presente recurso extraordinário refere-se à inclusão do ICMS na base de cálculo das contribuições sociais – PIS e COFINS. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 6. Não houve omissão, portanto. O que se considerou, de forma expressa, naquele julgamento é que o que se tinha como matéria central naqueles julgados não se aplicava a este caso e assim foi considerado pela maioria dos Ministros, que formaram na corrente vencedora, e que concluiu pela tese a ser acolhida neste caso. Vale dizer, não se omitiu nem se desconheceu o que antes julgara este Supremo Tribunal. Antes, foi cuidado o tema, conquanto a conclusão prevalecente tenha sido em sentido oposto ao pretendido pela embargante. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Neste sentido se tem, por exemplo, o realce dado pelos Ministros Roberto Barroso (fls. 51 e 68 do acórdão) e Ministro Gilmar Mendes (fls. 124 e segs. do acórdão), que ficaram na corrente vencida. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Os votos que formaram na corrente vencedora, entretanto, consideraram que as matérias não se confundiam, porque aqueles precedentes – como antes mencionado - referiam-se à inclusão do ICMS na base de cálculo do ICMS. No caso examinado no presente processo, cuidou-se da inclusão do ICMS na base de cálculo das contribuições PIS e COFINS, que têm natureza, estrutura normativa e finalidades diversas daquele tributo. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Não se vislumbra, assim, omissão em relação ao decidido nos Recursos Extraordinários ns . 212.209 e 582.461. O não acolhimento daqueles julgados como orientador jurisprudencial a ser aplicado no caso presente não significa omissão, mas inadmissão, na forma do julgado. [...] (destaca-se). &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;

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	background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Esta, aliás, é a jurisprudência pacífica e hodierna dos Tribunais Pátrios sobre a matéria: &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> APELAÇÃO CÍVEL – MANDADO DE SEGURANÇA CÍVEL – INCLUSÃO DO PIS E DA COFINS NA BASE DE CÁLCULO DO ICMS – POSSIBILIDADE – ART. 13, § 1º, II, DA LC Nº 87/1996 –MERO REPASSE ECONÔMICO QUE INTEGRA O VALOR DA OPERAÇÃO – ENTENDIMENTO DO SUPERIOR TRIBUNAL DE JUSTIÇA – RECURSO CONHECIDO E NÃO PROVIDO, COM O PARECER. O Superior Tribunal de Justiça já se pronunciou sobre a controvérsia atinente à inclusão do PIS e da COFINS na base de cálculo do ICMS, em mais de uma oportunidade, assentando o entendimento de que é legítima a inclusão do PIS e da COFINS na base de cálculo do ICMS, uma vez que se trata de mero repasse econômico que integra o valor da operação deste tributo. Outrossim, o cômputo do PIS e da COFINS na base de cálculo do ICMS encontra respaldo na Constituição Federal e na Lei Complementar nº 87/1996, uma vez que, de acordo com o Superior Tribunal de Justiça, trata-se de mero repasse econômico que integra o valor da operação. Ademais, nos termos do art. 13, § 1º, inc. II, da Lei Complementar nº 87/1996, integra a base de cálculo do ICMS, além do montante do próprio imposto, o valor correspondente a seguros, juros e demais importâncias pagas, recebidas ou debitadas, bem como descontos concedidos sob condição. No mais, não merece acolhida a pretensão de exclusão do PIS e da COFINS da base de cálculo do ICMS com base no entendimento sedimentado pelo Supremo Tribunal Federal no julgamento do Recurso Extraordinário nº 574.706/PR, com repercussão geral (Tema nº 69), pois este trata de hipótese distinta do caso em análise, a saber: a (im) possibilidade de inclusão do ICMS na base de cálculo do PIS e da COFINS, e não o contrário. Recurso conhecido e não provido, com o parecer. (TJ-MS - AC: 08301504920228120001 Campo Grande, Relator: Des. Alexandre <span class="NormalTextRun SpellingErrorV2Themed SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-

Processo	3039121-36.2023.8.06.0001
	position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">Raslan , Data de Julgamento: 09/11/2023, 5ª Câmara Cível, Data de Publicação: 13/11/2023) (destaca-se). &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> APELAÇÃO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE RELAÇÃO JURÍDICA COM PEDIDO DE URGÊNCIA – Alegação de que é inconstitucional a inclusão do PIS e do COFINS na base de cálculo do ICMS. Constitucionalidade reconhecida pelo STF - Cálculo por dentro - Admissibilidade da inclusão do tributo em sua própria base de cálculo - Precedentes das Cortes Superiores - Inclusão do PIS/COFINS na base de cálculo do ICMS - Legalidade - Inteligência do art. 8º, II, b, da Lei Complementar 87/96 e art. 28-A, I, da Lei Estadual nº 6.374/89 - Inaplicabilidade do posicionamento firmado pelo C. Supremo Tribunal Federal mediante o julgamento do Recurso Extraordinário nº 574.706, Tema nº 69 pois esse paradigma trata de situação inversa, na qual incluído o ICMS na base de cálculo de PIS e COFINS. Necessidade de manutenção do r. decisum que rejeitou a exceção de pré -executividade. Incidência do artigo 252 do Regimento Interno deste TJSP. Precedentes. Sentença mantida. RECURSO NÃO PROVIDO (TJ-SP - AC: 10069718720218260053 SP 1006971-87.2021.8.26.0053, Relator: Antonio Celso Faria, Data de Julgamento: 01/02/2023, 8ª Câmara de Direito Público, Data de Publicação: 02/02/2023) (destaca-se). <span class="EOP SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	3039121-36.2023.8.06.0001
	Roman_MSFontService&quot;, serif;">&#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Desta feita, resta assente que o PIS e a COFINS devem compor a base de cálculo do ICMS , sendo forçoso reconhecer que a demandante não possui o direito líquido e certo afirmado. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Ante o exposto, conheço o recurso para negar-lhe provimento , mantendo incólu mes os termos da sentença vergastada. <span class="EOP SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	3039121-36.2023.8.06.0001
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Deixo de promover a majoração de honorários advocatícios de sucumbência, porquanto não arbitrados na origem, em atenção ao art. 25 da Lei n.º 12.016/2009. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> É como voto. &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data e hora informadas pelo sistema. &#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849

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	BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relatora &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <hr /> <p>&#160;</p> </div> <div class="OutlineElement Ltr SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW201343849 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; color: windowtext; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;"

Processo	3039121-36.2023.8.06.0001
	lang="PT-BR" xml:lang="PT-BR">Art. 150. [...] §6º. Qualquer subsídio ou isenção, redução de base de cálculo, concessão de crédito presumido, anistia ou remissão, relativos a impostos, taxas ou contribuições, só poderá ser concedido mediante lei específica, federal, estadual ou municipal, que regule exclusivamente as matérias acima enumeradas ou o correspondente tributo ou contribuição, sem prejuízo do disposto no art. 155, § 2.º, XII, g. &#160; </p> </div></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	142
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Fraldas
Polo ativo	MUNICIPIO DE BEBERIBE ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA ALEXANDRE GOMES
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ   <br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="text-align: center;">   <br /> </p><p>   PROCESSO:&#160;3000032-22.2024.8.06.0049 -&#160;APELAÇÃO CÍVEL (198) </p><p>   APELANTE: MUNICIPIO DE BEBERIBE, ESTADO DO CEARA </p><p>   APELADO: MARIA ALEXANDRE GOMES </p><p> S2</p><p style="text-align: justify;">&#160;</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;">   EMENTA: DIREITO CONSTITUCIONAL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. OBRIGAÇÃO DE FAZER. FORNECIMENTO DE ALIMENTAÇÃO ENTERAL E DE FRALDAS GERIÁTRICAS. DIREITO À SAÚDE. DEVER DO PODER PÚBLICO. INTELIGÊNCIA DOS ARTS. 6º E 196 DA CF/88. NECESSIDADE DE RENOVAÇÃO PERIÓDICA DA PRESCRIÇÃO MÉDICA. HONORÁRIOS. ALTERAÇÃO DO CRITÉRIO DE FIXAÇÃO.

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	PROVEITO ECONÔMICO INESTIMÁVEL. FIXAÇÃO DA VERBA HONORÁRIA POR EQUIDADE. ART. 85, §8º, DO CPC/15, E TEMA 1076 DO STJ. PRECEDENTES DESTE EGRÉGIO TRIBUNAL DE JUSTIÇA. APELAÇÃO CÍVEL CONHECIDA E PROVIDA. SENTENÇA REFORMADA. </p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160; </p><p style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Apelação Cível para provê-la , nos termos do voto do relator.</p><p style="margin-bottom: 12.0pt; line-height: 200%;"> Fortaleza/CE, data e hora indicadas pelo sistema. </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> Relator &#160;</p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> <br /> </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> RELATÓRIO </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Trata-se de Apelação Cível interposta pelo Município de Beberibe objetivando a reforma da sentença Id. 15337043, proferida pelo Juízo de Direito da 2ª Vara da Comarca de Beberibe, nos autos da Ação de Obrigação de Fazer ajuizada por Maria Alexandre Gomes em face do Estado do Ceará e do ora recorrente. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Sentença (Id.15337043) : o magistrado julgou procedente a demanda, nos seguintes termos: “confirmo a liminar anteriormente deferida e JULGO PROCEDENTE&#160;o pedido, extinguindo o feito com resolução de mérito,&#160;com fundamento no art. 487, I, CPC/15.&#160;Condeno os requeridos em honorários sucumbenciais em prol do&#160;Fundo de Apoio e Aparelhamento da Defensoria Pública do Estado do Ceará – FAADEP (Caixa Econômica Federal – Agência 0919 - Conta Corrente nº 0919.006.71003-8, CNPJ 05.220.055/0001-20), no percentual de 10% sobre o valor da causa, nos termos do RE&#160;0000569-48.2013.4.02.5110, JULGADO EM 26/06/2023 (HTTPS://PORTAL.STF.JUS.BR/PROCESSOS/DETALHE.ASP?INCIDENTE=5487108).” &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Recurso de Apelação (Id.15337046) : o ente municipal requer, em síntese, que a parte autora/apelada tenha a obrigação de renovar, semestralmente, o laudo médico e o parecer nutricional, nos moldes do Enunciado Nº 02, da III Jornada de Direito da Saúde do CNJ. Ainda, requer a redução do valor fixado a título de multa cominatória. &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Contrarrazões (Id.15337049) : a apelada pugna pela manutenção da sentença, visto que, no presente caso, é desnecessária a apresentação de laudo médico e que a multa foi fixada de forma proporcional. &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Parecer do Ministério Público (Id.15413775): manifestação pelo conhecimento e desprovimento do apelo, devendo ser mantida a sentença.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> <span style="font-size: 12pt; line-

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	height: 200%; color: black;"> É o relatório. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> &#160;</p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> VOTO </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Presentes os pressupostos de admissibilidade, conheço do recurso. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Conforme relatado, o presente apelo visa reformar a sentença no sentido de atribuir à parte autora/apelada a obrigação de renovar, periodicamente, o laudo médico, a fim de comprovar a necessidade dos insumos pleiteados. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> &#160; Como se sabe, a saúde é um direito constitucional assegurado a todos, inerente à vida, bem maior do homem, matriz de todos os direitos, sendo, portanto, atribuição do Estado o dever de prover condições indispensáveis ao seu pleno exercício.</p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> &#160; Percebe-se que, nos termos da própria jurisprudência do STF, a responsabilidade dos entes federativos, no que toca aos deveres inerentes ao direito à saúde, é solidária. Ou seja, não há fixação de responsabilidade subsidiária de um ente federativo em relação ao outro.</p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> &#160; Com base em tais premissas, é dever incontestável do Estado assegurar o direito à saúde de todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo, especialmente quando o que se tem não é exatamente o exercício de uma política pública de saúde, mas sua completa ausência ou cumprimento insuficiente.</p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> &#160; Traçado esse breve panorama normativo e volvendo ao caso em análise, depreende-se que a parte autora comprovou a necessidade e a urgência dos insumos pleiteados, conforme documentos acostados aos autos, tendo se desincumbido do ônus de provar o fato constitutivo de seu direito.</p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> &#160; No entanto, em conformidade com os argumentos constantes no apelo, considerando que se trata de medida judicial de prestação continuativa, é imprescindível que o jurisdicionado promova a renovação periódica da prescrição médica, a fim de comprovar a permanência da necessidade da prestação determinada, conforme enunciado n° 2 da I Jornada de Direito da Saúde do CNJ, veja-se:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Enun ciado nº 02 do CNJ – Concedidas medidas judiciais de prestação continuativa, em tutela provisória ou definitiva, é necessária a renovação periódica do relatório e prescrição médicos a serem apresentados preferencialmente ao executor da medida, no prazo legal ou naquele fixado pelo julgador como razoável, considerada a natureza da enfermidade, de acordo com a legislação sanitária, sob pena de perda de eficácia da medida. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Outro ssim, verifico que o magistrado condenou a parte promovida ao pagamento de honorários advocatícios em 10% (dez por cento) do valor da causa.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Tal determinação, contudo, é contrária aos recentes julgados deste Tribunal, cuja orientação é no sentido de que, tratando-se de processos envolvendo prestação à saúde, o proveito econômico é inestimável, devendo, pois, o ônus de sucumbência ser fixado na forma equitativa, conforme disposição do art. 85, §8º, do CPC, <em style="mso-bidi-font-style: normal;"> in verbis <span style="font-size: 12.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif; color: black; mso-

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	themecolor: text1; mso-bidi-font-style: italic;"> : </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif; color: black; mso-themecolor: text1; mso-bidi-font-style: italic;"> <span style="font-size: small;">CONSTITUCIONAL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL INTERPOSTA PELA DEFENSORIA PÚBLICA. AÇÃO DE OBRIGAÇÃO DE FAZER C/C PEDIDO DE TUTELA DE URGÊNCIA (ALIMENTOS, INSUMOS E FRALDAS). AVOCAÇÃO DO FEITO EM REMESSA NECESSÁRIA. DIREITO À SAÚDE. ARTS. 5º, §1º, 6º, CAPUT, 23, II, 196 E 197 DA CF. TEMA 793 DO STF E SÚMULA 45 DO TJCE. COMPROVAÇÃO DA HIPOSSUFICIÊNCIA DA PARTE AUTORA E DA NECESSIDADE DA ALIMENTAÇÃO ESPECIAL, DOS INSUMOS E DAS FRALDAS. MANUTENÇÃO DA CONDENAÇÃO DO ESTADO. RECURSO DE APELAÇÃO. HONORÁRIOS EM FAVOR DA DEFENSORIA PÚBLICA. MUDANÇA DE ENTENDIMENTO. JULGAMENTO DO RE 1140005 PELO STF, EM SEDE DE REPERCUSSÃO GERAL. TEMA 1.002. TESE QUE IMPÕE A CONDENAÇÃO A QUALQUER ENTRE PÚBLICO A PAGAR VERBA HONORÁRIA SUCUMBENCIAL EM FAVOR DA DEFENSORIA PÚBLICA, INCLUINDO-SE O ESTADO AO QUAL A INSTITUIÇÃO SE VINCULA. FORÇA VINCULANTE DOS PRECEDENTES. ART. 927, III DO CPC. REMESSA NECESSÁRIA AVOCADA E DESPROVIDA. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. SENTENÇA PARCIALMENTE REFORMADA. 1. Busca a Defensoria Pública em seu apelo a reforma parcial da sentença, objetivando a condenação do Estado do Ceará ao pagamento de honorários advocatícios em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. (…) 8. A respeito da questão discutida no recurso voluntário, impende esclarecer que, até bem pouco tempo, o entendimento jurisprudencial unânime nesta Corte de Justiça, em consonância com o enunciado sumular nº 421 do STJ, era no sentido da impossibilidade jurídica de condenação do Estado do Ceará em honorários em favor da Defensoria Pública, em virtude de ser a instituição vinculada ao ente federado em alusão. 9. Todavia, em data recente (23.06.2023), o STF julgou o RE 114005, em sede de Repercussão Geral (Tema 1.002), no qual firmou a seguinte tese: "1. É devido o pagamento de honorários sucumbenciais à Defensoria Pública, quando representa parte vencedora em demanda ajuizada contra qualquer ente público, inclusive aquele que integra; 2. O valor recebido a título de honorários sucumbenciais deve ser destinado, exclusivamente, ao aparelhamento das Defensorias Públicas, vedado o seu rateio entre os membros da instituição". 10. Com o mencionado julgado, encerra-se a discussão acerca da possibilidade, ou não, de a pessoa jurídica, à qual se encontra vinculada a Defensoria Pública ser condenada em honorários advocatícios de sucumbência em prol do mencionado órgão, isso em decorrência da força vinculante dos precedentes, com previsão no art. 927, III, do CPC/2015. 11. Em consequência, devem ser fixados na hipótese honorários sucumbenciais, em atendimento aos parâmetros estabelecidos no artigo 85, §§ 2º e 3º, do CPC/ 2015. 12. Na hipótese, como se trata de causa de valor que não se pode estimar, envolvendo direito à saúde, constitucionalmente garantido e inserido no conceito de mínimo existencial, a fixação dos honorários deve ocorrer por apreciação equitativa, nos termos do art. 85, § 8º, do CPC, mostrando-se cabível a fixação do valor de R$ 1.000,00 (mil reais) a título de honorários sucumbenciais, a serem pagos pelo Estado do Ceará em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. 13. Remessa necessária avocada e desprovida. Recurso de apelação conhecido e provido. Sentença parcialmente reformada. ACÓRDÃO – Vistos, relatados e discutidos os presentes autos, nesta Comarca de Fortaleza, em que figuram as partes indicadas. ACORDAM os membros integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em AVOCAR o feito em remessa necessária, para NEGAR LHE PROVIMENTO, e em CONHECER do recurso de apelação interposto, para DAR-LHE PROVIMENTO, reformando parcialmente a sentença, nos termos do voto do Relator. Fortaleza, 30 de outubro de 2023. Des. José Tarcílio Souza da Silva Relator (Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023). </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Ademais, considerando que no presente caso o proveito econômico obtido pelo vencedor da ação é inestimável (direito à saúde), o arbitramento de honorários advocatícios em percentual se mostra inadequado, conforme orientação do Tema 1076 do STJ: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Questão submetida a julgamento: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Definição do

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	alcance da norma inserta no §8º do artigo 85 do Código de Processo Civil nas causas em que o valor da causa ou o proveito econômico da demanda forem elevados. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Tese Firmada: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I) A fixação dos honorários por apreciação equitativa não é permitida quando os valores da condenação, da causa ou o proveito econômico da demanda forem elevados. É obrigatória nesses casos a observância dos percentuais previstos nos §§ 2º ou 3º do artigo 85 do CPC – a depender da presença da Fazenda Pública na lide –, os quais serão subsequentemente calculados sobre o valor: (a) da condenação; ou (b) do proveito econômico obtido; ou (c) do valor atualizado da causa. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II) Apenas se admite arbitramento de honorários por equidade quando, havendo ou não condenação: (a) o proveito econômico obtido pelo vencedor for inestimável ou irrisório; ou (b) o valor da causa for muito baixo. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> A ssim, de ofício, considerando os julgados do TJCE, em especial desta 3ª Câmara de Direito Público, arbitro os honorários sucumbenciais, de forma equitativa, em R$ 1.000,00 (mil reais), nos moldes do art. 85, § 8º do CPC, revelando-se como razoável e proporcional . </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Importante salientar que o valor ora fixado se justifica no fato de se tratar de demanda de baixa complexidade, havendo sobre o tema farta jurisprudência, tanto desta Egrégia Corte, como também dos Tribunais Superiores. Ademais, considerando o trabalho desempenhado, o local de prestação, o tempo despendido e a natureza da causa, afigura-se justo e razoável o montante arbitrado, por se revelar uma quantia consentânea com os critérios previstos no referido digesto processual, além de seguir a coerência dos valores fixados por esta Câmara nos julgados supracitados.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Anoto, por fim, que deverá a totalidade da verba honorária ser destinada exclusivamente ao aparelhamento da Defensoria Pública, vedado o seu rateio entre os membros da instituição, em conformidade com a tese jurídica fixada no Tema nº 1.002 do STF.</p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Isso posto, conheço do Recurso de Apelação para provê-lo, reformando a sentença objurgada para determinar que a parte autora/apelada comprove, semestralmente, por meio de prescrição médica, a necessidade do insumo requerido, bem como para modificar o critério de fixação dos honorários sucumbenciais, oportunidade em que arbitro, por equidade, em R$ 1.000,00 (um mil reais), nos termos do art. 85, §8º, do CPC, devendo tal ônus recair de forma solidária sobre ambos os entes, restando atribuída a estes a responsabilidade pelo adimplemento da referida verba . </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> É como voto. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Fortaleza, data e hora informadas pelo sistema. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> <br /> </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> Relator </p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	143
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Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	ANTONIO SILVA LOPES
Advogado(s) - Polo ativo	ELISANGELA SILVA ARAUJO - (CE31005-A) CIBELE FAUSTINO DE SOUSA - (CE28696-A)
Polo passivo	PROCURADORIA GERAL DO ESTADO PROCURADORIA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3004106-11.2023.8.06.0064
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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 </p><p>&#160;</p><p>
   ACÓRDÃO:
</p><p> O Colegiado, por unanimidade, acordou em não conhecer do recurso, nos termos do voto do(a) eminente
Relator(a).</p><p>&#160;</p><p>
RELATÓRIO:
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	2tra8ee/PPW9cu5MfFJ22uMt1OYscqQgE0i1KWNCJJhZQxQapkY7bBpiphaR8FyhHP9kNP06UynFZgbQKyv4lQWxLFIaUf2FU6WnOjuk8x0pUjNngnQtlNay2YK1lhKIzE58PHn+Uurs8+fDrU3147V1NWhksXwZmTni/+t04vgJ69bW5rsdpM2h4aHy2Wezyj2DfaWmIQ4Xv2BOnSw2YG6QENalaeGbTENsStPDfEZz7PLudwCCd2BVjByWUMDiCqLCmdmc34wRYr8b881eQ/DsM8NHiaoEjDbDeQs+t5WES4z/89bW1qrZX2aVx8aOlTU01KGjveXu6OioNUfc/xpRqJ3X2ta8h3lz4WBH09PTZ08H0G5plrOqBxwTA/GeBYGx3kBCM0ds9P2VZn7VmhC7xVqTvAvRhwoR0r0Pq2NUMZc5AvuDFpnfCFQQWYj9Jiwz5oVTrA9YrBrm7G946tKlhIbmxqcH21pRU1u1h5GNI+Z/n6anp53rG2oH+w/1obGh9t6Th/dbaNG8irrKa7rBdlTRkN95b2efQLG7bgYAm6niIT8yb4jEzMwPHZd/vtmhUur98n3T1zXNJG7mb5pjqS0ftCLskVuef2326Yu8p0+etNCa1/v6e1BZXTl49epVZ45Y/14iQO8O9fXJlpeXXG8k/2xpabo4+/MDlZ+mZwLKm2quKHjo410XEtR1G+ZRlfMWA5SJvGSe2/YYIudY40R4T+7El3HUXzIvuDIaZIAxmvfixkonQci66yKnpvDK9N3pAHIJle7uzosEDmWlxdfa2tpkGRk44vx1dO/e7LKuri7DurraUTKVH7u629sf3r6nPjU1lRGwN+awfIgJ3janiEsVD/NqJfM855MYJXyZuAsfRythCdWXjOmyG1gy7bm22yAXaMic9R2evDyZ8XDmoXpvZ1tNbU3ldGVlyWhzc53hvXv3lnGW/79Lvb3dvgf2Zfa0HWxGe1d7NO2w3ejoiK9VoNNN5h0WLg8edvKez1QnTLHAMMc3mc7lSycZWPjZ3RwZ7GcioV17V0d0c3MTjhw5jIHBviTOMv9viZx9xfj4WPOh4UMoKi16MTFxsXj24S9u3QN9ZxRc9Z4uMucmk6TgweQyhgnk23Y7IOWs9bSpo/nM859/drs8MVFcSPf2DfVjYKC3+Zdnz9Q40//PIAK5+ObNqW1dvV3flpUVo6GxYfrx9AP5mxcnvaMOpNxf5yEPLncetkbfM+dDcEbMz1fPX/Z+PP2TXPPBpinyMbR1dXx7ceriNmYuzrT/M+nYsWPq+QW5VTU11Th39nQNmZ5DbE5S8Zc6AvhqtyBKWFUP6TePSxfP1TDvx7V3tD0dONT71/7r6l9BVTWV4e3tbSgoyKsmQGu7OrtedLa1vaDvPjX1NU3Uh6KhoT6e/pbh3PK/j65enQwZIr8qKS1pJyBRDFeVF1ZTcML4+HgIZ9j/brp//6fAgcF+akKLK9taWRXDw0OU9GcCOZf//6CpqSthpWVFyMvPweTk5f8/NPd7SklLCz956iQFSazm/PQXExfX/wGXuTX16scS8AAAAABJRU5ErkJggg==" alt="" /></p><p style="margin: 0cm; text-align: center;" align="center"> ESTADO DO CEARÁ </p><p style="margin: 0cm; text-align: center;" align="center"> PODER JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;" align="center"> TRIBUNAL DE JUSTIÇA </p><p style="margin: 0cm; text-align: center;" align="center"> GABINETE DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO </p><p style="text-align: center;" align="center"> &#160;</p><p style="text-align: left;">&#160;</p><p style="text-align: left;"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> Processo: &#160;3004106-11.2023.8.06.0064 </p><p style="text-align: left;"> [Obrigação de Fazer / Não Fazer] </p><p style="text-align: left;"> REMESSA NECESSÁRIA CÍVEL </p><p style="text-align: left;"> Recorrente:&#160;ANTONIO SILVA LOPES</p><p style="text-align: left;"> Recorrido:&#160;PROCURADORIA GERAL DO ESTADO</p><p style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> E menta

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	   : Direito Processual civil. Direito à saúde. Reexame necessário. Ação ordinária para compelir o Estado do Ceará a fornecer insumos de saúde . D ispensa do duplo grau de jurisdição. Art. 496, §3º, inciso II, do cpc. Não conhecimento do reexame. Sentença mantida. I. Caso em exame <br /> 1. R <span style="text-

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	decoration: none;"> emessa necessária de sentença que condenou conden ar o Estado do Ceará a fornecer vaga em leito de Hospital Terciário com serviço de hematologia e cirurgia digestiva, para avaliação do quadro clínica e tratamento . </p><p style="font-variant: small-caps; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> II. Questão em discussão </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 2. A questão a ser dirimida consiste em saber se, diante da iliquidez da sentença e do valor estimado da condenação estar abaixo do limite legal, é cabível a dispensa do reexame necessário. </p><p class="western" style="font-variant: small-caps; line-height: 150%; margin-bottom: 0cm;" align="justify"> III. Razões de decidir </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> 3

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	      . Atualmente, ainda se encontra em vigor a Súmula nº 490 do STJ, pela qual “a dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas”. Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. <br /> IV. Dispositivo </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 4. Remessa necessária não conhecida, mantendo-se a sentença. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> ________ </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Dispositivos relevantes citados: CPC/2015, art. 496, §3º, III. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Jurisprudência relevante citada: AgInt no REsp n. 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022 e AgInt no AREsp n. 1.969.907/TO, relator Ministro Herman Benjamin, Segunda Turma, julgado em 11/4/2022, DJe de 25/4/2022. </p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0.6cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;"

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	align="justify"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em não conhecer do reexame necessário, tudo nos termos do voto do relator, parte integrante deste. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> F ortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> <br /> <br /></p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p class="western" style="font-variant: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm; page-break-before: auto;" align="justify"> Tem-se reexame necessário da sentença de procedência prolatada pelo juízo da 1ª Vara Cível da Comarca de Caucaia em Ação de Obrigação de Fazer c/c Pedido de Tutela Provisória de Urgência , que confirmou a tutela antecipada concedida, para conden ar a parte promovida na obrigação de fornecer uma vaga de leito em hospital público terciário com serviço de hematologia e cirurgia digestiva, para fins de avaliação do quadro clínico e tratamento, ou, na impossibilidade, em hospital da rede privada de saúde às expensas do suplicado. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm; background: transparent; page-break-before: auto;" align="justify"> Sentença: julgou procedente o pleito autoral ,

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	   considerando os documentos médicos que comprovam a gravidade do estado de saúde da parte autora, com quadro de abscesso hepático, sendo necessária e urgente sua transferência para hospital terciário com serviço de hematologia e cirurgia digestiva para fins de avaliação do quadro clínico e tratamento. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm;" align="justify"> Parecer da PGJ: manifesta-se pelo não conhecimento da remessa necessária. </p><p style="letter-spacing: 0.6pt; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> É o relatório, no essencial. </p><p style="letter-spacing: 0.6pt; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0.21cm; background: transparent;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify"> Conforme se observa o juízo a quo consignou: “ Sentença sujeita ao duplo grau de jurisdição obrigatório, nos termos do artigo 496, inciso I, do Código de Processo Civil. Empós o decurso do prazo para recurso voluntário, remetam-se os autos ao c. Tribunal de Justiça do Ceará, em remessa necessária ” . </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify"> Todavia, não obstante o entendimento do juízo a quo , a demanda não alcança o valor de alçada para reexame obrigatório que, na situação, dos autos é de 5 00 (

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	   quinhentos) salários mínimos, inclusive este é posicionamento das três câmaras de Direito Público deste e.TJCE, explico. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> I - proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> § 3º Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> II - 500 (quinhentos) salários-mínimos para os Estados, o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Em se tratando de sentença ilíquida, poder-se-ia pensar, a princípio, ser o caso de aplicação, no caso concreto, da Súmula 490 do STJ, cujo enunciado prevê que “ A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas ”. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Nesse sentido, os seguintes precedentes do STJ, in verbis <span style="color:

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	#000000;"> : </p><p class="western" style="line-height: 200%; text-indent: 2.49cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> PROCESSUAL CIVIL. RECURSO ESPECIAL. ENTE ESTADUAL. REEXAME NECESSÁRIO. VALOR DE ALÇADA. PROVEITO ECONÔMICO DA DEMANDA. PARÂMETRO PARA AFASTAMENTO DA ILIQUIDEZ. POSSIBILIDADE . 1. "Aos recursos interpostos com fundamento no CPC/1973 (relativos a decisões publicadas até 17 de março de 2016) devem ser exigidos os requisitos de admissibilidade na forma nele prevista, com as interpretações dadas, até então, pela jurisprudência do Superior Tribunal de Justiça" (Enunciado Administrativo n. 2 - STJ). 2. De acordo com o disposto no art. 475, I, § 2º, do CPC/1973, a sentença cuja condenação, ou o direito controvertido, não ultrapasse o valor correspondente a 60 (sessenta) salários-mínimos, não está sujeita ao reexame necessário. 3. O entendimento consolidado na Súmula 490 do STJ pode ser relativizado nas hipóteses em que o proveito econômico buscado na demanda servir como parâmetro balizador ao afastamento da iliquidez da sentença. 4. Hipótese em que o Tribunal de origem ratificou que o direito controvertido na ação de cobrança não supera, de forma manifesta, o patamar de 60 (sessenta) salários-mínimos, quantia tida como alçada pela legislação processual para tornar obrigatória a remessa necessária da sentença proferida em desfavor do ente estatal. 5. Agravo interno não provido. GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) </p><p class="western" style="font-weight: normal; line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> No mesmo sentido, é o entendimento das três Câmaras de Direito Público deste e.TJCE: </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> CONSTITUCIONAL E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO. PROVEITO ECONÔMICO DECORRENTE DA CONDENAÇÃO INFERIOR AOS VALORES DO ARTIGO 496, INCISO II DO CPC. REEXAME NECESSÁRIO NÃO CONHECIDO. FORNECIMENTO DE LEITO. DEMANDA AJUIZADA CONTRA O ESTADO DO CEARÁ. HONORÁRIOS ADVOCATÍCIOS. PAGAMENTO EM FAVOR DA DEFENSORIA PÚBLICA ESTADUAL. NÃO CABIMENTO. INCIDÊNCIA DA SÚMULA 421 E DO RECURSO ESPECIAL Nº 1199715/RJ, JULGADO NA SISTEMÁTICA DOS RECURSOS REPETITIVOS (TEMA 433), AMBOS DO SUPERIOR TRIBUNAL DE JUSTIÇA. SENTENÇA EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ E DESTA CORTE ESTADUAL. MANUTENÇÃO. REMESSA NECESSÁRIA NÃO CONHECIDA. APELO CONHECIDO E DESPROVIDO. 1. Revela-se dispensável a remessa necessária quando o proveito econômico decorrente da condenação é inferior ao valor expresso no inciso II do § 3º do artigo 496 do CPC, que constitui exceção ao duplo grau de jurisdição obrigatório. Precedentes. <span

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	style="font-weight: normal;">2. São indevidos honorários sucumbenciais pelo Estado do Ceará à Defensoria Pública Estadual. Inteligência da Súmula 421 do Superior Tribunal de Justiça e do Recurso Especial nº 1199715/RJ, repetitivo (Tema 433), do STJ. 3. Os arestos proferidos após a Lei Complementar Federal nº 132/2009 mostram-se atualizados e estão baseados na tese de que a Defensoria Pública é parte integrante da estrutura orgânica do Estado e com ele se confunde. As autonomias funcional e administrativa tratadas no art. 4º, XXI, da Lei Orgânica Nacional da Defensoria Pública e no art. 134, § 2º, da Constituição Federal não possuem aptidão para afastar a sua qualidade de órgão vinculado ao Poder Executivo do ente federativo que a instituiu, não lhe sendo permitido cobrar honorários a este, sob pena de confusão entre devedor e credor. 4. Remessa necessária não conhecida. Apelação conhecida e desprovida. ACÓRDÃO Vistos, relatados e discutidos estes autos, acordam os Desembargadores integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por julgamento de Turma e decisão unânime, em não conhecer da remessa necessária e conhecer da apelação para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 08 de novembro de 2021. DESEMBARGADOR FERNANDO LUIZ XIMENES ROCHA Relator (Apelação / Remessa Necessária - 0000833-80.2018.8.06.0119, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 08/11/2021 , data da publicação: 08/11/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> RECURSOS OFICIAL E APELATÓRIO EM AÇÃO DECLARATÓRIA C/C OBRIGAÇÃO DE PAGAR QUANTIA CERTA. VENCIMENTOS INFERIORES AO MÍNIMO NACIONAL. IMPOSSIBILIDADE. CONDENAÇÃO INFERIOR A 100 (CEM) SALÁRIOS-MÍNIMOS. APURAÇÃO POR SIMPLES CÁLCULO ARITMÉTICO. REMESSA NECESSÁRIA NÃO CONHECIDA. RECURSO APELATÓRIO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O Código de Processo Civil, em seu art. 496, § 3º, inciso III, estabelece que não há reexame necessário quando o valor da condenação for inferior a 100 (cem) salários-mínimos, tratando-se dos Municípios e respectivas autarquias e fundações de direito público. 2. Assim, diante dos precisos parâmetros indicados para a apuração do valor da condenação, é possível concluir, por simples cálculo aritmético, que será muito inferior ao patamar legal previsto para dispensa da remessa necessária, impondo a aplicação da respectiva norma (art. 496, § 3º, inciso III, do CPC). 3. Recurso apelatório conhecido e provido. Remessa Necessária não conhecida. Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, conhecer do Recurso Apelatório, para dar-lhe provimento, não conhecendo da Remessa Necessária, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data registrada no sistema. FRANCISCO GLADYSON PONTES Relator(Apelação / Remessa Necessária - 0008365-65.2019.8.06.0121, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 15/12/2021 , data da publicação: 16/12/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. PROCESSUAL CIVIL. CONSTITUCIONAL. AÇÃO DE OBRIGAÇÃO DE FAZER. FORNECIMENTO DE MEDICAÇÃO EM QUANTIDADE PREVIAMENTE DETERMINADA. CONDENAÇÃO EM VALOR INFERIOR A 500 SALÁRIOS-MÍNIMOS. OBSERVÂNCIA DO ART. 496, §3º, II E III DO CPC. NÃO CONHECIMENTO DO REEXAME NECESSÁRIO. <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-weight: normal;">APELAÇÃO CÍVEL. PROCESSUAL CIVIL. AÇÃO DE OBRIGAÇÃO DE FAZER. CONDENAÇÃO DO ENTE MUNICIPAL EM HONORÁRIOS ADVOCATÍCIOS. POSSIBILIDADE. APRECIAÇÃO EQUITATIVA. VALOR INESTIMÁVEL DA CAUSA. RECURSO CONHECIDO E

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	PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Trata o caso de apelação cível em ação ordinária por meio da qual se busca a realização do fornecimento de injeções intravítrea de BEVACIZUMAB e fotocoagulação a laser, conforme prescrição médica. 2. Fornecimento de medicamento em quantidade previamente determinada, não alcançando 500 (quinhentos) salários-mínimos, razão pela qual o não conhecimento do reexame necessário é medida que se impõe. 3. Nesse contexto, tendo em vista tratar-se de causa de valor inestimável (direito à saúde), é imperioso ajustar a verba honorária a patamares razoáveis, com fulcro no mencionado §8º do art. 85 do CPC, na medida em que a fixação de honorários no montante de R$ 200,00 (duzentos reais) não valora adequadamente o trabalho desenvolvido. 4. Destarte, merece acolhimento a pretensão de majoração dos honorários advocatícios arbitrados, razão pela qual arbitro o valor de R$ 800,00 (oitocentos reais), porquanto razoável e adequado à remuneração do serviço prestado. - Precedentes do STF, STJ e desta egrégia Corte de Justiça. - Reexame Necessário não conhecido. - Apelação conhecida e parcialmente provida. - Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0001031-18.2019.8.06.0173, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do reexame necessário e conhecer da apelação interposta, para dar parcial provimento a esta última, reformando em parte a sentença, tão somente para reformar a sentença no tocante aos honorários sucumbenciais, nos termos do voto da Relatora. Fortaleza, 31 de janeiro de 2022 DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora(Apelação / Remessa Necessária - 0001031-18.2019.8.06.0173, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE , 3ª Câmara Direito Público, data do julgamento: 31/01/2022, data da publicação: 31/01/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nesse sentido ainda, o seguinte precedente da relatoria do iminente Desembargador FRANCISCO LUCIANO LIMA RODRIGUES: (Apelação/Remessa Necessária - 0000044-89.2014.8.06.0194, 3ª Câmara Direito Público, data do julgamento: 07/02/2022, data da publicação: 08/02/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A matéria é, inclusive, objeto de exame na Corte Superior, sob o regime dos Recursos Repetitivos, Tema 1081 (REsp 1882236/RS, REsp 1893709/RS e REsp 189466/SC), ainda pendente de julgamento, que tem por objetivo “Definir se a demanda previdenciária cujo valor da condenação seja aferível por simples cálculos aritméticos deve ser dispensada da remessa necessária, quando for possível estimar que será inferior ao montante previsto no artigo 496, § 3º, inc. I do Código de Processo Civil” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Dos precedentes acima citados, transcrevo, por pertinente, trecho do voto do Ministro Og Fernandes em que o magistrado destaca "Importante frisar que não se propõe o cancelamento da Súmula nº 490/STJ, mas sim a delimitação da sua aplicação ou não à demanda presente e às similares” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Deste modo, embora a condenação do Estado não tenha sido em valor líquido, certamente não ultrapassará o valor de

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	 5 00 (quinhentos) salários-mínimos, levando-se em conta o proveito econômico obtido. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Em outras palavras, o proveito econômico obtido, ainda que ilíquido, é mensurável, de modo que não se alcançará valor superior a 500 (quinhentos) salários-mínimos (referente ao teto previsto no art. 496, § 3º, inciso II, do CPC). </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nestes termos, não conheço do reexame necessário, mantendo a sentença de primeiro grau em todos os seus termos, com fulcro no art. 932, III , do Código de Processo Civil/2015 </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> É como voto. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent; page-break-before: auto;" align="justify"> Fortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent;" align="justify"> <br /> <br /></p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify">&#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	144
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Competência Tributária
Polo ativo	NATHALLIA COUTO COELHO
Advogado(s) - Polo ativo	SEVERINO DA SILVA NUNES JUNIOR - (CE45847-A)
Polo passivo	MUNICIPIO DE AIUABA Procuradoria do Município de Aiuaba
Advogado(s) - Polo passivo	PRISCILA SOUSA DE OLIVEIRA - (CE39709-A)
Terceiros	Elissandra Araújo Moraes MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <img style="font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3TaQ+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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	height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Primeiramente, afasta-se a alegada inadequação da via eleita pela ausência de prova pré-constituída, deduzida na manifestação da autoridade coatora, uma vez que a impetrante acostou à exordial cópia do contrato firmado com o Município de Aiuaba e nota de pagamento com a indicação de retenção do pagamento de ISSQN.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Ausente o elemento empresarial e demonstrada a pessoalidade na prestação do serviço, realizada de forma individual pela impetrante, é devido o recolhimento do ISSQN calculado por alíquota fixa, nos termos do art. 9º, §1º do Decreto-Lei nº 406/1968.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. A recepção e a constitucionalidade do art. 9º do Decreto-Lei nº 406/1968, bem como a inconstitucionalidade de legislação municipal que dispõe de modo diverso acerca da base de cálculo de ISSQN, foram objeto do recurso repetitivo nº RE 940769 (Tema 918/STF).</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Logo, permanecem, então, totalmente inabalados os fundamentos da sentença, impondo-se sua confirmação neste azo.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo e tese</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Reexame necessário conhecido. Sentença confirmada.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> _______________</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Dispositivos citados relevantes: CC, art. 966; Lei nº 12.016/2009, art. 14;Decreto-Lei nº 406/1968, art. 9º;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Jurisprudência relevante: STF, RE 940769, Rel. Edson Fachin, Tribunal Pleno, j. 24/04/2019.</p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-7df5cee7-7fff-b30d-b083-7d8ad93e4cce" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> ACÓRDÃO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Reexame Necessário e Apelação Cível nº 3000040-90.2023.8.06.0030, em que figuram as partes acima indicadas.

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	Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Reexame Necessário e confirmar a sentença proferida em primeiro grau de jurisdição, nos termos do voto da Relatora.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Fortaleza, data e hora da assinatura digital.</p><p style="line-height: 1.8; margin-top: 3pt; margin-bottom: 3pt; text-align: center;" dir="ltr"> <br /> JUÍZA CONVOCADA DRA. ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> RELATÓRIO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Em evidência, Reexame Necessário de sentença proferida pelo Juízo da Vara Única da Comarca de Aiuaba, que, nos autos do mandado de segurança epigrafado, concedeu a ordem pretendida.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">O caso/a ação originária: Nathallia Couto Coelho impetrou mandado de segurança contra ato tido por ilegal e abusivo atribuído à Secretária de Finanças do Município de Aiuaba/CE, consubstanciado na retenção de Imposto Sobre Serviços de Qualquer Natureza - ISSQN calculado sobre a remuneração salarial bruta.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Afirmou ter sido contratada pelo Município de Aiuaba para a prestação de serviços de caráter pessoal, na qualidade de médica, conforme contrato de prestação de serviços médicos nº 2022.01.27.005-SESA, e que vem sofrendo descontos indevidos de 5% (cinco por cento) do Imposto Sobre Serviços de Qualquer Natureza.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Defendeu que a Lei Municipal nº 08/2009, que instituiu o Código Tributário Municipal de Aiuba, prevê, no art. 92, que a alíquota do ISS será de 5% sobre todos os serviços, em manifesta afronta à disposição legal contida no Decreto-lei nº 406/1968, em inquestionável vigência dada pelo art. 10 da Lei Complementar Nacional 116/2003.</p><p style="line-height: 1.7999999999999998; text-indent:

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	113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Pugnou, então, pela concessão da ordem, a fim de que a autoridade coatora realize a cobrança do ISS por valor fixo anual, nos termos do Decreto-lei nº 406/1968.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Manifestação/contestação do Município de Aiuaba (ID 15361423), na qual sustentou a impossibilidade do deferimento da liminar em face do esgotamento do mérito da ação.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Manifestação/contestação da Autoridade Coatora (ID 15361440), na qual sustentou, preliminarmente, a inadequação da via eleita por ausência de prova pré-constituída. No mérito, defendeu a prevalência do dispositivo da lei municipal, ante a competência do Município para legislar sobre assuntos de interesse local, invocando o art. 30, I da CF/1988</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Requereu, pois, a denegação da segurança.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Sentença (ID 15361548) em que o Juízo a quo concedeu a segurança pleiteada. Transcreve-se seu dispositivo:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“Isto posto, CONCEDO A SEGURANÇA para determinar a imediata suspensão da exigibilidade dos valores de ISSQN cobrados por meio do regime comum de tributação, devendo a cobrança ser realizada por meio do regime especial de recolhimento previsto no Decreto-Lei n.º 406/68.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Por via de consequência, julgo extinto o processo, nos termos do artigo 487,

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	inciso I, do Código de Processo Civil.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Indevida condenação em honorários advocatícios, conforme artigo 25 da Lei nº 12.016/2009, Súmula 512 do Supremo Tribunal Federal e Súmula 105 do Superior Tribunal de Justiça.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Custas pelo impetrado.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Oportunamente, remetam-se os autos ao E. Tribunal de Justiça do Estado do Ceará para cumprimento do reexame necessário, conforme determina o artigo 14, §1º, da Lei Federal nº 12.016/09.”</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Certificada a ausência de recurso voluntário (ID 15361551).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Parecer da Procuradoria-Geral de Justiça (ID 15501391), opinando pela manutenção integral da sentença.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> É o relatório.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Nos termos do art. 14, § 1º, da Lei nº 12.016/2009, “concedida a segurança, a sentença estará sujeita obrigatoriamente ao duplo grau de jurisdição”, conheço do reexame necessário por suas próprias razões.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 3pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">A questão em discussão consiste em averiguar o acerto da decisão proferida pelo Juízo da Vara Única da Comarca de Aiuaba, que concedeu a segurança para determinar que a impetrante se submeta o regime especial de recolhimento do ISSQN, previsto do Decreto-Lei nº 406/1968.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 3pt;" dir="ltr"> Primeiramente, afasta-se a alegada inadequação da via eleita pela ausência de prova pré-constituída, deduzida na manifestação da autoridade coatora, uma vez que a impetrante acostou à exordial cópia do contrato firmado com o Município de Aiuaba e nota de pagamento com a indicação de retenção do pagamento de ISSQN.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Pois bem. O art. 9º do Decreto-Lei nº 406/1968 estabelece regime especial de tributação, nos seguintes termos:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Art. 9º A base de cálculo do imposto é o preço do serviço.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">§ 1º Quando se tratar de prestação de serviços sob a forma de trabalho pessoal do próprio contribuinte, o imposto será calculado, por meio de alíquotas fixas ou variáveis, em função da natureza do serviço ou de outros fatores pertinentes, nestes não compreendida a importância paga a título de remuneração do próprio trabalho.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> § 3° Quando os serviços a que se referem os itens 1, 4, 8, 25, 52, 88, 89, 90, 91 e 92 da lista anexa forem prestados por sociedades, estas ficarão sujeitas ao imposto na forma do § 1°, calculado em relação a cada profissional habilitado, sócio, empregado ou não, que preste serviços em nome da sociedade, embora assumindo responsabilidade pessoal, nos termos da lei aplicável.” (destacado)</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Na espécie, a impetrante, pessoa física, juntou contrato de prestação de serviços firmado com o Município de Aiuaba em que se obrigou a prestar de serviços médicos “Aviso noturno/Clínico geral e médico plantonista para atender as demandas da Secretaria de Saúde” (ID 15361413).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Destaca-se que os profissionais liberais, como médicos, em regra, não são considerados empresários, nos termos do Parágrafo Único do art. 966 do Código Civil:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“ Art. 966. Considera-se empresário quem exerce profissionalmente atividade econômica organizada para a produção ou a circulação de bens ou de serviços.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Parágrafo único. Não se considera empresário quem exerce profissão intelectual, de natureza científica, literária ou artística, ainda com o concurso de auxiliares ou colaboradores, salvo se o exercício da profissão constituir elemento de empresa.” (destacado)</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Ausente o elemento empresarial e demonstrada a pessoalidade na prestação do serviço, realizada de forma individual pela impetrante, é devido o recolhimento do ISSQN calculado por alíquota fixa, nos termos do art. 9º, §1º do Decreto-Lei nº 406/1968 acima citado.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> A recepção e a constitucionalidade do art. 9º do Decreto-Lei nº 406/1968, bem como a inconstitucionalidade de legislação municipal que dispõe de modo diverso acerca da base de cálculo de ISSQN, foram objeto do recurso repetitivo nº RE 940769 (Tema 918/STF), assim ementado:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">RECURSO EXTRAORDINÁRIO. REPERCUSSÃO GERAL. DIREITO TRIBUTÁRIO. IMPOSTO SOBRE SERVIÇOS DE QUALQUER NATUREZA – ISSQN. BASE DE CÁLCULO. LEI COMPLEMENTAR NACIONAL. SOCIEDADE DE PROFISSIONAIS. ADVOGADOS. COMPETÊNCIA TRIBUTÁRIA DE MUNICÍPIO. REGIME DE TRIBUTAÇÃO FIXA. NATUREZA DO SERVIÇO. REMUNERAÇÃO DO LABOR. DECRETO-LEI 405-1968. RECEPÇÃO. LEI COMPLEMENTAR 7/1973 DO MUNICÍPIO DE PORTO ALEGRE. CONFLITO LEGISLATIVO. ISONOMIA TRIBUTÁRIA. 1. A jurisprudência do STF se firmou no sentido da recepção do Decreto-Lei 406/1968 pela ordem constitucional vigente com status de lei complementar nacional, assim como pela compatibilidade material da prevalência do cálculo do imposto por meio de alíquotas fixas, com base na natureza do serviço, não compreendendo a importância paga a título de remuneração do próprio labor<span style="font-size: 10pt; font-family: Arial,sans-serif; color:

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	#000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">. Precedente: RE 220.323, de relatoria do Ministro Carlos Velloso, Tribunal Pleno, DJ 18.05.2001. 2. É inconstitucional lei municipal que disponha de modo divergente ao DL 46/1968 sobre base de cálculo do ISSQN, por ofensa direta ao art. 146, III, “a”, da Constituição da República. 3. Reduziu-se o âmbito de incidência e contrariou-se o comando da norma prevista no art. 9º, §§1º e 3º, do Decreto-Lei 406/1968, por meio do código tributário porto-alegrense. Logo, há inconstitucionalidade formal em razão da inadequação de instrumento legislativo editado por ente federativo incompetente, nos termos do art. 146, III, “a”, do Texto Constitucional. 4. Fixação de Tese jurídica ao Tema 918 da sistemática da repercussão geral: “É inconstitucional lei municipal que estabelece impeditivos à submissão de sociedades profissionais de advogados ao regime de tributação fixa em bases anuais na forma estabelecida por lei nacional.” 5. Recurso extraordinário a que dá provimento, com a declaração incidental de inconstitucionalidade dos arts. 20, §4º, II, da Lei Complementar 7/73, e 49, IV, §§3º e 4º, do Decreto 15.416/2006, ambos editados pelo Município de Porto Alegre. (RE 940769, Relator(a): EDSON FACHIN, Tribunal Pleno, julgado em 24-04-2019, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-198 DIVULG 11-09-2019 PUBLIC 12-09-2019)</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Nesse mesmo sentido tem decidido este egrégio Tribunal de Justiça:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">“Ementa: Direito tributário e constitucional. Remessa necessária e apelação cível em mandado de segurança. Admissibilidade recursal. Iss. Alíquota fixa. Sociedade uniprofissional. Remessa necessária conhecida e desprovida. Apelação não conhecida. 1. Caso em exame: Remessa necessária e apelação cível interposta contra sentença que concedeu a segurança de submissão da impetrante ao recolhimento do Imposto Sobre Serviços de Qualquer Natureza ISSQN nos moldes do regime especial de tributação fixa concedido às sociedades uniprofissionais. 2. Questão em discussão: A questão em discussão consiste em analisar: (i) a intempestividade do apelo interposto pela Fazenda Pública; (ii) o enquadramento da autora no regime especial de tributação do ISS destinado às sociedades uniprofissionais de prestação de serviços intelectuais de medicina. 3. Razões de decidir: 3.1. Intempestividade do apelo verificada, diante do protocolo da peça recursal fora do prazo legal. 3.2. Os profissionais liberais e sociedades profissionais que oferecem serviços de caráter intelectual estão sujeitos a um regime tributário especial do ISSQN, conforme estabelecido no art. 9º, §§ 1º e 3º, do Decreto-Lei nº 406/68. 3.2. Para o Superior Tribunal de Justiça, a configuração do regime diferenciado para sociedades uniprofissionais não depende da forma jurídica da pessoa jurídica, seja ela uma sociedade simples ou uma sociedade de responsabilidade limitada. O que importa é que a pessoa jurídica realize atividades profissionais regulamentadas e que os sócios assumam responsabilidade pessoal e ilimitada pelos serviços prestados, e desde que a sociedade não tenha natureza empresária. 3.3. As provas apresentadas nos autos delineiam uma situação fática que permite a cobrança do ISSQN com base em um valor fixo anual, calculado de acordo com o número de

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	profissionais que compõem a sociedade. Ou seja, os serviços prestados pela impetrante, composta por apenas dois médicos, estão listados no item 1 da relação anexa ao Decreto-Lei nº 406/68, a responsabilidade da empresa é pessoal devido à natureza dos serviços e não ficou demonstrado o caráter empresarial da atividade. 4. Dispositivo e tese: Remessa necessária conhecida e desprovida. Apelação não conhecida. (REMESSA NECESSÁRIA CÍVEL - 30032806420238060167, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 16/09/2024)” (destacado)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> *****</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">“RECURSO DE APELAÇÃO CÍVEL E REEXAME NECESSÁRIO. DIREITO TRIBUTÁRIO. NOVA APRECIAÇÃO DO PLEITO DEVIDO A CASSAÇÃO DO ACÓRDÃO ANTERIOR DESTE COLEGIADO PELO STJ. SOCIEDADE POR COTAS DE RESPONSABILIDADE LIMITADA COMPOSTA POR ARQUITETOS. PESSOALIDADE E RESPONSABILIDADE ILIMITADA NA PRESTAÇÃO DE SERVIÇOS. RECOLHIMENTO PELA ALÍQUOTA FIXA ANUAL. APLICAÇÃO DO ART. 9º §§1º E 3º DO DECRETO-LEI 406/68. ENTENDIMENTO ADEQUADO A MAIS RECENTE JURISPRUDÊNCIA DO STJ. APELAÇÃO E REEXAME CONHECIDOS E DESPROVIDOS. SENTENÇA MANTIDA. HONORÁRIOS MAJORADOS. 01. Cuida-se de Recurso de Apelação Cível e Reexame Necessário por meio do qual se pugna pela reforma da sentença que entendeu pela procedência da Ação Ordinária declarando a inexistência de relação jurídica que obrigue a autora a apresentar, mensalmente, a Declaração Digital de Serviços ¿ DDS. Em suas razões, alega o Município de Fortaleza, em resumo, que o benefício em questão somente é aplicável às sociedades que tenham por objeto a prestação de serviço especializado, com responsabilidade pessoal dos sócios e sem caráter empresarial. 02. O cerne da questão em apreço consiste em reexaminar a apelação anteriormente julgada pela 1ª Câmara de Direito Público deste Tribunal, a fim de verificar e apreciar a questão tendo por base o entendimento recente do STJ, no sentido de que, em síntese, a constituição da sociedade simples sob a forma de responsabilidade limitada não é suficiente pra caracterizá-la como empresária e impedi-la de recolher o ISS pelo regime diferenciado. 03. Ab initio, convém registrar que, pela sentença, foi provido o pedido da parte autora para declarar a inexistência de relação jurídica que obrigue a autora a apresentar, mensalmente, a Declaração Digital de Serviços ¿ DDS. Em julgamento de apelação interposta pela parte promovida, esta Câmara proveu o apelo, reformando a sentença no sentido de julgar improcedente o pleito autoral. Ocorre que após a interposição de Recurso Especial o julgado do colegiado estadual foi cassado, ordenando-se novo julgamento do pleito. 04. Nos cabe por oportuno registrar que a questão relativa à legitimidade da tributação do ISS por meio de alíquota fixa das sociedades profissionais encontra-se pacificada pelo Supremo Tribunal Federal, o qual firmou o entendimento de que o Decreto-Lei nº 406/68 foi recepcionado pela Carta Magna vigente com status de lei complementar nacional, conforme teor da Súmula 663 do STF. 05. Pelo entendimento mais recente da jurisprudência do C. Superior Tribunal de Justiça, o qual vem sendo adotado pelas demais Câmaras de Direito Público deste TJCE, pouco importa, para a configuração do regime diferenciado das sociedades uniprofissionais, seja a pessoa jurídica constituída como sociedade simples, ou sociedade de responsabilidade limitada, bastando que a pessoa jurídica desempenhe atividade profissional regulamentada, com assunção de responsabilidade pessoal e ilimitada dos sócios pelos serviços prestados, sem que ostente natureza empresária<span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color:

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	transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">. 06. Com efeito, revendo nosso posicionamento e nos curvando ao atual entendimento dos Tribunais de Sobreposição, ousamos repensar e afirmar que deve o julgador, em casos desta natureza, verificar como é prestado o serviço e se tal natureza personalíssima está presente, independentemente da forma societária adotada. E, no caso concreto, estamos diante de uma sociedade formada por arquitetos e não houve efetiva verificação, pelo Fisco, da prestação de atividade empresária pela parte apelada, ou de qualquer outro elemento apto a afastar a presunção de que os arquitetos integrantes da sociedade são os únicos prestadores de serviço e o fazem de modo pessoal. 07. In casu, os documentos colacionados aos autos dão conta de que a empresa autora é sociedade de profissionais que se dedicam à execução de projetos de arquitetura, no caso, três arquitetos (pgs. 14/19). Observa-se ainda, que conforme a Cláusula Quarta do Contrato (fl. 43), o objeto social da empresa é ¿a prestação de serviços técnicos de arquitetura e urbanismo, podendo dedicar-se a qualquer atividade própria desta categoria profissional¿ (pg. 16), restando, assim, caracterizada a pessoalidade do serviço e à responsabilidade do profissional que presta o serviço, ensejando, deste modo, a cobrança de ISSQN com base em valor fixo anual calculado de acordo com o número de profissionais que integram a sociedade, viabilizando a concretização dos princípios da isonomia e da capacidade contributiva, uma vez que a intenção do referido dispositivo legal é tratar de forma igualitária os profissionais liberais e as sociedades profissionais. 08. Por fim vale lembrar que o Supremo Tribunal Federal, no julgamento do RE940769 em sede de repercussão geral (Tema 918), considerou inconstitucional lei municipal que estabeleça base de cálculo de ISS diversa daquela prevista no art. 9º, §§1º e 3º, do Decreto-Lei 406/68. 09. Ante tais premissas, em especial o que vem decidindo o Superior Tribunal de Justiça em casos deste jaez, só nos resta reformar nosso posicionamento nos curvando também ao que as demais Câmaras de Direito Público desta Corte Estadual vem julgando, nos cabe apenas assegurar o direito de submissão da parte autora ao recolhimento do Imposto Sobre Serviços nos termos previstos no art. 9º, §§ 1º e 3º, do Decreto-lei nº 406/68, confirmando-se a sentença recorrida. 10. Recurso de Apelação Cível e Reexame Necessário conhecidos e desprovidos. Sentença mantida. Honorários majorados. A C Ó R D Ã O Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer o Recurso de Apelação e o reexame Necessário para negar-lhes provimento, de acordo com o voto do Relator. Fortaleza, 18 de abril de 2023 DESEMBARGADOR PAULO FRANCISCO BANHOS PONTE Relator (Apelação / Remessa Necessária - 0031028-63.2008.8.06.0001, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento: 15/05/2023, data da publicação: 22/05/2023)” destacado)</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Logo, permanecem, então, totalmente inabalados os fundamentos da sentença, impondo-se sua confirmação neste azo.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.38; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">DISPOSITIVO</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr">Por tais razões, voto por conhecer do Reexame Necessário para confirmar a sentença proferida pelo magistrado de primeiro grau, <span style="font-size: 12pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">pelos seus próprios fundamentos.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Fortaleza, data e hora da assinatura digital.</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> JUÍZA CONVOCADA ELIZABETE SILVA PINHEIRO – PORTARIA 1550/2024</p><p style="text-indent: 8%; text-align: center;"> &#160;</p><p style="line-height: 1.38; text-align: center; margin-top: 3pt; margin-bottom: 3pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	145
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adicional por Tempo de Serviço
Polo ativo	DAUCI FREIRE PEREIRA
Advogado(s) - Polo ativo	RONALDO FARIAS FEIJAO - (CE24951-A)
Polo passivo	MUNICIPIO DE SANTA QUITERIA Procuradoria do Município de Santa Quitéria
Advogado(s) - Polo passivo	MANUELITO MELO MAGALHAES - (CE41127-A) LUIS GUILHERME SOARES TIMBO - (CE47571-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	  Vedação à decisão surpresa. Contraditório e ampla defesa . Apel ação provid a . Sentença anulada. I. Caso em exame 1. Apelação interposta contra sentença que julgou improcedente ação de cobrança c/c obrigação de fazer&#160; ajuizada por servidora pública municipal em face do Município de Santa Quitéria , visando o pagamento de adicional por tempo de serviço sob a forma de anuênio. A sentença fundamentou-se em lei municipal que, segundo o juízo a quo, teria extinguido a vantagem. Não foi, todavia, oportunizado às partes,&#160; manifestação sobre a norma. II. Questão em discussão 2. A questão em discussão consiste em verificar se houve violação ao princípio da vedação à decisão surpresa, com consequente cerceamento de defesa, ao julgar improcedente o pedido da autora com base em lei municipal que não havia sido objeto de discussão no processo.

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	 III. Razões de decidir </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 3. A sentença viol ou o princípio da vedação à decisão surpresa, uma vez que o juiz decidiu com base em fundamento sobre o qual não havia dado à s parte s a oportunidade de se manifestar em . A decisão judicial deve sempre observar o princípio do contraditório e da ampla defesa, garantindo às partes o direito de conhecer os fundamentos utilizados pelo juiz para a tomada da decisão (art. 10 do CPC) . </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> IV. Dispositivo </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 4. Apel ação conhecid a e provida. Sentença anulada . </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> ______ </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> Dispositivo relevante citado: C PC, art. 10 . </p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm; page-break-before: always;">&#160;</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="center"> ACÓRDÃO </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer a apelação, para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Fortaleza, data informada pelo sistema. </p><p style="letter-

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	spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> <strong style="font-size: 13pt; font-family: Arial, serif;">RELATOR</p><p style="line-height: 200%; margin-bottom: 0cm; page-break-before: always;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm; page-break-before: always;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm; page-break-before: always;" align="center"> RELATÓRIO </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Tem-se apelação cível interposta contra a sentença de improcedência proferida pelo juízo da 1ª Vara Cível da Comarca de Santa Quitéria em Ação de cobrança c/c obrigação de fazer.&#160; </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Petição inicial: &#160;narra a Promovente que é servidora pública efetiva e desde que tomou posse recebe adicional por tempo de serviço na forma de quinquênio, mas a previsão legal da norma municipal é a forma de anuênio, o qual deveria ser calculado com base na remuneração integral e não apenas sobre o salário-base. Requer a implantação do adicional por tempo de serviço à razão de 1% (um por cento) por ano de serviço público efetivo,&#160;na forma de anuênios, e o&#160;pagamento das parcelas vencidas&#160;e vincendas até a implementação em sua remuneração,&#160;do adicional por tempo de serviço sob a forma de&#160;anuênios, tendo como parâmetro a diferença entre a&#160;remuneração&#160;e o&#160;salário base,&#160;inclusive sobre o pagamento do 13º salário e férias acrescidas do terço constitucional, descontados os valores já pagos na forma de quinquênios, atualizados. Subsidiariamente pugna pelo percebimento das diferenças recebidas dos quinquênios, calculando-se com base na remuneração e não no salário base.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Contestação : preliminarmente suscita prejudicial de prescrição das diferenças vencidas há mais de 05 (cinco) anos e no mérito alega que o regime jurídico ao qual está submetido a autora é o respaldado pela Lei Municipal nº 647/2009, que instituiu o Plano de Cargos e Carreiras (PCC) do Magistério local e revogou todos os incentivos e gratificações previstos em leis ordinárias (como é o caso do anuênio estipulado na Lei Municipal nº 081-A/93, que regula o Regime Jurídico Único geral dos servidores municipais), portanto, por ausência de previsão na legislação regente, deve a ação ser julgada improcedente.&#160;&#160; </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Sentença : julgou improcedente a pretensão inaugural,&#160;considerando que não há previsão legal vigente que preveja o pagamento do adicional por tempo de serviço, seja na forma de anuênio ou quinquênio. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Recurso:&#160; a autora sustenta que o juízo&#160; a quo &#160;julgou a ação citando a Lei nº 506/2007 que supostamente teria revogado o adicional por tempo de serviço, sem dar oportunidade às partes de se manifestarem sobre a norma, violando o devido processo legal, sem oportunidade do contraditório e da ampla defesa. Defende, dentre outros argumentos, ser devido o adicional por tempo de serviço na forma requerida na exordial. Aponta nulidade do processo legislativo que deu origem à Lei Municipal nº 506/2007. Pede a declaração da nulidade da sentença, por violar o devido processo legal ao ter cerceado o direito ao contraditório e à ampla defesa, e o retorno dos autos à origem, para que seja recebida a emenda à inicial, declarando-se a nulidade do processo legislativo e da Lei&#160;nº 506/2007. Subsidiariamente pugna seja declarada a&#160;inconstitucionalidade formal de forma incidental da referida lei. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Contrarrazões no Id. 15368338.</p><p style="line-height:

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	200%; text-indent: 1.51cm; margin-bottom: 0.2cm;" align="justify"> Manifestação da&#160; Procuradoria Geral de Justiça &#160;indiferente ao mérito. É o relatório no essencial. <br /> <br /> VOTO No que se refere ao juízo de admissibilidade ou de prelibação, analisando os pressupostos processuais recursais necessários, vê-se que os requisitos intrínsecos ou subjetivos (cabimento, interesse e legitimidade, e inexistência de súmula impeditiva) e extrínsecos ou objetivos (tempestividade, preparo, regularidade formal e inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também os específicos descritos no artigo 1.010 do Código de Processo Civil, razão pela qual conheço da apelação. Conforme brevemente relatado, tem-se recurso interposto pela autora contra a sentença de improcedência nos autos da Ação de cobrança c/c obrigação de fazer movida&#160; por si&#160; em desfavor do&#160;Município de Santa Quitéria. Irresignada, a a pelante invoca como&#160;questão preliminar a nulidade da sentença por cerceamento de defesa, notadamente em razão da violação ao princípio da vedação à decisão surpresa, a o devido processo legal, contraditório e ampla defesa . No mérito, defende a nulidade do processo legislativo de edição da Lei Municipal nº 506/2007 e pede a declaração de inconstitucionalidade do referido diploma que serviu de fundamento para o juízo sentenciante negar seu pleito .&#160;Requereu a “ declaração da nulidade da sentença por violar o devido processo legal ao ter cerceado o direito ao contraditório e a ampla defesa, e o retorno dos autos a origem para que seja aceita a presente emenda a inicial, e que seja declarada a nulidade do processo legislativo e da lei&#160; <span style="font-variant-numeric: normal; font-variant-east-

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	asian: normal; font-variant-alternates: normal; font-variant-position: normal;"> n.º 506/2007 , caso não seja o entendimento, então que seja declarada a &#160; inconstitucionalidade formal de forma incidental da lei n.º 506/2007” . Pois bem. Na inicial, a autora narrou perceber adicional por tempo de serviço (ATS), pago sob a forma de quinquênio, apesar de a Lei Municipal nº 081-A/1993 - Estatuto dos Servidores do Município de Santa Quitéria, prev er no art. 68, que o ATS é devido à razão de 1% (um por cento) por ano de serviço público efetivo, ou seja, a municipalidade deveria pagar sob a forma de anuênio, incidi ndo sobre toda a remuneração, e não sobre o salário base, como ocorria/ocorre . Após a apresentação da réplica, o juízo determinou a intimação do ente político para se manifestar sobre eventual interesse na produção de provas, nada sendo apresentado ou requerido (Id.&#160;15368324). Em seguida, o magistrado julgou improcedente a demanda com fundamento na Lei Municipal nº 506/2007, que teria extinguido a vantagem almejada.&#160;Frise-se que a referida lei não foi suscitada pelo réu por ocasião da contestação, tampouco foi alegada ao longo do processo. Ademais, é imperioso ressaltar que em seu arrazoado, a apelante traz uma séria de questionamentos relativos à constitucionalidade do ato normativo que serviu de

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	base à decisão apelada, defendendo inclusive, a sua inconstitucionalidade decorrente da violação ao processo legislativo. Tais matérias não foram discutidas ao longo do processo, vindo a serem arguidas somente em sede de apelação. Assim, a ssiste razão à recorrente quando sustenta a nulidade da sentença por cerceamento defesa, notadamente ante a manifesta violação ao princípio da vedação à decisão surpresa, com malferimento do contraditório e ampla defesa . Com efeito, antes de utilizar como&#160; ratio decidendi &#160;uma questão que não foi discutida pelas partes, deveria o magistrado de primeiro grau ter oportunizado que os litigantes se manifestassem previamente acerca da matéria. A propósito, estabelece o Código de Processo Civil: &#160; Art. 10.&#160;O juiz não pode decidir, em grau algum de jurisdição, com base em fundamento a respeito do qual não se tenha dado às partes oportunidade de se manifestar, ainda que se trate de matéria sobre a qual deva decidir de ofício. &#160; Nesse sentido, trago à colação alguns julgados deste egrégio Sodalício: PROCESSO CIVIL. AGRAVO DE INSTRUMENTO. DECISÃO QUE HOMOLOGOU OS CÁLCULOS DA CONTADORIA JUDICIAL. AUSÊNCIA DE INTIMAÇÃO PRÉVIA DAS PARTES. DESRESPEITO AO CONTRADITÓRIO E À VEDAÇÃO A DECISÃO SURPRESA. RECURSO PROVIDO. I. CASO EM EXAME 1. No caso, Agravo de Instrumento em face de decisão que homologou os cálculos apresentados pela Contadoria Judicial e determinou a expedição do Precatório. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em averiguar se houve violação ao contraditório e à Vedação a Decisão Surpresa na homologação dos cálculos apresentados pela Contadoria Judicial, sem a prévia intimação das partes. III. RAZÕES DE DECIDIR 3. É lição comezinha que antes de homologar os cálculos deve o magistrado permitir às partes que se manifestem acerca dos valores apresentados, em respeito ao contraditório, insculpido no art. 5º, LIV, da CF/88, bem como em atenção à vedação a decisão surpresa, de acordo com os arts. 9º e 10 do CPC. IV. DISPOSITIVO E TESE 4.

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	            Agravo de Instrumento conhecido e provido para anular a decisão proferida pelo Juízo&#160; a quo . (Agravo de instrumento nº&#160;0623375-02.2024.8.06.0000,&#160;Relatora: Dra. Elizabete Silva Pinheiro (Juíza Convocada), 3ª Câmara de Direito Público, data de julgamento: 07/10/2024) - negritei &#160; <span style="color: #000000;"> <span style="font-family: Arial, sans-serif;"> <span style="font-size: 11pt;">APELAÇÃO CÍVEL. IMPLEMENTAÇÃO DE PROGRESSÃO POR MERECIMENTO E PAGAMENTO DE VALORES RETROATIVOS. SENTENÇA DE EXTINÇÃO SEM RESOLUÇÃO DO MÉRITO POR AUSÊNCIA DE INTERESSE DE AGIR. VIOLAÇÃO AOS PRINCÍPIOS DO CONTRADITÓRIO, AMPLA DEFESA, INAFASTABILIDADE DO CONTROLE JURISDICIONAL E VEDAÇÃO À DECISÃO SURPRESA. ARTS. 9º E 10 DO NCPC. NULIDADE DA SENTENÇA E RETORNO DOS AUTOS AO JUÍZO DE PRIMEIRA INSTÂNCIA. RECURSO CONHECIDO E PROVIDO. 1. O Município de Pentecoste instituiu por meio da Lei nº 538/2003 o Plano de Cargos e Carreiras dos Servidores Públicos, aplicado a todos os servidores técnicos administrativos do Município, com exceção dos profissionais do Magistério, que possuem plano específico, e, apesar de devidamente aprovado, o Município nunca o cumpriu. 2. O Plano prevê a realização de avaliação dos servidores a cada 18 (dezoito) meses para fins de progressão, entretanto, permanece a ausência de implementação das progressões por merecimento e de pagamento das diferenças salariais devidas, respeitada a prescrição quinquenal. 3. Sentença extinguiu o feito sem resolução do mérito, tendo em vista que o Município teria implementado as progressões dos servidores conforme a Portaria nº 209/2019, no curso do processo. Autores conheceram da portaria com advento da decisão prolatada. 4. Sentença nula, por julgar sumariamente a lide sem que houvesse manifestação prévia do magistrado acerca da intenção de proferir decisão utilizando fundamento sobre o qual não foi dada oportunidade para que as partes se manifestassem. 5. Apelação conhecida e provida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso de apelação para dar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, data informada pelo sistema. Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO Relator (Apelação Cível&#160;- 0006874-51.2019.8.06.0144, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 15/03/2021, data da publicação:&#160; 15/03/2021) - negritei Destaque-se, por fim, recentíssima Decisão Monocrática da lavra da Desembargadora Maria <span

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	style="font-family: Arial, serif;"> d o Livramento Alves Magalhães, no s autos nº 3000454-52.2024.8.06.0160, em caso idêntico ao dos autos, com mesma solução jurídica. Isto posto , conheço d a apelação, para dar-lhe provimento, &#160;anulando a sentença recorrida, e determin and o o retorno dos autos à origem&#160;para que o juízo&#160; a quo &#160;oportunize que as partes se manifestem sobre a Lei Municipal nº 506/2007 de Santa Quitéria, e após o efetivo contraditório, decid a a causa enfrentando as matérias deduzidas quanto ao ato normativo. É o voto que submeto à consideração de meus

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	pares. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.2cm; margin-bottom: 0.41cm;" align="justify"> Fortaleza, data informada pelo sistema. </p><p> <br style="mso-special-character: line-break;" /> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	146
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE CANINDE
Advogado(s) - Polo ativo	Não informado
Polo passivo	FRANCISCO CELSO CRISOSTOMO SECUNDINO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext;"> &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);"> <img class="WACImage SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; 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	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Processo: 0012693-81.2015.8.06.0055 – Apelação Cível. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelante: Município de Canindé. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelado: Francisco Celso Crisóstomo Secundino. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ementa: Direito processual civil. Apelação cível. Execução fiscal. Extinção do processo, sem resolução do mérito, por abandono da causa. Intimação pessoal prévia da parte exequente. Recurso desprovido.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse:

Processo	0012693-81.2015.8.06.0055
	preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Apelação cível interposta por ente municipal em face de sentença que extinguiu execução fiscal sem resolução do mérito, por abandono da causa, com fulcro no art. 485, incisos II e III, §§1º e 6º, do CPC. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. Questão em discussão &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em: (i) saber se houve a prévia intimação pessoa do exequente para adotar as diligências necessárias à continuidade do feito; e, (<span class="NormalTextRun SpellingErrorV2Themed SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0012693-81.2015.8.06.0055
	transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">ii) saber se é necessário o prévio requerimento da parte contrária para a extinção por abandono da causa. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. É cediço que a ausência de comparecimento da parte autora ao processo pode justificar a extinção do feito, por abandono da causa, conforme prevê o art. 485, inciso III, do CPC. Há de se observar, contudo, que, em conformidade com o disposto no §1º deste dispositivo processual, a inexistência de prática, pela demandante, dos atos e das diligências de sua incumbência, por mais de 30 (trinta) dias, somente configura abandono do processo e enseja a extinção do processo sem análise do mérito, caso a parte seja pessoalmente intimada para suprir a falta em 5 (cinco) dias e, ainda assim, persista a inércia. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Na hipótese, o magistrado <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; font-style: italic; line-height: 22px; font-family: &quot;Times New

Processo	0012693-81.2015.8.06.0055
	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">a quo, após o decurso de mais de 30 (trinta) dias de inércia do exequente em praticar os atos e as diligências de sua incumbência, ordenou a intimação pessoal do exequente para, no prazo de 5 (cinco) dias, manifestar interesse no prosseguimento do feito, sob pena de extinção por abandono da causa, na forma do art. 485, inciso III c/c §1º do CPC. Contudo, o postulante, mesmo tendo sido intimado pessoalmente e ciente da possibilidade de extinção da demanda executiva, quedou-se inerte no prazo indicado. &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. Registra-se que a necessidade de requerimento da parte adversa, nos termos do art. 485, §6º, do CPC, e da Súmula nº 240, do STJ, para fins de extinção do processo por abandono da causa, não aplica ao caso concreto, vez que o executado não apresentou nenhuma peça defensiva. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. Mostra-se escorreita a sentença vergastada. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;

Processo	0012693-81.2015.8.06.0055
	font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">IV. Dispositivo &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7. Recurso desprovido. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> __________ &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dispositivos relevantes citados: CPC, arts . 485, inciso III, §§1º e 6º, e 183, <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0012693-81.2015.8.06.0055
	padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 14pt; font-style: italic; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">caput e §1º; Lei Federal nº 11.419/2006, arts . 5º, §§1º a 6º, e 9º, §1º; Lei Federal nº 6.830/1980, art. 25. &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 9.46667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Jurisprudência relevante citada: STJ, Súmula nº 240; TJCE, Apelação Cível nº 0019450-23.2017.8.06.0055, Relator: Washington Luís Bezerra de Araújo, 3ª Câmara de Direito Público, Data do julgamento: 07/06/2024, Data da publicação: 08/06/2024; TJCE, Apelação Cível nº 0022700-43.2012.8.06.0151, Relator: Maria do Livramento Alves Magalhães, 3ª Câmara de Direito Público, Data do julgamento: 18/04/2024, Data da publicação: 19/04/2024. &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-

Processo	0012693-81.2015.8.06.0055
	BR">ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, acordam em conhecer o recurso para negar-lhe provimento, nos termos do voto da Relatora, parte integrante deste. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO <span class="EOP SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 11.3333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de Apelação Cível interposta pelo MUNICÍPIO DE CANINDÉ contra sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Canindé que, nos autos de

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	Execução Fiscal proposta pelo apelante em desfavor de FRANCISCO CELSO CRISÓSTOMO SECUNDINO, julgou extinto o feito, sem resolução do mérito, nos termos do art. 485, inciso III, do CPC (ID nº 15370703). &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais (ID nº 15370707), o ente municipal sustenta que a extinção do processo por abandono da causa é nula, pois não houve a sua prévia intimação pessoal para adotar as diligências necessárias para continuidade do feito, a teor do disposto no art. 485, §1º, do CPC. Aduz que, nos termos da Súmula nº 240 do STJ, a extinção por abandono da causa só pode ocorrer quando requerida pela parte contrária, o que não ocorrera no caso. Ao final, pugna pelo conhecimento e provimento do recurso, anulando a sentença impugnada e determinando o retorno dos autos à origem para regular prosseguimento à execução fiscal.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Sem contrarrazões (ID nº 15370714). &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Deixo de abrir vista dos autos à Procuradoria Geral de Justiça, com esteio na Súmula nº 189, do STJ, <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-

Processo	0012693-81.2015.8.06.0055
	select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; font-style: italic; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">verbis : “é desnecessária a intervenção do Ministério Público nas execuções fiscais” . &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório, no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p

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	class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Segundo dispõe o art. 34, da Lei Federal nº 6.830/1980, das sentenças proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional (ORTN), somente serão cabíveis Embargos Infringentes e de Declaração. Vejamos:&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 34 – Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional—ORTN, só se admitirão embargos infringentes e de declaração.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Assim, partindo dessa premissa legal, faz-se necessário verificar se o recurso apelatório carece de requisito de admissibilidade intrínseco, notadamente, o cabimento. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0012693-81.2015.8.06.0055
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> De início, registre-se que, com a extinção das ORTN como fator de indexação econômica, o colendo Superior Tribunal de Justiça definiu, no julgamento do REsp. nº 1.168.625/MG, o valor mínimo para o recurso de apelação em execução fiscal, fixando-o em R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), como correspondente ao valor das antigas 50 ORTN, a ser corrigido pelo IPCA-E a partir de janeiro de 2001, considerada a data da propositura da ação.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Na hipótese vertente, conforme se infere da inicial, protocolada em 17 de agosto de 2015 , pretende a Fazenda Pública do Município de Canindé a cobrança, via execução fiscal, de crédito não tributário no valor de R$ 12.769,20 (doze mil, setecentos e sessenta e nove reais e vinte centavos). Nessa data, o valor mínimo de alçada apto a dar ensejo à interposição de eventual apelação correspondia a R$ 847,13 <span class="NormalTextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0012693-81.2015.8.06.0055
	transparent; margin: 0px; padding: 0px; user-select: text;">(oitocentos e quarenta e sete reais e treze centavos), corrigido pela calculadora do Banco Central do Brasil.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Assim, vê-se que a importância exequenda é superior ao patamar fixado pelo art. 34, da Lei Federal nº 6.830/1980, sendo o caso, portanto, de admissibilidade do recurso apelatório dirigido a este egrégio Tribunal de Justiça. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Diante de tais ponderações, hei por bem, preenchidos os requisitos de admissibilidade, conhecer a apelação cível, passando, a seguir, ao exame da matéria jurídica discutida nos autos. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> A questão em discussão consiste em: (i) saber se houve a prévia intimação pessoa do exequente

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	para adotar as diligências necessárias à continuidade do feito; e, (ii) saber se é necessário o prévio requerimento da parte contrária para a extinção por abandono da causa. Pois bem.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Inicialmente, cumpre registrar que o Poder Judiciário, quando provocado, tem o dever de conduzir o feito independentemente do estímulo das partes. Tal autonomia processual, todavia, não é ilimitada, pois, a depender do caso concreto, faz-se necessário, como forma de garantir que o processo entregue a melhor prestação jurisdicional, que as partes colaborem com o trâmite processual. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Nesse contexto, é cediço que a ausência de comparecimento da parte autora ao processo pode justificar a extinção do feito, por abandono da causa, conforme prevê o art. 485, inciso III, do CPC , verbis : <span class="EOP SCXW118539182 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 485. O juiz não resolverá o mérito quando: &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III – por não promover os atos e as diligências que lhe incumbir, o autor abandonar a causa por mais de 30 (trinta) dias; &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun

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	SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">[...] &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> § 1º Nas hipóteses descritas nos incisos II e III, a parte será intimada pessoalmente para suprir a falta no prazo de 5 (cinco) dias. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Há de se observar, contudo, que, em conformidade com o disposto no §1º do referido dispositivo processual, a inexistência de prática, pela demandante , dos atos e diligências de sua incumbência, por mais de 30 (trinta) dias, somente configura abandono do processo e enseja a extinção do processo sem análise do mérito, caso a parte seja pessoalmente intimada para suprir a falta em 5 (cinco) dias e, ainda assim, persista a inércia. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Ratificando a necessidade de intimação pessoal da fazenda pública, especificamente nas ações de execução fiscal, o art. 25, da Lei nº 6.830/80 , preleciona que “n a execução fiscal, qualquer intimação ao representante judicial da Fazenda Pública será feita pessoalmente ” . &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Com efeito, a norma acima mencionada, que trata da necessidade de intimação pessoal da fazenda pública, busca permitir a realização dos atos e diligências de sua incumbência, colaborando assim com o trâmite processual, como também resguardar o interesse público na arrecadação forçada de impostos. &#160; </p></div><div

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	class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Diga-se, ainda, que a intimação pessoal da Fazenda Pública, na forma da legislação processual vigente 1 , é realizada de forma eletrônica, sendo, prescindível, portanto, a intimação na pessoa do prefeito ou do procurador do ente público. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> No caso dos autos, o Juízo de origem , considerando o decurso do prazo legal indicad o na citaçã o sem que a parte <span class="NormalTextRun

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	SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">executada tenha apresentado ou requerido algo , no dia 27 de maio de 2024 determinou a intimação da exequente para, no prazo de 10 (dez) dias, dizer se houve o adimplemento do débito ou postular o que entende por direito (ID nº 15370697). Todavia, o ente municipal permaneceu inerte no lustro temporal assinalado (ID nº 15370699). &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Diante disso, o magistrado a quo , <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	0012693-81.2015.8.06.0055
	Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">no dia 12 de julho de 2024 , ordenou a intimação pessoal do exequente para, no prazo de 5 (cinco) dias, manifestar interesse no prosseguimento do feito, sob pena de extinção por abandono da causa, na forma do art. 485, inciso III c/c §1º do CPC (ID nº 15370700). Contudo, o Município de Canindé , mesmo tendo sido intimado pessoalmente e ciente da possibilidade de extinção da demanda executiva, quedou-se inerte no prazo indicado , senão vejamos: &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 6.66667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 600px; height: 74px; transform: rotate(0deg);"> <img

Processo	0012693-81.2015.8.06.0055
	class="WACImage SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 600px; height: 74px; text-wrap-mode: nowrap !important;" 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	UUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQBJcf6w/7tfPPws07xnea58Uf+Ee8QaHpFn/wl16rLqGhzXsvmeXB8yst3Gv935dtfQ1x/rP+A1m6dpFlpL3TWVnb2ZupWuLhoYlj86RvvSNt+83yr81Svi5vL/IOn9eZ4Df/AAd8P6T4/wDhP4QvoP8AhIdKtbDXLiZNUjSRbyZpbaRnkj27W/eSM+3btVtv92vN/jPZw6r4T+J/iu3sPD9lBo+oXFpH4g16RrvV4bmHy1ht7JY1j+xxrJ/q/wB5I3zbtvzV9jy6XaXGp219LaW8t7aq0VvcNGrSRK23cqt95d21d3+6tYepfC/wdrWsT6tqHhPQ77VbhGjm1C402GSeRGj8tlaRl3Mvl/L/ALvy0ve/P8yonjfxA8DeFvjZ4ptPDNv4c0W71Bre1vfE/id9Phlube32r5dss23cs0yr97/lnH838S1cTwb4R8VfF7xxovjTTtPvdN0LR7JdG03UVXyLOwaNvPmhVvlX94u1pV+Zdqrur0u++B/w71K6a6vfAXhi8uW27pp9It5Wbau1fmZf7taOtfDbwl4gtdOtdV8L6Lqdrpq+XYwXenwzLar8vyxqy/u/ur93+6tW/wC6Zx905L9n9ZvEHwn8Ha3rS/2nq8drItpql3HuuWtmk/dt5jfN+8jWFmb+L71d/rWg6br0EA1LT7W/W1mW7gW7hWTyZl+7Iu77rL/eqeXS7K41K2vpbO3kvbVWit7lo1aSJW27lVsbl3bU3f7q1con7yZUfdPlTw3NHY/st/CPVLl/L0zTdZ066vZG+7HD9rZdzf7Ksy16nYg6l+07qdxayCa107wtBaXm1v8AVzSXTSRq3+15as3+63+1Xotr4b0mz0L+xbfS7OHSRG0P9nx26rB5bfeXy/u7fm+7UXhrwjofg2way0DRdP0OxaTzGtdNtY7eJm/vbVVfm+Wl9rm82/vVgl70f673PJ/EGgaF42+PeuaX43trPUNN0/w3b3ek2WpfNAqtNOt3cqrfL5i7YF8z7yrt/vV5r8Fbq10/R/gxdQzTXNjDD4mkjnX95JJGsjfN/tNtr6f8TeCvDvjSO2TxBoOl64tu3mQrqVnHceS395dyttqSx8J6Jpa2Js9H0+0+w+Z9lENrHH9n8z/WeXtX5d38W371LpyldeY+QNNt/wCy7v4N+KorTw7oLa9rll9nvI7hr3xBqizLK1zJd3irGrLtkVWj2yLub7y/KtdlZ6Db/D3xNZeI9Q0nw743sL7xT5Fj400nUGj1uGSaRo/Lm2r/AKQscjeQ0azf6tf9X8rKvu9r8J/BFjeS3lr4O0C1u5J1uZJ4tMgWRplbcsm7b95W+bd/eqzH8N/Cdv4n/wCEki8L6NF4gZmb+10sIVu9zLtZvO27vu/L96rj7r/ry/yM5e8v68/8zpKKKKRQUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAFFFFABRRRQAUUUUAPvJFSRdzKvy/wATVD58f/PRf++q06KAMzz4/wDnov8A31R58f8Az0X/AL6rTooAzPPj/wCei/8AfVHnx/8APRf++q06KAMzz4/+ei/99UefH/z0X/vqtOigDM8+P/nov/fVHnx/89F/76rTooAzPPj/AOei/wDfVHnx/wDPRf8AvqtOigDM8+P/AJ6L/wB9UefH/wA9F/76rTooAzPPj/56L/31R58f/PRf++q06KAMzz4/+ei/99UefH/z0X/vqtOigDM8+P8A56L/AN9UefH/AM9F/wC+q06KAMzz4/8Anov/AH1R58f/AD0X/vqtOigDM8+P/nov/fVHnx/89F/76rTooAzPPj/56L/31R58f/PRf++q06KAMzz4/wDnov8A31R58f8Az0X/AL6rTooAzPPj/wCei/8AfVHnx/8APRf++q06KAMzz4/+ei/99UefH/z0X/vqtOigDM8+P/nov/fVHnx/89F/76rTooAzPPj/AOei/wDfVHnx/wDPRf8AvqtOigDM8+P/AJ6L/wB9UefH/wA9F/76rTooAzPPj/56L/31R58f/PRf++q06KAMzz4/+ei/99UefH/z0X/vqtOigDM8+P8A56L/AN9UefH/AM9F/wC+q06KAMzz4/8Anov/AH1R58f/AD0X/vqtOigDM8+P/nov/fVHnx/89F/76rTooAzPPj/56L/31R58f/PRf++q06KAMzz4/wDnov8A31R58f8Az0X/AL6rTooAzPPj/wCei/8AfVHnx/8APRf++q06KAMzz4/+ei/99UefH/z0X/vqtOigDM8+P/nov/fVHnx/89F/76rTooAzPPj/AOei/wDfVHnx/wDPRf8AvqtOigDM8+P/AJ6L/wB9UefH/wA9F/76rTooAzPPj/56L/31R58f/PRf++q06KAMzz4/+ei/99UefH/z0X/vqtOigDM8+P8A56L/AN9UefH/AM9F/wC+q06KAMzz4/8Anov/AH1R58f/AD0X/vqtOigDM8+P/nov/fVHnx/89F/76rTooAzPPj/56L/31R58f/PRf++q06KAMzz4/wDnov8A31R58f8Az0X/AL6rTooAzPPj/wCei/8AfVFadFAH/9k=" alt="" /> &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0012693-81.2015.8.06.0055
	transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Dentro desse contexto, denota-se que a exigência estabelecida no art. 485, inciso III, e §1º, do CPC, restou concretizada pelo Juízo sentenciante. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Por derradeiro, acrescente-se, outrossim, que a necessidade de requerimento da parte adversa, nos termos do §6º 2 do art. 485 do CPC e da Súmula nº 240 3 do STJ, para

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	fins de extinção do processo por abandono da causa, não se aplica ao caso concreto, vez que o executad o não apresentou nenhuma peça defensiva. &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Nesse sentido é o entendimento desta Colenda Câmara Julgadora, in verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMENTA: APELAÇÃO CÍVEL. TRIBUTÁRIO E PROCESSO CIVIL. EXECUÇÃO FISCAL. VALOR

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	SUPERIOR A 50 ORTN. ADMISSIBILIDADE RECURSAL. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. ABANDONO DA CAUSA. POSSIBILIDADE. INTIMAÇÃO PESSOAL DA PARTE EXEQUENTE POR MEIO DO PORTAL ELETRÔNICO - ART. 485, INCISO III E §1º, C/C ART. 183, CAPUT E §1º, AMBOS DO CPC, E ART. 5º, §§ 1º A 6º, 9º, §1º, DA LEI Nº 11.419/06. INAPLICABILIDADE DO ART. 485, §6º, DO CPC, E DA SÚMULA Nº 240, DO STJ. PRECEDENTES DO TJCE. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA . (APELAÇÃO CÍVEL - 00520514320218060055, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 05/08/2024) (destaca-se). &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMENTA: APELAÇÃO CÍVEL EM EXECUÇÃO FISCAL. EXTINÇÃO DA EXECUÇÃO FACE AO ABANDONO DA CAUSA. TRANSCURSO DO PRAZO PARA MANIFESTAÇÃO DE PROSSEGUIMENTO DO FEITO. INTIMAÇÃO PESSOAL REALIZADA POR PORTAL ELETRÔNICO NOS MOLDES DO §1º DO ART. 485 DO CPC. INAPLICABILIDADE DO ART. 485, §6º, DO CPC, E DA SÚMULA Nº 240 DO STJ. INEXISTÊNCIA DE EMBARGOS À EXECUÇÃO. PRECEDENTES DO TJCE. RECURSO CONHECIDO, MAS DESPROVIDO. 1. Controverte-se sobre o acerto da sentença que extinguiu o feito com base no art. 485, inciso III e §1º do CPC, sob o fundamento de que teria havido abandono da causa, pela parte exequente, que não promoveu atos de regular andamento processual. 2. Conforme previsto no art. 485, III e §1º do CPC é possível a extinção do processo por abandono da causa quando a parte autora não promova a prática de atos de sua incumbência ou abandone a causa por mais de 30 (trinta) dias. É necessária também a intimação pessoal

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	prévia do autor para suprir a sua falta, no prazo de 5 (cinco) dias, sob pena de extinção. 3. No caso em análise, tem-se que o magistrado de piso observou integralmente o procedimento legal, intimando o exequente para se manifestar sobre a certidão de óbito do executado (ID 11012832), assim como para promover andamento ao feito, no prazo de 5 (cinco) dias, sob pena de extinção (ID 1102834), por meio de portal eletrônico, ou seja, pessoalmente, conforme previsão do art. 183, §1º do CPC. 4. Ademais, o requerimento da parte adversa para fins de extinção do processo por abandono da causa, nos termos do §6 do art. 485 do CPC e da Súmula nº 240 do STJ, não se aplica ao caso concreto, vez que a parte executada não embargou à execução. Precedentes do TJCE. 5. Apelo conhecido, mas desprovido. (APELAÇÃO CÍVEL - 00194502320178060055, Relator(a): WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara de Direito Público, Data do julgamento: 07/06/2024) (destac a-s e). &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> APELAÇÃO CÍVEL. DIREITO TRIBUTÁRIO E PROCESSUAL CIVIL. EXECUÇÃO FISCAL. VALOR SUPERIOR A 50 ORTN. ADMISSIBILIDADE RECURSAL. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. ABANDONO DA CAUSA CONFIGURADO (ART. 485, INCISO III, DO CPC/2015). INTIMAÇÃO PESSOAL DA PARTE EXEQUENTE REALIZADA (§1º DO ART. 485 DO CPC/ 2015). INAPLICABILIDADE DO DISPOSTO NO §6º DO ART. 485 DO CPC/ 2015 E DA SÚMULA 240 DO STJ. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1 - Cinge-se a controvérsia em verificar a higidez da sentença que extinguiu o feito com base no art. 485, inciso III, do CPC/ 2015, sob o fundamento de que teria havido abandono da causa pela parte exequente. 2 - De início, cumpre destacar que, caso o autor deixe de

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	cumprir os atos e as diligências que lhe competem, permanecendo o processo parado por mais de 30 (trinta) dias, o feito deverá ser extinto sem resolução de mérito, desde que realizada a respectiva intimação pessoal do demandante para suprir a falta no prazo de 5 (cinco) dias, conforme previsto no art. 485, inc. III e §1º, do CPC/ 2015. 3 - No caso em tela, o recorrente não atendeu ao chamado judicial, muito embora tenha sido intimado pessoalmente, via portal eletrônico, conforme certidão de ID 10528548, em obediência ao §1º do art. 485 do CPC/ 2015, deixando transcorrer in albis o prazo para cumprir a determinação judicial. 4 - Acrescente-se, outrossim, ser inaplicável ao caso concreto a necessidade de requerimento da parte adversa, nos termos do §6º do art. 485 do CPC/2015 e da Súmula nº 240 do STJ, para fins de extinção do processo por abandono da causa, uma vez que a parte executada, embora citada, não apresentou Embargos à Execução. 5 - Recurso de apelação conhecido e desprovido. Sentença mantida. (APELAÇÃO CÍVEL - 00227004320128060151, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 18/04/2024) (destac a -se). &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Desta feita, mostra-se escorreita a sentença extintiva proferida pelo Juízo da 1 ª Vara Cível da Comarca de Canindé com supedâneo no abandono da causa pela parte exequente, ora apelante. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Ante o exposto, <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR"

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	xml:lang="PT-BR">conheço o recurso para negar-lhe provimento . &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Deixo de promover a majoração de honorários advocatícios de sucumbência, porquanto não arbitrados na origem . &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;,

Processo	0012693-81.2015.8.06.0055
	&quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Fortaleza, data e hora informadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;">&#160;</p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0012693-81.2015.8.06.0055
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">1. CPC - Art. 183. A União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito público gozarão de prazo em dobro para todas as suas manifestações processuais, cuja contagem terá início a partir da intimação pessoal. § 1º A intimação pessoal far-se-á por carga, remessa ou meio eletrônico . (destac a -se) &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Lei nº 11.419/2006

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	- Art. 5º As intimações serão feitas por meio eletrônico em portal próprio aos que se cadastrarem na forma do art. 2º desta Lei, dispensando-se a publicação no órgão oficial, inclusive eletrônico. § 1º Considerar-se-á realizada a intimação no dia em que o intimando efetivar a consulta eletrônica ao teor da intimação, certificando-se nos autos a sua realização. § 2º Na hipótese do § 1º deste artigo, nos casos em que a consulta se dê em dia não útil, a intimação será considerada como realizada no primeiro dia útil seguinte. § 3º A consulta referida nos §§ 1º e 2º deste artigo deverá ser feita em até 10 (dez) dias corridos contados da data do envio da intimação, sob pena de considerar-se a intimação automaticamente realizada na data do término desse prazo. § 4º Em caráter informativo, poderá ser efetivada remessa de correspondência eletrônica, comunicando o envio da intimação e a abertura automática do prazo processual nos termos do § 3º deste artigo, aos que manifestarem interesse por esse serviço. § 5º Nos casos urgentes em que a intimação feita na forma deste artigo possa causar prejuízo a quaisquer das partes ou nos casos em que for evidenciada qualquer tentativa de burla ao sistema, o ato processual deverá ser realizado por outro meio que atinja a sua finalidade, conforme determinado pelo juiz. § 6º As intimações feitas na forma deste artigo, inclusive da Fazenda Pública, serão consideradas pessoais para todos os efeitos legais. [...] Art. 9º No processo eletrônico, todas as citações, intimações e notificações, <span class="TextRun SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-

Processo	0012693-81.2015.8.06.0055
	family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">inclusive da Fazenda Pública , serão feitas por meio eletrônico, na forma desta Lei. § 1º As citações, intimações, notificações e remessas que viabilizem o acesso à íntegra do processo correspondente serão consideradas vista pessoal do interessado para todos os efeitos legais. (destaca-se) &#160;</p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. CPC - Art. 485. [...] § 6º Oferecida a contestação, a extinção do processo por abandono da causa pelo autor depende de requerimento do réu. &#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="EOP SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0012693-81.2015.8.06.0055
	transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW118539182 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Súmula nº 240 do STJ – A extinção do processo, por abandono da causa pelo autor, depende de requerimento do réu. &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	147
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	EDITE MARIANO DA SILVA
Advogado(s) - Polo ativo	Não informado
Polo passivo	ESTADO DO CEARA PROCURADORIA GERAL DO ESTADO
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3003132-37.2024.8.06.0064
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	DE FIXAÇÃO. PROVEITO ECONÔMICO INESTIMÁVEL. FIXAÇÃO DA VERBA HONORÁRIA POR EQUIDADE. ART. 85, §8º, DO CPC/15, E TEMA 1076 DO STJ. PRECEDENTES DESTE EGRÉGIO TRIBUNAL DE JUSTIÇA. REMESSA NECESSÁRIA CONHECIDA E PARCIALMENTE PROVIDA. SENTENÇA PARCIALMENTE CONFIRMADA. </p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160; </p><p style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da Remessa Necessária para parcialmente provê-la , nos termos do voto do relator.</p><p style="margin-bottom: 12.0pt; line-height: 200%;"> Fortaleza/CE, data e hora indicadas pelo sistema. </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> Relator &#160;</p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> RELATÓRIO </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Trata-se de reexame necessário da sentença proferida nos autos da Ação de Obrigação de Fazer proposta por Edite Mariano da Silva em face do Estado do Ceará, por meio da qual se objetivou o fornecimento mensal, de forma contínua e por tempo indeterminado, de 120 (cento e vinte) unidades de fraldas geriátricas, tamanho GG.&#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Sentença (Id.15374866) : o magistrado julgou procedente a demanda, nos seguintes termos: Ante as razões expendidas, com espeque no artigo 487, inciso I, do Código de Processo Civil,&#160; ratifico a decisão interlocutória de ID&#160;88789559&#160;e&#160; julgo procedente&#160;o pedido autoral, condenando a parte promovida na obrigação de fornecer ao(à) paciente 120 (cento e vinte) unidades de fraldas geriátricas, tamanho GG, mensalmente, de forma contínua e por tempo indeterminado, de acordo com as especificações médicas de ID 88783102 - pág. 04. Honorários advocatícios pelo promovido, à ordem de 10% (dez por cento) sobre o valor atualizado da causa, nos termos do artigo 85 do Código de Processo Civil." &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Parecer do Ministério Público (Id.15493917): manifestação pelo conhecimento e desprovimento do reexame, devendo ser mantida a sentença. &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> É o relatório. &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> &#160;</p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> VOTO &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;">&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> <span

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	style="font-size: medium;">Presentes os pressupostos de admissibilidade, visto que não é o caso de aplicação das ressalvas previstas nos §§ 3º e 4º do art. 496 do CPC, conheço da Remessa Necessária. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Como se sabe, a saúde é um direito constitucional assegurado a todos, inerente à vida, bem maior do homem, matriz de todos os direitos, sendo, portanto, atribuição do Estado o dever de prover condições indispensáveis ao seu pleno exercício. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> O direito constitucional à saúde também encontra previsão no Art. 6º da CF/88, sendo nessa regra enquadrado como um direito social e fundamental que, atrelado ao princípio fundamental do direito à vida digna, fundamento da República Federativa do Brasil (Art. 1º, inciso I da CF/88), assegura a todos atendimento necessário na área da saúde, estando inclusos os serviços de assistência médica, farmacêutica e hospitalar </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Com base em tais premissas, é dever incontestável do Estado, portanto, garantir o direito à saúde de todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo, especialmente quando o que se tem não é exatamente o exercício de uma política pública de saúde, mas a sua completa ausência ou cumprimento insuficiente. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> &#160; Registre-se, ainda, que este egrégio Tribunal de Justiça, ao editar a Súmula 45, firmou entendimento no sentido de responsabilizar o Poder Público em garantir a pacientes o fornecimento de tratamento médico necessário ou medicamento, devidamente registrado no órgão de vigilância sanitária, não disponíveis na rede pública de saúde, nestes termos: &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Súm ula 45 do TJCE – Ao Poder Público compete fornecer a pacientes tratamento ou medicamento registrado no órgão de vigilância sanitária competente, não disponibilizados no sistema de saúde.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Tra çado esse breve panorama normativo e volvendo ao caso em análise, depreende-se que a parte autora comprovou a necessidade e a urgência do insumo pleiteado, conforme documentos acostados aos autos, tendo se desincumbido do ônus de provar o fato constitutivo de seu direito. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Importante salientar que os documentos médicos juntados pela parte autora gozam de presunção de idoneidade técnica e veracidade sobre a necessidade da paciente, não tendo sido objeto de impugnação pelo promovido no curso da ação. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Outrossim, resta incontroverso nos autos que a parte autora é pessoa hipossuficiente, dependente, inclusive, do cuidado de terceiros, de idade avançada, e desprovida de recursos para arcar com os custos financeiros do insumo pleiteado. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Dessa forma, incumbe ao Poder Judiciário determinar o fornecimento do insumo pela parte demandada, tendo em vista que o direito à saúde é uma garantia do cidadão e dever do Estado, conforme arts. 6º e 196 da CF/88, devendo ser repelido qualquer iniciativa que contrarie tal preceito fundamental. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Nesse sentido, destaco os seguintes julgados desta 3ª Câmara de Direito Público: &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> DIREITO CONSTITUCIONAL. REMESSA NECESSÁRIA.

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	OBRIGAÇÃO DE FAZER. FORNECIMENTO DE FRALDAS GERIÁTRICAS. SAÚDE. DEVER DO PODER PÚBLICO. INTELIGÊNCIA DOS ARTS. 6º E 196 DA CF/88. NECESSIDADE DE RENOVAÇÃO PERIÓDICA DA PRESCRIÇÃO MÉDICA. HONORÁRIOS. ALTERAÇÃO DO CRITÉRIO DE FIXAÇÃO. PROVEITO ECONÔMICO INESTIMÁVEL. FIXAÇÃO DA VERBA HONORÁRIA POR EQUIDADE. ART. 85, §8º, DO CPC/15, E TEMA 1076 DO STJ. PRECEDENTES DESTE EGRÉGIO TRIBUNAL DE JUSTIÇA. REMESSA NECESSÁRIA CONHECIDA E PARCIALMENTE PROVIDA. SENTENÇA PARCIALMENTE REFORMADA. (Remessa Necessária – 3002593-08.2023.8.06.0064, Rel. Desembargadora JORIZA MAGALHÃES PINHEIRO, 3ª Câmara Direito Público, data do julgamento: 29/04/2024, data da publicação: 29/04/2024) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> AGRAVO DE INSTRUMENTO. CONSTITUCIONAL. PROCESSUAL CIVIL. AÇÃO CIVIL PÚBLICA. PRELIMINAR DE ILEGITIMIDADE PASSIVA DO MUNICÍPIO DE JAGUARETAMA AFASTADA. MÉRITO. PACIENTE MENOR, HIPOSSUFICIENTE E ACOMETIDA DE DOENÇA GRAVE. NECESSIDADE DO FORNECIMENTO DE FRALDAS DESCARTÁVEIS E OUTROS INSUMOS. DIGNIDADE DA PESSOA HUMANA. DIREITO À VIDA E À SAÚDE. REQUISITOS PARA A ANTECIPAÇÃO DOS EFEITOS DA TUTELA DEMONSTRADOS. INCIDÊNCIA DA SÚMULA Nº 45 DO TJCE. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. DECISÃO INTERLOCUTÓRIA CONFIRMADA. [...] (Agravo de Instrumento – 0623309-90.2022.8.06.0000, Rel. Desembargadora MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 30/05/2022, data da publicação: 30/05/2022). </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Com isso, deve ser mantida a sentença que condenou o Estado do Ceará a fornecer, em favor da parte autora, o insumo requerido na inicial, como forma de efetivação do direito à saúde.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> &#160; No entanto, considerando que se trata de medida judicial de prestação continuativa, é imprescindível que o jurisdicionado promova a renovação periódica da prescrição médica, a fim de comprovar a permanência da necessidade da prestação determinada, conforme enunciado n° 2 da I Jornada de Direito da Saúde do CNJ, veja-se:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Enun ciado nº 02 do CNJ – Concedidas medidas judiciais de prestação continuativa, em tutela provisória ou definitiva, é necessária a renovação periódica do relatório e prescrição médicos a serem apresentados preferencialmente ao executor da medida, no prazo legal ou naquele fixado pelo julgador como razoável, considerada a natureza da enfermidade, de acordo com a legislação sanitária, sob pena de perda de eficácia da medida. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Outro ssim, verifico que o magistrado condenou a parte promovida ao pagamento de honorários advocatícios em 10% (dez por cento) do valor da causa. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Tal determinação, contudo, é contrária aos recentes julgados deste Tribunal, cuja orientação é no sentido de que, tratando-se de processos envolvendo prestação à saúde, o proveito econômico é inestimável, devendo, pois, o ônus de sucumbência ser fixado na forma equitativa, conforme disposição do art. 85, §8º, do CPC, <em style="mso-bidi-font-style: normal;"> in verbis : </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif; color: black; mso-themecolor: text1; mso-bidi-font-style: italic;"> <span style="font-size: small;">CONSTITUCIONAL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL INTERPOSTA PELA DEFENSORIA PÚBLICA. AÇÃO DE OBRIGAÇÃO DE FAZER C/C PEDIDO DE TUTELA DE URGÊNCIA (ALIMENTOS, INSUMOS E FRALDAS). AVOCAÇÃO DO FEITO EM REMESSA NECESSÁRIA. DIREITO À SAÚDE. ARTS. 5º, §1º, 6º, CAPUT, 23, II, 196 E 197 DA CF. TEMA 793 DO STF E SÚMULA 45 DO TJCE. COMPROVAÇÃO DA HIPOSSUFICIÊNCIA DA PARTE AUTORA E DA NECESSIDADE DA ALIMENTAÇÃO ESPECIAL, DOS INSUMOS E DAS FRALDAS. MANUTENÇÃO DA CONDENAÇÃO DO ESTADO. RECURSO DE APELAÇÃO. HONORÁRIOS EM FAVOR DA DEFENSORIA PÚBLICA. MUDANÇA DE

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	ENTENDIMENTO. JULGAMENTO DO RE 1140005 PELO STF, EM SEDE DE REPERCUSSÃO GERAL. TEMA 1.002. TESE QUE IMPÕE A CONDENAÇÃO A QUALQUER ENTRE PÚBLICO A PAGAR VERBA HONORÁRIA SUCUMBENCIAL EM FAVOR DA DEFENSORIA PÚBLICA, INCLUINDO-SE O ESTADO AO QUAL A INSTITUIÇÃO SE VINCULA. FORÇA VINCULANTE DOS PRECEDENTES. ART. 927, III DO CPC. REMESSA NECESSÁRIA AVOCADA E DESPROVIDA. RECURSO DE APELAÇÃO CONHECIDO E PROVIDO. SENTENÇA PARCIALMENTE REFORMADA. 1. Busca a Defensoria Pública em seu apelo a reforma parcial da sentença, objetivando a condenação do Estado do Ceará ao pagamento de honorários advocatícios em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. (…) 8. A respeito da questão discutida no recurso voluntário, impende esclarecer que, até bem pouco tempo, o entendimento jurisprudencial unânime nesta Corte de Justiça, em consonância com o enunciado sumular nº 421 do STJ, era no sentido da impossibilidade jurídica de condenação do Estado do Ceará em honorários em favor da Defensoria Pública, em virtude de ser a instituição vinculada ao ente federado em alusão. 9. Todavia, em data recente (23.06.2023), o STF julgou o RE 114005, em sede de Repercussão Geral (Tema 1.002), no qual firmou a seguinte tese: "1. É devido o pagamento de honorários sucumbenciais à Defensoria Pública, quando representa parte vencedora em demanda ajuizada contra qualquer ente público, inclusive aquele que integra; 2. O valor recebido a título de honorários sucumbenciais deve ser destinado, exclusivamente, ao aparelhamento das Defensorias Públicas, vedado o seu rateio entre os membros da instituição". 10. Com o mencionado julgado, encerra-se a discussão acerca da possibilidade, ou não, de a pessoa jurídica, à qual se encontra vinculada a Defensoria Pública ser condenada em honorários advocatícios de sucumbência em prol do mencionado órgão, isso em decorrência da força vinculante dos precedentes, com previsão no art. 927, III, do CPC/2015. 11. Em consequência, devem ser fixados na hipótese honorários sucumbenciais, em atendimento aos parâmetros estabelecidos no artigo 85, §§ 2º e 3º, do CPC/ 2015. 12. Na hipótese, como se trata de causa de valor que não se pode estimar, envolvendo direito à saúde, constitucionalmente garantido e inserido no conceito de mínimo existencial, a fixação dos honorários deve ocorrer por apreciação equitativa, nos termos do art. 85, § 8º, do CPC, mostrando-se cabível a fixação do valor de R$ 1.000,00 (mil reais) a título de honorários sucumbenciais, a serem pagos pelo Estado do Ceará em favor do Fundo de Apoio ao Aparelhamento da Defensoria Pública. 13. Remessa necessária avocada e desprovida. Recurso de apelação conhecido e provido. Sentença parcialmente reformada. ACÓRDÃO – Vistos, relatados e discutidos os presentes autos, nesta Comarca de Fortaleza, em que figuram as partes indicadas. ACORDAM os membros integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em AVOCAR o feito em remessa necessária, para NEGAR LHE PROVIMENTO, e em CONHECER do recurso de apelação interposto, para DAR-LHE PROVIMENTO, reformando parcialmente a sentença, nos termos do voto do Relator. Fortaleza, 30 de outubro de 2023. Des. José Tarcílio Souza da Silva Relator (Apelação Cível – 0210190-90.2023.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 30/10/2023, data da publicação: 30/10/2023). </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Ademais, considerando que no presente caso o proveito econômico obtido pelo vencedor da ação é inestimável (direito à saúde), o arbitramento de honorários advocatícios em percentual se mostra inadequado, conforme orientação do Tema 1076 do STJ: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Questão submetida a julgamento: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Definição do alcance da norma inserta no §8º do artigo 85 do Código de Processo Civil nas causas em que o valor da causa ou o proveito econômico da demanda forem elevados. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Tese Firmada: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I) A fixação dos honorários por apreciação equitativa não é permitida quando os valores da condenação, da causa ou o proveito econômico da demanda forem elevados. É obrigatória nesses casos a observância dos percentuais previstos nos §§ 2º ou 3º do artigo 85 do CPC – a depender da presença da Fazenda Pública na lide –, os quais serão subsequentemente calculados sobre o valor: (a) da condenação; ou (b) do proveito econômico obtido; ou (c)

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	do valor atualizado da causa. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II) Apenas se admite arbitramento de honorários por equidade quando, havendo ou não condenação: (a) o proveito econômico obtido pelo vencedor for inestimável ou irrisório; ou (b) o valor da causa for muito baixo. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Assim, considerando os julgados do TJCE, em especial desta 3ª Câmara de Direito Público, arbitro os honorários sucumbenciais, de forma equitativa, em R$ 1.000,00 (mil reais), nos moldes do art. 85, § 8º do CPC, revelando-se como razoável e proporcional . </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Importante salientar que o valor ora fixado se justifica no fato de se tratar de demanda de baixa complexidade, havendo sobre o tema farta jurisprudência, tanto desta Egrégia Corte, como também dos Tribunais Superiores. Ademais, considerando o trabalho desempenhado, o local de prestação, o tempo despendido e a natureza da causa, afigura-se justo e razoável o montante arbitrado, por se revelar uma quantia consentânea com os critérios previstos no referido digesto processual, além de seguir a coerência dos valores fixados por esta Câmara nos julgados supracitados.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Anoto, por fim, que deverá a totalidade da verba honorária ser destinada exclusivamente ao aparelhamento da Defensoria Pública, vedado o seu rateio entre os membros da instituição, em conformidade com a tese jurídica fixada no Tema nº 1.002 do STF.</p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Isso posto, conheço da Remessa Necessária para parcialmente provê-la, reformando a sentença objurgada somente para determinar que a parte autora/apelada comprove, semestralmente, por meio de prescrição médica, a necessidade do insumo requerido, bem como para modificar o critério de fixação dos honorários sucumbenciais, oportunidade em que arbitro, por equidade, em R$ 1.000,00 (um mil reais), nos termos do art. 85, §8º, do CPC. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> É como voto. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> Fortaleza, data e hora informadas pelo sistema. </p><p style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 200%;"> <br /> </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> Relator </p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	148
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	MUNICIPIO DE QUIXADA
Advogado(s) - Polo ativo	KAEELINA DE ARAUJO CARNEIRO - (CE51882-A)
Polo passivo	FRANCISCO JOSE DE LIMA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span class="SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);"> <img class="WACImage SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 89px; height: 120px; text-wrap-mode: nowrap !important;" 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serif;">&#160;</p><div class="OutlineElement Ltr SCXW184176562 BCX8"
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Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8"
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vertical-align: baseline; font-kerning: none; background-color: transparent; color:

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	windowtext; text-align: center;"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Processo: 0051061-55.2021.8.06.0151 – Apelação/Remessa Necessária. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelante: Município de Quixadá. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelado: Francisco José de Lima. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Remetente: Juízo da 2ª Vara Cível da Comarca de Quixadá. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Custos Legis: Ministério Público Estadual. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ementa: <span

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	class="NormalTextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Direito constitucional e processual civil. Remessa necessária e apelação cível. Ação de obrigação de fazer. Fornecimento de fraldas descartáveis e cadeiras de rodas . Remessa necessária desprovida e r ecurso parcialmente provido.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Apelação Cível interposta pelo Município de Quixadá, e Remessa Necessária, que transferem a este Tribunal conhecimento de Ação de Obrigação de Fazer proposta com o fim de <span class="NormalTextRun

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	SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">compelir o ente municipal à concessão de fraldas descartáveis, cadeira higiênica e cadeira de rodas manual em X. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. Questão em discussão &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em saber se: (i) a municipalidade detém legitimidade para figurar no polo passivo da demanda; (ii) a municipalidade deve ser compelida ao fornecimento do insumo e dos equipamentos requeridos; (ii i) a decisão recorrida <span class="NormalTextRun SCXW184176562 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">malfer e à reserva do possível, os princípios da separaç ão de poderes e da isonomia; (iv) a prescrição médica deve ser renovada periodicamente; e, (v) o s honorários advocatícios sucumbenciais foram fixados corretamente. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="NormalTextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text;">3. Da leitura dos arts . 23, inciso II, e 198, ambos da CF, e do Tema de RG nº 793 , depreende-se que o funcionamento do SUS é de responsabilidade solidária da União, Estados-Membros, Distrito Federal e Municípios, de forma que quaisquer destes entes possuem legitimidade para figurar no polo passivo de demandas que pretendam garantir o acesso a tratamento médico para pessoas carentes de recursos financeiros. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Extrai-se dos arts . 5º, §1º, 6º e 196 , todos da CF, que é dever incontestável do&#160; Estado garantir o direito à saúde de

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	todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo, especialmente quando o que se tem não é exatamente o exercício de uma política pública de saúde, mas a sua completa ausência ou cumprimento insuficiente. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. No caso dos autos, os relatórios médicos acostados apontam que o autor necessita fazer uso de fraldas descartáveis, cadeiras de rodas manual em X e cadeira de rodas higiênica. O s documentos mencionados, gozando de presunção de idoneidade técnica e veracidade sobre a necessidade do paciente, não foi objeto de impugnação pelo promovido no curso da ação. Outrossim, resta incontroverso nos autos que o postulante é pessoa hipossuficiente . &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. A simples alegação de insuficiência de recursos não pode servir para legitimar a omissão do Município quanto ao dever de assegurar ao cidadão o mínimo existencial, assim compreendido como conjunto de prestações materiais e absolutamente essenciais para todo ser humano ter uma vida digna, especialmente na área da saúde. <span class="EOP SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7.&#160; A jurisprudência do Supremo Tribunal Federal é firme no sentido de que não viola o princípio da separação dos poderes a interferência do Poder Judiciário para que haja implementação de políticas públicas voltadas ao direito à saúde &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 8. Não há afronta&#160;ao princípio da isonomia o Judiciário conceder um direito subjetivo que naturalmente já deveria ser respeitado e cumprido na seara administrativa. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-family:

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	&quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">9. A condenação&#160;do ente municipal ao adimplemento de honorários advocatícios sucumbenciais à Defensoria Pública está em consonância com os preceitos normativos indicados no art. 85, caput , §§2º e 8º, do CPC, e as teses fixadas nos Temas nºs 1.002, do STF, e 1.076, do STJ. &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 10. C oncedida medida judicial de prestação continuativa, é imprescindível que o jurisdicionad o promova a renovação periódica da prescrição médica, a fim de comprovar a permanência da necessidade da prestação determinada, conforme exigido pelo Enunciado n° 2, da I Jornada de Direito da Saúde do CNJ. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p

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	class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV. Dispositivo &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 11 . Remessa necessária desprovida e R ecurso parcialmente provido. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> __________ &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear:

Processo	0051061-55.2021.8.06.0151
	both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dispositivos relevantes citados: CF, arts . 1º, inciso I, 5º, §1º, 6º, 23, inciso II, 196 e 198; CPC, art. 85, §§2º e 8º. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 9.46667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Jurisprudência relevante citada: Apelação Cível nº 0001952-36.2018.8.06.0100, Rel ator: Desembargador José T arcílio S <span class="NormalTextRun SCXW184176562 BCX8"

Processo	0051061-55.2021.8.06.0151
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">ouza da S ilva, 1ª Câmara Direito Público, D ata do J ulgamento: 12/09/2022, D ata da P ublicação:&#160; 12/09/2022; STF, RE nº 1.140.005/RJ, Relator: Roberto Barroso, Data de Julgamento: 26/06/2023, Tribunal Pleno, Data de Publicação: 16/08/2023; STF, RE nº 855.178 SE, Relator: Luiz Fux, Data de Julgamento: 05/03/2015, Tribunal Pleno, Data de Publicação: 16/03/2015 ; STF, Rcl nº 66254 / AP, Relator: Min. GILMAR MENDES, Data de Julgamento: 05/06/2024, Segunda Turma, Data de Publicação: 26/07/2024; STF, <span class="NormalTextRun SpellingErrorV2Themed SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0051061-55.2021.8.06.0151
	transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">AgR nº 1250997 / PE , Relator: Min. EDSON FACHIN, Data de Julgamento: 29/06/2020, Segunda Turma, Data de Publicação: 08 /0 7 / 2020 ; STJ, REsp nº 1.850.512/SP, Relator: Ministro Og Fernandes, Corte Especial, Data de Julgamento: 16/03/2022,&#160;Data de Publicação 31/05/2022. &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 9.46667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade,

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	acordam em conhecer a Remessa Necessária para negar-lhe provimento; e, conhecer o Recurso de Apelação para d ar-lhe parcial provimento, nos termos do voto da Relatora, parte integrante deste. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial,

Processo	0051061-55.2021.8.06.0151
	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 11.3333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-

Processo	0051061-55.2021.8.06.0151
	numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 16pt; line-height: 37.5px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de Apelação Cível interposta pelo MUNICÍPIO DE QUIXADÁ, e de Remessa Necessária, que transferem a este Tribunal conhecimento de Ação de Obrigação de Fazer proposta por FRANCISCO JOSÉ DE LIMA em desfavor do apelante, objetivando a concessão de fraldas descartáveis, cadeira higiênica e cadeira de rodas manual em X.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> O Juízo da 2ª Vara Cível da Comarca de Quixadá julgou procedente o pleito exordial, nos termos do dispositivo abaixo transcrito (ID nº 15396786): &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] <span class="EOP SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman

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	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Diante do exposto, com fulcro no art. 487, I, do Código de Processo Civil, JULGO PROCEDENTE o pleito autoral para: a) Condenar a parte requerida a fornecer os insumos pleiteados; b) Confirmar a decisão de ID 47261686. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Condeno o ente público ao pagamento de honorários advocatícios de sucumbência, no importe de R$ 1.000,00 (um mil reais), nos termos do art. 85, §8º, do CPC. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Deixo de condenar a Fazenda Pública em custas processuais em face da isenção legal. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-

Processo	0051061-55.2021.8.06.0151
	kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Sentença sujeita ao reexame necessário. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais (ID nº 15396794), o ente municipal sustenta que o fármaco postulado pelo autor não se enquadra no rol de medicamentos e insumos obrigatórios que devem ser por ele fornecidos. Aduz que é incontroverso nos autos que as fraldas e as cadeiras de rodas foram fornecidas, não havendo descumprimento voluntário ou intencional, mas sim dificuldades operacionais que já foram superadas. Afirma a necessidade de observância dos princípios da reserva do possível, da isonomia e da separação de poderes. Pondera que a causa não ostenta complexidade que demande um grau de zelo e importância a exigir a fixação de honorários em favor do requerente, de sorte que a condenação em verba honorária se mostra abusiva e desproporcional. Ao final, pugna pelo conhecimento e provimento do recurso, reformando a sentença para : direcionar a obrigação de fazer somente em desfavor do Estado do Ceará, parte legítima para figurar no polo passivo ; fixar as contracautelas necessárias ao caso concreto; e , <span

Processo	0051061-55.2021.8.06.0151
	class="NormalTextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">afastar a verba honorária arbitrada em seu desfavor.&#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 18.5333px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: justify; text-indent: 75px;"> Em sede de contrarrazões (ID nº 15396800), o apelado impugna as teses recursais e defende a manutenção do julgado.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Instada a manifestar-se, a Procuradoria Geral de Justiça apresenta o Parecer de ID nº 15514642, opinando pelo conhecimento e desprovimento do Recurso de Apelação.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório, no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe

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	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Presentes os requisitos de admissibilidade, conheço a Remessa Necessária e o Recurso de Apelação.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> O cerne da controvérsia consiste em aferir a higidez da sentença que julgou procedente o pleito autoral, condenando o Município de Quixadá ao fornecimento do insumo equipamentos indicados na exordial, bem como ao adimplemento de verba honorária sucumbencial no montante de R$ 1.000,00 (um mil reais). Pois bem.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe

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	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> De início, insta salientar que a Constituição Federal estabelece, em seu art. 196 1 , que a saúde é direito de todos e dever do Estado, sendo direito do cidadão, carente de recursos, receber o tratamento necessário à sua saúde, incumbindo ao poder público criar as políticas necessárias à concretização dos direitos sociais. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 74px;"> Ademais, continuando na disciplina da temática, a Carta Constitucional, em seu art. 198 2 , preceitua que a assistência à saúde, provida pelo segmento público, é materializada através do Sistema Único de Saúde (SUS), o qual se organiza sob a forma de uma rede unificada, regionalizada e hierarquizada, mediante esforços conjuntos e descentralizados da União, Estados, Distrito Federal e Municípios e a complementação, quando necessária, do setor privado. <span class="EOP

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	SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 74px;"> A referida conjugação das esferas federal, estadual, distrital e municipal na assistência à saúde decorre do art. 23, inciso II 3 , da CF, que atribui aos entes federativos a competência comum para zelar pela proteção e conservação do direito à saúde. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 74px;"> Nesse contexto, vige a compreensão jurisprudencial de que o funcionamento do SUS é de responsabilidade solidária da União, Estados-Membros, Distrito Federal e Municípios, de forma que quaisquer destes entes possuem legitimidade para figurar o polo passivo de demandas que pretendam garantir o acesso a tratamento médico para pessoas carentes de recursos financeiros. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-

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	highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 74px;"> Assim, no julgamento dos Embargos de Declaração no Recurso Extraordinário RE nº 855.178 ED/SE, em 23 de maio de 2019, esse entendimento foi firmado definitivamente, sendo fixada a Tese de Repercussão Geral que compõe o Tema nº 793, de que “os entes da federação, em decorrência da competência comum, são solidariamente responsáveis nas demandas prestacionais na área da saúde, e diante dos critérios constitucionais de descentralização e hierarquização, compete à autoridade judicial direcionar o cumprimento conforme as regras de repartição de competências e determinar o ressarcimento a quem suportou o ônus financeiro” . &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Prosseguindo, urge pontuar que o direito constitucional à saúde também encontra previsão no art. 6º 4 , da CF, sendo nessa regra enquadrado como um direito social e fundamental que, atrelado ao princípio fundamental do direito à vida digna,

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	fundamento da República Federativa do Brasil (art. 1º, inciso I 5 , da CF), assegura a todos atendimento necessário na área da saúde, estando inclusos os serviços de assistência médica, farmacêutica e hospitalar. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Quadra salientar, outrossim, que, na qualidade de direito fundamental, não há que se falar em sua inaplicabilidade, pois conforme o art. 5º, §1º 6 , da CF, as normas protetivas do direito à saúde possuem aplicabilidade imediata. &#160; </p></div><div

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	class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 77px;"> Com base em tais premissas, tenho que é dever incontestável do Estado, portanto, garantir o direito à saúde de todos, pelo que não havendo a sua efetivação, cabe ao cidadão, negativamente afetado, exigir imediatamente o seu cumprimento em juízo, especialmente quando o que se tem não é exatamente o exercício de uma política pública de saúde, mas a sua completa ausência ou cumprimento insuficiente. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No caso dos autos, o s re l atórios médicos acostado s ao s ID s nº <span class="NormalTextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">s 1 5396585 e 15396586 (págs. 2 e 3) aponta m que o autor se encontra acometido de tetraplegia (CID10:G82.5) e de s equelas de traum atismo da medula espinhal (traumatismo raquimedular) - nível cervical (CID10:T91.3), razão pela qual necessita fazer uso de fraldas descartáveis , cadeiras de rodas manual em X e cadeira de rodas higiênica.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Há de se destacar que o s documento s acima mencionado s , gozando de presunção de idoneidade técnica e

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	veracidade sobre a necessidade d o paciente, não foi objeto de impugnação pelo promovido no curso da ação. Outrossim, resta incontroverso nos autos que o postulante é pessoa hipossuficiente (vide ID nº 15396587) . &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> I mpende enfatizar que não se desconhece dos problemas financeiros por que passam os entes federados na árdua tarefa executiva de administrar e gerir os recursos públicos, entretanto, diante da inobservância da lei pelo Poder Público, isto é, ante a omissão ou desvio de finalidade na execução do orçamento público, incumbe ao Poder Judiciário dar efetividade à lei, de modo a intervir, quando assim requerido, para que o direito à saúde seja garantido ao cidadão.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Desse modo, a simples alegação de insuficiência de recursos não pode servir para legitimar a omissão do Município quanto ao dever de assegurar ao cidadão o mínimo existencial, assim compreendido como conjunto de prestações materiais e absolutamente essenciais para todo ser humano ter uma vida digna, especialmente na área da saúde.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> É bem verdade que a teoria da reserva do possível surgiu com o objetivo de condicionar a implementação de direitos sociais prestacionais, dos quais decorre o direito à saúde, à existência de recursos financeiros pelo Estado. Contudo, a referida teoria não tem caráter absoluto, razão pela qual é dever do Poder Judiciário ponderar sua aplicação, sem que para isso tenha que aniquilar ou reduzir direitos constitucionalmente assegurados. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> A fim de corroborar tal entendimento, colaciono trecho do voto do Ministro Celso de Mello, no julgamento da Suspensão de Tutela Antecipada 175-AgR CE, julgado em 17/03/2010, DJe <span class="NormalTextRun

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	SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">: 30/04/2010, que, diante do conflito entre a cláusula da reserva do possível e a garantia do mínimo existencial, ponderou que o direito à saúde deve prevalecer sobre a questão da indisponibilidade orçamentária estatal, quando não comprovada, objetivamente, a limitação material. Vejamos: &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> […] Não se ignora que a realização dos direitos econômicos, sociais e culturais – além de caracterizar-se pela gradualidade de seu processo de concretização – depende, em grande medida, de um inescapável vínculo financeiro subordinado às possibilidades orçamentárias do Estado, de tal modo que, comprovada, objetivamente, a alegação de incapacidade econômico-financeira da pessoa estatal, desta não se poderá razoavelmente exigir, então, considerada a limitação material referida, a imediata efetivação do comando fundado no texto da Carta Política.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Não se mostrará lícito, contudo, ao Poder Público, em tal hipótese, criar obstáculo artificial que revele – a partir de indevida manipulação de sua atividade financeira e/ou político-administrativa – o legítimo, arbitrário e censurável propósito de fraudar e de inviabilizar o estabelecimento e a preservação, em favor da pessoa e dos cidadãos, de condições materiais mínimas de existência (ADPF 45/DF. Rel. Min. CELSO DE MELLO, informativo STF nº 345/2004).&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-

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	variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Cumpre advertir, desse modo, que a cláusula da “reserva do possível” - ressalvada a ocorrência de justo motivo objetivamente aferível – não pode ser invocada, pelo Estado, com a finalidade de exonerar-se, dolosamente, do cumprimento, de suas obrigações constitucionais, notadamente quando, dessa conduta governamental negativa, puder resultar nulificação ou, até mesmo, aniquilação de direitos constitucionais impregnados de um sentido de essencial fundamentalidade. […]. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> No caso dos autos, a parte recorrente deixou de juntar qualquer prova que venha demonstrar, objetivamente, que não possui os recursos financeiros necessários para o cumprimento da obrigação de fazer imposta. Além disso, cumpre observar que a pretensão autoral se mostra razoável e não está além da capacidade econômico-financeira do Município de Quixadá. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> A propósito, assim vem decidindo este egrégio Tribunal de Justiça:&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> CONSTITUCIONAL. ADMINISTRATIVO E

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	PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO CIVIL PÚBLICA. AÇÃO DE OBRIGAÇÃO DE FAZER. FORNECIMENTO DE MEDICAMENTOS. TEMA 793 DA REPERCUSSÃO GERAL DO STF. ENTENDIMENTO PACIFICADO DE QUE A GARANTIA DO DIREITO À SAÚDE É DE RESPONSABILIDADE SOLIDÁRIA DOS TRÊS ENTES FEDERATIVOS. FÁRMACOS COM REGISTRO NA ANVISA. ALEGAÇÃO DE RESERVA DO POSSÍVEL. INCABÍVEL. DETERMINAÇÃO DE AVALIAÇÃO PERÍODICA. ENUNCIADO Nº 2 DO CNJ. RECURSO DE APELAÇÃO CONHECIDO E DESPROVIDO. SENTENÇA REFORMADA DE OFÍCIO, PARA DETERMINAR AVALIAÇÃO PERIÓDICA DA NECESSIDADE DOS MEDICAMENTOS. 1 – Busca o apelante a reforma da sentença de primeiro grau que julgou procedente a Ação Civil Pública que objetivava o fornecimento dos medicamentos (ORLIPID ou LIPIBLOCK) à paciente diagnosticada com hipertensão e obesidade em face do Município de Itapajé e do Estado do Ceará. 2 – O Supremo Tribunal Federal no julgamento do Recurso Extraordinário nº 855178-RG/SE, com repercussão geral, que ensejou o Tema nº 793, pacificou o entendimento que a garantia do direito à saúde é de responsabilidade solidária dos três entes federativos. 3 – No presente caso, os medicamentos pleiteados possuem o devido registro na ANVISA, razão pela qual poderão ser demandados perante qualquer dos entes federativos, não tendo o que falar em exclusão do ente municipal do polo passivo da demanda. 4 – "Ao Poder Público compete fornecer a pacientes tratamento ou medicamento registrado no órgão de vigilância sanitária competente, não disponibilizado no sistema de saúde" – Súmula nº 45 do TJCE. 5 – A teoria da reserva do possível não pode ser utilizada como justificativa para o não fornecimento dos medicamentos por parte do ente municipal, tendo em vista que é dever dos entes federativos garantir a concretização de políticas públicas de saúde, tutelando o direito à saúde e o direito à vida digna. 6 – Em que pese a inviabilidade da pretensão do apelante de determinação de que a obrigação de fornecimento do medicamento seja assumida

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	apenas pelo outro ente público demandado, nada obsta que o Município ingresse oportunamente contra o Estado do Ceará, no intuito de obter o ressarcimento que entender cabível. 7 – "Concedidas medidas judiciais de prestação continuativa, em tutela provisória ou definitiva, é necessária a renovação periódica do relatório e prescrição médicos a serem apresentados preferencialmente ao executor da medida, no prazo legal ou naquele fixado pelo julgador como razoável, considerada a natureza da enfermidade, de acordo com a legislação sanitária, sob pena de perda de eficácia da medida." ENUNCIADO Nº 2 DO CNJ. 8 – Recurso de apelação conhecido e desprovido. Sentença reformada de ofício. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, nesta Comarca de Fortaleza, em que figuram as partes indicadas. ACORDAM os membros integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em CONHECER do recurso de apelação cível, para NEGAR PROVIMENTO ao apelo, mas para reformar a sentença de OFÍCIO, nos termos do voto do Relator. Fortaleza, 12 de setembro de 2022. Des. José Tarcílio Souza da Silva Relator (Apelação Cível – 0001952-36.2018.8.06.0100, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 12/09/2022, data da publicação:&#160; 12/09/2022). (destac a -se). &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Portanto, considerando que o direito à saúde não constitui uma faculdade do Poder Público, mas um dever inconteste, óbices administrativos são inoponíveis ao direito em discussão, não havendo que se falar em ofensa ao princípio da reserva do possível. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> C <span class="NormalTextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text;">onvém assinalar , ainda, que a jurisprudência do Supremo Tribunal Federal é firme no sentido de que não viola o princípio da separação dos poderes a interferência do Poder Judiciário para que haja implementação de políticas públicas voltadas ao direito à saúde. Vejamos: &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Agravo regimental na reclamação. 2. Direito Constitucional e Processual Civil. 3. Aplicação do tema 698 da repercussão geral pelo Tribunal de origem. Teratologia não configurada. Intervenção do Poder Judiciário em políticas públicas voltadas à realização de direitos fundamentais não viola o princípio da separação dos poderes. 4. Ausência de argumentos capazes de infirmar a decisão agravada. 5. Agravo regimental não provido. (STF - Rcl : 66254 AP, Relator: Min. GILMAR MENDES, Data de Julgamento: 05/06/2024, Segunda Turma, Data de Publicação: PROCESSO ELETRÔNICO DJe -s/n DIVULG 25-07-2024 PUBLIC 26-07-2024) (destaca-se). &#160;</p></div><div

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	class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> AGRAVO REGIMENTAL EM RECURSO EXTRAORDINÁRIO COM AGRAVO. INTERPOSIÇÃO EM 12.03.2020. FORNECIMENTO DE TRATAMENTO PARA GLAUCOMA. IMPLANTE DE TUBO DE DRENAGEM DO TIPO EXPRESS. ART. 196 DA CF. DIREITO À SAÚDE. PRINCÍPIO DA SEPARAÇÃO DE PODERES. AFRONTA. INOCORRÊNCIA. PRECEDENTES. SUPOSTA OFENSA AO POSTULADO DA ISONOMIA. REEXAME DE FATOS E PROVAS. SÚMULA 279 DO STF. ALTO CUSTO DOS MEDICAMENTOS. AUSÊNCIA DE DISCUSSÃO PARA FINS DE APLICAÇÃO DO TEMA 6 DA REPERCUSSÃO GERAL. 1. O acórdão recorrido, na hipótese, não destoa da jurisprudência desta Corte, quanto à inocorrência de violação ao princípio da separação dos poderes, eis que o julgamento, pelo Poder Judiciário, da legalidade dos atos dos demais poderes, não representa ofensa ao princípio da separação dos poderes, especialmente em se tratando de políticas públicas nas questões envolvendo o direito constitucional à saúde. 2. No que tange à suposta ofensa ao postulado da isonomia, eventual divergência em relação ao entendimento adotado pelo juízo a quo demandaria o reexame de fatos e provas, o que inviabiliza o processamento do apelo extremo, tendo em vista a vedação contida na Súmula 279 do STF. 3. A questão envolvendo o alto custo dos medicamentos não foi objeto de discussão no acórdão recorrido para fins de aplicação do Tema 6 da repercussão geral, cujo paradigma é o RE 566.471-RG, de relatoria do Min. Marco Aurélio. 4. Agravo regimental a que se nega provimento. Incabível a aplicação do disposto no art. 85, § 11, do CPC, em virtude da ausência de fixação de honorários pelo Tribunal de origem. (STF - AgR ARE: 1250997 PE - PERNAMBUCO 0060078-26.2011.8.17.0001, Relator: Min. EDSON FACHIN, Data de Julgamento: 29/06/2020, Segunda Turma, Data de Publicação: DJe-172 08-07-2020) (destaca-se). &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-

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	numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> Por derradeiro, e nfatizo que não há ferimento ao princípio da isonomia o Judiciário conceder um direito subjetivo que naturalmente já deveria ser respeitado e cumprido na seara administrativa. Ressalte-se que a isonomia possui duas vertentes, sendo uma delas a igualdade material, por meio da qual deve-se tratar os desiguais de forma desigual. Assim sendo, quando o Poder Judiciário determina que o direito pleiteado no feito em questão seja concedido está aplicando no caso concreto o próprio princípio da isonomia. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Diante dessas premissas, comungo do entendimento exarado na sentença, que condenou o Município de Quixadá ao fornecimento de insumo e de equipamentos em favor da parte autora, como forma de efetivação do direito à saúde. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> No mesmo liame, compreendo que o magistrado, ao condenar o ente municipal ao adimplemento de honorários advocatícios sucumbenciais à Defensoria Pública, agiu em consonância com os preceitos normativos indicados no art. 85, <span class="TextRun SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-

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	numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; font-style: italic; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">caput , §§2º e 8º, do CPC 7 , e as teses fixadas nos Temas nºs 1.002 8 , do STF, e 1.076 9 , do STJ, motivo pelo qual o julgado não merece qualquer reparo neste tocante <span class="NormalTextRun SCXW184176562 BCX8" style="-

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	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Lado outro, entendo que há de ser realizado acréscimo à decisão, pois, tendo sido concedida medida judicial de prestação continuativa – fornecimento de fraldas descartáveis - , é imprescindível que o jurisdicionad o promova a renovação periódica da prescrição médica, a fim de comprovar a permanência da necessidade da prestação determinada, conforme exigido pelo Enunciado n° 2 10 , da I Jornada de Direito da Saúde do CNJ. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color:

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	transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ante o exposto, conheço a Remessa Necessária para negar-lhe provimento; e, conheço o Recurso de Apelação para dar-lhe parcial provimento, tão somente para acrescer a determinação de que a utor comprove, semestralmente , por meio de prescrição médica, a necessidade d o fornecimento das fraldas descartáveis. <span class="EOP SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New

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	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO <span class="EOP SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New

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	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Art. 196. A saúde é direito de todos e dever do Estado, garantido mediante políticas sociais e econômicas que visem à redução do risco de doença e de outros agravos e ao acesso universal e igualitário às ações e serviços para sua promoção, proteção e recuperação. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. Art. 198. As ações e serviços públicos de saúde integram uma rede regionalizada e hierarquizada e constituem um sistema único, organizado de acordo com as seguintes diretrizes: [...] I -

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	descentralização, com direção única em cada esfera de governo; II - atendimento integral, com prioridade para as atividades preventivas, sem prejuízo dos serviços assistenciais; III - participação da comunidade.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Art. 23. É competência comum da União, dos Estados, do Distrito Federal e dos Municípios: […] II – cuidar da saúde e assistência pública, da proteção e garantia das pessoas portadoras de deficiência. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Art. 6º São direitos sociais a educação, a saúde, a alimentação, o trabalho, a moradia, o transporte, o lazer, a segurança, a previdência social, a proteção à maternidade e à infância, a assistência aos desamparados, na forma desta Constituição. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. Art. 1º A República Federativa do Brasil, formada pela união indissolúvel dos Estados e Municípios e do Distrito Federal, constitui-se em Estado Democrático de Direito e tem como fundamentos: [...] III - a dignidade da pessoa humana; <span class="EOP SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. Art. 5. [...] § 1º As normas definidoras dos direitos e garantias fundamentais têm aplicação imediata. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7. Art. 85. A sentença condenará o vencido a pagar honorários ao advogado do vencedor. [...] § 2º Os honorários serão fixados entre o mínimo de dez e o máximo de vinte por cento sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa, atendidos: I - o grau de zelo do profissional; II - o lugar de prestação do serviço; III - a natureza e a importância da causa; IV - o trabalho realizado pelo advogado e o tempo exigido para o seu serviço. [...] § 8º Nas causas em que for inestimável ou irrisório o proveito econômico ou, ainda, quando o valor da causa for muito baixo, o juiz fixará o valor dos honorários por apreciação equitativa, observando o disposto nos incisos do § 2º. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 8 . Tema nº 1.002/STF: 1. É devido o pagamento de honorários sucumbenciais à Defensoria

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	Pública, quando representa parte vencedora em demanda ajuizada contra qualquer ente público, inclusive aquele que integra; 2. O valor recebido a título de honorários sucumbenciais deve ser destinado, exclusivamente, ao aparelhamento das Defensorias Públicas, vedado o seu rateio entre os membros da instituição. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 9 . Tema nº 1.076/STJ: i) A fixação dos honorários por apreciação equitativa não é permitida quando os valores da condenação, da causa ou o proveito econômico da demanda forem elevados. É obrigatória nesses casos a observância dos percentuais previstos nos §§ 2º ou 3º do artigo 85 do CPC - a depender da presença da Fazenda Pública na lide -, os quais serão subsequentemente calculados sobre o valor: (a) da condenação; ou (b) do proveito econômico obtido; ou (c) do valor atualizado da causa. ii) Apenas se admite arbitramento de honorários por equidade quando, havendo ou não condenação: (a) o proveito econômico obtido pelo vencedor for inestimável ou irrisório; ou (b) o valor da causa for muito baixo. &#160; </p></div><div class="OutlineElement Ltr SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW184176562 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1 0 . Enunciado° 2 - Concedidas medidas judiciais de prestação continuativa, em tutela provisória ou definitiva, é necessária a renovação periódica do relatório, com definição de metas terapêuticas a fim de avaliar a efetividade do tratamento e adesão do paciente e prescrição médicas, a serem apresentados preferencialmente ao executor da medida, no prazo legal ou naquele fixado pelo julgador como razoável, considerada a natureza da enfermidade, de acordo com a legislação sanitária (Portaria SVS/MS nº 344/98), sob pena de perda de eficácia da medida. (Redação dada na VI

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	Jornada de Direito da Saúde - 15.06.2023). &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>

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Número de ordem	149
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PISO SALARIAL
Polo ativo	MUNICIPIO DE QUIXADA
Advogado(s) - Polo ativo	LEANDRO TEIXEIRA GOMES - (CE27462-A)
Polo passivo	MARIA DO SOCORRO LINO
Advogado(s) - Polo passivo	DANIEL QUEIROZ DA SILVA - (CE40871-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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4VNtHZ3W/Met/g2X/6yapyu9BUy9JWrp4MR8eep/szCw+OfzbVPFv/5nW/73y/wnAFFMa2H
LlyhUS4qfg7+MrwC3Rfmsoao//H7D60gCY2u7asZPioqmSf+pkw/+G6f15gf8DLlMncTlWGu
AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES</p><p style="text-align: center;">&#160;</p><p> PROCESSO:&#160;3001332-38.2023.8.06.0151 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE QUIXADA</p><p> APELADO: MARIA DO SOCORRO LINO</p><p> A1</p><p> <br /> </p><p style="text-align: center;">&#160;</p><p style="text-align: justify;">   EMENTA:&#160; CONSTITUCIONAL. ADMINISTRATIVO. PROCESSUAL CIVIL. APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. AUTORA ADMITIDA TEMPORARIAMENTE PARA O EXERCÍCIO DA FUNÇÃO DE PROFESSORA. PISO SALARIAL NACIONAL DAS CARREIRAS DO MAGISTÉRIO. LEI FEDERAL Nº 11.738/2008. INAPLICABILIDADE AOS PROFESSORES CONTRATADOS.

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	AUSÊNCIA DE SUBMISSÃO A CONCURSO PÚBLICO. PRECEDENTES DESTE TJCE. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA PARA JULGAR IMPROCEDENTE A AÇÃO. INVERSÃO DOS ÔNUS SUCUMBENCIAIS. JUSTIÇA GRATUITA. EXIGIBILIDADE SUSPENSA.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I. Caso em exame </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 1. Apelação cível interposta pelo Município de Quixadá em face de sentença prolatada pelo Juízo da 2ª Vara Cível da Comarca de Quixadá, que julgou parcialmente procedente ação de obrigação de fazer e pagar, para condenar o ente público ao adimplemento das diferenças salariais decorrentes da não observância do piso nacional do magistério.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II. Questão em discussão </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 2. A questão em discussão consiste em saber se a parte autora, professora contratada temporariamente pelo município, tem direito à percepção do piso salarial da categoria, previsto na Lei Federal nº 11.738/2008. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> III. Razões de decidir </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 3. O art. 1º da referida lei regulamenta o piso salarial profissional nacional para os profissionais do magistério público da educação básica a que se refere a alínea “e” do inciso III, do caput do art. 60, do Ato das Disposições Constitucionais Transitórias. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 4. O § 2º do art. 2º, por sua vez, impõe a observância do piso salarial nacional para os profissionais do magistério público da educação básica que integrem a “carreira de magistério”, o que pressupõe a efetividade no serviço, provimento no cargo público, fazendo distinção, portanto, quanto a servidores temporários. Assim, o referido piso salarial alcança tão somente os professores concursados (art. 37, II, da CF), ocupantes de cargo ou emprego público. &#160; </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 5. O caso dos autos trata de servidora temporária, detentora apenas de função pública (art. 37, IX da CF), consoante contratos temporários firmados entre a autora e o Município de Quixadá e fichas financeiras acostados aos autos. Assim, não faz jus a autora à concessão do piso salarial nacional do Magistério, por ser servidora contratada, e não efetiva. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> IV. Dispositivo e tese </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 6. Apelação cível conhecida e provida. Sentença reformada para julgar improcedente a ação. Inversão dos ônus sucumbenciais, para condenar a parte autora nos honorários advocatícios, estes fixados em 10% (dez por cento) sobre o valor atualizado da causa (art. 85, §2º, do CPC), com exigibilidade suspensa, por ser a autora beneficiária da justiça gratuita (art. 98, §3º do CPC).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160; </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;">Tese de julgamento: <span style="font-

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	size: 11pt; line-height: 200%; font-family: Arial, sans-serif;">“O piso salarial do magistério, previsto na Lei Federal nº 11.738/2008, alcança tão somente os professores concursados (art. 37, II, da CF), ocupantes de cargo ou emprego público, pois o § 2º do art. 2º da referida lei impõe a observância do piso salarial nacional para os profissionais do magistério público da educação básica que integrem a ‘carreira de magistério’, o que pressupõe a efetividade no serviço, provimento no cargo público, fazendo distinção, portanto, quanto a servidores temporários”. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;">Dispositivos relevantes citados: art. 37, incisos II e IX, da CF/88; art. 1º e art. 2º, §2º, da Lei Federal nº 11.738/2008.&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 1.0cm; line-height: 200%;"> Jurisprudência relevante citada: A pelação Cível - 0009952-10.2017.8.06.0084, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 23/08/2021, data da publicação: 23/08/2021; Remessa Necessária Cível - 0000054-75.2019.8.06.0189, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 09/06/2021, data da publicação: 09/06/2021; Apelação Cível - 0004597-16.2017.8.06.0085, Rel. Desembargador(a) LISETE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento: 29/08/2022, data da publicação: 29/08/2022. &#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade, em CONHECER e do recurso para DAR-LHE PROVIMENTO, nos termos do voto do relator. </p><p style="text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; </p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: justify;"> &#160; </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p class="TextbodyWW" style="margin-top: .05pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Trata-se de apelação cível interposta pelo Município de Quixadá em face de sentença prolatada pelo Juízo da 2ª Vara Cível da Comarca de Quixadá.</p><p class="TextbodyWW" style="margin-top: .15pt; margin-right: 5.85pt; margin-bottom: 0cm; margin-left: 5.05pt; text-

Processo	3001332-38.2023.8.06.0151
	align: justify; text-indent: 3.0cm; line-height: 200%;"> Ação (Id. 15399788): de obrigação de fazer e de pagar ajuizada por Maria do Socorro Lino contra o Município de Quixadá, objetivando a concessão do piso nacional do magistério.</p><p class="TextbodyWW" style="margin-top: 0cm; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Sentença (Id. 15399827): proferida nos seguintes termos: “JULGO&#160;PARCIALMENTE&#160;PROCEDENTES os pedidos autorais, resolvendo o mérito da demanda, nos termos do art. 487, I do CPC, para CONDENAR o Município de&#160;Quixadá&#160;à OBRIGAÇÃO DE PAGAR consistente no adimplemento das diferenças salariais decorrentes da não observância do piso nacional do magistério da requerente, correspondente a 20 horas semanais em exercício de cargo efetivo, durante o período de&#160;agosto&#160;a dezembro&#160;de 2019&#160;e fevereiro a abril de 2020, o que deve refletir sobre as demais verbas cujos valores tem como base de cálculo o vencimento base do professor (13º salário e adicional de férias). Deverá incidir a taxa SELIC para correção monetária e juros de mora, nos termos do artigo 3º da Emenda Constitucional nº 113/20213, razão pela qual deixo de considerar a planilha apresentada pela parte autora, que utilizou também o IPCA-E. Condeno, por fim, o Município de&#160;Quixadá&#160;em honorários de&#160;sucumbência que fixo no valor de 01 (um) salário mínimo, considerando que o valor da condenação foi irrisório, o que faço por apreciação equitativa, na forma do §8º, do art. 85,do CPC, com fundamento nos critérios do § 2º do mesmo artigo. Isento o Município de&#160;Quixadá/CE do pagamento de custas processuais, por força do art. 5º, I, da Lei Estadual nº 16.132/2016.&#160;Processo não submetido à remessa necessária, tendo em vista que o valor da condenação é inferior a 100 (cem) salários-mínimos (art. 496, §3º, III, do CPC)”.</p><p class="TextbodyWW" style="margin-top: .2pt; margin-right: 6.1pt; margin-bottom: 7.0pt; margin-left: 5.05pt; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Razões recursais (Id. 15399831): alega o ente público, em síntese, que a autora, por ser contratada temporariamente para a função de professora do Município, não faz jus ao pagamento do piso nacional do magistério, direito reservado aos servidores efetivos, motivo pelo qual requer a reforma da sentença, com o julgamento improcedente da ação.</p><p class="StandardWW" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Regularmente intimada (Id. 15399833), a parte recorrida deixou de apresentar contrarrazões .</p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p class="StandardWW" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Parecer da Procuradoria Geral de Justiça (Id. 15538082): deixou de se manifestar acerca do mérito, por entender ausente o interesse público na demanda.</p><p class="StandardWW" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É o relatório.</p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO </p><p style="text-align: center;"> <br /> </p><p class="TextbodyWW" style="margin-bottom: 0cm; text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Presentes os requisitos de admissibilidade, conheço do recurso de apelação.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> A controvérsia recursal consiste em saber se a parte autora, professora contratada temporariamente pelo município, tem direito à percepção do piso salarial da categoria, previsto na Lei Federal nº 11.738/2008. &#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> <span style="background-image: initial; background-position: initial; background-size: initial;

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	background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;">O art. 1º da referida lei regulamenta o piso salarial profissional nacional para os profissionais do magistério público da educação básica a que se refere a alínea “e” do inciso III, do caput do art. 60, do Ato das Disposições Constitucionais Transitórias. &#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> O § 2º do art. 2º, por sua vez, impõe a observância do piso salarial nacional para os profissionais do magistério público da educação básica que integrem a “carreira de magistério”, o que pressupõe a efetividade no serviço, provimento no cargo público, fazendo distinção, portanto, quanto a servidores temporários. &#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Assim, o referido piso salarial alcança tão somente os professores concursados (art. 37, II, da CF), ocupantes de cargo ou emprego público. &#160; </p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> O caso dos autos trata de servidora temporária, detentora apenas de função pública (art. 37, IX da CF), consoante contratos temporários firmados entre a autora e o Município de Quixadá (Id. 15399807 ao Id. 15399809) e fichas financeiras (Id. 15399810 ao Id. 15399811). Assim, não faz jus a autora à concessão do piso salarial nacional do Magistério, por ser servidora contratada, e não efetiva. </p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Nesse sentido, cito julgados desta Corte de Justiça, no âmbito das três Câmaras de Direito Público, assim ementados, in verbis: &#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> REEXAME NECESSÁRIO AVOCADO E APELAÇÃO CÍVEL. CONSTITUCIONAL. ADMINISTRATIVO. CONTRATO TEMPORÁRIO PARA EXERCER A FUNÇÃO DE PROFESSOR. PISO NACIONAL DOMAGISTÉRIO. PERCEPÇÃO APENAS POR SERVIDOR PÚBLICO. ART. 1º DA LEI Nº 11.738/2008. IMPOSSIBILIDADE DE CONCESSÃO NO PRESENTE CASO. SENTENÇA MODIFICADA PARA JULGAR IMPROCEDENTE A DEMANDA. <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">APELO NÃO CONHECIDO. RAZÕES DE APELAÇÃO INSUFICIENTES À IMPUGNAÇÃO DA SENTENÇA. APLICAÇÃO DO ART. 1.010, III DO CPC. 1. Tratam os autos de reexame necessário e apelação cível em face de sentença que julgou parcialmente procedente o pedido formulado, a fim de condenar o Município de Guaraciaba do Norte ao pagamento dos valores relativos às diferenças salariais devidas em razão do Piso Nacional do Magistério, fixado pela Lei Federal nº 11.738/2008. 2. A jurisprudência desta e. Corte de Justiça firmou entendimento no sentido de que "a Lei Federal nº 11.738/2006 que instituiu piso salarial profissional nacional para os profissionais do magistério alcança tão somente os professores concursados (art. 37, IX CF), não sendo o caso da autora, que tem vínculo contratual junto ao Município" (APC 0000039-77.2017.8.06.0189; Relator (a): INACIO DE ALENCAR CORTEZ NETO; Comarca: Santa Quitéria; Órgão julgador: 3ª Câmara de Direito Público; Data do julgamento: 28/06/2021; Data de registro: 28/06/2021). 3. Portanto, uma vez que o vínculo estabelecido entre as partes fora de natureza precária, não há que se falar em pagamento de acordo com o Piso Nacional do Magistério, devendo, portando, ser reformada a sentença de primeiro grau de jurisdição nesta parte. 4. Ao interpor o recurso apelatório, o insurgente aduziu argumentos que não detêm qualquer relação com os fundamentos da sentença recorrida, restando inobservado, portanto, o Princípio da Dialeticidade. 5. A este respeito, é pacífico entendimento segundo o qual o recurso deve rebater, de maneira precisa e direta, as razões utilizadas pelo Julgador para embasar o seu convencimento, sob pena de não conhecimento da insurgência. - Apelação não conhecida. - Reexame Necessário conhecido para modificar a sentença, a fim de

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	afastar a condenação no pagamento de valores em conformidade com o Piso Nacional do Magistério julgando, deste modo, improcedente o pedido autoral. - Sentença reformada. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos de Reexame Necessário e Apelação Cível nº 0009952-10.2017.8.06.0084, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do reexame necessário para modificar a sentença de primeiro grau, a fim de afastar a condenação do pagamento das diferenças salariais, julgando, deste modo, improcedente o pleito e não conhecer da apelação interposta, nos termos do voto da Relatora. Fortaleza, 23 de agosto de 2021. DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora (Apelação Cível - 0009952-10.2017.8.06.0084, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 23/08/2021, data da publicação: 23/08/2021)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> APELAÇÃO CÍVEL. REEXAME NECESSÁRIO. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA DE COBRANÇA. PRETENSÃO DE RECEBER DIFERENÇA PISO SALARIAL PARA PROFESSOR LEI FEDERAL Nº 11.738/2008 <span style="font-size: 10.0pt; line-height: 200%; font-family: &quot;Arial&quot;,sans-serif;">E LEI MUNICIPAL Nº 240/2011, 13º SALÁRIO, FÉRIAS. 1/3 CONSTITUCIONAL. CONTRATO TEMPORÁRIO CONSIDERADO NULO. INVESTIDURA SEM CONCURSO PÚBLICO. NÃOIDENTIFICAÇÃO DE NECESSIDADE DE ATENDIMENTO A INTERESSE PÚBLICO EXCEPCIONAL. ART. 37, IX, CF/88. SALDO SALARIAL. VERBA DEVIDA. REMESSA OFICIAL CONHECIDA E DESPROVIDA. SENTENÇA MANTIDA. 1. Cuida-se de Reexame Necessário da sentença que julgou parcialmente procedente Ação de Cobrança, condenando o Município de Catunda ao pagamento das diferenças do salário mínimo com a ressalva da prescrição quinquenal, acrescido de juros de mora de acordo com o art. 1º-F da Lei nº 9.494/97, com relação dada pela Lei nº 11.960/2009, a partir da citação e correção monetária com base no IPCA-E, a partir do momento em que a verba deveria ter sido paga. Julgou improcedente os pedidos de férias, terço constitucional de férias e décimo terceiro. 2. A autora, admitida pelo Município de Catunda por contrato de trabalho temporário, para exercer a função de professora no ano de 2015 e agente administrativo no ano de 2016, recebeu remuneração inferior ao piso salarial fixado para os professores pela Lei Federal nº 11.738/2008 e pela Lei Municipal nº 240/2011. Pleiteia, portanto, a diferença do piso salarial, 13º salário, férias e 1/3 de férias, devidamente atualizados. 3. A Constituição da República Federativa do Brasil de 1988, em seu art. 37, IX, garante a possibilidade de contratação por tempo determinado no âmbito do Poder Público para atender à necessidade temporária e excepcional do interesse público, forma de admissão de agentes públicos diversa do concurso público e da nomeação para cargos em comissão. 4. O Supremo Tribunal Federal, emsede de Repercussão Geral, RE nº 765320 RG/MG, rel. Min. Teori Zavascki, Tribunal Pleno, 15.09.2016, decidiu que a contratação por tempo determinado para atendimento de necessidade temporária de excepcional interesse público realizada em desconformidade com os preceitos do art. 37, IX, da Constituição Federal não gera quaisquer efeitos jurídicos válidos emrelação aos servidores contratados, com exceção do direito à percepção dos salários referentes ao período trabalhado e, nos termos do art. 19-A da Lei 8.036/1990, ao levantamento dos depósitos efetuados no Fundo de Garantia do Tempo de Serviço – FGTS. 5. O Supremo Tribunal Federal firmou entendimento, em tese de Repercussão Geral -Tema 551- no recente julgamento do RE 1.066.677/MG, assim decidindo: "Servidores temporários não fazem jus a décimo terceiro salário e férias remuneradas acrescidas do terço constitucional, salvo (I) expressa previsão legal e/ou contratual emsentido contrário, ou (II) comprovado desvirtuamento da contratação temporária pela Administração Pública, em razão de sucessivas e reiteradas renovações e/ou prorrogações" 6. Na hipótese, resta reconhecida a nulidade das contratações temporárias e precárias do ente público com a requerente, gerando tão somente, a título de efeitos jurídicos, o direito a percepção das diferenças do salário mínimo, do período contratual efetivamente trabalhado, deixando de realizar o levantamento dos depósitos realizados no FGTS, tendo em vista a ausência de requerimento autoral, em sede de exordial, afastando, destarte, o pagamento das verbas relativas ao adicional por tempo de serviço, ao 13ª salário, as férias e terço constitucional das férias. 7. O piso salarial profissional nacional para os profissionais do magistério, alcança tão somente os professores concursados (art. 37, II da CF), ocupantes de cargo ou emprego público, o que não se aplica ao presente caso, por se tratar de servidora temporária, detentora apenas de função pública (art. 37, IX da CF). 8. Remessa Necessária conhecida e desprovida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, conhecer do Reexame Necessário, para negar-lhe provimento, nos termos do voto da Relatora, parte deste. Fortaleza, dia e horário registrados no sistema. MARIA IRANEIDE MOURA SILVA Presidente do Órgão Julgador e Relatora (Remessa

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	Necessária Cível - 0000054-75.2019.8.06.0189, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 09/06/2021, data da publicação: 09/06/2021)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> CONSTITUCIONAL. ADMINISTRATIVO. PROCESSUAL CIVIL. APELAÇÃO CÍVEL EM AÇÃO DE COBRANÇA. AUTORA ADMITIDA TEMPORARIAMENTE PARA O EXERCÍCIO DA FUNÇÃO DE PROFESSORA. CONTRATO TEMPORÁRIO DECLARADO NULO. PISO SALARIAL NACIONAL DAS CARREIRAS DO MAGISTÉRIO (LEI FEDERAL N. 11.738/2008). INAPLICABILIDADE À HIPÓTESE. PRECEDENTES DAS CÂMARAS DE DIREITO PÚBLICO DO TJCE EM CASOS ANÁLOGOS. DIFERENÇAS SALARIAIS INDEVIDAS. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. HONORÁRIOS ADVOCATÍCIOS MAJORADOS. SUSPENSÃO DA EXIGIBILIDADE PRESERVADA. ACÓRDÃO Vistos, relatados e discutidos estes autos de Apelação Cível n. 0004597-16.2017.8.06.0085, ACORDA a 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, conhecer e negar provimento ao recurso, nos termos do voto da Relatora, parte integrante deste. Fortaleza/CE, 29 de agosto de 2022. (Apelação Cível - 0004597-16.2017.8.06.0085, Rel. Desembargador(a) LISETE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento: 29/08/2022, data da publicação: 29/08/2022)</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> E desta Relatoria: Apelação/Remessa Necessária&#160;nº 0003084-38.2019.8.06.0151, 3ª Câmara Direito Público, data do julgamento:&#160; 22/05/2023, data da publicação:&#160; 23/05/2023.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> Diante do exposto, conheço da apelação para dar-lhe provimento, a fim de reformar a sentença de primeiro grau, para julgar improcedente a demanda, invertendo-se os ônus sucumbenciais, para condenar a parte autora nos honorários advocatícios, estes fixados em 10% (dez por cento) sobre o valor atualizado da causa (art. 85, §2º, do CPC), com exigibilidade suspensa, por ser a autora beneficiária da justiça gratuita (art. 98, §3º do CPC).</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; É como voto.</p><p class="Standard" style="text-align: justify; text-indent: 3.0cm; line-height: 200%;"> &#160; Fortaleza/CE,&#160; data e hora indicadas no sistema.</p><p style="text-indent: 8%; text-align: justify;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> </p><p style="text-align: center;"> <strong style="font-size: small;"> Relator </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	150
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Equivalência salarial
Polo ativo	MUNICIPIO DE CAMOCIM
Advogado(s) - Polo ativo	Não informado
Polo passivo	JOSE WILSON ARAUJO PEREIRA
Advogado(s) - Polo passivo	JOAO VICTOR DA SILVA MONTEIRO - (CE49137-B)
Terceiros	Não informado

Processo	3000433-09.2024.8.06.0053
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;&#160;&#160; </p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-c0ac635f-7fff-7191-d28c-7dc2f72589bf" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo nº 3000433-09.2024.8.06.0053 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Município de Camocim</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: José Wilson Araújo Pereira</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ementa: Direito administrativo. Apelação cível. Efeito suspensivo não concedido. Preliminarmente: inovação recursal. Matéria não apreciada pelo juízo de origem. No mérito: adicional por tempo de serviço pago a menor ao servidor. Anuênio devido na razão de 18%. Município de Camocim. Recurso parcialmente conhecido e desprovido.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">I. Caso em exame <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

Processo	3000433-09.2024.8.06.0053
	wrap;">&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 1. Apelação cível interposta pelo ente público contra sentença que deu procedência à pretensão autoral de servidor público, para determinar o pagamento de diferença devida nos adicionais por tempo de serviço vencidos e não prescritos até o ajuizamento da ação.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">2. Estão presentes as seguintes questões em discussão: i) o recebimento do recurso com efeito suspensivo; ii) a inovação recursal de parte dos argumentos apresentados pelo recorrente; iii) a legalidade e a porcentagem devida dos anuênios ao servidor público; iv) a eficácia do dispositivo na legislação municipal; e v) a alegação de grave impacto financeiro da sentença nas contas municipais.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 3. Preliminarmente, a parte recorrente apresentou argumentos que não foram discutidos na primeira instância, configurando inovação recursal. Apelação parcialmente conhecida.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 4. Rejeitado o recebimento do recurso com efeito suspensivo, vez que a parte apelante deixou de apresentar relevante fundamentação que comprovasse risco de dano grave ou de difícil reparação ou probabilidade de provimento recursal.&#160;&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 6. No mérito, o servidor público comprovou fazer parte do quadro de servidores efetivos do Município de 2003 até o presente momento e que recebia anuênio a menor, não condizente com os anos completos de serviço público.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 7. A norma do art. 69 da Lei Municipal n.º 537/1993 de Camocim previu o pagamento de adicional por tempo de serviço em 1% por ano trabalhado ao servidor público.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant:

Processo	3000433-09.2024.8.06.0053
	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">8. Apesar de o dispositivo ter sido revogado em 2021, o direito ao anuênio foi incorporado e passou a integrar o patrimônio jurídico daqueles servidores que implementaram os requisitos legais para tanto durante a vigência da lei instituidora.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 9. A norma presente no art. 69 da Lei Municipal n.º 537/1993 é suficiente para a sua vigência, eficácia e aplicação, não havendo necessidade de lei específica para tratar da vantagem.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">10. A jurisprudência consolidada do Superior Tribunal de Justiça é no sentido de que os direitos e as vantagens dos servidores públicos previstos na legislação não podem ser cessados com fundamento em alegações genéricas de incapacidade financeira.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> IV. Dispositivo e tese</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">11. Apelação cível parcialmente conhecida e, nessa extensão, desprovida.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> __________</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Dispositivos relevantes citados: Lei Municipal nº 537/1993, art. 69.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgInt no AgInt no REsp n. 1.431.119/RN, Rel. Sérgio Kukina, Primeira Turma, j. 7/10/2019.</p><p> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, conhecer parcialmente da Apelação Cível para, nesta extensão, negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 72pt;

Processo	3000433-09.2024.8.06.0053
	text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160; RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE CAMOCIM em face da sentença proferida pelo Juízo da 2ª Vara da Comarca de Camocim que, nos autos da Ação de Obrigação de Fazer c/c Cobrança proposta por JOSÉ WILSON ARAÚJO PEREIRA em desfavor do ente público, julgou procedente a pretensão autoral, nos termos do dispositivo abaixo transcrito (id. 15404101):</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Diante do exposto, JULGO PROCEDENTE o pedido para extinguir o processo com resolução de mérito e condenar a Municipalidade:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> A) a incorporar ao salário do(a) Autor(a) o adicional por tempo de serviço (anuênios) à razão de 1% por ano de efetivo exercício no serviço público, perfazendo o percentual de 18%, considerando a extinção/revogação do adicional em maio/2021.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> B) a pagar

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	ao(à) Autor(a) as parcelas vencidas não prescritas, a partir de abril de 2019. A correção monetária se dará pelo IPCA-E e juros de mora conforme a remuneração oficial do índice da caderneta de poupança, conforme os REsp 1.492.221, 1.495.144 e 1.495.146. A partir de 9/12/2021, deverá incidir exclusivamente a Taxa SELIC, uma única vez, pois abrange, em si, os juros moratórios e a correção monetária, até o efetivo pagamento, acumulado mensalmente, nos termos da Emenda Constitucional nº 113/2021.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Presentes os requisitos do artigo 300, do CPC, tenho que deve ser concedida a tutela de urgência pretendida visto que os documentos coligidos aos autos indicam a probabilidade do direito do(a) autor(a), pois evidenciam o preenchimento dos requisitos legais para o direito ao adicional, conforme acima delineado. No mesmo sentido, há também urgência no pedido, consistente em fornecimento de verba alimentar necessária para a sobrevivência do(a) autor(a).</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Por conseguinte, CONCEDO a tutela provisória para impor à parte ré a obrigação de implantar, em até 30 (trinta) dias, o adicional por tempo de serviço (anuênio), sob pena de astreinte diária de R$ 100,00 (cem reais), limitada a multa em R$ 20.000,00 (vinte mil reais).</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Isenção de custas em relação ao Município (art. 10 da Lei Estadual 12.381/94).</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Condeno o Município sucumbente em honorários advocatícios cujo percentual deverá ser fixado quando liquidado o julgado, nos termos do artigo 85, § 4º, II do CPC.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Depreendo por simples estimativa que o valor da condenação não ultrapassará a 100 (cem) salários mínimos. Deixo, portanto, de submeter a presente sentença ao reexame necessário, o que faço com base no art. 496, §3º, III do CPC.</p><p style="line-height: 1.2; margin-

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	left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões recursais (id. 15404103), o Município alegou que a Lei Municipal nº 537/1993 só teria sido publicada em agosto de 2008, momento em que entra em vigor, não podendo atingir acordos anteriores à sua publicação; que é necessária a edição de lei específica sobre o assunto, estabelecendo o percentual adequado ao adicional; e que a decisão recorrida impacta o orçamento do Município, cujos recursos financeiros não estão suprindo de forma adequada com o custo mensal das políticas voltadas à coletividade.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por fim, requereu a aplicação de efeito suspensivo à Apelação, nos termos do art. 1.012 do CPC, sob o fundamento de que a decisão de primeiro grau afetaria as finanças do ente público e prejudicaria o funcionamento da máquina administrativa.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em sede de contrarrazões (id. 15404107), a parte embargante aduziu que a lei regulamentadora do adicional por tempo de serviço estava plenamente vigente ao tempo da prestação do serviço e que, portanto, ao autor faz jus ao recebimento dos valores pleiteados. Ademais, alega que a revogação dos dispositivos da Lei Municipal nº 537/1993 pela Lei nº 1.528/2021 não têm efeitos sobre o objeto do feito, vez que os adicionais por tempo de serviço foram incorporados ao patrimônio jurídico da parte, razão pela qual pediu pelo desprovimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Por fim, consigno que deixei de abrir vistas dos autos à Procuradoria-Geral de Justiça, uma vez que não há interesse público primário que justifique sua intervenção, conforme já reconhecido pelo próprio Parquet por meio de pareceres emitidos em processos análogos, envolvendo a mesma temática e município, que tramitam sob o crivo desta relatoria (0200968-73.2022.8.06.0053; 3000915-88.2023.8.06.0053; 0200208-90.2023.8.06.0053).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Compulsando os autos para análise dos requisitos de admissibilidade da Apelação, verifica-se que esta merece ser conhecida apenas parcialmente, pois o Município de Camocim utilizou argumentos em seu recurso que não foram submetidos anteriormente ao juízo a quo<span

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	style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Não obstante o ente público ter alegado que “ Foi explicitado, ainda em sede de contestação que ‘o patamar requerido pelo(a) servidor(a), encontra-se parcialmente prescrito, ficou consignado também que a Lei Municipal nº 537 (Regime Jurídico Único) foi sancionada em agosto de 1993, sendo, porém, publicada apenas em 06 de junho de 2008, não regulando, assim, a matéria em epígrafe’ ” (página 5 - id. 14504103), da leitura da peça de defesa de id. 15404096 não se extrai nenhuma menção à data de publicação da Lei Municipal nº 537/1993 e a ausência de vigência da legislação de 1993 a 2008.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Em verdade, o Município apenas afirma que o mencionado normativo teve seus dispositivos revogados pela Lei Municipal nº 1.528/2021 e que “a partir de 17 de maio de 2021, data de publicação e início da produção de efeitos (eficácia) da Lei Municipal n°1528/2021, de 17 de maio de 2021, o regime jurídico dos servidores de Camocim foi alterado, restanto (sic) revogadas a gratificação por exercício da função de confiança, o adicional por tempo de serviço e a licença prêmio” (página 4 - id. 15404096).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> E mais: “ Portanto, é ilegítimo o pleito dos servidores no que pertine à incorporação de vantagens previstas em artigos já revogados do Estatuto dos Servidores Municipais de Camocim, em razão da superveniência da Lei que extirpou os benefícios pleiteados pelos servidores do regime jurídico único, ou seja, a partir de 17 de maio de 2021 (Lei Municipal n°1528/2021, de 17 de maio de 2021) os agentes públicos municipais não tem mais direito à incorporação de referidas vantagens em seu patrimônio, com esteio no entendimento consolidado das nossas cortes superiores sobre a matéria em debate ” (página 6 - id. 15404096).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Durante toda a contestação, o ente público réu utiliza-se dos dispositivos da Lei Municipal nº 537/1993, inclusive trazendo aos autos o normativo em sua integralidade (id. 15404100), sem menção ou comprovação de que este não tenha entrado em vigor na data de 02 de agosto de 1993.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Sendo assim, por óbvio, não poderia o juízo de origem se debruçar sobre tais argumentos, visto que não foram levantados nos autos durante o processo de conhecimento. Consequentemente, a apreciação dos argumentos expostos diretamente no segundo grau de jurisdição implicaria em flagrante supressão de instância, considerando que o Tribunal ad quem fica impossibilitado de conhecer de questões não apreciadas em primeiro grau. Nesse sentido: Agravo de Instrumento - 0622656-54.2023.8.06.0000, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 09/10/2023, data da publicação: 10/10/2023.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Feitas tais considerações, não conheço dos mencionados tópicos do recurso, pois tratam de inovação recursal, conheço-o, porém, quanto às demais teses arguidas, pelo que passo a analisá-las.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Inicialmente, trato do pedido de recebimento da Apelação com efeito suspensivo, amparado no art. 1.012, §1º, V, c/c §§ 3º, I, e 4º do Código Processual Civil.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 1.012. A apelação terá efeito suspensivo.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 1º Além de outras hipóteses previstas em lei, começa a produzir efeitos imediatamente após a sua publicação a sentença que:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I - homologa divisão ou demarcação de terras;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify;

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	margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - condena a pagar alimentos;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III - extingue sem resolução do mérito ou julga improcedentes os embargos do executado;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV - julga procedente o pedido de instituição de arbitragem;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">V - confirma, concede ou revoga tutela provisória;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VI - decreta a interdição.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">§ 2º Nos casos do § 1º, o apelado poderá promover o pedido de cumprimento provisório depois de publicada a sentença.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 3º O pedido de concessão de efeito suspensivo nas hipóteses do § 1º poderá ser formulado por requerimento dirigido ao:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">I - tribunal, no período compreendido entre a interposição da apelação e sua distribuição, ficando o relator designado para seu exame prevento para julgá-la;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - relator, se já distribuída a apelação.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">§ 4º Nas hipóteses do § 1º, a eficácia da sentença poderá ser suspensa pelo relator se o apelante demonstrar a probabilidade de provimento do recurso ou se, sendo relevante a fundamentação, houver risco de dano grave ou de difícil reparação. (destaca-se)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Conquanto o CPC determine que a regra geral dos efeitos da Apelação é de que esta seja recebida com duplo efeito, devolutivo e suspensivo, o §1º do art. 1.012 da legislação apresenta rol de hipóteses em que a sentença começa a produzir efeitos após sua publicação de forma imediata.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">No caso em questão, a sentença de id. 15404101 concedeu a tutela provisória requerida pelo autor, no sentido de " impor à parte ré a obrigação de implantar, em até 30 (trinta) dias, o adicional por tempo de serviço (anuênio), sob pena de astreinte diária de R$ 100,00 (cem reais), limitada a multa em R$ 20.000,00 (vinte mil reais) ", enquadrando-se, portanto, na hipótese do inciso V do §1º do art. 1.012.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Nesse sentido é que a municipalidade requereu o recebimento do recurso com efeito suspensivo, nos termos do art. 1.012, §4º do CPC, sob o fundamento de a decisão de primeiro grau ensejar dano grave ou de difícil reparação ao ente público, por supostamente onerar de forma drástica os cofres públicos e criar precedente temeroso em favor dos servidores. Ademais, alega-se que o Município sofreu redução vultosa em relação ao Fundo de Participação dos Municípios - FPM, em razão de crise econômica no país.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Dispõe o mencionado §4º do dispositivo que, para possibilitar a suspensão da eficácia da sentença, é necessário que o recorrente demonstre: a probabilidade de provimento do recurso ou se, sendo relevante a fundamentação, houver risco de dano grave ou de difícil reparação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Entendo que o Município de Camocim não preencheu nenhum desses requisitos. Isso porque, conforme veremos a seguir, não há probabilidade do direito a seu favor, vez que o adicional por tempo de serviço estava presente na legislação municipal desde 1993 e, portanto, sendo pago normalmente aos seus servidores.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

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	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Quanto ao risco de dano grave ou de difícil reparação, o ente público não apresentou relevante fundamentação ou comprovação de incapacidade financeira de arcar com os valores cobrados pelo autor. Cumpre salientar que alegações genéricas de dificuldades financeiras não possuem o condão de afastar a eficácia da sentença ou a obrigação de pagamento de verbas.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Diante disso, rejeito o pedido de concessão de efeito suspensivo à presente Apelação. Passo a analisar o mérito do caso concreto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O cerne da controvérsia cinge-se em aferir se o servidor público faz jus ao recebimento de adicional por tempo de serviço referente ao período de vigência do art. 69 da Lei Municipal nº 537/1993, posteriormente revogado pela Lei Municipal nº 1.528/2021.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Confira-se a redação do dispositivo da legislação municipal que assegurava o benefício:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 47 – Vencimento é a retribuição pecuniária pelo exercício de cargo público, com valor fixado em lei.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Parágrafo Único – Nenhum servidor perceberá a título de vencimento, importância inferior ao salário mínimo, admitida no entanto, a percepção de vencimento proporcional a carga horária.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 69 – O adicional por tempo de serviço é devido à razão de 1 % (um por cento) por ano de serviço público efetivo, incidente sobre o vencimento de que trata o art. 47.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Parágrafo Único – O servidor fará jus ao adicional a partir do mês em que completar o anuênio. (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color:

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	transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ocorre que a Lei Municipal nº 1.528/2021 expressamente revogou o artigo 69, dentre outros, senão vejamos:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 1º Ficam revogados o inciso XIX do art. 4º, o inciso III do art. 63, o §2º e o §3º do art. 64, o art. 69, o inciso VIII do art. 90 e os artigos 102 a 108, todos da Lei nº 537, de 02 de agosto de 1993.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Descendo à realidade dos autos, verifico que o servidor público promovente comprovou que tomou posse no cargo de vigia, junto ao Município de Camocim, tendo adentrado ao quadro de pessoal do ente público em 11 de fevereiro de 2003, consoante se vê no termo de posse colacionado aos autos (id. 15403982), e que, até maio de 2021 (data da revogação do anuênio), havia prestado 18 (dezoito) anos de efetivo exercício de função pública (fichas financeiras de id. 15403983 a 15404091).</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Sendo assim, até o momento da revogação da vantagem, fazia jus ao recebimento de adicional por tempo de serviço na razão de 18% sobre seu vencimento, nos termos do art. 69 colacionado acima, o que, todavia, não era cumprido pelo ente público.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Da análise das fichas financeiras, depreende-se que, em 2024, o anuênio não só continuou sendo pago após a sua revogação, como era calculado na razão de 8% (oito por cento), ao passo que o servidor já havia completado 21 (vinte e um) anos de serviço no Município de Camocim. O mesmo equívoco se repete nos anos anteriores, de modo que o autor jamais recebeu o benefício em sua razão correta, conforme os anos completos de exercício no cargo.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Tais informações configuram fatos incontroversos nos autos, porquanto o ente público se limitou a alegar ausência de previsão legal vigente para a concessão, ausência de direito adquirido e o limite de gastos da municipalidade com seus servidores, olvidando acostar documentação apta a comprovar fato que modificasse, impedisse ou extinguisse o direito vindicado (art. 373, II, CPC).</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Sendo assim, tem-se que, até a revogação do adicional por tempo de serviço pela Lei Municipal nº 1.528, de 17 de maio de 2021, o servidor já havia completado 18 (dezoito) anos de serviço público, fazendo jus ao recebimento de anuênio de 18% (dezoito por cento) sobre seus vencimentos, conforme o artigo 69 da Lei Municipal nº 537/1993.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">O caso em questão não se trata, portanto, de reconhecimento de direito adquirido a regime jurídico para servidor, mas cobrança de benefícios devidos ao promovente e não garantidos pela Administração Pública. Dessa forma, apesar de revogado em 2021, o direito ao anuênio progressivo nas razões expostas foi incorporado e passou a integrar o patrimônio jurídico daqueles servidores que implementaram os requisitos legais para tanto durante a vigência da lei instituidora, a partir de 1993<span

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	style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Não havendo que se falar em ausência de eficácia ou vigência da legislação em questão ou mesmo da necessidade de legislação específica sobre o assunto, vez que o art. 69 do Regime Jurídico Único dos servidores públicos de Camocim previu de forma expressa e suficiente o benefício do adicional por tempo de serviço, sua base cálculo, bem como as formas de cálculo e de pagamento, tendo eficácia plena.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No mesmo sentido, é a jurisprudência do TJCE:</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> SERVIDOR PÚBLICO DO MUNICÍPIO DE CAMOCIM. PRINCÍPIO DA LEGALIDADE. ARTIGO 69, DA LEI MUNICIPAL Nº 537/1993 (ESTATUTO DOS SERVIDORES DO MUNICÍPIO DE CAMOCIM/CE) GRATIFICAÇÃO A CADA ANUÊNIO DE EFETIVO SERVIÇO. POSTERIOR REVOGAÇÃO DA NORMA. SUPERVENIÊNCIA DE LEI NÃO OPERA EFEITOS RETROATIVOS. ENTE MUNICIPAL NÃO DE DESINCUMBIU DO SEU ÔNUS PROBATÓRIO. ART. 373, II, DO CPC. PRECEDENTES DO STJ E DO TJCE. FIXAÇÃO DA NORMA NO ÁTRIO DA PREFEITURA. VALIDADE. CORREÇÃO MONETÁRIA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA REFORMADA DE OFÍCIO APENAS NO TOCANTE AOS CONSECTÁRIOS DA CONDENAÇÃO.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1 - Insurge-se a apelante contra a sentença que julgou procedente a Ação de Obrigação de Fazer, a qual condenou o município a incorporar ao salário do autor o adicional por tempo de serviço (anuênios) à razão de 1% por ano de efetivo exercício no serviço público, perfazendo o percentual de 18%, além de pagar ao autor as parcelas vencidas não prescritas, a partir de maio de 2018.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2 - Não merece prosperar a alegação do recorrente, no sentido de que, apesar da Lei Municipal nº 537 ter sido sancionada no ano de 1993, somente teria sido publicada em agosto de 2008, haja vista a plena validade da publicação de leis e dos atos administrativos municipais através da afixação na sede da prefeitura.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3 - Acerca da matéria, a questão de fundo em apreço trata de analisar se o apelante faz jus ao recebimento de anuênio no importe de 1% a mais por ano a partir de 2003 até o percentual de 18% em 2021, data de revogação da lei.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4 - Ainda que revogado esse benefício por lei posterior, no caso pela Lei nº 1.528/2021, tal fato não exclui o direito dos servidores que implementaram os requisitos exigidos para sua fruição antes da sua revogação. Em outras palavras, posterior revogação da norma não possui o condão de prejudicar direito já incorporado ao patrimônio jurídico do servidor.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5 - Conforme se depreende do caso, o apelado tomou posse no cargo

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	de Vigia em 10/02/2003, portanto, faz jus ao recebimento de 18% a título de adicional, nos termos da Lei Municipal nº 537/93. O referido dispositivo legal era autoaplicável, isto é, prescindia de regulamentação por outro ato normativo para produzir seus efeitos, e estabelecia como único requisito para a concessão de tal vantagem o efetivo exercício do serviço público pelo prazo de 01 (um) ano.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6 - Incumbia à Administração Pública demonstrar, nos termos do art. 373, inciso II do CPC/2015, que o servidor não teria exercido suas atividades, ininterruptamente, desde que tomou posse no cargo, ou que existiria alguma outra razão legítima para que não lhe fosse concedido o adicional por tempo de serviço por determinado período.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7 - No que concerne ao alegado impacto financeiro que poderia causar o pagamento do adicional por tempo de serviço ao promovente, não merece respaldo, haja vista que o Superior Tribunal de Justiça possui iterativa jurisprudência no sentido de que empecilhos de ordem financeira ou orçamentária não podem ser utilizados com vistas a afastar o direito dos servidores públicos quanto à percepção de vantagem legitimamente assegurada por lei.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 8 - Em relação aos índices de atualização dos valores devidos, por se tratarem de matéria de ordem pública, há ser observado, in casu, o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação, em 09/12/2021.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 9 - A sentença merece ser reformada de ofício apenas no que concerne aos consectários da condenação.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 10 - Recurso conhecido e desprovido.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 02004816920238060053, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 29/04/2024)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> SERVIDORA PÚBLICA DO MUNICÍPIO DE CAMOCIM.&#160; ADICIONAL POR TEMPO DE SERVIÇO (ANUÊNIO).&#160; PREVISÃO NA LEI MUNICIPAL Nº 537/93. PUBLICAÇÃO DA LEI MEDIANTE AFIXAÇÃO EM LOCAL PÚBLICO (ÁTRIO DA PREFEITURA). VALIDADE DO ATO.&#160; EFICÁCIA PLENA E AUTOAPLICABILIDADE DA NORMA. PRESSUPOSTOS LEGAIS ATENDIDOS. PROCEDÊNCIA DA PRETENSÃO. DIFICULDADE FINANCEIRA OU ORÇAMENTÁRIA NÃO ELIDE DIREITO DE SERVIDOR À VANTAGEM ASSEGURADA POR LEI. PRECEDENTES DO STJ E DESTE TJCE. JUROS DE MORA E CORREÇÃO MONETÁRIA. ENTENDIMENTO FIRMADO PELO STJ (RESP 1.495.146-MG / TEMA 905) E EMENDA CONSTITUCIONAL Nº 113/2021 (TAXA SELIC). SENTENÇA ILÍQUIDA. HONORÁRIOS ADVOCATÍCIOS. FIXAÇÃO POSTERGADA PARA A FASE DE LIQUIDAÇÃO. RECURSO VOLUNTÁRIO CONHECIDO E DESPROVIDO. SENTENÇA REFORMADA&#160; EX OFFÍCIO.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;"

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	dir="ltr"> 1.A Lei Complementar Municipal nº 537/93, que instituiu o Estatuto dos Servidores do Município de Camocim, em seu art. 69, assegura aos servidores públicos o direito ao recebimento do adicional por tempo de serviço (anuênio), à razão de 1% (um por cento) por ano, incidente sobre o vencimento do servidor, para cada ano trabalhado.&#160;&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2.Inexistindo imprensa oficial no município, é plenamente válida a publicação de atos legislativos e administrativos por meio tradicional de afixação do seu conteúdo em locais públicos, como o átrio da Prefeitura ou da Câmara Municipal.&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3.Comprovado que a autora é servidora pública municipal, e que o adicional por tempo de serviço (anuênio) não integrava seus vencimentos, em visível afronta ao art. 69 da Lei Municipal nº 537/93, imperiosa a conclusão de que faz jus à percepção do benefício pleiteado, devido a partir da vigência do referido diploma legal, para cada ano trabalhado, desde a data em que ingressou nos quadros da municipalidade, observada, todavia, a prescrição das parcelas anteriores ao quinquênio que precedeu a interposição da ação (Súmula nº 85 do STJ).&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4.É firme a jurisprudência do Superior Tribunal de Justiça, no sentido de que empecilhos de ordem financeira ou orçamentária, não podem ser utilizados como motivos para afastar direito de servidores públicos quanto à percepção de vantagem legitimamente assegurada por lei.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5.As parcelas deverão ser corrigidas, monetariamente, de acordo com o entendimento firmado pelo Superior Tribunal de Justiça, nos REsp's 1.495.146/MG, 1.492.221/PR e 1.495.144/RS, julgados sob o rito dos recursos repetitivos (Tema 905), até o dia 08/12/21, e, a partir de 09/12/2021, conforme estabelecido no art. 3º&#160; da Emenda Constitucional nº 113, de 08 de dezembro de 2021.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6.Em se tratando de decisão ilíquida, como ocorre na hipótese dos autos, a definição do percentual dos honorários advocatícios sucumbenciais somente deverá ocorrer quando da liquidação da sentença, nos termos do art. 85, §4º, inc. II, do CPC.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7.Apelação conhecida e não provida. Sentença retificada de ofício.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO CÍVEL - 00105835220148060053, Relator(a): JOSE TARCILIO SOUZA DA SILVA, 1ª Câmara de Direito Público, Data do julgamento: 04/12/2023)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> AUTO-

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	APLICABILIDADE DA NORMA QUE REGULAMENTAVA A MATÉRIA NO ÂMBITO DO MUNICÍPIO DE CAMOCIM/CE. REQUISITOS ATENDIDOS. DIREITO À IMPLANTAÇÃO DA VANTAGEM EM PERCENTUAL CORRESPONDENTE AO NÚMERO DE ANOS EFETIVAMENTE TRABALHADOS ATÉ A REVOGAÇÃO DO ART. 69 DA LEI Nº 537/1993. RELAÇÃO DE TRATO SUCESSIVO. PRESCRIÇÃO QUINQUENAL. INCIDÊNCIA APENAS EM RELAÇÃO AOS SEUS EFEITOS FINANCEIROS. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA CONFIRMADA.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Cuida-se, no presente caso, de reexame necessário e apelação cível, buscando a reforma de sentença em que o magistrado de primeiro grau, em sede de ação ordinária, condenou o Município de Camocim/CE à implantação, no contracheque de servidora pública, do adicional por tempo de serviço (anuênios), em percentual correspondente ao número de anos efetivamente trabalhados até a revogação do art. 69 da Lei nº 537/1993, e ao pagamento das parcelas vencidas, desde que não atingidas pela prescrição.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. De fato, o art. 69 da Lei nº 537/1993 (Estatuto dos Servidores Públicos do Município de Camocim/CE) previa, expressamente, que o direito ao recebimento do adicional por tempo de serviço surgia, de imediato, a partir do mês subsequente àquele em que o servidor público completasse cada ano de efetivo exercício no cargo.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. E, por sua auto-aplicabilidade, essa norma não necessitava de regulamentação por qualquer outro ato, para que pudesse produzir efeitos in concreto.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Ora, facilmente se infere dos autos que, até a revogação do art. 69 da Lei nº 537/1993, a autora/apelada contava mais de 20 (vinte) anos de serviço público, e não estava percebendo a integralidade dos anuênios que lhe eram devidos. Incumbia, assim, ao réu/apelante demonstrar a existência de fato impeditivo, modificativo ou extintivo do seu direito (CPC, art. 373, II), o que, porém, não ocorreu.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Por outro lado, em se tratando aqui de uma relação de trato sucessivo em que não houve a negativa do próprio fundo de direito, a prescrição atinge apenas as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação (Súmula nº 85 do STJ).</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Ademais, a mera alegação, por parte da Administração, de indisponibilidade financeira, por si só, também não é suficiente para eximi-la do dever de satisfazer os legítimos anseios dos seus agentes, quanto ao recebimento de vantagens que lhes são salvaguardadas por lei.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Diante do que, permanecem, então, totalmente inabalados os fundamentos do decisum oriundo do Juízo a quo, impondo-se sua confirmação por este Tribunal.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> -

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	Precedentes.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Reexame Necessário conhecido.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Apelação Cível conhecida e não provida.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> - Sentença confirmada</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (APELAÇÃO / REMESSA NECESSÁRIA - 02009522220228060053, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 03/10/2023)</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por fim, quanto à alegação do Município de Camocim atinente à sua situação financeira e orçamentária, tem-se jurisprudência consolidada do Superior Tribunal de Justiça no sentido de que os direitos e as vantagens dos servidores públicos previstos na legislação não podem ser cessados com fundamento nas citadas conjunturas. N esse sentido:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">PROCESSUAL CIVIL. ADMINISTRATIVO. SERVIDOR PÚBLICO. AGRAVO INTERNO NO AGRAVO INTERNO NO RECURSO EM MANDADO DE SEGURANÇA. IMPLANTAÇÃO DE VANTAGEM PECUNIÁRIA. LIMITES ORÇAMENTÁRIOS DA LEI DE RESPONSABILIDADE FISCAL. INAPLICABILIDADE. 1. A jurisprudência do STJ firmou-se no sentido de que "'os limites orçamentários previstos na Lei de Responsabilidade Fiscal, no que se refere às despesas com pessoal do ente público, não podem servir de fundamento para o não cumprimento de direitos subjetivos do servidor' (AgInt no REsp 1.678.968/RO, 1ª T., Rel. Min. Sérgio Kukina, DJe 05.04.2018)" (AgInt no REsp 1.772.604/DF, Rel. Ministra REGINA HELENA COSTA, PRIMEIRA TURMA, DJe 23/04/2019). Nesse mesmo sentido: AgInt no RMS 60.779/SP, Rel. Ministro BENEDITO GONÇALVES, PRIMEIRA TURMA, DJe 21/08/2019; AgRg no AREsp 539.468/RN, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, DJe 19/12/2018. [...] 3. Agravo interno não provido. (AgInt no AgInt no REsp n. 1.431.119/RN, relator Ministro Sérgio Kukina, Primeira Turma, julgado em 7/10/2019, DJe de 9/10/2019.) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Desse modo, rejeito as alegações apresentadas, pois incapazes de desconstituir as razões da decisão recorrida.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt;

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	font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ante o exposto, conheço parcialmente da Apelação, para, nessa extensão, negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Determino, ainda, a majoração da condenação do Município de Camocim ao pagamento de honorários advocatícios, nos termos do art. 85, §1º e §11 do CPC, a serem definidos na fase de liquidação de sentença, nos termos do art. 85, §4º, inciso II, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 2.4; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 2.4; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	151
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE PARACURU
Advogado(s) - Polo ativo	JOSE CLEITON VIANA - (CE7455-A) BRUNA MATOS ARANHA - (CE40203-A)
Polo passivo	FRANCISCO ADEMAR MARTINS
Advogado(s) - Polo passivo	JOAQUIM HOLANDA CRUZ - (CE27145-A)
Terceiros	MARIA AURILENE MARTINS

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);"> <img class="WACImage SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 89px; height: 120px; text-wrap-mode: nowrap !important;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAFkAAAB4CAIAAAAWmclrAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAACxMAAAsUAU/bCt8AAFFrSURBVHhevb0HgB1luTc+feb0sr1vNtmSHtJJSEJCCTUUQQgdFVAEFcu13U/RT6+9N6SoKAhESggkQAikkd77Znvvp9fp/98zuyD3Kv5v/K73ze7ZOXNm3vd9fk/7Pe/MnLC2bTP/RLNsm2NZm7FYm2Xwwxm6qus6Z3OMIsk8Z9nc3p1bu04ciUYj2dioaeXVTDoxNuIvn/KJL3+7tLIM4/7wC59W9E6324vuBFYyWW14zFx+w8eXXnIp5vTKU09uefExv9sjuoKSR+YFj8sfrqqsWXLVtcXFxThd1/K6YYkCx4iSxPHYg/kwHIve8GdinufS/kkscJKl5ZPZnJHND/Z2dfe0DXd3D7Q1501t3tLLlq26uKim+lsPfmRGVaKyslJWeNHllV3SmWOtZ4/3GJ6aG+7/0qSmpq/dt/aOm5aWVFXouikIAsvpG9a9EZh80VU33fT0Y48MH3ndxajLL1/kCSj5VFKD5Fltx96eFbd+ed6ipQf37nzzpefjfa1F1fWVkyaXVk0uq5tUFC5QFMXl85ssIzAA5dzauWNhmwzLWoz9+vMv7H3jGVYd83BqZVWoqsI3OJRM5z1FpSVv72g+b/X1p3bvvPGKysraUs20GFOEtPt2H2o/2aN45dYhpnLylFTfmbV3XhkoLrVNlkMTrB2vbT3RHHW53bGRzimloVQ6dvkNlwZCAVM3eJ7lGfXllw+o4XmRng6/Ndg4raqnuXX67NJsOtPbkxyJG2lDKa2bddenvhgsLGCAxjm2c8YCYnEMjz8/+MpDMws6G2YWsCymqfA8f/Rw+7HDsalzage6h4aGx9xu+fKrFxUUhCxBYGxB5uVUKtvX1+dSPOHisCjiDNkXLGLwCQ9DZzRD1VRVTybgUNlsdmQ45vWLpWUVDKtaps7Bhaz8sf1nDx9u9bnEyprqXN5IR4ZWXzvH53PZlmVbuVxae2Pr0DUP/qS6birHT0z4v9/+CbvAP7K/n339i02FzZPqwnnV4lhBkqR02hruGRI8YmlJSag4KHoUQ+UsmiVnMrxp6gKnCLxiQDLTZE3JZGzITBMAmizCji1KtiQqAmczPCfJHGuZmq5SNOERlgye5WQBg1upRHZ0aDQyHHX5lNJyn2Uxlq5xPM9xxltvDV75wE9q66dOzPZc2rnbhWUgPsE0Hv/ZT7zxNxctrrQpUPEkMwP18smMkctqmbSazehqOp/WdAxhGjpj2Jqlmjjb5jjbMngal7MQgDnsMsntWHxkchZHTkixmRNgPOhUYiVOtjnFJcuy6EHk8XFuj4ygKwoaojgrGJauwwcTkfTzm4Y/95M/+UJFwPZc2zlj4RxN8+7v7vrtV+5cPq8gkcmkk2Y2b+f0vKZpPAu5BE7QEd1ZAfYiYq6iIAuSybEyC+FYXeQk6sWyOBKWEzgePRq2CTw5S4A3ABkIqcOAMKJhWjqPXxUeZFisxpg6Y1Le4EX0KMtuFwBSCoNi31AmIsz/1De/zQJNmue5tXP3kYmEBbtkv/OVz+Zb3wwXu2zeRO4TRNEtUxQ0bZ5DnrHgFoymW4LNZnKWAYgsC3aBEeE5UDtjw6ctnheBILQq8jAS1jBg8oDGRJYERjAbxEy3S6EELtoiz0gUaETWzhuMYBgG0ouZMvKGbulc17Dw2V8+W1lVRRGNkuu5tXPHgsDAj4CXoeH+n33lM2VKV/UkdyKhxyP5rArhTR5gsDzULSlyYaG3vycRCMglIWHII8suQYbbyzYvICgILCMJ8r49J2omlVZUlOZxsqkDNs3WOd3Oa0Y+n+dt68TxroqyMD5KpXXIj1/AKHE27xKDfiEcciP47js4PO2iB267976JaZ57+2d8hB23DYqJTCoeee6xR/o6TqZ6W2Y0eUMhl9vr8vjccGy34uJso6NrdNf21ksumz51TpNBtgEpbUgBZgRoLOJJ/JZXdjXMqK2ZUmHkdRvGwekWIqGJQMLwghUZiz39x11NU0rmLpvEMqKW0UDqEghIaQ3bew52i6XTeZZZsPKaq268hdCdaOdMt/5JLBAvcR4CPfwcztJ6+sSGn3x67e1NasqGseagVg2hXd29s6OguNoX9p093lxWovCyYmm6lsGHliiLFDZZGxY/OprxehWXIuqmAVcwDU43NcUlgqTBSvqHk43Tpmv59EBf78L5k9wBnmNFt0sAY3F5pDMnuoeFS66/4yPYhn+CAdMMnVmeaztnLODJjghAgPIgYzIw3d/+8D+43tf8YTkR00ARIafPL5843r1s9WpO1pOjyfLa6m0bt6y5dr7sFs8e70PGmLegEfw5NhLtOdOfylscx5SUBSc1lHm8vs72rrbTPVNnT/IGlPVP71mwYlk8FgVtFUXf2xs2zZhZYahGLK0pMhf0SYpL2H9G/fqTG0P+oM2iJIA4CM/GP8G1ztmQkPKoAkHCI/OwENhi8UjP8c31jWU1k0rq6osDQWXV6qmXr5lTP3VSuDj06os7tm89hGhXXhYsryoNFQRFUeREzh3wpCPR00cHPFWTp8yaXTtzZiYnHt/fLkqcy+UBy0QCLS0pDBf63F739m271z+/w+Nhp06vWrG66fo7FtZNLiop8c2YXVk2KTyjVtj++iswBHJaAEHqhRefcztnLGBKxIrAuGwTXgpK/tbG9YtnB+qnFxWX+vI50z

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	1refA/0dDvv7jRtW/kufHX9o6uz37xq7/5wzOpdN4wDHza0d5776e/9PgfnsMhiA445uDJM/d9/itP/PFZVdVtW0dIRh3kdPWvbf9PPvLfbzTSuFXbdk63Hvnto8OR+Gc+fk9BcQGiZiKd8Siy878f2hve3PHma5seuO+epqaGcc93FvD+1gj/59v/Bhbv44J4wSvVXS+/+tobW3d95aEHyksKdZ1KHkSEp1/cePzkiX+7/5PFDsWm8tupWP9xHfE/1mh2//r2ro+QU4x7DV63bd91z2e/NNQ/Bl/QNOOpFzZ84WvfTmdyzod0Av047d1T/rXtfwmL99o4KNToViXz5U2bH/r3h7OaunPvgU989su5vEYAvNv+evD/Svvf8BEa5u/5O43MMt//8c89RYWnjp3894cerKgooaRDS3zE15CJaHKm5Vxq/Ze3f/kY7wHxHujQ9vhflFGQ9YF773tt05bzpk8vr6D/nNtJzCjTkVixMc4tKWI4p/xr27/cLqh3Z4j/YhpwEkhJ1b3NHTl2vG5ybcDnHv8aHuyaSBwOSfkgs/ofbgzz/wH6OTEHS42NvgAAAABJRU5ErkJggg==" alt="" /> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Processo: 0001940-62.2019.8.06.0140 – Apelação Cível. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelante: Município de Paracuru. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8"

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelado: Francisco Ademar Martins. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ementa: Direito processual civil. Apelação cível. Execução fiscal. Extinção sem resolução do mérito por ausência de interesse de agir. Decisão surpresa. Nulidade do ato decisório. Retorno dos autos à origem. Recurso p rovido .&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse:

Processo	0001940-62.2019.8.06.0140
	preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Apelação cível interposta por ente municipal em face de sentença que extinguiu execução fiscal, sem resolução do mérito, por ausência de interesse de agir, com supedâneo no Tema de Repercussão Geral nº 1.184 c/c art.1º, §1º, da Resolução CNJ nº 547/2024. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. Questão em discussão &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em verificar se subsiste, ou

Processo	0001940-62.2019.8.06.0140
	não, o interesse de agir do ente municipal na execução judicial de débito inscrito em dívida ativa.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Inicialmente, verifica-se questão preliminar de nulidade da sentença resultante da violação ao contraditório substancial e à vedação à decisão surpresa, debate que deve anteceder a discussão sobre a possibilidade , ou não , de prosseguimento da execução fiscal em razão da presença <span class="NormalTextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0001940-62.2019.8.06.0140
	padding: 0px; user-select: text;">, ou não, do interesse de agir. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Na hipótese, o Juízo de origem proferiu a sentença vergastada, julgando extinto o processo ao fundamento de ausência de interesse processual alicerçado nas teses estabelecidas no Tema RG nº 1.184 c/c art. 1º, §1º, da Resolução CNJ nº 547/2024, sem, contudo, determinar a prévia intimação do exequente para se manifestar a respeito dessa matéria. &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. O referido procedimento representa violação aos princípios do contraditório substancial e da vedação às decisões surpresa – positivados nos arts . 9º e 10, do CPC – com evidente prejuízo ao exequente, que não teve a oportunidade de influenciar na formação da convicção do magistrado. Nessa situação, há de se considerar nula a sentença. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe

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	UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. Registra-se que não se aplica ao caso a teoria da causa madura (art. 1.013, §3º, inciso I, do CPC), visto que se mostra necessário oportunizar ao exequente a adoção das medidas indicadas no art.1º, §5º, da Resolução CNJ nº 547/2024. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV. Dispositivo &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7. Recurso provido. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 16pt; line-height: 25px; font-family: &quot;Times New Roman&quot;,

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	&quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">__________ &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dispositivos relevantes citados: Lei Federal nº 6.830/1980, arts . 2º, §1º, e 34; CPC, arts . 9º, 10 e 1.013, §3º, inciso I; Resolução CNJ nº 547/2024, art. 1º, §1º. &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color:

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	windowtext; text-align: justify;"> Jurisprudência relevante citada: STF, RE nº 1.355.208/SC, Relatora: Cármen Lúcia, Data de Julgamento: 27/06/2022, Data de Publicação: 12/07/2022 – Tema de Repercussão Geral nº 1.184; STJ, AgInt no REsp nº 2.108.615/CE, Relator: Ministra Regina Helena da Costa, Primeira Turma, Data de Julgamento: 22/04/2024, Data de Publicação: DJe 25/04/2024; TJMG , Apelação Cível nº 5006319-20.2021.8.13.0261, Relator: Des. Luiz Carlos Gomes da Mata, 13ª Câmara Cível, Data de Julgamento: 23/05/2024, Data de Publicação: 24/05/2024; TJCE, Apelação Cível nº 00505669720218060090, Relator: Inácio de Alencar Cortez Neto, 1ª Câmara de Direito Público, Data do julgamento: 10/09/2024, Data de Publicação: 11/09/2024. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color:

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	windowtext; text-align: justify;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer o r ecurso para dar-lhe provimento , nos termos do voto da Relatora, parte integrante deste.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="EOP SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;,

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	serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap:

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	break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de Apelação Cível interposta pelo MUNICÍPIO DE PARACURU contra sentença proferida pelo Juízo da Vara Única da Comarca de Paracuru que, nos autos de Execução Fiscal proposta pelo apelante em desfavor de FRANCISCO ADEMAR MARTINS, julgou extinta a demanda, sem resolução do mérito, por ausência de interesse de agir, com fundamento no art. 485, inciso IV, do CPC (ID nº 15408308). &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais (ID nº 15408312), o ente municipal sustenta que a Resolução CNJ nº 547/2024 ofende princípios basilares da democracia brasileira, pois está retirando o direito assegurado a todos de buscar a resolução de litígios através do Poder Judiciário, sob o fundamento da existência de uma grande quantidade de processos referente a execuções fiscais. Aduz que a CDA foi constituída em perfeita consonância com a legislação vigente, indicando toda a sua base legal e regulamentar de apoio, bem como, de maneira precisa e discriminada, o <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal;

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	font-size: 14pt; font-style: italic; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> quantum debeatur . Salienta que o Juízo de origem não se atentou para o disposto no art. 1º, §5º, da Resolução CNJ nº 547/2024, deixando de oportunizar ao exequente a possibilidade de requerer nos autos a não aplicação, por até 90 (noventa) dias, do §1º do citado artigo. Afirma que sempre promoveu o devido impulso processual visando a satisfação da presente execução, não tendo esta ficado paralisada ou mesmo sem diligências por mais de um ano, razão pela qual não deve ser aplicado o disposto no art. 1º, §1º, da Resolução CNJ nº 547/2024. Ao final, pugna pelo conhecimento e provimento do recurso, anulando a sentença impugnada e determinando o retorno dos autos à origem para regular prosseguimento à execução fiscal.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Contrarrazões acostadas ao ID nº 15408317. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman

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	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Deixo de abrir vista dos autos à Procuradoria Geral de Justiça, com esteio na Súmula nº 189, do STJ, verbis : “é desnecessária a intervenção do Ministério Público nas execuções fiscais” . &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório, no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO <span class="EOP SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 16pt; line-height: 37.5px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

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	Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Segundo dispõe o art. 34, da Lei Federal nº 6.830/1980, das sentenças proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional (ORTN), somente serão cabíveis Embargos Infringentes e de Declaração. Vejamos:&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 34 – Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional—ORTN, só se admitirão embargos infringentes e de declaração.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Assim, partindo dessa premissa legal, faz-se necessário verificar se o recurso apelatório carece de requisito de admissibilidade intrínseco, notadamente, o cabimento. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8"

Processo	0001940-62.2019.8.06.0140
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> De início, registre-se que, com a extinção das ORTN como fator de indexação econômica, o colendo Superior Tribunal de Justiça definiu, no julgamento do REsp. nº 1.168.625/MG, o valor mínimo para o recurso de apelação em execução fiscal, fixando-o em R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), como correspondente ao valor das antigas 50 ORTN, a ser corrigido pelo IPCA-E a partir de janeiro de 2001, considerada a data da propositura da ação.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Na hipótese vertente, conforme se infere da inicial, protocolada em 06 de novembro de 2020 , pretende a Fazenda Pública do Município de Paracuru a cobrança, via execução fiscal, de crédito tributário no valor de R$ 8.020,78 (oito mil, vinte reais e setenta e oito centavos). Nessa data, o valor mínimo de alçada apto a dar ensejo à interposição de eventual apelação correspondia a R$ 1. 066,73 <span class="NormalTextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	0001940-62.2019.8.06.0140
	transparent; margin: 0px; padding: 0px; user-select: text;">(um mil, se s senta e seis reais e setenta e três centavos), corrigido pela calculadora do Banco Central do Brasil.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Assim, vê-se que a importância exequenda é superior ao patamar fixado pelo art. 34, da Lei Federal nº 6.830/1980, sendo o caso, portanto, de admissibilidade do recurso apelatório dirigido a este egrégio Tribunal de Justiça. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Diante de tais ponderações, hei por bem, preenchidos os requisitos de admissibilidade, conhecer a apelação cível, passando, a seguir, ao exame da matéria jurídica discutida nos autos. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family:

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	&quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> De início, verifico questão preliminar de nulidade da sentença resultante da violação, nela praticada, da inobservância do princípio do contraditório e da vedação à decisão surpresa , debate que deve anteceder a discussão sobre a possibilidade , ou não , de prosseguimento da execução fiscal em razão da presença , ou não , do interesse de agir. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Os arts . <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; color: #000000; font-size: 14pt; line-height: 33px; font-family: &quot;Times New

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	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">9º e 10, do Código de Processo Civil (CPC), exigem de forma expressa que, antes de decidir sobre qualquer matéria, o magistrado oportunize às partes sobre ela manifestarem-se, ainda que dela deva conhecer de ofício, verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0001940-62.2019.8.06.0140
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Art. 9º. Não se proferirá decisão contra uma das partes sem que ela seja previamente ouvida. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 10. O juiz não pode decidir, em grau algum de jurisdição, com base em fundamento a respeito do qual não se tenha dado às partes oportunidade de se manifestar, ainda que se trate de matéria sobre a qual deva decidir de ofício. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> O descumprimento dessas normas - que, evidentemente, se destinam a assegurar observância do princípio do contraditório substancial, como garantia de influência das partes no desenvolvimento e resultado do processo e vedação da prolação de decisões surpresas - com prejuízo à parte demandada, acarreta a nulidade da decisão. <span class="EOP SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt;

Processo	0001940-62.2019.8.06.0140
	line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; color: #0f172a;">&#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Na hipótese, o douto Juízo de origem proferiu a sentença vergastada, julgando extinto o processo, sem resolução do mérito, ao fundamento de ausência de interesse processual alicerçado nas teses estabelecidas no Tema RG nº 1.184 c/c art. 1º, §1º, da Resolução CNJ nº 547/2024 , sem, contudo, determinar a pr évia intimação do exequente para se manifestar a respeito dessa matéria.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Esse procedimento, a meu ver, representa violação aos princípios do contraditório substancial e da vedação à decis ão surpresa – positivados nos arts . 9º e 10, do CPC – com evidente prejuízo ao exequente, que não teve a oportunidade de influenciar na formação da convicção do magistrado. <span class="EOP SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New

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	Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; color: #0f172a;">&#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Nessa situação, há de se considerar nula a sentença. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> A corroborar, colaciono precedentes do Superior Tribunal de Justiça, dos Tribunais Pátrios e deste Sodalício, in verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New

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	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. APLICABILIDADE. PROIBIÇÃO DE DECISÕES SURPRESA. CONTRADITÓRIO SUBSTANCIAL PRÉVIO EM MATÉRIAS DE ORDEM PÚBLICA. NECESSIDADE. ARGUMENTOS INSUFICIENTES PARA DESCONSTITUIR A DECISÃO ATACADA. APLICAÇÃO DE MULTA. ART. 1.021, § 4º, DO CÓDIGO DE PROCESSO CIVIL DE 2015. DESCABIMENTO. I - Consoante o decidido pelo Plenário desta Corte na sessão realizada em 09.03.2016, o regime recursal será determinado pela data da publicação do provimento jurisdicional impugnado. In casu , aplica-se o Código de Processo Civil de 2015. II - Decorrente do princípio do contraditório, a vedação a decisões surpresa tem por escopo permitir às partes, em procedimento dialógico, o exercício das faculdades de participação nos atos do processo e de exposição de argumentos para influir na decisão judicial, impondo aos juízes, mesmo em face de matérias de ordem pública e cognoscíveis de ofício, o dever de facultar prévia manifestação dos sujeitos processuais a respeito dos elementos fáticos e jurídicos a serem considerados pelo órgão julgador. III - Não apresentação de argumentos suficientes para desconstituir a decisão recorrida. IV - Em regra, descabe a imposição da multa, prevista no art. 1.021, § 4º, do Código de Processo Civil de 2015, em razão do mero improvimento do Agravo Interno em votação unânime, sendo necessária a configuração da manifesta inadmissibilidade ou improcedência do recurso a autorizar sua aplicação, o que não ocorreu no caso. V - Agravo Interno improvido. (STJ - AgInt no REsp: 2108615 CE 2023/0400544-2, Relator: Ministra REGINA HELENA COSTA, Data de Julgamento: 22/04/2024, T1 - PRIMEIRA TURMA, Data de Publicação: DJe <span class="NormalTextRun SCXW97163408 BCX8" style="-

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	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">25/04/2024) (destac a -se). &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMENTA: APELAÇÃO CÍVEL. PROCESSO CIVIL. EXECUÇÃO FISCAL. E XTINÇÃO POR AUSÊNCIA DE INTERESSE DE AGIR. TEMA 1.184 DO STF. AUSÊNCIA DE PRÉVIA INTIMAÇÃO. ART. 10 DO CPC. VIOLAÇÃO À REGRA DA NÃO SURPRESA E, POR CONSEQUÊNCIA, DO CONTRADITÓRIO. SENTENÇA CASSADA. - No julgamento do Tema 1.184, em sede de repercussão geral, o Supremo Tribunal Federal pacificou o entendimento de que "É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agi tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado" - Hipótese em que, antes da extinção da execução, não foi oportunizada à parte autora manifestar-se acerca da possibilidade de se utilizar as diretrizes estabelecidas no julgamento do Tema 1.184, de modo que a sentença deve ser cassada, em observância à regra da não surpresa e ao princípio do contraditório. (TJ-MG - Apelação Cível: 50044851720218130411 1.0000.24.206822-9/001, Relator: Des.(a) Wauner Batista Ferreira Machado (JD Convocado), Data de Julgamento: 30/07/2024, 1ª CÂMARA CÍVEL, Data de Publicação: 05/08/2024) (destac a -se). &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both;

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	cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMENTA: APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. EXTINÇÃO DA EXECUÇÃO POR AUSÊNCIA DE CERTEZA E LIQUIDEZ DO TÍTULO. PRÉVIA INTIMAÇÃO DA PARTE AUTORA PARA MANIFESTAÇÃO. NECESSIDADE. INTIMAÇÃO NÃO REALIZADA. VIOLAÇÃO AO PRINCÍPIO DA NÃO SURPRESA. NULIDADE. SENTENÇA CASSADA. - Ofende a disposição do artigo 10 do Código de Processo Civil o julgador que, sem ouvir as partes sobre a matéria, extingue a ação de execução por ausência de certeza e liquidez do título - Ainda que se trate de matéria conhecível de ofício, deve o magistrado dar oportunidade à parte a propósito do seu intuito de suscitá-la, a fim de que ela possa indicar ao juízo as razões que tenha para contrariar o potencial entendimento a ser adotado pelo julgador. (TJMG - Apelação Cível: 5006319-20.2021.8.13.0261 1.0000.23.218012-5/001, Relator: Des.(a) Luiz Carlos Gomes da Mata, Data de Julgamento: 23/05/2024, 13ª CÂMARA CÍVEL, Data de Publicação: 24/05/2024) (destac a -se). &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> PROCESSO CIVIL. EXECUÇÃO FISCAL. EXTINÇÃO POR FALTA DE INTERESSE DE AGIR. TEMA Nº 1.184 DO STF. RESOLUÇÃO Nº 547 DO CNJ. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. INSUFICIÊNCIA DE

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	PRÉVIA INTIMAÇÃO. ART. 10 DO CPC. VIOLAÇÃO À REGRA DA NÃO SURPRESA. INOBSERVÂNCIA DO PRINCÍPIO DO CONTRADITÓRIO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. Trata-se de apelação cível interposta pelo Município de Icó em face da sentença, que extinguiu sem resolução do mérito, por ausência de interesse de agir, a ação de execução fiscal ajuizada pelo citado ente municipal. 2. O Plenário do Supremo Tribunal Federal, por ocasião do julgamento do recurso extraordinário nº 1.355.208/SC, em sede de repercussão geral (Tema 1.184), decidiu a controvérsia, por maioria de votos, e fixou a seguinte tese (destaquei):&#160; 1. É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado. 2. O ajuizamento da execução fiscal dependerá da prévia adoção das seguintes providências: a) tentativa de conciliação ou adoção de solução administrativa; e b) protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida. 3. O trâmite de ações de execução fiscal não impede os entes federados de pedirem a suspensão do processo para a adoção das medidas previstas no item 2, devendo, nesse caso, o juiz ser comunicado do prazo para as providências cabíveis. 3. In casu , verifica-se que apesar do feito, desde o ano de 2021, manter uma marcha processual ineficiente, entendo que o despacho (ID nº 13537292) não oportunizou ao ente municipal a possibilidade de adotar as providências estampadas nos itens “2” e “3” da tese fixada no Tema nº 1.184 do STF. 4. Resta imprescindível a manifestação prévia do exequente para comprovar ou justificar a utilização das providências diversas com o intuito de obter a satisfação do crédito tributário. Ressalte-se que, a propósito, a parte poderá requerer a suspensão da execução fiscal, conforme as balizas acima transcritas. 5. Assim, tendo em vista que o despacho externado pelo magistrado a quo não conferiu ao exequente as medidas diversas da extinção do feito, vislumbra-se a inobservância dos princípios do contraditório, na sua acepção de influenciar o julgador, e, ao mesmo tempo, da vedação de decisão surpresa. 6. Apelação conhecida e provida. Sentença anulada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e dar provimento ao recurso de apelação, conforme o voto do Relator. (APELAÇÃO CÍVEL - 00505669720218060090, Relator(a): INACIO DE ALENCAR CORTEZ NETO, 1ª Câmara de Direito Público, Data do julgamento: 10/09/2024) (destac a -se). &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;">

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	Registro, por fim, que ao caso não se aplica a teoria da causa madura (art. 1.013 , §3º , inciso I, do CPC) , <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; color: #0f172a; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times

Processo	0001940-62.2019.8.06.0140
	New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> visto que se mostra necessário oportunizar ao exequente a adoção das medidas indicadas n o art. 1º, §5º, da Resolução CNJ nº 547/2024 , verbis : “a Fazenda Pública poderá requerer nos autos a não aplicação, por até 90 (noventa) dias, do § 1º deste artigo, caso demonstre que, dentro desse prazo, poderá localizar bens do devedor” . &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	0001940-62.2019.8.06.0140
	Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Ante o exposto, conheço o recurso para dar-lhe provimento , anulando a sentença e determinando o retorno dos autos à origem, para que o Juízo de origem, antes de decidir novamente sobre a falta de interesse processual, oportunize ao exequente manifestar-se sobre a matéria . &#160;</p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8"

Processo	0001940-62.2019.8.06.0140
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW97163408 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: center;"> Relatora &#160; &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	152
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	MANUELITO MELO MAGALHAES - (CE41127-A) ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A)
Polo passivo	ESPEDITO ARAUJO DE MOURA
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3000458-89.2024.8.06.0160
Acordão	<p style="text-align: center;"> &#160;&#160;&#160; </p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-5a891853-7fff-65db-fc73-bd527483460a" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo nº 3000458-89.2024.8.06.0160 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Município de Santa Quitéria</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: Espedito Araújo de Moura</p><p> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ementa: Direito administrativo. Apelação cível. Preliminarmente: ausência de dialeticidade reconhecida. Base de cálculo de terço de férias de servidor público. Remuneração integral. Município de Santa Quitéria. Recurso parcialmente conhecido e desprovido.&#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">I. Caso em exame &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> <span

Processo	3000458-89.2024.8.06.0160
	style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação cível interposta pelo ente público contra sentença que deu parcial procedência à pretensão autoral de servidor público, para determinar o pagamento de terço de férias sobre a remuneração integral percebida pelo servidor.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> II. Questão em discussão &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">2. Preliminarmente, a respeito da admissibilidade do recurso, discutiu-se a dialeticidade dos argumentos apresentados pelo recorrente. No mérito, analisou-se a base de cálculo do pagamento da verba de terço constitucional de férias de servidor público.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> III. Razões de decidir &#160;</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 3. Preliminarmente, a parte recorrente apresentou argumentos que não diziam respeito aos fundamentos da sentença ou mesmo ao objeto do feito. Ausência de dialeticidade de parte da peça recursal. Parcialmente conhecida, nos termos do art. 1.010, II e III, do CPC.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 4. No mérito, a Constituição Federal, em seus artigos 7º, inc. XVII e 39, §3º, prevê o direito à percepção de terço de férias pelos servidores públicos, ao passo que o art. 80 da Lei Municipal n.º 081-A/1993 de Santa Quitéria determina que a verba será paga sobre a remuneração integral dos servidores. Precedentes deste Tribunal.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 5. A norma do art. 80 da Lei Municipal n.º 081-A/1993 de Santa Quitéria afigura-se plenamente aplicável, com carga normativa relevante e aptidão para produzir todos os efeitos, prescindindo da edição de qualquer outro diploma normativo para tanto.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> 6. A regra de não cumulação do art. 55 da Lei Municipal n.º 081-A/1993 de Santa Quitéria não se aplica ao terço constitucional, mas às vantagens descritas no art. 54 do normativo.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> IV. Dispositivo e tese</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff;

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	margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">8. Apelação cível parcialmente conhecida e, nessa extensão, desprovida.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> _________</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Dispositivos relevantes citados: CF, art. 7º, inc. XVII, e art. 39, §3º; Lei Municipal nº 81-A/1993, arts. 54, 55 e 80.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Jurisprudência relevante citada: STF, RE 1.400.787, Rel. Luiz Fux, Tribunal Pleno, j. 09.12.2015.</p><p> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, conhecer parcialmente da Apelação Cível para, nesta extensão, negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 72pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt;

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	margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160; RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE SANTA QUITÉRIA em face da sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Santa Quitéria que, nos autos da Ação de Cobrança proposta por ESPEDITO ARAÚJO DE MOURA em desfavor do ente público, julgou parcialmente procedente a pretensão autoral, nos termos do dispositivo abaixo transcrito (id. 15418502):</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ante o exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão inaugural, com a resolução do mérito, na forma do art. 487, I, do CPC, para o fim de DETERMINAR que o requerido proceda ao pagamento do terço de férias à parte autora com incidência sobre sua remuneração integral, bem como CONDENÁ-LO ao pagamento das diferenças do terço de férias dos anos anteriores, ressalvada a prescrição quinquenal, e prestações vincendas, com juros e correção monetária na forma exposta na fundamentação;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Deixo de condenar o demandado ao pagamento de custas processuais ante a isenção legal do ente público concedida no art. 5º, I, da Lei estadual nº. 16.132/2016.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom:

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	0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Condeno a parte requerida ao pagamento dos honorários advocatícios sucumbenciais à contraparte, os quais fixo desde já no percentual de 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, § 3º, I, do CPC.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Deixo de promover a remessa necessária, uma vez que é possível antever que o proveito econômico referente às prestações vencidas não ultrapassará 100 (cem) salários-mínimos, conforme preconizado no artigo 496, §3º, inciso I, do CPC.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em suas razões recursais (id. 15418505), o Município alegou que: a ampliação da carga horária da recorrida decorreu de transação consensual entre as partes, não configurando um ato unilateral da administração; o pagamento da ampliação da carga horária não se equipara ao vencimento-base; não há direito adquirido ao valor da hora ampliada; não houve afronta ao princípio da irredutibilidade dos vencimentos pela Administração Pública; a servidora não faz jus ao direito requerido; que a Lei Municipal n.º 081-A/1993 é norma de eficácia limitada e não há norma regulamentadora que defina a concessão do benefício do art. 54, §2º; e o abono recebido pelos professores não configura remuneração de rendimento acumulado, não havendo obrigação do Município em repassar tais valores por meio da subvinculação estabelecida pelo artigo 60, inciso XII, do Ato das Disposições Constitucionais Transitórias (ADCT), em conjunto com o artigo 22 da Lei 11.494/2007.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em sede de contrarrazões (id. 15418508), a parte embargante alega que os argumentos da recorrente não encontram amparo na Constituição Federal, razão pela qual requer o conhecimento e o desprovimento da Apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Por fim, consigno que deixei de abrir vistas dos autos à Procuradoria-Geral de Justiça, uma vez que não há interesse público primário que justifique sua intervenção, conforme já reconhecido pelo próprio Parquet por meio de pareceres emitidos em processos análogos, envolvendo a mesma temática e município, que tramitam sob o crivo desta relatoria (3001038-56.2023.8.06.0160; 3000164-37.2024.8.06.0160; 3000155-75.2024.8.06.0160<span style="font-size: 12pt; font-

Processo	3000458-89.2024.8.06.0160
	family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Na atual sistemática processual civil, vislumbra-se que, além dos requisitos objetivos (ou extrínsecos), faz-se imprescindível a observância de algumas formalidades inerentes à cada espécie recursal, com impugnação frontal do substrato lógico da decisão impugnada, demonstrando os motivos fáticos e jurídicos que importam sua reforma ou desconstituição.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No caso específico da apelação, o requisito de admissibilidade está expressamente disposto no art. 1.0101, incisos II e III do CPC, refletindo no que se convencionou chamar de princípio da dialeticidade. Por força deste preceito, cumpre ao recorrente promover a impugnação específica de todos os fundamentos da sentença proferida, cuja reforma pressupõe a apresentação de razões suficientes para demonstrar o desacerto da compreensão assentada pelo julgador.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Compulsando os autos, verifica-se que a decisão terminativa de id. 15418502 concedeu a parcial procedência do pedido autoral sob os seguintes fundamentos: i) a Constituição Federal prevê o pagamento de terço constitucional a servidores públicos (arts. 7º, XVII, e 39, §3º); ii) a interpretação dos dispositivos constitucionais é de que o décimo terceiro salário e o terço constitucional abrangem adicionais e vantagens de caráter permanente, excluídas as verbas de natureza indenizatória; iii) devem ser inseridos os abonos percebidos pelos profissionais da educação em razão de verbas do FUNDEF/FUNDEB; e iv) não há que se falar em escusa fiscal pela Lei Complementar nº 101/2005, pois não se trata de inovação remuneratória, mas reconhecimento de norma vigente do ordenamento jurídico.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Contudo, ao analisar a peça apelatória, percebe-se que, para além da fundamentação jurídica referente aos arts. 54 e 55 da Lei Municipal nº 081-A/1993, à não cumulação de vantagens, à interpretação de que a CF faz menção a salários e não remunerações, ao princípio da legalidade e à Súmula Vinculante nº 37, que já haviam sido apresentados em sede de contestação, o Município de Santa Quitéria impugnou a sentença também sob os seguintes argumentos: 1) ampliação da carga horária de natureza precária; 2) irredutibilidade de vencimentos; 3) o Município não tem obrigação de repassar valores do FUNDEF/FUNDEB; e 4) o Município agiu corretamente ao efetuar desconto de Imposto de Renda sobre as verbas do FUNDEF/FUNDEB.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top:

Processo	3000458-89.2024.8.06.0160
	0pt; margin-bottom: 6pt;" dir="ltr"> Tais questões, todavia, não guardam qualquer correlação com os fundamentos da sentença recorrida ou mesmo com o objeto jurídico da Ação de Cobrança ajuizada pela parte autora.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Nesse esteio, e com base no disposto no art. 1.010, II, do Código de Processo Civil, entendo pelo não conhecimento do presente recurso quanto aos seus capítulos enumerados acima, em face da total ausência de dialeticidade de tais argumentos.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Quanto aos demais fundamentos do Apelo, entendo estarem presentes os requisitos de admissibilidade. Portanto, resta conhecida parcialmente a Apelação do Município de Santa Quitéria.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O cerne da questão em deslinde consiste em analisar a higidez da sentença que julgou parcialmente procedente a pretensão autoral, condenando o ente requerido a implementar, em favor do autor, o pagamento do terço constitucional de férias tendo como base de cálculo a sua remuneração integral, bem como ao pagamento das diferenças das parcelas vencidas e prestações vincendas, observada a prescrição quinquenal e a devida&#160; correção monetária.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em face do julgado, o ente público se insurgiu, sustentando a tese de que a base de cálculo do terço constitucional deve ser o salário-base e não a remuneração, bem como que a norma local que prevê o direito seria de eficácia limitada e veda a acumulação de vantagens.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Já adianto que a sentença merece ser mantida.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Como se sabe, a Constituição Federal de 1988, em seu art. 39, § 3º c/c art. 7º, XVII, garante a todos os ocupantes de cargos públicos em geral, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre eles o de recebimento de férias acrescidas do terço constitucional. Vejamos:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-

Processo	3000458-89.2024.8.06.0160
	space: pre-wrap;">Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas. [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> No âmbito do Município de Santa Quitéria, a matéria se encontra disciplinada na Lei Municipal nº 081-A/1993, (Estatuto Jurídico dos Servidores Públicos do Município de Santa Quitéria), que assim dispõe:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 46 - Vencimento é a retribuição pecuniária pelo exercício de cargo público, com valor fixado em lei.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 47 - Remuneração é o vencimento de cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em Lei.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 80 - Independente de solicitação, será pago ao servidor por ocasião de férias, um adicional correspondente a 1/3 (um terço) da remuneração do período das férias.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Parágrafo único - <span style="font-size: 10pt; font-family: &quot;Times New Roman&quot;, serif; color: #000000; background-color: transparent; font-weight: 400;

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	font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">No caso de servidor exercer função de direção, chefia ou assessoramento, ou ocupar cargo em comissão,a respectiva vantagem será considerada no cálculo do adicional de que trata este artigo. (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Verifica-se, assim, que o pagamento do terço constitucional de férias deve ter como base de cálculo a remuneração integral do servidor que, por sua vez, compreende o vencimento do cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A redação do parágrafo único do art. 80 elucida perfeitamente esta interpretação, vez que assegura que os servidores que exerçam função de direção, chefia ou assessoramento ou que ocupem cargos em comissão devem receber o terço constitucional considerando as gratificações de seus cargos ou funções, abarcando, portanto, a remuneração integral do servidor e não seu salário-base.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Desta feita, resta claro que a regra de não cumulação do art. 55 do Estatuto mencionado não se aplica ao terço constitucional, mas apenas às conceituadas “vantagens pecuniárias” do Capítulo II do Título IV do Estatuto, quais sejam: indenizações, gratificações e adicionais.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Capítulo II - DAS VANTAGENS PECUNIÁRIAS</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 54 - Além do vencimento, poderão ser pagas ao servidor as seguintes vantagens:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I - Indenizações;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - Gratificações;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III - Adicionais.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> §1º - As indenizações não se incorporam ao vencimento ou provento para qualquer efeito.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align:

Processo	3000458-89.2024.8.06.0160
	baseline; white-space: pre-wrap;">§2º - As gratificações e os adicionais incorporam-se ao vencimento ou provento, nos casos e condições indicados em Lei.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 55 - As vantagens pecuniárias não serão computadas, nem acumuladas, para efeito de concessão de qualquer outros acréscimos pecuniários ulteriores, sob mesmo título ou idêntico fundamento. (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por óbvio, o terço de férias não integra nenhuma dessas espécies de vantagens, não configurando “mesmo título ou idêntico fundamento”, de modo que a norma em questão não tem o condão de impedir seu cálculo sobre a remuneração integral do servidor.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Além do mais, diferentemente do alegado pelo ente público, a norma do art. 80 afigura-se plenamente aplicável, com carga normativa relevante e aptidão para produzir todos os efeitos, prescindindo da edição de qualquer outro diploma normativo para tanto. Nesse sentido: Apelação Cível - 3000658-33.2023.8.06.0160, Rel. Desembargador(a) LISETE DE SOUSA GADELHA 1ª Câmara Direito Público, data do julgamento: 10/05/2024.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Acerca da temática, cumpre registrar que o Supremo Tribunal Federal, ao concluir o julgamento do Leading Case RE 1400787 RG/CE (Tema nº 1241), sob a sistemática da repercussão geral, fixou a tese de que “O adicional de 1/3 (um terço) previsto no art. 7º, XVII, da Constituição Federal incide sobre a remuneração relativa a todo período de férias<span style="font-size:

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	12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">”.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Nessa perspectiva, conjugando o texto constitucional e a norma de regência local, tenho que os elementos de prova coligidos (notadamente as fichas financeiras, demonstrando que o autor é servidor público municipal ativo no exercício do magistério e que o cálculo da verba requerida era efetuado sobre o seu salário-base), comprovam o fato constitutivo do direito autoral (art. 373, I, CPC).</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral (art. 373, II, CPC), tendo se limitado a defender a tese de que o pagamento do terço de férias deve ser apenas sobre o salário-base, tornando, pois, o fato incontroverso.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Dessa forma, escorreita sentença que condenou o ente federado a efetuar o pagamento do terço constitucional de férias da autora com base na sua remuneração integral e ao pagamento das diferenças que lhe são devidas, observada a prescrição quinquenal, conforme dispõe o art. 1º, do Decreto Lei nº 20.910/32 e a Súmula 85 do Superior Tribunal de Justiça.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Perfilhando o entendimento ora esposado, colaciono precedentes das três Câmaras de Direito Público deste Tribunal de Justiça, referentes ao mesmo município e com causa de pedir semelhantes, in verbis:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> EMENTA: DIREITO CONSTITUCIONAL. DIREITO ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. MUNICÍPIO DE SANTA QUITÉRIA. TERÇO CONSTITUCIONAL DE FÉRIAS. REMUNERAÇÃO INTEGRAL. ART. 39, §3º C/C ART. 7º, INCISO XVII, DA CONSTITUIÇÃO FEDERAL. ARTS. 46, 47 E 80 DA LEI MUNICIPAL Nº 081-A/93. ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. PRESCRIÇÃO QUINQUENAL. ART. 1º DO DECRETO Nº 20.910/32. PRECEDENTES DO TJCE. APELAÇÃO CONHECIDA E NÃO PROVIDA. SENTENÇA MANTIDA.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. A Constituição Federal de 1988, em seu art. 39, § 3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito pleiteado na presente demanda, qual seja, o terço constitucional de férias. Por sua vez, a Lei Municipal nº 081-A/93 (Estatuto dos Servidores Públicos de Santa Quitéria) prevê expressamente que a parcela deve ser calculada com base na remuneração integral do servidor.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

Processo	3000458-89.2024.8.06.0160
	vertical-align: baseline; white-space: pre-wrap;">2. In casu, conjugando o texto constitucional, a norma de regência local e os elementos de prova coligidos, restam comprovados os fatos constitutivos do direito da autora. A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. Nesse contexto, escorreita sentença que condenou o ente federado a implementar o pagamento do terço constitucional de férias da autora com base na sua remuneração e ao pagamento das diferenças que lhes são devidas, das parcelas vencidas e vincendas até a efetiva implementação, observada a prescrição quinquenal contida no art. 1º, do Decreto Lei nº 20.910/32.&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. Apelação conhecida e não provida. Sentença mantida.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">(APELAÇÃO CÍVEL - 30006407520248060160, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 15/10/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÕES CÍVEIS. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. MUNICÍPIO DE SANTA QUITÉRIA. TERÇO CONSTITUCIONAL DE FÉRIAS. REMUNERAÇÃO INTEGRAL. ART. 39, §3º C/C ART. 7º, INCISO XVII, DA CONSTITUIÇÃO FEDERAL. ARTS. 46, 47 E 80 DA LEI MUNICIPAL Nº 081-A/93. ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. PRESCRIÇÃO QUINQUENAL. ART. 1º DO DECRETO Nº 20.910/32. PRECEDENTES DO TJCE. APELAÇÕES CONHECIDAS E DESPROVIDAS. SENTENÇA MANTIDA. 1. A Constituição Federal de 1988, em seu art. 39, § 3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito pleiteado na presente demanda, qual seja, o terço constitucional de férias. Por sua vez, a Lei Municipal nº 081-A/93 (Estatuto dos Servidores Públicos de Santa Quitéria) prevê expressamente que a parcela deve ser calculada com base na remuneração integral do servidor. 2. In casu, conjugando o texto constitucional, a norma de regência local e os elementos de prova coligidos, restam comprovados os fatos constitutivos do direito da autora. A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none;

Processo	3000458-89.2024.8.06.0160
	vertical-align: baseline; white-space: pre-wrap;">3. Nesse contexto, escorreita sentença que condenou o ente federado a implementar o pagamento do terço constitucional de férias da autora com base na sua remuneração e ao pagamento das diferenças que lhes são devidas, das parcelas vencidas e vincendas até a efetiva implementação, observada a prescrição quinquenal contida no art. 1º, do Decreto Lei nº 20.910/32. 4. Apelações conhecidas e desprovidas. Sentença mantida.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">(APELAÇÃO CÍVEL - 30010385620238060160, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 12/08/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">APELAÇÕES. CONSTITUCIONAL E ADMINISTRATIVO. COBRANÇA. SERVIDOR PÚBLICO EFETIVO. COBRANÇA DE DIFERENÇAS DE VERBA SALARIAL. ART. 7º, CF. OBRIGAÇÃO DE PAGAR. PRESCRIÇÃO QUINQUENAL. ENCARGOS LEGAIS RETIFICADOS. SENTENÇA POSTERIOR A EMENDA CONSTITUCIONAL Nº 113/2021. APELOS CONHECIDOS. DESPROVIDO O APELO DA PARTE AUTORA E PROVIDO EM PARTE O DO ENTE MUNICIPAL. 1.Trata-se de Apelações oriundas de Ação de Cobrança interpostas em desfavor do Município de Santa Quitéria, em cujos autos referido ente municipal restou condenado a pagar a autora a diferença do terço de férias, acrescido dos encargos legais, deixando a fixação da condenação honorária a ser arbitrada pelo juízo da liquidação. 2.Quanto a prejudicial de mérito, acertada a decisão do Juízo originário ao aplicar a prescrição quinquenal em observância à Súmula nº 85 da Corte Superior, segundo a qual: “Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação.” Prejudicial rejeitada. 3. Não logrou êxito o ente promovido em trazer prova em seu favor, na forma do art. 373, II, do CPC, mediante apresentação de simples

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	dados interna corporis. Na verdade, é entendimento pacificado nesta Corte de Justiça que em feitos desta natureza compete à Fazenda Pública comprovar os pagamentos solicitados, ao passo que ao autor compete demonstrar o vínculo funcional, o que restou cumprido pela promovente sob pena de locupletamento ilícito. 4.O novo índice (SELIC) instituído pela EC 113/2021 incide a partir do dia 9 de dezembro de 2021, data de sua publicação no Diário Oficial. Como no caso em exame a sentença fora proferida em 16.01.2024, resta alterado esse capítulo do julgado. 5. Apelos conhecidos. Desprovido o apelo da parte autora e provido em parte o do ente municipal. (Apelações cíveis - 3000883-53.2023.8.06.0160, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 22/04/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">CONSTITUCIONAL, ADMINISTRATIVO E PROCESSO CIVIL. REEXAME NECESSÁRIO. APELAÇÃO CÍVEL. SERVIDOR PÚBLICO MUNICIPAL. DIFERENÇAS SALARIAIS. GRATIFICAÇÃO NATALINA E ADICIONAL DE FÉRIAS. COMPOSIÇÃO. VERBAS REMUNERATÓRIAS. PAGAMENTO DEVIDO SOBRE O VALOR TOTAL PERCEBIDO PELO SERVIDOR. REEXAME NECESSÁRIO NÃO CONHECIDO. RECURSO DE APELAÇÃO DESPROVIDO. 1. Trata-se de reexame necessário e de recurso de Apelação interposto contra sentença que condenou o município de Santa Quitéria/CE ao pagamento de diferenças salariais. 2. À luz das disposições da Constituição Federal de 1988, são garantidos aos servidores públicos em geral, efetivos ou temporários, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre os quais, a percepção de décimo terceiro salário e de férias remuneradas, acrescidas do terço constitucional. 3. Os valores devidos a título de gratificação

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	natalina (décimo terceiro salário) e adicional de férias (terço constitucional) devem ser pagos em paridade com a remuneração do servidor, compreendida como o vencimento básico e as demais verbas remuneratórias a que faz jus.&#160; [...] Recurso de apelação conhecido e desprovido.</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">(Remessa Necessária Cível - 0001925-04.2017.8.06.0160, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 12/09/2022, data da publicação:&#160; 12/09/2022) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">E ainda: Apelações cíveis - 3000660-03.2023.8.06.0160, Rel. Desembargador(a)&#160; MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 20/05/2024; Apelação / Remessa Necessária - 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 11/07/2022, data da publicação:&#160; 11/07/2022; Remessa Necessária Cível - 0001898-21.2017.8.06.0160, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 1ª Câmara Direito Público, data do julgamento:&#160; 05/10/2020, data da publicação:&#160; 06/10/2020; Apelação / Remessa Necessária - 0001900-88.2017.8.06.0160, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento:&#160; 17/02/2020, data da publicação:&#160; 18/02/2020; Apelação / Remessa Necessária - 0001919-94.2017.8.06.0160, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento:&#160; 13/05/2020, data da publicação:&#160; 13/05/2020; Apelação / Remessa Necessária - 0050380-29.2019.8.06.0160, Rel. Desembargador(a) INACIO DE ALENCAR CORTEZ NETO, 3ª Câmara Direito Público, data do julgamento:&#160; 28/06/2021, data da publicação:&#160; 28/06/2021.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por fim, afasta-se também as alegações de desrespeito ao princípio da legalidade e à Súmula Vinculante 37 do Supremo Tribunal Federal, visto que a atuação do Poder Judiciário neste feito visa tão somente à aplicação dos dispositivos vigentes que determinam expressamente o pagamento de terço constitucional sobre a remuneração integral de servidor e a medida não cuida de aumento de vencimento de servidor público sob o fundamento de isonomia, mas reconhecimento de direito posto do servidor.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço parcialmente da Apelação, para, nessa

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	extensão, negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Determino, ainda, a majoração da condenação do Município de Santa Quitéria ao pagamento de honorários advocatícios, nos termos do art. 85, §1º e §11 do CPC, a serem definidos na fase de liquidação de sentença, nos termos do art. 85, §4º, inciso II, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.656; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.656; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	153
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adicional por Tempo de Serviço
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A) LUIS GUILHERME SOARES TIMBO - (CE47571-A)
Polo passivo	FRANCISCA ANALINE MARTINS TIMBO FRANKLIN
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GIIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kzE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTJz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	150%; font-family: Arial, sans-serif;">1. Apelação interposta contra a sentença que condenou o Município de Santa Quitéria a implementar o pagamento&#160;do adicional por tempo de serviço à razão de 1% (um por cento) por ano de efetivo exercício no serviço público, com base no vencimento-base, e a pagar as diferenças adimplidas a menor, parcelas vencidas e vincendas, atualizadas e respeitada a prescrição quinquenal.</p><p class="LO-Normal3" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;"> II. Questão em discussão </p><p class="LO-Normal3" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;">2. A questão em discussão consiste em definir se o adicional por tempo de serviço: i) foi revogado ou não pela Lei Municipal nº 647/2009; ii) depende ou não de alguma norma regulamentadora para produzir efeitos; e iii) deve ser calculado sobre a remuneração integral ou apenas sobre o salário-base.&#160;</p><p class="LO-Normal3" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;"> III. Razões de decidir &#160;</p><p class="LO-Normal3" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;">3. Não conhecimento da tese arguida a respeito da prescrição, uma vez que já reconhecida na origem em favor do ente recorrente. A Lei Municipal nº 647/2009 não revogou expressamente o adicional por tempo de serviço. A eficácia do anuênio é plena e sua aplicabilidade imediata, prescindindo de quaisquer normas regulamentadoras para produzir seus efeitos. A Lei Municipal nº 081-A/93 (Estatuto dos Servidores) estabeleceu, em seu art. 68, que o adicional por tempo de serviço incidirá à razão de 1% (um por cento) sobre o vencimento previsto no art. 47, o qual, acrescido das vantagens pecuniárias permanentes ou temporárias, integra a remuneração, assim, tenho que o referido adicional deve incidir sobre o valor do salário-base (vencimento) definido em Lei. &#160;</p><p class="LO-Normal3" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;"> IV. Dispositivo &#160;</p><p class="LO-Normal3" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;">4. Apelo parcialmente conhecido, mas, na parte conhecida, desprovido. &#160;</p><p class="LO-Normal4" style="text-align: justify; line-height: 150%; mso-hyphenate: auto;"> ______</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; line-height: 150%;"> Dispositivos relevantes citados: CF/88, art. 37, XIV; CPC, art. 85, §§ 2º, 3º, 4º e 11; Decreto 20.910/1932, art. 1º; Lei Complementar Municipal nº 81-A/1993, arts. 46, 47 e 68; Lei Municipal nº 647/2009, art. 50.&#160;</p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 150%;"> Jurisprudência relevante citada: Súmula 85 do STJ; REsp nº 1.729.064/PB, relator Ministro Herman Benjamin, Segunda Turma, julgado em 15/5/2018, DJe de

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	2/8/2018; EDCL no Resp 1785364/CE, 06/04/2021.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; line-height: 150%;">&#160;</p><p class="LO-Normal0"> &#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: center; tab-stops: 380.65pt;" align="center"> ACÓRDÃO </p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;">Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer parcialmente do recurso interposto pelo Município de Santa Quitéria, mas para, na parte conhecida, negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal;" align="center"> &#160; </p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> RELATOR </p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center">&#160;</p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> <br /> </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 150%; tab-stops: center 216.0pt right 432.0pt;" align="center"> RELATÓRIO &#160;</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Tem-se Apelação Cível interposta contra a sentença de parcial procedência proferida pelo juízo da 1ª Vara Cível da Comarca de Santa Quitéria em Ação de Cobrança c/c Obrigação de Fazer.&#160;</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Petição inicial: &#160;narra a Promovente que é servidora pública efetiva e desde que tomou posse recebe adicional por tempo de serviço na forma de quinquênio, mas a previsão legal da norma municipal é a forma de anuênio, o qual deveria ser calculado com base na remuneração integral e não apenas sobre o salário-base. Requer a implantação do adicional por tempo de serviço à razão de 1% (um por cento) por ano de serviço público efetivo,&#160;na forma de anuênios, e o&#160; pagamento das parcelas vencidas&#160;e vincendas até a implementação em sua remuneração,&#160;do adicional por tempo de serviço sob a forma de&#160;anuênios, tendo como parâmetro a diferença entre a&#160;remuneração&#160;e o&#160;salário base,&#160;inclusive sobre o pagamento do 13º salário e férias acrescidas do terço constitucional, descontados os valores já pagos na forma de quinquênios e devidamente atualizados. Subsidiariamente pugna pelo percebimento das diferenças recebidas dos quinquênios, calculando-se com base na remuneração e não no salário base.</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Contestação: citado, o

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	promovido apresentou defesa sobre tema alheio ao mérito da causa.&#160;&#160;</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Sentença : julgou parcialmente procedente a pretensão inaugural,&#160;condenando o ente político a&#160;implementar na remuneração da autora e efetuar o pagamento&#160;do adicional por tempo de serviço à razão de 1% (um por cento) por ano de efetivo exercício no serviço público, na forma de anuênio, conforme art. 68 da Lei Municipal nº 081-A/93, Estatuto dos Servidores Públicos do Município de Santa Quitéria,&#160;tendo por base de cálculo o vencimento-base; e a pagar as diferenças havidas entre os quinquênios que vêm sendo pagos, com os valores que serão apurados a título de anuênios, parcelas vencidas e vincendas, até a implementação na remuneração da autora, observando-se a prescrição quinquenal e atualizadas.</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Recurso:&#160; a municipalidade suscita prejudicial de mérito de prescrição das diferenças vencidas há mais de 05 (cinco) anos (já reconhecida na sentença), e, no mérito defende que o regime jurídico ao qual está submetida a autora é respaldado pela Lei Municipal nº 647/2009, o qual revogou todos os incentivos e gratificações previstos em leis ordinárias (como é o caso do anuênio estipulado na Lei Municipal nº 081-A/93, que regula o Regime Jurídico Único geral dos servidores municipais) destinados aos profissionais do magistério. Acrescenta que a Lei Municipal nº 081-A/1993 que prevê o direito ao anuênio, é de eficácia limitada, o que torna indispensável a edição de uma norma regulamentadora que defina, efetivamente, quando e como deverá ser concedida aos servidores públicos.</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Contrarrazões: &#160;requer seja negado provimento ao recurso e majorados os honorários de sucumbência.</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Manifestação da&#160; Procuradoria Geral de Justiça&#160;indiferente ao mérito.</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> É o relatório no essencial.</p><p class="LO-Normal0" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 150%; tab-stops: center 216.0pt right 432.0pt;" align="center">&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 150%; tab-stops: center 216.0pt right 432.0pt;" align="center"> VOTO </p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.5pt; line-height: 150%;"> No que se refere ao juízo de admissibilidade ou de prelibação, analisando os pressupostos processuais recursais necessários, vê-se que os requisitos intrínsecos ou subjetivos (cabimento, interesse e legitimidade, e inexistência de súmula impeditiva) e extrínsecos ou objetivos (tempestividade, preparo, regularidade formal e inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também os específicos descritos no artigo 1.010 do Código de Processo Civil, razão pela qual conheço da apelação, ressalvada a tese municipal a respeito da prescrição arguida, uma vez que já reconhecida na origem em favor do ente recorrente.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;">Conforme brevemente relatado, narra a Promovente que é servidora pública e recebe adicional por tempo de serviço (ATS) na forma de quinquênio, mas deveria receber na forma de anuênio, conforme previsão legal, e que o ATS deveria ser calculado com base na

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	remuneração integral e não apenas sobre o salário-base, nos termos dos arts. 68 e 47 da Lei Complementar nº 81-A/1993.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Pois bem.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Por se tratar de direito envolvendo servidor público, é necessário, para o deslinde da causa, identificar a existência de lei de iniciativa do Chefe do Poder Executivo vigente à época dos fatos (tempus regit actum), além, por óbvio, de verificar se a parte interessada se encontrava em efetivo exercício no período de vigência e se preencheu os requisitos exigidos na norma regulamentadora.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> A Lei Municipal nº 081-A/93, que instituiu o Estatuto dos Servidores Públicos do Município de Santa Quitéria, estabeleceu, em seus artigos 46, 47 e 68, o seguinte:</p><p class="MsoFootnoteText" style="margin-left: 4.0cm; text-align: justify;"> Art. 46. Vencimento é a retribuição pecuniária pelo exercício de cargo público, com valor fixado em Lei.</p><p class="MsoFootnoteText" style="margin-left: 4.0cm; text-align: justify;"> Art. 47. Remuneração é o vencimento do cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei.</p><p class="MsoFootnoteText" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="MsoFootnoteText" style="margin-left: 4.0cm; text-align: justify;"> Art. 68. O adicional por tempo de serviço é devido à razão de 1% (um por cento) por ano de serviço público efetivo, incidente sobre o vencimento que trata o art. 47.</p><p class="MsoFootnoteText" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify;"> Parágrafo único. O servidor fará jus ao adicional a partir do mês em que completar o anuênio. - negritei</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Com efeito, restou assegurado ao servidor o direito ao Adicional por Tempo de Serviço à razão de 1% (um por cento) ao ano de serviço efetivo.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Nesse sentido, cabe destacar que a Lei Municipal nº 647/2009, que instituiu o Plano de Cargos e Carreiras (PCC) do Magistério do Município de Santa Quitéria, ao contrário do alegado pelo ente público em sede recursal, não revogou expressamente o adicional por tempo de serviço previsto no normativo acima transcrito.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Da leitura do referido dispositivo legal, percebe-se que foram revogados apenas os incentivos e gratificações destinados especificamente aos servidores do magistério, e não aqueles que dizem respeito aos servidores em geral, como é o caso do anuênio. Tanto é assim que foram expressamente excluídas da revogação “as gratificações relativas ao Suporte Pedagógico”, dirigidas exclusivamente para os profissionais do magistério. Veja-se:</p><p class="MsoBodyText" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 106.2pt; text-align: justify; line-height: normal;"> Art. 50. Esta Lei revoga os incentivos e as gratificações de caráter pecuniárias previstos em leis ordinárias deste município&#160;e destinadas aos profissionais do magistério, exceto as gratificações relativas ao Suporte Pedagógico.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Dessa forma, conclui-se que o adicional por tempo de serviço é direito de todo servidor público efetivo do Município de Santa Quitéria, que a ele faz jus “a partir do mês que completar o anuênio”, tal como previsto no art. 68 da Lei Municipal nº 081-A/93, que não depende de norma regulamentadora, visto que já traz em seu bojo todos os critérios para a sua implementação.&#160;</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> A parte promovente faz prova de que é servidora pública por meio de Fichas Financeiras que evidenciam ter ingressado no serviço público em 01/08/2008, ocupando o cargo 0085 - PROF POS GRAD 100H, e que recebe adicional por tempo de serviço pago sob a rubrica de “quinquênio”; se não, vejamos

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	recorte da Ficha Financeira referente ao ano de 2023:</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"><!--[if gte vml 1]><v:shapetype id="_x0000_t75" coordsize="21600,21600" o:spt="75" o:preferrelative="t" path="m@4@5l@4@11@9@11@9@5xe" filled="f" stroked="f"> <v:stroke joinstyle="miter" /> <v:formulas> <v:f eqn="if lineDrawn pixelLineWidth 0" /> <v:f eqn="sum @0 1 0" /> <v:f eqn="sum 0 0 @1" /> <v:f eqn="prod @2 1 2" /> <v:f eqn="prod @3 21600 pixelWidth" /> <v:f eqn="prod @3 21600 pixelHeight" /> <v:f eqn="sum @0 0 1" /> <v:f eqn="prod @6 1 2" /> <v:f eqn="prod @7 21600 pixelWidth" /> <v:f eqn="sum @8 21600 0" /> <v:f eqn="prod @7 21600 pixelHeight" /> <v:f eqn="sum @10 21600 0" /> </v:formulas> <v:path o:extrusionok="f" gradientshapeok="t" o:connecttype="rect" /> <o:lock v:ext="edit" aspectratio="t" /> </v:shapetype><v:shape id="Figura1" o:spid="_x0000_s1026" type="#_x0000_t75" 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	bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%; mso-hyphenate: auto;"> Outrossim, de acordo com a atual disciplina constitucional sobre o assunto, a eficácia do benefício previsto na Lei Municipal nº 081-A/1993, que trata do direito ao anuênio, é plena e a aplicabilidade imediata, prescindindo, portanto, de quaisquer normas regulamentadoras para produzir seus efeitos.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%; mso-hyphenate: auto;"> Há, inclusive, julgados desta e. Corte de Justiça contendo mesma causa de pedir e pedido, se não, veja:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> CONSTITUCIONAL. PROCESSUAL CIVIL. REMESSA NECESSÁRIA. AÇÃO DE COBRANÇA CUMULADA COM OBRIGAÇÃO DE FAZER. SERVIDORA PÚBLICA EFETIVA DO MUNICÍPIO DE CATUNDA. REMUNERAÇÃO INFERIOR AO SALÁRIO MÍNIMO. IMPOSSIBILIDADE. OFENSA AO §3º, ART. 39 C/C INCISO IV DO ART. 7º DA CF/88. APLICAÇÃO DA SÚMULA Nº. 47 DESTE TRIBUNAL. ADICIONAL POR TEMPO DE SERVIÇO. PREVISÃO EXPRESSA NO ESTATUTO DOS SERVIDORES PÚBLICOS (ARTS. 47 E 68 DA LEI MUNICIPAL 01/1993). AUTOAPLICABILIDADE. REQUISITOS PREENCHIDOS. FATOS IMPEDITIVOS, MODIFICATIVOS OU EXTINTIVOS DO DIREITO DA PARTE AUTORA. ÔNUS DA PROVA DO QUAL A EDILIDADE NÃO SE DESVENCILHOU. DIFERENÇAS SALARIAIS DEVIDAS, RESPEITADA A PRESCRIÇÃO QUINQUENAL. BASE DE CÁLCULO DO ATS. VENCIMENTO BÁSICO (ART. 37, XIV, CF/88) PRECEDENTES DA 1ª CÂMARA DE DIREITO PÚBLICO DESTE TRIBUNAL. VERBA HONORÁRIA. ILIQUIDEZ DA CONDENAÇÃO. APLICAÇÃO DO ART. 85, § 4º, II, DO CPC. JUROS E CORREÇÃO MONETÁRIA (TEMAS 905 DO STJ E 810 DO STF). REMESSA NECESSÁRIA CONHECIDA E PARCIALMENTE PROVIDA, NO PONTOS CONCERNENTES À DEFINIÇÃO DO PERCENTUAL DOS HONORÁRIOS ADVOCATÍCIOS E À BASE DE CÁLCULO DO ANUÊNIO, QUE DEVE SER O VENCIMENTO BÁSICO E NÃO DA REMUNERAÇÃO DA SERVIDORA. ACÓRDÃO Vistos, relatados e discutidos estes autos de Remessa Necessária de nº. 0000367-41.2016.8.06.0189, em que são partes as acima relacionadas, (Remessa Necessária Cível&#160;- 0000367-41.2016.8.06.0189, Rel. Desembargador(a) LISETE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento:&#160; 26/04/2021, data da publicação:&#160; 27/04/2021) – negritei</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <span style="font-size: medium;">ADMINISTRATIVO. REEXAME NECESSÁRIO E APELAÇÃO. AÇÃO DE COBRANÇA - PROFESSOR DA EDUCAÇÃO BÁSICA DO MUNICÍPIO DE CATUNDA - PISO SALARIAL DO MAGISTÉRIO PÚBLICO DA EDUCAÇÃO BÁSICA FIXADO POR MEIO DA LEI FEDERAL Nº&#160;11.738/2008 - CONSTITUCIONALIDADE DO DISPOSITIVO LEGAL. JULGAMENTO DA ADI Nº 4.167/DF PELO SUPREMO TRIBUNAL FEDERAL. VIGÊNCIA A PARTIR DO 27/04/2011. PREVISÃO DE ASSISTÊNCIA FINANCEIRA COMPLEMENTAR DA UNIÃO PARA O CUMPRIMENTO DO PISO SALARIAL PELOS ESTADOS, DISTRITO FEDERAL E MUNICÍPIOS. VALOR FIXADO EM LEI FEDERAL QUE DIZ RESPEITO AO VENCIMENTO BÁSICO - DIFERENÇAS SALARIAIS ATÉ A VIGÊNCIA DA LEI MUNICIPAL QUE IGUALOU O VALOR DEVIDO – OBSERVAR A PRESCRIÇÃO NA FORMA DA SÚMULA Nº 85/STJ. INTEGRAÇÃO DO ADICIONAL POR TEMPO DE SERVIÇO E DA GRATIFICAÇÃO PÓ DE GIZ NO DÉCIMO TERCEIRO SALÁRIO: APLICAÇÃO DOS ARTS. 39, § 1º, E 7º, VIII, DA CARTA MAGNA. INEXISTÊNCIA DE VIOLAÇÃO À LEI DE RESPONSABILIDADE FISCAL E À SÚMULA VINCULANTE Nº 37 DO STF. REFORMULAÇÃO DO ARBITRAMENTO DOS HONORÁRIOS ADVOCATÍCIOS, QUE SERÃO FIXADOS QUANDO DA LIQUIDAÇÃO DO JULGADO MAJORADOS NOS TERMOS ART. 85, §§ 4º, II, E 11, DO CPC. PRECEDENTES DA JURISPRUDÊNCIA LOCAL. REMESSA NECESSÁRIA E APELAÇÃO CONHECIDAS E PROVIDAS PARCIALMENTE - SENTENÇA MANTIDA NOS DEMAIS FUNDAMENTOS. (...). Dando continuidade, a sentença merece reparo ínfimo na via do reexame necessário no ponto concernente à base de cálculo do anuênio, que deve ocorrer em torno do vencimento básico e não da remuneração do servidor, integrando tal verba para cômputo do total remuneratório para fins de aplicação do salário-mínimo. 9 - Por fim, por se tratar de sentença ilíquida, entendo que a condenação em honorários deve ser feita após a liquidação do julgado, como prevê o art.85, § 4º, II, do CPC. (Apelação / Remessa Necessária&#160;- 0000090-88.2017.8.06.0189, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 1ª Câmara Direito Público, data do julgamento:&#160; 23/11/2020, data da publicação:&#160; 24/11/2020) - negritei</p><p

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	class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.5pt; line-height: 150%;"> Já com relação aos honorários sucumbenciais, reza o art. 85, § 4º, inciso II, do CPC/2015, que não sendo líquida a sentença, a definição do percentual dos honorários advocatícios somente deverá ocorrer posteriormente, quando da liquidação do julgado.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.5pt; line-height: 150%;"> Desse modo, revela-se inapropriada a fixação de tal verba sucumbencial na sentença, por malferir o dispositivo legal supracitado. Isso significa, também, que não deverão ser majorados, neste momento, os honorários advocatícios recursais enquanto não definido o valor (STJ, 2ª Turma, EDcl no REsp nº 1.785.364/CE, 6/04/2021 – Informativo nº 691).</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.5pt; line-height: 150%;"> Por essa razão, merece a sentença ser reformada nesta parte, ex officio, única e tão somente, para excluir da condenação o percentual arbitrado a título de honorários advocatícios, o qual deverá ser definido, a posteriori, em liquidação, a teor do que preconiza o dispositivo retro.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-indent: 42.5pt; line-height: 150%;"> Isto posto, conheço parcialmente da apelação, mas para, na parte conhecida, negar-lhe provimento. Reformo, porém, a sentença, em parte e de ofício, apenas para determinar que a fixação do percentual da verba honorária sucumbencial, assim como a majoração decorrente da etapa recursal, somente ocorra posteriormente, na fase de liquidação, a teor do art. 85, § 4º, inciso II, do CPC/2015.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> É o voto que submeto à consideração de meus pares.</p><p class="LO-Normal1" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p> <br style="mso-special-character: line-break;" /> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	154
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Anulação de Débito Fiscal
Polo ativo	MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM
Advogado(s) - Polo ativo	Não informado
Polo passivo	FRANCISCO SOARES CAMPOS
Advogado(s) - Polo passivo	FRANCISCO HERMINIO NETO - (CE23066-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-a0bdd2e6-7fff-3f4f-80b2-dea4a8422eac" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Processo: 0145780-62.2019.8.06.0001 – Apelação cível</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Apelante: MUNICÍPIO DE FORTALEZA</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Apelado: <span style="font-size: 11pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

Processo	0145780-62.2019.8.06.0001
	wrap;">FRANCISCO SOARES CAMPOS</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito tributário. Execução Fiscal. Apelação. Responsabilidade civil do estado. Dano moral. Cobrança indevida de iptu. Redução do valor da indenização fixada pelo juízo de origem. Recurso provido em seu pedido alternativo. Sentença parcialmente reformada.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">1. Trata-se de apelação cível interposta pelo Município de Fortaleza contra sentença que, em Ação Anulatória de Débito Fiscal cumulada com Pedido de Indenização por Danos Morais, julgou parcialmente procedente o pleito autoral e condenou o ente público demando ao pagamento de indenização por danos morais, no valor de R$ 10.000,00 (dez mil reais).</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">2. Há duas questões em discussão: (i) saber se o Município de Fortaleza é responsável pelo pagamento de danos morais devido à cobrança indevida de IPTU; e (ii) saber se o valor fixado a título de indenização é adequado ou se deve ser reduzido, considerando as circunstâncias do caso.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 4. A responsabilidade do Estado, por danos causados a terceiros em razão de atos administrativos, é objetiva, nos termos do Art. 37, §6º da CF/88.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 5. No caso concreto, a inscrição indevida em dívida ativa e a subsequente ação de execução fiscal, gerou abalo da honra e tranquilidade da parte autora, o que configura o direito à indenização por danos morais.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 6. O valor arbitrado a título de danos morais é excessivo, considerando as peculiaridades do caso concreto e o montante adotado por este Órgão Julgador para casos análogos, devendo ser reduzido para R$ 5.000,00, como forma de evitar o enriquecimento sem causa.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family:

Processo	0145780-62.2019.8.06.0001
	'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">7. Recurso provido em seu pedido alternativo. Sentença parcialmente reformada.&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Dispositivos relevantes citados: CF/88, Art. 37, § 6º; CPC/15, Art. 313, inciso I.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Jurisprudência relevante citada: STJ, REsp nº 1.755.463/SP, Rel. Min. Herman Benjamin, Segunda Turma, julgado em 11/09/2018.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em conhecer da apelação cível para dar-lhe provimento em seu pedido alternativo, tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.8; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE FORTALEZA

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	contra sentença proferida pelo Juízo da 4ª Vara de Execuções Fiscais da Comarca de Fortaleza que, em Ação Anulatória de Débito Fiscal cumulada com Pedido de Indenização por Danos Morais movida por FRANCISCO SOARES CAMPOS em face da parte recorrente, julgou parcialmente procedente o pedido autoral para condenar o ente municipal ao pagamento de indenização por danos morais no montante de R$ 10.000,00 (dez mil reais). Honorários sucumbenciais arbitrados em 10% do valor da causa.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Em suas razões recursais, a parte apelante inicialmente sustenta que se presume veracidade do ato administrativo norteado, pois cabia à parte autora a comprovação de que não seria contribuinte do IPTU, além de que ela não teria descaracterizado sua condição de titular da posse por não juntar a matrícula do imóvel aos autos. Argui que não se demonstra a razoabilidade do valor arbitrado a título de danos morais, ao passo que se deve observar as limitações orçamentárias da administração pública. Por fim, requer o conhecimento do presente recurso e a alteração da sentença vergastada com o fito de julgar improcedente o pleito inicial. Subsidiariamente, postula para que se limite o valor da indenização por danos morais ao valor do principal, isto é, do tributo que teria sido indevidamente cobrado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Contrarrazões (ID nº 14962936).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Parecer da Procuradoria-Geral de Justiça (ID nº 15406718).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Preenchidos os requisitos de admissibilidade, hei por bem conhecer da apelação cível, passando, a seguir, ao exame da matéria jurídica discutida nos autos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O cerne da irresignação recursal cinge-se em averiguar a higidez da sentença que, julgando em parte o pleito autoral, condenou o ente público municipal ao pagamento de indenização a título de danos morais, no valor de R$ 10.000,00 (dez mil reais).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">A questão trata da responsabilidade civil do Estado (sentido <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-

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	decoration: none; vertical-align: baseline; white-space: pre-wrap;">lato sensu) em decorrência da violação de direitos da personalidade da parte autora, por força da execução fiscal ajuizada pelo Município de Fortaleza para a cobrança de IPTU.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Acerca do tema, cumpre inicialmente observar que o Estado responde objetivamente pelos danos causados a terceiros por atos comissivos ou omissivos praticados por seus agentes, sendo assegurado o direito de regresso contra o responsável nos casos de dolo ou culpa, conforme Art. 37, § 6º, da CF/88. Vejamos:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios de legalidade, impessoalidade, moralidade, publicidade e eficiência e, também, ao seguinte:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> (…)</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">§6º As pessoas jurídicas de direito público e as de direito privado prestadoras de serviços públicos responderão pelos danos que seus agentes, nessa qualidade, causarem a terceiros, assegurado o direito de regresso contra o responsável nos casos de dolo ou culpa. (Destaque-se).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> Em assim sendo, a responsabilidade objetiva do Estado dispensa a comprovação de dolo ou culpa do agente, cabendo ao lesado apenas demonstrar: (I) o comportamento do agente público; (II) o dano sofrido e, por fim (III) o nexo de causalidade entre o primeiro e segundo pressuposto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> O comportamento do agente público, seja ele comissivo ou omissivo é o primeiro pressuposto da responsabilidade. Registre-se que essa ação ou omissão há de ser voluntária, ou seja, realizada com discernimento e liberdade. Ressalte-se, ainda, que apenas a ação ou omissão são insuficientes para gerar reparação, pois exige-se a repercussão da conduta comissiva ou omissiva na esfera jurídica de outra pessoa.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> O dano, como pressuposto para a responsabilidade, pode ser definido

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	como prejuízo originário de ato de terceiro que cause diminuição no patrimônio juridicamente tutelado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> O terceiro pressuposto da responsabilidade objetiva é o nexo de causalidade entre a conduta praticada e o dano suportado pela vítima. Em outras palavras, só haverá obrigação de reparar, se restar demonstrado que o dano sofrido adveio de conduta positiva ou negativa do agente público.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> No que concerne ao dano moral, este consiste na lesão de direitos de conteúdo não suscetíveis de aferição pecuniária, onde o ilícito agride os direitos personalíssimos da pessoa, de forma a abalar a sua honra, reputação, seu pudor, dignidade, sua paz e tranquilidade, causando-lhe aflição e dor, de modo a afetar a forma como se relaciona consigo mesmo, com seu próximo e até com a sociedade de modo geral, encontrando no próprio texto constitucional respaldo jurídico para a reparação de tais direitos da personalidade (CF, Art. 5º, incisos V e X).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> A indenização por danos morais tem, portanto, o condão de compensar a vítima em razão da lesão; punir o agente causador do dano e por último, tem a função de dissuadir e/ou prevenir nova prática do mesmo tipo de evento danoso. Já a prova do dano moral coincide com a demonstração do fato violador do direito da personalidade.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> No caso dos autos, infere-se que o Município de Fortaleza, com fim de receber o crédito tributário decorrente da falta de recolhimento de IPTU do imóvel localizado à Av. Coronel Carvalho, nº 2570, bairro Jardim Guanabara, nesta urbe, ajuizou contra a parte autora, ora apelada, a Ação de Execução Fiscal nº 0400164-88.2019.8.06.0001. No entanto, com a extinção administrativa do crédito tributário, a referida ação foi extinta, com fundamento nos Arts. 924, inciso III, e 775, caput, do CPC/15, em combinação com o Art. 26 da Lei nº 6.830/80.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">Além disso, cumpre registrar que se tratando de dano moral in re ipsa, isto é, que prescinde de prova, sendo este presumido, consta nos autos a informação de que a parte autora teve seu nome negativado junto ao SERASA, conforme ID nº 14962905.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">Nesse sentido, calha registrar a jurisprudência do Superior Tribunal de Justiça – STJ quanto à condenação do ente público em danos morais in re ipsa, nos casos de inscrição indevida em dívida ativa e posterior cobrança judicial, conforme disposto na Lei nº 6.830/80. Vejamos: <br /></p><p style="line-

Processo	0145780-62.2019.8.06.0001
	height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">ADMINISTRATIVO E TRIBUTÁRIO. RESPONSABILIDADE CIVIL DO ESTADO. EXECUÇÃO FISCAL INDEVIDA. CRÉDITO QUITADO. DEVER DE INDENIZAR. DANO MORAL IN RE IPSA 1. O ajuizamento de execução fiscal para a cobrança de valor já quitado ou débito cuja inexistência deveria ser de conhecimento da Fazenda Pública por si só faz presumir a ocorrência de dano moral (dano moral in re ipsa). A caracterização do dano moral em casos que tais prescinde da prova da ocorrência de abalo psicológico relevante (REsp. 1.139.492/PB, Rel. Min. Mauro Campbell Marques, Segunda Turma, DJe 16.2.2011). 2. Recurso Especial não provido. (REsp n. 1.755.463/SP, relator Ministro Herman Benjamin, Segunda Turma, julgado em 11/9/2018, DJe de 21/11/2018). (Destaque-se).<br /></p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">Constata-se, ainda, que a parte autora apresentou provas de que não possui qualquer imóvel naquela jurisdição (ID nº 14962901), assim como de que não há débito fiscal em seu nome, conforme consta na Certidão Negativa de Débitos (CND) emitida pela própria municipalidade, vinculada ao CPF do autor (ID nº 14962908).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">Portanto, não há dúvidas do ilícito praticado, do constrangimento sofrido pela parte autora com a cobrança fiscal indevida e, por conseguinte, do nexo de causalidade ante a demonstração de que o dano moral sofrido ocorreu mediante conduta comissiva do agente público que promoveu a ação executiva, sem que a parte executada fosse responsável pelo pagamento do crédito tributário.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> Por sua vez, o Município de Fortaleza não conseguiu demonstrar que a parte autora, ao menos, seja ou tenha sido titular de domínio útil (enfiteuta, foreiro ou superficiário) ou possuidora do imóvel a qualquer título.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr"> Como se vê, a parte autora, nos termos do Art. 313, inciso I, do CPC/15, conseguiu demonstrar os fatos constitutivos de seu direito. Logo, entendo cabível o direito à

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	reparação por dano moral.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">Noutra banda, considerando as peculiaridades do caso concreto e o montante adotado por este Órgão Julgador para casos análogos, tenho que o valor acima mencionado, revela-se exorbitante, devendo o montante arbitrado pelo Juízo a quo ser reduzido para R$ 5.000,00 (cinco mil reais), o que garante, a meu ver, evita o enriquecimento sem causa da parte demandante.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">A fim de corroborar tal entendimento, trago à colação julgado da 3ª Câmara de Direito Público deste egrégio Tribunal de Justiça: <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">APELAÇÃO cível. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS. cobrança indevida de dívida tributária. execução fiscal proposta. RESPONSABILIDADE OBJETIVA DO município de fortaleza. INTELIGÊNCIA DO ART. 37, § 6º, DA CONSTITUIÇÃO FEDERAL. NEXO CAUSAL DEMONSTRADO. DANO MORAL FIXADO EM VALOR excessivo para a hipótese. APELAÇÃO CONHECIDA PROVIDA. SENTENÇA reformada em parte. 1. Tratam os autos de apelação cível objetivando a parcial reforma da sentença que julgou procedente o pedido indenizatório formulado pelo autor, a fim de condenar o ente público ao pagamento dos danos morais sofridos. 2. Aduz o art. 37, § 6º da CF/88 que “as pessoas jurídicas de direito público e as de direito privado prestadoras de serviços públicos responderão pelos danos que seus agentes, nessa qualidade, causarem a terceiros, assegurado o direito de regresso contra o responsável nos casos de dolo ou culpa.” 3. No caso, o autor demonstrou de forma satisfatória a cobrança indevida, com a consequente propositura de ação de execução movida pela municipalidade, mesmo já obtendo na via administrativa o reconhecimento de inexistência da dívida. 4. Portanto, não havendo o recorrente conseguido comprovar satisfatoriamente a ausência do nexo de causalidade entre o ato praticado pelo agente público e o evento danoso, correta a sentença de primeiro grau de jurisdição que decidiu pelo dever de indenizar. 5. O quantum indenizatório arbitrado no valor de R$ 10.000,00 (dez mil reais) a título de danos morais, mostra-se excessivo no caso em análise, razão pela qual deve ser reduzida a verba para R$ 5.000,00 (cinco mil reais), a fim de atender ao caráter punitivo e reparatório do ato. - Apelação conhecida e provida. - Sentença reformada em parte, tão somente para readequar o quantum arbitrado.

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	ACÓRDÃO: Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0146543-05.2015.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do apelo interposto para dar-lhe provimento, a fim de readequar o quantum arbitrado a título de danos morais, fixando-o no importe de R$ 5.000,00 (cinco mil reais), nos termos do voto da Relatora. Fortaleza, 1º de março de 2021. DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora (Apelação Cível – 0146543-05.2015.8.06.0001, Rel. Desembargadora MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 01/03/2021, data da publicação: 01/03/2021).&#160; (Destaque-se). <br /></p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">De igual modo: Apelação Cível – 0167602-49.2015.8.06.0001, Rel. Desembargador(a) TEODORO SILVA SANTOS, 1ª Câmara Direito Público, data do julgamento: 06/12/2021, data da publicação: 06/12/2021; Apelação Cível – 0014368-05.2017.8.06.0154, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento: 16/02/2022, data da publicação: 16/02/2022; e Apelação Cível – 0137366-80.2016.8.06.0001, Rel. Desembargadora MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 02/02/2022, data da publicação: 02/02/2022.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Diante do exposto, CONHEÇO da apelação cível e DOU-LHE provimento em seu pedido alternativo para, modificando em parte o julgamento de 1º grau, reduzir para R$ 5.000,00 (cinco mil reais) o valor da indenização a título de danos morais.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Mostra-se indevida a aplicação do §11 do Art. 85 do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top:

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	12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> &#160; Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	155
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Perdas e Danos
Polo ativo	WEVERLANIA FERNANDES DA SILVA
Advogado(s) - Polo ativo	OTAVIO SANTANA BARROS - (CE33789-A) JOAO RAIMUNDO FREIRE DE ANDRADE - (CE38111-A)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	PAULO DE TARSO CAVALCANTE ASFOR JUNIOR - (CE15603-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.44; margin-left: -28pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong id="docs-internal-guid-ef3debb1-7fff-547e-63b9-e8d3d3a456bc" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 0000906-97.2019.8.06.0125 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Weverlânia Fernandes da Silva</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: Estado do Ceará</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Custos Legis: Ministério Público Estadual</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito constitucional e processual civil. Apelação cível. Ação de indenização por danos morais e materiais. Abordagem policial. Alegação de excesso. Inexistência de prova do direito autoral. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-

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	decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação cível interposta pela parte autora buscando a reforma da sentença que julgou improcedente a pretensão de indenização dos danos morais e materiais por ela formulada em face do Estado do Ceará, em razão de suposta abordagem policial abusiva/excessiva.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Analisar se estão presentes os requisitos necessários à responsabilização civil estatal em decorrência do alegado abuso de autoridade cometido durante abordagem policial.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. Inobstante tratar-se de caso de responsabilidade civil objetiva, prevista no art. 37, §6º, da CF, deve ser observada a regra de distribuição do ônus da prova prevista pelo art. 373, I, do CPC.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A prova coligida não comprova de forma inequívoca a narrativa autoral de excesso por parte dos policiais, tampouco a extensão dos supostos danos e o nexo de causalidade. Não se desvencilhando a autora do ônus que lhe competia, a manutenção da sentença de improcedência é medida que se impõe. Precedentes do TJCE.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> _________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CF/1988, art. 37, §6º; CPC/2015, art. 373.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br />

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	</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgRg no REsp n. 773.939/MG, Rel. Min. Sidnei Beneti, Terceira Turma, j. 27/10/2009; TJCE, AC nº 01485539020138060001, Rel. Maria Iracema Martins do Vale, 3ª Câmara de Direito Público, j. 19/06/2023; TJCE, AC nº 00157706620168060119, Rel. Luiz Evaldo Gonçalves Leite, 2ª Câmara de Direito Público, j. 10/10/2024; AC nº 01064519220098060001, Rel. Lisete de Sousa Gadelha, 1ª Câmara de Direito Público, j. 04/12/2023.</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, conhecer do recurso para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> </p><hr /><p>&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta por WEVERLÂNIA FERNANDES DA SILVA, contra sentença proferida pelo Juízo da Vara Única da Comarca de Missão Velha que, em sede de Ação de Indenização por Danos Morais e Materiais proposta por pela parte apelante em desfavor do ESTADO DO CEARÁ, julgou improcedente o feito, nos termos do seguinte dispositivo (ID nº 15030737):</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Feitas essas considerações e por tudo o mais que dos autos consta, JULGO IMPROCEDENTE o pedido inicial, nos termos do artigo 487, inciso I, do Código de Processo Civil.&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Sucumbente, arcará o autor com o pagamento das custas, despesas processuais e honorários advocatícios que arbitro em 10% sobre o valor atualizado da

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	causa, observada a gratuidade judicial concedida, nos termos do §3º do art. 98 do CPC.&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Após o trânsito em julgado, não havendo outros requerimentos, dê-se baixa e arquive-se.&#160;</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> P.R.I.C.</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em suas razões (ID nº 15030744), a parte apelante defende que há lastro probatório documental e testemunhal suficiente para comprovar a ilicitude da abordagem policial. Sustenta que resta configurada a responsabilidade civil objetiva do estado e, consequentemente, o dever de indenizar pelos danos sofridos. Assim, requer o provimento do recurso, com a reforma do julgado e o julgamento procedente da pretensão.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em contrarrazões (ID nº 15030750), a parte apelada refuta as teses recursais e pugna pelo desprovimento ao recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr">Instado a manifestar-se (ID nº 15510806), o Parquet opinou pelo conhecimento do recurso, não adentrando no mérito por entender ausente o interesse público.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 10pt;" dir="ltr"> VOTO</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Preenchidos os requisitos de admissibilidade, conheço da Apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">O cerne da controvérsia cinge-se, em suma, em analisar a (in)existência de responsabilidade civil do Estado do Ceará pelo alegado <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-

Processo	0000906-97.2019.8.06.0125
	weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">abuso de autoridade cometido durante abordagem policial à parte autora.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Conforme brevemente relatado, o juízo a quo julgou improcedente os pedidos autorais, sob o fundamento de que “não restou comprovada a ocorrência de excesso por parte da força policial, o mosaico probatório constante dos autos não demonstrou a ocorrência da alegada agressão sofrida pela autora”. A parte apelante, por sua vez, sustenta que o conjunto probatório é suficiente para demonstrar o caráter ilícito da abordagem realizada, pelo que deveria ser indenizada pelos danos morais e materiais sofridos.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Nos termos da art. 37, §6º, da Constituição Federal, a Administração, via de regra, responde pelos danos que seus agentes, nessa qualidade, vierem a causar a terceiros, no exercício de suas atividades, independentemente de dolo ou culpa, in verbis:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios de legalidade, impessoalidade, moralidade, publicidade e eficiência e, também, ao seguinte:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 6º As pessoas jurídicas de direito público e as de direito privado prestadoras de serviços públicos responderão pelos danos que seus agentes, nessa qualidade, causarem a terceiros, assegurado o direito de regresso contra o responsável nos casos de dolo ou culpa.</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">O ordenamento jurídico brasileiro adotou a Teoria do Risco Administrativo, segundo a qual a responsabilidade civil estatal é, ordinariamente, objetiva, uma vez que decorre do risco administrativo em si, não se exigindo perquirir sobre existência de culpa ou dolo por parte do agente. Basta, portanto, a comprovação da conduta estatal, do dano, e do nexo de

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	causalidade entre eles para que exsurja o dever estatal de indenizar. O Estado, por sua vez, somente se eximirá de tal encargo se comprovar existência de caso fortuito ou força maior; de culpa exclusiva da vítima; ou de culpa exclusiva de terceiro. Incide, portanto, a regra processual de distribuição do ônus da prova, prevista pelo art. 373, do CPC, ex vi:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 373. O ônus da prova incumbe:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I - ao autor, quanto ao fato constitutivo de seu direito;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - ao réu, quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor.</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Feitas estas considerações e descendo à realidade dos autos, constato que a autora, em sua petição inicial, narra que no dia 12 de outubro de 2018, por volta das 21h30min, estava próximo à sua casa, quando 05 (cinco) policiais do RAIO invadiram a residência vizinha e, ao avistá-la, indagaram-lhe sobre a vizinha vender drogas, bem como se ela própria vendia drogas, dizendo que se ela não falasse a verdade “levaria um tiro”. Ato contínuo, afirma que os policiais teriam entrado em sua residência, danificado 2 (duas) portas e agredido-a fisicamente, em abordagem truculenta contra ela, que estava grávida. Após o ocorrido, alega que passou mal e foi atendida no hospital municipal.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">No afã de comprovar o alegado, anexou à exordial, além de sua documentação pessoal, boletim de ocorrência, mídias da residência, ficha de atendimento e exames que demonstram que ela estava grávida à época. A autora também juntou Laudo da Perícia Forense do Estado do Ceará - o qual, contudo, concluiu pela inexistência de “ofensa à integridade corporal ou à saúde do paciente’’.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ademais, foi realizada audiência de instrução, com a oitiva de 2 (duas) testemunhas arroladas pela parte autora. A senhora Cícera Claudenia Batista de Souza, ao ser indagada, afirmou que não estava no local e não viu o acontecido - “estava no sítio, na casa da minha sobrinha.” Já o senhor José Deuzimar Pereira de Brito, embora confirme a existência da abordagem policial, ao ser perguntado pelo magistrado sobre a dinâmica do ocorrido, não trouxe maiores informações, pois disse que estava fora da residência, sequer conseguindo ouvir o que foi dito durante a ação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ressalta-se que é fato incontroverso a existência da ação policial citada nos autos, já que o Estado do Ceará

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	afirma que “ a conduta policial que supostamente ocasionou os danos é decorrente do estrito cumprimento de seu dever legal, ao realizar a tentativa de busca e apreensão de suspeito procurado da Justiça, cujas relações confluem para criminosos envolvidos com o tráfico ilícito de entorpecentes ’’, no que resta aferir apenas se está comprovado o excesso por parte dos agentes estatais na ação em comento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Na análise conjunta do conteúdo probatório, pode-se inferir que o Laudo Técnico da PEFOCE aponta de forma objetiva para a inexistência de ofensa à integridade física da recorrente, não havendo comprovação da alegada agressão. A prova testemunhal também não guarda robustez suficiente para evidenciar de forma inequívoca a conduta ilícita por parte dos agentes do estado, uma vez que nenhuma das testemunhas confirmou, categoricamente, a dinâmica da abordagem policial, não havendo informações sobre os procedimentos realizados ou mesmo de diálogo entre a autora e os policiais – os quais sequer foram identificados – no momento da ocorrência.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Com relação ao boletim de ocorrência, é consabido que se trata de um documento produzido unilateralmente, que apenas registra as declarações nele constantes narradas pelo interessado, mas não as atesta. Assim, embora se cuide de ato administrativo, sua presunção de veracidade se restringe ao fato de que o noticiante, no dia e hora lá constantes, declarou o texto nele transcrito. Não há como municiá-lo de presunção de veracidade dos fatos declarados, se eles carecem de comprovação com os demais elementos probatórios.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Perfilhando o mesmo raciocínio, colaciono julgado do Superior Tribunal de Justiça:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">AGRAVO REGIMENTAL. ACIDENTE DE TRÂNSITO. RESPONSABILIDADE. BOLETIM DE OCORRÊNCIA. PRESUNÇÃO IURIS TANTUM. RECURSO ESPECIAL PELA ALÍNEA "C". DISSÍDIO NÃO CONFIGURADO. I - O Boletim de Ocorrência Policial, em regra, não gera presunção iuris tantum da veracidade dos fatos narrados, uma vez que apenas consigna as declarações unilaterais narradas pelo interessado, sem atestar que tais afirmações sejam verdadeiras. II - Na hipótese em exame, contudo, a situação é diversa, por ter sido ele elaborado pela Polícia Rodoviária Federal, no local do acidente, instantes após a ocorrência do sinistro, firmando, em princípio, presunção relativa acerca dos fatos narrados, se inexistirem provas em sentido contrário, ante a fé pública de que goza a autoridade policial. III - Considerando que os precedentes colacionados versam sobre hipótese em que o Boletim foi elaborado a partir de informações exclusivas da vítima, não se prestam tais paradigmas à configuração do dissídio, dada a diversidade das bases fáticas em que assentadas as conclusões dos julgados. Agravo Regimental improvido. (AgRg no REsp n. 773.939/MG, relator Ministro Sidnei Beneti, Terceira Turma, julgado em 27/10/2009, DJe de 29/10/2009.) (destacou-se)</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height:

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	1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Desse modo, não há um cenário que permita a condenação do Estado do Ceará ao pagamento de indenização, que afirma ter agido no estrito cumprimento do dever legal, não havendo comprovação em contrário que ateste de forma precisa que os agentes entraram na residência da autora sem autorização e tenham agido com excesso contra ela, e ainda que indique seguramente terem sido os policiais os responsáveis por quaisquer danos materiais causados, que também não são dotados de comprovação de sua extensão.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Não logrou a autora, portanto, comprovar o fato constitutivo do seu direito, ônus que lhe competia nos termos do art. 373, I, do CPC. Desse modo, diante do contexto fático, apesar do esforço argumentativo autoral, o acervo probatório coligido não é suficiente para atestar a existência de danos morais e materiais indenizáveis. Assim, ausente os requisitos ensejadores da responsabilidade civil estatal, impõe-se a manutenção da improcedência do pedido. Nesse sentido, vejamos a jurisprudência deste Tribunal de Justiça sobre a configuração da responsabilidade civil do estado em casos similares:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">AÇÃO DE REPARAÇÃO DE DANOS MORAIS. ABORDAGEM POLICIAL. SUPOSTA INVASÃO DE RESIDÊNCIAS SEM O CONSENTIMENTO DE SEUS MORADORES. AUSÊNCIA DE PROVA DE EXCESSO OU DE ABUSO DE PODER DOS AGENTES PÚBLICOS. ATUAÇÃO EM ESTRITO CUMPRIMENTO DO DEVER LEGAL. AFASTADA A RESPONSABILIDADE CIVIL DA ADMINISTRAÇÃO. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">1. Em evidência, apelação cível, desafiando sentença em que o magistrado de primeiro grau concluiu pela total improcedência a ação de reparação de danos morais. 2. Ora, é cediço que, nos termos do art. 37, § 6º, da CF/88, a Administração, em regra, responde pelos danos que os agentes públicos vierem a causar a terceiros, no exercício de suas atividades, independentemente de dolo ou culpa. 3. Todavia, não se encontra evidenciado, aqui, um quadro que permita o Poder Judiciário condenar o Estado do Ceará ao pagamento de qualquer indenização&#160; in concreto. 4. Isso porque, pelo que se infere dos autos, os policiais militares apenas atuaram, à época, no estrito cumprimento do dever legal, não havendo elementos suficientemente robustos em sentido contrário, isto é, de que tenham invadido residências sem autorização, ou agredido verbal e fisicamente seus moradores, durante as buscas. 5. Logo, não subsiste dúvida de que a conduta dos agentes públicos se encontra acobertada por uma das causas excludentes da responsabilidade civil da Administração. 6. Por tudo isso, a manutenção da decisão&#160; a quo, em seus exatos termos, é medida que se impõe a este Tribunal. - Precedentes. - Recurso conhecida e não provido. - Sentença confirmada. (APELAÇÃO / REMESSA NECESSÁRIA - 01485539020138060001, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 19/06/2023) (destaca-se)</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-

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	decoration: none; vertical-align: baseline; white-space: pre-wrap;">APELAÇÃO CÍVEL EM AÇÃO DE REPARAÇÃO POR DANOS MATERIAIS E MORAIS. ABORDAGEM POLICIAL. ALEGAÇÃO DE EXCESSO. INSUFICIÊNCIA DO ACERVO PROBATÓRIO. ÔNUS QUE COMPETIA AOS AUTORES. ART. 373, I, DO CPC. ATO ILÍCITO E NEXO DE CAUSALIDADE NÃO DEMONSTRADOS. ESTRITO CUMPRIMENTO DO DEVER LEGAL. REPARAÇÃO INDEVIDA. RECURSO DE APELAÇÃO CONHECIDO E DESPROVIDO. 1.&#160; O cerne da demanda consiste em verificar se deve o Estado do Ceará ser compelido ao pagamento de indenização por danos materiais e morais aos autores, decorrentes de suposta abordagem policial abusiva. 2. Em se tratando de responsabilidade da pessoa jurídica de direito público, é imprescindível que haja o dano e que se estabeleça um nexo causal entre este e a conduta do agente, comissiva ou omissiva, sem o que o prejuízo não teria sido causado, elidindo-se a responsabilidade civil, por outro lado, se não houver um comportamento contrário à ordem jurídica.&#160; 3. Na situação sob exame, não há provas que corroborem com a alegação autoral de que os agentes públicos teriam incorrido em excesso durante a abordagem policial, sendo forçoso admitir que o ato ilícito e o nexo de causalidade não restaram suficientemente demonstrados. 4. Conquanto a violência policial seja uma constante neste país, não se desincumbiram os autores de provar suas alegações, não se desvencilhando do ônus que lhes competia, consoante disposto no artigo 373, I, do CPC. 5. Apelação cível conhecida e desprovida. Sentença mantida. (APELAÇÃO CÍVEL - 00157706620168060119, Relator(a): LUIZ EVALDO GONCALVES LEITE, 2ª Câmara de Direito Público, Data do julgamento: 10/10/2024) (destaca-se)</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. EXCESSOS COMETIDOS DURANTE AÇÃO POLICIAL. INVASÃO E DEPREDAÇÃO DE IMÓVEIS DURANTE PERSEGUIÇÃO DE SUSPEITOS. NÃO COMPROVAÇÃO. RESPONSABILIDADE OBJETIVA DO ESTADO. AUSÊNCIA DE DEMONSTRAÇÃO DO NEXO DE CAUSALIDADE ENTRE O DANO E A CONDUTA DO ENTE ESTATAL. INSUFICIÊNCIA DE PROVAS. CONDUTA ILÍCITA NÃO DEMONSTRADA. DANOS MORAIS E MATERIAIS NÃO CONFIGURADOS. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. HONORÁRIOS MAJORADOS. 1. O cerne da controvérsia cinge-se em analisar se o requerente faz jus ao recebimento de indenização por danos morais por ocasião de sua propriedade ter sido revistada e depredada em meio a uma perseguição policial. 2. No caso em tela, o Autor afirma que sua propriedade foi depredada em meio a uma perseguição policial, onde, segundo narra, os agentes policiais procederam com a procura de suspeitos em imóveis pertencentes ao demandante. Na ocasião, os policiais teriam quebrado algumas portas e assustado seus moradores, o que teria ocasionando danos na esfera moral e material. 3. Analisando repertório probatório juntado aos autos, depreende-se que o Apelante juntou um boletim de ocorrência (Id nº 6882922), onde narra unilateralmente os fatos que alega terem ocorrido, e um laudo pericial (Id nº 6882926/6882932), que atesta danos em 03 (três) portas, e que os danos constatados foram produzidos mediante ação humana direta e intencional. 4. Denota-se que, <span style="font-size: 10pt; font-family: &quot;Times New Roman&quot;, serif; color:

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	#000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">apesar dos fatos narrados e dos danos constatados pelo perito, não se extrai dos autos nenhuma prova apta a conectar os danos identificados no imóvel com a conduta de agentes policiais. No boletim de ocorrência não há menção sequer ao horário que a ação truculenta teria ocorrido, ou a identificação de algum policial que poderia ter participado da suposta abordagem. 5. Portanto, o autor não se desincumbiu do ônus de comprovar o dano moral sofrido, ou demonstrou o nexo de causalidade entre a suposta conduta do ente Estatal e o sofrimento psíquico que afirma ter vivenciado. No mesmo sentido, ante a ausência de provas, não há que se falar em condenação por danos materiais. 6. Recurso conhecido e desprovido. Sentença mantida. Honorários majorados. (APELAÇÃO CÍVEL - 01064519220098060001, Relator(a): LISETE DE SOUSA GADELHA, 1ª Câmara de Direito Público, Data do julgamento: 04/12/2023) (destaca-se)</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> E ainda, de minha relatoria: Apelação Cível - 02022414020228060101, Relator(a): Joriza Magalhães Pinheiro, 3ª Câmara de Direito Público, Data do julgamento: 13/11/2023 e Apelação Cível - 02022292620228060101, Relator(a): Joriza Magalhães Pinheiro, 3ª Câmara de Direito Público, Data do julgamento: 27/11/2023.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço do recurso, para negar-lhe provimento, mantendo a sentença em todos os seus termos.</p><p style="line-height: 1.7999999999999998; text-indent: 56pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por fim, tendo havido resistência e sucumbência em sede recursal, hei por bem majorar a verba honorária para o patamar de 12% (doze por cento), nos termos do art. 85, §11 do CPC/15, com observância à condição suspensiva prevista no art. 98, § 3º, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 2.16; margin-left: -28pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><div> <span style="font-size: 12pt; font-family: 'Times

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	New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	156
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	MUNICIPIO DE CAMPOS SALES
Advogado(s) - Polo ativo	Não informado
Polo passivo	SILVIO BARROS AIRES
Advogado(s) - Polo passivo	FRANCISCO COSTA TORRES JUNIOR - (CE17636-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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	bottom: 0cm; text-align: justify; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;">1. Apelação cível em ação de indenização por danos morais, estéticos e materiais por acidente de trabalho que ocasionou graves e irreversíveis lesões ao autor, incluindo a perda da visão do olho esquerdo e da audição em um dos ouvidos. A sentença julgou parcialmente procedente o pedido, condenando o ente político ao pagamento de indenização por danos morais e estéticos. A parte ré apelou, requerendo exclusivamente, a minoração dos valores arbitrados a título de danos morais. &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> II. Questão em discussão </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> 2. A questão central consiste em definir se deve ser minorado o quantum indenizatório fixado a título de danos morais em adequação aos princípios da proporcionalidade e razoabilidade. &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%;"> III. Razões de decidir </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;">3. Considerando os critérios de razoabilidade e proporcionalidade, deve ser mantida a condenação imposta na sentença, no valor de R$ 50.000,00 (cinquenta mil reais), quantia que se mostra apta a compor o gravame sofrido pelo autor, revestindo-se plenamente do sentido compensatório e punitivo que se exige na espécie e em consonância com os parâmetros adotados por esta Corte de Justiça em situações análogas.&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> IV. Dispositivo &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;">4. Recurso conhecido, mas desprovido. &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> ______</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> Dispositivo relevante citado: CPC, arts. 85, §11.&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%;"> Jurisprudência relevante

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	citada: Enunciado Administrativo nº 7 do STJ. &#160;&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br style="mso-special-character: line-break; page-break-before: always;" /> </p><p class="MsoNormal" style="margin-bottom: 0cm; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: center; mso-line-height-alt: 12.4pt;" align="center"> ACÓRDÃO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, mas para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste. &#160; &#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p class="MsoNormal" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-indent: 42.5pt; line-height: 12.4pt;"> &#160;</p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center">&#160;</p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> Desembargador WASHINGTON LUIS BEZERRA DE ARAÚJO </p><p style="text-align: center; font-family: &quot;Times New Roman&quot;; font-size: medium; margin: 0cm;" align="center"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> RELATOR <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> &#160; </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br style="mso-special-character: line-break; page-break-before: always;" /> </p><p class="MsoNormal"> &#160; </p><p class="MsoNormal" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: center; mso-line-height-alt: 12.4pt;" align="center"> RELATÓRIO &#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Tem-se&#160;apelação cível interposta contra a sentença de parcial procedência exarada pelo juízo da Vara Única da Comarca de Campos Sales em ação de indenização por danos morais, estéticos e materiais por acidente de trabalho.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Petição inicial: &#160;narra o promovente que, apesar de ter sido contratado pela Prefeitura

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	Municipal de Campos Sales na função de coordenador distrital-DAS-04, sempre exerceu as funções de motorista, mecânico e operador de máquina pesada. Certo dia, cumprindo ordens do diretor da Secretaria de Obras e Urbanismo, buscou pneu no município de Juazeiro do Norte para realizar conserto de maquinário e, durante o conserto, realizado fora do seu horário de trabalho e sem material de segurança, o semi-aro do pneu saiu e gerou uma explosão, causando-lhe graves e irreversíveis lesões, incluindo a perda da visão do olho esquerdo e da audição em um dos ouvidos. Atualmente encontra-se afastado de suas funções, motivo pelo qual requer, em juízo, condenação do ente em danos morais, materiais e estéticos pelas lesões físicas e pelo abalo psicológico sofrido.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Contestação: &#160;sustenta inexistência de dano material e requer, caso seja reconhecido o dano moral ou estético, que seja fixada indenização com base nos princípios da proporcionalidade e da razoabilidade.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Sentença: &#160;julgou parcialmente procedentes os pedidos da inicial, condenando a parte ré ao pagamento de R$ 50.000,00 (cinquenta mil reais) por danos morais e R$ 10.000,00 (dez mil reais) por danos estéticos, corrigidos e atualizados, além de condenar as partes ao pagamento de honorários de sucumbência em 10%, calculados sobre o valor da condenação, no caso do réu, e sobre o proveito econômico, no caso do autor, condenando-o, também, ao pagamento de 1/3 (um terço) das custas processuais, sob condição suspensiva de exigibilidade.&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Recurso: &#160;o ente político requer a reforma da sentença no sentido de serem minorados os valores arbitrados à título de indenização por danos morais.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Contrarrazões: &#160;pugna pela manutenção da sentença.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> Manifestação ministerial alheia ao mérito.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.55pt; line-height: 150%;"> É o relatório no essencial. &#160;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; mso-line-height-alt: 12.4pt;"> &#160;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; mso-line-height-alt: 12.4pt;"> &#160;</p><p class="MsoNormal" style="mso-margin-top-alt: auto; margin-bottom: 0cm; text-align: center; line-height: 150%;" align="center">

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	 VOTO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> No que se refere ao juízo de admissibilidade, analisando os pressupostos processuais recursais necessários, tenho que os requisitos intrínsecos (cabimento, interesse e legitimidade, inexistência de súmula impeditiva) e extrínsecos (tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) estão devidamente preenchidos, como também os específicos, descritos no art. 1.010 do CPC/2015, motivo pelo qual conheço do apelo.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;">Conforme brevemente relatado, versam os autos sobre responsabilidade civil estatal decorrente de acidente de trabalho. Na ocasião, o autor estava realizando conserto de maquinário do município réu e foi vítima da explosão de um pneu, ocasionando, dentre outras graves e irreversíveis lesões, a perda da visão do olho esquerdo e da audição em um dos ouvidos, motivo pelo qual requereu a condenação do ente ao pagamento de indenização por danos morais, materiais e estéticos.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> Na sentença proferida, o juízo de origem julgou parcialmente procedente o pleito autoral, condenando a edilidade ao pagamento de R$ 50.000,00 (cinquenta mil reais) a título de danos morais e R$ 10.000,00 (dez mil reais) a título de danos estéticos, ao que o Município recorreu, requerendo, única e tão somente, a minoração dos valores arbitrados a título de indenização por danos morais, de modo a observar os princípios da razoabilidade e proporcionalidade. &#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> Pois bem.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> No que se refere ao quantum indenizatório dos danos morais, a fixação exige adequada correlação entre o caráter punitivo da obrigação de indenizar e o intuito compensatório referente ao dever de proceder à justa reparação extrapatrimonial.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> A quantificação do dano moral, segundo a doutrina e a jurisprudência, leva em consideração vários aspectos fáticos, tais como o sofrimento experimentado, a capacidade financeira do ofensor e o caráter pedagógico, buscando a adoção de medidas preventivas de outras ocorrências semelhantes, procurando-se minorar o transtorno extrapatrimonial do ofendido com pecúnia, diante da impossível restituição do&#160; status quo ante.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> Por isso, o melhor critério para estabelecer o&#160; quantum debeatur&#160;tem sido o da proporcionalidade entre a punição e o benefício, de maneira a não causar a ruína do ofensor, nem provocar o enriquecimento ilícito do ofendido.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> <span style="font-size: 13pt; line-height: 150%; font-family: Arial, sans-serif; background-image: initial; background-position: initial;

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	background-size: initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;">Na espécie, o sofrimento pelo qual passou e passa o promovente é inegável, sobretudo em razão da gravidade do acidente, efetivamente comprovado nos autos, sendo incontroverso.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;">Conforme robustamente demonstrado, o autor foi submetido a cirurgias e até hoje realiza tratamento médico e psiquiátrico, tendo sido também afastado de suas atividades laborais, situações que lhe trouxeram dor e angústia, afetando a sua psique.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;">No que concerne às consequências do sinistro, tenho que foram extremamente danosas, haja vista que acarretaram perda da audição em um dos ouvidos, em face de fratura de assoalho de conduto auditivo externo direito, e da visão do olho esquerdo, nos termos dos documentos médicos emitidos pelo Hospital Regional do Cariri e pelo Instituto de Olhos do Cariri (Ids. 15422800 ao 15422817), além dos danos estéticos, evidenciados pelas fotos anexadas aos autos (Id. 15422822 ao 15422833), que demonstram a extensão das lesões sofridas, sobretudo no rosto do requerente. Ou seja, é evidente que o abalo é revivido todos os dias nas mais corriqueiras atividades diárias.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> Por certo que, pelo resto de sua vida, o autor sofrerá com a aflição e desgosto em razã o das sequelas ocasionadas pelo sinistro, sendo evidente, portanto, o dever de indenizar (tanto que a municipalidade ré pugna apenas pela minoração do quantum indenizatório).</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> Nessa perspectiva, considerando os critérios de razoabilidade e proporcionalidade, deve ser mantida a condenação imposta na sentença, no valor de R$ 50.000,00 (cinquenta mil reais), porquanto a quantia se mostra apta a compor o gravame sofrido pelo autor, revestindo-se plenamente do sentido compensatório e punitivo que se exige na espécie e em consonância com os parâmetros adotados por esta Corte de Justiça em situações análogas. Veja:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <span style="font-size: medium;">CONSTITUCIONAL, ADMINISTRATIVO E PROCESSUAL CIVIL. RECURSOS DE APELAÇÃO CÍVEL DO AUTOR E DO RÉU. AÇÃO DE INDENIZAÇÃO CONTRA MUNICÍPIO. CONDENAÇÃO EM DANOS MORAIS. PERDA DA VISÃO DE UM OLHO DE CRIANÇA EM ESCOLA MUNICIPAL. RECURSO DO ENTE PÚBLICO. ALEGAÇÃO DE AUSÊNCIA DE CULPA. INVIABILIDADE. RESPONSABILIDADE OBJETIVA DO ESTADO. OMISSÃO ESPECÍFICA. PRESCINDIBILIDADE DE DEMONSTRAÇÃO DE DOLO OU CULPA. DANO MORAL IN RE IPSA. PEDIDO DE REDUÇÃO DO QUANTUM DA INDENIZAÇÃO. NÃO CABIMENTO. VALOR ADEQUADO E PROPORCIONAL À GRAVIDADE DO DANO. RECURSO DO AUTOR. PEDIDO DE CONDENAÇÃO DO RÉU EM LUCROS CESSANTES. INVIABILIDADE NO MOMENTO. AUSÊNCIA DE PROVA TÉCNICA DA FUTURA POSSÍVEL REDUÇÃO NA CAPACIDADE LABORAL. RECURSOS CONHECIDOS E DESPROVIDOS. SENTENÇA CONFIRMADA. 1 – Busca o primeiro

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	apelante a reforma da sentença, objetivando a improcedência do pleito indenizatório e, subsidiariamente, a redução do valor fixado a título de indenização por danos morais, ao passo que o segundo apelante requer a condenação do ente público também ao pagamento de lucros cessantes. 2 – A responsabilidade objetiva estatal tem seu amparo constitucional no art. 37, § 6º da CF/88, e é explicada pela denominada Teoria do Risco Administrativo, segundo a qual, para a responsabilização do ente público, mostram-se suficientes a conduta comissiva ou omissiva imputada à Administração Pública, o dano causado e a demonstração do nexo causal entre ambos. 3 – Na hipótese, mostra-se presente o nexo causal entre a conduta omissiva do ente público e o resultado danoso, haja vista que é fato incontroverso nos autos que o autor perdeu a visão de um olho quando estava sob os cuidados de uma creche escola municipal. 4 – No caso, a conduta ilícita decorreu de omissão específica, haja vista que o autor era regularmente matriculado em uma creche escola municipal e estava entregue à vigilância e guarda do poder público quando da ocorrência do acidente que resultou na perda da visão de um olho do infante, sendo objetiva a responsabilidade do Município, razão pela qual não se perquire acerca de culpa . 5 – A perda da visão de um olho acarreta evidente dano moral, e sequer necessita ser provado, por se tratar de dano in re ipsa, ou seja, presumido, o qual independe de comprovação de grande abalo psicológico. 6 – No caso, o ente público foi condenado ao pagamento de indenização por danos morais ao autor, no valor de R$ 70.000,00 (setenta mil reais), acrescido de correção monetária a partir do arbitramento, e de juros de mora a contar da citação, quantia essa que se mostra razoável e proporcional, ante a gravidade do dano causado ao autor, quando este tinha a tenra idade de 02 (dois) anos. 7 – Não tendo sido configurada a futura incapacidade laboral do autor, e não havendo comprovação, através de prova pericial, de futura diminuição de sua capacidade para o trabalho, resta inviabilizada a pretensão de condenação do Poder Público no pagamento de lucros cessantes. 8 – Recursos conhecidos e desprovidos. Sentença confirmada. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, nesta Comarca de Fortaleza, em que figuram as partes indicadas. ACORDAM os membros integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em CONHECER dos recursos de apelação interpostos, para NEGAR-LHES PROVIMENTO, nos termos do voto do Relator. Fortaleza, 16 de maio de 2022. Des. José Tarcílio Souza da Silva Relator&#160;(Apelação Cível&#160;- 0906221-41.2014.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 16/05/2022, data da publicação:&#160; 16/05/2022) - negritei</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <br /> </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <span style="font-size: medium;">DIREITO CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. INDENIZAÇÃO POR DANOS MORAIS E LUCROS CESSANTES. SENTENÇA PROCEDENTE. PRELIMINAR DE NÃO APLICAÇÃO DO CDC. REJEIÇÃO. CONSUMIDOR POR EQUIPARAÇÃO (ART. 18, CDC). PRELIMINAR DE NULIDADE DA SENTENÇA SOB O ARGUMENTO DE FERIMENTO AO ART. 10, CPC (NÃO SURPRESA). REJEIÇÃO. NORMA DE ORDEM PÚBLICA APLICÁVEL DE OFÍCIO. PRELIMINAR DE ILEGITIMIDADE PASSIVA. AFASTADA. RESPONSABILIDADE SOLIDÁRIA (ART. 18, CPC). MÉRITO. ACIDENTE DE CONSUMO PELO FATO DO PRODUTO. RESPONSABILIDADE OBJETIVA DA EMPRESA FORNECEDORA DE GASES MEDICINAIS. AUTOR QUE SOFREU DEBILIDADES PERMANENTES DEVIDO À EXPLOSÃO DE CILINDRO DE OXIGÊNIO. PERDA PARCIAL DA AUDIÇÃO E DA VISÃO. DANOS E NEXO DE CAUSALIDADE CONFIGURADOS. INDENIZAÇÃO DEVIDA. DANO MORAL IN RE IPSA. VALOR INDENIZATÓRIO DE R$ 200.000,00 QUE NÃO SE AFIGURA RAZOÁVEL NEM PROPORCIONAL. REDUÇÃO PARA R$ 60.000,00, ESTANDO CONDIZENTE COM O QUE É USUALMENTE ARBITRADO POR ESTA CORTE ESTADUAL, EM CASOS SEMELHANTES. HONORÁRIOS FIXADOS EM 15% DO VALOR DA CONDENAÇÃO EM CONSONÂNCIA COM O DISPOSTO NO ART. 85, § 2º, CPC. RECURSO CONHECIDO E PROVIDO PARCIALMENTE. SENTENÇA REFORMADA EM PARTE. [...] 12. Em atenção às especificidades do caso concreto, tenho que o valor de R$ 60.000,00 (sessenta mil reais), mostra-se mais adequado e razoável, eis que o acidente provocou a perda parcial de dois órgãos (visão e audição) estando condizente com o que é usualmente arbitrado por esta Corte Estadual, em casos semelhantes. 13. Por fim, quanto ao pleito de redução dos honorários advocatícios fixados pelo Juízo a quo, entendo que foram bem arbitrados na sentença, no percentual de 15% sobre o valor total da condenação, eis que considerou a complexidade da demanda e o esforço do profissional, sendo certo, portanto, que estão em conformidade com o disposto no artigo 85, §2º, do Código de Processo Civil. Não se justifica a redução dos honorários ante a inexistência de exagero quanto à sua fixação, em patamar inferior ao máximo. Ao revés, pautou-se o julgador singular na razoabilidade e proporcionalidade, pelo que deve ser o quantum mantido. Ademais, em vista do provimento parcial deste recurso, restou reduzida a base de cálculo, repercutindo sobre o valor a ser pago a título de honorários sucumbenciais. 14. RECURSO CONHECIDO E PARCIALMENTE

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	PROVIDO. SENTENÇA REFORMADA EM PARTE. ACÓRDÃO Vistos, relatados e discutidos, acordam os membros da Primeira Câmara de Direito Privado, à unanimidade de votos, em CONHECER DO RECURSO DE APELAÇÃO, PARA REJEITAR AS PRELIMINARES SUSCITADAS E, NO MÉRITO, DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do Relator, que integra esta decisão. Fortaleza, 10 de abril de 2019. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Relator&#160;(Apelação Cível&#160;- 0008264-83.2008.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160; 10/04/2019, data da publicação:&#160; 11/04/2019) - negritei</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.5pt; line-height: 150%;"> Isso posto, conheço do apelo, mas para negar-lhe provimento.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%;"> Em consequência do desprovimento do recurso e considerando o teor do Enunciado Administrativo nº 7 do STJ, determino a majoração dos honorários advocatícios em desfavor do Município de Campos Sales, em 2% (dois por cento) sobre o valor da condenação, somando-se ao percentual fixado na origem, o que faço com supedâneo no art. 85, §11, do CPC.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> É o voto que submeto à consideração de meus pares.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-indent: 42.8pt; line-height: 150%; mso-pagination: none; punctuation-wrap: simple; vertical-align: baseline;"> Fortaleza, data informada pelo sistema.</p><p> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	157
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	CONFLITO DE COMPETÊNCIA CÍVEL
Assunto principal	Conflito de Competência
Polo ativo	JUIZ DE DIREITO DA 5ª VARA DA FAZENDA PÚBLICA DA COMARCA DE FORTALEZA
Advogado(s) - Polo ativo	Não informado
Polo passivo	Juízo da 1ª Vara da Fazenda Pública da Comarca de Fortaleza
Advogado(s) - Polo passivo	Não informado
Terceiros	TEREZA REGINA DE CASTRO ALMEIDA ALEXANDRE MUNICIPIO DE FORTALEZA - PROCURADORIA GERAL DO MUNICIPIO - PGM EDILSON FERREIRA FONTELE

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-47c1b129-7fff-4796-c32f-435a6edf366f" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Processo: 3006290-98.2024.8.06.0000 – Conflito de Competência Cível</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Suscitante: JUÍZO DA 5ª VARA DA FAZENDA PÚBLICA DA COMARCA DE FORTALEZA</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Suscitado: JUÍZO DA 1ª VARA DA FAZENDA PÚBLICA DA COMARCA DE FORTALEZA</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Ementa: Processo civil. Conflito negativo de competência. Fazenda comum (suscitante) e Juizado especial da fazenda pública (suscitado). Complexidade da causa. Prova técnica. Lei nº 12.153/2009. Conflito conhecido e dirimido para declarar competente o juízo suscitado.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-

Processo	3006290-98.2024.8.06.0000
	bottom: 6pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">1. Trata-se de Conflito Negativo de Competência tendo como suscitante o Juízo da 5ª Vara da Fazenda Pública, e como suscitado o Juízo da 1ª Vara da Fazenda Pública com competência de Juizado Especial, ambas da Comarca de Fortaleza, nos autos da Ação Ordinária nº 0169955-57.2018.8.06.0001.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 2. A questão em discussão consiste em saber se a alegada complexidade da causa e a necessidade de prova técnica justificam a redistribuição da competência para uma das Varas Comuns da Fazenda Pública, afastando a competência dos Juizados Especiais da Fazenda Pública.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 3. Considerando que a necessidade de produção de prova técnica não afasta a competência do Juizado Especial, tem-se que a competência para processar e julgar a ação é do Juizado Especial da Fazenda Pública, conforme entendimento consolidado do STJ e da Súmula nº 67 deste Tribunal.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 4. Conflito conhecido e dirimido para declarar competente o Juízo da 1ª Vara da Fazenda Pública da Comarca de Fortaleza.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> _________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Dispositivos relevantes citados: CPC, arts. 178, 951, § único, e 953; Lei nº 12.153/2009, arts. 2º, caput e §1º, e 10.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top:

Processo	3006290-98.2024.8.06.0000
	12pt; margin-bottom: 6pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgInt no AREsp: 1711911 SP 2020/0136121-8, Relator: Ministro Og Fernandes, Data de Julgamento: 12/04/2021, T2 – Segunda Turma, Data de Publicação: DJe 16/04/2021; TJCE, Conflito de competência cível: 0002821-32.2023.8.06.0000 Fortaleza, Relatora Maria Iracema Martins do Vale, Data de Julgamento: 18/09/2023, 3ª Câmara Direito Público, Data de Publicação: 18/09/2023.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em acolher o Conflito Negativo de Competência e, por consequência, declarar a competência do Juízo suscitado, para processar e julgar a Ação Ordinária nº 0169955-57.2018.8.06.0001 , tudo nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 2pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Trata-se de CONFLITO NEGATIVO DE COMPETÊNCIA tendo como suscitante o JUÍZO DA 5ª VARA DA FAZENDA PÚBLICA DA COMARCA DE FORTALEZA, e como suscitado o JUÍZO DA 1ª VARA DA FAZENDA PÚBLICA DA COMARCA DE FORTALEZA, nos autos da Ação Cautelar contra Cobrança Abusiva de IPTU com Pedido de Concessão de Antecipação de

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	Tutela ajuizada por TEREZA REGINA DE CASTRO ALMEIDA ALEXANDRE em face do MUNICÍPIO DE FORTALEZA (Processo nº 0169955-57.2018.8.06.0001).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Na ação originária, endereçada ao Juízo da 1ª Vara do Juizado Especial da Fazenda Pública da Comarca de Fortaleza, a parte autora pugna, em sede de tutela, pela anulação do débito fiscal e, no mérito, pela emissão de IPTU de 2018 em parcelas com o percentual de 2,94% sobre o IPTU de 2017.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Distribuídos os autos ao Juízo da 1ª Vara do Juizado Especial da Fazenda Pública da Comarca de Fortaleza, o feito tomou seu regular prosseguimento, com apresentação de contestação pelo ente municipal, réplica e parecer do Ministério Público, manifestando ausência de interesse na causa. Empós, o magistrado declinou da competência em favor de uma das Varas Comuns da Fazenda Pública, sob o fundamento de complexidade da causa.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Na sequência, redistribuídos os autos à 5ª Vara da Fazenda Pública da Comarca de Fortaleza, o magistrado suscitou o presente conflito de competência, indicando que se encontram reunidos todos os requisitos de atração da competência do Juizado Especial fazendário.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Deixo de abrir vista dos autos à Procuradoria-Geral de Justiça, uma vez que o mérito recursal se restringe exclusivamente à discussão de matéria na qual não há interesse público primário que justifique a intervenção ministerial, conforme disposição do Arts. 178 e 951, § único, do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Atendidos os pressupostos legais, conheço do presente Conflito de Competência, nos termos do Art. 953 e seguintes do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">A controvérsia discutida nos autos cinge-se a definir qual o juízo competente para processar e julgar a Ação Ordinária nº 0169955-57.2018.8.06.0001: se da 1ª Vara do Juizado Especial da Fazenda Pública (Juízo suscitado) ou da 5ª Vara da Fazenda Pública (Juízo suscitante), ambas da Comarca de Fortaleza.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Pois bem.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Compulsando os autos, verifico que o Juízo da 1ª Vara da Fazenda Pública, ora suscitado, indicou que os juizados especiais são órgãos que se destinam a tratar de causas de menor complexidade, bem como os casos relacionados à divergência no valor do IPTU prescindiriam da realização de perícia. Nesse sentido, apontou que, em razão do grau de complexidade da matéria, o processo deveria ser julgado por uma das Varas Comuns da Fazenda Pública.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">In casu, verifico que o argumento da vara suscitada não merece prosperar, tendo em vista que a presente ação não se amolda a nenhuma das hipóteses que afastam a competência dos Juizados Especiais da Fazenda Pública, bem como o nível de complexidade está intimamente relacionado ao valor da causa, que, no caso em comento, o valor atribuído encontra-se em conformidade com o valor de alçada de 60 (sessenta) salários-mínimos (Art. 2º, caput, da Lei nº 12.153/2009 – Lei do Juizado Especial da Fazenda Pública).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Nesse sentido, é o entendimento consolidado pelo STJ:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO NO RECURSO ESPECIAL. COMPETÊNCIA DOS JUIZADOS ESPECIAIS DA FAZENDA PÚBLICA. VALOR DA CAUSA. PARCELAS VENCIDAS MAIS 12 (DOZE) PARCELAS VINCENDAS. ART. 2º, § 2º, DA LEI N. 12.153/2009. IRRELEVÂNCIA DE EVENTUAL DEMORA NA TRAMITAÇÃO DO FEITO. ART. 43 DO CPC. COMPLEXIDADE DA CAUSA NÃO AFASTA A COMPETÊNCIA DOS JUIZADOS. AGRAVO IMPROVIDO. 1. A competência dos Juizados Especiais da Fazenda Pública é definida pelo valor da causa, que não pode superar os 60 (sessenta) salários-mínimos, consoante o art. 2º da Lei n. 12.153/2009. 2. O valor da causa em que se veicule obrigações vincendas, por sua vez, é definido pela soma de 12 (doze) parcelas vincendas e de eventuais parcelas vencidas, conforme o § 2º do referido dispositivo. Precedentes. 3. A eventual demora na tramitação do processo não suplanta a observância à norma supramencionada, pois a competência é definida pelo momento do registro ou distribuição da petição inicial, sendo irrelevantes as modificações do estado de fato ocorridas posteriormente, consoante o art. 43 do CPC. 4. Se, no momento da propositura da demanda, o valor da causa não ultrapassa o teto legal e não está presente nenhuma hipótese prevista no art. 2º, § 1º, da Lei n. 12.153/2009, é do Juizado Especial da Fazenda

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	Pública a competência para processar e julgar o feito. 5. A complexidade da causa não é motivo suficiente para afastar a competência dos juizados especiais. Precedentes. 6. Agravo interno a que se nega provimento. (STJ – AgInt no AREsp: 1711911 SP 2020/0136121-8, Relator: Ministro OG FERNANDES, Data de Julgamento: 12/04/2021, T2 – SEGUNDA TURMA, Data de Publicação: DJe 16/04/2021). (Destaque-se).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De igual modo, assim dispõe a Súmula nº 67 deste Tribunal:</p><p style="line-height: 1.7999999999999998; margin-left: 111pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Súmula 67/TJCE A necessidade de produção de prova técnica, por si só, não afasta a competência dos Juizados Especiais da Fazenda Pública para o processamento e julgamento da causa. (Resolução do Órgão Especial nº 03/2020; DJe 30/01/2020).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Ademais, o Art. 10 da lei autoriza a produção de prova técnica nos Juizados Especiais da Fazenda Pública. Confira-se:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Art. 10.&#160; Para efetuar o exame técnico necessário à conciliação ou ao julgamento da causa, o juiz nomeará pessoa habilitada, que apresentará o laudo até 5 (cinco) dias antes da audiência.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Outro não é o entendimento deste egrégio Tribunal Justiça:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">PROCESSO CIVIL. CONFLITO NEGATIVO DE COMPETÊNCIA. AÇÃO DE OBRIGAÇÃO DE FAZER. BENEFÍCIO PREVIDENCIÁRIO. APOSENTADORIA POR INVALIDEZ OU READAPTAÇÃO FUNCIONAL. CAUSA DE VALOR INFERIOR A 60 SALÁRIOS MÍNIMOS. MATÉRIA QUE NÃO EXCLUI A COMPETÊNCIA ESPECIAL. NECESSIDADE DE PERÍCIA MÉDICA. PROVA TÉCNICA. INEXISTÊNCIA DE COMPLEXIDADE. POSSIBILIDADE DAS AÇÕES DESTA NATUREZA TRAMITAREM PERANTE OS JUIZADOS ESPECIAIS DA FAZENDA PÚBLICA. RITO DA LEI Nº 12.153/2009. INTELIGÊNCIA DA SÚMULA 67 DO TJCE. COMPETÊNCIA DO JUÍZO SUSCITANTE. PRECEDENTES DO STJ E DESTA CORTE DE JUSTIÇA. 1. Tratam os autos de Conflito Negativo de Competência entre os Juízos da 6ª e da 5ª Vara da Fazenda Pública, ambos da Comarca de Fortaleza, envolvendo ação de obrigação de fazer, com o objetivo de discutir a concessão de aposentadoria por invalidez ou a readaptação para cargo compatível com as limitações que a autora possui. 2. O valor da causa atribuído na petição inicial não ultrapassa o limite imposto pelo art. 2º da Lei nº 12.153/2009, bem como que a matéria discutida nos autos de origem (pedido de benefício previdenciário) não está dentre aquelas excluídas da competência dos Juizados Especiais da Fazenda Pública. 3. Inclusive, sabe-se que a simples necessidade de produção de prova pericial técnica ou mesmo uma relativa complexidade não é causa suficiente a ensejar o deslocamento da competência para a Justiça Comum. Inteligência da Súmula 67 do TJCE. - Precedentes do STJ e desta e. Corte de Justiça. - Conflito conhecido, declarando-se competente para julgar a causa o Juízo da 6ª Vara da Fazenda Pública da Comarca de Fortaleza. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff;

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	font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Conflito de Competência nº 0002821-32.2023.8.06.0000, em que figuram os Juízos acima indicados. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do conflito, a fim de declarar a competência do Juízo da 6ª Vara da Fazenda Pública da Comarca de Fortaleza para processar e julgar a ação originária, nos termos do voto da Relatora. Fortaleza, 18 de setembro de 2023. DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora (TJCE – Conflito de competência cível: 0002821-32.2023.8.06.0000 Fortaleza, Relator: MARIA IRACEMA MARTINS DO VALE, Data de Julgamento: 18/09/2023, 3ª Câmara Direito Público, Data de Publicação: 18/09/2023. (Destaque-se).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Nesse sentido: Conflito de competência cível: 0003460-50.2023.8.06.0000 Fortaleza, Relator: FERNANDO LUIZ XIMENES ROCHA, Data de Julgamento: 30/10/2023, 1ª Câmara Direito Público, Data de Publicação: 30/10/2023; Conflito de competência cível: 3003318-58.2024.8.06.0000 Fortaleza, Relator: JOSÉ TARCÍLIO SOUZA DA SILVA, Data de Julgamento: 14/08/2024, 1ª Câmara Direito Público; Conflito de competência cível: 0003551-43.2023.8.06.0000 Fortaleza, Relator: TEREZE NEUMANN DUARTE CHAVES, Data de Julgamento: 30/08/2023, 2ª Câmara Direito Público, Data de Publicação: 30/08/2023; e Conflito de competência cível: 3005791-17.2024.8.06.0000 Fortaleza, Relator: LUIZ EVALDO GONÇALVES LEITE, Data de Julgamento: 18/10/2024, 2ª Câmara Direito Público.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Por fim, vislumbro que a demanda em questão não se encontra listada no rol de exceções à competência dos Juizados Especiais da Fazenda Pública, dispostas no § 1º do Art. 2º da Lei 12.153/2009.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Desse modo, considerando que a alegada complexidade não afasta a competência do Juizado Especial da Fazenda Pública, <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color:

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	#000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">tenho que a competência ara processar e julgar a lide é do juízo suscitado.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Pelo exposto, CONHEÇO do conflito de competência negativo para DIRIMI-LO, declarando competente o juízo suscitado, qual seja, o da 1ª Vara da Fazenda Pública da Comarca de Fortaleza, para processar e julgar o feito.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160; Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	158
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Progressão Funcional com Interstício de Doze Meses
Polo ativo	ERMANO BATISTA DA COSTA
Advogado(s) - Polo ativo	ANTONIO CARLOS CARDOSO SOARES - (CE8928-A)
Polo passivo	MUNICIPIO DE NOVA RUSSAS
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong id="docs-internal-guid-0620c9ec-7fff-215f-6c31-f76c598a90dc" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 3000386-23.2023.8.06.0133 - Remessa Necessária Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Remetente: Juízo da 2ª Vara da Comarca de Nova Russas</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Requerente: Ermano Batista da Costa</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Requerido: Município de Nova Russas</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito administrativo e processual civil. Remessa necessária. Ação ordinária. Servidor público municipal. Progressão por antiguidade. Norma autoaplicável. Consectários legais. ajuste. Verba honorária. Postergação. Remessa necessária conhecida e parcialmente provida.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span

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	style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 700; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Remessa necessária em ação ordinária julgada procedente, com a condenação do ente público à concessão, em favor do autor, de progressões por antiguidade, nos termos da Lei Municipal nº 576/2004, bem como ao pagamento das diferenças salariais, observada a prescrição quinquenal.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Consiste em analisar a higidez da sentença, bem como se a norma local seria autoaplicável.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. Da leitura da norma local, vê-se que a progressão por antiguidade dos servidores se submete a requisitos objetivos, não havendo previsão legal acerca da existência de avaliação de desempenho para tanto. Precedentes do TJCE.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A Administração Pública é regida, dentre outros princípios, pelo da legalidade, de modo que, satisfeita as condições objetivas previstas na lei, o direito do servidor deve ser concretizado através de ato vinculado da Administração Pública. Precedente do STJ.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Nesse panorama e considerando a realidade fática dos autos, mostra-se escorreita a sentença que reconheceu o direito do autor às progressões por antiguidade, nos termos do art. 26 e do art. 27 e parágrafos da Lei Municipal nº 576/2004, bem como condenou o ente público ao pagamento das eventuais diferenças&#160; daí advindas, respeitada a prescrição quinquenal (art. 1º, do Decreto nº 20.910/32), cujos valores serão definidos por ocasião da liquidação da sentença.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">6. No que se refere aos índices de atualização dos valores devidos, por se tratarem de matéria de ordem pública, há ser observado, in casu, o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3º da

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	Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação, em 09/12/2021.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Merece reparo a decisão em relação aos honorários sucumbenciais advocatícios, pois em se tratando de sentença ilíquida, tal verba deve ser apurada apenas na fase de liquidação do julgado (art. 85, §4º, II, do CPC).</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 8. Remessa necessária conhecida e parcialmente provida.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; ____________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CPC/2015, art. 373; Decreto-Lei nº 20.910/1932, art. 1º; Lei Municipal nº 576/2004.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STJ, REsp nº 1.878.849/TO, Rel. Manoel Erhardt (Desembargador Convocado do Trf5), Primeira Seção, j. 24/2/2022; TJCE, AC nº 0006177-05.2015.8.06.0133, Rel. Des. Washington Luis Bezerra De Araújo, 3ª Câmara Direito Público, j. 30/05/2022; AC nº 0009502-51.2016.8.06.0133, Rel. Des. Teodoro Silva Santos, 1ª Câmara Direito Público, j. 04/10/2021.</p><p style="line-height: 1.2; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em conhecer da Remessa Necessária para dar-lhe parcial provimento, tudo nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">Fortaleza, data e hora indicadas pelo sistema.</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <br /> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de REMESSA NECESSÁRIA que transfere a este Tribunal o conhecimento de Ação Ordinária ajuizada por ERMANO BATISTA DA COSTA em desfavor do MUNICÍPIO DE NOVA RUSSAS, por meio da qual o autor objetivava, em síntese, a concessão de progressão funcional, nos termos da Lei Municipal nº 576/2004, bem como o pagamento das diferenças pecuniárias vencidas não prescritas e vincendas.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O Juízo da 2ª Vara da Comarca de Nova Russas julgou a demanda procedente nos termos no dispositivo abaixo (ID nº 15458831):</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ante o exposto, JULGO PROCEDENTE o presente feito, nos termos do artigo 487, I, CPC, para:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> A) CONDENAR o município requerido a conceder progressões por antiguidade, de forma anual e no percentual total de ocupantes de cargo ou função em cada referência, nos termos do art. 26 e do art. 27 e parágrafos da Lei nº 576/2004, progressões estas que incidem desde 01 de julho de 2008;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> B) CONDENAR o requerido a pagar as eventuais diferenças salariais oriundas das progressões por antiguidade devidas à parte autora, na forma estabelecida no inciso “a” desse dispositivo, respeitada a prescrição parcial quinquenal (contados do ajuizamento da presente ação). Tais valores devem ser atualizados com juros de mora na forma do artigo 1-F da Lei nº 9.494/97 desde a citação e com correção monetária do Índice de Preços ao Consumidor Amplo Especial (IPCA-E), contados do efetivo prejuízo.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Os valores acima devem ser apurados em liquidação de sentença.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-

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	align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Condeno a parte ré ao pagamento de honorários advocatícios que fixo em 10% (dez por cento) do valor da condenação.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Requerido isento de custas processuais nos termos do artigo 5º, I, da Lei Estadual nº 16.132/2016.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Remessa necessária com base no art. 496, I, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">As partes não interpuseram recurso voluntário, razão pela qual os autos ascenderam a este Tribunal por força exclusivamente do duplo grau de jurisdição obrigatório (vide ID nº 15458834).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Instado a manifestar-se, o Parquet deixou de apresentar parecer de mérito por entender desnecessária sua intervenção (ID nº 15485875).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Preenchidos os requisitos de admissibilidade, conheço da Remessa Necessária.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> O cerne da controvérsia consiste em analisar se o autor, servidor público do Município de Nova Russas, faz jus à progressão funcional por antiguidade, nos termos da Lei Municipal nº 576/2004, bem como à percepção das diferenças salariais devidamente corrigidas, respeitada a prescrição quinquenal.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">De início, consigno que, conforme assentado pela magistrada

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	a quo, “é firme o entendimento desta Corte no sentido de que ‘a existência de ação coletiva não impede o ajuizamento de ação individual, por aquela não induzir litispendência. Entretanto, ajuizada ação individual com o mesmo pedido da ação coletiva, o autor da demanda individual não será beneficiado pelos efeitos da coisa julgada da lide coletiva, se não for requerida a sua suspensão, conforme previsto no art. 104 do CDC’ (Agint no Aresp 1.494.721/RJ, relator Ministro Manoel Erhardt -Desembargador Convocado do TRF da 5ª Região -, Primeira Turma, julgado em 23/5/2022, DJe de 25/5/2022).” (STJ - AgInt no REsp: 2021321 RJ 2022/0264702-4, Relator: Ministro PAULO SÉRGIO DOMINGUES, Data de Julgamento: 20/11/2023, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 27/11/2023). Dessa forma, a manutenção da rejeição da preliminar aventada é medida que se impõe.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Dando seguimento, tem-se que a Lei Municipal nº 576/2004, que instituiu o Plano de Cargos e Carreiras dos Servidores Técnicos-Administrativos da Prefeitura Municipal de Nova Russas, em seu Capítulo IV, traz o conceito de progressão e promoção, os critérios objetivos para concessão da progressão, bem como o prazo e a forma para sua concretização. Por relevante, vejamos:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">CAPÍTULO IV</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DO DESENVOLVIMENTO DO SERVIDOR NAS CARREIRAS</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 22 - O desenvolvimento do servidor nas carreiras far-se-á mediante as seguintes formas de ascensão funcional:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">I- progressão e</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II-promoção</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br />

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	</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 23 - A Prefeitura Municipal de Nova Russas deverá alocar, anualmente, no Orçamento a ser aprovado, pela Câmara Municipal, recursos financeiros para efetivar as ascensões funcionais.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> SEÇÃO I</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DA PROGRESSÃO</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 24 - Progressão é a passagem do servidor de uma referência para outra imediatamente superior dentro da faixa vencimental da mesma classe, obedecidos os critérios de Desempenho ou Antiguidade e o cumprimento do interstício de 365 dias.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Parágrafo Único - Observando o disposto neste artigo, considerar-se-á prioridade o critério de desempenho.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 25 - Os critérios para Avaliação de Desempenho serão estabelecidos por Lei Complementar, e o ato por Decreto.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 26 - A

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	progressão ocorrerá anualmente, observando o interstício de 365 dias a contar da data da vigência do Enquadramento por Descompressão, estabelecida pelo Plano de Cargos e Carreiras.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 27 - O número de servidores a serem avançados por progressão, corresponderá a 60% (sessenta por cento) do total de ocupantes de cargo ou função em cada referência, atendidos aos critérios de desempenho e antiguidade, excluindo-se a última referência de cada classe que concorrerá por promoção.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> § 1º - Observando o disposto neste artigo, do percentual previsto para progressão, 50% (cinquenta por cento) será por desempenho e 50% (cinquenta por cento) por antiguidade.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> SEÇÃO II</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DA PROMOÇÃO</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 28 Promoção é a elevação do servidor de uma para outra classe imediatamente superior, dentro da mesma carreira.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Parágrafo Único - A promoção a que se refere este artigo dar-se-á exclusivamente por Avaliação de Desempenho, cujos critérios são os estabelecidos por lei e o ato por Decreto do Chefe do Poder Executivo Municipal.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 29 - Para habilitar-se à promoção o servidor dependerá de:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I - habilitação legal para o exercício do cargo ou função integrante da classe;</p><p

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	style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - desempenho eficaz de suas atribuições;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II - cumprimento do interstício de 365 dias;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 30 - O número de servidores a serem promovidos corresponderá a 40% (quarenta por cento) do total de ocupantes de cargo ou função integrantes da última referência de cada classe.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Parágrafo único - Se o quociente for fracionário e a fração igual ou superior a 0,5 (cinco décimos) será promovido mais um servidor.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 31 - Somente concorrerá a promoção o servidor que se encontrar na última referência de sua respectiva classe. (destacou-se)</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Da leitura dos dispositivos acima, vê-se que a progressão do servidor deve obedecer critérios de desempenho, mediante avaliação, ou de antiguidade, e o cumprimento do interstício de 365 (trezentos e sessenta e cinco) dias. Infere-se, ainda, que a progressão dos servidores deve ocorrer anualmente, de modo que 60% (sessenta por cento) dos servidores progridem após o interstício de 365 (trezentos e sessenta e cinco) dias, sendo 30% (trinta por cento) por merecimento e 30% (trinta por cento) por antiguidade. Não se vislumbra, portanto, a existência de avaliação de desempenho para promoção por antiguidade - pois, quando a legislação reputou necessária, assim o fez, de forma explícita, ex vi do art. 28, parágrafo único supra - ou mesmo de lei para regulamentar sua concessão</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Como se sabe, a Administração Pública é regida, dentre outros princípios, pelo da legalidade, de modo que, satisfeita a condição objetiva prevista na lei, o direito do servidor deve ser concretizado através de ato vinculado da Administração Pública, não havendo que se falar em discricionariedade.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Oportuno consignar que o Superior Tribunal de Justiça, em julgamento

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	submetido à sistemática dos recursos especiais repetitivos, fixou a tese de que “é ilegal o ato de não concessão de progressão funcional de servidor público, quando atendidos todos os requisitos legais, a despeito de superados os limites orçamentários previstos na Lei de Responsabilidade Fiscal, referentes a gastos com pessoal de ente público, tendo em vista que a progressão é direito subjetivo do servidor público, decorrente de determinação legal, estando compreendida na exceção prevista no inciso I do parágrafo único do art. 22 da Lei Complementar 101/2000.” (Tema 1075 - REsp n. 1.878.849/TO, relator Ministro Manoel Erhardt (Desembargador Convocado do Trf5), Primeira Seção, julgado em 24/2/2022, DJe de 15/3/2022.)</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> In casu , conforme visto, o autor comprovou seu ingresso no serviço público do Município de Nova Russas em 2008, no cargo de odontologista, consoante Ato de Nomeação e Termo de Posse (ID nº 15458810); bem como que o seu salário base correspondia ao seu enquadramento funcional na Referência 11 (ID nº 15458811) e, somente a partir de&#160; fevereiro de 2023, passou a corresponder à Referência 16.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> &#160; O ente público, por sua vez, se limitou a alegar, em sua peça de defesa, q ue a progressão requerida não é automática, pois depende da edição de lei complementar estabelecedora dos critérios de avaliação de desempenho - o que não se sustenta, conforme exposto acima. Não logrou, portanto, comprovar algum fato impeditivo, modificativo ou extintivo do direito autoral, ônus que lhe competia (art. 373, II, do CPC) e que poderia ser demonstrado por meio de prova documental.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Perfilhando o mesmo entendimento, colaciono precedente deste órgão colegiado envolvendo mesma causa de pedir e com solução idêntica, senão vejamos:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">ADMINISTRATIVO. REMESSA NECESSÁRIA AVOCADA E APELAÇÕES CÍVEIS EM AÇÃO ORDINÁRIA. PROGRESSÃO POR TEMPO DE SERVIÇO. PREVISÃO NO ESTATUTO DOS SERVIDORES PÚBLICOS DO MUNICÍPIO DE NOVA RUSSAS. LEI MUNICIPAL Nº 576/2004. REGRA AUTOAPLICÁVEL. PRECEDENTES TJCE. SENTENÇA ILÍQUIDA. POSTERGADA FIXAÇÃO DA VERBA HONORÁRIA. APELAÇÕES CONHECIDAS. DESPROVIDO RECURSO DO MUNICÍPIO. PARCIALMENTE PROVIDOS REMESSA E APELO DO AUTOR. 1. É obrigatório o reexame da sentença ilíquida proferida contra a União, os Estados, o Distrito Federal, os Municípios e as respectivas autarquias e fundações de

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	direito público. 2. A causa de pedir remota versa sobre a possibilidade de que seja realizada a progressão automática dos servidores públicos municipais, tendo em vista que o Município de Nova Russas não teria implementado comissão de avaliação para que fossem analisados os requisitos preenchidos pelos servidores para serem progredidos na carreira. 3. A jurisprudência pátria é uníssona entendendo que, em se tratando de progressão por antiguidade, havendo apenas requisitos objetivos para a obtenção de tal instituto, o ato da Administração de progredir o servidor é vinculado, e não discricionário, sendo verdadeiro direito subjetivo dos servidores públicos à pretendida elevação na carreira. 4. Julgou com acerto o magistrado sentenciante, ao entender que a pretensão da parte autora merece prosperar somente no que concerne à progressão por antiguidade, que, por se embasar apenas em requisito objetivo temporal, trata-se de direito subjetivo dos servidores públicos municipais, que vem sendo restringido indevidamente pela Administração Pública. 5. Já quanto à pretensão concernente à progressão por merecimento e à promoção (que é prevista pela Lei em apreço apenas por merecimento), não há que se falar em direito subjetivo dos servidores públicos, mas de ato discricionário da Administração. 6. Com relação aos honorários sucumbenciais, reza o art. 85, § 4º, inciso II, do CPC/2015, que não sendo líquida a sentença, a definição do percentual dos honorários advocatícios somente deverá ocorrer posteriormente, quando da liquidação do julgado. 7. Remessa avocada e apelações conhecidas; desprovido apelo do Município; parcialmente provido reexame e recurso do autor apenas para postergar a fixação da verba honorária. (Apelação Cível - 0006177-05.2015.8.06.0133, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 30/05/2022, data da publicação:&#160; 30/05/2022) (destacou-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">DIREITO ADMINISTRATIVO. APELAÇÃO CÍVEL. SENTENÇA QUE JULGOU PARCIALMENTE PROCEDENTE O PEDIDO DO SERVIDOR E CONDENOU O MUNICÍPIO DE NOVA RUSSAS. PROGRESSÃO POR TEMPO DE SERVIÇO. PREVISÃO NO ESTATUTO DOS SERVIDORES PÚBLICOS DO MUNICÍPIO DE NOVA RUSSAS. LEI MUNICIPAL Nº 546/2004. REGRA AUTOAPLICÁVEL. DESNECESSIDADE DE OUTRA LEI PARA REGULAMENTAR TEXTO LEGAL VIGENTE. IMPOSSIBILIDADE DE LIMITAÇÃO DO DIREITO ASSEGURADO NO REGIME JURÍDICO ÚNICO. PRECEDENTES STJ E TJCE. RECURSO CONHECIDO E DESPROVIDO. FIXAÇÃO DO PERCENTUAL DE HONORÁRIOS POSTERGADA PARA A FASE DE LIQUIDAÇÃO DO JULGADO. (Apelação Cível - 0009502-51.2016.8.06.0133, Rel. Desembargador(a) TEODORO SILVA SANTOS, 1ª Câmara Direito Público, data do julgamento:&#160; 04/10/2021, data da publicação:&#160; 04/10/2021) (destacou-se)</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Desse modo, mostra-se escorreita a sentença que reconheceu o direito do autor às progressões por antiguidade, nos termos do art. 26 e do art. 27 e parágrafos da Lei nº 576/2004, bem como condenou o ente público ao pagamento das eventuais diferenças&#160; daí advindas, respeitada a prescrição quinquenal (art. 1º, do Decreto nº 20.910/32), cujos valores serão definidos por ocasião da liquidação da sentença.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">No que se refere aos índices de atualização dos valores devidos, por se tratarem de matéria de ordem pública, há ser observado, in casu, o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação, em 09/12/2021.</p><p style="line-height: 1.7999999999999998; margin-left: 1pt; text-indent: 55.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Por fim, merece reparo a decisão em relação aos honorários sucumbenciais advocatícios, pois em se tratando de sentença ilíquida, tal verba deve ser apurada apenas na fase de liquidação do julgado (art. 85, §4º, II, do CPC).</p><p style="line-height: 1.7999999999999998; margin-left: 1pt; text-indent: 55.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço da Remessa Necessária para dar-lhe parcial provimento, reformando a sentença tão somente para ajustar os consectários da condenação e para postergar a fixação dos honorários advocatícios, mantendo-a nos demais termos.</p><p style="line-height: 1.7999999999999998; margin-left: 1pt; text-indent: 55.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; margin-left: 1pt; text-indent: 55.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 2pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	159
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE

Processo	3000015-81.2023.8.06.0158
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização Trabalhista
Polo ativo	MUNICIPIO DE RUSSAS
Advogado(s) - Polo ativo	LUIZ JOSE SILVA - (CE6384-A)
Polo passivo	CLAUDIO ICARO FERREIRA
Advogado(s) - Polo passivo	BRUNO MELO DE NOROES RAMOS - (CE33828-A)
Terceiros	Não informado

Processo	3000015-81.2023.8.06.0158
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"> <span style="font-size: medium;"> <img 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</p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;3000015-81.2023.8.06.0158 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE RUSSAS. <br /> </p><p> APELADO: CLAUDIO ICARO FERREIRA.</p><p align="center"> <br /> </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> Ementa: CONSTITUCIONAL. ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. EX-SERVIDOR PÚBLICO. EXERCÍCIO DE CARGO EM COMISSÃO ENTRE OS ANOS DE 2018 E 2020. DIREITO À PERCEPÇÃO DE VERBAS RESCISÓRIAS (DÉCIMO TERCEIRO SALÁRIO E DE FÉRIAS ACRESCIDAS DO ADICIONAL DE UM TERÇO). ART. 7º, INCISOS VIII E XVII, C/C O ART. 39, § 3º, DA CONSTITUIÇÃO FEDERAL DE 1988. PAGAMENTO DEVIDO. ÔNUS DA PROVA QUE INCUMBIA AO MUNICÍPIO DE RUSSAS/CE. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> I. CASO EM EXAME </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 1. Apelação Cível interposta pelo Município de Russas/CE, adversando sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação de cobrança movida por Cláudio Ícaro Ferreira, ex-servidor público, exonerado de cargo em comissão que exerceu entre os anos de 2018 e 2020. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   II. QUESTÃO EM DISCUSSÃO </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> 2. A principal questão discutida nos autos gira em torno do direito à percepção de verbas rescisórias (13º salário e férias acrescidas do adicional de 1/3), na forma da lei. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> 3. Ora, a CF/88, em seu art. 39, §3º, assegura, expressamente, ao s servidores em geral, efetivos ou comissionados, alguns direitos trabalhistas, dentre eles, 13º salário e férias acrescidas do adicional de 1/3 (art. 7º, incisos VIII e XVII). &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 4. E, nas causas movidas por ex-servidores, para a cobrança de eventuais verbas rescisórias, se evidenciada a existência do vínculo funcional, o ônus da prova da realização dos pagamentos recai sobre o ente

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	público.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 5. Incide, aqui, a Teoria da Carga Dinâmica da Prova, segundo a qual o seu ônus deve ser imputado àquela parte que, dadas as circunstâncias existentes no caso, tenha melhores condições para dele se desincumbir in concreto.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 6. Logo, não havendo dúvida quanto à existência do vínculo funcional, incumbia ao Município de Russas/CE ter demonstrado que realizou o pagamento das verbas rescisórias devidas ao ex-servidor público, Cláudio Ícaro Ferreira, após sua exoneração do cargo em comissão, o que, porém, não ocorreu.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> IV. DISPOSITIVO </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 7. Recurso conhecido e não provido.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 8. Sentença mantida.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> ______</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Dispositivos relevantes citados: CF/88, arts. 7º, XVII e 39, §3º. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> &#160; </p><p class="EmentadoAcrdo" style="margin-left: 4cm; text-align: justify;"> &#160; &#160; </p><p class="EmentadoAcrdo" style="line-height: 150%; text-align: center;"> ACÓRDÃO </p><p class="EmentadoAcrdo" style="text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000015-81.2023.8.06.0158, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para negar-lhe provimento, confirmando integralmente a sentença, nos termos do voto da Relatora.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 &#160; </p><p class="MsoNormal" style="margin-bottom: 12pt; line-height: 150%; text-align: center;"> R elatora &#160; </p><p class="MsoNormal" style="line-height: 150%; text-align: justify;"> &#160; </p><p class="MsoNormal" style="line-height: 200%; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de apelação cível, adversando sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação de cobrança (Processo nº 3000015-81.2023.8.06.0158). &#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária : Cláudio Ícaro Ferreira ingressou com ação de cobrança em face do Município de Russas/CE, alegando, em suma, que, entre os anos de 2018 e 2020, exerceu o cargo em comissão, e que, ao ser exonerada, não percebeu as verbas rescisórias a que teria direito, por força de lei (por exemplo, 13º salário e férias acrescidas do adicional de 1/3, etc.).</p><p

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	class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Citado, o ente público ofertou contestação (ID 15458966).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160; Sentença proferida pelo magistrado de primeiro grau (ID 15458978), dando parcial procedência à ação de cobrança, in verbis: </p><p class="MsoNormal" style="margin-left: 120.45pt; text-align: justify;"> “ Ante o exposto,&#160; JULGO PARCIALMENTE PROCEDENTE&#160;a pretensão autoral, condenando o réu a pagar à promovente: a) 13º salário integral referente aos anos de 2018, 2019 e 2020, no valor de sua remuneração no respectivo período; e b) férias integrais simples referentes ao período aquisitivo de 2018/2019, 2019/2020 e 2021/2022, acrescidas do terço constitucional, no valor de sua remuneração no respectivo período. </p><p class="MsoNormal" style="margin-left: 120.45pt; text-align: justify;"> Sobre o valor da condenação, incidirá correção monetária pelo IPCA-E, a contar da data em que cada verba deveria ter sido paga, e juros de mora na forma do artigo 1.º- F, da Lei n.º 9.494/97, com redação dada pela Lei n.º 11.960/09, conforme ficou decidido pelo STJ, no Tema Repetitivo nº 905, e, a partir de 09/12/2021, pela taxa referencial da SELIC (EC nº 113/2021), a contar da data da citação. </p><p class="MsoNormal" style="margin-left: 120.45pt; text-align: justify;"> Julgo IMPROCEDENTES os demais pedidos. </p><p class="MsoNormal" style="margin-left: 120.45pt; text-align: justify;"> Tendo havido sucumbência recíproca, condeno a parte autora ao pagamento de 1/3 das custas processuais, e&#160;ambas as partes ao pagamento de honorários advocatícios em favor do patrono da outra, no mínimo legal sobre o proveito econômico obtido, de acordo com o índice previsto no art. 85, § 3º, do CPC (art. 86, caput, e art. 85, § 14º, do CPC). </p><p class="MsoNormal" style="margin-left: 120.45pt; text-align: justify;"> Deixo de condenar o promovido ao pagamento de custas, em virtude da isenção do ente público (art. 5º, I, da Lei Estadual nº 16.132/2016). </p><p class="MsoNormal" style="margin-left: 120.45pt; text-align: justify;"> Suspensa a exigibilidade das custas e dos honorários advocatícios devidos pelo requerente, em virtude da gratuidade da justiça (art. 98, § 3º, do CPC). </p><p class="MsoNormal" style="margin-left: 120.45pt; text-align: justify;"> Sentença não sujeita a remessa necessária (art. 496, § 3º, III, do CPC). </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 120.5pt; text-align: justify;"> Transitada em julgado e, não havendo requerimentos a serem analisados, arquivem-se os autos, sem prejuízo de posterior desarquivamento, a pedido do interessado, para fins de cumprimento de sentença.” (sic) </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Russas/CE interpôs Apelação Cível (ID 15458982), buscando a reforma integral do r. <em style="mso-bidi-font-style: normal;">decisum.</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Para tanto, sustentou que não assistiri a ao ex-servidor público, in casu, o direito a eventuais verbas rescisória s, porque teria apenas exercido cargo em comissão, que é de livre nomeação e exoneração, na forma da lei. &#160;</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, ao final, pugnou pelo provimento do recurso. &#160;</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sem contrarrazões (ID 15458986). &#160; </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> <span

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	style="text-decoration: underline;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça como custos legis, na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, não havendo, portanto, interesse público a ser tutelado pelo ilustre representante Parquet neste azo. </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="MsoNormal" style="line-height: 150%; text-align: justify;"> &#160; </p><p class="MsoNormal" style="line-height: 200%; text-align: center;"> VOTO </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos todos os requisitos legais pertinentes, conheço da apelação cível, e passo, a seguir, ao enfrentamento de suas razões. </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foi devolvida a este Tribunal apenas controvérsia em torno do direito do ex-servidor público, Cláudio Ícaro Ferreira, à percepção de verbas rescisórias (13º salário e férias acrescidas do adicional de 1/3), após sua exoneração de cargo em comissão que exerceu, no âmbito do Município de Russas/CE, entre os anos de 2018 e 2020, como visto.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, o art. 39, §3º, da CF/88 assegura, expressamente, aos servidores em geral, efetivos ou comissionados, alguns direitos trabalhistas, dentre eles, 13º salário e férias acrescidas do adicional de 1/3 (art. 7º, VIII e XVII), ex vi: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <br /> </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> VIII - décimo terceiro salário com base na remuneração integral ou no valor da aposentadoria; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...] &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal; (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, nas causas movidas para a cobrança de tais verbas rescisórias, cabe ao ex-servidor que invoca a inadimplência do ente público, única e tão somente, demonstrar a existência do seu vínculo funcional, à época. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ao ente público, por seu turno, recai o dever de comprovar o pagamento dos respectivos valores ou a presença de qualquer outro fato extintivo, impeditivo ou modificativo do direito reivindicado pelo ex-servidor. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> <span style="color:

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	black;"> Incide, aqui, a Teoria da Carga Dinâmica da Prova, segundo a qual o seu ônus deve ser imputado à parte que, dadas as circunstâncias existentes, tenha melhores condições para dele se desincumbir in concreto. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Deveras, é mais simples ao ente público, que deve ter pleno controle dos dados relativos à vida funcional de todos os integrantes de seus quadros, fazer prova da (in)existência de direito reivindicado pelo ex-servidor.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Acerca do tema, ex vi: </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “Ação de Cobrança – Saldo de verbas rescisórias – Ex-servidora estatutária do Município de Ferraz de Vasconcelos/SP – Não se desincumbiu a ré, ora apelada, do seu ônus processual quanto à prova de fato impeditivo, modificativo ou extintivo do direito do autor, nos termos do art. 333, inciso II, do Código de Processo Civil – Impossibilidade de carrear à autora a produção de "prova diabólica" – Onus probandi que deve ser carreado àquele que tiver melhores condições de suportá-lo segundo a Teoria da Distribuição Dinâmica do ônus da prova. Atualização do débito nas condenações impostas à Fazenda Pública – Aplicação do disposto no art. 1º-F da Lei n.º 9.494/97, com redação determinada pelo art. 5.º da Lei n.º 11.960/09, observadas as determinações do C. Supremo Tribunal Federal. Sentença reformada – Recurso provido.” (TJSP - Apelação Cível 0006143-29.2014.8.26.0191; Relator (a): Renato Delbianco; Órgão Julgador: 2ª Câmara de Direito Público; Foro de Ferraz de Vasconcelos - 3ª Vara Judicial; Data do Julgamento: 01/09/2015; Data de Registro: 03/09/2015). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. VERBAS REMUNERATÓRIAS (13º SALÁRIO, FÉRIAS E LICENÇA-PRÊMIO). SERVIDOR PÚBLICO EFETIVO APOSENTADO. NECESSIDADE DE MELHOR INSTRUÇÃO DO FEITO, PELO MUNICÍPIO RÉU/APELADO. TEORIA DA DISTRIBUIÇÃO DINÂMICA DO ÔNUS DA PROVA. SENTENÇA CASSADA, DE OFÍCIO. RECURSO PREJUDICADO. 1. Embora, a priori, caiba ao autor o ônus de demonstrar o fato constitutivo do seu direito, tem entendido esta Corte, em situações como a dos autos, que ao ente público requerido torna-se mais fácil instruir o processo com cópias dos holerites e demais documentos funcionais do postulante, de forma a permitir a averiguação da regularidade ou não dos pagamentos, referentes ao período questionado. 2. À luz da teoria da distribuição dinâmica do ônus da prova (art. 373, §1º, CPC), deve ser cassada a sentença, ainda que de ofício, a fim de que o réu/apelado comprove a alegada quitação das verbas remuneratórias postuladas pelo autor/apelante, isto porque, em linha de princípio, quem afirma um fato positivo tem de prová-lo com preferência a quem sustenta um fato negativo. Sentença cassada, de ofício. Apelação cível prejudicada.” (TJGO, Apelação (CPC) 5216651-21.2017.8.09.0065, Rel. ZACARIAS NEVES COELHO, 2ª Câmara Cível, julgado em 30/08/2019, DJe de 30/08/2019). (destacado). </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “APELAÇÃO CÍVEL. DIREITO ADMINISTRATIVO. COBRANÇA. SERVIDOR MUNICIPAL COM VÍNCULO COMPROVADO. FALTA DE PAGAMENTO. ÔNUS DA PROVA QUE COMPETIA À ADMINISTRAÇÃO PÚBLICA. AUSÊNCIA PROBATÓRIA DA QUITAÇÃO DA DÍVIDA PELO MUNICÍPIO. DEVER DO ENTE PÚBLICO DE EFETUAR O PAGAMENTO DA CONTRAPRESTAÇÃO PELO TRABALHO DESEMPENHADO, SOB PENA DE ENRIQUECIMENTO ILÍCITO. CONSECTÁRIOS LEGAIS FIXADOS DE ACORDO COM OS PARÂMETROS ESTABELECIDOS PELO SUPREMO TRIBUNAL FEDERAL, NO JULGAMENTO DOS EMBARGOS DECLARATÓRIOS OPOSTOS NO RE 870.947, OBSERVADO PELO JUÍZO A QUO. APELO NÃO PROVIDO. SENTENÇA INTEGRADA. I - Em ação de cobrança ajuizada por servidor contra Município, objetivando o pagamento de vencimento atrasado, comprovado o vínculo com a Administração, compete ao réu, a teor do inciso II, do artigo 373 do CPC, demonstrar a existência de fato impeditivo, modificativo, ou extintivo do direito vindicado, conceito no qual se inclui a demonstração, por via documental, da quitação da parcela trabalhista reclamada na presente demanda, ou de eventual afastamento temporário do demandante, o que, in casu, não ocorreu. II - Demonstrada a efetiva prestação de serviços pelo suplicante e não se desincumbindo a municipalidade de seu ônus probatório, é devida, ao servidor, a verba de ordem remuneratória pleiteada na inicial, sob pena de se configurar em enriquecimento sem causa da Administração Pública, em detrimento do particular. III - Tratando-se de condenação imposta à Fazenda Pública, os

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	consectários legais devem ser fixados de acordo com os parâmetros estabelecidos pelo Supremo Tribunal Federal, no julgamento dos embargos declaratórios apresentados no RE 870.947, o que foi observado pelo Juízo a quo. IV - Apelo não provido. Sentença integrada.(APL nº 0500112-19.2013.8.05.0105,Relator: DINALVA GOMES LARANJEIRA PIMENTEL,Publicado em: 03/12/2019). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Ora, a partir da documentação acostada aos autos (ID’s 15458958/ 15458962), facilmente se infere que Cláudio Ícaro Ferreira , realmente , exerceu cargo em comissão de “Gerente de Núcleo de Protocolo e Expedição – Nível 5”, &#160; &#160; no âmbito do Município de Russas/CE, entre os anos de 2018 e 2020, não havendo, com isso, nenhuma dúvida quanto à existência do vínculo funcional.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Incumbia, assim, ao ente público demonstrar que realizou o pagamento das verbas rescisórias devidas ao ex-servidor (13º salário e férias acrescidas do adicional de 1/3), o que, porém, não ocorreu.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Daí por que, correta sua condenação in casu, mediante distribuição do ônus da prova (art. 373, incisos I e II, do CPC), ex vi : </p><p class="MsoNormal" style="margin: 6pt 0cm 0.0001pt 4cm; text-align: justify;"> &#160; “Art. 373. O ônus da prova incumbe: &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> I - ao autor, quanto ao fato constitutivo de seu direito; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> II - ao réu, quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor.” (destacado).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Não é demais lembrar, nesse ponto, que a própria Constituição Federal de 1988 garante, diretamente, esses direitos aos ocupantes de cargos efetivos e/ou comissionados (art. 7º, inciso XVII c/c art. 39, § 3º), como visto. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; background: white; text-align: justify;"> Com efeito, apenas para os “agentes políticos” (v.g., detentores de mandato eletivo ou secretários) , é que deve ser editada previamente uma lei, autorizando a extensão desses direitos (13º salário e férias acrescidas do adicional de 1/3), conforme Tema nº 484 do Supremo Tribunal Federal , ex vi:</p><p class="EmentadoAcrdo" style="margin: 6pt 0cm 12pt 4cm; text-align: justify;"> “DIREITO ADMINISTRATIVO. AGRAVO INTERNO EM RECURSO EXTRAORDINÁRIO COM AGRAVO. AGENTE POLÍTICO. FIXAÇÃO DE SUBSÍDIO. RECEBIMENTO DE DÉCIMO TERCEIRO SALÁRIO. AUSÊNCIA DE PREVISÃO NA LEGISLAÇÃO MUNICIPAL. SÚMULAS 279 E 280/STF. 1. O Supremo Tribunal Federal, no julgamento do Tema 484/STF, não afirmou a obrigatoriedade do pagamento de décimo terceiro e do terço de constitucional de férias aos agentes políticos, senão que a “definição sobre a adequação de percepção dessas verbas está inserida no espaço de liberdade de conformação do legislador infraconstitucional”. 2. Para dissentir das conclusões do Tribunal de origem com relação à ausência de legislação municipal autorizando o pagamento de tais verbas, seria necessário analisar a legislação infraconstitucional pertinente e reexaminar os fatos e provas constantes dos autos, providências inviáveis neste momento processual. Precedentes. 3. Nos termos do art. 85, § 11, do CPC/2015, fica majorado em 25% o valor da verba honorária fixada anteriormente, observados os limites legais do art. 85, §§ 2º e 3º, do CPC/2015. 4. Agravo interno a que se nega provimento, com aplicação da multa prevista no art. 1.021, § 4º, do CPC/2015.” (ARE 1368626 AgR, Relator(a): ROBERTO BARROSO, Primeira Turma, julgado em 02/05/2022, PROCESSO ELETRÔNICO DJe-088&#160; DIVULG 06-05-2022&#160; PUBLIC 09-05-2022). (destacado)

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	 </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Nesse sentido, ensina o Professor José dos Santos Carvalho Filho que <em style="mso-bidi-font-style: normal;">“o que caracteriza o agente político não é só o fato de serem mencionados, na Constituição, mas sim o de exercerem efetivamente (e não eventualmente) função política de governo e de administração, de comando e, sobretudo, de fixação das estratégias de ação, ou seja, aos agentes políticos é que cabe realmente traçar os destinos do país.” (vide Manual de Direito Administrativo. 25 ed. São Paulo: Atlas, 2012, p. 584-585).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desse modo, não se pode, aqui, equiparar um trabalhador, que apenas esteve no 2º escalão do governo, em funções meramente administrativas na SEGEPE, aos “agentes políticos”, sendo, portanto, inadequado o condicionamento do seu direito às verbas rescisórias (13º salário e a férias acrescidas do adicional de 1/3) à existência de autorização específica em lei, no plano local.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Este é o posicionamento que tem sido adotado pelas Câmaras de Direito Público do TJ/CE, em hipóteses como a dos autos:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <span style="font-size: small;"> <span style="color: black; background: white;">“RECURSO DE APELAÇÃO. DIREITO PROCESSUAL CIVIL, ADMINISTRATIVO E CONSTITUCIONAL. <strong style="mso-bidi-font-weight: normal;">SERVIDOR PÚBLICO. CARGO EM COMISSÃO. VERBAS REMUNERATÓRIAS. FÉRIAS E TERÇO CONSTITUCIONAL. ÔNUS DA PROVA. RECURSO DE APELAÇÃO CONHECIDO E DESPROVIDO. HONORÁRIOS POSTERGADOS. 01. Cuida-se de Recurso de Apelação Cível com a finalidade de reforma da sentença que entendeu procedência da Ação de Cobrança intentada pela parte ora recorrida e que condenou o Município de Viçosa do Ceará a pagar verbas referentes às férias vencidas, acrescidas de 1/3 do período laborado de 01.04.2013 a 30.12.2016, não pagas pelo réu por ocasião da exoneração da parte promovente do cargo de livre nomeação e desligamento. 02. O art. 39, §3º, c/c artigo 7º, VIII e XVII, da CF88, asseguram ao ocupante de cargo público, seja efetivo ou comissionado, a percepção de férias acrescidas de um terço, inclusive em valor proporcional ao período laborado. 03. In casu, tem-se comprovado nos autos que a parte autora foi ocupante do cargo comissionado, no período de 01 de abril de 2013 até 30 de dezembro de 2016, de forma que outro entendimento não deve prevalecer, senão o de que lhe é assegurado, pela expressa dicção constitucional acima colacionada, o direito à percepção das verbas relativas às férias proporcionais e respectivo terço constitucional referentes ao período acima mencionado. 04. O Município apelante, não fez prova da efetiva quitação das verbas remuneratórias pleiteadas na inicial, e acolhidas pelo magistrado de piso, ônus este do qual não se desincumbiu, consoante artigo 373, II, do CPC. Precedentes. 05. Observo que, na senda dos entendimentos deste Sodalício Alencarino, resta incontroverso o direito à percepção dos valores inerentes ao saldo salarial relativo ao período de 01.04.2013 a 30.12.2016, isto é, nos moldes apresentados pela parte requerente e já reconhecidos pelo magistrado de planície, não merecendo alteração o decisum nesse ponto. 06. Apelação conhecida e desprovida. Honorários Advocatícios e majoração apenas na fase de liquidação (art. 85, §4º, II e §11, CPC).” (Processo nº 0002521-48.2019.8.06.0182; Relator (a):&#160;PAULO FRANCISCO BANHOS PONTE; Comarca: Viçosa do Ceará; Órgão julgador: 1ª Câmara de Direito Público; Data do julgamento: 05/07/2021) (destacado).</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; line-height: 150%; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “ APELAÇÃO CÍVEL. CONSTITUCIONAL E ADMINISTRATIVO. <strong style="mso-bidi-font-weight: normal;">COBRANÇA. CARGO COMISSIONADO. RELAÇÃO JURÍDICO-ADMINISTRATIVA E ESTATUTÁRIA. OBRIGAÇÃO QUANTO AO PAGAMENTO FÉRIAS E TERÇO CONSTITUCIONAL. APELO CONHECIDO E DESPROVIDO. 1. Trata-se de Apelação interposta pelo Município de Viçosa, requerendo a reforma da sentença que julgou procedente o pedido inaugural, no sentido de condená-lo ao pagamento de R$ 1.735,64 (mil, setecentos e trinta e cinco reais e sessenta e quatro centavos) referentes às férias e um terço constitucional correspondente ao período em que o autor trabalhara para a municipalidade ocupando cargo comissionado, ficando ainda condenado ao pagamento da verba honorária. 2. A Constituição Federal de 1988 conferiu aos servidores ocupantes de cargo público, sejam eles ocupantes de cargo efetivo ou comissionado, os direitos dispostos no art. 7º, da CF, dentre os quais encontram-se as férias e 1/3 constitucional. Diante da expressa previsão constitucional (art. 39, § 3º), ainda que se trate de cargo de livre nomeação e exoneração (art. 37, II, CF), inexiste dúvidas quanto ao direito ao percebimento de verbas rescisórias advindas do exercício do cargo de comissão. 3. Precedentes jurisprudenciais do STF e desta Corte de Justiça. 4. Apelo

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	conhecido e desprovido. (Processo nº 0002545-76.2019.8.06.0182; &#160; Relator (a):&#160;MARIA IRANEIDE MOURA SILVA; Comarca:&#160;Viçosa do Ceará; Órgão julgador: 2ª Câmara de Direito Público; Data do julgamento: 23/06/2021). (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 5pt 0cm 12pt 4cm; text-align: justify;"> <span style="font-size: medium;"> <span style="color: black; background: white;"> <span style="font-size: small;">“PROCESSUAL CIVIL. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO DE COBRANÇA. APELAÇÃO CIVIL. <strong style="mso-bidi-font-weight: normal;">SERVIDOR PÚBLICO OCUPANTE DE CARGO COMISSIONADO EXONERADO. RECLAMA DIREITO A FÉRIAS, TERÇO DE FÉRIAS. ART. 39, § 3º E ART. 7, VIII e XVII, DA CONSTITUIÇÃO FEDERAL. APELAÇÃO CÍVEL CONHECIDA E IMPROVIDA. I. O descortino em revista nesta seara recursal é saber acerca das verbas rescisórias reivindicadas pelo autor em razão de ter ocupado cargo comissionado perante o Município requerido, durante o período de 26/06/2015 a 30/12/2016. II. Com efeito, o servidor público ocupante de cargo em comissão de livre nomeação e exoneração, na forma do art. 37, II e V, da Constituição Federal, ao ser exonerado, possui o direito a receber, 13º (décimo terceiro) salário e o adicional de férias, afora a indenização pelas férias não gozadas, na forma do art. 39, § 3º e art. 7º, VIII e XVII, da Constituição Federal. III. Portanto, repise-se que a jurisprudência nacional tem consolidado o entendimento que servidor público ocupante de cargo em comissão de livre nomeação e exoneração, na forma do art. 37, II e V, da Constituição Federal, quando dispensado, possui apenas o direito a receber, 13º (décimo terceiro) salário e o adicional de férias, afora a indenização pelas férias não gozadas, na forma do art. 39, § 3º e art. 7, VIII e XVII, da Constituição Federal Precedentes. IV. No mais, o Ente Público nenhuma prova produziu de molde a afiançar o argumento de que o autor não tem direito ao recebimento das verbas postuladas, por ocasião do exercício do cargo comissionado. Ora, repise-se que todos os trabalhadores nacionais, independentemente da maneira de admissão, o legislador constituinte pôs a salvo diversos direitos sociais, igualmente concedidos aos trabalhadores em geral, incluindo férias remuneradas e respectivo terço adicional, afora o décimo terceiro salário. V. Por esta forma, consoante o art. 373, inciso II, do Código de Processo Civil, não se desincumbiu do ônus de comprovar o pagamento dos valores pleiteados, de molde a desconstituir a sentença recorrida. VI. Realmente, "o ônus da prova como regra de conduta, a teor do art. 373 do CPC, é atribuído de acordo com o interesse na afirmação do fato. Cabe ao autor a prova dos fatos constitutivos do seu direito, porque são aqueles que poderão levar à procedência de seu pedido. Ao réu caberá o ônus de provar os fatos modificativos, extintivos ou impeditivos do direito do autor, porque poderão levar à improcedência do pedido formulado na petição inicial. Se o réu se limitar a negar o fato constitutivo do direito alegado pelo autor, o ônus continuará cabendo a este último. Sob as perspectivas das partes, o art. 373 lhes permite traçar sua estratégia probatória, exercendo um papel de regra de conduta. VII. Apelação Cível conhecida e improvida.” (Processo nº 0002568-22.2019.8.06.0182; Relator (a):&#160;INACIO DE ALENCAR CORTEZ NETO; Comarca:&#160;Viçosa do Ceará; Órgão julgador: 3ª Câmara de Direito Público; Data do julgamento: 05/07/2021) (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Por tudo isso, permanecem totalmente inabalados os fundamentos da sentença, impondo-se sua confirmação por este Tribunal. &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: center;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, conheço do recurso, para negar-lhe provimento, confirmando integralmente a sentença, por seus próprios termos.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, in casu, o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3 º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, não sendo líquido o <em style="mso-bidi-font-style: normal;">decisum, a definição do percentual dos honorários advocatícios, bem como o <em style="mso-bidi-font-style: normal;">quantum a ser suportado por

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	cada um dos litigantes parcialmente sucumbentes, somente deverá ocorrer na fase de liquidação, a teor do que preconiza o art. 85, § 4º, inciso II, do CPC. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É como voto. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 </p><p class="MsoNormal" style="margin-bottom: 12pt; line-height: 150%; text-align: center;"> R elatora </p><p> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	160
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A) MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	CICERO VIEIRA BARROS
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

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Nº PROCESSO:&#160;3000413-85.2024.8.06.0160 </p><p>
   CLASSE:&#160;APELAÇÃO CÍVEL
</p><p> &#160;</p><p>&#160;</p><p>&#160;</p><p>   EMENTA:
 </p><p>&#160;</p><p>
   ACÓRDÃO:
</p><p> O Colegiado, por unanimidade, acordou em conhecer do recurso para negar-lhe provimento, nos termos do(a) eminente Relator(a).</p><p>&#160;</p><p>
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	Precedentes deste TJCE. Direito à percepção das diferenças do terço constitucional de férias sobre o pagamento das parcelas vencidas, respeitada a prescrição quinquenal, a contar da data do ajuizamento da ação. relação de trato sucessivo. Aplicação da súmula nº 85 do STJ. Recurso de Apelação Conhecido e Desprovido. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> I. Caso em Exame </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> 1. Trata-se de Apelação Cível interposta pelo Município de Santa Quitéria visando a reforma da sentença Id. 15460075, proferida pelo Juízo de Direito da 2ª Vara Cível da Comarca de Santa Quitéria, nos autos da Ação de Cobrança proposta por Cícero Vieira Barros em face do ora apelante.&#160;</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> II. Questão em discussão&#160; </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> 2. A questão em discussão consiste na análise do direito da autora ao recebimento de férias e do terço constitucional com base de cálculo na remuneração integral.&#160;</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> III. Razões de decidir&#160; </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> 3. A Lei Municipal é de eficácia plena e estabelece o pagamento do terço de férias com base de cálculo na remuneração integral.&#160;</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> 4. Aplicação da inversão do ônus da prova, previsto no Código de Processo Civil. Deve o ente municipal provar fato impeditivo, o que não foi apresentado pelo apelante, não sendo possível contestar o direito do autor, que, ao contrário do que alega o município, acostou aos autos do processo fichas financeiras que comprovam o seu direito.&#160;</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> IV. Dispositivo e tese&#160; </p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> 5. Apelação conhecida e desprovida. Sentença mantida.&#160;</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> Dispositivos relevantes citados:&#160; art. 7º, inciso XVII, c/ c art. 39, § 3º, da Constituição Federal, Arts. 46, 47 e 80 da&#160; Lei Municipal nº 081-A/93 e art. 373, II, do CPC/2015.&#160;</p><p class="Textbody" style="text-align: justify; text-justify: inter-ideograph;"> Jurisprudência relevante citada:&#160; T J-CE - APL: 00021999420198060160 CE 0002199-94.2019.8.06.0160, Relator: LUIZ EVALDO GONÇALVES LEITE, Data de Julgamento: 12/08/2020, 2ª Câmara Direito Público, Data de Publicação: 12/08/2020, Apelação Cível - 0015696-49.2018.8.06.0084, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 08/05/2023, data da publicação: 08/05/2023.</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> &#160;</p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os integrantes da 3ª Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer a Apelação interposta para desprovê-la, nos termos do voto do relator.</p><p class="Standard" style="margin-bottom: 12.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Fortaleza, data e hora indicados pelo sistema. </p><p class="Textbody" style="margin-top: .05pt; margin-right: 60.8pt; margin-bottom: 0cm; margin-left: 57.85pt; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="Textbody" style="margin-top: 8.75pt; margin-right: 59.85pt; margin-bottom: 0cm; margin-left: 57.45pt; text-align: center; line-height: 200%;" align="center"> Relator </p><p class="Textbody" style="margin-top: 8.75pt; margin-right: 59.85pt; margin-bottom: 0cm; margin-left: 57.45pt; text-align: center; line-height: 200%;" align="center"> &#160; </p><p class="Textbody" style="margin-top: 8.75pt; margin-right: 59.85pt; margin-bottom: 0cm; margin-left: 57.45pt;

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	text-align: center; line-height: 200%;" align="center"> <br /> </p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> RELATÓRIO </p><p class="Standard" style="text-align: center; line-height: 200%;" align="center"> &#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.4pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 50.75pt; line-height: 200%;"> Trata-se de Apelação Cível interposta pelo Município de Santa Quitéria visando a reforma da sentença ID nº 15460075, proferida pelo Juízo de Direito da 2ª Vara Cível da Comarca de Santa Quitéria, nos autos da Ação de Cobrança proposta por Cícero Vieira Barros em face do Município de Santa Quitéria. </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 50.75pt; line-height: 200%;"> Sentença (Id. 15460075) : julgamento de parcial procedência, nos seguintes termos: “JULGO PARCIALMENTE PROCEDENTE a pretensão autoral para condenar o Município de Santa Quitéria-CE à obrigação de implementar o pagamento do terço constitucional tendo como base de cálculo todas as parcelas de natureza remuneratória, com pagamento da diferença das parcelas vencidas, desde o início do vínculo com o requerido, de forma simples, e vicendas até a implementação na remuneração, observando a prescrição relativa aos 05 (cinco) anos anteriores ao ajuizamento da presente ação.”. </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 50.75pt; line-height: 200%;"> Razões Recursais (Id. 15460080): a municipalidade alega que a Lei Municipal nº 081-A/1993 possui eficácia limitada e, por esse motivo, a autora não faz jus ao recebimento de férias e do terço constitucional. Além disso, argumenta que o legislador utiliza o termo técnico “salário” e não “remuneração” para determinar a base de cálculo de incidência das férias e do terço constitucional.&#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 50.75pt; line-height: 200%;"> Contrarrazões (Id. 15460083): contrapõe os argumentos do ente municipal, afirmando que o pagamento das férias deve ser com base na remuneração integral, bem como pugna pelo desprovimento do apelo.</p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 50.75pt; line-height: 200%;"> &#160; Sem manifestação do Ministério Público por inexistir interesse público primário na matéria versada, conforme pareceres do próprio Parquet em casos análogos.&#160;</p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 7.0pt; margin-left: 5.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 50.75pt; line-height: 200%;"> É o relatório. </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 7.0pt; margin-left: 5.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 50.75pt; line-height: 200%;"> <br /> </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: center; line-height: 200%;" align="center"> &#160; </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: center; line-height: 200%;" align="center"> VOTO </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: center; line-height: 200%;" align="center"> <br /> </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: center; line-height: 200%;" align="center"> &#160; </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: justify; text-justify: inter-ideograph; text-indent: 50.75pt; line-height: 200%;"> Presentes os pressupostos recursais de admissibilidade, conheço do recurso. </p><p class="Textbody" style="margin-top: 0cm; margin-right: 8.55pt; margin-bottom: 0cm; margin-left: 5.95pt; text-align: justify; text-justify: inter-

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	ideograph; text-indent: 50.75pt; line-height: 200%;"> O cerne da controvérsia cinge-se em saber se o autor, servidor efetivo que compõe os quadros do magistério da rede pública municipal, faz jus ao recebimento do adicional de férias (1/3) das parcelas vencidas e vincendas incidente sobre a remuneração integral, nos termos da XVII art. 7º da CF/88 . </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Sendo servidor pública ativo, a promovente detém a garantia de perceber abono de férias correspondente a, no mínimo, um terço do patamar salarial, conforme regramento insculpido no art. 7º, inciso XVII, c/ c art. 39, § 3º, ambos da Constituição Federal de 1988; confiram-se: </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social: […] </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal; […] </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas. (Vide ADIN nº 2.135-4) […] </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir. (Incluído pela Emenda Constitucional nº 19, de 1998). </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> A saber, a Lei Municipal nº 081-A/93 (Estatuto dos Servidores Públicos de Santa Quitéria) prevê expressamente que as parcelas do terço de férias devem ser calculadas com base na remuneração integral do servidor, veja-se: </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Art. 46 – Vencimento é a retribuição pecuniária pelo exercício do cargo público, com valor fixado em lei. </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Art 47 – Remuneração é o vencimento de cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei. </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Art. 80 – Independente de solicitação, será pago ao servidor por ocasião das férias, um adicional correspondente a 1/3 (um terço) da remuneração do período das férias. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Ainda, deve ser ressaltado que cabe ao ente público o ônus de provar fato impeditivo, modificativo ou extintivo do direito da parte autora, nos termos do art. 373, II, do CPC/2015, nos seguintes termos: </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Art. 373. O ônus da prova incumbe: </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> (…) </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> II - ao réu, quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor.

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	</p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Por sua vez, esta Corte de Justiça Estadual, por suas Câmaras de Direito Público, tem se manifestado no mesmo sentido em casos análogos ao que ora se examina, envolvendo servidores municipais: </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> <span style="font-size: 10pt; line-height: 200%; color: black;"> <span style="font-size: small;">REMESSA NECESSÁRIA E RECURSO DE APELAÇÃO. ADMINISTRATIVO. CONSTITUCIONAL. SERVIDOR PÚBLICO DO MUNICÍPIO DE SANTA QUITÉRIA. BASE DE CÁLCULO DO 13º SALÁRIO E TERÇO CONSTITUCIONAL DE FÉRIAS. REMUNERAÇÃO. CORREÇÃO MONETÁRIA. ÍNDICE APLICÁVEL. IPCA-E. JUROS MORATÓRIOS. REMUNERAÇÃO OFICIAL DA CADERNETA DE POUPANÇA. REMESSA NECESSÁRIA E RECURSO DE APELAÇÃO CONHECIDOS E PARCIALMENTE PROVIDOS. SENTENÇA REFORMADA EM PARTE. I. O cerne do recurso cinge-se em analisar se o promovente faz jus à percepção das verbas de 13º salário e terço de férias incidente sobre o valor de sua remuneração total, em razão do exercício do cargo de agente de endemias. II. Consoante os arts. 46, 47, 64 e 80, do Estatuto dos Servidores Públicos do Município de Santa Quitéria, é notório o direito do autor de perceber os valores de 13º salário e terço de férias que tomem por base de cálculo o valor total de sua remuneração, Ademais, cumpre ressaltar que o art. 7º, incisos VIII e XVIII, bem como o art. 39, §3º, da Constituição Federal, determinam que, para o mencionado fim, deve ser observada a remuneração do servidor. Assim, o d. Juízo de primeiro grau corretamente condenou a parte ré ao pagamento da diferença do décimo terceiro salário e terço de férias, devida nos vencimentos da parte autora, tendo como parâmetro a remuneração integral, observada a ressalva da prescrição quinquenal. III. O REsp 1.495.146/MG, o qual teve seu recente julgamento proferido pelo STJ, sob a relatoria do Ministro Mauro Campbell Marques, sob o rito dos recursos repetitivos, firmou tese (tema 905) acerca dos índices de juros moratórios e correção monetária incidentes em casos de condenação impostas à Fazenda Pública. No caso em tela, o índice aplicável aos juros de mora é a remuneração oficial da caderneta de poupança, enquanto o da correção monetária é o IPCA-E. IV. Remessa necessária e recurso de apelação conhecidos e parcialmente providos. Sentença reformada em parte. (TJCE, Processo nº 000005-58.2018.8.06.0160, Relator (a): INACIO DE ALENCAR CORTEZ NETO; Comarca: Santa Quitéria; Órgão julgador: 3ª Câmara de Direito Público; Data do julgamento: 20/04/2020; Data de registro: 20/04/2020). </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> <span style="font-size: 10pt; line-height: 200%; color: black;"> <span style="font-size: small;">CONSTITUCIONAL E ADMINISTRATIVO. REEXAME NECESSÁRIO E APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA DE COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL. ARGUMENTO RECURSAL DE QUE A VANTAGEM INTITULADA "INCENTIVO FINANCEIRO" NÃO DEVE SER CONSIDERADA NO CÁLCULO DA "REMUNERAÇÃO INTEGRAL". INOVAÇÃO RECURSAL. NÃO CONHECIMENTO DO RECURSO NESTA EXTENSÃO. DÉCIMO TERCEIRO SALÁRIO E FÉRIAS COM BASE NA REMUNERAÇÃO INTEGRAL. INTELIGÊNCIA DOS ARTS. 7º, VIII E XVII E 39, § 3º, AMBOS DA CF/88 E DOS ARTS. 46, 47, 64 E 80 DA LEI MUNICIPAL Nº 081-A/93. ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. ADEQUAÇÃO DOS ENCARGOS LEGAIS AOS PARÂMETROS FIXADOS PELO STJ. SENTENÇA ILÍQUIDA. HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS A SEREM DEFINIDOS APENAS POR OCASIÃO DA LIQUIDAÇÃO. CONDENAÇÃO DA FAZENDA PÚBLICA EM DESPESAS PROCESSUAIS. DESCABIMENTO. REEXAME NECESSÁRIO CONHECIDO E PARCIALMENTE PROVIDO. APELO CONHECIDO EM PARTE E, NESTA EXTENSÃO, PROVIDO. 1. Cinge-se a controvérsia acerca do direito de servidor público do Município de Santa Quitéria à percepção das parcelas do décimo terceiro salário e das férias com base na remuneração integral, tendo em vista o exercício de cargo efetivo. 2. Nas razões recursais, a municipalidade alega que a vantagem intitulada "incentivo financeiro" não deve ser considerada no cálculo da "remuneração integral" da promovente, por ser transitória e possuir caráter indenizatório, nos termos do art. 3º da Lei Municipal nº 862/2015. Contudo, verifica-se que tal argumento não foi submetido ao crivo do juízo primevo em sede de contestação, tampouco consiste em matéria cognoscível ex officio, configurando, portanto, inovação recursal. Mesmo se assim não fosse, o dispositivo legal apontado pelo recorrente não conduz ao entendimento de que tal benesse concedida aos "agentes comunitários de saúde e agentes de combate às edemias" é, de fato, transitória e indenizatória. Apelo não conhecido nesta extensão. 3. Em reexame necessário, verifica-se que a Constituição Federal de 1988, em seu art. 39, § 3º, garante aos servidores ocupantes de cargo público, sem nenhuma distinção, os direitos sociais pleiteados na presente demanda. Por sua vez, a Lei Municipal nº 081-A/93 (Estatuto dos Servidores Públicos de Santa Quitéria) prevê

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	expressamente que as parcelas do terço de férias e da gratificação natalina devem ser calculadas com base na remuneração integral do servidor. 5. De outro giro, voltando às razões recursais, assiste razão ao ente apelante, quando se insurge contra os parâmetros dos encargos financeiros decorrentes da condenação fixados no decisum. Sobre este ponto, imperiosa a observância do precedente vinculante do Tribunal Cidadão (REsp 1.495.146/MG). 6. Ainda em sede de Reexame Necessário, cumpre retocar o decisum para determinar que a verba honorária sucumbencial seja fixada apenas por ocasião da liquidação do julgado, bem como para decotar a condenação do ente requerido ao pagamento das despesas processuais. 7. Reexame Necessário conhecido e parcialmente provido. Apelação conhecida apenas em parte e, nesta extensão, provida. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, ACORDAM os Desembargadores integrantes da Segunda Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer do reexame necessário para dar-lhe parcial provimento e apenas em parte do recurso apelatório, para, nesta extensão, dar-lhe provimento, tudo nos termos do voto do Relator. Fortaleza, data e hora indicadas pelo sistema. Presidente do Órgão Julgador DESEMBARGADOR LUIZ EVALDO GONÇALVES LEITE Relator (TJ-CE - APL: 00021999420198060160 CE 0002199-94.2019.8.06.0160, Relator: LUIZ EVALDO GONÇALVES LEITE, Data de Julgamento: 12/08/2020, 2ª Câmara Direito Público, Data de Publicação: 12/08/2020) </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Ao exame dos autos, consta-se que o pedido do autor é pelo “ao&#160;pagamento das parcelas vencidas, desde o início do vínculo com o requerido,&#160; E VINCENDAS até a implementação na remuneração do(a) autor(a),&#160;do terço constitucional das férias tendo como parâmetro a remuneração integral, como determina o inciso&#160;XVII art. 7º da CF/88; ”. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Ocorre que, por se tratar de demanda que constitui prestação de trato sucessivo, a prescrição alcança apenas as parcelas vencidas antes do quinquênio que antecedeu o ajuizamento da ação, nos termos da Súmula 85 do STJ: </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> Súmula nº 85/STJ: Nas relações jurídicas de trato sucessivo em que a fazenda pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior a propositura da ação. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Desse modo, deve prevalecer o que restou consignado na sentença, que, inclusive, é reiterado pelo ente municipal em suas razões, no que diz respeito à prescrição de cinco anos, conforme dispõe a supracitada Súmula nº 85 do STJ, que considera a data da propositura da demanda. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> No caso, tendo ação judicial sido protocolada em 18/04/2024 (id. nº 15460050), as parcelas anteriores ao ano de 2019 foram atingidas pela prescrição quinquenal. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Tendo em vista o reconhecimento da incidência da remuneração integral e não do vencimento-base, entendo que é devido o pagamento das parcelas remuneratórias não pagas do terço de férias com base na remuneração integral, ou seja, do período de 2019 a 2024. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> A propósito, confira-se o seguinte julgado: </p><p class="Textbody" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 200%;"> <span style="line-height: 200%; color: black;"> <span style="font-size: small;">CONSTITUCIONAL. ADMINISTRATIVO. PROCESSO CIVIL. APELAÇÃO CÍVEL. SERVIDORAS PÚBLICAS MUNICIPAIS (PROFESSORAS). FÉRIAS ANUAIS DE 45 DIAS. PREVISÃO EXPRESSA NO ART. 34 DA LEI MUNICIPAL Nº 948/2009. ADICIONAL DE UM TERÇO SOBRE TODO O PERÍODO. PROCEDÊNCIA. COMPATIBILIDADE COM O TEXTO CONSTITUCIONAL (ART. 7º, INC. XVII, DA CF/ 88). PRECEDENTES DO STF E TJCE. RESSARCIMENTO DO VALORES NÃO PAGOS. CABIMENTO. OBSERVÂNCIA DA PRESCRIÇÃO QUINQUENAL. PAGAMENTO EM DOBRO DAS VERBAS ATRASADAS (ART. 137 DA CLT). INVIABILIDADE. PREVISÃO CELETISTA INAPLICÁVEL AOS SERVIDORES ESTATUTÁRIOS. JUROS MORATÓRIOS E CORREÇÃO MONETÁRIA. OBSERVÂNCIA AO ENTENDIMENTO FIRMADO PELO STJ (TEMA Nº 905). CORREÇÃO DAS PARCELAS A PARTIR DE

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	09/12/2021. TAXA SELIC (EC Nº 113/2021). DECISÃO ILÍQUIDA. HONORÁRIOS ADVOCATÍCIOS. FIXAÇÃO POSTERGADA PARA A FASE DE LIQUIDAÇÃO. PREQUESTIONAMENTO. PRETENSÃO PREJUDICADA. APELO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA. 1.A Constituição Federal assegura ao trabalhador, estendido aos servidores públicos (art. 39, § 3º), o mínimo que é o gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal (art. 7º, XVII), nada impedindo que a legislação infraconstitucional amplie as garantias em questão com relação a determinadas categorias. 2.O art. 34 da Lei Municipal nº 948/2009 (Plano de Cargos e Carreiras do Magistério Municipal de Guaraciaba do Norte), é expresso em conceder férias de 45 (quarenta e cinco) dias aos docentes, estando plenamente compatível com a Carta Magna, razão pela qual deverá incidir o abono de 1/3 (um terço) sobre os 45 (quarenta e cinco) dias. 3. Devem as autoras/apelantes serem ressarcidas das parcelas não adimplidas, observada a prescrição quinquenal relativa ao lapso temporal anterior à data do ajuizamento da ação (Súmula 85 do STJ). 4.Em face da impossibilidade de aplicação das disposições da CLT aos servidores submetidos ao regime estatutário, afasta-se a pretensão de recebimento em dobro dos valores não adimplidos oportunamente, devendo a restituição se dar na forma simples. 5.As parcelas deverão ser corrigidas monetariamente, desde cada vencimento, conforme o IPCA-E, acrescidas de juros de mora, a partir da citação, nos moldes do art. 1°-F da Lei n.° 9.494/97, com a redação conferida pela Lei n.° 11.960/09, conforme entendimento do STJ (Tema 905). A partir de 09/12/2021, passa a incidir apenas a SELIC, consoante Emenda Constitucional nº 113/2021, para fins de atualização monetária e compensação da mora. 6.Em se tratando de decisão ilíquida, a definição do percentual dos honorários advocatícios sucumbenciais somente deverá ocorrer quando da liquidação da sentença, nos termos do art. 85, §4º, inc. II, do CPC, 7.Deferido o pleito recursal relativo ao direito de recebimento do terço constitucional sobre todo o período de férias (45 dias), resta prejudicada a pretensão prequestionadora. 8.Recurso conhecido e em parte provido. Sentença retificada. ACÓRDÃO Vistos, relatados e discutidos os presentes autos em que figuram as partes indicadas, ACORDA a 1ª Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do apelo para dar-lhe parcial provimento, nos termos do voto do relator. Fortaleza, 08 de maio de 2023. DES. JOSÉ TARCÍLIO SOUZA DA SILVA Relator (Apelação Cível - 0015696-49.2018.8.06.0084, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento: 08/05/2023, data da publicação: 08/05/2023. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Isso posto, conheço da Apelação para DESPROVÊ-LA, restando mantida a sentença em todos os termos. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> É como voto. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 200%;"> Fortaleza, data da assinatura. </p><p class="Textbody" style="margin-top: 0cm; margin-right: 60.35pt; margin-bottom: 7.0pt; margin-left: 57.45pt; text-align: center; line-height: 200%;" align="center"> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="Textbody" style="margin-top: .15pt; margin-right: 59.85pt; margin-bottom: 0cm; margin-left: 57.45pt; text-align: center; line-height: 200%;" align="center"> Relator </p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO / REMESSA NECESSÁRIA
Assunto principal	Gratificação Natalina/13º salário
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A) MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	VALDILEIA GOMES DE SOUSA

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Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

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Acordão

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black;">APELAÇÃO CÍVEL E REMESSA NECESSÁRIA </p><p
style="text-align: left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-
serif; color: black;">Recorrente:&#160;MUNICIPIO DE SANTA QUITERIA</p><p
style="text-align: left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-
serif; color: black;">Recorrido:&#160;VALDILEIA GOMES DE SOUSA</p><p
style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-
justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate:
auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p
class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%;
mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-
align-alt: auto;">&#160;</p><p class="western" style="margin-top: 0.42cm; margin-bottom:
0.42cm; line-height: 100%;" lang="pt-BR"> <br /> <br /></p><p class="western"
style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify">   Ementa: Direito
Constitucional e Administrativo. Remessa necessária e Apelação Cível em Ação Ordinária.
base de cálculo do décimo-terceiro. Regime de tributação do imposto de renda incidente
sobre o abono do fundeb. Sentença confirmada. Recurso não provido.
</p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-
BR" align="justify">   <span style="font-size:
small;">   I. Caso em exame   </p><p
class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR"
align="justify"> 1. Sentença, devolvida em remessa
necessária e atacada por apelação do Município de Santa Quitéria, que julgou procedente

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	pedido de cobrança de valores de décimo terceiro, pagos a menor por erro da base de cálculo, e também o pedido de devolução de imposto de renda incidente sobre o abono do Fundeb, pago a maior por erro no regime de tributação aplicado.</p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> I I. Questão em discussão </p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> 2. Há duas questões em discussão, a saber (i) decidir se a base de cálculo do décimo terceiro corresponde à integralidade da remuneração, incluindo o abono do Fundeb; (ii) decidir qual é o regime de tributação aplicável para o imposto de renda incidente sobre o abono do Fundeb.</p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> III. Razões de decidir </p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> 3. O décimo terceiro é calculado com base no valor de toda a remuneração, o que inclui o abono do Fundeb.</p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> 4. O imposto de renda pago sobre o abono do Fundeb obedece ao regime de competência e não ao regime de caixa, inclusive quando o abono provier de rateio de precatório pago pela União ao Município.</p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> IV. Dispositivo </p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> 5. Sentença confirmada. Apelação desprovida.</p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> ______</p><p class="western" style="margin-bottom: 0.42cm; line-height: 150%;" lang="pt-BR" align="justify"> Dispositivos relevantes citados: CF/88, art. 39, § 3º c/c art. 7º, VIII; Lei Federal nº 7.713/1988, 12-A.</p><p class="western" style="margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="justify"> Jurisprudência relevante citada: STF, Recurso Extraordinário nº 614406 AgR-QO-RG, Relator(a): ELLEN GRACIE, Tribunal Pleno, julgado em 20-10-2010 - Tema 368 de repercussão geral; STJ, Recurso Especial nº 1.118.429/SP, relator Ministro Herman Benjamin, Primeira Seção, julgado em 24/3/2010 – Tema 351 de recursos especiais repetitivos.</p><p class="western" style="margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%; page-break-before: always;" lang="pt-BR" align="center"> ACÓRDÃO </p><p class="western" style="margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer da remessa necessária e da apelação, para negar-lhes provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="western" style="margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Fortaleza, data informada pelo sistema.</p><p class="western" style="margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="center"> Relator </p><p class="western" style="margin-top: 0.42cm; margin-bottom: 0cm; line-height: 150%; page-break-before: always;" lang="pt-BR" align="center"> RELATÓRIO </p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify">Têm-se apelação e remessa necessária que transferem a este tribunal o conhecimento sobre a ação ajuizada por Valdiléia Gomes de Sousa em face do Município de Santa Quitéria.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Petição inicial (id 15460673): alegou a parte autora que o ente municipal, ao efetuar pagamento de verba oriunda do Abono do Fundeb em dezembro de 2021, reteve, indevidamente na fonte imposto de renda em alíquota superior à devida, uma vez que atentou ao regime de caixa quando deveria ter observado o regime de competência, já que se trataria de rendimentos recebidos acumuladamente – RRA. Argumentou que o mesmo acontecerá, quando for realizar o rateio do precatório do extinto Fundef, oriundo do processo nº 0068508-

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	56.2016.4.01.3400. Sustentou que a edilidade, ao quitar o décimo terceiro, não observou a base de cálculo como a remuneração integral, mas, sim, computou a gratificação natalina exclusivamente em face do vencimento básico. Pediu, então, retificação da DIRF referente ao pagamento realizado em dezembro de 2021 para que seja aplicado o regime de competência; restituição tributária do que sobejar com a forma de cálculo requerida; que futuras quitações de abono Fundeb ou numerário de equivalente sejam pagas ao autor com retenção de IRPF na fonte sob o regime de competência, com declaração em RRA; a quitação de décimo terceiro com base na remuneração integral, inclusive retroativamente, inserindo-se em sua base de cálculo, inclusive, mas não apenas, o abono Fundeb.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Sentença (id 15460843): o juízo de origem julgou parcialmente procedente o pedido, para <span style="font-variant: normal;"> <span style="color: #000000;"> a) determinar que o requerido proceda ao pagamento do décimo terceiro salário à parte autora com incidência sobre sua remuneração integral (parcelas remuneratórias), bem como condenar o demandado ao pagamento das diferenças da gratificação natalina, correspondente à diferença entre a remuneração integral e o salário-base, referentes às parcelas vencidas e vincendas, ressalvada a prescrição quinquenal, com juros e correção monetária na forma exposta na fundamentação; b) condenar o demandado a retificar a DIRF (Declaração de Imposto de Renda Retido na Fonte) ano-calendário 2021, de modo a constar os valores recebidos do abono do FUNDEB no informe de rendimentos que compõem o “campo 6 – Rendimentos Recebidos Acumuladamente”, na forma do artigo 12-A da Lei 7.713/88 e da Instrução Normativa da RFB nº. 1.127/2011, detalhando o valor recebido, o período correspondente em meses, mantendo as informações relativas a descontos com imposto de renda retido na fonte e demais despesas, tal qual discriminado em folha de pagamento, no percentual de 60% (sessenta por cento) sobre o valor do rateio; c) condenar o promovido a restituir o Imposto de Renda retido a maior sobre as parcelas vencidas, proveniente do rateio dos recursos do FUNDEB referente ao ano de 2021, incidente sobre a remuneração recebida acumuladamente, devendo o imposto ser calculado sobre o regime de competência e aplicada a alíquota correspondente ao valor recebido mês a mês, com juros e correção monetária na forma exposta na fundamentação; d) condenar o demandado a realizar o pagamento do abono do FUNDEB, ou outra designação que for dada a esta verba trabalhista, proveniente do rateio dos recursos do FUNDEB, doravante, aplicando a alíquota correspondente ao valor recebido mês a mês, incluindo-se as decorrentes de condenação judicial. </p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Apelação (id 15460848): com relação ao pedido referente à gratificação natalina, o Município defendeu que o pleito atenta contra o disposto nos arts. 54, § 2º e 67 do Estatuto dos Servidores Públicos de Santa Quitéria (Lei Municipal n.º 081-A/93). Quanto à tributação pelo imposto de renda, argumentou que a verba recebida pela promovente consiste em abono salarial, de modo que se trata de renda sujeita a tributação do imposto de renda e que o Município não pode usar recursos de precatórios do Fundeb para abonos indenizatórios, rateios ou passivos trabalhistas e previdenciários, conforme decisões reiteradas do TCU (ACÓRDÃO 2866/2018 - PLENÁRIO, ACÓRDÃO N°. 1962/2017 - PLENÁRIO, TC N°. 020.079/2018-4) e decisão do Ministro Barroso do STF no MS 35675 MC/DF, de modo que “considerando que o respectivo abono recebido pelos professores não se configura como remuneração de rendimento acumulado, uma vez que não há obrigação do município em repassar tais valores por meio da subvinculação estabelecida pelo artigo 60, inciso XII, do Ato das Disposições Constitucionais Transitórias (ADCT), em conjunto com o artigo 22 da Lei 11.494/2007, não se trata de uma verba pretérita”. Requereu a reforma da sentença;</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Contrarrazões da autora (id 15460851): reafirmou sua tese de que deve receber o décimo-terceiro com base na remuneração integral e de que a verba proveniente do rateio de precatórios do Fundeb consiste em rendimento recebido acumuladamente (RRA) e se sujeita a essa modalidade de tributação.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Dispensada vista dos autos à Procuradoria de Justiça diante da evidente ausência de interesse público a justificar a intervenção do Ministério Público como fiscal da ordem.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> É o relatório, no essencial.</p><p

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	class="western" style="margin-top: 0.42cm; margin-bottom: 0cm; line-height: 150%; page-break-before: always;" lang="pt-BR" align="center"> VOTO </p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Presentes os requisitos de admissibilidade, conheço da apelação do Município, para negar-lhe provimento, bem como da remessa necessária, para confirmar a condenação da Fazenda Pública.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> De fato, a jurisprudência deste tribunal se firmou no sentido de que a base de cálculo do décimo terceiro (art. 39, § 3º c/c art. 7º, VIII, da CF) é a integralidade da remuneração, o que inclui o abono do Fundeb, como se verifica das ementas a seguir:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0cm; line-height: 100%;" lang="pt-BR" align="justify">REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO DE COBRANÇA. SERVIDORA PÚBLICA DO MUNICÍPIO DE TAUÁ. DÉCIMO TERCEIRO SALÁRIO (GRATIFICAÇÃO NATALINA). BASE DE CÁLCULO. REMUNERAÇÃO INTEGRAL DO MÊS DE DEZEMBRO DE CADA ANO. INTELIGENCIA DA CONSTITUIÇÃO FEDERAL E DA LEI MUNICIPAL. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Trata-se, no presente caso, de reexame necessário e apelação cível em ação de cobrança, por meio da qual a autora busca a efetivação do direito ao recebimento de décimo terceiro salário (gratificação natalina), com base na remuneração integral do mês de dezembro de cada ano. 2. O art. 39, § 3º, da CF/88 assegura, expressamente, a todos aqueles ocupantes de cargos públicos em geral, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre eles, o décimo terceiro salário (CF/88, art. 7º, incisos VIII). 3. Vê-se, portanto, que o décimo terceiro salário (gratificação natalina) constitui um direito constitucional do servidor público, que deve ser pago pela Administração a cada ano, com base na sua remuneração integral, isto é, o vencimento do cargo, acrescido de outras vantagens pecuniárias previstas em lei. 4. É forçoso então reconhecer que o abono do FUNDEB faz parte da remuneração da servidora pública, desta forma, deve ser considerado para fins de cálculo do décimo terceiro salário com arrimo na Constituição Federal e da Lei Municipal. 5. Quanto aos índices de atualização dos valores devidos, há de ser observada, in casu, a tese firmada pelo Superior Tribunal de Justiça, na sistemática dos recursos repetitivos (Tema nº 905), incidindo juros moratórios conforme previsto na Lei nº 11.960/2009, a partir da citação, e correção monetária com base no IPCA-E, desde o inadimplemento de cada parcela. 6. Com relação aos honorários advocatícios, note-se que com a vigência do Código de Processo Civil/2015, restou estabelecido que, nas condenações contra a Fazenda Pública, não sendo líquida a sentença, a definição do percentual, nos termos previstos nos incisos I a V do art. 85, § 3º, somente ocorrerá quando liquidado o julgado, vide art. 85, § 4º, II, do CPC. Portanto, não sendo líquida a decisão judicial é impossível fixar neste momento processual a porcentagem devida de honorários sucumbenciais. 7. Ademais, os índices de correção monetária e juros de mora deverão observar o tema 905 do STJ e art. 3º da EC 113/21. - Reexame Necessário conhecido. - Apelação conhecida e não provida. - Sentença reformada apenas no tocante aos honorários advocatícios. Apelação / Remessa Necessária - 0001635-82.2019.8.06.0171, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 26/09/2022, data da publicação: 26/09/2022)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">DIREITO CONSTITUCIONAL. ADMINISTRATIVO. REEXAME NECESSÁRIO. AÇÃO DE COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL DE TAUÁ. DÉCIMO TERCEIRO. BASE DE CÁLCULO. REMUNERAÇÃO INTEGRAL. ART. 39, § 3º C/C ART. 7º, INCISO VIII, DA CONSTITUIÇÃO FEDERAL. ESTATUTO DOS SERVIDORES MUNICIPAIS. PRINCÍPIO DA LEGALIDADE. INCLUSÃO DO ABONO DO FUNDEB. POSSIBILIDADE. ÔNUS DA PROVA. NÃO DEMONSTRAÇÃO DO ADIMPLEMENTO DA OBRIGAÇÃO POR PARTE DO MUNICÍPIO. PRECEDENTES DO TJ/CE. CONSECTÁRIOS LEGAIS EM DESCONFORMIDADE COM TEMA 905/STJ. DECISÃO ILÍQUIDA. HONORÁRIOS SUCUMBENCIAIS. POSTERGADOS PARA LIQUIDAÇÃO. REEXAME NECESSÁRIO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO Acordam os integrantes da Terceira Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Reexame Necessário para dar-lhe parcial provimento, tudo em conformidade com o voto da Relatora. Fortaleza-CE, 04 de outubro de 2021.(TJ-CE - Remessa Necessária Cível: 00131502220168060171 CE 0013150-22.2016.8.06.0171, Relator: ROSILENE FERREIRA FACUNDO - PORT. 900/2021, Data de Julgamento: 04/10/2021, 3ª Câmara Direito Público, Data de Publicação: 04/10/2021)</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Ao contrário do que afirma o Município, o pedido autoral não contraria os arts. 54, § 2º e 67 do Estatuto dos Servidores Públicos de Santa Quitéria (Lei Municipal n.º 081-A/93).</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm;

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	margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Ora, esses dispositivos não tratam sequer da questão controvertida neste processo (base de cálculo do décimo terceiro), mas, sim, de impossibilidade de o décimo terceiro servir de base de cálculo para outras gratificações (efeito cascata) e da incorporação de gratificações em geral nos vencimentos ou proventos.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> É em vão invocar os arts. 16, I, 17, § 1°, da Lei Complementar 101/2000 (Lei de Responsabilidade Fiscal - LRF), uma vez que, conforme jurisprudência do Superior Tribunal de Justiça - STJ, “os limites orçamentários previstos na Lei de Responsabilidade Fiscal, no que se refere às despesas com pessoal do ente público, não podem servir de fundamento para o não cumprimento de direitos subjetivos do servidor, sobretudo na hipótese de despesas provenientes de decisão judicial” (AgInt no RMS n. 66.238/SP, relator Ministro Benedito Gonçalves, Primeira Turma, julgado em 14/2/2022, DJe de 16/2/2022.)</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Por fim, quanto à incidência do imposto de renda sobre o abono do Fundeb pago em atraso, a exação deve ser calculada sob o regime de competência e não o regime de caixa, isto é, em respeito às alíquotas vigentes à época em que a verba havia de ter sido creditada.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> É inconteste que o abono pago pelo Município em dezembro de 2021 corresponde ao somatório dos abonos pagos nos doze meses anteriores, pagos extemporaneamente, isto é, no último mês do ano.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> O Município de Santa Quitéria não contestou o fato de que adotou, ilegalmente, o regime de caixa para cobrar imposto de renda, ao tratar o abono de dezembro de 2021 como rendimento daquele mês, e não como somatório dos rendimentos remuneratórios dos meses de janeiro a dezembro de 2021.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> O Município cometeu, pois, ilegalidade, ao não tratar a verba como espécie de Rendimento Recebido Acumuladamente – RRA, na forma do art. 12-A da Lei nº 7.713/1988:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Art. 12-A. Os rendimentos recebidos acumuladamente e submetidos à incidência do imposto sobre a renda com base na tabela progressiva, quando correspondentes a anos-calendário anteriores ao do recebimento, serão tributados exclusivamente na fonte, no mês do recebimento ou crédito, em separado dos demais rendimentos recebidos no mês. (Redação dada pela Lei nº 13.149, de 2015)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 1o O imposto será retido pela pessoa física ou jurídica obrigada ao pagamento ou pela instituição financeira depositária do crédito e calculado sobre o montante dos rendimentos pagos, mediante a utilização de tabela progressiva resultante da multiplicação da quantidade de meses a que se refiram os rendimentos pelos valores constantes da tabela progressiva mensal correspondente ao mês do recebimento ou crédito. (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 2o Poderão ser excluídas as despesas, relativas ao montante dos rendimentos tributáveis, com ação judicial necessárias ao seu recebimento, inclusive de advogados, se tiverem sido pagas pelo contribuinte, sem indenização. (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 3o A base de cálculo será determinada mediante a dedução das seguintes despesas relativas ao montante dos rendimentos tributáveis: (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">I – importâncias pagas em dinheiro a título de pensão alimentícia em face das normas do Direito de Família, quando em cumprimento de decisão judicial, de acordo homologado judicialmente ou de separação ou divórcio consensual realizado por escritura pública; e (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">II – contribuições para a Previdência Social da União, dos Estados, do Distrito Federal e dos Municípios. (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 4o Não se aplica ao disposto neste artigo o constante no art. 27 da Lei no 10.833, de 29 de dezembro de 2003, salvo o previsto nos seus §§ 1o e 3o. (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 5o O total dos rendimentos de que trata o caput, observado

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	o disposto no § 2o, poderá integrar a base de cálculo do Imposto sobre a Renda na Declaração de Ajuste Anual do ano-calendário do recebimento, à opção irretratável do contribuinte. (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 6o Na hipótese do § 5o, o Imposto sobre a Renda Retido na Fonte será considerado antecipação do imposto devido apurado na Declaração de Ajuste Anual. (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 7o Os rendimentos de que trata o caput, recebidos entre 1o de janeiro de 2010 e o dia anterior ao de publicação da Lei resultante da conversão da Medida Provisória no 497, de 27 de julho de 2010, poderão ser tributados na forma deste artigo, devendo ser informados na Declaração de Ajuste Anual referente ao ano-calendário de 2010. (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 8o (VETADO) (Incluído pela Lei nº 12.350, de 2010)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">§ 9o A Secretaria da Receita Federal do Brasil disciplinará o disposto neste artigo. (Incluído pela Lei nº 12.350, de 2010).</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> O erro do Município implica alíquota de imposto de renda maior, haja vista a progressividade do tributo.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Realmente, entender a verba como rendimento do mês exclusivamente de dezembro eleva – erroneamente – sua capacidade econômica naquele período e faz incidir sobre ele imposto de renda retido na fonte em sua alíquota máxima.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify">Não há, pois, controvérsia de que o pagamento, ainda que feito ao final do ano, foi proporcional aos meses trabalhados , em correspondência aos períodos aquisitivos mensais , de tal modo que a renda foi auferida mês a mês, impondo-se a aplicação do Tema 368/STF sob pena de vulneração da isonomia, da capacidade contributiva e da proporcionalidade.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> A propósito, cito literalmente o voto proferido pela Ministra Carmem Lúcia naquele caso paradigma, isto é, o Recurso Extraordinário nº 614.406/RS:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">11. O que se põe em foco no presente recurso é qual o regime de cobrança do imposto de renda incidiria sobre as verbas recebidas em atraso, se o regime de competência, própria das pessoas jurídicas, ou o regime de caixa, próprio das pessoas físicas. De se concluir se o imposto de renda deve ter como base de cálculo o valor de cada parcela mensal a que teria direito o beneficiário, ou se deve ser calculado sobre o montante final recebido, em atraso e acumuladamente, pelo beneficiário.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">12. O art. 153 da Constituição da República estabelece:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">“Art. 153. Compete à União instituir impostos sobre:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">(…)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">III - renda e proventos de qualquer natureza;</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">(...)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">§ 2º - O imposto previsto no inciso III:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">I - será informado pelos critérios da generalidade, da</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">universalidade e da progressividade, na forma da lei”.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">(…)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">O art. 43 do Código Tributário Nacional prevê:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;"

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	lang="pt-BR" align="justify">“Art. 43. O imposto, de competência da União, sobre a renda e proventos de qualquer natureza tem como fato gerador a aquisição da disponibilidade econômica ou jurídica:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">I - de renda, assim entendido o produto do capital, do trabalho ou da combinação de ambos;</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">II - de proventos de qualquer natureza, assim entendidos os acréscimos patrimoniais não compreendidos no inciso anterior.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">§ 1º A incidência do imposto independe da denominação da receita ou do rendimento, da localização, condição jurídica ou nacionalidade da fonte, da origem e da forma de percepção” (grifos nossos).</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">Em estudo sobre o conceito de renda, Hugo de Brito Machado assevera:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">“Não há renda, nem provento, sem que haja acréscimo patrimonial, pois o CTN adotou expressamente o conceito de renda como acréscimo. (…) Referindo-se o CTN à aquisição da disponibilidade econômica ou jurídica, quer dizer que a renda, ou os proventos, podem ser os que foram pagos ou simplesmente creditados. A disponibilidade econômica decorre do recebimento do valor que se vem a acrescentar ao patrimônio do contribuinte. Já a disponibilidade jurídica decorre do simples crédito desse valor, do qual o contribuinte passa a juridicamente dispor, embora este não lhe esteja ainda nas mãos . Para uma adequada compreensão do sentido da expressão” (MACHADO, Hugo de Brito. Curso de direito tributário. 30 ed. São Paulo: Malheiros, 2009. p. 317, grifos nossos).</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">O art. 150, inc. II, da Constituição estabelece:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">“Art. 150. Sem prejuízo de outras garantias asseguradas ao contribuinte, é vedado à União, aos Estados, ao Distrito Federal e aos Municípios: (...)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">II - instituir tratamento desigual entre contribuintes que se encontrem em situação equivalente, proibida qualquer distinção em razão de ocupação profissional ou função por eles exercida, independentemente da denominação jurídica dos rendimentos, títulos ou direitos”.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">Ainda segundo Hugo de Brito Machado:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">“ A renda não se confunde com sua disponibilidade . Pode haver renda, mas esta não ser disponível para seu titular. O fato gerador do imposto de que se cuida não é a renda mas a aquisição da disponibilidade da renda, ou dos proventos de qualquer natureza. Assim, não basta, para ser devedor desse imposto, o auferir renda, ou proventos. É preciso que se tenha adquirido a disponibilidade, que não se configura pelo fato de ter o adquirente da renda ação para sua cobrança. Não basta ser credor da renda se está não está disponível, e a disponibilidade pressupõe ausência de obstáculos jurídicos a serem removidos . O proprietário de prédios alugados aufere renda desde o momento em que se consuma cada período, geralmente mensal, de vigência do contrato de locação. Entretanto, se o inquilino não paga, nem oferece ao locador o crédito da quantia correspondente, este não será devedor do imposto de renda, embora tenha mais do que ação, porque tem execução contra o inquilino, posto ser o contrato de locação um título executivo” (MACHADO, Hugo de Brito. Curso de direito tributário. 30 ed. São Paulo: Malheiros, 2009. p. 319, grifos nossos).</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">Sobre os regimes de cobrança, cito precedente deste Supremo Tribunal:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">“REGIME DE CAIXA E REGIME DE COMPETÊNCIA.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">A base de tal distinção - ou diferença - está no regime a que cada uma delas – física ou jurídica – estão submetidas (sic). Para as pessoas físicas impera o REGIME DE CAIXA.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">Já, para as pessoas jurídicas, o REGIME DE COMPETÊNCIA.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR"

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	align="justify">No REGIME DE CAIXA, exige-se o registro de receitas e despesas quando efetivamente recebidas ou pagas.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">Somente quando recebido o valor do crédito ou quando pago o valor do débito tem-se a alteração, para mais ou para menos, no patrimônio da pessoa física.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">A só existência do direito subjetivo ou da obrigação, exigíveis, não altera, para fins tributários, a situação patrimonial da pessoa física.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">Não é o que se passa no REGIME DE COMPETÊNCIA, a que se submetem as empresas” (ADI 2.588/DF, Relatora a Ministra Ellen Gracie, Relator para o acórdão Ministro Joaquim Barbosa, Dje 10.2.2014).</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">(…)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">À luz dos princípios da isonomia e da capacidade contributiva tanto significa dizer que a incidência do imposto de renda deve considerar as datas e as alíquotas vigentes na data em que essa verba deveria ter sido paga (disponibilidade jurídica, como advertido pelo Ministro Marco Aurélio), observada a renda auferida mês a mês pelo segurado. Disso resulta não ser razoável, tampouco proporcional, a incidência da alíquota máxima sobre o valor global pago fora do prazo legal, como se dá na espécie examinada. A solução da controvérsia também deve levar em conta o princípio da proporcionalidade.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">(…)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">20. De se relevar que, na espécie, os valores recebidos pelo Recorrido e sobre os quais incidiria o imposto de renda têm natureza trabalhista e previdenciária.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">(…)</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">21. Desse modo, tal como afirmado nos votos divergentes dos Ministros Marco Aurélio e Dias Toffoli, não é razoável ser o contribuinte/segurando duplamente apenado pela inadimplência da Recorrente.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.6cm; line-height: 100%;" lang="pt-BR" align="justify"> O dever fundamental de pagar o tributo, como advertido pela Ministra Ellen Gracie, não está dissociado da estrita observâncias dos princípios constitucionais da isonomia, da capacidade contributiva e da proporcionalidade, consubstanciados, na espécie, pela cobrança do imposto de renda, segundo o regime de competência.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 150%;" lang="pt-BR" align="justify">De se ver que o caso em análise é, em tudo, similar ao caso paradigma, impondo-se a adoção da ratio decidendi do precedente vinculante, isto é, do Tema 368/STF.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 150%;" lang="pt-BR" align="justify"> Recentemente este posicionamento foi reafirmado e pacificado no âmbito desta 3º Câmara de Direito Público, em julgamento assim ementado:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.11cm; line-height: 100%;" lang="pt-BR" align="justify">EMENTA: EMENTA: APELAÇÃO. CONSTITUCIONAL E TRIBUTÁRIO. INCIDÊNCIA DE IMPOSTO DE RENDA SOBRE VANTAGEM PAGA COM RECURSOS ORIUNDOS DE PRECATÓRIO DE COMPLEMENTAÇÃO DO FUNDEB/ FUNDEF. APLICAÇÃO DO REGIME DE COMPETÊNCIA. VERBA QUE DEVE SER DECLARADA, PARA FINS DE IMPOSTO DE RENDA, COMO “RENDA DE RENDIMENTO ACUMULADO”. RECURSO CONHECIDO E NÃO PROVIDO. 1. Verifica-se que os autores obtiveram vantagem referente ao rateio de 70% (setenta por cento) do precatório de complementação de recursos do FUNDEB/FUNDEF, devidamente paga na forma da Lei Municipal nº 1.034/2021, pelo Município de Hidrolândia, ora apelante. 2. O imposto de renda incidente sobre a vantagem devida aos autores deve ser calculado sob o regime de competência e não o regime de caixa, de acordo com as alíquotas vigentes à época em que a verba havia de ter sido creditada. Precedentes deste Tribunal de Justiça. 3. Por uma questão de isonomia (art. 5º, caput, da CRFB), a tributação sobre ela deve incidir da maneira que incidiria se a verba tivesse sido paga no momento correto. Aplica-se, portanto, ao caso, a tese jurídica fixada pelo STF no julgamento do Tema 368 de repercussão geral e, por analogia, o entendimento do STJ firmado no julgamento do Tema 351 de recursos especiais repetitivos. 4. Em suma, o Município de Hidrolândia deve retificar a declaração de imposto de renda incidente, declarando a vantagem como “Rendimento Recebido

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	Acumuladamente – RRA”. Ademais, cabe ao Município restituir o percentual retido indevidamente. 5. Apelo conhecido e não provido. (TJCE, AP 02009935620228060160, Relator(a)/Magistrado(a):WASHINGTON LUIS BEZERRA DE ARAUJO, :3ª Câmara de Direito Público, Julgamento 27/08/2024)</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> É igualmente incontroverso que o abono adicional de Fundeb a ser recebido decorrerá de rateio do precatório pago pela União em cumprimento à sentença no processo de nº 0068508-56.2016.4.01.3400, em que a União foi condenada a pagar ao Município de Santa Quitéria as diferenças do Fundeb.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Isto é, o abono do rateio do precatório do Fundeb também será pago intempestivamente, considerando que o crédito foi pago com atraso por culpa da União e que ele já era exigível nos anos em que os repasses do Fundeb ocorreram a menor.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Também não há controvérsia de que o Município pretende tributar irregularmente, a título de imposto de renda, o abono dos recursos do rateio do precatório do Fundeb, mediante aplicação do regime de caixa, e não o regime de competência, que seria o correto.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Dessarte, se o abono do exercício do ano de 2021 foi pago a destempo, a tributação sobre tal valor, por uma questão de isonomia (art. 5º, caput, da CRFB), deverá obedecer ao regime de competência, e não o de caixa, isto é, incidir da maneira que incidiria se a verba tivesse sido paga no momento correto.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> O mesmo pode ser dito quanto ao abono advindo do precatório, respeitando-se as alíquotas que seriam aplicadas, se a União houvesse disponibilizado o crédito de forma tempestiva.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Aplica-se, portanto, ao caso, a tese jurídica fixada pelo STF no julgamento do Tema 368 de repercussão geral e, por analogia, o entendimento do STJ firmado no julgamento do Tema 351 de recursos especiais repetitivos:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Tema 351/STJ: O Imposto de Renda incidente sobre os benefícios previdenciários atrasados pagos acumuladamente deve ser calculado de acordo com as tabelas e alíquotas vigentes à época em que os valores deveriam ter sido adimplidos, observando a renda auferida mês a mês pelo segurado, não sendo legítima a cobrança de IR com parâmetro no montante global pago extemporaneamente.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Tema 368/STF: O Imposto de Renda incidente sobre verbas recebidas acumuladamente deve observar o regime de competência, aplicável a alíquota correspondente ao valor recebido mês a mês, e não a relativa ao total satisfeito de uma única vez. Obs: Redação da tese aprovada nos termos do item 2 da Ata da 12ª Sessão Administrativa do STF, realizada em 09/12/2015.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Veja-se, a respeito, jurisprudência deste tribunal, assim ementada:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">DIREITO CONSTITUCIONAL. DIREITO TRIBUTÁRIO. AÇÃO DECLARATÓRIA COM REPETIÇÃO DE INDÉBITO TRIBUTÁRIO C/C OBRIGAÇÃO DE FAZER. IMPOSTO DE RENDA. VERBAS RECEBIDAS ACUMULADAMENTE. CÁLCULO PELO REGIME DE CAIXA. NECESSIDADE DE REAVALIAÇÃO DO CÁLCULO. INCIDÊNCIA DO REGIME DE COMPETÊNCIA. PRECEDENTES DO SUPREMO TRIBUNAL FEDERAL. SOLUÇÃO CONSENTÂNEA COM OS PRINCÍPIOS DA ISONOMIA E DA CAPACIDADE CONTRIBUTIVA. JUROS DE MORA E CORREÇÃO MONETÁRIA. MATÉRIA COGNOSCÍVEL EX OFFICIO. IMPOSSIBILIDADE DE CUMULAÇÃO DA TAXA SELIC COM OUTROS ÍNDICES. APELAÇÃO CÍVEL CONHECIDA E IMPROVIDA. SENTENÇA REFORMADA PARCIALMENTE. I. Trata-se de Apelação Cível interposta pelo Município de Acopiara contra sentença proferida pelo Juízo da 2ª Vara da Comarca de Acopiara que, nos autos de Ação Declaratória com Repetição de Indébito Tributário c/c Obrigação de Fazer, julgou procedente o pleito exordial. II. Em análise aos autos, a controvérsia em tela cinge-se em avaliar a legalidade do regime de aplicação da alíquota de imposto de renda sobre o valor de R$ 77.448,78 (setenta e sete mil reais, quatrocentos e quarenta e oito reais e setenta e oito centavos) recebido pela demandante enquanto professora da rede pública municipal de Acopiara, em face do precatório PR 134667-CE, expedido no processo nº 0800031-75.2016.4.05.8107, que tramitou perante a 25ª Vara Federal de Iguatu. III. A aplicação da regra do art. 12-A da Lei nº 7.713/88 ao presente caso, na forma

pretendida pelo apelante, significaria consagrar o regime de caixa ao cobrar o imposto de renda sobre o rendimento auferido com decisão judicial. Ao tratar da aplicação de dispositivo revogado da referida lei (qual seja, o seu art. 12), que também possibilitaria a adoção do supracitado regime no momento em que incidisse a cobrança de imposto de renda sobre rendimentos percebidos acumuladamente, o Supremo Tribunal Federal, ao julgar o Recurso Extraordinário 614406, firmou tese no sentido de que o Imposto de Renda incidente sobre verbas recebidas acumuladamente deve observar o regime de competência. IV. Nesse sentido, deve prevalecer o parecer constante no tema 368 do Supremo Tribunal Federal no sentido de que a aplicação irrestrita do art. 12-A da Lei n. 7.713/1988 proporcionaria, ao cabo, tratamento desigual entre os contribuintes, cuja renda originara-se de mesma base jurídica, embora obtidas em momentos distintos. V. É certo que, em caso de adoção do regime de caixa ao presente caso, por um lado, haveria contribuintes que receberiam em dia as verbas devidas e, dessa forma, pagariam um valor menor a título de imposto de renda e, de outro, estariam os contribuintes que receberiam a verba indenizatória tão somente após decisão judicial, sendo cobrado destes valor a maior. Eis a ofensa ao princípio da isonomia tributária. VI. Em face dos princípios da isonomia e da capacidade contributiva, a incidência do imposto de renda deve ponderar as datas e as alíquotas vigentes à época da devida cobrança do tributo, observando-se a renda auferida mês a mês pelo contribuinte. Portanto, não seria uma alternativa razoável nem proporcional a incidência de alíquota máxima sobre o valor total recebido após a 25ª Vara Federal de Iguatu proferir sentença a qual determinara que o Município de Acopiara aplicasse os valores do precatório PR 134667-CE à educação, na proporção de 60% (sessenta por cento) à remuneração dos profissionais do magistério em efetivo exercício. VII. A utilização da taxa SELIC para o cálculo dos juros de mora, em conjunto com a incidência do índice de correção monetária IPCA-E para correção monetária, desde a data da retenção indevida fere precedente judicial firmado pelo Superior Tribunal de Justiça em sede de recursos repetitivos (Tema 905). Tal entendimento encontra fundamento no fato de a Taxa SELIC diferenciar-se das demais taxas por poder abranger tanto a correção monetária quanto os juros de mora. Desse modo, na atualização monetária do valor deve incidir tão somente a referida taxa, sem possibilidade de cumulação com qualquer outro índice. A Lei Estadual nº 16.132/16, conforme art. 5º, inciso I, estabelece a isenção do pagamento de despesas aos municípios. VIII. Apelação conhecida e improvida. Sentença reformada ex officio.(TJCE – 3º Câmara de Direito Público – relator: Desembargador INACIO DE ALENCAR CORTEZ NETO; Data do julgamento: 01/02/2021, grifo inexistente no original)</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> É impertinente a menção pelo Município ao art. 158, I, da CF e o argumento de que o abono percebido pela autora é renda tributável, porque não há controvérsia de que esse ganho patrimonial é sujeito a tributação pelo imposto de renda e que a arrecadação pertence ao Município por se tratar de servidor público municipal. A contenda é sobre qual regime deve ser aplicado ao caso.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> É igualmente irrelevante perquirir a legalidade do pagamento do abono advindo do rateio do precatório, à luz da jurisprudência do Tribunal de Contas da União - TCU (ACÓRDÃO 2866/2018 - PLENÁRIO, ACÓRDÃO N°. 1962/2017 - PLENÁRIO, TC N°. 020.079/2018-4), uma vez que o direito ao rateio do precatório nem sequer é discutido neste processo.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> De toda sorte, essa diretriz do TCU foi superada pela Emenda Constitucional nº 114/2021, que, em seu art. 5º, parágrafo único, estabeleceu a subvinculação dos precatórios do FUNDEF aos profissionais da educação:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Art. 4º Os precatórios decorrentes de demandas relativas à complementação da União aos Estados e aos Municípios por conta do Fundo de Manutenção e Desenvolvimento do Ensino Fundamental e de Valorização do Magistério (Fundef) serão pagos em 3 (três) parcelas anuais e sucessivas, da seguinte forma:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">I - 40% (quarenta por cento) no primeiro ano;</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">II - 30% (trinta por cento) no segundo ano;</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">III - 30% (trinta por cento) no terceiro ano.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Parágrafo único. Não se incluem nos limites estabelecidos nos arts. 107 e 107-A do Ato das Disposições Constitucionais Transitórias, a partir de 2022, as despesas para os fins de que trata este artigo.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Art. 5º As receitas que os Estados e os Municípios receberem a título de pagamentos da União por força de ações

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	judiciais que tenham por objeto a complementação de parcela desta no Fundo de Manutenção e Desenvolvimento do Ensino Fundamental e de Valorização do Magistério (Fundef) deverão ser aplicadas na manutenção e desenvolvimento do ensino fundamental público e na valorização de seu magistério, conforme destinação originária do Fundo.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Parágrafo único. Da aplicação de que trata o caput deste artigo, no mínimo 60% (sessenta por cento) deverão ser repassados aos profissionais do magistério, inclusive aposentados e pensionistas, na forma de abono, vedada a incorporação na remuneração, na aposentadoria ou na pensão.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> De fato, o Ministro Barroso do Supremo Tribunal Federal - STF no MS 35675 MC/DF entendeu que não haveria subvinculação das receitas creditadas por precatória, mas, repita-se, essa decisão é anterior à Emenda Constitucional nº 114/2021 e, portanto, já não mais corresponde ao normativo constitucional vigente.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Também é verdade que o STF validou o posicionamento do TCU ao julgar a ADPF 528/DF, mas a Corte Constitucional sinalizou que é necessário que o TCU reveja seu entendimento, a partir do novo parâmetro constitucional. É o que consta expressamente do voto do relator do precedente, o Ministro Alexandre de Moraes,</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Corroborando esse entendimento, a compreensão da matéria ganhou contornos inteiramente novos em decorrência da edição da Emenda Constitucional 114, de 16 de dezembro de 2021, promulgada pelo Congresso Nacional “para estabelecer o novo regime de pagamentos de precatórios, modificar normas relativas ao Novo Regime Fiscal e autorizar o parcelamento de débitos previdenciários dos Municípios”, entre providências, nas quais se inclui o teor dos seus arts. 4º e 5º, a seguir transcritos, QUE EXCLUIRAM – EXPRESSAMENTE – A POSSIBILIDADE DE INCORPORAÇÃO DESSES VALORES NOS SALÁRIOS DOS PROFESSORES:</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">[...]</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">O advento da nova regra constitucional permitiu a observância da regra de destinação específica ao gasto em remuneração de profissionais de magistério, mitigando a possibilidade de efeitos adversos ao equilíbrio fiscal dos entes públicos em questão, ao vedar a incorporação dos valores repassados ao patamar irredutível de remuneração desses servidores. Com isso, resultam atendidos o pleito do Requerente PSL (doc. 171) – que apresentou manifestação nos autos pela desistência da Ação Direta, ou, alternativamente, na sua extinção, por perda superveniente do objeto – e atendidas também as preocupações externadas pelo TCU, na medida em que afastado os efeitos fiscais de longo prazo, com a impossibilidade de incorporação.</p><p class="western" style="margin-left: 3.99cm; margin-top: 0.42cm; margin-bottom: 0.42cm; line-height: 100%;" lang="pt-BR" align="justify">Considerando que o objeto impugnado na presente ADPF é um pronunciamento da Corte de Contas proferido em momento anterior à EC 114/2021, apreciando situações concretas à luz do texto constitucional e da legislação então vigentes, suas conclusões devem ser considerada válidas, mas é necessária a modificação do entendimento daquele órgão, a partir do novo parâmetro constitucional. (grifo inexistente no original)</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Isto é, o Município de Santa Quitéria deve retificar a declaração de imposto de renda incidente sobre o abono pago em 2021, cabendo ao ente municipal declarar a vantagem como “Rendimento Recebido Acumuladamente – RRA”.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Deverá também adotar o mesmo regime de competência para o abono decorrente do rateio do precatório do Fundeb, aplicando a alíquota correspondente ao valor que teria sido recebido mês a mês pela parte autora, se a União houvesse repassado os recursos tempestivamente.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Aqui apenas se determina que o Município cumpra a lei, razão pela qual não há falar em concessão de benefício fiscal sem observância das formalidades legais, de modo que não há caracterização do ato de improbidade do art. 10, VII, da Lei Federal nº 8.429/92.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Ademais, cabe ao Município pagar à parte adversa o décimo terceiro com base na integralidade da remuneração, tanto quanto às prestações vincendas, quanto às vencidas, respeitada a prescrição quinquenal.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Assim, conheço da apelação e da remessa necessária, para

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	confirmar a condenação da Fazenda Pública e negar provimento ao apelo do Município.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Deixo de majorar, no momento, os honorários de sucumbência devidos pelo Município (art. 85, § 11, do CPC), uma vez que a fixação da verba foi postergada para a liquidação de sentença.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> É o voto que submeto à consideração de meus pares.</p><p class="western" style="text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm; line-height: 150%;" lang="pt-BR" align="justify"> Fortaleza, data informada pelo sistema.</p><p class="western" style="margin-top: 0.42cm; margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="margin-top: 0.42cm; margin-bottom: 0cm; line-height: 150%;" lang="pt-BR" align="center"> Relator</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A) MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	BENEDITO PAIVA ARAUJO
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJlfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sRfQychwGks/1DRpKd38LungZZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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	caso de condenação do Município de Santa Quitéria/CE à efetivação do direito do servidor público ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 6. Ademais, em se tratando de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Súmula nº 85 do Superior Tribunal de Justiça. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> IV. DISPOSITIVO </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 7. Recurso conhecido e não provido.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> ______</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Dispositivos relevantes citados: CF/88, arts. 7º, XVII e 39, §3º; Lei Municipal nº 081-A/1993, art. 47. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Jurisprudência relevante citada: Súmula nº 85 do STJ. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-left: 99.25pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-left: 99.25pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> ACORDÃO </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000478-80.2024.8.06.0160, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em <strong style="mso-bidi-font-weight: normal;">conhecer do recurso, mas para lhe negar provimento, confirmando integralmente a sentença, nos termos do voto da e. Relatora.</p><p class="Recuodecorpodetexto21" style="margin: 11.35pt 0cm 11.35pt 0.55pt; text-indent: 112.85pt; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> R elatora </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> <br /> </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de Apelação Cível, adversando sentença proferida pelo M.M. Juiz de Direito da 2ª Vara Cível da Comarca de Santa Quitéria/CE, que deu parcial procedência a ação ordinária. &#160;</p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária: Benedito Paiva Araújo moveu ação ordinária , aduzindo, em suma, que têm sido excluídas, d a base de cálculo do seu terço de férias, algumas vantagens que deveriam integrá-la, em afronta aos arts. 7º, inciso XVII, e 39, §3º, ambos da Constituição Federal de 1988.</p><p class="MsoNormal" style="margin: 5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Diante do que, requereu a condenação da Administração na imediata correção de tais falhas/omissões e,

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	consequentemente, ao pagamento dos valores retroativamente devidos, in casu, acrescidos dos consectários legais. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Citado, o ente público apresentou <strong style="mso-bidi-font-weight: normal;"> contestação (ID 15464203).</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sentença proferida pelo magistrado de primeiro grau (ID 15464212), dando parcial procedência a ação. Transcrevo seu dispositivo <em style="mso-bidi-font-style: normal;">:</p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> “Diante do exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão autoral para condenar o Município de Santa Quitéria-CE à obrigação de implementar o pagamento do terço constitucional tendo como base de cálculo todas as parcelas de natureza remuneratória, com pagamento da diferença das parcelas vencidas, desde o início do vínculo com o requerido, de forma simples, e vicendas até a implementação na remuneração, observando a prescrição relativa aos 05 (cinco) anos anteriores ao ajuizamento da presente ação.” (sic) </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Santa Quitéria/CE interpôs Apelação Cível (ID 15464217), sustentando que seria o caso de reforma do referido decisum, porque seus atos estariam amparados por lei e, portanto, não haveria nenhuma lesão a direito do servidor público in concreto. &#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foram ofertadas contrarrazões (ID 15464220). &#160; </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça <strong style="mso-bidi-font-weight: normal;"> como custos legis, na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, como visto . </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="Texto" style="margin: 5.95pt 0cm 11.35pt; text-indent: 0cm; text-align: center;">&#160;</p><p class="Texto" style="margin: 5.95pt 0cm 11.35pt; text-indent: 0cm; text-align: center;"> VOTO </p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos todos os requisitos legais, conheço da apelação cível, e passo, a seguir, ao enfrentamento de suas razões. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> A principal questão discutida nos autos é sobre qual seria a base de cálculo correta a ser utilizada pelo Município de Santa Quitéria/CE, para fins de pagamento do terço de férias aos seus servidores públicos, como visto.</p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, nos termos do art. 39, §3º, c/c art. 7º, inciso XVII, da Constituição Federal de 1988, são garantidos a todos aqueles ocupantes de cargos públicos, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores em geral, entre eles, o terço de férias, in verbis: </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas.&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> [...]&#160; <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left:

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	120.5pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social: &#160; </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 120.5pt; text-align: justify;"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal” <strong style="mso-bidi-font-weight: normal;"> ; (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vê-se, portanto, o terço de férias constitui um direito fundamental dos servidores públicos, que deve ser pago, a cada ano, com base na remuneração integral (que corresponde ao vencimento do cargo, somado a outras vantagens previstas em lei), como bem ensina a melhor doutrina, ex vi:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “Remuneração, do latim remunerado, de <em style="mso-bidi-font-style: normal;">remunerare, originariamente indica qualquer tipo de retribuição monetária correlata à prestação dos serviços efetuada. O termo, em sentido amplo, corresponde a toda e qualquer verba contra prestativa atribuída aos agentes do Estado em virtude do seu labor. Mas, <em style="mso-bidi-font-style: normal;">stricto sensu, tal como empregado no artigo 37, X, da Constituição, <strong style="mso-bidi-font-weight: normal;">remuneração é sinônimo de vencimentos do servidor, correspondendo ao somatório do vencimento – retribuição em dinheiro pelo exercício do cargo ou função pública com valor fixado em lei – e das demais vantagens inerentes ao cargo ou aos seus respectivos ocupantes (vantagens de caráter individual).” (DI PIETRO, Maria Sylvia Zanella, MOTTA, Fabrício, FERRAZ, Luciano de Araújo. Servidores Públicos na Constituição Federal. 3ª Ed. – São Paulo: Atlas, 2015, p. 113). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, no âmbito do Município de Santa Quitéria/CE, a matéria se encontra disciplinada pela Lei nº 081-A/1993 (Estatuto dos Servidores Públicos), mais especificamente, em seu art. 47, que assim dispõe:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “ Art. 47. Remuneração é o vencimento de cargo efetivo acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei.” (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Facilmente se extrai que a base de cálculo do terço de férias deve ser mesmo a remuneração integral, que sempre corresponderá ao vencimento do cargo, somado às outras vantagens – permanentes ou temporárias - recebidas, à época, pelo servidor público (exceto as de natureza indenizatória). </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Aliás, este tem sido o posicionamento da 3ª Câmara de Direito Público do TJ/CE, em casos praticamente idênticos ao dos autos: <em style="mso-bidi-font-style: normal;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <em style="mso-bidi-font-style: normal;">“ EMENTA: APELAÇÕES CÍVEIS. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA. SERVIDORES PÚBLICOS DO MUNICÍPIO DE CATUNDA/CE. ADICIONAL POR TEMPO DE SERVIÇO. BASE DE CÁLCULO. &#160;REMUNERAÇÃO INTEGRAL. IMPOSSIBILIDADE. EFEITO “CASCATA”. VEDAÇÃO PREVISTA NO ART. 37, INCISO XIV, DA CF/88. VANTAGEM INCIDENTE APENAS SOBRE O VENCIMENTO DO CARGO. COM REFLEXOS NO 13ª (DÉCIMO TERCEIRO) E NO 1/3 (TERÇO) DE FÉRIAS. PRECEDENTES DESTE TRIBUNAL. RECURSOS CONHECIDOS E NÃO PROVIDOS. SENTENÇA MANTIDA.&#160; 1. Foi devolvida a este Tribunal, em sede de Apelações Cíveis, a controvérsia em torno de base de cálculo correta, para fins de pagamento do adicional por tempo de serviço aos servidores públicos do Município de Catunda/CE. &#160; 2. Atualmente, tem prevalecido, entre as Câmaras de Direito Público do TJ/CE, a orientação no sentido de que os percentuais relativos aos “anuênios” somente devem incidir sobre o vencimento do

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	cargo, sob pena de ofensa ao art. 37, inciso XIV, da Constituição Federal de 1988. &#160;3. E foi exatamente isso o que estabeleceu o Juízo &#160; a quo no presente caso, não havendo, portanto, qualquer reparo a ser feito por este Tribunal, em seu &#160; decisum. 4. Aqui, vale destacar que, diversamente do que sustenta o Município de Catunda/CE, não configura “efeito cascata” a inclusão de tal vantagem (“anuênios”) no cálculo do 13º (décimo terceiro) e do 1/3 (terço) de férias, porque estes, sim, são pagos com base na remuneração integral dos servidores públicos (art. 7º, incisos VIII e XVII, c/c art. 39, §3º, ambos da Constituição Federal de 1988). 5. É bom ressaltar, ainda, que não houve, propriamente, a declaração de inconstitucionalidade Lei Complementar nº 001/1993, mas apenas foi dada ao seus arts. 47 e 68 uma interpretação conforme a CF/88, o que afasta a necessidade de observância da cláusula de reserva de plenário, segundo o Supremo Tribunal Federal. 6. Permanecem, então, inabalados os fundamentos da sentença, devendo ser confirmada neste azo. - Precedentes. - Recursos conhecidos e não providos. - Sentença confirmada. &#160;(APELAÇÃO CÍVEL - 30006470420238060160, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 05/05/2024) (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Consequentemente, era mesmo o caso de condenação do Município de Santa Quitéria/CE à efetivação do direito do servidor público ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, em se tratando, aqui, de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Sú mula nº 85 do STJ, in verbis:</p><p class="MsoNormal" style="margin: 6pt 0cm 12pt 4cm; text-align: justify;"> Súmula 85 do STJ - “Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação.”</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Também há precedentes deste Tribunal no mesmo sentido:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <span style="font-family: arial, helvetica, sans-serif;"> <span style="color: black; background: white;"> <span style="font-size: small;">“CONSTITUCIONAL E ADMINISTRATIVO. REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL. AGENTE DE ENDEMIAS. ARGUMENTO RECURSAL DE QUE O "INCENTIVO FINANCEIRO" NÃO DEVE SER CONSIDERADO NO CÁLCULO DA REMUNERAÇÃO INTEGRAL. INOVAÇÃO RECURSAL. APELO NÃO CONHECIDO NESTE PONTO. DÉCIMO TERCEIRO SALÁRIO E FÉRIAS COM BASE NA REMUNERAÇÃO INTEGRAL (ARTS. 7º, VIII E XVII E 39, § 3º, DA CF E ARTS. 46, 47, 64 E 80 DA LEI MUNICIPAL Nº 081-A/93). ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. SENTENÇA ILÍQUIDA. HONORÁRIOS SUCUMBENCIAIS A SEREM DEFINIDOS APENAS POR OCASIÃO DA LIQUIDAÇÃO. CONDENAÇÃO DA FAZENDA PÚBLICA EM DESPESAS PROCESSUAIS. DESCABIMENTO. REEXAME CONHECIDO E PARCIALMENTE PROVIDO. APELO CONHECIDO EM PARTE E, NESTA EXTENSÃO, PROVIDO. 01. A municipalidade alega que a vantagem intitulada "incentivo financeiro" não deve ser considerada na base de cálculo da "remuneração integral" da promovente, por ser transitória e possuir caráter indenizatório, nos termos do art. 3º da Lei Municipal nº 862/2015. Contudo, tal argumento não foi submetido ao crivo do juízo de 1º grau em sede de contestação, tampouco consiste em matéria cognoscível ex officio, configurando, portanto, inovação recursal. Assim, não conheço do apelo nesse ponto. 02. Aduz, ainda, que a sentença hostilizada merece reparo no tocante à fixação dos juros e correção monetária, com o fito de observar a orientação do Superior Tribunal de Justiça vertida no Tema nº 905. De fato, assiste razão ao ente apelante, quando se insurge contra os parâmetros dos encargos financeiros decorrentes da condenação, fixados no decisum. 03. Em reexame necessário, forçoso manter a condenação do ente federado ao pagamento das diferenças do décimo terceiro salário e do terço constitucional de férias com base em sua remuneração integral, com a ressalva da prescrição quinquenal. 04. Precedentes. 05. Por fim, a sentença merece reparos, ainda em sede de reexame necessário, no que diz respeito aos honorários de sucumbência, porquanto referida decisão é ilíquida, de maneira que a fixação dessa verba somente ocorrerá na fase de liquidação [art. 85, § 4º, II, do CPC.] 06. Reexame necessário conhecido e parcialmente provimento e apelação parcialmente conhecida e provida, no sentido de determinar que: a) os encargos legais decorrentes da condenação sejam fixados em observância à orientação do STJ (REsp 1.495.146/MG), b) a verba honorária sucumbencial seja fixada apenas por ocasião da liquidação do julgado e c) seja decotada da condenação o pagamento do ente requerido em despesas

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	processuais.” (Apelação / Remessa Necessária&#160;- 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 11/07/2022, data da publicação:&#160; 11/07/2022) (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Permanecem, portanto, totalmente inabalados os fundamentos do decisum proferido pelo Juízo a quo, devendo ser confirmado por este Tribunal. &#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;">&#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, <strong style="mso-bidi-font-weight: normal;">conheço do recurso, <strong style="mso-bidi-font-weight: normal;">mas para lhe negar provimento, confirmando integralmente a sentença, por seus próprios termos.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, <em style="mso-bidi-font-style: normal;">in casu, o disposto no Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o previsto no art. 3 º da EC nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, não sendo líquido o <em style="mso-bidi-font-style: normal;">decisum, a definição do <em style="mso-bidi-font-style: normal;">quantum dos honorários devidos pelo réu/apelante aos advogados do autor/apelado fica postergada para a fase de liquidação (CPC, art. 85, §4º, inciso II), oportunidade em que o Juízo a quo deverá levar em consideração, inclusive, o trabalho adicional realizado em sede de recurso, nos termos do art. 85, § 11, do CPC.</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É como voto.</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: justify;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> R elatora </p><p style="text-align: justify;"> &#160; </p><p style="text-align: justify;">&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	163
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	LUIS GUILHERME SOARES TIMBO - (CE47571-A)
Polo passivo	LUCELIA ZUIANNE DOS SANTOS CAMPOS
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A) MANUELITO MELO MAGALHAES - (CE41127-A)
Terceiros	Não informado

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AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ   <br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;">   <br /> </p><p> PROCESSO:&#160;3000527-24.2024.8.06.0160 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE SANTA QUITERIA</p><p> APELADO: LUCELIA ZUIANNE DOS SANTOS CAMPOS.</p><p align="center">   <br /> </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">Ementa: CONSTITUCIONAL. ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. MUNICÍPIO DE SANTA QUITÉRIA/CE. TERÇO DE FÉRIAS. BASE DE CÁLCULO. REMUNERAÇÃO INTEGRAL. ART. 39, §3º C/C ART. 7º, INCISO XVII, DA CF/88. DIFERENÇAS DEVIDAS. PARCELAS VENCIDAS E VINCENDAS. PRESCRIÇÃO QUINQUENAL. INCIDÊNCIA. SÚMULA Nº 85 DO STJ. PRECEDENTES DO TJ/CE. RECURSO CONHECIDO E NÃO PROVIDO . SENTENÇA MANTIDA. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   <strong style="mso-bidi-font-weight: normal;">   I. CASO EM EXAME   </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 1. Apelação Cível interposta pelo Município de Santa Quitéria, buscando a reforma de sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação ordinária movida por servidora pública. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   II. QUESTÃO EM DISCUSSÃO   </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 2. A principal questão discutida nos autos é sobre qual seria a base de cálculo correta a ser utilizada pelo Município de Santa Quitéria/CE, para fins de pagamento do terço de férias aos seus servidores públicos, como visto. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;">   III. RAZÕES DE DECIDIR   </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 3. Ora, é dever da Administração realizar, anualmente, o pagamento do terço de férias aos seus agentes, com base na remuneração integral (que corresponde ao   vencimento do cargo, somado a outras vantagens previstas em lei), nos termos do art. 39, §3º c/c art. 7º, inciso XVII, da CF/88.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 4. E, no âmbito do Município de Santa Quitéria/CE, a matéria se encontra disciplinada pela Lei nº 081-A/1993 (Estatuto dos Servidores Públicos), em seu art. 47.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 5. Consequentemente, não há dúvida de que era mesmo o caso de condenação do Município de Santa Quitéria/CE à efetivação do direito da

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	servidora pública ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 6. Ademais, em se tratando de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Súmula nº 85 do Superior Tribunal de Justiça. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> IV. DISPOSITIVO </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 7. Recurso conhecido e não provido.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> ______</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Dispositivos relevantes citados: CF/88, arts. 7º, XVII e 39, §3º; Lei Municipal nº 081-A/1993, art. 47. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Jurisprudência relevante citada: Súmula nº 85 do STJ. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-left: 99.25pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; &#160; </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> ACORDÃO </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000527-24.2024.8.06.0160, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em <strong style="mso-bidi-font-weight: normal;">conhecer do recurso, mas para lhe negar provimento, confirmando integralmente a sentença, nos termos do voto da e. Relatora.</p><p class="Recuodecorpodetexto21" style="margin: 11.35pt 0cm 11.35pt 0.55pt; text-indent: 112.85pt; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> R elatora &#160; </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;">&#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de Apelação Cível, adversando sentença proferida pelo M.M. Juiz de Direito da 2ª Vara Cível da Comarca de Santa Quitéria/CE, que deu parcial procedência a ação ordinária. &#160;</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária: Lucelia Zuianne dos Santos Campos moveu ação ordinária, aduzindo, em suma, que têm sido excluídas, da base de cálculo do seu terço de férias, algumas vantagens que deveriam integrá-la, em afronta aos arts. 7º, inciso XVII, e 39, §3º, ambos da CF/88.</p><p class="MsoNormal" style="margin: 5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Diante do que, requereu a condenação da Administração na imediata correção de tais falhas/omissões e, consequentemente, ao pagamento dos valores retroativamente devidos, in casu, acrescidos dos consectários legais. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin: 12pt 0cm

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	8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> Em sede de contestação (ID 15466767), o Município de Santa Quitéria/CE enfatizou que seus atos estariam amparados por lei e, portanto, não haveria nenhuma lesão a direito a ser afastada pelo Judiciário. &#160;</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sentença proferida pelo magistrado de primeiro grau (ID 15466771), dando parcial procedência a ação. Transcrevo seu dispositivo <em style="mso-bidi-font-style: normal;">:</p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> “Diante do exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão autoral para condenar o Município de Santa Quitéria-CE à obrigação de implementar o pagamento do terço constitucional tendo como base de cálculo todas as parcelas de natureza remuneratória, com pagamento da diferença das parcelas vencidas, desde o início do vínculo com o requerido, de forma simples, e vicendas até a implementação na remuneração, observando a prescrição relativa aos 05 (cinco) anos anteriores ao ajuizamento da presente ação.” (sic) </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Santa Quitéria/CE interpôs Apelação Cível (ID 15466776), buscando a reforma do referido decisum monocrático, basicamente, pelas mesmas razões outrora expostas nos autos. &#160; </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foram ofertadas contrarrazões (ID 15466779). &#160; </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça <strong style="mso-bidi-font-weight: normal;"> como custos legis, na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, como visto . </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;">&#160;</p><p class="Texto" style="margin: 5.95pt 0cm 11.35pt; text-indent: 0cm; text-align: center;"> VOTO </p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos todos os requisitos legais, conheço da apelação cível, e passo, a seguir, ao enfrentamento de suas razões. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> A principal questão discutida nos autos é sobre qual seria a base de cálculo correta a ser utilizada pelo Município de Santa Quitéria/CE, para fins de pagamento do terço de férias aos seus servidores públicos, como visto.</p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, nos termos do art. 39, §3º, c/c art. 7º, inciso XVII, da Constituição Federal de 1988, são garantidos a todos aqueles ocupantes de cargos públicos, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores em geral, entre eles, o terço de férias, in verbis: </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas.&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> [...]&#160; <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> § 3º Aplica-se aos servidores

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	ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social: &#160; </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 120.5pt; text-align: justify;"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal” <strong style="mso-bidi-font-weight: normal;"> ; (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vê-se, portanto, o terço de férias constitui um direito fundamental dos servidores públicos, que deve ser pago, a cada ano, com base na remuneração integral (que corresponde ao vencimento do cargo, somado a outras vantagens previstas em lei), como bem ensina a melhor doutrina, ex vi:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “Remuneração, do latim remunerado, de <em style="mso-bidi-font-style: normal;">remunerare, originariamente indica qualquer tipo de retribuição monetária correlata à prestação dos serviços efetuada. O termo, em sentido amplo, corresponde a toda e qualquer verba contra prestativa atribuída aos agentes do Estado em virtude do seu labor. Mas, <em style="mso-bidi-font-style: normal;">stricto sensu, tal como empregado no artigo 37, X, da Constituição, <strong style="mso-bidi-font-weight: normal;">remuneração é sinônimo de vencimentos do servidor, correspondendo ao somatório do vencimento – retribuição em dinheiro pelo exercício do cargo ou função pública com valor fixado em lei – e das demais vantagens inerentes ao cargo ou aos seus respectivos ocupantes (vantagens de caráter individual).” (DI PIETRO, Maria Sylvia Zanella, MOTTA, Fabrício, FERRAZ, Luciano de Araújo. Servidores Públicos na Constituição Federal. 3ª Ed. – São Paulo: Atlas, 2015, p. 113). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, no âmbito do Município de Santa Quitéria/CE, a matéria se encontra disciplinada pela Lei nº 081-A/1993 (Estatuto dos Servidores Públicos), mais especificamente, em seu art. 47, que assim dispõe:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “ Art. 47. Remuneração é o vencimento de cargo efetivo acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei.” (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Facilmente se extrai que a base de cálculo do terço de férias deve ser mesmo a remuneração integral, que sempre corresponderá ao vencimento do cargo, somado às outras vantagens – permanentes ou temporárias - recebidas, à época, pela servidora pública (exceto as de natureza indenizatória). </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Aliás, este tem sido o posicionamento da 3ª Câmara de Direito Público do TJ/CE, em casos praticamente idênticos ao dos autos: <em style="mso-bidi-font-style: normal;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <em style="mso-bidi-font-style: normal;">“ EMENTA: APELAÇÕES CÍVEIS. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA. SERVIDORES PÚBLICOS DO MUNICÍPIO DE CATUNDA/CE. ADICIONAL POR TEMPO DE SERVIÇO. BASE DE CÁLCULO. &#160;REMUNERAÇÃO INTEGRAL. IMPOSSIBILIDADE. EFEITO “CASCATA”. VEDAÇÃO PREVISTA NO ART. 37, INCISO XIV, DA CF/88. VANTAGEM INCIDENTE APENAS SOBRE O VENCIMENTO DO CARGO. COM REFLEXOS NO 13ª (DÉCIMO TERCEIRO) E NO 1/3 (TERÇO) DE FÉRIAS. PRECEDENTES DESTE TRIBUNAL. RECURSOS CONHECIDOS E NÃO PROVIDOS. SENTENÇA MANTIDA.&#160; 1. Foi devolvida a este Tribunal, em sede de Apelações Cíveis, a controvérsia em torno de base de cálculo correta, para fins de pagamento do adicional por tempo de serviço aos servidores públicos do Município de Catunda/CE. &#160; 2. Atualmente, tem prevalecido, entre as Câmaras de Direito Público do TJ/CE, a orientação no sentido de que os percentuais relativos aos “anuênios” somente devem incidir sobre o vencimento do cargo, sob pena de ofensa ao art. 37, inciso XIV, da Constituição Federal de 1988. &#160;3. E foi exatamente isso o que estabeleceu o Juízo &#160; a quo no presente caso, não havendo, portanto, qualquer reparo a

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	ser feito por este Tribunal, em seu &#160; decisum. 4. Aqui, vale destacar que, diversamente do que sustenta o Município de Catunda/CE, não configura "efeito cascata" a inclusão de tal vantagem ("anuênios") no cálculo do 13º (décimo terceiro) e do 1/3 (terço) de férias, porque estes, sim, são pagos com base na remuneração integral dos servidores públicos (art. 7º, incisos VIII e XVII, c/c art. 39, §3º, ambos da Constituição Federal de 1988). 5. É bom ressaltar, ainda, que não houve, propriamente, a declaração de inconstitucionalidade Lei Complementar nº 001/1993, mas apenas foi dada ao seus arts. 47 e 68 uma interpretação conforme a CF/88, o que afasta a necessidade de observância da cláusula de reserva de plenário, segundo o Supremo Tribunal Federal. 6. Permanecem, então, inabalados os fundamentos da sentença, devendo ser confirmada neste azo. - Precedentes. - Recursos conhecidos e não providos. - Sentença confirmada. &#160;(APELAÇÃO CÍVEL - 30006470420238060160, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 05/05/2024) (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Consequentemente, era mesmo o caso de condenação do Município de Santa Quitéria/CE à efetivação do direito da servidora pública ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, em se tratando, aqui, de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Sú mula nº 85 do STJ, in verbis:</p><p class="MsoNormal" style="margin: 6pt 0cm 12pt 4cm; text-align: justify;"> Súmula 85 do STJ - "Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação."</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Também há precedentes deste Tribunal no mesmo sentido:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <span style="font-family: arial, helvetica, sans-serif;"> <span style="color: black; background: white;"> <span style="font-size: small;">"CONSTITUCIONAL E ADMINISTRATIVO. REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL. AGENTE DE ENDEMIAS. ARGUMENTO RECURSAL DE QUE O "INCENTIVO FINANCEIRO" NÃO DEVE SER CONSIDERADO NO CÁLCULO DA REMUNERAÇÃO INTEGRAL. INOVAÇÃO RECURSAL. APELO NÃO CONHECIDO NESTE PONTO. DÉCIMO TERCEIRO SALÁRIO E FÉRIAS COM BASE NA REMUNERAÇÃO INTEGRAL (ARTS. 7º, VIII E XVII E 39, § 3º, DA CF E ARTS. 46, 47, 64 E 80 DA LEI MUNICIPAL Nº 081-A/93). ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. SENTENÇA ILÍQUIDA. HONORÁRIOS SUCUMBENCIAIS A SEREM DEFINIDOS APENAS POR OCASIÃO DA LIQUIDAÇÃO. CONDENAÇÃO DA FAZENDA PÚBLICA EM DESPESAS PROCESSUAIS. DESCABIMENTO. REEXAME CONHECIDO E PARCIALMENTE PROVIDO. APELO CONHECIDO EM PARTE E, NESTA EXTENSÃO, PROVIDO. 01. A municipalidade alega que a vantagem intitulada "incentivo financeiro" não deve ser considerada na base de cálculo da "remuneração integral" da promovente, por ser transitória e possuir caráter indenizatório, nos termos do art. 3º da Lei Municipal nº 862/2015. Contudo, tal argumento não foi submetido ao crivo do juízo de 1º grau em sede de contestação, tampouco consiste em matéria cognoscível ex officio, configurando, portanto, inovação recursal. Assim, não conheço do apelo nesse ponto. 02. Aduz, ainda, que a sentença hostilizada merece reparo no tocante à fixação dos juros e correção monetária, com o fito de observar a orientação do Superior Tribunal de Justiça vertida no Tema nº 905. De fato, assiste razão ao ente apelante, quando se insurge contra os parâmetros dos encargos financeiros decorrentes da condenação, fixados no decisum. 03. Em reexame necessário, forçoso manter a condenação do ente federado ao pagamento das diferenças do décimo terceiro salário e do terço constitucional de férias com base em sua remuneração integral, com a ressalva da prescrição quinquenal. 04. Precedentes. 05. Por fim, a sentença merece reparos, ainda em sede de reexame necessário, no que diz respeito aos honorários de sucumbência, porquanto referida decisão é ilíquida, de maneira que a fixação dessa verba somente ocorrerá na fase de liquidação [art. 85, § 4º, II, do CPC.] 06. Reexame necessário conhecido e parcialmente provimento e apelação parcialmente conhecida e provida, no sentido de determinar que: a) os encargos legais decorrentes da condenação sejam fixados em observância à orientação do STJ (REsp 1.495.146/MG), b) a verba honorária sucumbencial seja fixada apenas por ocasião da liquidação do julgado e c) seja decotada da condenação o pagamento do ente requerido em despesas processuais." (Apelação / Remessa Necessária&#160;- 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 11/07/2022, data da publicação:&#160; 11/07/2022)

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	(destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Permanecem, portanto, totalmente inabalados os fundamentos do decisum proferido pelo Juízo a quo, devendo ser confirmado por este Tribunal. &#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: justify;">&#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, <strong style="mso-bidi-font-weight: normal;">conheço do recurso, <strong style="mso-bidi-font-weight: normal;">mas para lhe negar provimento, confirmando integralmente a sentença, por seus próprios termos.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, <em style="mso-bidi-font-style: normal;">in casu, o disposto no Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o previsto no art. 3 º da EC nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, não sendo líquido o <em style="mso-bidi-font-style: normal;">decisum, a definição do <em style="mso-bidi-font-style: normal;">quantum dos honorários devidos pelo réu/apelante aos advogados da autora/apelada fica postergada para a fase de liquidação (CPC, art. 85, §4º, inciso II), oportunidade em que o Juízo a quo deverá levar em consideração, inclusive, o trabalho adicional realizado em sede de recurso, nos termos do art. 85, § 11, do CPC.</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É como voto.</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> R elatora </p><p> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3000035-59.2024.8.06.0054
Número de ordem	164
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	REMESSA NECESSÁRIA CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	MINISTERIO PUBLICO DO ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	JORDHANA ALVES DE ALENCAR MUNICIPIO DE CAMPOS SALES Procuradoria do Município de Campos Sales
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTIkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuleWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblIDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4rKKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GlIlgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7R7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGll9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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   ACÓRDÃO:
</p><p> O Colegiado, por unanimidade, acordou
em não conhecer do recurso, nos termos do voto do(a) eminente
Relator(a).</p><p>&#160;</p><p>
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	2tra8ee/PPW9cu5MfFJ22uMt1OYscqQgE0i1KWNCJJhZQxQapkY7bBpiphaR8FyhHP9kNP06UynFZgbQKyv4lQWxLFIaUf2FU6WnOjuk8x0pUjNngnQtlNay2YK1lhKIzE58PHn+Uurs8+fDrU3147V1NWhksXwZmTni/+t04vgJ69bW5rsdpM2h4aHy2Wezyj2DfaWmIQ4Xv2BOnSw2YG6QENalaeGbTENsStPDfEZz7PLudwCCd2BVjByWUMDiCqLCmdmc34wRYr8b881eQ/DsM8NHiaoEjDbDeQs+t5WES4z/89bW1qrZX2aVx8aOlTU01KGjveXu6OioNUfc/xpRqJ3X2ta8h3lz4WBH09PTZ08H0G5plrOqBxwTA/GeBYGx3kBCM0ds9P2VZn7VmhC7xVqTvAvRhwoR0r0Pq2NUMZc5AvuDFpnfCFQQWYj9Jiwz5oVTrA9YrBrm7G946tKlhIbmxqcH21pRU1u1h5GNI+Z/n6anp53rG2oH+w/1obGh9t6Th/dbaNG8irrKa7rBdlTRkN95b2efQLG7bgYAm6niIT8yb4jEzMwPHZd/vtmhUur98n3T1zXNJG7mb5pjqS0ftCLskVuef2326Yu8p0+etNCa1/v6e1BZXTl49epVZ45Y/14iQO8O9fXJlpeXXG8k/2xpabo4+/MDlZ+mZwLKm2quKHjo410XEtR1G+ZRlfMWA5SJvGSe2/YYIudY40R4T+7El3HUXzIvuDIaZIAxmvfixkonQci66yKnpvDK9N3pAHIJle7uzosEDmWlxdfa2tpkGRk44vx1dO/e7LKuri7DurraUTKVH7u629sf3r6nPjU1lRGwN+awfIgJ3janiEsVD/NqJfM855MYJXyZuAsfRythCdWXjOmyG1gy7bm22yAXaMic9R2evDyZ8XDmoXpvZ1tNbU3ldGVlyWhzc53hvXv3lnGW/79Lvb3dvgf2Zfa0HWxGe1d7NO2w3ejoiK9VoNNN5h0WLg8edvKez1QnTLHAMMc3mc7lSycZWPjZ3RwZ7GcioV17V0d0c3MTjhw5jIHBviTOMv9viZx9xfj4WPOh4UMoKi16MTFxsXj24S9u3QN9ZxRc9Z4uMucmk6TgweQyhgnk23Y7IOWs9bSpo/nM859/drs8MVFcSPf2DfVjYKC3+Zdnz9Q40//PIAK5+ObNqW1dvV3flpUVo6GxYfrx9AP5mxcnvaMOpNxf5yEPLncetkbfM+dDcEbMz1fPX/Z+PP2TXPPBpinyMbR1dXx7ceriNmYuzrT/M+nYsWPq+QW5VTU11Th39nQNmZ5DbE5S8Zc6AvhqtyBKWFUP6TePSxfP1TDvx7V3tD0dONT71/7r6l9BVTWV4e3tbSgoyKsmQGu7OrtedLa1vaDvPjX1NU3Uh6KhoT6e/pbh3PK/j65enQwZIr8qKS1pJyBRDFeVF1ZTcML4+HgIZ9j/brp//6fAgcF+akKLK9taWRXDw0OU9GcCOZf//6CpqSthpWVFyMvPweTk5f8/NPd7SklLCz956iQFSazm/PQXExfX/wGXuTX16scS8AAAAABJRU5ErkJggg==" alt="" /></p><p style="margin: 0cm; text-align: center;" align="center"> ESTADO DO CEARÁ </p><p style="margin: 0cm; text-align: center;" align="center"> PODER JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;" align="center"> TRIBUNAL DE JUSTIÇA </p><p style="margin: 0cm; text-align: center;" align="center"> GABINETE DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO </p><p style="text-align: center;" align="center"> &#160;</p><p style="text-align: left;">&#160;</p><p style="text-align: left;"> <strong style="font-family: Arial, Verdana, sans-serif; font-size: 11px;"> Processo: &#160;3000035-59.2024.8.06.0054 </p><p style="text-align: left;"> [Obrigação de Fazer / Não Fazer, Serviços de Saúde, Fornecimento de insumos] </p><p style="text-align: left;"> REMESSA NECESSÁRIA CÍVEL </p><p style="text-align: left;"> Recorrente:&#160;PROCURADORIA GERAL DE JUSTICA</p><p style="text-align: left;"> Recorrido:&#160;J. A. D. A. e outros</p><p style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> E menta <span style="text-decoration:

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	none;"> : Direito Processual civil. Direito à saúde. Reexame necessário. Ação ordinária para compelir o Município de Campos Sales a fornecer tratamento de saúde . D ispensa do duplo grau de jurisdição. Art. 496, §3º, inciso II, do cpc. Não conhecimento do reexame. Sentença mantida. I. Caso em exame <span style="text-

Processo	3000035-59.2024.8.06.0054
	decoration: none;"> <br /> 1. R emessa necessária de sentença que condenou conden ar o Município de Campos Sales no fornecimento de tratamento de fisioterapias, psicologia e psicopedagogia, incluindo deslocamento necessário para realização do tratamento. </p><p style="font-variant: small-caps; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> II. Questão em discussão </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 2. A questão a ser dirimida consiste em saber se, diante da iliquidez da sentença e do valor estimado da condenação estar abaixo do limite legal, é cabível a dispensa do reexame necessário. </p><p class="western" style="font-variant: small-caps; line-height: 150%; margin-bottom: 0cm;" align="justify"> III. Razões de decidir </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> 3 . Atualmente, ainda se encontra em vigor a Súmula nº 490 do STJ, pela qual “a dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas”. <span style="font-

Processo	3000035-59.2024.8.06.0054
	style: normal;"> Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. <br /> IV. Dispositivo </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> 4. Remessa necessária não conhecida, mantendo-se a sentença. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> ________ </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Dispositivos relevantes citados: CPC/2015, art. 496, §3º, III. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm; background: transparent;" align="justify"> Jurisprudência relevante citada: AgInt no REsp n. 1.916.025/SC, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 14/3/2022, DJe de 21/3/2022 e AgInt no AREsp n. 1.969.907/TO, relator Ministro Herman Benjamin, Segunda Turma, julgado em 11/4/2022, DJe de 25/4/2022. </p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 200%; margin-left: 2.5cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0.6cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> Acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em não conhecer do reexame necessário, tudo nos termos do voto do relator, parte integrante deste. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> F ortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-bottom: 0.6cm;" align="justify"> <br /> <br /></p><p class="western" style="letter-spacing: -0.3pt; line-

Processo	3000035-59.2024.8.06.0054
	height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="letter-spacing: -0.3pt; line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p class="western" style="font-variant: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm; page-break-before: auto;" align="justify"> Tem-se reexame necessário da sentença de procedência prolatada pelo juízo da Vara Única da Comarca de Campos Sales em Ação de Obrigação de Fazer c/c Pedido de Tutela Provisória de Urgência , que confirmou a tutela antecipada concedida, para conden ar o Município de Campos Sales no fornecimento dos tratamento requeridos, conforme laudos de Ids. 78243481 e 78243482 . </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm; background: transparent; page-break-before: auto;" align="justify"> Sentença: julgou procedente o pleito autoral , considerando laudo médico que confirma doença rara progressiva, que gera limitação de movimentos e atrofia muscular da parte autora, além de doença neuromuscular de causa genética, que exige fisioterapia neurofuncional com Bobath. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 1.5cm;" align="justify"> <span style="letter-

Processo	3000035-59.2024.8.06.0054
	spacing: 0.6pt;"> Parecer da PGJ: sem manifestação. </p><p style="letter-spacing: 0.6pt; line-height: 200%; text-indent: 1.5cm; margin-bottom: 0.21cm;" align="justify"> É o relatório, no essencial. </p><p style="letter-spacing: 0.6pt; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0.21cm; background: transparent;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify"> Conforme se observa o juízo a quo consignou: “ Independente da interposição de recurso, remetam-se os presentes autos para reexame necessário (em razão da obrigação de fornecimento de medicamentos de forma contínua), com a observação de que a tutela de urgência tem vigência imediata ” . </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify"> Todavia, não obstante o entendimento do juízo a quo , a demanda não alcança o valor de alçada para reexame obrigatório que, na situação, dos autos é de 1 00 (cem) salários mínimos, inclusive este é posicionamento das três câmaras de Direito Público deste e.TJCE, explico. </p><p class="western" style="line-height: 200%; text-indent: 1.5cm; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Art. 496. Está sujeita ao duplo grau de jurisdição, não produzindo efeito senão depois de confirmada pelo tribunal, a sentença: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> I - proferida contra a União, os Estados, o Distrito Federal, os Municípios e suas respectivas autarquias e fundações de direito

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	público; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> § 3º Não se aplica o disposto neste artigo quando a condenação ou o proveito econômico obtido na causa for de valor certo e líquido inferior a: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> (...) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> II - 500 (quinhentos) salários-mínimos para os Estados, o Distrito Federal, as respectivas autarquias e fundações de direito público e os Municípios que constituam capitais dos Estados; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> III - 100 (cem) salários-mínimos para todos os demais Municípios e respectivas autarquias e fundações de direito público. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Em se tratando de sentença ilíquida, poder-se-ia pensar, a princípio, ser o caso de aplicação, no caso concreto, da Súmula 490 do STJ, cujo enunciado prevê que “ A dispensa de reexame necessário, quando o valor da condenação ou do direito controvertido for inferior a sessenta salários mínimos, não se aplica a sentenças ilíquidas ”. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Todavia, a Corte Superior de Justiça vem mitigando a rigidez do entendimento sumulado nas hipóteses em que, embora ilíquido o decisum , os elementos constantes dos autos permitam inferir que o valor da condenação não ultrapassa o teto previsto no artigo 496, § 3º, do CPC, permitindo, assim, a dispensa da remessa necessária, ainda que se trate o caso de condenação ilíquida. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Nesse sentido, os seguintes precedentes do STJ, in verbis : </p><p class="western" style="line-height: 200%; text-indent: 2.49cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> PROCESSUAL CIVIL. RECURSO ESPECIAL. ENTE ESTADUAL. REEXAME NECESSÁRIO. VALOR DE ALÇADA. PROVEITO ECONÔMICO DA DEMANDA. PARÂMETRO PARA AFASTAMENTO DA ILIQUIDEZ. POSSIBILIDADE . 1. "Aos recursos interpostos com fundamento no CPC/1973 (relativos a decisões publicadas até 17 de março de 2016) devem ser exigidos os requisitos de admissibilidade na forma nele prevista, com as interpretações dadas, até então, pela jurisprudência do Superior Tribunal de Justiça" (Enunciado Administrativo n. 2 - STJ). 2. De acordo com o disposto no art. 475, I, § 2º, do CPC/1973, a sentença cuja condenação, ou o direito controvertido, não ultrapasse o valor correspondente a 60

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	(sessenta) salários-mínimos, não está sujeita ao reexame necessário. 3. O entendimento consolidado na Súmula 490 do STJ pode ser relativizado nas hipóteses em que o proveito econômico buscado na demanda servir como parâmetro balizador ao afastamento da iliquidez da sentença. 4. Hipótese em que o Tribunal de origem ratificou que o direito controvertido na ação de cobrança não supera, de forma manifesta, o patamar de 60 (sessenta) salários-mínimos, quantia tida como alçada pela legislação processual para tornar obrigatória a remessa necessária da sentença proferida em desfavor do ente estatal. 5. Agravo interno não provido. GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 08/10/2019, DJe 11/10/2019) </p><p class="western" style="font-weight: normal; line-height: 200%; margin-left: 4cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify"> No mesmo sentido, é o entendimento das três Câmaras de Direito Público deste e.TJCE: </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> CONSTITUCIONAL E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO. PROVEITO ECONÔMICO DECORRENTE DA CONDENAÇÃO INFERIOR AOS VALORES DO ARTIGO 496, INCISO II DO CPC. REEXAME NECESSÁRIO NÃO CONHECIDO. FORNECIMENTO DE LEITO. DEMANDA AJUIZADA CONTRA O ESTADO DO CEARÁ. HONORÁRIOS ADVOCATÍCIOS. PAGAMENTO EM FAVOR DA DEFENSORIA PÚBLICA ESTADUAL. NÃO CABIMENTO. INCIDÊNCIA DA SÚMULA 421 E DO RECURSO ESPECIAL Nº 1199715/RJ, JULGADO NA SISTEMÁTICA DOS RECURSOS REPETITIVOS (TEMA 433), AMBOS DO SUPERIOR TRIBUNAL DE JUSTIÇA. SENTENÇA EM CONSONÂNCIA COM A JURISPRUDÊNCIA DO STJ E DESTA CORTE ESTADUAL. MANUTENÇÃO. REMESSA NECESSÁRIA NÃO CONHECIDA. APELO CONHECIDO E DESPROVIDO. 1. Revela-se dispensável a remessa necessária quando o proveito econômico decorrente da condenação é inferior ao valor expresso no inciso II do § 3º do artigo 496 do CPC, que constitui exceção ao duplo grau de jurisdição obrigatório. Precedentes. 2. São indevidos honorários sucumbenciais pelo Estado do Ceará à Defensoria Pública Estadual. Inteligência da Súmula 421 do Superior Tribunal de Justiça e do Recurso Especial nº 1199715/RJ, repetitivo (Tema 433), do STJ. 3. Os arestos proferidos após a Lei Complementar Federal nº 132/2009 mostram-se atualizados e estão baseados na tese de que a Defensoria Pública é parte integrante da estrutura orgânica do Estado e com ele se confunde. As autonomias funcional e administrativa tratadas no art. 4º, XXI, da Lei Orgânica Nacional da Defensoria Pública e no art. 134, § 2º, da Constituição Federal não possuem aptidão para afastar a sua qualidade de órgão vinculado ao Poder Executivo do ente federativo que a instituiu, não lhe sendo permitido cobrar honorários a este, sob pena de confusão entre devedor e credor. 4. Remessa necessária não conhecida. Apelação conhecida e desprovida. ACÓRDÃO Vistos, relatados e discutidos estes autos, acordam os Desembargadores integrantes da 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por julgamento de Turma e decisão unânime, em não conhecer da remessa necessária e conhecer da apelação para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 08 de novembro de 2021. DESEMBARGADOR FERNANDO LUIZ XIMENES ROCHA Relator (Apelação / Remessa Necessária - 0000833-80.2018.8.06.0119, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, <span style="text-decoration:

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	none;"> 1ª Câmara Direito Público, data do julgamento: 08/11/2021 , data da publicação: 08/11/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> RECURSOS OFICIAL E APELATÓRIO EM AÇÃO DECLARATÓRIA C/C OBRIGAÇÃO DE PAGAR QUANTIA CERTA. VENCIMENTOS INFERIORES AO MÍNIMO NACIONAL. IMPOSSIBILIDADE. CONDENAÇÃO INFERIOR A 100 (CEM) SALÁRIOS-MÍNIMOS. APURAÇÃO POR SIMPLES CÁLCULO ARITMÉTICO. REMESSA NECESSÁRIA NÃO CONHECIDA. RECURSO APELATÓRIO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O Código de Processo Civil, em seu art. 496, § 3º, inciso III, estabelece que não há reexame necessário quando o valor da condenação for inferior a 100 (cem) salários-mínimos, tratando-se dos Municípios e respectivas autarquias e fundações de direito público. 2. Assim, diante dos precisos parâmetros indicados para a apuração do valor da condenação, é possível concluir, por simples cálculo aritmético, que será muito inferior ao patamar legal previsto para dispensa da remessa necessária, impondo a aplicação da respectiva norma (art. 496, § 3º, inciso III, do CPC). 3. Recurso apelatório conhecido e provido. Remessa Necessária não conhecida. Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Segunda Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, conhecer do Recurso Apelatório, para dar-lhe provimento, não conhecendo da Remessa Necessária, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data registrada no sistema. FRANCISCO GLADYSON PONTES Relator(Apelação / Remessa Necessária - 0008365-65.2019.8.06.0121, Rel. Desembargador(a) FRANCISCO GLADYSON PONTES, 2ª Câmara Direito Público, data do julgamento: 15/12/2021 , data da publicação: 16/12/2021) </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. PROCESSUAL CIVIL. CONSTITUCIONAL. AÇÃO DE OBRIGAÇÃO DE FAZER. FORNECIMENTO DE MEDICAÇÃO EM QUANTIDADE PREVIAMENTE DETERMINADA. CONDENAÇÃO EM VALOR INFERIOR A 500 SALÁRIOS-MÍNIMOS. OBSERVÂNCIA DO ART. 496, §3º, II E III DO CPC. NÃO CONHECIMENTO DO REEXAME NECESSÁRIO. <span style="color: #000000;"> <span style="font-family: Arial, serif;"> <span style="font-weight: normal;">APELAÇÃO CÍVEL. PROCESSUAL CIVIL. AÇÃO DE OBRIGAÇÃO DE FAZER. CONDENAÇÃO DO ENTE MUNICIPAL EM HONORÁRIOS ADVOCATÍCIOS. POSSIBILIDADE. APRECIAÇÃO EQUITATIVA. VALOR INESTIMÁVEL DA CAUSA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Trata o caso de apelação cível em ação ordinária por meio da qual se busca a realização do fornecimento de injeções intravítrea de BEVACIZUMAB e fotocoagulação a laser, conforme prescrição médica. 2. Fornecimento de medicamento em quantidade previamente determinada, não alcançando 500 (quinhentos) salários-mínimos, razão pela qual o não conhecimento do reexame necessário é medida que se impõe. 3. Nesse contexto, tendo em vista tratar-se de causa de valor inestimável (direito à saúde), é imperioso ajustar a verba honorária a patamares razoáveis, com fulcro no mencionado §8º do art. 85 do CPC, na medida em que a fixação de honorários no montante de R$ 200,00 (duzentos reais) não valora adequadamente o trabalho desenvolvido. 4. Destarte, merece acolhimento a pretensão de majoração dos honorários advocatícios arbitrados, razão pela qual arbitro o valor de R$ 800,00 (oitocentos reais), porquanto razoável e adequado à remuneração do serviço prestado. - Precedentes do STF, STJ e desta egrégia Corte de Justiça. - Reexame Necessário não conhecido. - Apelação conhecida e parcialmente provida. - Sentença reformada em parte. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0001031-18.2019.8.06.0173, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do reexame necessário e conhecer da apelação interposta, para dar parcial provimento a esta última, reformando em parte a sentença, tão

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	somente para reformar a sentença no tocante aos honorários sucumbenciais, nos termos do voto da Relatora. Fortaleza, 31 de janeiro de 2022 DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE Relatora(Apelação / Remessa Necessária - 0001031-18.2019.8.06.0173, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE , 3ª Câmara Direito Público, data do julgamento: 31/01/2022, data da publicação: 31/01/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify">&#160;</p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nesse sentido ainda, o seguinte precedente da relatoria do iminente Desembargador FRANCISCO LUCIANO LIMA RODRIGUES: (Apelação/Remessa Necessária - 0000044-89.2014.8.06.0194, 3ª Câmara Direito Público, data do julgamento: 07/02/2022, data da publicação: 08/02/2022) </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> A matéria é, inclusive, objeto de exame na Corte Superior, sob o regime dos Recursos Repetitivos, Tema 1081 (REsp 1882236/RS, REsp 1893709/RS e REsp 189466/SC), ainda pendente de julgamento, que tem por objetivo “Definir se a demanda previdenciária cujo valor da condenação seja aferível por simples cálculos aritméticos deve ser dispensada da remessa necessária, quando for possível estimar que será inferior ao montante previsto no artigo 496, § 3º, inc. I do Código de Processo Civil” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Dos precedentes acima citados, transcrevo, por pertinente, trecho do voto do Ministro Og Fernandes em que o magistrado destaca "Importante frisar que não se propõe o cancelamento da Súmula nº 490/STJ, mas sim a delimitação da sua aplicação ou não à demanda presente e às similares” . </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> Deste modo, embora a condenação do Município não tenha sido em valor líquido, certamente não ultrapassará o valor de 1 00 (cem) salários-mínimos, levando-se em conta o proveito econômico obtido. </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Em outras palavras, o proveito econômico obtido, ainda que ilíquido, é mensurável, de modo que não se alcançará valor superior a 100 (cem) salários-mínimos (referente ao teto previsto no art. 496, § 3º, inciso II, do CPC). </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom: 0cm; text-decoration: none;" align="justify"> Nestes termos, não conheço do reexame necessário, mantendo a sentença de primeiro grau em todos os seus termos, com fulcro no art. 932, III , do Código de Processo Civil/2015 </p><p class="western" style="line-height: 200%; text-indent: 2cm; margin-bottom:

Processo	3000035-59.2024.8.06.0054
	0cm; text-decoration: none;" align="justify"> É como voto. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent; page-break-before: auto;" align="justify"> Fortaleza, data informada pelo sistema. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2cm; margin-bottom: 0.07cm; background: transparent;" align="justify"> <br /> <br /></p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="western" style="line-height: 200%; margin-bottom: 0cm;" align="center"> Relator </p><p class="western" style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; text-indent: 1.51cm; margin-bottom: 0cm;" align="justify">&#160;</p><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	165
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	IPTU/ Imposto Predial e Territorial Urbano
Polo ativo	MUNICIPIO DE ARACATI
Advogado(s) - Polo ativo	GEORGIA MOURA DE SOUSA - (CE39458-A)
Polo passivo	JERSSYKA DE SOUZA TARGINO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEkAAABkCAYAAADKQR00AAAABHNCSVQICAgIfAhkiAAAIABJREFUeF7tfQl0ldW1/y8TmWdCBhIyQcgAyCDzDCIKOIuzdWjtYK0+q6+21acd9G9rbW2ttrVWi1O14lxBBERmwiTlkISEDGQOmeeEDPft3/5yLjc3N4CA63Wt/vdad93c851zvnP2t+ez9xc3fM3Q3t5uO3z4MLLyctDe1Iqurg6UHTmE8PjRePDBB914+y3bNtn+8OSj9pW0tx/Xv+9+4DdYumSZ9nnhhRdsu7N3IjkiDoHBYQgN9sOIpBSMSx+L4NAw7fN1gef5mLixvs5WXVWBstIi5OSXoq6mHLPmLcDsmXPdiKC/Pfs4Qny6EejXg6AhvnA/UY/Mjbm68e985ztuIeWVGBbci4tmpqOlqRcBQanIzi1GW2urLm/lyn/aPvjHnxET3ImAIQ2wNQJ10r5tzauCyce1DxG9c8du+Ph4ITEpWRCYgBGRMecFgef0BAoLCmx/feZJNNblDTAE1HBoShrOIGS6hZEJU1CY089Ino8YOuswLWXjERbWyv8/PxxKLcamXsPoaTuhFDCLNQ3ViN1+AnMmpyifQhHCuuwL+c4gsNScSBrK+LChmDSuJGYkBGHpjYPBAnCP918BC09sdqfwHn4MIaHDNF1NLU26vibvn8fxqaOOeu9nhMllVaUWAi4dIoukgsnAkpKC+DVfATt8l0s7fOmp9k3TyQkxfrBHdYYHTg8ArGxQbJ5nQWeaMLoxDCEhw9VypqcNke/2aetrUmuQ75lWFQYdh3MQWN9LWKGBaO5phHT5kzAmJQIvV83RmOtIDLn4GG9zdnCOSGJN1UWkg8XxYUTAdcsm42QoAC5OlrX1dDUgpomoEm+CZRLrW3t1t8dJ/T7SGGPfjtDiJ8H6hqHaHNnVx28vHz07yCZn59r+x6Q4zgiUvvIukhVfv7+jpe/8t/nhCQKzTfqvFFcyQ27o7a2Rjff2m5DQ0MDmluVNOS7y76wQH8vBPr7uVzoEG8LAbx4orND++TXWXPwb/chQeg9YSGAc3IuA5xzeHSo/gwRticC0dSubLcsNd3e72z+OGs+NTd7+umnbatffw4po4K1iYs1myUVGGhosyjFbN55sQahzu1mTtPuiEg/35NIbWvvUMQ6znOstB1zlt2Inzz883Pa5zkN5sKLq8ptf378MRXeQf4WohrqS3RP5mkbyjl0pBZjRocrErlBf9+Tt/f389Uxew8cRerI4TC/2Xa81qImIoLwxYEy0WCR8PfqVqQYSjVUyvmJsPJGbzz5l39Qy53TPs+J3bhgLoC20HvvvI4t61YB7YWqhSg7SPKUTZRJVOlhoY3UMiqA2eYajiq7uMNiyYAgdxHgVk/OVVxaiaKSKpH1AZh+ocVGnIuCvRdtIsiL0drVjbj0i3H3jbedM4J453PCsPMmf/rwj22JPnmKoOa6dnR0NYFsxk2NGTtDu2/ds03VOamr/HijypXwsDC9VltXZ6e+uOExIOWYtoS4SJ2H/WdMmoKSylJk5R4D28nWPl5BCAzz1fu2uIXhJ7/+23nb23mbaM+ePbaXn7lfnzA3xw1R9dPWYdu+o23w9nJDeryvGpRTZ03Eug3bMCzcDxdcMAHbd2yHR4+PbpDQ21mmlELKySssxVLF+LDVZ8hICQZmzdvxvgL56r5Qe1KU4B2l5GH9S3duPP+Z3DhhReel/2dlKy6tLOHxPjon6VHeWPqlLHo7e5ER3s7pkwai4KKngHxGP9/iOIDvFHRIgXqkQLNjbUoOBYOVpaOpCVnQcPTx/UnojCzh2bhUW94RsQg+2ZW9He2a3UVFPbIMgqw7DIOOTm5KG9tweJI+Jh62lGbEyEsG8bkhOGYe7sGfBx98L+vAp8tmHTz89+RydHnrNM4lR0S35yzxWoE0F6pPCoborw2ZYv9G8+/drCIgSOTUFzWzdSkmOUJadNsmQPx7h7D8dLL7yh4/Zml+L+79yEkNA4MSqjgURtVgol+Ib7orW2Qv4apSxnNBuFflGpde+i43m6rvPh150XJH388bvKUnFRseJ3ufcZktbGduzJ0j8ign0RHz1UrPEjIohP2i20rajpjlXU2PtVN7Zj7+E8jEpMUQPS28tiQbo9TcKGY5OT8eXBXO2fnhJvF+DWHS3j1U8UxWtvvGaazun7nJFEzfaLH92LGF9f1S5lRe3IPlGMIW5dOF7fiqySBly/KBa33HCVuB1uOFZZg71f5tptGhqIRHBzc0O/jTASEOQ3Crn55SLMj6pwN2p9TMpIzJkTpfMdyCqyU5gxK2g+UNbt3fU5uD5fXwdb4yzQdc5I2vPFLhGueXAf5oamE+12jXTx/GIlIgUN8c7FwZxDCAkJEe+/QxA2C6np8SgtLVFkjU4ciayCClQIOxJIRYSCOjfMINWIyUB2nHRBipgOcdi59QtUNuQr9XULYi+ZlIbhCRE6ZseuA2Lpi08nHEqr372nBbu2bdBr5wLnLP2ffOIx23CPcrV9CGSvZvHS05OilVU6mm2KPLY5Aj30RmkLDAxBTV39oHsYGhaqVMZ+9PCdgdqNQA1HLUhYOHuiftN+OnKs55zNgbNCEgWiWNrqXa/4y88wY2yCneRr24MlIGY92aCoGHuAbIhPEIaFBsDdl46vCF9vf4QEWFa2h5gEHv6WixE85KSr0SiU19NqCWuOaTlhWd4NtbU6R1Njs8ac6uoaNIbVVFmuZoEjHC1vxqLLbsKkSZOUZROTkr7yns94AGNHq1b/C82Nlvbw8g7UtTDINTZ1JPxDIkXV+zDIhYggy9E8U1lAudFvZ4P8ON18Zp7qpnqcqK9HQ0s7qo5XorSkTCMPXLtZ95XLLsXI1Iwz2v8ZdaJ/9oenfotp06YgdWyGRvyG+PjC1aK5UC6SIBSHTrGDuNDaxgbUtjeiQ3ytBmE1QlNzB7paLaSX9pz09h1xFOtxMmLg5R+GoECL0kLET/QRqz1G1hITEqaUGRAeIrZY2KBrIwfU1TcgKycLGz77HPd8//tnRFlnhCS6GzNnzrLHm0241jwpIqCspgL5+dngZtsbrHBGaU+ThDa60eQlT7HnJNs4IuGEGJhnCkMarKilc/9AD/ETu3wklOKJWI8g+IYEITEoFhnRcQgSxy9xRBxC5JtUbpxdhns/Wf0J/ueRx1w+bMd7nBZJb7z2oq2lrReMRZNKXnrpr/j4yA7k1ZaiwWY5qQYBjhv29veAm9/JeI/zxszvDp8z4jT7cJ+OwZdsa+tCZ+vJ4J1BKpFIGOMZg2kZE/HT7/xQY9/cW3Fx6WlDKYPfUSbdtH6V7dPPt+ChB39kn/Rbrz2J9oRQDIaEr7rpwZB3PtqdEUokuh+uwW8uvw/33HOfPvTf/+5XGDdhsp1LXN3X3VUj2yioP/pkA+765rcVQUTYff/4PXozhsIvLhCdYZ4gQpw/g833f9HuvDau2TY5Gj9b9Vf8c9X7amTe/K3vqHwSW25QknaJJGL4RWGrK6++XAUbEfboK8+jJs5HWai3owvOT+n/AgInc08irjnVHz/++68VMZRRN954I9587XX19VzN6dLiptxJHTNGz8048PpH78auKjk2unAE6n2swL2ryc62TQK+gw5tw/m/HymqsLUTjz72qEZWiShS1p/+9AeX6xhASatWf2yjPbH8ymt0wJ9efwmbjuzSv90LGxDaPviGXN7BRSORwk9YjUQds9rQfbASti3FAz5s53X2433NOBdTfuUmiow19fvx5LO/07HXL73KjSfDFObOk/UT3CS/FS/+Hff96AFVlTw5/d7Lv0DPhAi4tXajbVcR/BOGojcxBO3iwH5VIc1NeotrRmS31Yp5UNkFP+9QhA6NF5snBL5iDdQflwcxLETXyb/rayQU0lkPN38beuMC4D8yCp2WoS7u9LlRGUWG2+4KvHDHL/CNG29Rrvn100/h6quu7Rews7MbO/zi8SdA/iSCGGlc/qt7lH89uChfT/hNSUArEcWfgig5n3BG+qC/SQlETmtRDXy7wzB95k1oSu5BxOhpiBtnhXabKgvReLwCqZNno7XTUuUlB7aj+kimzpu/ZxXacvJhkzURWd6C9LN5WGaRfMjeoogee/c5PSangjKEYtiQfe1IevGlI9WiZsiTHW598FsoDJMnHRaogprQMdSrH6L80kNO+zRJPT41pMKjsLW6YeaC2xE772aER0Ti0IZ3EZGQghZY9hQRRKjqpBQ4KQlGzr4KQVGJSF/8DVTt/wi7Vr2hyPKfHw93WZOPrO+rUrXeSMDIp0f+8mvV6FRU1ORv/O0F08VaCdmKLcuWXa7xF/Lpjs4CVfUkaaNK9e+hfRRFisiyZBTJVrWdk1FNBLFP6+fHkJEyXxB0myKoOyi6DxH2degfNeKgEmkGugr26p/uURYiOS5jzg248PIfIDllns7L+X1tpzda7ZO6+iPOW/d7/+9/qRpuyswFCBsaY5dP7kTQ0dwssYfu1OEbPv8Mf9/wFgIkiuiK550RRRbiIvVJnnTgVdByAy2HazFn+aOYe9vjaPYZjhNtzXqf3spc8eG6FWEEIiTE39P+m21FR3P7IY1t2Qf2wzNwGBbf/wedl/O3Hq08Z4VC9l2zex3Wrl+nbso3vvENVFQ1auaLe1VVpcRzWqgK9eKs6TNw3xW3oz27fNAbu0KUoxrn30QeNzB25i0Ys+AaYan+R9s9fchSDPUhJCQ6yfxE/YFNGCqhF

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	style="font-size: 13pt;"> 1. Apelação Cível interposta pelo Município de Aracati em face da sentença que extinguiu a execução fiscal por ausência de interesse processual.</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> 2. O apelante defende a reforma da sentença, determinando-se o regular prosseguimento do feito, em razão do Recurso Especial n. 1.100.501, pelo qual o relator, ministro Jorge Mussi, destaca que a legislação possibilita que a União e os dirigentes máximos da Administração Indireta desistam ou não de propor ações para cobrança de crédito de valor inferior a R$ 1.000,00.</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> II. Questão em discussão </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> 3 . A questão em discussão consiste na possibilidade ou não de extinção da execução fiscal por falta de interesse processual.</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> III. Razões para decidir </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> 4. Nos autos do processo, constata-se a paralisação do processo por mais de um ano, sem a realização de citação, e o baixo valor. Portanto, a sentença decidiu de acordo com a tese firmada no Tema 1184 pelo Supremo Tribunal Federal.</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> IV. Dispositivos e tese </p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> 5. Apelação conhecida, mas desprovida.</p><p style="line-height: 200%; margin-bottom: 0.21cm;" align="justify"> ______</p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> Legislação relevante citada: artigo 1º, § 1º da Resolução 547/2024 do CNJ. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> Jurisprudência relevante citada: STF, Recurso Extraordinário nº 1355208/SC, Rel. Ministra Cármen Lúcia, Tribunal Pleno, j. 19/12/2023 ;&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: 380.65pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> ACÓRDÃO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso voluntário, mas para negar a ele provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> <span style="font-size: 13.5pt; font-family:

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	&quot;Arial&quot;,sans-serif; color: black;">RELATOR </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br /> </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: center 216.0pt right 432.0pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p style="line-height: 240%; text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm;" align="justify"> Tem-se apelação cível interposta pelo MUNICIPIO DE ARACATI contra sentença proferida pelo juízo da 2ª Vara Cível da Comarca de Aracati, que declarou extinta a execução fiscal, por ausência de interesse processual.</p><p style="line-height: 240%; text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm;" align="justify"> Petição inicial (id 15486860) : o Município de Aracati promove execução fiscal em face de Jerssyka de Souza Targino Me referente a crédito tributário de IPTU, materializado na CDA nº 010836/2019, no valor de R$ 1.081,36 (um mil, oitenta e um reais e trinta e seis centavos).</p><p style="line-height: 240%; text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm;" align="justify"> Sentença (id 15486874) : julgou extinta a execução fiscal, com base no art. 485, VI, do Código de Processo Civil.</p><p style="line-height: 240%; text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm;" align="justify"> Apelação (id 15486879) : defende a reforma da sentença, determinando-se o regular prosseguimento do feito, em razão do Recurso Especial n. 1.100.501, pelo qual o relator, ministro Jorge Mussi, destaca que a legislação possibilita que a União e os dirigentes máximos da Administração Indireta desistam ou não de propor ações para cobrança de crédito de valor inferior a R$ 1.000,00. Por fim, ele conclui que: não está o Poder Judiciário autorizado a promover a extinção de execução por considerar tal valor ínfimo.</p><p style="line-height: 240%; text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm;" align="justify"> Sem contrarrazões (id 15486889) : ausência de localização da parte executada.</p><p style="line-height: 240%; text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm;" align="justify"> Desnecessária a manifestação da PGJ, na forma da Súmula 189/STJ.</p><p style="line-height: 240%; text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm;" align="justify"> Vieram os autos conclusos após regular distribuição por sorteio.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 240%; text-indent: 1.52cm; margin-top: 0.42cm; margin-bottom: 0.21cm;" align="justify"> É o relatório, no essencial.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> VOTO </p><p style="line-height: 200%; page-break-inside: auto; orphans: 0; widows: 0; text-indent: 1.51cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify">

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	Presentes os requisitos de admissibilidade do apelo, dele conheço e passo a examinar. Conforme relatado, o Município de Aracati promove execução fiscal em face de Jerssyka de Souza Targino Me referente a crédito tributário de IPTU, materializado na CDA nº 010836/2019, no valor de R$ 1.081,36 (um mil, oitenta e um reais e trinta e seis centavos). Na análise dos autos, o juízo de origem extinguiu o feito executivo por falta de interesse processual, com base no art. 485, VI, do Código de Processo Civil. Na peça recursal , o Município de Aracati defende a reforma da sentença, determinando-se o regular prosseguimento do feito, em razão do Recurso Especial n. 1.100.501, pelo qual o relator, ministro Jorge Mussi, destaca que a legislação possibilita que a União e os dirigentes máximos da Administração Indireta desistam ou não de propor ações para cobrança de crédito de valor inferior a R$ 1.000,00. Sem apresentação das contrarrazões. Inicialmente, no presente caso, a sentença extinguiu a execução fiscal por falta de interesse processual. Tal decisão observa a hipótese legal prevista no artigo 1º, § 1º da Resolução 547/2024 do CNJ: Art. 1º É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado. § 1º Deverão ser extintas as execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento, em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis. O processo iniciou em 2019 e permanece sem intimação da parte executada. Constata-se a presença dos requisitos para extinção da execução fiscal, quais sejam, a paralisação do processo por mais de um ano, sem a realização de citação, e o baixo valor. Na jurisprudência, o Supremo Tribunal Federal analisou a questão, em sede de julgamento do Recurso Extraordinário nº 1355208/SC, quando firmado a tese do Tema 1184, restando o acórdão assim ementado: EMENTA: RECURSO EXTRAORDINÁRIO. DIREITO CONSTITUCIONAL E TRIBUTÁRIO. EXTINÇÃO DE EXECUÇÃO FISCAL DE BAIXO VALOR POR FALTA DE INTERESSE DE AGIR: POSTERIOR AO JULGAMENTO DO

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	RECURSO EXTRAORDINÁRIO N. 591.033 (TEMA N. 109). INEXISTÊNCIA DE DESOBEDIÊNCIA AOS PRINCÍPIOS FEDERATIVO E DA INAFASTABILIDADE DA JURISDIÇÃO. FUNDAMENTOS EXPOSTOS PELO SUPREMO TRIBUNAL FEDERAL NA TESE DO TEMA N. 109 DA REPERCUSSÃO GERAL: INAPLICABILIDADE PELA ALTERAÇÃO LEGISLATIVA QUE POSSIBILITOU PROTESTO DAS CERTIDÕES DA DÍVIDA ATIVA. RECURSO EXTRAORDINÁRIO AO QUAL SE NEGA PROVIMENTO. 1. Ao se extinguir a execução fiscal de pequeno valor com base em legislação de ente federado diverso do exequente, mas com fundamento em súmula do Tribunal catarinense e do Conselho da Magistratura de Santa Catarina e na alteração legislativa que possibilitou protesto de certidões da dívida ativa, respeitou-se o princípio da eficiência administrativa. 2. Os princípios da proporcionalidade e da razoabilidade devem nortear as práticas administrativas e financeiras na busca do atendimento do interesse público. Gastos de recursos públicos vultosos para obtenção de cobranças de pequeno valor são desproporcionais e sem razão jurídica válida. 3. O acolhimento de outros meios de satisfação de créditos do ente público é previsto na legislação vigente, podendo a pessoa federada valer-se de meios administrativos para obter a satisfação do que lhe é devido. 4. Recurso extraordinário ao qual se nega provimento com proposta da seguinte tese com repercussão geral: “É legítima a extinção de execução fiscal de baixo valor, pela ausência de interesse de agir, tendo em vista o princípio da eficiência administrativa”. (RE 1355208, Relator(a): CÁRMEN LÚCIA, Tribunal Pleno, julgado em 19-12-2023, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-s/n DIVULG 01-04-2024 PUBLIC 02-04-2024) A razão dessa conclusão é que o princípio da inafastabilidade da jurisdição ou da garantia do acesso à Justiça com direito a petição, entre outros, assegura a toda pessoa natural ou jurídica que possa reivindicar seus direitos, porém cumprindo-se as exigências que são feitas para se exercer todo e qualquer direito. Aquela garantia, portanto, não afasta de serem observados e atendidos os pressupostos processuais, neles incluído o interesse de agir para o regular exercício dessa garantia. O interesse de agir é demonstrado pela comprovação de utilidade, adequação e necessidade. A utilidade sendo proveito ou vantagem que o autor busca obter com a tutela jurisdicional; a adequação está relacionada à via processual a ser utilizada; e a necessidade provém da correlação entre a pretensão resistida e a imprescindibilidade da judicialização para a satisfação do conflito. O recurso não merece prosperar, pois a sentença extinguiu a execução fiscal por falta de interesse de agir e está adequada ao entendimento firmado no julgamento do Tema 1184 pelo Supremo Tribunal Federal. Isso posto, conheço do apelo para nega r-lhe provimento, mantendo a sentença em todos os seus termos, com fulcro no julgamento do Recurso Extraordinário nº 1355208/SC, com repercussão geral (Tema 1184) do Supremo Tribunal Federal, em razão do ajuizamento da ação executiva ter valor inferior a R$10.000 (dez mil reais), e pela ausência da intimação da parte executada. É o voto que submeto à consideração de meus pares. Fortaleza, data informada pelo sistema. <br style="mso-special-character:

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	line-break;" /> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	166
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	IPTU/ Imposto Predial e Territorial Urbano
Polo ativo	MUNICIPIO DE ARACATI
Advogado(s) - Polo ativo	GEORGIA MOURA DE SOUSA - (CE39458-A)
Polo passivo	MARIA DO CARMO SILVA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+X7fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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Processo	0014593-23.2019.8.06.0035
	size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:small-caps;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">2. A questão em discussão consiste em saber se os requisitos autorizadores do tema 1884 do STF c/c Resolução 547 do CNJ foram observados para extinguir o feito sem resolução de mérito, por ausência do interesse de agir.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">3. Com o julgamento do RE 1355208, em sede de repercussão geral, o Supremo Tribunal Federal estabeleceu a possibilidade de extinção da execução fiscal de baixo valor desde que observado os requisitos autorizadores (tema 1.184).</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">4. O Conselho Nacional de Justiça, por seu turno, elaborou a Resolução nº 547/2024, que “institui medidas de tratamento racional e eficiente na tramitação das execuções fiscais pendentes no Poder Judiciário, a partir do julgamento do tema 1184 da repercussão geral pelo STF”, estabelecendo em seu art. 1º, § 1º, que as execuções ficais inferiores a R$ 10.000,00 (dez mil reais) deverão ser extintas quando inexistir movimentação útil por mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">5. No caso dos autos, o iter processual não deixa dúvidas quanto à inobservância de tais procedimentos. Isso porque, o Recurso Extraordinário nº 1.355.208 somente foi julgado pela Corte Suprema em 19 de dezembro de 2023, isto é, após a prolação da sentença e interposição do presente recurso.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">6. Desse modo, merece a sentença ser anulada para que o feito seja

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	processado adequadamente em primeira instância pelo Juízo a quo, observando categoricamente o que dispõe o tema 1884 do STF c/c a Resolução 547/2024 do CNJ, a fim de que não haja o que se falar em violação ao princípio da separação dos poderes ou cerceamento de defesa, oportunizando ao Fisco a possibilidade de demonstrar a sua ineficiência administrativa para quitar o crédito perseguido, consequente interesse de agir no regular prosseguimento do feito.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">7. Logo, permanece hígido o interesse de agir do Fisco, não se justificando a extinção da Execução Fiscal.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">8. Apelação cível conhecida e provida. Sentença anulada.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> _________</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Dispositivo relevante citado: LEF, art. 8º, inciso II. LEF, art. 34. CNJ, resolução 547/2024.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Jurisprudência relevante citada: STJ, REsp 1168625/MG, Rel. Ministro Luiz Fux, Primeira Seção, j. 09/06/2010; STF, RE nº 1.355.208, Rel. Cármen Lúcia, Tribunal Pleno, j. 19/122023 (tema 1884 do STF); STJ, AgInt no AREsp 1864070 SP 2021/0089368-2, Rel. Ministro Gurgel de Faria, Primeira Turma, j. 14/02/2022/ TJCE, Apelação cível 00511333120218060090, Rel. Joriza Magalhães Pinheiro, 3ª Câmara de Direito Público, j. 10/07/2024.</p><p align="center"> <strong id="docs-internal-guid-96fd77ff-7fff-c719-1dd1-5b4574c6cc53" style="font-weight:normal;"> <br /> <br /> </p><p style="line-height:1.38;margin-left: 112pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <br /> <br /> </p><h3

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	style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height:1.7999999999999998;margin-left: 1pt;text-indent: 112.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0014593-23.2019.8.06.0035, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação interposta, para dar-lhe provimento, anulando a sentença proferida em 1º grau de jurisdição, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, 18 de novembro de 2024.</p><p align="center"> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Juíza Convocada ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Portaria 1550/2024</p><p align="center"> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta em face de sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Aracati que decidiu pela extinção do processo sem resolução de mérito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">O caso/a ação originária: o Município de Aracati ajuizou Ação de Execução Fiscal em face de Maria do Carmo Silva com base em certidão da dívida ativa, oriunda de débitos de IPTU, no valor total de R$ 1.051,35 (mil e cinquenta e um reais e trinta e cinco centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">A Sentença: o Juízo da 2ª Vara Cível da Comarca de Aracati decidiu pela <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-

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	space:pre-wrap;">extinção do processo sem resolução de mérito, por ausência de interesse de agir, sob o fundamento de que o valor executado não justificaria a movimentação do aparato judiciário (ID nº 15487129). Transcrevo o dispositivo da sentença:</p><p style="line-height:1.38;margin-left: 114pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Ante o exposto, EXTINGO o processo sem resolução do mérito por ausência de interesse processual, nos termos do art. 485, VI, do Código de Processo Civil.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Apelação: irresignado, o ente público interpôs recurso (ID nº 15487135) pugnando pela regular continuidade de tramitação do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Inexistiram contrarrazões, conforme despacho de ID 15487444.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desnecessária a intervenção do Ministério Público , nos termos da súmula 189 do STJ.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É o relatório.</p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> De conformidade com o relatado, depreende-se que se trata de apelação cível interposta em face de sentença que decidiu pela extinção do processo sem resolução de mérito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">

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	Por partes e em tópicos segue o presente voto.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:6pt;margin-bottom:9pt;" dir="ltr"> - Do cabimento do recurso de apelação.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> A presente demanda, por se referir a execução proposta pela Fazenda Pública, deve se desenvolver sob o rito previsto na Lei 6.830/80 (Lei de Execuções Fiscais – LEF).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Neste sentido, cumpre observar o disposto no art. 34 da LEF:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Art. 34 - Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração”.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 1º - Para os efeitos deste artigo considerar-se-á o valor da dívida monetariamente atualizado e acrescido de multa e juros de mora e de mais encargos legais, na data da distribuição.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 2º - Os embargos infringentes, instruídos, ou não, com documentos novos, serão deduzidos, no prazo de 10 (dez) dias perante o mesmo Juízo, em petição fundamentada.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 3º - Ouvido o embargado, no prazo de 10 (dez) dias, serão os autos conclusos ao Juiz, que, dentro de 20 (vinte) dias, os rejeitará ou reformará a sentença.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Há que se destacar, de início, que referido dispositivo encontra-se em plena vigência, uma vez que recepcionado pela ordem jurídica vigente, consoante entendimento firmado pelo Supremo Tribunal Federal:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“AGRAVO REGIMENTAL NO AGRAVO DE INSTRUMENTO. CONSTITUCIONALIDADE DA LEI 6.830/80<span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-

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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">. SUPERVENIÊNCIA DO ARTIGO 108, II, DA CB/88. REVOGAÇÃO TÁCITA. NÃO OCORRÊNCIA. PRECEDENTE. 1. Este Supremo Tribunal Federal já decidiu que o artigo 108, inciso II, da Constituição do Brasil, não revogou tacitamente o disposto do artigo 34 da Lei 6.830/80. Agravo regimental a que se nega provimento.” (STF, AI 710921 AgR, Relator(a):&#160; Min. EROS GRAU, Segunda Turma, julgado em 10/06/2008, DJe-117 DIVULG 26-06-2008 PUBLIC 27-06-2008 EMENT VOL-02325-16 PP-03211) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Pois bem. Com base neste artigo, cumpre destacar que o caso em análise envolve quantia superior ao valor de alçada legalmente previsto, conforme estabeleceu o colendo STJ em julgados que seguem transcritos:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. RECURSO ESPECIAL REPRESENTATIVO DA CONTROVÉRSIA. ART. 543-C, DO CPC. TRIBUTÁRIO. EXECUÇÃO FISCAL. VALOR DE ALÇADA. CABIMENTO DE APELAÇÃO NOS CASOS EM QUE O VALOR DA CAUSA EXCEDE 50 ORTN'S. ART. 34 DA LEI N.º 6.830/80 (LEF). 50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27, EM DEZ/2000. PRECEDENTES. CORREÇÃO PELO IPCA-E A PARTIR DE JAN/2001. 1. O recurso de apelação é cabível nas execuções fiscais nas hipóteses em que o seu valor excede, na data da propositura da ação, 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, à luz do disposto no artigo 34, da Lei n.º 6.830, de 22 de setembro de 1980. 2. A ratio essendi da norma é promover uma tramitação mais célere nas ações de execução fiscal com valores menos expressivos, admitindo-se apenas embargos infringentes e de declaração a serem conhecidos e julgados pelo juízo prolator da sentença, e vedando-se a interposição de recurso ordinário. 3. Essa Corte consolidou o sentido de que "com a extinção da ORTN, o valor de alçada deve ser encontrado a partir da interpretação da norma que extinguiu um índice e o substituiu por outro, mantendo-se a paridade das unidades de referência, sem efetuar a conversão para moeda corrente, para evitar a perda do valor aquisitivo", de sorte que "50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) a partir de janeiro/2001, quando foi extinta a UFIR e desindexada a economia". (REsp 607.930/DF, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 06/04/2004, DJ 17/05/2004 p. 206) 4. Precedentes jurisprudenciais: AgRg no Ag 965.535/PR, Rel. Ministro Mauro Campbell Marques, Segunda Turma, julgado em 02/10/2008, DJe 06/11/2008; AgRg no Ag 952.119/PR, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 19/02/2008, DJ 28/02/2008 p. 1; REsp 602.179/SC, Rel. Ministro Teori Albino Zavascki, Primeira Turma, julgado em 07/03/2006, DJ 27/03/2006 p. 161. 5. Outrossim, há de se considerar que a jurisprudência do Egrégio STJ manifestou-se no sentido de que "extinta a UFIR pela Medida Provisória nº 1.973/67, de 26.10.2000, convertida na Lei 10.552/2002, o índice substitutivo utilizado para a atualização monetária dos créditos do contribuinte para com a Fazenda passa a ser o IPCA-E, divulgado pelo IBGE, na forma da resolução 242/2001 do Conselho da Justiça Federal". (REsp 761.319/RS, Rel. Ministro Luiz Fux, Primeira Turma, julgado em 07/03/2006, DJ 20/03/2006 p. 208) <span

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	style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">6. A doutrina do tema corrobora esse entendimento, assentando que "tem-se utilizado o IPCA-E a partir de então pois servia de parâmetro para a fixação da UFIR. Não há como aplicar a SELIC, pois esta abrange tanto correção como juros". (PAUSEN, Leandro. ÁVILA, René Bergmann. SLIWKA, Ingrid Schroder. Direito Processual Tributário. 5.ª ed. Porto Alegre: Livraria do Advogado editora, 2009, p. 404) 7. Dessa sorte, mutatis mutandis, adota-se como valor de alçada para o cabimento de apelação em sede de execução fiscal o valor de R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), corrigido pelo IPCA-E a partir de janeiro de 2001, valor esse que deve ser observado à data da propositura da execução. 8. In casu, a demanda executiva fiscal, objetivando a cobrança de R$ 720,80 (setecentos e vinte reais e oitenta centavos), foi ajuizada em dezembro de 2005. O Novo Manual de Cálculos da Justiça Federal, (disponível e &lt;http://aplicaext.cjf.jus.br/phpdoc/sicomo/&gt;), indica que o índice de correção, pelo IPCA-E, a ser adotado no período entre jan/2001 e dez/2005 é de 1,5908716293. Assim, R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), com a aplicação do referido índice de atualização, conclui-se que o valor de alçada para as execuções fiscais ajuizadas em dezembro/2005 era de R$ 522,24 (quinhentos e vinte e dois reais e vinte a quatro centavos), de sorte que o valor da execução ultrapassa o valor de alçada disposto no artigo 34, da Lei n.º 6.830/80, sendo cabível, a fortiori, a interposição da apelação. 9. Recurso especial conhecido e provido. Acórdão submetido ao regime do art. 543-C do CPC e da Resolução STJ 08/2008.” (REsp 1168625/MG, Rel. Ministro LUIZ FUX, PRIMEIRA SEÇÃO, julgado em 09/06/2010, DJe 01/07/2010) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Em verdade, na data da distribuição do presente feito (dezembro de 2019), 50 ORTN correspondiam a cerca de R$ 1.034,31 (mil e trinta e quatro reais e trinta e um centavos) (&lt;https://www3.bcb.gov.br/CALCIDADAO/publico/corrigirPorIndice.do?method=corrigirPorIndice&gt;).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Por sua vez, o valor indicado na petição inicial corresponde a R$ 1.051,35 (mil e cinquenta e um reais e trinta e cinco centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Patente, portanto, o cabimento da presente apelação, razão pela qual conheço do recurso e, ato contínuo, prossigo na sua análise.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Da de extinção da execução fiscal – Tema 1184 do STF</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Superada a discussão acerca do cabimento do recurso, cumpre-nos, agora, verificar a possibilidade de extinção da execução fiscal, de ofício, sob o fundamento de que o valor executado seria ínfimo, não justificando a propositura da ação.</p><p style="line-

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	height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Nestes termos, há que se esclarecer, desde logo, que se encontrava assente na jurisprudência pátria entendimento segundo o qual não pode o julgador adentrar a esfera própria da administração pública para decidir acerca da relevância ou não do valor a ser reclamado em juízo, sob pena de flagrante violação ao princípio da separação dos poderes (tema 109 do STF).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> No âmbito do Superior Tribunal de Justiça, a matéria encontra-se, inclusive, sumulada, conforme se depreende do enunciado 452, adiante transcrito:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Súmula 452, STJ – “A extinção das ações de pequeno valor é faculdade da Administração Federal, vedada a atuação judicial de ofício.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Contudo, é cediço que, com o julgamento do tema 1184 pelo Supremo Tribunal Federal, denota-se que restou estabelecido que é possível a extinção da execução fiscal quando o ente público não cumpre com o seu dever de eficiência administrativa, demonstrando a clara ausência do interesse de agir em juízo.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Isso porque, em 19 de dezembro de 2023, com o julgamento do RE 1355208, em sede de repercussão geral, a Suprema Corte estabeleceu as seguintes teses:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tema nº 1184 do STF</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “1. É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 2. O ajuizamento da execução fiscal dependerá da prévia adoção das seguintes providências: a) tentativa de conciliação ou adoção de solução administrativa e b) protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-

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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">3. O trâmite de ações de execução fiscal não impede os entes federados de pedirem a suspensão do processo para a adoção das medidas previstas no item 2, devendo, nesse caso, o juiz ser comunicado do prazo para as providências cabíveis.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Com efeito, no que se refere ao item nº 1, o Conselho Nacional de Justiça elaborou a Resolução nº 547/2024, que “ institui medidas de tratamento racional e eficiente na tramitação das execuções fiscais pendentes no Poder Judiciário, a partir do julgamento do tema 1184 da repercussão geral pelo STF ”, estabelecendo o valor a ser considerado irrisório e as situações em que a execução fiscal podem ser extintas. Confira-se:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:0pt;" dir="ltr">“Art. 1º É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:0pt;" dir="ltr"> § 1º Deverão ser extintas as execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento, em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:0pt;" dir="ltr"> § 2º Para aferição do valor previsto no § 1º, em cada caso concreto, deverão ser somados os valores de execuções que estejam apensadas e propostas em face do mesmo executado.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Quanto ao item nº 2, o STF estabeleceu que a Fazenda, antes do ajuizamento da demanda, deveria buscar a adoção de métodos extrajudiciais a fim de promover a satisfação do crédito e, caso restassem infrutíferas ou evidenciada a impossibilidade ou inadequação da medida, é que o Fisco poderia ajuizar a demanda fiscal.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Assim, definiu que nas ações ajuizadas em data posterior ao julgamento do tema 1184 (20/12/2023), o Fisco deve, necessariamente, observar os requisitos para a constituição e o desenvolvimento válido e regular do processo fiscal, adotando as seguintes providências: “ a) tentativa de conciliação ou adoção de solução administrativa; e b) protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-

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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">”.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Por fim, a Corte Suprema, ao estabelecer o item nº 3, instituiu que para as ações ajuizadas em momento anterior ao dia 19/12/2023 (data do julgamento do tema 1184), decidiu que a Fazenda Pública poderia requerer a suspensão do processo, a fim de promover as medidas extrajudiciais verificadas no item 2, e comprovar a ineficácia de tais providências para, então, demonstrar seu interesse no regular prosseguimento do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">No caso dos autos, o iter processual não deixa dúvidas quanto à inobservância de tais procedimentos. Isso porque, o Recurso Extraordinário nº 1.355.208 somente foi julgado pela Corte Suprema em 19 de dezembro de 2023, isto é, após a prolação da sentença e interposição do presente recurso.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Desse modo, merece a sentença ser anulada para que o feito seja processado adequadamente em primeira instância pelo Juízo a quo, observando categoricamente o que dispõe o tema 1884 do STF c/c a Resolução 547/2024 do CNJ, a fim de que não haja o que se falar em violação ao princípio da separação dos poderes ou cerceamento de defesa, oportunizando ao Fisco a possibilidade de demonstrar a sua ineficiência administrativa para quitar o crédito perseguido, consequente interesse de agir no regular prosseguimento do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Destaque-se que o presente voto não se trata de apego excessivo à forma, mas sim de observância ao procedimento consolidado pelo Supremo Tribunal Federal no Recurso Extraordinário nº 1.355.208, em sede de repercussão geral, para extinção da execução fiscal por ausência do interesse de agir, prestigiando a razoável duração do processo e, ao mesmo tempo, a segurança jurídica e o direito do credor de perseguir a satisfação do seu crédito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É neste sentido a linha de raciocínio adotada por esta egrégia Corte de Justiça:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“APELAÇÃO CÍVEL. TRIBUTÁRIO E PROCESSO CIVIL. EXECUÇÃO FISCAL. EXTINÇÃO SEM EXAME DO MÉRITO - AUSÊNCIA DE INTERESSE DE AGIR. BAIXO VALOR DO CRÉDITO EXEQUENDO. TEMA Nº 1.184, STF E ART. 1º, §1º, DA

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	RESOLUÇÃO Nº 547/2024, CNJ. ERROR IN PROCEDENDO DO JULGADOR. INEXISTÊNCIA DO REQUISITO DE “AUSÊNCIA DE MOVIMENTAÇÃO ÚTIL POR MAIS DE UM ANO”. PERMANÊNCIA DO INTERESSE DE AGIR DO EXEQUENTE. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS À ORIGEM.” (APELAÇÃO CÍVEL - 00511333120218060090, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 10/07/2024) (destacamos)</p><p style="line-height:1.2;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“EMENTA: PROCESSUAL CIVIL. DIREITO TRIBUTÁRIO. APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. BAIXO VALOR DO CRÉDITO EXEQUENDO. EXTINÇÃO POR AUSÊNCIA DE INTERESSE DE AGIR. TEMA Nº 1.184, STF E ART. 1º, §1º, DA RESOLUÇÃO Nº 547/2024, CNJ. ERROR IN PROCEDENDO. INOBSERVÂNCIA DO REQUISITO DE AUSÊNCIA DE MOVIMENTAÇÃO ÚTIL POR MAIS DE UM ANO. PERMANÊNCIA DO INTERESSE DE AGIR DO EXEQUENTE. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS À ORIGEM. 1. Trata-se de Recurso de Apelação manejado contra sentença que extinguiu ação de execução fiscal, por considerar que a cobrança de dívida tributária de pequeno valor representa falta de interesse de agir. 2. O &lt;em&gt;STF&lt;/em&gt;, no julgamento do Recurso Extraordinário nº 1.355.208, afetado em repercussão geral (&lt;em&gt;Tema nº 1.184), firmou entendimento no sentido de ser legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, sem, no entanto, definir os parâmetros autorizadores da extinção da execução fiscal de “baixo valor”. 3. Diante dessa lacuna, o Conselho Nacional de Justiça editou a Resolução nº 547/2024, instituindo medidas de tratamento racional e eficiente na tramitação das execuções fiscais pendentes no Poder Judiciário, a partir do julgamento do &lt;em&gt;Tema&lt;/em&gt; &lt;em&gt;1184&lt;/em&gt; da repercussão geral pelo &lt;em&gt;STF&lt;/em&gt;, autorizando a extinção das execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento, em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis. 4. In casu, observa-se que o requisito da ausência de movimentação útil há mais de um ano não foi satisfeito, vez que, embora a devedora tenha sido citada por edital, o Juízo de origem sequer chegou a iniciar a constrição de bens, permanecendo hígido o interesse de agir do exequente, ainda que de pequeno valor, não se justificando a extinção da Execução Fiscal. 5. Apelação conhecida e provida. Sentença anulada.” (APELAÇÃO CÍVEL - 00514477420218060090, Relator(a): JOSE TARCILIO SOUZA DA SILVA, 1ª Câmara de Direito Público, Data do julgamento: 29/08/2024) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-

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	space:pre;white-space:pre-wrap;">Desse modo, o provimento da apelação, consequente anulação da sentença recorrida, é medida que se impõe.</p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Por tais razões, em conformidade com os precedentes jurisprudenciais transcritos, conheço da apelação interposta, para dar-lhe provimento, anulando a sentença recorrida e determinando o retorno dos autos à origem, para que o feito siga seu regular trâmite processual.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, 18 de novembro de 2024.</p><p align="center"> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Juíza Convocada ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Portaria 1550/2024</p><p align="center">&#160;</p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	167
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE ARACATI
Advogado(s) - Polo ativo	JOSE LUCAS DA COSTA SILVA - (CE43057-A)
Polo passivo	JOSE ATUALPA MONTEIRO COSTA LIMA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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Acordão	&#160; &#160; <div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; display: inline-block;"> <span class="WACImageContainer NoPadding DragDrop BlobObject SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: move; left: 0px; position: relative; display: inline-block; top: 2px; width: 89px; height: 120px; transform: rotate(0deg);"> <img class="WACImage SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; width: 89px; height: 120px; text-wrap-mode: nowrap !important;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAFkAAAB4CAIAAAAWmclrAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAACxMAAAsUAU/bCt8AAFFrSURBVHhevb0HgB1luTc+feb0sr1vNtmSHtJJSEJCCTUUQQgdFVAEFcu13U/RT6+9N6SoKAhESggkQAikkd77Znvvp9fp/98zuyD3Kv5v/K73ze7ZOXNm3vd9fk/7Pe/MnLC2bTP/RLNsm2NZm7FYm2Xwwxm6qus6Z3OMIsk8Z9nc3p1bu04ciUYj2dioaeXVTDoxNuIvn/KJL3+7tLIM4/7wC59W9E6324vuBFYyWW14zFx+w8eXXnIp5vTKU09uefExv9sjuoKSR+YFj8sfrqqsWXLVtcXFxThd1/K6YYkCx4iSxPHYg/kwHIve8GdinufS/kkscJKl5ZPZnJHND/Z2dfe0DXd3D7Q1501t3tLLlq26uKim+lsPfmRGVaKyslJWeNHllV3SmWOtZ4/3GJ6aG+7/0qSmpq/dt/aOm5aWVFXouikIAsvpG9a9EZh80VU33fT0Y48MH3ndxajLL1/kCSj5VFKD5Fltx96eFbd+ed6ipQf37nzzpefjfa1F1fWVkyaXVk0uq5tUFC5QFMXl85ssIzAA5dzauWNhmwzLWoz9+vMv7H3jGVYd83BqZVWoqsI3OJRM5z1FpSVv72g+b/X1p3bvvPGKysraUs20GFOEtPt2H2o/2aN45dYhpnLylFTfmbV3XhkoLrVNlkMTrB2vbT3RHHW53bGRzimloVQ6dvkNlwZCAVM3eJ7lGfXllw+o4XmRng6/Ndg4raqnuXX67NJsOtPbkxyJG2lDKa2bddenvhgsLGCAxjm2c8YCYnEMjz8/+MpDMws6G2YWsCymqfA8f/Rw+7HDsalzage6h4aGx9xu+fKrFxUUhCxBYGxB5uVUKtvX1+dSPOHisCjiDNkXLGLwCQ9DZzRD1VRVTybgUNlsdmQ45vWLpWUVDKtaps7Bhaz8sf1nDx9u9bnEyprqXN5IR4ZWXzvH53PZlmVbuVxae2Pr0DUP/qS6birHT0z4v9/+CbvAP7K/n339i02FzZPqwnnV4lhBkqR02hruGRI8YmlJSag4KHoUQ+UsmiVnMrxp6gKnCLxiQDLTZE3JZGzITBMAmizCji1KtiQqAmczPCfJHGuZmq5SNOERlgye5WQBg1upRHZ0aDQyHHX5lNJyn2Uxlq5xPM9xxltvDV75wE9q66dOzPZc2rnbhWUgPsE0Hv/ZT7zxNxctrrQpUPEkMwP18smMkctqmbSazehqOp/WdAxhGjpj2Jqlmjjb5jjbMngal7MQgDnsMsntWHxkchZHTkixmRNgPOhUYiVOtjnFJcuy6EHk8XFuj4ygKwoaojgrGJauwwcTkfTzm4Y/95M/+UJFwPZc2zlj4RxN8+7v7vrtV+5cPq8gkcmkk2Y2b+f0vKZpPAu5BE7QEd1ZAfYiYq6iIAuSybEyC+FYXeQk6sWyOBKWEzgePRq2CTw5S4A3ABkIqcOAMKJhWjqPXxUeZFisxpg6Y1Le4EX0KMtuFwBSCoNi31AmIsz/1De/zQJNmue5tXP3kYmEBbtkv/OVz+Zb3wwXu2zeRO4TRNEtUxQ0bZ5DnrHgFoymW4LNZnKWAYgsC3aBEeE5UDtjw6ctnheBILQq8jAS1jBg8oDGRJYERjAbxEy3S6EELtoiz0gUaETWzhuMYBgG0ouZMvKGbulc17Dw2V8+W1lVRRGNkuu5tXPHgsDAj4CXoeH+n33lM2VKV/UkdyKhxyP5rArhTR5gsDzULSlyYaG3vycRCMgllWHII8suQYbbyzYvICgILCMJ8r49J2omlVZUlOZxsqkDNs3WOd3Oa0Y+n+dt68TxroqyMD5KpXXIj1/AKHE27xKDfiEcciP47js4PO2iB267976JaZ57+2d8hB23DYqJTCoeee6xR/o6TqZ6W2Y0eUMhl9vr8vjccGy34uJso6NrdNf21ksumz51TpNBtgEpbUgBZGgRoLOJJ/JZXdjXMqK2ZUmHkdRvGwekWIqGJQMLwghUZiz39x11NU0rmLpvEMqKW0UDqEghIaQ3bew52i6XTeZZZsPKaq268hdCdaOdMt/5JLBAvcR4CPfwcztJ6+sSGn3x67e1NasqGseagVg2hXd29s6OguNoX9p093lxWovCyYmm6lsGHliiLFDZZGxY/OprxehWXIuqmAVcwDU43NcUlgqTBSvqHk43Tpmv59EBf78L5k9wBnmNFt0sAY3F5pDMnuoeFS66/4yPYhn+CAdMMnVmeaztnLODJjghAgPIgYzIw3d/+8D+43tf8YTkR00ARIafPL5843r1s9WpO1pOjyfLa6m0bt6y5dr7sFs8e70PGmLegEfw5NhLtOdOfylscx5SUBSc1lHm8vs72rrbTPVNnT/IGlPVP71mwYlk8FgVtFUXf2xs2zZhZYahGLK0pMhf0SYpL2H9G/fqTG0P+oM2iJIA4CM/GP8G1ztmQkPKoAkHCI/OwENhi8UjP8c31jWU1k0rq6osDQWXV6qmXr5lTP3VSuDj06os7tm89hGhXXhYsryoNFQRFUeREzh3wpCPR00cHPFWTp8yaXTtzZiYnHt/fLkqcy+UBy0QCLS0pDBf63F739m271z+/w+Nhp06vWrG66fo7FtZNLiop8c2YXVk2KTyjVtj++iswBHJaAEHqhRefcztnLGBKxIrAuGwTXgpK/tbG9YtnB+qnFxWX+vI50zB5NW+dOdWDjJDPJhEIS4sLkBeHBmKHdh3fveVwV9fIYOfwW6/u2vzq4frZs9vPnH38N0+u//MrPhwm+5965NVTR9tGRpKH97Xs3HJweCCWU7XSomKO03KZrGmxJ49293bHYJ6pTJZXhOqq8KILave/9jz8C+oxoSAUjQzl7HNt/MMPPzyx+d9rMApgAWNEiAMsyJF/+O6/V/m1jq5IV/vo0GBGM/R0PNfRMsKLnkDYf+JQa0lFqLQsnE2MNkyv8fq8U6ZVzJrXlEml/QWlY6OJt97eJ9hCPJkd6h+avXBGPptasnJa08zagpJgOOxPJTMury+bTHX1jjQ2TQLvHukZyub0VCybSeujg/HBnkQynh7pHfaUNlTV1hEOUBRVz+ccMM4ZC/BigyizkwYYZue2t7KtbxSW+TyKXFLkb5xRMmNO6YyZtbILE/Jkc9rZU61zz5vOiVLQw8xZMEVWBMXlRkDp6x4pKK44fORMJp5gwUw4kMd8ZXlRKOx2C1ww6GUFKxAOo9DPZBmvO3D2VFt1RXmw0Dt5irLkoum1NeGGpuKiYj9CJhJ4YZFr796OFVdea7E6yIUTO88Zi38QO53EOf4hsKYX7KPk4aQO8CXgYT/8wN3XLlF9hV41q+o6n8vlUgkD5cOxI30FFZXVkxu7unpqJ1Ud2L7fzMerJxXmwNBzOaARjWRmL1n6xqbtw72joNjoEb/LVszzh/x9HS0o8WF6gYALNV46JSy/YlVnR9+kmtLh3sG2s0dn

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AAAABJRU5ErkJggg==" alt="" />   <span class="EOP
SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:
transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 23px;

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	font-family: Calibri, Calibri_EmbeddedFont, Calibri_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-family: &quot;Times New

Processo	0201477-58.2022.8.06.0035
	Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Processo: 0201477-58.2022.8.06.0035 – Apelação Cível. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Apelante: Município de Aracati. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-

Processo	0201477-58.2022.8.06.0035
	family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> Apelado: José Atualpa Monteiro Costa Lima. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Ementa: Direito processual civil. Apelação cível. Execução fiscal. Extinção sem resolução do mérito por ausência de interesse de agir. Decisão surpresa. Nulidade do ato decisório – reconhecimento de ofício. Retorno dos autos à origem. Recurso prejudicado.&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;

Processo	0201477-58.2022.8.06.0035
	font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">I. Caso em exame &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Apelação cível interposta por ente municipal em face de sentença que extinguiu execução fiscal, sem resolução do mérito, por ausência de interesse de agir em razão do baixo valor da causa. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. Questão em discussão &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em verificar se subsiste, ou não, o interesse de agir do ente municipal na execução judicial de débito inscrito em dívida ativa. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse:

Processo	0201477-58.2022.8.06.0035
	preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. Razões de decidir &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Inicialmente, verifica-se questão preliminar, a ser suscitada de ofício, de nulidade da sentença – por fundamento diverso daquele expresso no apelo – resultante da violação ao contraditório substancial e à vedação à decisão surpresa, debate que deve anteceder a discussão sobre a possibilidade , ou não , de prosseguimento da execução fiscal em razão da subsistência, ou não, do interesse de agir do exequente. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. Na hipótese, o Juízo de origem <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 14pt; line-height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-

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	BR">proferiu a sentença vergastada, julgando extinto o processo ao fundamento de ausência de interesse processual oriunda do baixo valor executado, sem, contudo, determinar a prévia intimação do exequente para se manifestar a respeito dessa matéria. &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. O referido procedimento representa violação aos princípios do contraditório substancial e da vedação às decisões surpresa – positivados nos arts . 9º e 10, do CPC – com evidente prejuízo ao exequente, que não teve a oportunidade de influenciar na formação da convicção do magistrado. Nessa situação, há de se considerar nula a sentença. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. Registra-se que não se aplica ao caso a teoria da causa madura (art. 1.013, §3º, inciso I, do CPC), pois, considerando que o ato jurisdicional sentenciante e o recurso foram confeccionados antes do julgamento do Tema de Repercussão Geral nº 1.184 e da edição da Resolução CNJ nº 547/2024, mostra-se necessário o retorno dos autos à origem para que o magistrado a quo <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-ligatures: none !important; font-size: 14pt; line-

Processo	0201477-58.2022.8.06.0035
	height: 22px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">observe os novos requisitos cumulativos autorizadores da extinção da execução fiscal por ausência de interesse de agir em razão do baixo valor executado, oportunizando ao exequente prévia manifestação sobre a questão jurídica. &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV. Dispositivo &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7. Sentença anulada de ofício. Retorno dos autos à origem. Recurso prejudicado. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> __________ &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0201477-58.2022.8.06.0035
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dispositivos relevantes citados: CPC, arts . 9º, 10 e 1.013, §3º, inciso I; Resolução CNJ nº 547/2024, art. 1º, §1º. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Jurisprudência relevante citada: STF, RE nº 1.355.208/SC, Relatora: Cármen Lúcia, Data de Julgamento: 27/06/2022, Data de Publicação: 12/07/2022 – Tema de Repercussão Geral nº 1.184; STJ, <span class="NormalTextRun SpellingErrorV2Themed SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-

Processo	0201477-58.2022.8.06.0035
	image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">AgInt no REsp nº 2.108.615/CE, Relator: Ministra Regina Helena da Costa, Primeira Turma, Data de Julgamento: 22/04/2024, Data de Publicação: DJe 25/04/2024; TJMG , Apelação Cível nº 5006319-20.2021.8.13.0261, Relator: Des. Luiz Carlos Gomes da Mata, 13ª Câmara Cível, Data de Julgamento: 23/05/2024, Data de Publicação: 24/05/2024; TJCE, Apelação Cível nº 00505669720218060090, Relator: Inácio de Alencar Cortez Neto, 1ª Câmara de Direito Público, Data do julgamento: 10/09/2024, Data de Publicação: 11/09/2024. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em anular, de ofício, a sentença; e, julgar prejudicado o recurso, nos termos do voto da Relatora, parte integrante deste.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="EOP SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt;

Processo	0201477-58.2022.8.06.0035
	line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8"

Processo	0201477-58.2022.8.06.0035
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; </p> <hr /> <p>&#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de Apelação Cível interposta pelo MUNICÍPIO DE ARACATI em face de sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Aracati que, nos autos de Ação de Execução Fiscal proposta pelo apelante em desfavor de JOSÉ ATUALPA MONTEIRO COSTA LIMA, extinguiu o processo, sem resolução do mérito, por ausência de interesse processual, nos termos do art. 485, inciso VI, do CPC (ID nº 15488013). &#160; </p></div><div

Processo	0201477-58.2022.8.06.0035
	class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais (ID nº 15488019), o ente municipal sustenta que não há prova da existência de qualquer irregularidade na certidão de dívida ativa que ampara a execução fiscal, eis que foram cumpridos os requisitos legais e é desnecessário o processo administrativo no caso de cobrança de IPTU. Aduz que lhe negar a possibilidade de executar seus créditos de pequeno valor, sob o fundamento da falta de interesse econômico, viola o seu direito de acesso à justiça. Ao final, pugna pelo conhecimento e provimento do recurso, para determinar o prosseguimento da ação executiva.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Sem contrarrazões (ID nº 15488027). &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Deixo de abrir vista dos autos à Procuradoria Geral de Justiça, com esteio na Súmula nº 189, do STJ, verbis <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-

Processo	0201477-58.2022.8.06.0035
	height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">: “é desnecessária a intervenção do Ministério Público nas execuções fiscais” . &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório, no essencial. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 14pt; line-height: 33px; font-family:

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	&quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> De início, verifico questão preliminar, a ser suscitada de ofício, de nulidade da sentença - por fundamento diverso daquele expresso no apelo - resultante da violação, nela praticada, a o contraditório substancial e à vedação à decisão surpresa , debate que deve anteceder a discussão sobre a possibilidade ou não de prosseguimento da execução f iscal em razão do valor da dívida fiscal por meio dela exigida do contribuinte executado. &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Os arts . 9º e <a class="Hyperlink HyperlinkGateOff SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; text-decoration-line: none;" rel="noreferrer noopener"

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	href="https://www.jusbrasil.com.br/topicos/28896491/artigo-10-da-lei-n-13105-de-16-de-marco-de-2015" target="_blank"> 10º, do Código de Processo Civil (CPC), exigem de forma expressa que, antes de decidir sobre qualquer matéria, o magistrado oportunize às partes sobre ela manifestarem-se, ainda que dela deva conhecer de ofício, verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 9º. Não se proferirá decisão contra uma das partes sem que ela seja previamente ouvida. <span class="EOP SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0201477-58.2022.8.06.0035
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 10. O juiz não pode decidir, em grau algum de jurisdição, com base em fundamento a respeito do qual não se tenha dado às partes oportunidade de se manifestar, ainda que se trate de matéria sobre a qual deva decidir de ofício. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> O descumprimento dessas normas - que, evidentemente, se destinam a assegurar observância do princípio do contraditório substancial, como garantia de influência das partes no desenvolvimento e resultado do processo e vedação da prolação de decisões surpresas - com prejuízo à parte demandada, acarreta a nulidade da decisão. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI

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	Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Na hipótese, o douto Juízo de origem proferiu a sentença vergastada, julgando extinto o processo ao fundamento de ausência de interesse processual oriunda do baixo valor executado , sem, contudo, determinar a prévia intimação do exequente para se manifestar a respeito dessa matéria.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Esse procedimento, a meu ver, representa violação aos princípios do contraditório substancial e da vedação às decisões surpresa – positivados nos arts . 9º e 10, do CPC – com evidente prejuízo ao exequente, que não teve a oportunidade de influenciar na formação da convicção do magistrado. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates:

Processo	0201477-58.2022.8.06.0035
	normal; font-variant-position: normal; color: #0f172a; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">Nessa situação, há de se considerar nula a sentença. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> A corroborar, colaciono precedentes do Superior Tribunal de Justiça, dos Tribunais Pátrios e deste Sodalício, in verbis : &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. APLICABILIDADE. PROIBIÇÃO DE DECISÕES SURPRESA. CONTRADITÓRIO SUBSTANCIAL PRÉVIO EM MATÉRIAS DE ORDEM PÚBLICA. <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

Processo	0201477-58.2022.8.06.0035
	text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> NECESSIDADE. ARGUMENTOS INSUFICIENTES PARA DESCONSTITUIR A DECISÃO ATACADA. APLICAÇÃO DE MULTA. ART. 1.021, § 4º, DO CÓDIGO DE PROCESSO CIVIL DE 2015. DESCABIMENTO. I - Consoante o decidido pelo Plenário desta Corte na sessão realizada em 09.03.2016, o regime recursal será determinado pela data da publicação do provimento jurisdicional impugnado. In casu , aplica-se o Código de Processo Civil de 2015. II - Decorrente do princípio do contraditório, a vedação a decisões surpresa tem por escopo permitir às partes, em procedimento dialógico, o exercício das faculdades de participação nos atos do processo e de exposição de argumentos para influir na decisão judicial, impondo aos juízes, mesmo em face de matérias de ordem pública e cognoscíveis de ofício, o dever de facultar prévia manifestação dos sujeitos processuais a respeito dos elementos fáticos e jurídicos a serem considerados pelo órgão julgador. III - Não apresentação de argumentos suficientes para desconstituir a decisão recorrida. IV - Em regra, descabe a imposição da multa, prevista no art. 1.021, § 4º, do Código de Processo Civil de 2015, em razão do mero improvimento do Agravo Interno em votação unânime, sendo necessária a configuração da manifesta inadmissibilidade ou improcedência do recurso a autorizar sua aplicação, o que não ocorreu no caso. V - Agravo Interno improvido. (STJ - AgInt no REsp: 2108615 CE 2023/0400544-2, Relator: Ministra REGINA HELENA COSTA, Data de Julgamento: 22/04/2024, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 25/04/2024) (destaca-se). &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-

Processo	0201477-58.2022.8.06.0035
	collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMENTA: APELAÇÃO CÍVEL. PROCESSO CIVIL. EXECUÇÃO FISCAL. E XTINÇÃO POR AUSÊNCIA DE INTERESSE DE AGIR. TEMA 1.184 DO STF. AUSÊNCIA DE PRÉVIA INTIMAÇÃO. ART. 10 DO CPC. VIOLAÇÃO À REGRA DA NÃO SURPRESA E, POR CONSEQUÊNCIA, DO CONTRADITÓRIO. SENTENÇA CASSADA. - No julgamento do Tema 1.184, em sede de repercussão geral, o Supremo Tribunal Federal pacificou o entendimento de que "É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agi tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado" - Hipótese em que, antes da extinção da execução, não foi oportunizada à parte autora manifestar-se acerca da possibilidade de se utilizar as diretrizes estabelecidas no julgamento do Tema 1.184, de modo que a sentença deve ser cassada, em observância à regra da não surpresa e ao princípio do contraditório. (TJ-MG - Apelação Cível: 50044851720218130411 1.0000.24.206822-9/001, Relator: Des.(a) Wauner Batista Ferreira Machado (JD Convocado), Data de Julgamento: 30/07/2024, 1ª CÂMARA CÍVEL, Data de Publicação: 05/08/2024) (destaca-se). &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMENTA: APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. EXTINÇÃO DA EXECUÇÃO POR AUSÊNCIA DE CERTEZA E LIQUIDEZ DO TÍTULO. PRÉVIA INTIMAÇÃO DA PARTE AUTORA PARA MANIFESTAÇÃO. NECESSIDADE. INTIMAÇÃO NÃO REALIZADA. VIOLAÇÃO AO PRINCÍPIO DA NÃO SURPRESA. NULIDADE. SENTENÇA CASSADA. - <span class="TextRun SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-size: 12pt; line-height: 18px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New

Processo	0201477-58.2022.8.06.0035
	Roman_MSFontService&quot;, serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Ofende a disposição do artigo 10 do Código de Processo Civil o julgador que, sem ouvir as partes sobre a matéria, extingue a ação de execução por ausência de certeza e liquidez do título - Ainda que se trate de matéria conhecível de ofício, deve o magistrado dar oportunidade à parte a propósito do seu intuito de suscitá-la, a fim de que ela possa indicar ao juízo as razões que tenha para contrariar o potencial entendimento a ser adotado pelo julgador. (TJMG - Apelação Cível: 5006319-20.2021.8.13.0261 1.0000.23.218012-5/001, Relator: Des.(a) Luiz Carlos Gomes da Mata, Data de Julgamento: 23/05/2024, 13ª CÂMARA CÍVEL, Data de Publicação: 24/05/2024) (destaca-se). &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px 186px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> PROCESSO CIVIL. EXECUÇÃO FISCAL. EXTINÇÃO POR FALTA DE INTERESSE DE AGIR. TEMA Nº 1.184 DO STF. RESOLUÇÃO Nº 547 DO CNJ. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. INSUFICIÊNCIA DE PRÉVIA INTIMAÇÃO. ART. 10 DO CPC. VIOLAÇÃO À REGRA DA NÃO SURPRESA. INOBSERVÂNCIA DO PRINCÍPIO DO CONTRADITÓRIO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. Trata-se de apelação cível interposta pelo Município de Icó em face da sentença, que extinguiu sem resolução do mérito, por ausência de interesse de agir, a ação de execução fiscal ajuizada pelo citado ente municipal. 2. O Plenário do Supremo Tribunal Federal, por ocasião do julgamento do recurso extraordinário nº 1.355.208/SC, em sede de repercussão geral (Tema 1.184), decidiu a controvérsia, por maioria de votos, e fixou a seguinte tese (destaquei):&#160; 1. É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado. 2. O ajuizamento da execução fiscal dependerá da prévia adoção das seguintes providências: a) tentativa de conciliação ou adoção de solução administrativa; e b) protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida. 3. O trâmite de ações de execução fiscal não impede os entes federados de pedirem a suspensão do processo para a adoção das medidas previstas no item 2, devendo, nesse caso, o juiz ser comunicado do prazo para as providências cabíveis. 3. In <span class="NormalTextRun SpellingErrorV2Themed SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-

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	image: var(--urlSpellingErrorV2,url(&quot;data; border-bottom: 1px solid transparent;">casu , verifica-se que apesar do feito, desde o ano de 2021, manter uma marcha processual ineficiente, entendo que o despacho (ID nº 13537292) não oportunizou ao ente municipal a possibilidade de adotar as providências estampadas nos itens “2” e “3” da tese fixada no Tema nº 1.184 do STF. 4. Resta imprescindível a manifestação prévia do exequente para comprovar ou justificar a utilização das providências diversas com o intuito de obter a satisfação do crédito tributário. Ressalte-se que, a propósito, a parte poderá requerer a suspensão da execução fiscal, conforme as balizas acima transcritas. 5. Assim, tendo em vista que o despacho externado pelo magistrado a quo não conferiu ao exequente as medidas diversas da extinção do feito, vislumbra-se a inobservância dos princípios do contraditório, na sua acepção de influenciar o julgador, e, ao mesmo tempo, da vedação de decisão surpresa. 6. Apelação conhecida e provida. Sentença anulada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e dar provimento ao recurso de apelação, conforme o voto do Relator. (APELAÇÃO CÍVEL - 00505669720218060090, Relator(a): INACIO DE ALENCAR CORTEZ NETO, 1ª Câmara de Direito Público, Data do julgamento: 10/09/2024) (destaca-se). &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Em arremate, considerando que o ato jurisdicional sentenciante e o recurso foram confeccionados antes do julgamento do Tema de Repercussão Geral nº 1.184 e da edição da Resolução CNJ nº 547/2024, entendo que se faz necessário o retorno dos autos à origem para que o magistrado a quo observe o <span class="NormalTextRun SCXW179223458 BCX8" style="-webkit-user-

Processo	0201477-58.2022.8.06.0035
	drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">s novos requisitos cumulativos autorizadores da extinção da execução fiscal por ausência de interesse de agir e m razão do baixo valor executado , oportunizando ao exequente prévia manifesta ção sobre a questão jurídica .&#160; &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Nesse liame, é de rigor o afastamento d a aplicação d a teoria da causa madura (art. 1.013 <span class="TextRun

Processo	0201477-58.2022.8.06.0035
	SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; color: #0f172a; font-size: 14pt; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR">, §3º, inciso I, do CPC) . &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Ante o exposto, anulo a sentença , <span class="TextRun Underlined UnderlinedGateOff SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-

Processo	0201477-58.2022.8.06.0035
	variant-position: normal; font-size: 14pt; text-decoration-line: underline; line-height: 33px; font-family: &quot;Times New Roman&quot;, &quot;Times New Roman_EmbeddedFont&quot;, &quot;Times New Roman_MSFontService&quot;, serif;" lang="PT-BR" xml:lang="PT-BR"> de ofício , e determino o retorno dos autos à origem, para que o Juízo de origem, antes de decidir novamente sobre a falta de interesse processual, oportunize ao exequente manifestar-se sobre a matéria; e, julgo prejudicado o Recurso de Apelação . &#160;</p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> Fortaleza, data e hora informadas pelo sistema.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -

Processo	0201477-58.2022.8.06.0035
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 78px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: center;"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; color: windowtext; text-align: center;"> Relatora &#160; </p></div><div class="OutlineElement Ltr SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW179223458 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 18.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	168
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO

Processo	0201294-87.2022.8.06.0035
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE ARACATI
Advogado(s) - Polo ativo	GEORGIA MOURA DE SOUSA - (CE39458-A)
Polo passivo	JOSE FLAVIO RODRIGUES DE MATOS
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0201294-87.2022.8.06.0035
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-26d3c8c0-7fff-9595-e96a-00401e268f02" style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Processo: 0201294-87.2022.8.06.0035 – Apelação cível</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Apelante: MUNICÍPIO DE ARACATI</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Apelado(a): JOSÉ FLÁVIO RODRIGUES DE MATOS</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Ementa: Processo civil. Execução fiscal. Apelação. Valor inferior a 50 ortn. Inadmissibilidade do recurso. Art. 34 da lei 6.830/1980.

Processo	0201294-87.2022.8.06.0035
	Recurso não conhecido.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> I. Caso em exame</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> 1. Trata-se de apelação cível interposta pelo Município de Aracati contra sentença que extinguiu a Ação de Execução Fiscal sem resolução do mérito, por ausência de interesse processual, nos termos do art. 485, VI, do CPC/15.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> 2. A despeito do julgamento e das razões expostas no apelo da municipalidade, a questão em discussão consiste em saber se é admissível a interposição de apelação em execução fiscal cujo valor exequendo é inferior a 50 ORTN.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> 3. O art. 34 da Lei nº 6.830/1980 determina que nas execuções fiscais cujo valor seja igual ou inferior a 50 ORTN, somente são cabíveis embargos infringentes ou embargos de declaração, não sendo admissível a apelação.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> 4. No caso concreto, o valor da dívida exequenda é inferior ao limite de alçada fixado pela legislação, motivo pelo qual a interposição da apelação não é cabível, configurando, assim, erro grosseiro, não sendo aplicável o princípio da fungibilidade recursal.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> 5. Recurso não conhecido.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> ________________</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">Dispositivos relevantes citados: Lei nº

Processo	0201294-87.2022.8.06.0035
	6.830/1980, art. 34; CPC/2015, arts. 485, inciso VI, e 932, inciso III.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgRg no REsp n. 1.461.742/RS, Rel. Ministra Assusete Magalhães, 2ª Turma, j. 18/06/2015; TJCE, Apelação Cível 0008349-17.2011.8.06.0049, Rel. Desembargadora Maria Vilauba Fausto Lopes, 3ª Câmara de Direito Público, j. 03/07/2023.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em não conhecer da apelação, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.8; text-align: justify; margin-top: 12pt; margin-bottom: 6pt; padding-left: 90px;" dir="ltr"> &#160; Fortaleza, data e hora indicadas pelo sistema.</p><p style="line-height: 1.8; text-align: justify; margin-top: 12pt; margin-bottom: 6pt; padding-left: 90px;" dir="ltr">&#160;</p><p style="line-height: 1.8; text-align: justify; margin-top: 12pt; margin-bottom: 6pt; padding-left: 90px;" dir="ltr"> &#160; DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.8; text-align: justify; margin-top: 12pt; margin-bottom: 6pt; padding-left: 90px;" dir="ltr"> &#160; Relatora</p><hr /><p>&#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:6pt;" dir="ltr">&#160;</p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE ARACATI contra sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Aracati que, em Ação de Execução Fiscal movida pela parte recorrente em face de J OSÉ FLÁVIO RODRIGUES DE MATOS , julgou extinto o processo sem resolução de mérito por ausência de interesse processual, nos termos do Art. 485, VI, do CPC/15. Sem custas e honorários sucumbenciais.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">Em suas razões recursais, a parte recorrente defende, em suma, que,

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	na espécie em julgamento, não há prova da existência de qualquer irregularidade na certidão da dívida ativa que ampara a execução fiscal, eis que foram cumpridos os requisitos legais e é desnecessário o processo administrativo no caso de cobrança de IPTU, devendo, assim, prevalecer a presunção de certeza e liquidez socorre os atos administrativos. Defende, ainda, a existência de lei municipal que estipula o valor mínimo para execução de R$ 500,00 (quinhentos reais). Por fim, pugna pelo provimento do apelo para, anulando a sentença vergastada, determinar o retorno dos autos à origem para regular prosseguimento da ação de execução fiscal.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Sem contrarrazões.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> É o relatório. <br /> <br /> </p><p style="line-height:1.7999999999999998;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">&#160;</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Deixo de abrir vista dos autos à Procuradoria-Geral de Justiça, a teor da Súmula nº 189 do STJ, verbis: “é desnecessária a intervenção do Ministério Público nas execuções fiscais”.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Pois bem.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> De acordo com o Art. 34 da Lei Federal nº 6.830/1980, das sentenças proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional – ORTN, somente serão cabíveis Embargos Infringentes e de Declaração. Vejamos: <br /></p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> Art. 34 – Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional – ORTN, só se admitirão embargos infringentes e de declaração.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Da análise aos autos, verifica-se que na Certidão de

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	Dívida Ativa que acompanha a exordial, a parte apelante pretende executar dívida relativa ao IPTU no valor total de R$ 1.195,73 (um mil, cento e noventa e cinco reais e setenta e três centavos).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Registre-se que, com a extinção das ORTN como fator de indexação econômica, o colendo Superior Tribunal de Justiça definiu, no julgamento do REsp. nº 1.168.625/MG, o valor mínimo para o recurso de apelação em execução fiscal, fixando-o em R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), como correspondente ao valor das antigas 50 ORTN, a ser corrigido pelo IPCA-E a partir de janeiro de 2001, considerada a data da propositura da ação.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Na hipótese vertente, conforme se infere da inicial, protocolada em 09 de setembro de 2022, pretende a Fazenda Pública do Município de Aracati a cobrança, via execução fiscal, de crédito tributário no valor de R$ 1.195,73 (um mil, cento e noventa e cinco reais e setenta e três centavos). Nessa data, o valor mínimo de alçada apto a dar ensejo à interposição de eventual apelação correspondia a R$ 1.245,53 (um mil, duzentos e quarenta e cinco reais e cinquenta e três centavos), corrigido pela calculadora do Banco Central do Brasil. Assim, vê-se que a importância exequenda é inferior ao patamar fixado pelo Art. 34 da Lei Federal nº 6.830/1980, sendo o caso, portanto, de inadmissibilidade do recurso apelatório dirigido a este egrégio Tribunal de Justiça.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> A fim de corroborar tal entendimento, trago à colação julgado da 3ª Câmara de Direito Público deste egrégio Tribunal de Justiça: <br /> </p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">TRIBUTÁRIO. APELAÇÃO EM EXECUÇÃO FISCAL. VALOR COBRADO INFERIOR A 50 ORTN. INADMISSIBILIDADE DO RECURSO, NA FORMA DO ART. 34 DA LEF. PRECEDENTES DO STF E DESTA EG. CORTE. APELAÇÃO NÃO CONHECIDA. 01. A presente execução fiscal foi proposta com o fito de cobrar débitos inscritos na dívida ativa no montante de inicial de R$549,19 (quinhentos e quarenta e nove reais e dezenove centavos), o qual, no entanto, não ultrapassa o valor de alçada estipulado no art. 34 da Lei nº. 6.830/80, que, na data da propositura da ação, equivalia a R$621,24 (seiscentos e vinte e um reais e vinte e quatro centavos), de acordo com os critérios de atualização definidos em sede de julgamento de recurso repetitivo (REsp nº. 1.168.625/MG) e obtido na ¿calculadora do cidadão¿, disponibilizada no sítio eletrônico do Banco Central do Brasil.. 02. E, no entanto, nos termos do art. 34 da LEF: ¿Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional ORTN, só se admitirão embargos infringentes e de embargos de declaração¿. 03. Inclusive, o entendimento do STJ e desta Eg. Corte é assente no sentido de que é inadmissível a interposição do recurso de apelação nas hipóteses em que o valor cobrado na execução fiscal seja inferior ao valor de alçada estipulado na LEF, constituindo exceção ao duplo grau de jurisdição. 04. Recurso de Apelação não conhecido. ACÓRDÃO Vistos, relatados e discutidos, os

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	autos da execução acima declinada, ACORDA a TURMA JULGADORA DA TERCEIRA CÂMARA DE DIREITO PÚBLICO DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ, por UNANIMIDADE, em NÃO CONHECER DA APELAÇÃO CÍVEL, nos termos do voto da eminente Relatora. Presidente do Órgão Julgador MARIA VILAUBA FAUSTO LOPES Desembargadora-Relatora&#160; (Apelação Cível - 0008349-17.2011.8.06.0049, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento:&#160; 03/07/2023, data da publicação:&#160; 03/07/2023). (Destaque-se). <br /></p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">Na mesma esteira: Apelação Cível – 0017382-55.2016.8.06.0049, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 3ª Câmara Direito Público, data do julgamento: 04/03/2024, data da publicação: 04/03/2024; Apelação Cível – 0287150-24.2022.8.06.0001, Rel. Desembargadora MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 22/05/2023, data da publicação: 22/05/2023; Apelação Cível – 0001023-47.2019.8.06.0171, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 20/03/2023, data da publicação: 20/03/2023.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Na mesma direção tem decidido o Superior Tribunal de Justiça – STJ, consoante se observa no seguinte precedente: <br /> </p><p style="line-height:1.7999999999999998;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">PROCESSUAL CIVIL. AGRAVO REGIMENTAL NO RECURSO ESPECIAL. OFENSA AO ART. 535 DO CPC. NÃO OCORRÊNCIA. EXECUÇÃO FISCAL. EXTINÇÃO. VALOR INFERIOR A 50 ORTNS. APELAÇÃO NÃO ADMITIDA. <span style="font-size:10pt;font-family:'Times New Roman',serif;color:#000000;background-color:#ffffff;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">RECURSO CABÍVEL. EMBARGOS INFRINGENTES. ART. 34 DA LEI 6.830/80. PRINCÍPIO DA FUNGIBILIDADE RECURSAL. INAPLICABILIDADE. AGRAVO

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	REGIMENTAL IMPROVIDO. I. No acórdão objeto do Recurso Especial, o Tribunal de origem negou provimento a Agravo de Instrumento interposto, pelo agravante, de decisão que, aplicando a regra prevista no art. 34 da Lei 6.830/80, não recebeu a Apelação, manifestada contra a sentença que julgara extinta Execução Fiscal. II. Os Embargos de Declaração têm como objetivo sanar eventual obscuridade, contradição ou omissão existentes na decisão recorrida. Não há omissão, no acórdão recorrido, quando o Tribunal de origem pronuncia-se, de forma clara e precisa, sobre a questão posta nos autos, assentando-se em fundamentos suficientes para embasar a decisão. Ademais, o Magistrado não está obrigado a rebater, um a um, os argumentos trazidos pela parte. Inocorrência, no caso, de violação ao art. 535 do CPC. III. É firme a jurisprudência do Superior Tribunal de Justiça no sentido de que "não incide o princípio da fungibilidade em caso de ausência de qualquer dos requisitos a que se subordina, quais sejam: a) dúvida objetiva sobre qual o recurso cabível; b) inexistência de erro grosseiro; c) que o recurso inadequado tenha sido interposto no prazo do que deveria ter sido apresentado" (STJ, AgRg no AgRg nos EDcl nos EDv no AgRg no CC 134.824/GO, Rel. Ministro MAURO CAMPBELL MARQUES, PRIMEIRA SEÇÃO, DJe de 31/03/2015). IV. O art. 34 da Lei 6.830/80 é expresso ao determinar que, "das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração". Já o § 2º do referido dispositivo legal estipula que "os embargos infringentes, instruídos, ou não, com documentos novos, serão deduzidos, no prazo de 10 (dez) dias perante o mesmo Juízo, em petição fundamentada". V. Inviável, portanto, a incidência do princípio da fungibilidade recursal, no caso, pois existe disposição legal expressa, acerca do recurso cabível, o que afasta a possibilidade de dúvida objetiva sobre qual recurso deveria ter sido interposto. Ademais, a questão relacionada ao não cabimento de Apelação, nas Execuções Fiscais de valor inferior a 50 ORTNs, encontra-se pacificada, na jurisprudência do Superior Tribunal de Justiça, o que evidencia a existência de erro grosseiro, na hipótese. VI. Não tendo sido admitida a Apelação, interposta pelo agravante, inviável o conhecimento das questões relacionadas ao mérito da sentença que extinguira a Execução Fiscal, pois, além de a matéria não ter sido prequestionada, seu exame implicaria supressão de instância. VII. Agravo Regimental improvido.(AgRg no REsp n. 1.461.742/RS, relatora Ministra Assusete Magalhães, Segunda Turma, julgado em 18/6/2015, DJe de 1/7/2015). (Destaque-se).</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> In casu , a interposição de apelação em face de execução fiscal de valor inferior a 50 ORTN caracteriza erro grosseiro, devido, sobretudo, à ausência de dúvida quanto ao recurso a ser interposto. Nesse sentido, não se consagra a aplicabilidade do princípio da fungibilidade, logo, resta configurada a inadmissibilidade do presente recurso.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Diante de tais ponderações, mister se faz não conhecer do recurso de apelação interposto pelo Município de Aracati, na forma do Art. 932, inciso III, do CPC/15, haja vista a via eleita afigurar-se inadequada para o combate à sentença proferida em sede de execução fiscal de importância inferior a 50 ORTN, conforme disposto no Art. 34 da Lei nº 6.830/1980.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr">Pelo exposto, <span style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-color:#ffffff;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-

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	space:pre-wrap;">NÃO CONHEÇO da apelação, eis que incabível.</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> É como voto.</p><p> <strong style="font-weight:normal;"> <br /> </p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height:1.7999999999999998;text-indent: 56.692913385826756pt;text-align: justify;margin-top:12pt;margin-bottom:6pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	169
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	IPTU/ Imposto Predial e Territorial Urbano
Polo ativo	MUNICIPIO DE ARACATI
Advogado(s) - Polo ativo	GEORGIA MOURA DE SOUSA - (CE39458-A)
Polo passivo	PAULO CESAR DE LIMA FERREIRA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0014770-84.2019.8.06.0035
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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	serif;"> I. Caso em exame 1.Execução fiscal para cobrança de valor correspondente a 1.338,90 (MIL E TREZENTOS E TRINTA E OITO REAIS E NOVENTA CENTAVOS). 2. Apelação de sentença &#160; que julgou extinta a execução fiscal por falta de interesse de agir, em razão do baixo valor do crédito executado. 3. O apelante alega que o crédito é líquido, certo, exigível e deve ser objeto de cobrança por meio de execução fiscal, em razão do interesse público que o torna indisponível. Sustenta que há entendimento sumulado do STJ que veda a extinção de execução fiscal de ofício. Defende que o valor do crédito não pode ser considerando insignificante em face da sua importância para as receitas do município e que há lei municipal autorizando essa cobrança pela via judicial. II. Questão em discussão&#160; . 4. A questão em discussão permeia a aplicabilidade do tema 1184 do STF e da Resolução nº 547/2024 do CNJ ao caso. III. Razões de decidir 5. O STF, no tema 1184, fixou a tese de que é legítima a extinção de execução fiscal de baixo valor, por falta de interesse de agir, respeitada a competência constitucional de cada ente federativo. Ausente a modulação de efeitos da decisão proferida nesse tema, essa decisão pode retroagir para abarcar as execuções fiscais ajuizadas anteriormente à fixação dessa tese, o que torna superado o entendimento sumulado do STJ que impedia a extinção de ofício das execuções fiscais consideradas de baixo valor. 6. O argumento da violação ao princípio federativo, uma vez presente lei do ente federado fixando parâmetros que estabeleçam o valor mínimo passível de ser executado pelo rito da Lei n. 6.830/1980, foi afastado pelo voto condutor da tese. Por dever de estabilidade, coerência e integridade da jurisprudência, há impossibilidade de reavaliação dess e argumento no

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	momento da aplicação das teses fixadas no tema 1184 , ausentes mudanças de ordem fática ou jurídica que impliquem um contexto diverso daquele em que foi fixado o precedente. 7. A Resolução nº 547/2024 do CNJ disciplina os critérios para extinção da execução fiscal em razão do baixo valor, tratando-se de um ato normativo capaz de inovar na ordem jurídica sem incorrer em inconstitucionalidade formal ou material, por força do art. 103-B, parágrafo 4º, II, da C.F/88, e do art. 37, caput, da C.F/88, respectivamente. 8. O art. 1º , parágrafo 1º, da Resolução nº 547/2024 fixa a quantia inferior a R$ 10.000,00 (dez mil reais) na data do ajuizamento da execução como definição de baixo valor. 9. Além do crédito objeto de execução fiscal se enquadrar como de baixo valor, o citado artigo da resolução também requer que o processo fique paralisado por mais de um ano, sem nenhuma movimentação útil que realize a citação ou que localize bens penhoráveis do devedor, caso já realizada a citação. 10. No caso, o crédito cobrado é inferior a R$ 10.000,00 (dez mil reais) e o processo tramitou na instância de origem por mais de um ano sem movimentação que tenha conseguido realizar a citação do executado. Aplicação correta pela sentença do tema 1184 do STF e do art. 1º, parágrafo 1º, da Resolução nº 547/2024. IV. Dispositivo . 11. Apelação des provida. ______ Dispositivos relevantes citados: Constituição Federal: art. 37, caput <span style="font-variant-numeric: normal; font-variant-east-

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	asian: normal; font-variant-alternates: normal; font-variant-position: normal;"> , e art. 103-B, parágrafo 4º, II; Resolução nº 547/2024 do CNJ: A rt. 1º, parágrafo 1º. Art. 34 da Lei nº 6.830/80. Art. 928 do CPC/15. </p><p align="justify"> Jurisprudência relevante citada : Súmula 189 do STJ; Súmula 452 do STJ, Tema 1184 do STF, ADC 12 MC. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br /> </p><p style="line-height: 0.9cm; text-align: center;"> ACÓRDÃO </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso para negar-lhe provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.9cm;" align="justify"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Fortaleza, data informada pelo sistema. </p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> RELATOR </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: center;"> &#160; RELATÓRIO </p><p class="MsoNormal" style="text-align: center;"> <br /> </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.9cm;" align="justify"> &#160; &#160; &#160; &#160;Trata-se de apelação cível interposta contra sentença proferida pelo juízo da 2ª Vara Cível da Comarca de Aracati, que declarou extinta a execução fiscal, por considerar que o baixo valor do débito executado não justifica o acionamento do Poder Judiciário para cobrá-lo.

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	      &#160; &#160; &#160; &#160; &#160; Petição inicial : o Município de Aracati promove execução fiscal em face de Paulo Cesar de Lima Ferreira e Paulo Cesar de Lima Ferreira - Me para a cobrança de crédito de valor histórico de 1.338,90 (MIL E TREZENTOS E TRINTA E OITO REAIS E NOVENTA CENTAVOS), materializado nas CDA´s de ID nº 15488050 &#160; &#160; &#160; &#160; &#160; Sentença : declarou extinta a execução fiscal, por falta de interesse de agir, considerando o baixo valor do crédito cobrado. &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Apelação : Aduz que o crédito cobrado é líquido, certo e exigível, além de ser de caráter indisponível, razão pela qual sua cobrança não pode ser dispensada, sob pena de violar o interesse público. Sustenta que há entendimento sumulado do STJ que veda a extinção da execução fiscal de ofício. Defende que há lei municipal que regulamenta o valor autorizado para o ajuizamento da execução fiscal, não havendo que se falar em insignificância desse montante considerando-se as

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	receitas municipais obtidas. &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Remetidos os autos sem contrarrazões(Id nº 15388090), os autos foram conclusos após regular distribuição por sorteio. &#160; &#160; &#160; &#160; &#160; &#160;Feito que dispensa a manifestação da PGJ, conforme assentado na Súmula nº 189 do STJ:" É desnecessária a intervenção do Ministério Público nas execuções fiscais ". &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;É o relatório, no essencial. VOTO &#160;&#160;&#160;&#160;&#160;&#160;&#160;É cabível o presente apelo, pois o valor de 1.338,90 (MIL E TREZENTOS E TRINTA E OITO REAIS E NOVENTA CENTAVOS), apurado na data da distribuição da execução fiscal, em 18 de dezembro de 2019, é maior do que o valor de 1.034,31 (MIL E TRINTA E QUATRO REAIS, E TRINTA E UM CENTAVOS), o qual corresponde a 50 ORTN´s na data referida. &#160; &#160; &#160; &#160; &#160; &#160; Portanto, superado o valor de alçada previsto no art. 34 da Lei nº 6.830/80. <span

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	style="font-family: Arial, sans-serif;"> Art . 34 - Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração. &#160; &#160; &#160; &#160; Presentes os demais requisitos de admissibilidade do apelo, passo a examinar o mérito recursal, o qual permeia a análise da presença de interesse de agir para a cobrança de crédito considerado de baixo valor, por meio de execução fiscal. Aplicam-se ao caso as teses fixadas no Tema 1184 do STF, em 19 de dezembro de 2023: “ 1. É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado. &#160; 2. O ajuizamento da execução fiscal dependerá da prévia adoção das seguintes providências: a) tentativa de conciliação ou adoção de solução administrativa; e b) protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida. 3. O trâmite de ações de execução fiscal não impede os entes federados de pedirem a suspensão do processo para a adoção das medidas previstas no item 2, devendo, nesse caso, o juiz ser comunicado do prazo para as providências cabíveis.” &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Embora a presente execução fiscal tenha sido ajuizada em 18 de dezembro de 2019, o STF não modulou os efeitos da decisão que fixou as teses do tema 1184, logo essa decisão retroage para abarcar o caso em apreço, tornando inaplicável, portanto, o entendimento exposto na súmula 452 do STJ. Súmula 452: A extinção das ações de pequeno valor é faculdade da Administração Federal, vedada a atuação judicial de ofício . <span style="font-family: Arial, Verdana,

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	sans-serif;"> &#160; &#160; &#160; &#160; &#160; &#160;&#160; Por sua vez, foi apreciado e afastado pelo voto condutor da tese o argumento de violação ao princípio federativo, uma vez presente lei do ente federado fixando parâmetros que estabeleçam o valor mínimo passível de ser executado pelo rito da Lei n. 6.830/1980. </p><p style="line-height: 0.98cm;" align="justify"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;C onf ira-se o seguinte trecho do voto: </p><p style="line-height: 0.98cm; margin-left: 2.5cm;" align="justify"> “26. O advento da Lei 12.767/2012, que permitiu o protesto das certidões de dívidas ativas da União, dos Estados, do Distrito Federal, dos Municípios e das respectivas autarquias e fundações públicas, põe-se como forma de solução não judicial mais eficiente para os poderes Executivo e Judiciário, dando cumprimento integral ao princípio da eficiência, sem se excluírem outros meios de atuação na busca do mesmo desiderato. </p><p style="line-height: 0.98cm; margin-left: 2.5cm;" align="justify"> O contexto legislativo vigente, representando alternativa para o poder público compelir o contribuinte a pagar seu débito, revela a importância de o ente federado utilizar essa modalidade de cobrança como meio prioritário quando o débito for considerado de pequeno valor.</p><p style="line-height: 0.98cm; margin-left: 2.5cm;" align="justify"> 27. Anote-se, ainda, não se comprovar desobediência ao princípio federativo, por ser inquestionável deter o Município competência legislativa para regulamentar todos os aspectos relativos aos tributos de sua competência, podendo, inclusive, fixar parâmetros que determinem o valor mínimo passível de ser executado pelo rito da Lei n. 6.830/1980, a qual “dispõe sobre a cobrança judicial da Dívida Ativa da Fazenda Pública, e dá outras providências”. A autonomia de cada ente federativo há de ser respeitada. Entretanto, o valor mínimo do débito a justificar a mobilização do aparato judicial deve se mostrar razoável e proporcional, sob pena de subverter o dever constitucional de atendimento ao princípio da eficiência. Assim, a extinção da execução fiscal pelo Judiciário, ao fundamento de ausência de interesse processual com base no valor da causa, mesmo que fundamentada em legislação elaborada pelo ente diverso do exequente, por carência de lei municipal que adote critério diverso, representa adoção de interpretação judicial coerente com a solução da equação processual “valor do débito x custo do procedimento executivo”.</p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.98cm;" align="justify"> &#160; &#160; &#160; &#160; &#160;Logo, não cabe a reavaliação desse argumento pelas instâncias responsáveis pela aplicação das teses fixadas no precedente, sem que tenham ocorrido mudanças de ordem fática ou jurídica que impliquem um contexto diverso daquele em que foi fixado o precedente.&#160; </p><p

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	style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.98cm; margin-bottom: 0cm;" align="justify"> &#160; &#160; &#160; &#160; &#160; &#160; Nesse direcionamento, é o dever de estabilidade, integridade e coerência que os tribunais devem observar na aplicação dos precedentes, plasmado no art. 926 do CPC. Art. 926. Os tribunais devem uniformizar sua jurisprudência e mantê-la estável, íntegra e coerente. &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;&#160; Superado esse argumento, a Resolução 547/2024 do CNJ regulamentou as teses fixadas no tema 1184 do STF. &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;A constitucionalidade formal dessa resolução como ato normativo primário se fundamenta no art. 103-B, parágrafo 4º, II, da C.F/88 , que dá ao CNJ a atribuição de assegurar q ue o Poder Judiciário, no exercício da função administrativa e dentro da sua esfera de independência, garanta o cumprimento do art. 37 da C.F/88. &#160; &#160; &#160; &#160; &#160; Já a constitucionalidade material da resolução deriva d o art.

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	 37, caput, da C.F/88 , uma vez que esse ato normativo primário concretiza o princípio da eficiência voltado a racionalizar o volume de execuções fiscais cujo resultado arrecadatório praticamente não compensa a movimentação do Poder Judiciário, gerando somete custos administrativos, financeiros e operacionais e prejuízo à Administração da Justiça. &#160; &#160; &#160; &#160; &#160; &#160; Colaciono os dispositivos constitucionais, com destaque: &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;&#160; Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios de legalidade, impessoalidade, moralidade, publicidade e eficiência e, também, ao seguinte:&#160; &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; Art. 103-B. O Conselho Nacional de Justiça compõe-se de 15 (quinze) membros com mandato de 2 (dois) anos, admitida 1 (uma) recondução, sendo:&#160; &#160; &#160;&#160; &#160; &#160; &#160; &#160; &#160;

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	&#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;§ 4º Compete ao Conselho o controle da atuação administrativa e financeira do Poder Judiciário e do cumprimento dos deveres funcionais dos juízes, cabendo-lhe, além de outras atribuições que lhe forem conferidas pelo Estatuto da Magistratura:&#160; &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; II - zelar pela observância do art. 37 e apreciar, de ofício ou mediante provocação, a legalidade dos atos administrativos praticados por membros ou órgãos do Poder Judiciário, podendo desconstituí-los, revê-los ou fixar prazo para que se adotem as providências necessárias ao exato cumprimento da lei, sem prejuízo da competência do Tribunal de Contas da União &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;O STF já se manifestou no de sentido de que o CNJ tem a atribuição de editar atos normativos primários com fundamento direto em normas constitucionais: EMENTA: AÇÃO DECLARATÓRIA DE CONSTITUCIONALIDADE, AJUIZADA EM PROL DA RESOLUÇÃO Nº 07, de 18/10/2005, DO CONSELHO NACIONAL DE JUSTIÇA. MEDIDA CAUTELAR. Patente a legitimidade da Associação dos Magistrados do Brasil - AMB para propor ação declaratória de constitucionalidade. Primeiro, por se tratar de entidade de classe de âmbito nacional. Segundo, porque evidenciado o estreito vínculo objetivo entre as finalidades institucionais da proponente e o conteúdo do ato normativo por ela defendido (inciso IX do art. 103 da CF, com redação dada pela EC 45/04). Ação declaratória que não merece conhecimento quanto ao art. 3º da resolução, porquanto, em 06/12/05, o Conselho Nacional de Justiça editou a Resolução nº 09/05, alterando substancialmente a de nº 07/2005. A Resolução nº 07/05 do CNJ reveste-se dos atributos da generalidade (os dispositivos dela constantes veiculam normas proibitivas de ações administrativas de logo padronizadas), impessoalidade (ausência de indicação nominal ou patronímica de quem quer que seja) e abstratividade (trata-se de um modelo normativo com âmbito temporal de vigência em aberto, pois claramente vocacionado para renovar de forma contínua o liame que prende suas hipóteses de incidência aos respectivos mandamentos) .&#160; A Resolução nº 07/05 se dota, ainda, de caráter normativo primário, dado que arranca diretamente do § 4º do art. 103-B da Carta-cidadã e tem como finalidade debulhar os próprios conteúdos lógicos dos princípios constitucionais de centrada regência de toda a atividade administrativa do Estado, especialmente o da impessoalidade, o da eficiência, o da igualdade e o da moralidade. &#160; O ato normativo que se faz de objeto desta ação declaratória densifica apropriadamente os quatro citados princípios do art. 37 da Constituição Federal, razão por que não há antinomia de conteúdos na comparação dos comandos que se veiculam pelos dois modelos normativos: o constitucional e o infraconstitucional. Logo, o Conselho Nacional de Justiça fez adequado uso da competência que lhe conferiu a Carta de Outubro, após a Emenda 45/04. <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal;

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	font-variant-position: normal;"> &#160; <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal;"> <span style="color: #000000;"> <span style="font-family: Arial, Verdana, sans-serif;"> <span style="font-size: 11pt;">Noutro giro, os condicionamentos impostos pela Resolução em foco não atentam contra a liberdade de nomeação e exoneração dos cargos em comissão e funções de confiança (incisos II e V do art. 37). Isto porque a interpretação dos mencionados incisos não pode se desapegar dos princípios que se veiculam pelo caput do mesmo art. 37. Donde o juízo de que as restrições constantes do ato normativo do CNJ são, no rigor dos termos, as mesmas restrições já impostas pela Constituição de 1988, dedutíveis dos republicanos princípios da impessoalidade, da eficiência, da igualdade e da moralidade. É dizer: o que já era constitucionalmente proibido permanece com essa tipificação, porém, agora, mais expletivamente positivado. Não se trata, então, de discriminar o Poder Judiciário perante os outros dois Poderes Orgânicos do Estado, sob a equivocada proposição de que o Poder Executivo e o Poder Legislativo estariam inteiramente libertos de peias jurídicas para prover seus cargos em comissão e funções de confiança, naquelas situações em que os respectivos ocupantes não hajam ingressado na atividade estatal por meio de concurso público. O modelo normativo em exame não é suscetível de ofender a pureza do princípio da separação dos Poderes e até mesmo do princípio federativo. Primeiro, pela consideração de que o CNJ não é órgão estranho ao Poder Judiciário (art. 92, CF) e não está a submeter esse Poder à autoridade de nenhum dos outros dois; segundo, porque ele, Poder Judiciário, tem uma singular compostura de âmbito nacional, perfeitamente compatibilizada com o caráter estadualizado de uma parte dele. Ademais, o art. 125 da Lei Magna defere aos Estados a competência de organizar a sua própria Justiça, mas não é menos certo que esse mesmo art. 125, caput, junge essa organização aos princípios "estabelecidos" por ela, Carta Maior, neles incluídos os constantes do art. 37, cabeça. Medida liminar deferida para, com efeito vinculante: a) emprestar interpretação conforme para incluir o termo "chefia" nos inciso II, III, IV, V do artigo 2° do ato normativo em foco b) suspender, até o exame de mérito desta ADC, o julgamento dos processos que tenham por objeto questionar a constitucionalidade da Resolução nº 07/2005, do Conselho Nacional de Justiça; c) obstar que juízes e Tribunais venham a proferir decisões que impeçam ou afastem a aplicabilidade da mesma Resolução nº 07/2005, do CNJ e d) suspender, com eficácia ex tunc, os efeitos daquelas decisões que, já proferidas, determinaram o afastamento da sobredita aplicação. (ADC 12 MC, Relator(a): CARLOS BRITTO, Tribunal Pleno, julgado em 16-02-2006, DJ 01-09-2006 PP-00015&#160; EMENT VOL-02245-01 PP-00001 RTJ VOL-00199-02 PP-00427) Fixada a premissa da constitucionalidade da Resolução 547/2024 do CNJ, prevê o seu artigo 1º, § 1º: Art. 1º É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado. § 1º Deverão ser extintas as execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento,&#160;em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis. &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Por meio desse parâmetro

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	normativo, extrai-se que, para justificar a extinção da execução fiscal em razão do baixo valor, são necessários dois requisitos: </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.98cm;" align="justify"> a) A cobrança de crédito tributário inferior a R$ 10.000,00 (dez mil reais). </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.98cm;" align="justify"> b) A paralisação do processo por mais de um ano, sem nenhuma movimentação útil que realize a citação ou que localize bens penhoráveis do devedor, caso já realizada a citação. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.98cm;" align="justify">&#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160;&#160; &#160; O caso em apreço reúne os requisitos acima apontados.</p><p style="line-height: 0.98cm;" align="justify"> &#160; &#160; &#160; &#160;De fato, o crédito cobrado é inferior a R$ 10.000,00 (dez mil reais). Ademais, o despacho que determinou a citação do executado foi realizado em 10 de janeiro de 2020 (ID nº 15488043) e até o presente momento de 2024 não se logrou realizar a citação do executado em razão de ele não estar sendo localizado, como dá mostras o AR não cumprido em 10 de dezembro de 2023 (ID nº 15488084). </p><p style="line-height: 0.98cm;" align="justify"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Portanto, a sentença aplicou corretamente o tema 1184 do STF, regulamentado pelo artigo 1º, § 1º da Resolução 547/2024 do CNJ, ao caso em apreço, não merecendo provimento o apelo. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.9cm;" align="justify"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;É o voto que submeto à consideração de meus pares. </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 0.9cm;" align="justify"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;Fortaleza, data informada pelo sistema. </p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO

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	</p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	170
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	IPTU/ Imposto Predial e Territorial Urbano
Polo ativo	MUNICIPIO DE ARACATI
Advogado(s) - Polo ativo	GEORGIA MOURA DE SOUSA - (CE39458-A)
Polo passivo	JOSINALDO DE OLIVEIRA MOREIRA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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Acordão

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xfX/wGXuTX16scS8AAAAABJRU5ErkJggg==" alt="" /></p><p style="margin: 0cm; text-
align: center;" align="center"> <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">ESTADO DO CEARÁ </p><p
style="margin: 0cm; text-align: center;" align="center"> <span style="font-size:
13.0pt; font-family: &quot;Arial&quot;,sans-serif; color: black;">PODER
JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;"
align="center"> <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">TRIBUNAL DE JUSTIÇA
</p><p style="margin: 0cm; text-align: center;" align="center"> GABINETE
DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO
</p><p style="text-align: center;" align="center"> <span style="font-size: 8.5pt;
font-family: &quot;Arial&quot;,sans-serif; color: black;">&#160;</p><p style="text-
align: left;">&#160;</p><p style="text-align: left;"> <span style="font-size: 13.5pt; font-
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Verdana, sans-serif; font-size: 11px;"> <span style="font-size: 13.5pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">Processo: <span
style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">&#160;0014406-15.2019.8.06.0035 </p><p style="text-align:
left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">[IPTU/ Imposto Predial e Territorial Urbano] </p><p style="text-
align: left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">APELAÇÃO CÍVEL </p><p style="text-align: left;"> <span
style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">Recorrente:&#160;MUNICIPIO DE ARACATI</p><p style="text-align:
left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">Recorrido:&#160;JOSINALDO DE OLIVEIRA MOREIRA</p><p
style="text-align: left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-
justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate:
auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height:
200%; margin-bottom: 0.2cm;" align="justify"><span style="font-variant-numeric: normal;
font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates:
normal; font-variant-position: normal;">
Ementa: <span style="font-variant-numeric:
normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-
alternates: normal; font-variant-position: normal;">
Direito Processual Civil e tributário. Apelação cível. Pequeno valor. Interesse
processual. Tema 1184 do STF. Aplicação correta do precedente vinculante. recurso
conhecido, mas desprovido. </p><p style="line-height: 200%;
margin-bottom: 0.2cm;" align="justify"> <span style="font-variant-numeric: normal; font-
variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal;
font-variant-position: normal;"> I. Caso em
exame </p><p style="line-height: 200%; margin-bottom:
0.2cm;" align="justify"><span style="font-variant-numeric: normal; font-variant-east-asian:
normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position:
normal;"> 1. <span

Processo	0014406-15.2019.8.06.0035
	style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal;"> Apelação Cível interposta pelo Município de Aracati em face da sentença que extinguiu a execução fiscal por ausência de interesse processual.</p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> 2. O apelante defende a reforma da sentença, determinando-se o regular prosseguimento do feito, em razão do Recurso Especial n. 1.100.501, pelo qual o relator, ministro Jorge Mussi, destaca que a legislação possibilita que a União e os dirigentes máximos da Administração Indireta desistam ou não de propor ações para cobrança de crédito de valor inferior a R$ 1.000,00.</p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> II. Questão em discussão </p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> 3. A questão em discussão consiste na possibilidade ou não de extinção da execução fiscal por falta de interesse processual.</p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> <br /> <br /></p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> III. Razões para decidir </p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> 4. Nos autos do processo, constata-se a paralisação do processo por mais de um ano, sem a realização de citação, e o baixo valor. Portanto, a sentença decidiu de acordo com a tese firmada no Tema 1184 pelo Supremo Tribunal Federal.</p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> IV. Dispositivos e tese </p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> 5. Apelação conhecida, mas desprovida.</p><p style="line-height: 200%; margin-bottom: 0.2cm;" align="justify"> ______ </p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%; margin-bottom: 0.2cm;" align="justify"> Legislação relevante citada: artigo 1º, § 1º da Resolução 547/2024 do CNJ. </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 200%; margin-bottom: 0.2cm;" align="justify"> Jurisprudência relevante citada: STF, Recurso Extraordinário nº 1355208/SC, Rel. Ministra Cármen Lúcia, Tribunal Pleno, j. 19/12/2023;&#160; </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: 380.65pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> ACÓRDÃO </p><p class="MsoNormal" style="margin-

Processo	0014406-15.2019.8.06.0035
	bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer do recurso voluntário, mas para negar a ele provimento, tudo nos termos do voto do relator, parte integrante deste.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> RELATOR </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> <br /> </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> &#160;</p><p class="MsoNormal" style="text-align: center; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; tab-stops: center 216.0pt right 432.0pt; text-autospace: none; mso-vertical-align-alt: auto;" align="center">&#160;</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.42cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Tem-se apelação cível interposta pelo MUNICÍPIO DE ARACATI contra sentença proferida pelo juízo da 2ª Vara Cível da Comarca de Aracati, que declarou extinta a execução fiscal, por ausência de interesse processual.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.42cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Petição inicial (id 15488268) : o Município de Aracati promove execução fiscal em face de Josinaldo de Oliveira Moreira Me referente a crédito tributário de IPTU, materializado na CDA nº 010753/2019, no valor de R$1.276,76 (um mil, duzentos e setenta e seis reais e setenta e seis centavos).</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.42cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Sentença (id 15488289) : julgou extinta a execução fiscal, com base no art. 485, VI, do Código de Processo Civil.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.42cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Apelação (id 15488298) : defende a reforma da sentença, determinando-se o regular prosseguimento do feito, em razão do Recurso Especial n. 1.100.501, pelo qual o relator, ministro Jorge Mussi, destaca que a legislação possibilita que a União e os dirigentes máximos da Administração Indireta desistam ou não de propor ações para cobrança de crédito de valor inferior a R$ 1.000,00. Por fim, ele conclui que: não está o Poder Judiciário autorizado a promover a extinção de execução por considerar tal valor ínfimo.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.42cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Sem contrarrazões (id 15488301) : ausência de localização da parte executada.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.42cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Desnecessária a manifestação da PGJ, na forma da Súmula 189/STJ.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.42cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> Vieram os autos conclusos após regular distribuição por sorteio.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height:

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	150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p style="line-height: 200%; text-indent: 1.51cm; margin-top: 0.42cm; margin-bottom: 0.21cm; background: transparent;" align="justify"> É o relatório, no essencial.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal" style="text-align: center; line-height: 150%; page-break-before: always; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;" align="center"> VOTO </p><p style="line-height: 200%; page-break-inside: auto; orphans: 0; widows: 0; text-indent: 1.51cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Presentes os requisitos de admissibilidade do apelo, dele conheço e passo a examinar. </p><p style="line-height: 200%; page-break-inside: auto; orphans: 0; widows: 0; text-indent: 1.51cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Conforme brevemente relatado, o Município de Aracati promove execução fiscal em face de Josinaldo de Oliveira Moreira Me referente a crédito tributário de IPTU, materializado na CDA nº 010753/2019, no valor de R$1.276,76 (um mil, duzentos e setenta e seis reais e setenta e seis centavos).</p><p style="line-height: 200%; page-break-inside: auto; orphans: 0; widows: 0; text-indent: 1.51cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Na análise dos autos, o juízo de origem extinguiu o feito executivo por falta de interesse processual, com base no art. 485, VI, do Código de Processo Civil.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify">Na peça recursal , o Município de Aracati defende a reforma da sentença, determinando-se o regular prosseguimento do feito, em razão do Recurso Especial n. 1.100.501, pelo qual o relator, ministro Jorge Mussi, destaca que a legislação possibilita que a União e os dirigentes máximos da Administração Indireta desistam ou não de propor ações para cobrança de crédito de valor inferior a R$ 1.000,00. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm;" align="justify"> Sem apresentação das contrarrazões.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> N o presente caso, a sentença extinguiu a execução fiscal por falta de interesse processual. Tal decisão observa a hipótese legal prevista no artigo 1º, § 1º da Resolução 547/2024 do CNJ:</p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Art. 1º É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado.</p><p style="line-height: 200%; margin-left: 4cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> § 1º Deverão ser extintas as execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento, em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis. </p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify">Nesse sentido, o processo iniciou em 2019 e permanece sem intimação da parte executada, de modo que estão presentes os requisitos para extinção da execução fiscal, quais sejam, a paralisação do processo por mais de um ano, sem a realização de citação, e o baixo valor.</p><p style="line-height: 200%; text-indent: 1.51cm;

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	margin-bottom: 0.21cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> Na jurisprudência, o Supremo Tribunal Federal analisou a questão, em sede de julgamento do Recurso Extraordinário nº 1355208/SC, quando firmado a tese do Tema 1184, restando o acórdão assim ementado: EMENTA: RECURSO EXTRAORDINÁRIO. DIREITO CONSTITUCIONAL E TRIBUTÁRIO. EXTINÇÃO DE EXECUÇÃO FISCAL DE BAIXO VALOR POR FALTA DE INTERESSE DE AGIR: POSTERIOR AO JULGAMENTO DO RECURSO EXTRAORDINÁRIO N. 591.033 (TEMA N. 109). INEXISTÊNCIA DE DESOBEDIÊNCIA AOS PRINCÍPIOS FEDERATIVO E DA INAFASTABILIDADE DA JURISDIÇÃO. FUNDAMENTOS EXPOSTOS PELO SUPREMO TRIBUNAL FEDERAL NA TESE DO TEMA N. 109 DA REPERCUSSÃO GERAL: INAPLICABILIDADE PELA ALTERAÇÃO LEGISLATIVA QUE POSSIBILITOU PROTESTO DAS CERTIDÕES DA DÍVIDA ATIVA. RECURSO EXTRAORDINÁRIO AO QUAL SE NEGA PROVIMENTO. 1. Ao se extinguir a execução fiscal de pequeno valor com base em legislação de ente federado diverso do exequente, mas com fundamento em súmula do Tribunal catarinense e do Conselho da Magistratura de Santa Catarina e na alteração legislativa que possibilitou protesto de certidões da dívida ativa, respeitou-se o princípio da eficiência administrativa. 2. Os princípios da proporcionalidade e da razoabilidade devem nortear as práticas administrativas e financeiras na busca do atendimento do interesse público. Gastos de recursos públicos vultosos para obtenção de cobranças de pequeno valor são desproporcionais e sem razão jurídica válida. 3. O acolhimento de outros meios de satisfação de créditos do ente público é previsto na legislação vigente, podendo a pessoa federada valer-se de meios administrativos para obter a satisfação do que lhe é devido. 4. Recurso extraordinário ao qual se nega provimento com proposta da seguinte tese com repercussão geral: “É legítima a extinção de execução fiscal de baixo valor, pela ausência de interesse de agir, tendo em vista o princípio da eficiência administrativa”. (RE 1355208, Relator(a): CÁRMEN LÚCIA, Tribunal Pleno, julgado em 19-12-2023, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-s/n DIVULG 01-04-2024 PUBLIC 02-04-2024) A razão dessa conclusão é que o princípio da inafastabilidade da jurisdição ou da garantia do acesso à Justiça com direito a petição, entre outros, assegura a toda pessoa natural ou jurídica que possa reivindicar seus direitos, porém cumprindo-se as exigências que são feitas para se exercer todo e qualquer direito. Aquela garantia, portanto, não afasta de serem observados e atendidos os pressupostos processuais, neles incluído o interesse de agir para o regular exercício dessa garantia. O interesse de agir é demonstrado pela comprovação de utilidade, adequação e necessidade. A utilidade sendo proveito ou vantagem que o autor busca obter com a tutela jurisdicional; a adequação está relacionada à via processual a ser utilizada; e a necessidade provém da correlação entre a pretensão resistida e a imprescindibilidade da judicialização para a satisfação do conflito. O recurso não merece prosperar, pois a sentença extinguiu a execução fiscal por falta de interesse de agir e está adequada ao entendimento firmado no julgamento do Tema 1184 pelo Supremo Tribunal Federal. Isso posto, conheço do apelo, mas <span

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	style="font-size: 13pt;">para nega r a ele provimento, mantendo a sentença e m todos os seus termos, com fulcro no julgamento do Recurso Extraordinário nº 1355208/SC, com repercussão geral (Tema 1184) do Supremo Tribunal Federal.</p><p style="line-height: 200%; text-indent: 1.51cm; margin-bottom: 0.71cm; background: transparent; page-break-before: auto; page-break-after: auto;" align="justify"> É o voto que submeto à consideração de meus pares.</p><p class="MsoNormal" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Fortaleza, data informada pelo sistema. &#160;</p><p> <br style="mso-special-character: line-break;" /> <br style="mso-special-character: line-break;" /> </p><p style="margin: 0cm; text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p style="margin: 0cm; text-align: center;" align="center"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	171
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE ARACATI
Advogado(s) - Polo ativo	Não informado
Polo passivo	IZOLA DUARTE SA DOS SANTOS
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

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	size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:small-caps;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">2. A questão em discussão consiste em saber se os requisitos autorizadores do tema 1884 do STF c/c Resolução 547 do CNJ foram observados para extinguir o feito sem resolução de mérito, por ausência do interesse de agir.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">3. Com o julgamento do RE 1355208, em sede de repercussão geral, o Supremo Tribunal Federal estabeleceu a possibilidade de extinção da execução fiscal de baixo valor desde que observado os requisitos autorizadores (tema 1.184).</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">4. O Conselho Nacional de Justiça, por seu turno, elaborou a Resolução nº 547/2024, que “institui medidas de tratamento racional e eficiente na tramitação das execuções fiscais pendentes no Poder Judiciário, a partir do julgamento do tema 1184 da repercussão geral pelo STF”, estabelecendo em seu art. 1º, § 1º, que as execuções ficais inferiores a R$ 10.000,00 (dez mil reais) deverão ser extintas quando inexistir movimentação útil por mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">5. No caso dos autos, o iter processual não deixa dúvidas quanto à inobservância de tais procedimentos. Isso porque, o Recurso Extraordinário nº 1.355.208 somente foi julgado pela Corte Suprema em 19 de dezembro de 2023, isto é, após a prolação da sentença e interposição do presente recurso.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">6. Desse modo, merece a sentença ser anulada para que o feito seja

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	processado adequadamente em primeira instância pelo Juízo a quo, observando categoricamente o que dispõe o tema 1884 do STF c/c a Resolução 547/2024 do CNJ, a fim de que não haja o que se falar em violação ao princípio da separação dos poderes ou cerceamento de defesa, oportunizando ao Fisco a possibilidade de demonstrar a sua ineficiência administrativa para quitar o crédito perseguido, consequente interesse de agir no regular prosseguimento do feito.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">7. Logo, permanece hígido o interesse de agir do Fisco, não se justificando a extinção da Execução Fiscal.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> IV. Dispositivo e Tese</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">8. Apelação cível conhecida e provida. Sentença anulada.</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> _________</p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Dispositivo relevante citado: LEF, art. 8º, inciso II. LEF, art. 34. CNJ, resolução 547/2024. <br /> <br /></p><p style="line-height:1.38;margin-left: 128pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Jurisprudência relevante citada: STJ, REsp 1168625/MG, Rel. Ministro Luiz Fux, Primeira Seção, j. 09/06/2010; STF, RE nº 1.355.208, Rel. Cármen Lúcia, Tribunal Pleno, j. 19/122023 (tema 1884 do STF); STJ, AgInt no AREsp 1864070 SP 2021/0089368-2, Rel. Ministro Gurgel de Faria, Primeira Turma, j. 14/02/2022/ TJCE, Apelação cível 00511333120218060090, Rel. Joriza Magalhães Pinheiro, 3ª Câmara de Direito Público, j. 10/07/2024.</p><p style="line-height:1.38;margin-left: 112pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-

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	variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;"> <br /> <br /> </p><h3 style="line-height:1.38;text-align: center;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> ACÓRDÃO</h3><p style="line-height:1.7999999999999998;margin-left: 1pt;text-indent: 112.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr">Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0051642-64.2020.8.06.0035, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer da apelação interposta, para dar-lhe provimento, anulando a sentença proferida em 1º grau de jurisdição, nos termos do voto da Relatora.</p><p style="line-height:1.7999999999999998;margin-left: 1pt;text-indent: 112.38582677165354pt;text-align: justify;margin-top:11pt;margin-bottom:11pt;" dir="ltr"> &#160; Fortaleza, 18 de novembro de 2024.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Juíza Convocada ELIZABETE SILVA PINHEIRO</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Portaria 1550/2024</p><p style="text-indent: 8%; text-align: center;"> <strong id="docs-internal-guid-146725f9-7fff-8de6-8694-2bebc19fa18c" style="font-weight:normal;"> <br /> <br /> </p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> RELATÓRIO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta em face de sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Aracati que decidiu pela extinção do processo sem resolução de mérito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">O caso/a ação originária: o Município de Aracati ajuizou Ação de Execução Fiscal em face de Izola Duarte Sá dos Santos com base em certidão da dívida ativa, oriunda de débitos de IPTU, no valor total de R$ 1.314,34 (mil trezentos e quatorze reais e trinta e quatro centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"><span style="font-size: 12pt; font-family: Arial, sans-

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	serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">A Sentença: o Juízo da 2ª Vara Cível da Comarca de Aracati decidiu pela extinção do processo sem resolução de mérito, por ausência de interesse de agir, sob o fundamento de que o valor executado não justificaria a movimentação do aparato judiciário (ID nº 15488325). Transcrevo o dispositivo da sentença:</p><p style="line-height:1.38;margin-left: 114pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “Ante o exposto, EXTINGO o processo sem resolução do mérito, por ausência de interesse processual, nos termos do art. 485, VI, do Código de Processo Civil.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Apelação: irresignado, o ente público interpôs recurso (ID nº 15488331) pugnando pela regular continuidade de tramitação do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Inexistiram contrarrazões, conforme despacho de ID 15488338.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desnecessária a intervenção do Ministério Público , nos termos da súmula 189 do STJ.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É o relatório.</p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> VOTO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> De conformidade com o relatado, depreende-se que se trata de

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	apelação cível interposta em face de sentença que decidiu pela extinção do processo sem resolução de mérito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Por partes e em tópicos segue o presente voto.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:6pt;margin-bottom:9pt;" dir="ltr"> -Do cabimento do recurso de apelação.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> A presente demanda, por se referir a execução proposta pela Fazenda Pública, deve se desenvolver sob o rito previsto na Lei 6.830/80 (Lei de Execuções Fiscais – LEF).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Neste sentido, cumpre observar o disposto no art. 34 da LEF:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“Art. 34 - Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração”.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 1º - Para os efeitos deste artigo considerar-se-á o valor da dívida monetariamente atualizado e acrescido de multa e juros de mora e de mais encargos legais, na data da distribuição.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 2º - Os embargos infringentes, instruídos, ou não, com documentos novos, serão deduzidos, no prazo de 10 (dez) dias perante o mesmo Juízo, em petição fundamentada.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> § 3º - Ouvido o embargado, no prazo de 10 (dez) dias, serão os autos conclusos ao Juiz, que, dentro de 20 (vinte) dias, os rejeitará ou reformará a sentença.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Há que se destacar, de início, que referido dispositivo encontra-se em plena vigência, uma vez que recepcionado pela ordem jurídica vigente, consoante entendimento firmado pelo Supremo Tribunal Federal:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“AGRAVO REGIMENTAL NO AGRAVO DE INSTRUMENTO. <span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:700;font-style:normal;font-variant:normal;text-decoration:none;vertical-

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	align:baseline;white-space:pre;white-space:pre-wrap;">CONSTITUCIONALIDADE DA LEI 6.830/80. SUPERVENIÊNCIA DO ARTIGO 108, II, DA CB/88. REVOGAÇÃO TÁCITA. NÃO OCORRÊNCIA. PRECEDENTE. 1. Este Supremo Tribunal Federal já decidiu que o artigo 108, inciso II, da Constituição do Brasil, não revogou tacitamente o disposto do artigo 34 da Lei 6.830/80. Agravo regimental a que se nega provimento.” (STF, AI 710921 AgR, Relator(a):&#160; Min. EROS GRAU, Segunda Turma, julgado em 10/06/2008, DJe-117 DIVULG 26-06-2008 PUBLIC 27-06-2008 EMENT VOL-02325-16 PP-03211) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Pois bem. Com base neste artigo, cumpre destacar que o caso em análise envolve quantia superior ao valor de alçada legalmente previsto, conforme estabeleceu o colendo STJ em julgados que seguem transcritos:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“PROCESSUAL CIVIL. RECURSO ESPECIAL REPRESENTATIVO DA CONTROVÉRSIA. ART. 543-C, DO CPC. TRIBUTÁRIO. EXECUÇÃO FISCAL. VALOR DE ALÇADA. CABIMENTO DE APELAÇÃO NOS CASOS EM QUE O VALOR DA CAUSA EXCEDE 50 ORTN'S. ART. 34 DA LEI N.º 6.830/80 (LEF). 50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27, EM DEZ/2000. PRECEDENTES. CORREÇÃO PELO IPCA-E A PARTIR DE JAN/2001. 1. O recurso de apelação é cabível nas execuções fiscais nas hipóteses em que o seu valor excede, na data da propositura da ação, 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, à luz do disposto no artigo 34, da Lei n.º 6.830, de 22 de setembro de 1980. 2. A ratio essendi da norma é promover uma tramitação mais célere nas ações de execução fiscal com valores menos expressivos, admitindo-se apenas embargos infringentes e de declaração a serem conhecidos e julgados pelo juízo prolator da sentença, e vedando-se a interposição de recurso ordinário. 3. Essa Corte consolidou o sentido de que "com a extinção da ORTN, o valor de alçada deve ser encontrado a partir da interpretação da norma que extinguiu um índice e o substituiu por outro, mantendo-se a paridade das unidades de referência, sem efetuar a conversão para moeda corrente, para evitar a perda do valor aquisitivo", de sorte que "50 ORTN = 50 OTN = 308,50 BTN = 308,50 UFIR = R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos) a partir de janeiro/2001, quando foi extinta a UFIR e desindexada a economia". (REsp 607.930/DF, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 06/04/2004, DJ 17/05/2004 p. 206) 4. Precedentes jurisprudenciais: AgRg no Ag 965.535/PR, Rel. Ministro Mauro Campbell Marques, Segunda Turma, julgado em 02/10/2008, DJe 06/11/2008; AgRg no Ag 952.119/PR, Rel. Ministra Eliana Calmon, Segunda Turma, julgado em 19/02/2008, DJ 28/02/2008 p. 1; REsp 602.179/SC, Rel. Ministro Teori Albino Zavascki, Primeira Turma, julgado em 07/03/2006, DJ 27/03/2006 p. 161. 5. Outrossim, há de se considerar que a jurisprudência do Egrégio STJ manifestou-se no sentido de que "extinta a UFIR pela Medida Provisória nº 1.973/67, de 26.10.2000, convertida na Lei 10.552/2002, o índice substitutivo utilizado para a atualização monetária dos créditos do

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	contribuinte para com a Fazenda passa a ser o IPCA-E, divulgado pelo IBGE, na forma da resolução 242/2001 do Conselho da Justiça Federal". (REsp 761.319/RS, Rel. Ministro Luiz Fux, Primeira Turma, julgado em 07/03/2006, DJ 20/03/2006 p. 208) 6. A doutrina do tema corrobora esse entendimento, assentando que "tem-se utilizado o IPCA-E a partir de então pois servia de parâmetro para a fixação da UFIR. Não há como aplicar a SELIC, pois esta abrange tanto correção como juros". (PAUSEN, Leandro. ÁVILA, René Bergmann. SLIWKA, Ingrid Schroder. Direito Processual Tributário. 5.ª ed. Porto Alegre: Livraria do Advogado editora, 2009, p. 404) 7. Dessa sorte, mutatis mutandis, adota-se como valor de alçada para o cabimento de apelação em sede de execução fiscal o valor de R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), corrigido pelo IPCA-E a partir de janeiro de 2001, valor esse que deve ser observado à data da propositura da execução. 8. In casu, a demanda executiva fiscal, objetivando a cobrança de R$ 720,80 (setecentos e vinte reais e oitenta centavos), foi ajuizada em dezembro de 2005. O Novo Manual de Cálculos da Justiça Federal, (disponível e &lt;http://aplicaext.cjf.jus.br/phpdoc/sicomo/&gt;), indica que o índice de correção, pelo IPCA-E, a ser adotado no período entre jan/2001 e dez/2005 é de 1,5908716293. Assim, R$ 328,27 (trezentos e vinte e oito reais e vinte e sete centavos), com a aplicação do referido índice de atualização, conclui-se que o valor de alçada para as execuções fiscais ajuizadas em dezembro/2005 era de R$ 522,24 (quinhentos e vinte e dois reais e vinte a quatro centavos), de sorte que o valor da execução ultrapassa o valor de alçada disposto no artigo 34, da Lei n.º 6.830/80, sendo cabível, a fortiori, a interposição da apelação. 9. Recurso especial conhecido e provido. Acórdão submetido ao regime do art. 543-C do CPC e da Resolução STJ 08/2008.” (REsp 1168625/MG, Rel. Ministro LUIZ FUX, PRIMEIRA SEÇÃO, julgado em 09/06/2010, DJe 01/07/2010) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Em verdade, na data da distribuição do presente feito (dezembro de 2020), 50 ORTN correspondiam a cerca de R$ 1.078,27 (mil e setenta e oito reais e vinte e sete centavos) (&lt;https://www3.bcb.gov.br/CALCIDADAO/publico/corrigirPorIndice.do?method=corrigirPorIndice&gt;).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Por sua vez, o valor indicado na petição inicial corresponde a R$ 1.314,34 (mil trezentos e quatorze reais e trinta e quatro centavos).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Patente, portanto, o cabimento da presente apelação, razão pela qual conheço do recurso e, ato contínuo, prossigo na sua análise.</p><p style="line-height:1.7999999999999998;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> - Da de extinção da execução fiscal – Tema 1184 do STF</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Superada

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	a discussão acerca do cabimento do recurso, cumpre-nos, agora, verificar a possibilidade de extinção da execução fiscal, de ofício, sob o fundamento de que o valor executado seria ínfimo, não justificando a propositura da ação.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Nestes termos, há que se esclarecer, desde logo, que se encontrava assente na jurisprudência pátria entendimento segundo o qual não pode o julgador adentrar a esfera própria da administração pública para decidir acerca da relevância ou não do valor a ser reclamado em juízo, sob pena de flagrante violação ao princípio da separação dos poderes (tema 109 do STF).</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> No âmbito do Superior Tribunal de Justiça, a matéria encontra-se, inclusive, sumulada, conforme se depreende do enunciado 452, adiante transcrito:</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Súmula 452, STJ – “A extinção das ações de pequeno valor é faculdade da Administração Federal, vedada a atuação judicial de ofício.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Contudo, é cediço que, com o julgamento do tema 1184 pelo Supremo Tribunal Federal, denota-se que restou estabelecido que é possível a extinção da execução fiscal quando o ente público não cumpre com o seu dever de eficiência administrativa, demonstrando a clara ausência do interesse de agir em juízo.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Isso porque, em 19 de dezembro de 2023, com o julgamento do RE 1355208, em sede de repercussão geral, a Suprema Corte estabeleceu as seguintes teses:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Tema nº 1184 do STF</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> “1. É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 2. O ajuizamento da execução fiscal dependerá da prévia adoção das seguintes providências: a) tentativa de conciliação ou adoção de solução administrativa e b) protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da

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	medida.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> 3. O trâmite de ações de execução fiscal não impede os entes federados de pedirem a suspensão do processo para a adoção das medidas previstas no item 2, devendo, nesse caso, o juiz ser comunicado do prazo para as providências cabíveis.”</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Com efeito, no que se refere ao item nº 1, o Conselho Nacional de Justiça elaborou a Resolução nº 547/2024, que “ institui medidas de tratamento racional e eficiente na tramitação das execuções fiscais pendentes no Poder Judiciário, a partir do julgamento do tema 1184 da repercussão geral pelo STF ”, estabelecendo o valor a ser considerado irrisório e as situações em que a execução fiscal podem ser extintas. Confira-se:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:0pt;" dir="ltr">“Art. 1º É legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, tendo em vista o princípio constitucional da eficiência administrativa, respeitada a competência constitucional de cada ente federado.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:0pt;" dir="ltr"> § 1º Deverão ser extintas as execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento, em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis.</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:6pt;margin-bottom:0pt;" dir="ltr"> § 2º Para aferição do valor previsto no § 1º, em cada caso concreto, deverão ser somados os valores de execuções que estejam apensadas e propostas em face do mesmo executado.” (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Quanto ao item nº 2, o STF estabeleceu que a Fazenda, antes do ajuizamento da demanda, deveria buscar a adoção de métodos extrajudiciais a fim de promover a satisfação do crédito e, caso restassem infrutíferas ou evidenciada a impossibilidade ou inadequação da medida, é que o Fisco poderia ajuizar a demanda fiscal.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Assim, definiu que nas ações ajuizadas em data posterior ao julgamento do tema 1184 (20/12/2023), o Fisco deve, necessariamente, observar os requisitos para a constituição e o desenvolvimento válido e regular do processo fiscal, adotando as seguintes providências: “ a) tentativa de conciliação ou adoção de solução administrativa; e b)

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	protesto do título, salvo por motivo de eficiência administrativa, comprovando-se a inadequação da medida ”.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Por fim, a Corte Suprema, ao estabelecer o item nº 3, instituiu que para as ações ajuizadas em momento anterior ao dia 19/12/2023 (data do julgamento do tema 1184), decidiu que a Fazenda Pública poderia requerer a suspensão do processo, a fim de promover as medidas extrajudiciais verificadas no item 2, e comprovar a ineficácia de tais providências para, então, demonstrar seu interesse no regular prosseguimento do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">No caso dos autos, o iter processual não deixa dúvidas quanto à inobservância de tais procedimentos. Isso porque, o Recurso Extraordinário nº 1.355.208 somente foi julgado pela Corte Suprema em 19 de dezembro de 2023, isto é, após a prolação da sentença e interposição do presente recurso.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Desse modo, merece a sentença ser anulada para que o feito seja processado adequadamente em primeira instância pelo Juízo a quo, observando categoricamente o que dispõe o tema 1884 do STF c/c a Resolução 547/2024 do CNJ, a fim de que não haja o que se falar em violação ao princípio da separação dos poderes ou cerceamento de defesa, oportunizando ao Fisco a possibilidade de demonstrar a sua ineficiência administrativa para quitar o crédito perseguido, consequente interesse de agir no regular prosseguimento do feito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Destaque-se que o presente voto não se trata de apego excessivo à forma, mas sim de observância ao procedimento consolidado pelo Supremo Tribunal Federal no Recurso Extraordinário nº 1.355.208, em sede de repercussão geral, para extinção da execução fiscal por ausência do interesse de agir, prestigiando a razoável duração do processo e, ao mesmo tempo, a segurança jurídica e o direito do credor de perseguir a satisfação do seu crédito.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É neste sentido a linha de raciocínio adotada por esta egrégia Corte de Justiça:</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"><span style="font-size:12pt;font-family:Arial,sans-serif;color:#000000;background-color:transparent;font-weight:400;font-style:normal;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-

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	space:pre-wrap;">“APELAÇÃO CÍVEL. TRIBUTÁRIO E PROCESSO CIVIL. EXECUÇÃO FISCAL. EXTINÇÃO SEM EXAME DO MÉRITO - AUSÊNCIA DE INTERESSE DE AGIR. BAIXO VALOR DO CRÉDITO EXEQUENDO. TEMA Nº 1.184, STF E ART. 1º, §1º, DA RESOLUÇÃO Nº 547/2024, CNJ. ERROR IN PROCEDENDO DO JULGADOR. INEXISTÊNCIA DO REQUISITO DE “AUSÊNCIA DE MOVIMENTAÇÃO ÚTIL POR MAIS DE UM ANO”. PERMANÊNCIA DO INTERESSE DE AGIR DO EXEQUENTE. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS À ORIGEM.” (APELAÇÃO CÍVEL - 00511333120218060090, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 10/07/2024) (destacamos)</p><p style="line-height:1.2;margin-left: 113pt;text-align: center;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> * * * * *</p><p style="line-height:1.2;margin-left: 113pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">“EMENTA: PROCESSUAL CIVIL. DIREITO TRIBUTÁRIO. APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. BAIXO VALOR DO CRÉDITO EXEQUENDO. EXTINÇÃO POR AUSÊNCIA DE INTERESSE DE AGIR. TEMA Nº 1.184, STF E ART. 1º, §1º, DA RESOLUÇÃO Nº 547/2024, CNJ. ERROR IN PROCEDENDO. INOBSERVÂNCIA DO REQUISITO DE AUSÊNCIA DE MOVIMENTAÇÃO ÚTIL POR MAIS DE UM ANO. PERMANÊNCIA DO INTERESSE DE AGIR DO EXEQUENTE. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS À ORIGEM. 1. Trata-se de Recurso de Apelação manejado contra sentença que extinguiu ação de execução fiscal, por considerar que a cobrança de dívida tributária de pequeno valor representa falta de interesse de agir. 2. O &lt;em&gt;STF&lt;/em&gt;, no julgamento do Recurso Extraordinário nº 1.355.208, afetado em repercussão geral (&lt;em&gt;Tema nº 1.184), firmou entendimento no sentido de ser legítima a extinção de execução fiscal de baixo valor pela ausência de interesse de agir, sem, no entanto, definir os parâmetros autorizadores da extinção da execução fiscal de “baixo valor”. 3. Diante dessa lacuna, o Conselho Nacional de Justiça editou a Resolução nº 547/2024, instituindo medidas de tratamento racional e eficiente na tramitação das execuções fiscais pendentes no Poder Judiciário, a partir do julgamento do &lt;em&gt;Tema&lt;/em&gt; &lt;em&gt;1184&lt;/em&gt; da repercussão geral pelo &lt;em&gt;STF&lt;/em&gt;, autorizando a extinção das execuções fiscais de valor inferior a R$ 10.000,00 (dez mil reais) quando do ajuizamento, em que não haja movimentação útil há mais de um ano sem citação do executado ou, ainda que citado, não tenham sido localizados bens penhoráveis. 4. In casu, observa-se que o requisito da ausência de movimentação útil há mais de um ano não foi satisfeito, vez que, embora a devedora tenha sido citada por edital, o Juízo de origem sequer chegou a iniciar a constrição de bens, permanecendo hígido o interesse de agir do exequente, ainda que de pequeno valor, não se justificando a extinção da Execução Fiscal. 5. Apelação conhecida e provida. Sentença anulada.” (APELAÇÃO CÍVEL - 00514477420218060090, Relator(a): JOSE TARCILIO SOUZA DA SILVA, 1ª Câmara de Direito Público, Data do julgamento: 29/08/2024) (destacamos)</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align:

Processo	0051642-64.2020.8.06.0035
	justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Desse modo, o provimento da apelação, consequente anulação da sentença recorrida, é medida que se impõe.</p><p style="line-height:0.03818181818181818;text-align: center;margin-top:12pt;margin-bottom:12pt;" dir="ltr"> DISPOSITIVO</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr">Por tais razões, em conformidade com os precedentes jurisprudenciais transcritos, conheço da apelação interposta, para dar-lhe provimento, anulando a sentença recorrida e determinando o retorno dos autos à origem, para que o feito siga seu regular trâmite processual.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> É como voto.</p><p style="line-height:1.7999999999999998;text-indent: 113.38582677165354pt;text-align: justify;margin-top:12pt;margin-bottom:0pt;" dir="ltr"> Fortaleza, 18 de novembro de 2024. <br /> <br /> </p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Juíza Convocada ELIZABETE SILVA PINHEIRO &#160;</p><p style="line-height:1.2;text-align: center;margin-top:6pt;margin-bottom:12pt;" dir="ltr"> Portaria 1550/2024</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	172
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Paridade Salarial
Polo ativo	MUNICIPIO DE CAMOCIM
Advogado(s) - Polo ativo	Não informado
Polo passivo	WALTENCIR RODRIGUES DOS SANTOS
Advogado(s) - Polo passivo	MARIA MICHELLE GOMES DA SILVA - (CE22312-A)
Terceiros	Não informado

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Acordão	<p style="text-align: center;"> <img style="font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONNnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThGPs/Gks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3TaQ+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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LlyhUS4qfg7+MrwC3Rfmsoao//H7D60gCY2u7asZPioqmSf+pkw/+G6f15gf8DLlMncTlWGu
AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ   <br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;">   <br /> </p><p> PROCESSO:&#160;3000810-77.2024.8.06.0053 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE CAMOCIM. <br /> </p><p> APELADO: WALTENCIR RODRIGUES DOS SANTOS.</p><p align="center">   <br /> </p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;">   Ementa : ADMINISTRATIVO. APELAÇÃO CÍVEL EM AÇÃO ORDINÁRIA. SERVIDOR PÚBLICO. INCORPORAÇÃO E GRATIFICAÇÃO PELO EXERCÍCIO DE FUNÇÃO DE DIREÇÃO, CHEFIA OU ASSESSORAMENTO, NO ÂMBITO DO MUNICÍPIO DE CAMOCIM/CE. AQUISIÇÃO DO DIREITO ANTES DA REVOGAÇÃO DA NORMA QUE REGULAMENTAVA A CONCESSÃO DE TAL VANTAGEM. PAGAMENTO DEVIDO. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA.</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;">   I. CASO EM EXAME </p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> 1. Apelação cível interposta pelo Município de Camocim/CE, buscando a reforma de sentença proferida pelo magistrado de primeiro grau, que deu total procedência a ação ordinária movida por servidor público.</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;">   II.   &#160; QUESTÃO EM DISCUSSÃO </p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> 2. Foi devolvida a este Tribunal a controvérsia em torno do direito de servidor público do Município de Camocim/CE à incorporação de gratificação pelo exercício de função de direção, chefia ou assessoramento, na forma do art. 64 da Lei nº 537/1993 e do art. 1º da Lei nº 939/2004, com efeitos financeiros retroativos.</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;">   III. RAZÕES DE DECIDIR </p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> 3. A documentação acostada aos autos evidencia que, ainda na vigência desses atos normativos, o servidor público exerceu, por mais de 03 (três) anos, os cargos em comissão de “CHEFE DE DEPARTAMENTO DE AÇÕES PREVENTIVAS” (02/05/2017 a 21/12/2018) e de “CHEFE

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	DE DIVISÃO DE OPERAÇÕES DE PATRIMÔNIO” (01/02/2019 a 17/05/2021), no Município de Camocim/CE.</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> 4. Assim, dúvida não há de que lhe assiste direito à incorporação de gratificação pelo exercício de função de direção, chefia ou assessoramento, na proporção de 3/5 (três quintos), e ao pagamento das parcelas em atraso, que não se encontram atingidas pela prescrição.</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> 5. Até porque, a mera alegação, por parte do Município de Camocim/CE, de indisponibilidade orçamentária, por si só, também não é suficiente de afastar o direito do servidor público ao pagamento de vantagem, conforme precedentes do STJ e do TJ/CE.</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> IV. DISPOSITIVO </p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> 6. Recurso conhecido e não provido.</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> ______</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> &#160;</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: none;"> Dispositivos relevantes citados: Lei nº 537/1993, art. 64; Lei nº 939/2004, art. 1º.</p><p class="western" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 99.25pt; mso-hyphenate: none;"> <br /> </p><h3 style="margin-top: 11.9pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: -2.85pt; text-align: center; mso-hyphenate: none;"> ACÓRDÃO </h3><p style="margin-top: 11.9pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.85pt; line-height: 150%; mso-hyphenate: none;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000810-77.2024.8.06.0053, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade , em conhecer do recurso, para negar-lhe provimento, mantendo inalterada a sentença proferida pelo magistrado de primeiro grau, nos termos do voto da e. Relatora.</p><p class="Standard" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center">&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="MsoNormal" style="margin-top: 6.0pt; text-align: center; text-autospace: none;" align="center"> R elatora </p><p class="MsoNormal" style="margin-top: 6.0pt; text-align: center; text-autospace: none;" align="center"> <br /> </p><p style="margin-top: 11.9pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; text-align: center; text-indent: 7.1pt; line-height: 150%; mso-hyphenate: none;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;"> Cuida-se, na espécie, de Apelação Cível, adversando sentença proferida pelo magistrado de primeiro grau, que deu procedência a ação ordinária movida por servidor público contra o Município de Camocim/CE.</p><p class="MsoNormal" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;"> O caso : Waltencir Rodrigues dos Santos ingressou com ação ordinária contra o Município de Camocim/CE, aduzindo,

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	em suma, que, enquanto servidor público, teria direito à incorporação, em seu contracheque, de gratificação pelo exercício de função de direção, chefia ou assessoramento, na forma do art. 64 da Lei nº 537/1993, com efeitos financeiros retroativos.</p><p class="MsoNormal" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;"> Em sua contestação (ID 15506480): o réu aduziu, em suma, que não seria possível a concessão da vantagem requerida pelo autor, em razão da revogação da norma que a regulamentava no plano local.</p><p class="MsoNormal" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;"> E, nesse sentido, sustentou que se aplicaria, in casu, a pacífica orientação do STF de que não há direito adquirido a regime jurídico.</p><p class="MsoNormal" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;"> Sentença proferida pelo magistrado de primeiro grau, dando total procedência à ação ordinária (ID 15506485), ex vi:</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-vertical-align-alt: auto;"> “ Diante do exposto,&#160; JULGO PROCEDENTE&#160;o pedido para extinguir o processo com resolução de mérito e condenar &#160;a Municipalidade a incorporar ao salário do(a) Autor(a) a gratificação pelo exercício de função na proporção de 1/5 por ano de exercício na função de&#160;CHEFE DE DIVISÃO DE OPERAÇÕES DE PATRIMÔNIO, CDA-III, na proporção específica de &#160; 3/5 (três quintos)&#160;com esteio no art. 64 da Lei nº 537/1993 c/c Lei Municipal 939/04. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-vertical-align-alt: auto;"> Ainda, condeno o Município a pagar ao Autor as diferenças salariais da gratificação não pagas e seus reflexos, excluídas as parcelas fulminadas pela prescrição quinquenal a contar da data do ajuizamento da ação (JUNHO/2019).&#160;A correção monetária se dará pelo IPCA-E e juros de mora conforme a remuneração oficial do índice da caderneta de poupança, conforme os REsp 1.492.221, 1.495.144 e 1.495.146. A partir de 9/12/2021, deverá incidir exclusivamente a Taxa SELIC, uma única vez, pois abrange, em si, os juros moratórios e a correção monetária, até o efetivo pagamento, acumulado mensalmente, nos termos da Emenda Constitucional nº 113/2021. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-vertical-align-alt: auto;"> Isenção de custas em relação ao Município (art. 10 da Lei Estadual 12.381/94). </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-vertical-align-alt: auto;"> Condeno o Município sucumbente em honorários advocatícios cujo percentual deverá ser fixado quando liquidado o julgado, nos termos do artigo 85, § 4º, II do CPC. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-vertical-align-alt: auto;"> Depreendo por simples estimativa que o valor da condenação não ultrapassará a 100 (cem) salários mínimos. Deixo, portanto, de submeter a presente sentença ao reexame necessário, o que faço com base no art. 496, §3º, III do CPC. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-vertical-align-alt: auto;"> P.R.I. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-vertical-align-alt: auto;"> Expedientes necessários .” (sic) </p><p class="MsoNormal" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;"> Inconformado, o ente público interpôs Apelação Cível (ID 15506487), buscando a reforma integral de referido decisum monocrático, basicamente, pelas mesmas razões outrora expostas nos autos.</p><p class="MsoNormal" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;"> Sem contrarrazões (ID 15506841).</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-

Processo	3000810-77.2024.8.06.0053
	indent: 4.0cm; line-height: 150%;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça como custos legis, na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, não havendo, portanto, interesse público a ser tutelado pelo Parquet, o que, inclusive, consta do parecer exarado no processo de nº 0050715-10.2021.8.06.0053 (ID <strong style="mso-bidi-font-weight: normal;"> 6843490 , que versa sobre um caso praticamente idêntico ao dos autos. </p><p class="MsoNormal" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;"> É o relatório.</p><p class="MsoNormal" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 112.5pt; line-height: 150%;">&#160;</p><p class="western" style="margin-top: 11.35pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; text-align: center; line-height: 150%; mso-hyphenate: none;" align="center"> VOTO </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Preenchidos os requisitos legais, conheço do recurso.</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Foi devolvida a este Tribunal a controvérsia em torno do direito de servidor público do Município de Camocim/CE à incorporação de gratificação pelo exercício de função de direção, chefia ou assessoramento, na forma do art. 64 da Lei nº 537/1993, com efeitos financeiros retroativos, ex vi:</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “Art. 64 – Ao servidor investido em função de direção, chefia ou assessoramento é devida uma gratificação pelo seu exercício. </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160;[…] </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> § 2º – A gratificação prevista neste artigo incorpora-se à remuneração do servidor e integra o provento da aposentadoria, na proporção de 1/5 (um quinto) por ano de exercício na função de direção, chefia ou assessoramento, até o limite de 5 (cinco) quintos. </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160;[...] </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> § 4º – Lei específica estabelecerá a remuneração dos cargos em comissão de que trata o inciso II, do art. 12, bem como os critérios de incorporação da vantagem prevista no parágrafo segundo, quando exercidos por servidor.” </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Por sua vez, a Lei nº 939/2004 previa, em seu art. 1º, quando e como essa vantagem deveria ser concedida pela Administração, ex vi:</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “Art. 1º. Nos termos do § 4º do art. 64 da Lei nº 537 de 02 de agosto de 1993, ficam definidos os critérios de incorporação da Gratificação pelo Exercício de Função Gratificada, para os servidores das demais Municipais. </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Parágrafo único – Os atuais servidores que percebem Gratificação pelo Exercício de Função Gratificada e Cargos de Direção, terão as mesmas incorporadas à remuneração, em rubrica nominalmente identificadas, na proporção de 1/5 (um quinto) por ano de serviço, contado a partir da data de suas nomeações.” </p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 117.0pt; line-

Processo	3000810-77.2024.8.06.0053
	height: 150%;"> Ora, ficou evidenciado na documentação acostada aos autos (ID 15506476/15506477) que, ainda na vigência desses atos normativos, o servidor público exerceu, por mais de 03 (três) anos, os cargos em comissão de “CHEFE DE DEPARTAMENTO DE AÇÕES PREVENTIVAS” (02/05/2017 a 21/12/2018) e de “CHEFE DE DIVISÃO DE OPERAÇÕES DE PATRIMÔNIO” (01/02/2019 a 17/05/2021), no Município de Camocim/CE.</p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 117.0pt; line-height: 150%;"> Assim, dúvida não há de que lhe assiste direito à incorporação de gratificação pelo exercício de função de direção, chefia ou assessoramento, na proporção de 3/5 (três quintos), e ao pagamento das parcelas em atraso, que não se encontram atingidas pela prescrição.</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Ademais, é válido destacar que, diversamente do sustenta o Município de Camocim/CE, o advento da Lei nº 1.528/2021, em nada afetou a esfera de interesses do servidor público, que implementou todos requisitos para a concessão da vantagem, em um momento anterior, como visto.</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Nesse sentido, há, inclusive, precedentes deste Tribunal, não se devendo confundir direito adquirido, com o seu efetivo exercício, ex vi:</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span style="font-size: 10pt;"> <span style="font-size: small;">“APELAÇÃO CÍVEL. ADMINISTRATIVO E PROCESSUAL CIVIL. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA DO MUNICÍPIO DE CAMOCIM. GRATIFICAÇÃO DE CARGO COMISSIONADO. INCORPORAÇÃO. LEI Nº 537/1993. ESTATUTO DOS SERVIDORES PÚBLICOS. PREVISÃO. PRINCÍPIO DA LEGALIDADE. OBSERVÂNCIA. POSTERIOR REVOGAÇÃO DA NORMA. CRISE FISCAL E ORÇAMENTÁRIA QUE NÃO SUPRIME O DIREITO DO SERVIDOR. PRECEDENTES. APELO CONHECIDO E DESPROVIDO. 1. Cuida-se de Recurso de Apelação Cível interposta pelo Município de Camocim, visando reformar sentença que julgou parcialmente procedente o pedido autoral, determinando a implantação e o pagamento da Gratificação Pelo Exercício de Função de Confiança na proporção de 1/5 por ano de exercício na função de Chefia, no caso específico, de Assessoramento de Nível Superior CAS-II, acumulando 5 (cinco) quintos da gratificação atualizada, na forma do art. 64 da Lei nº 537/1993 c/c Lei Municipal 939/04, além do pagamento das diferenças salariais do adicional, não pagos. 2. Nas razões recursais, alega, em síntese, a ineficácia da Lei Municipal nº 939/2004, tendo em vista que a gratificação por exercício de função de confiança, chefia e assessoramento, prevista no art. 64 da Lei nº 537/1993, fora revogada pela Lei Municipal n°1528/2021, de 17 de maio de 2021, e segundo entendimento adotado pelos Tribunais Superiores- STF e STJ, é vedado o reconhecimento de direito adquirido a regime jurídico de servidores, restando ilegítimo o pleito autoral, em razão da superveniência da Lei que extirpou os benefícios requeridos. Acrescenta que o erário do município ficaria drasticamente afetado caso fosse obrigado a implantar a gratificação pelo exercício da função comissionada a todos aqueles que se enquadram na hipótese normativa. 3. A legislação que instituía a Gratificação pelo Exercício de Função de ConfiançaLei Municipal nº 537/1993- foi revogada pela Lei Municipal nº 1528/2021, alterando alguns artigos, não mais contemplando a incorporação da gratificação. Todavia, a servidora que, antes da revogação do direito à incorporação, já tinham preenchido todos os requisitos exigidos para a sua fruição, não deverá ser atingida pela revogação, em relação ao tempo anterior à promulgação da lei revogadora, porque já é titular de direito adquirido, incorporado ao seu patrimônio, nos termos e condições estabelecidos na lei revogada. 4. No que concerne ao impacto financeiro que causará, por ocasião do pagamento da implantação da gratificação pelo exercício da função comissionada a autora/servidora, não merece respaldo legal, haja vista que o STJ possui interativa jurisprudência no sentido de que empecilhos de ordem financeira ou orçamentária não podem ser utilizados com vistas a afastar o direito dos servidores públicos quanto à percepção de vantagem legitimamente assegurada por lei. 5. Recurso de Apelação conhecido e desprovido.” (Apelação Cível - 0051147-29.2021.8.06.0053, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento:&#160; 15/06/2022, data da publicação:&#160; 15/06/2022) (destacado). </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: center;" align="center"> * * * * * </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “DIREITO ADMINISTRATIVO. PROCESSO CIVIL. REMESSA NECESSÁRIA

Processo	3000810-77.2024.8.06.0053
	AVOCADA. RECURSO DE APELAÇÃO. ADICIONAL POR TEMPO DE SERVIÇO. PRINCÍPIO DA LEGALIDADE. ARTIGO 69, DA LEI MUNICIPAL Nº 537/1993 (ESTATUTO DOS SERVIDORES DO MUNICÍPIO DE CAMOCIM/CE) GRATIFICAÇÃO A CADA ANUÊNIO DE EFETIVO SERVIÇO. PUBLICAÇÃO DA LEI INSTITUIDORA MEDIANTE AFIXAÇÃO NO ÁTRIO DOS PRÉDIOS PÚBLICOS. POSSIBILIDADE. AUSÊNCIA DE DEMONSTRAÇÃO PELA MUNICIPALIDADE DE ALGUM FATO IMPEDITIVO, MODIFICATIVO OU EXTINTIVO DO DIREITO AUTORAL. PRESCRIÇÃO DAS PARCELAS ANTERIORES AO QUINQUÊNIO DA DATA DE PROPOSITURA DA AÇÃO. CONSECTÁRIOS LEGAIS EM DESACORDO COM O ENTENDIMENTO FIRMADO PELO SUPERIOR TRIBUNAL DE JUSTIÇA. TEMA Nº. 905 (RESP. 1.495.146, 1.492.221 E 1.495.144). SENTENÇA ILÍQUIDA. HONORÁRIOS ADVOCATÍCIOS POSTERGADOS PARA A FASE DE LIQUIDAÇÃO. REMESSA NECESSÁRIA E RECURSO DE APELAÇÃO CONHECIDOS E NÃO PROVIDOS.” (Apelação Cível - 0051176-16.2020.8.06.0053, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 21/03/2022, data da publicação:&#160; 24/03/2022) </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> &#160;E a mera alegação, por parte do Município de Camocim/CE, de indisponibilidade orçamentária, por si só, também não é suficiente de afastar o direito do servidor público ao pagamento de vantagem.</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Com efeito, o STJ tem, reiteradamente, decidido que eventual dificuldade financeira ou proximidade dos limites impostos pela LRF, não configuram motivos idôneos para eximir a Administração do seu dever de satisfazer os legítimos anseios dos seus agentes, quanto ao recebimento de benefícios expressamente salvaguardados por lei, in verbis:</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO ESPECIAL. EXECUÇÃO DE SENTENÇA COLETIVA. LEGITIMIDADE ATIVA EXTRAORDINÁRIA DOS SINDICATOS A PROMOÇÃO DE AÇÕES E EXECUÇÕES EM FAVOR DOS SUBSTITUÍDOS. ORIENTAÇÃO FIRMADA PELO SUPREMO TRIBUNAL FEDERAL EM SEDE DE REPERCUSSÃO GERAL. RE 883.642/AL, DE RELATORIA DO MINISTRO&#160;RICARDO LEWANDOWSKI.&#160;NÃO INCIDÊNCIA DA VEDAÇÃO DO ART. 2o.-B DA LEI 9.494/1997.&#160;AGRAVO INTERNO DO ESTADO DO RIO GRANDE DO NORTE&#160;A QUE SE NEGA PROVIMENTO. 1. O&#160;entendimento do STJ é o de que o Sindicato, na qualidade de substituto processual, detém legitimidade ativa ad causam para atuar como substitutos processuais em Ações Coletivas, nas fases de conhecimento, na liquidação e na execução em nome dos integrantes da categoria que representam, inclusive nas liquidações e execuções de sentença, independentemente de autorização dos substituídos. Precedentes:&#160;AgInt no REsp. 1.769.764/SP, Rel. Min. BENEDITO GONÇALVES, DJe 30.5.2019 e&#160;AR 5.720/PR, Rel. Min. FRANCISCO FALCÃO, DJe 1o.7.2019. 2. É&#160;pacífico nesta Corte a orientação de que as restrições previstas na Lei de Responsabilidade Fiscal não podem servir de fundamento para o não cumprimento de direitos subjetivos do Servidor, sobretudo na hipótese de despesas decorrentes de decisão judicial, excluídas do limite de 60% (sessenta por cento) fixado para os Estados e Municípios por força do disposto no art. 19, § 1o., IV da Lei Complementar 101/2000. 3. Agravo Interno do&#160;ESTADO DO RIO GRANDE DO NORTE a que se nega provimento.” (AgInt no REsp 1601877/RN, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 22/09/2020, DJe 29/09/2020) </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Não por outra razão, as Câmaras de Direito Público do TJ/CE, em outros processos onde se discutia a mesma matéria de fundo desta actio, mantiveram as decisões que em determinaram a incorporação de gratificação pelo exercício de função de direção, chefia ou assessoramento, em favor dos servidores públicos do Município de Camocim/CE, ex vi:</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “APELAÇÃO. SERVIDOR PÚBLICO DO MUNICÍPIO DE CAMOCIM. INCORPORAÇÃO DE FRAÇÕES DA GRATIFICAÇÃO PELO EXERCÍCIO DE CARGO OU FUNÇÃO COMISSIONADA. PUBLICAÇÃO DA LEI ESPECÍFICA NO ÁTRIO DA PREFEITURA. CRITÉRIO DE VALIDADE. AUSENTE A PROVA DO FATO EXTINTIVO, MODIFICATIVO OU IMPEDITIVO, ÔNUS PREVISTO NO ART. 373, II, DO CPC, ACERCA DA NEGATIVA DE VIGÊNCIA DA LEI Nº 939/2004 POR AUSÊNCIA DE PUBLICAÇÃO. OBSERVÂNCIA DOS CRITÉRIOS LEGAIS PARA A INCORPORAÇÃO PARCIAL, EQUIVALENTE A 5/5 DA GRATIFICAÇÃO PELO

Processo	3000810-77.2024.8.06.0053
	DESEMPENHO POR MAIS DE CINCO ANOS DO CARGO EM COMISSÃO DE ORIENTADOR PEDAGÓGICO, SÍMBOLO CDM-VI. REQUISITOS PREVISTOS NOS ARTS. 63, I, E 64, §§ 1º A 4º, DA LEI Nº 573/1993 (RJU) E 1º, § ÚNICO, DA LEI Nº 939/2004. DEVIDA A INCORPORAÇÃO DA GRATIFICAÇÃO RESPECTIVA, NA PROPORÇÃO DE 5/5, EM PARCELAS VENCIDAS E VINCENDAS. PRESCRIÇÃO INEXISTENTE. HONORÁRIOS ARBITRADOS QUANDO DA LIQUIDAÇÃO DO JULGADO, MAJORADOS EM 30% (ART. 85, §§ 4º, II, E 11, DO CPC), TEMAS NÃO CONTIDOS NAS RAZÕES DO APELO. PRECEDENTES DO TJCE.RECURSO CONHECIDO, MAS DESPROVIDO; SENTENÇA MODIFICADA QUANTO A TEMA COGNOSCÍVEI EX OFFICIO: HONORÁRIOS. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará,à unanimidade, em conhecer da apelação, todavia, para negar-lhe provimento, modificando ex officio a sentença para alterar a forma da condenação ao pagamento de honorários advocatícios.” (APC - 0011774-35.2014.8.06.0053; Relator (a):&#160;PAULO AIRTON ALBUQUERQUE FILHO; Comarca:&#160;Camocim; Órgão julgador: 1ª Câmara de Direito Público; Data do julgamento: 09/11/2020; Data de registro: 09/11/2020) (destacado) </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: center;" align="center"> * * * * * </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160;APELAÇÃO CÍVEL ADMINISTRATIVO. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA MUNICIPAL. INCORPORAÇÃO DE GRATIFICAÇÃO. PREVISÃO LEGAL. PREENCHIMENTO DOS REQUISITOS. PAGAMENTO DEVIDO. DIFICULDADES ORÇAMENTÁRIAS. NÃO CONSTITUIÇÃO DE IMPEDIMENTO DE EFETIVAÇÃO DE DIREITO DE SERVIDOR PREVISTO EM LEI. PRECEDENTES. Não PROVIMENTO. SENTENÇA MANTIDA. 1.A Lei Municipal nº 537/93 prevê em, seu art. 64 e § 2º, que "ao servidor investido em função de direção, chefia ou assessoramento é devida uma gratificação pelo seu exercício" e "a gratificação prevista neste artigo incorpora-se à remuneração do servidor e integra o provento da aposentadoria, na proporção de 1/5 (um quinto) por ano de exercício na função de direção, chefia ou assessoramento, até o limite de 5 (cinco) quintos." 2.Comprovado o preenchimento dos requisitos legais, a autora faz jus à incorporação pleiteada, bem como ao pagamento das parcelas vencidas não atingidas pela prescrição. 3.Em momento algum as normas contidas no art. 64 e seus parágrafos levam à conclusão de que não seriam destinadas aos servidores efetivos, como quer fazer crer o apelante. 4.Há 16 (dezesseis) anos, época em que a Lei nº 939/2004 foi editada, era comum que os Municípios, principalmente os de menor porte, não dispusessem de órgãos de imprensa local. Assim, a prática corrente era a publicação das leis por afixação em locais públicos, como a sede da Prefeitura ou da Câmara Municipal, cuja validade é reconhecida na jurisprudência pacífica do STJ e desta Corte. 5.O Município não apresentou argumentos que levem a crer que essa prática não foi adotada em relação à multicitada Lei nº 939/2004. 6.O simples argumento desprovido de comprovação, acerca das dificuldades orçamentárias do Município, não tem o condão de afastar o direito da servidora previsto em lei, sob pena, inclusive, de enriquecimento sem causa da Administração. Precedentes desta Corte. 7.Apelação conhecida, porém desprovida. Sentença confirmada. ACÓRDÃO ACORDA a 3ª CÂMARA DE DIREITO PÚBLICO DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ, por uma de suas turmas julgadoras, à unanimidade, em conhecer da apelação, mas para negar-lhe provimento, tudo nos termos do voto do relator, parte deste. Fortaleza, 26 de outubro de 2020. (APC - 0017101-53.2017.8.06.0053; Relator (a):&#160;ANTÔNIO ABELARDO BENEVIDES MORAES; Comarca:&#160;Camocim; Órgão julgador: 3 ª Câmara de Direito Público; Data do julgamento: 26/10/2020; Data de registro: 26/10/2020) </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: center;" align="center"> * * * * * </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span style="font-size: 10pt;"> <span style="font-size: small;">ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA COM PEDIDO DE TUTELA ANTECIPADA. SERVIDORA PÚBLICA EFETIVA OCUPANTE DE FUNÇÃO COMISSIONADA. POSSIBILIDADE DE INCORPORAÇÃO DA GRATIFICAÇÃO CORRESPONDENTE, NOS TERMOS DA LEI MUNICIPAL Nº 573/1993 (ESTATUTO DOS SERVIDORES MUNICIPAIS). VALIDADE DA NORMA PUBLICADA MEDIANTE AFIXAÇÃO EM PRÉDIOS PÚBLICOS. IMPOSSIBILIDADE DE UTILIZAÇÃO DA LEI DE RESPONSABILIDADE FISCAL COMO RECUSA AO PAGAMENTO DE REMUNERAÇÃO DEVIDA À SERVIDORA. APELAÇÃO CÍVEL CONHECIDA E DESPROVIDA. REMESSA NECESSÁRIA CONHECIDA E PROVIDA PARCIALMENTE TÃO SOMENTE PARA DETERMINAR QUE A DEFINIÇÃO DO PERCENTUAL DA VERBA SUCUMBENCIAL SEJA PROCEDIDA QUANDO LIQUIDADO O JULGADO. Trata-se de Remessa

Processo	3000810-77.2024.8.06.0053
	Necessária e Apelação Cível interposta pelo MUNICÍPIO DE CAMOCIM adversando sentença proferida pelo Juízo de Direito da 1ª Vara da Comarca de Camocim que, nos Autos de Ação Ordinária de Cobrança manejada por MARIA DO LIVRAMENTO ZEFERINO FONTENELE em desfavor do referido Ente, julgou procedente o pedido contido na exordial, para o fim de condenar a municipalidade a incorporar definitivamente aos vencimentos da autora 3/5 da gratificação CDM-V, ante o preenchimento dos requisitos contidos no art. 64, parágrafo 2º da Lei Municipal nº 537/93 e art. 1º da Lei Municipal nº 939/04. O cerne da questão posta em descortinamento consiste em examinar se a parte autora, ora apelada, possui direito a perceber a gratificação por exercício de função comissionada, na proporção de 3/5, referentes à função de Coordenadora Pedagógica – Simbologia CDM-V, além do pagamento dos valores retroativos, devidamente atualizados. No caso, alega o Município apelado que a Lei Municipal nº 939, de 20/12/2004, regulamentadora dos critérios de incorporação das vantagens pertinentes aos cargos comissionados, não fora publicada, na forma determinada pela Lei Orgânica do Município, editada no ano de 2008, o que, segundo entende, lhe retiraria a eficácia. No entanto, em nenhum momento apresenta argumentos que refutem a possibilidade dela ter sido afixada, desde a sua promulgação em 2004, no átrio do Poder Municipal local, prática, usual em municípios de pequeno porte, consoante acima explanado, que confere ao mencionado diploma legal a eficácia necessária para fundamentar o pedido autoral, como bem reconhecido pelo juízo a quo. Com efeito, verifica-se que a autora é servidora pública efetiva ocupante do cargo de Professora desde 03/02/2003, tendo sido nomeada para o cargo comissionado de Coordenadora Pedagógica em 02/02/2009, restando demonstrado nos autos que a mesma exerceu o referido cargo de 02/02/2009 a 31/12/2012, de modo que deve incorporar a gratificação na fração de 3/5 da gratificação CDM-V, visto que preencheu os requisitos do art. 64 e parágrafos da Lei Municipal nº 537/93 e art. 1º da Lei Municipal nº 939/04. Destarte, mostra-se ilegal e indevida a supressão injustificada da gratificação pelo Ente Municipal, devendo ser imediatamente integralizada ao patrimônio da requerente. No que concerne ao argumento esboçado pela edilidade, de que haveria o comprometimento orçamentário, em implementar a gratificação devida à recorrida, realço que o Superior Tribunal de Justiça possui jurisprudência iterativa no sentido de que empecilhos de ordem financeira ou orçamentária não podem ser utilizados para elidir direito de servidores públicos ao percebimento de vantagem legitimamente assegurada por lei, cerceando, consequentemente, o direito legalmente reconhecido. Apelação Cível conhecida e desprovida. Remessa Necessária conhecida e parcialmente provida, tão somente para determinar que a definição do percentual da verba sucumbencial seja procedida quando liquidado o julgado. [...](APC - 0009657-71.2014.8.06.0053; Relator (a):&#160;LISETE DE SOUSA GADELHA; Comarca:&#160;Camocim; Órgão julgador: 1ª Câmara de Direito Público; Data do julgamento: 18/02/2019; Data de registro: 19/02/2019) </p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Diante do que, permanecem, pois, totalmente inabalados os fundamentos do decisum a quo, impondo-se sua manutenção neste azo.</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center">&#160;</p><p class="StandardWW" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> DISPOSITIVO </p><p class="MsoNormal" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Isto posto, conheço da apelação cível, mas para lhe negar provimento, mantendo inalterada a sentença proferida pelo magistrado de primeiro grau, por seus próprios termos.</p><p class="MsoNormal" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, in casu, o disposto no Tema nº 905 do STJ (REsp 1495146/MG) até 08/12/2021 e, após, o previsto no art. 3º da EC nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p class="Recuodecorpodetexto21" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Ademais, não sendo líquido o <em style="mso-bidi-font-style: normal;">decisum, a definição do <em style="mso-bidi-font-style: normal;">quantum dos honorários devidos pelo réu/apelante aos advogados do autor/apelado fica postergada para a fase de liquidação (CPC, art. 85, §4º, inciso II), oportunidade em que o Juízo a quo deverá considerar, inclusive, o trabalho adicional realizado em sede de recurso, nos termos do art. 85, § 11, do CPC.</p><p class="Recuodecorpodetexto21" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-

Processo	3000810-77.2024.8.06.0053
	justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> &#160;É como voto.</p><p class="Recuodecorpodetexto21" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="MsoNormal" style="margin-top: 6.0pt; text-align: center; text-autospace: none;" align="center"> R elatora </p><p> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3000224-59.2023.8.06.0058
Número de ordem	173
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dívida Ativa (Execução Fiscal)
Polo ativo	MUNICIPIO DE CARIRE
Advogado(s) - Polo ativo	PATRICIA ROSA MANSO NOBRE - (CE34329-A) SAULO GONCALVES SANTOS - (CE22281-A)
Polo passivo	FRANCISCO HAROLDO PONTE
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3000224-59.2023.8.06.0058
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <strong id="docs-internal-guid-c95771f6-7fff-d1b5-998e-d61c594a6674" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Processo: 3000224-59.2023.8.06.0058 – Apelação cível</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Apelante: MUNICÍPIO DE CARIRÉ</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Apelado(a): FRANCISCO HAROLDO PONTE</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size:12pt;font-family:'Times New Roman',serif;color:#000000;background-color:transparent;font-weight:700;font-style:italic;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-

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	wrap;">Ementa: Processo civil. Execução fiscal. Apelação. Valor inferior a 50 ortn. Inadmissibilidade do recurso. Art. 34 da lei 6.830/1980. Recurso não conhecido.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 1. Trata-se de apelação cível interposta pelo Município de Cariré contra sentença que extinguiu a Ação de Execução Fiscal sem resolução do mérito, por ausência de interesse processual, nos termos do art. 485, VI, do CPC/15.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 2. A despeito do julgamento e das razões expostas no apelo da municipalidade, a questão em discussão consiste em saber se é admissível a interposição de apelação em execução fiscal cujo valor exequendo é inferior a 50 ORTN.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 3. O art. 34 da Lei nº 6.830/1980 determina que nas execuções fiscais cujo valor seja igual ou inferior a 50 ORTN, somente são cabíveis embargos infringentes ou embargos de declaração, não sendo admissível a apelação.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 4. No caso concreto, o valor da dívida exequenda é inferior ao limite de alçada fixado pela legislação, motivo pelo qual a interposição da apelação não é cabível, configurando, assim, erro grosseiro, não sendo aplicável o princípio da fungibilidade recursal.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> 5. Recurso não conhecido.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> _________________</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Dispositivos relevantes citados: Lei nº 6.830/1980, art. 34;

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	CPC/2015, arts. 485, inciso VI, e 932, inciso III.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgRg no REsp n. 1.461.742/RS, Rel. Ministra Assusete Magalhães, 2ª Turma, j. 18/06/2015; TJCE, Apelação Cível 0008349-17.2011.8.06.0049, Rel. Desembargadora Maria Vilauba Fausto Lopes, 3ª Câmara de Direito Público, j. 03/07/2023.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">ACÓRDÃO: Vistos, relatados e discutidos estes autos, os Desembargadores da 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, acordam em não conhecer da apelação, nos termos do voto da relatora, parte integrante deste.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora indicadas pelo sistema.</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> &#160; Relatora</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <br /> </p><hr /><p>&#160;</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> RELATÓRIO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 85.03937007874016pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE CARIRÉ contra sentença proferida pelo Juízo da Vara Única da Comarca de Cariré que, em Ação de Execução Fiscal movida pela parte recorrente em face de FRANCISCO HAROLDO PONTE, julgou extinto o processo sem resolução de mérito por ausência de interesse processual, nos termos do Art. 485, VI, do CPC/15. Sem custas e honorários sucumbenciais.</p><p style="line-height: 1.7999999999999998; text-indent: 85.03937007874016pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Em suas razões recursais, a parte recorrente aduz, preliminarmente, a existência de conexão do presente feito com outros 62 (sessenta e dois processos). No mérito, defende a competência

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	constitucional da municipalidade para cobrança do tributo, a autonomia tributária do ente público e, por fim, a ausência de previsão legal sobre no que diz respeito à execução fiscal de baixo valor. No mais, pugna pelo provimento do apelo para, anulando a sentença vergastada, determinar o retorno dos autos à origem para regular prosseguimento da ação de execução fiscal.</p><p style="line-height: 1.7999999999999998; text-indent: 85.03937007874016pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Sem contrarrazões.</p><p style="line-height: 1.7999999999999998; text-indent: 85.03937007874016pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É o relatório. <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Deixo de abrir vista dos autos à Procuradoria-Geral de Justiça, a teor da Súmula nº 189 do STJ, verbis: "é desnecessária a intervenção do Ministério Público nas execuções fiscais".</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Pois bem.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> De acordo com o Art. 34 da Lei Federal nº 6.830/1980, das sentenças proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional – ORTN, somente serão cabíveis Embargos Infringentes e de Declaração. Vejamos: <br /> </p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> Art. 34 – Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional – ORTN, só se admitirão embargos infringentes e de declaração.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Da análise aos autos, verifica-se que na Certidão de Dívida Ativa que acompanha a exordial, a parte apelante pretende executar dívida relativa ao pagamento de IPTU e Taxas, no valor total de R$ 451,75 (quatrocentos e cinquenta e um reais e setenta e cinco centavos).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Registre-se que, com a extinção das ORTN como fator de indexação econômica, o colendo Superior Tribunal de Justiça definiu, no julgamento do REsp. nº 1.168.625/MG, o valor mínimo para o recurso de apelação em execução fiscal, fixando-o em R$ 328,27 (trezentos e vinte e

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	oito reais e vinte e sete centavos), como correspondente ao valor das antigas 50 ORTN, a ser corrigido pelo IPCA-E a partir de janeiro de 2001, considerada a data da propositura da ação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Na hipótese vertente, conforme se infere da inicial, protocolada em 30 de outubro de 2023, pretende a Fazenda Pública do Município de Cariré a cobrança, via execução fiscal, de crédito tributário no valor de R$ 451,75 (quatrocentos e cinquenta e um reais e setenta e cinco centavos). Nessa data, o valor mínimo de alçada apto a dar ensejo à interposição de eventual apelação correspondia a R$ 1.310,52 (um mil, trezentos e dez reais e cinquenta e dois centavos), corrigido pela calculadora do Banco Central do Brasil. Assim, vê-se que a importância exequenda é inferior ao patamar fixado pelo Art. 34 da Lei Federal nº 6.830/1980, sendo o caso, portanto, de inadmissibilidade do recurso apelatório dirigido a este egrégio Tribunal de Justiça.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> A fim de corroborar tal entendimento, trago à colação julgado da 3ª Câmara de Direito Público deste egrégio Tribunal de Justiça:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">TRIBUTÁRIO. APELAÇÃO EM EXECUÇÃO FISCAL. VALOR COBRADO INFERIOR A 50 ORTN. INADMISSIBILIDADE DO RECURSO, NA FORMA DO ART. 34 DA LEF. PRECEDENTES DO STF E DESTA EG. CORTE. APELAÇÃO NÃO CONHECIDA. 01. A presente execução fiscal foi proposta com o fito de cobrar débitos inscritos na dívida ativa no montante de inicial de R$549,19 (quinhentos e quarenta e nove reais e dezenove centavos), o qual, no entanto, não ultrapassa o valor de alçada estipulado no art. 34 da Lei nº. 6.830/80, que, na data da propositura da ação, equivalia a R$621,24 (seiscentos e vinte e um reais e vinte e quatro centavos), de acordo com os critérios de atualização definidos em sede de julgamento de recurso repetitivo (REsp nº. 1.168.625/MG) e obtido na ¿calculadora do cidadão¿, disponibilizada no sítio eletrônico do Banco Central do Brasil.. 02. E, no entanto, nos termos do art. 34 da LEF: ¿Das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinquenta) Obrigações Reajustáveis do Tesouro Nacional ORTN, só se admitirão embargos infringentes e de embargos de declaração¿. 03. Inclusive, o entendimento do STJ e desta Eg. Corte é assente no sentido de que é inadmissível a interposição do recurso de apelação nas hipóteses em que o valor cobrado na execução fiscal seja inferior ao valor de alçada estipulado na LEF, constituindo exceção ao duplo grau de jurisdição. 04. Recurso de Apelação não conhecido. ACÓRDÃO Vistos, relatados e discutidos, os autos da execução acima declinada, ACORDA a TURMA JULGADORA DA TERCEIRA CÂMARA DE DIREITO PÚBLICO DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ, por UNANIMIDADE, em NÃO CONHECER DA APELAÇÃO CÍVEL, nos termos do voto da eminente Relatora. Presidente do Órgão Julgador MARIA VILAUBA FAUSTO LOPES Desembargadora-relatora&#160; (Apelação Cível – 0008349-17.2011.8.06.0049, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 03/07/2023, data da publicação:&#160; 03/07/2023). (Destaque-se). <br /></p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Na mesma esteira: Apelação Cível – 0017382-55.2016.8.06.0049, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 3ª Câmara Direito Público, data do julgamento: 04/03/2024, data da publicação: 04/03/2024; Apelação Cível – 0287150-24.2022.8.06.0001, Rel. Desembargadora MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 22/05/2023, data da publicação: 22/05/2023; Apelação Cível – 0001023-47.2019.8.06.0171, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento: 20/03/2023, data da publicação: 20/03/2023.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Na mesma direção tem decidido o Superior Tribunal de Justiça – STJ, consoante se observa no seguinte precedente:</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">PROCESSUAL CIVIL. AGRAVO REGIMENTAL NO RECURSO ESPECIAL. OFENSA AO ART. 535 DO CPC. NÃO OCORRÊNCIA. EXECUÇÃO FISCAL. EXTINÇÃO. VALOR INFERIOR A 50 ORTNS. APELAÇÃO NÃO ADMITIDA. <span style="font-size: 10pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">RECURSO CABÍVEL. EMBARGOS INFRINGENTES. ART. 34 DA LEI 6.830/80. PRINCÍPIO DA FUNGIBILIDADE RECURSAL. INAPLICABILIDADE. AGRAVO REGIMENTAL IMPROVIDO. I. No acórdão objeto do Recurso Especial, o Tribunal de origem negou provimento a Agravo de Instrumento interposto, pelo agravante, de decisão que, aplicando a regra prevista no art. 34 da Lei 6.830/80, não recebeu a Apelação, manifestada contra a sentença que julgara extinta Execução Fiscal. II. Os Embargos de Declaração têm como objetivo sanar eventual obscuridade, contradição ou omissão existentes na decisão recorrida. Não há omissão, no acórdão recorrido, quando o Tribunal de origem pronuncia-se, de forma clara e precisa, sobre a questão posta nos autos, assentando-se em fundamentos suficientes para embasar a decisão. Ademais, o Magistrado não está obrigado a rebater, um a um, os argumentos trazidos pela parte. Inocorrência, no caso, de violação ao art. 535 do CPC. III. É firme a jurisprudência do Superior Tribunal de Justiça no sentido de que "não incide o princípio da fungibilidade em caso de ausência de qualquer dos requisitos a que se subordina, quais sejam: a) dúvida objetiva sobre qual o recurso cabível; b) inexistência de erro grosseiro; c) que o recurso inadequado tenha sido interposto no prazo do que deveria ter sido apresentado" (STJ, AgRg no AgRg nos EDcl nos EDv no AgRg no CC 134.824/GO, Rel. Ministro MAURO CAMPBELL MARQUES, PRIMEIRA SEÇÃO, DJe de 31/03/2015). IV. O art. 34 da Lei 6.830/80 é expresso ao determinar que, "das sentenças de primeira instância proferidas em execuções de valor igual ou inferior a 50 (cinqüenta) Obrigações Reajustáveis do Tesouro Nacional - ORTN, só se admitirão embargos infringentes e de declaração". Já o § 2º do referido dispositivo legal estipula que "os embargos infringentes, instruídos, ou não, com documentos novos, serão deduzidos, no prazo de 10 (dez) dias perante o mesmo Juízo, em petição fundamentada". V. Inviável, portanto, a incidência do princípio da fungibilidade recursal, no caso, pois existe disposição legal expressa, acerca do recurso cabível, o que afasta a

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	possibilidade de dúvida objetiva sobre qual recurso deveria ter sido interposto. Ademais, a questão relacionada ao não cabimento de Apelação, nas Execuções Fiscais de valor inferior a 50 ORTNs, encontra-se pacificada, na jurisprudência do Superior Tribunal de Justiça, o que evidencia a existência de erro grosseiro, na hipótese. VI. Não tendo sido admitida a Apelação, interposta pelo agravante, inviável o conhecimento das questões relacionadas ao mérito da sentença que extinguira a Execução Fiscal, pois, além de a matéria não ter sido prequestionada, seu exame implicaria supressão de instância. VII. Agravo Regimental improvido. (AgRg no REsp n. 1.461.742/RS, relatora Ministra Assusete Magalhães, Segunda Turma, julgado em 18/6/2015, DJe de 1/7/2015). (Destaque-se).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> In casu , a interposição de apelação em face de execução fiscal de valor inferior a 50 ORTN caracteriza erro grosseiro, devido, sobretudo, à ausência de dúvida quanto ao recurso a ser interposto. Nesse sentido, não se consagra a aplicabilidade do princípio da fungibilidade, logo, resta configurada a inadmissibilidade do presente recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Diante de tais ponderações, mister se faz não conhecer do recurso de apelação interposto pelo Município de Cariré, na forma do Art. 932, inciso III, do CPC/15, haja vista a via eleita afigurar-se inadequada para o combate à sentença proferida em sede de execução fiscal de importância inferior a 50 ORTN, conforme disposto no Art. 34 da Lei nº 6.830/1980.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Pelo exposto, NÃO CONHEÇO da apelação, eis que incabível.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> &#160; <span style="background-color: transparent; font-family: &quot;Times New Roman&quot;, serif; font-size: 12pt; white-

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	space-collapse: preserve; text-align: center;">Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	0000112-37.2012.8.06.0088
Número de ordem	174
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Pagamento
Polo ativo	MUNICIPIO DE IBICUITINGA
Advogado(s) - Polo ativo	HERBSTHER LIMA BEZERRA - (CE36621-A)
Polo passivo	JOSE CLEIDIANO BATISTA DE OLIVEIRA
Advogado(s) - Polo passivo	JOSE IDEMBERG NOBRE DE SENA - (CE14260-A) MARLA ISEUDA DA SILVA BARROS - (CE34912-A)
Terceiros	Não informado

Processo	0000112-37.2012.8.06.0088
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"> <span style="font-size: medium;"> <img 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AAAAAASUVORK5CYII=" alt="" /> </p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ <br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;">   <br /> </p><p> PROCESSO:&#160;0000112-37.2012.8.06.0088 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE IBICUITINGA. <br /> </p><p> APELADO: JOSE CLEIDIANO BATISTA DE OLIVEIRA.</p><p align="center">   <br /> </p><p class="MsoNormal" style="margin-left: 102.05pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">EMENTA: APELAÇÃO CÍVEL. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA. SERVIDOR PÚBLICO. REMUNERAÇÃO INFERIOR AO SALÁRIO MÍNIMO. IMPOSSIBILIDADE. OFENSA AO § 3º DO ART. 39 C/C INCISO IV DO ART. 7º DA CONSTITUIÇÃO FEDERAL. CONDENAÇÃO DO MUNICÍPIO DE IBICUITINGA/CE AO PAGAMENTO DE VALORES RETROATIVAMENTE DEVIDOS, DESDE QUE NÃO ATINGIDOS PELA PRESCRIÇÃO . PRECEDENTES <strong style="mso-bidi-font-weight: normal;">.   <strong style="mso-bidi-font-weight: normal;">RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-left: 102.05pt; text-align: justify;">   <strong style="mso-bidi-font-weight: normal;">1. Cuida-se, na espécie, apelação cível, desafiando sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação ordinária movida por servidor público em face do Município de Ibicuitinga/CE.   <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 102.05pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">   2. Ora, é cediço que são garantidos aos agentes públicos alguns dos direitos assegurados aos trabalhadores, em geral, dentre os quais, a percepção de remuneração em valor não inferior ao do salário mínimo (Constituição Federal de 1988, art. 39, § 3º c/c art. 7º, incisos IV)   <em style="mso-bidi-font-style: normal;">. </p><p class="MsoNormal" style="margin-left: 102.05pt; text-align: justify;"> 3. E, atualmente, não existe qualquer exceção à regra que estabelece o piso (mínimo) destinado aos agentes públicos para subsistência digna, razão pela qual não pode a Administração deixar de observá-la, independentemente da carga horária de trabalho cumprida   in concreto. &#160;   <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-left: 102.05pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">4. Assim,   dúvida não há de que, realmente, assiste ao servidor público o direito à   complementação de sua remuneração   em relação aos meses nos quais esta não atingiu um   salário mínimo, e ao pagamento dos

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	valores que lhe são retroativamente devidos pelo Município de <strong style="mso-bidi-font-weight: normal;">Ibicuitinga/CE , desde que não atingidos pela prescrição.</p><p class="MsoNormal" style="margin-left: 102.05pt; text-align: justify;"> 5. Permanecem, então, inabalados os fundamentos do decisum, devendo ser confirmado por este Tribunal <em style="mso-bidi-font-style: normal;"> . &#160; </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> - Precedentes. </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> - Recurso conhecido e não provido. </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> - Sentença mantida. </p><h3 style="margin: 12pt 0cm 0.0001pt; line-height: 150%; text-align: center;"> ACORDÃO </h3><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 0000112-37.2012.8.06.0088, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em <strong style="mso-bidi-font-weight: normal;">conhecer do recurso, mas para lhe negar provimento, confirmando a sentença, nos termos do voto da Relatora.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 &#160; </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: center;"> R elatora </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: justify;"> &#160; </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> RELATÓRIO &#160; </p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de Apelação Cível, adversando sentença proferida pelo o magistrado de primeiro grau, que deu parcial procedência a ação ordinária movida por servidor público em face do Município de Ibicuitinga/CE.</p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso: José Cleidiano Batista de Oliveira moveu ação ordinária em face do Município de Ibicuitinga/CE, aduzindo que, enquanto servidor público, durante alguns meses, teria recebido sua remuneração em valor inferior ao do salário mínimo, em clara e manifesta violação ao disposto na CF/88.</p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sustentou, ainda, que também lhe seriam devidas outras verbas, que não estariam sendo regularmente pagas, na via administrativa. </p><p class="MsoNormal" style="margin: 5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160;Diante do que, requereu, então, a condenação da Administração à efetivação de seus direitos, com efeitos financeiros retroativos.</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Contestação do ente público nos ID’s 15522585/15522586.</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sentença proferida pelo magistrado de primeiro grau, dando parcial procedência à <strong style="mso-bidi-font-weight: normal;">ação ordinária (ID

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	15522643), ex vi:</p><p class="Contedodatabela" style="margin-left: 4cm; text-indent: 0.3pt; line-height: 10pt; text-align: justify;"> “Ante o exposto,&#160; JULGO PARCIALMENTE PROCEDENTE&#160;a ação, condenando o Município de Ibicuitinga/CE a &#160;PAGAR&#160;à &#160;parte autora as diferenças entre a remuneração mensal e o salário mínimo relativos ao período compreendido entre&#160;Fevereiro/2005 a&#160;Fevereiro/2010. </p><p class="Contedodatabela" style="margin-left: 4cm; text-indent: 0.3pt; line-height: 10pt; text-align: justify;"> Condeno o requerido, ainda, ao pagamento dos reflexos incidentes nas verbas de 13º salário e terço de férias nos períodos correspondentes, cujo montante será oportunamente apurado em sede de liquidação de sentença, tudo atualizado monetariamente desde a data do vencimento de cada parcela e com juros de mora a partir da citação, extinguindo o processo com fulcro no art. 487, inciso I, do Código de Processo Civil. </p><p class="Contedodatabela" style="margin-left: 4cm; text-indent: 0.3pt; line-height: 10pt; text-align: justify;"> Sem prejuízo, condeno o promovido ao pagamento de honorários advocatícios, cuja definição do percentual somente ocorrerá quando liquidado o julgado, nos termos do art. 85, §4º, inciso II, do CPC. </p><p class="Contedodatabela" style="margin-left: 4cm; text-indent: 0.3pt; line-height: 10pt; text-align: justify;"> Em relação às parcelas atrasadas devidos, incidirá juros de mora com base no índice de remuneração oficial da caderneta de poupança, a partir da citação, e correção monetária pelo IPCA-E, a partir da data em que a parcela deveria ter sido paga, tudo conforme entendimento dos Tribunais Superiores, em sede de recursos repetitivos (STF, RE 870947, TEMA 810; e STJ, REsp 1495146/MG, TEMA 905). A partir da vigência da Emenda Constitucional nº 113/2021 (DOU 09/12/2021), haverá a incidência, uma única vez, até o efetivo pagamento, do índice da taxa referencial do Sistema Especial de Liquidação e de Custódia (Selic), acumulado mensalmente, vedada a cumulação com outros índices de juros ou correção. </p><p class="Contedodatabela" style="margin-left: 4cm; text-indent: 0.3pt; line-height: 10pt; text-align: justify;"> &#160;Deixo de condenar a parte requerida em custas processuais em razão da isenção concedida pela Lei Estadual nº. 16.132/2016. </p><p class="Contedodatabela" style="margin-left: 4cm; text-indent: 0.3pt; line-height: 10pt; text-align: justify;"> &#160; A presente sentença não sujeita à remessa necessária, por não superar o montante fixado no art. 496, § 3º, III, na forma do art. 509, § 2º, ambos do Código de Processo Civil. </p><p class="Contedodatabela" style="margin-left: 4cm; text-indent: 0.3pt; line-height: 10pt; text-align: justify;"> Publique-se. Registre-se. Intime-se. </p><p class="Contedodatabela" style="margin-left: 4cm; text-indent: 0.3pt; line-height: 10pt; text-align: justify;"> Com o trânsito em julgado, ausentes outros requerimentos, arquive-se. <strong style="mso-bidi-font-weight: normal;"> ” </p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Ibicuitinga/CE interpôs Apelação Cível (ID 15522647), afirmando que r. decisum deveria ser reformado, porque seria possível o pagamento de remuneração inferior a um salário mínimo, porque proporcional à carga horária de trabalho cumprida pelo servidor público, à época.</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, ao final, pugnou pelo provimento do seu recurso.</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> Foram ofertadas contrarrazões (ID 15522651).</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça <strong style="mso-bidi-font-weight: normal;"> como custos legis, na medida em que a questão devolvida a este Tribunal, em sede de recurso, é de natureza eminentemente patrimonial, não havendo, portanto, interesse público a ser tutelado pelo Parquet. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório.</p><p class="Texto" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;">&#160;</p><p class="Texto" style="margin: 12pt 0cm 6pt; text-indent: 0cm; line-height: 150%; text-align: center;">

Processo	0000112-37.2012.8.06.0088
	   VOTO </p><p class="Texto" style="margin: 12pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos todos os requisitos legais, conheço do recurso, passando, a seguir, ao enfrentamento de suas razões. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, atualmente, também são garantidos aos agentes públicos alguns dos direitos assegurados aos trabalhadores em geral, dentre os quais, a percepção de remuneração em valor não inferior ao do salário mínimo (Constituição Federal de 1988, art. 39, § 3º c/c art. 7º, incisos IV), in verbis: <em style="mso-bidi-font-style: normal;">.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios &#160;&#160;&#160; instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas.&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> [...]&#160; <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social: <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">IV- salário mínimo, fixado em lei, nacionalmente unificado, capaz de atender a suas necessidades vitais básicas e às de sua família com moradia, alimentação, educação, saúde, lazer, vestuário, higiene, transportes e previdência social, com reajustes periódicos que lhe preservem o poder aquisitivo, sendo vedada sua vinculação para qualquer fim.” (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É pacífica, outrossim, a orientação dos tribunais de que, nas causas movidas para a cobrança de verbas trabalhistas, cabe aos agentes públicos, única e tão somente, demonstrar a existência do vínculo com a Administração.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Já à Administração, por seu turno, recai o dever de comprovar o pagamento dos respectivos valores ou então a existência de qualquer outro fato extintivo, impeditivo ou modificativo do direito vindicado pelos agentes públicos.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isso nada mais é do que a aplicação da Teoria da Carga Dinâmica da Prova, segundo a qual seu ônus deve ser imputado à parte que, dadas as circunstâncias, tenha melhores condições para dele se desincumbir.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> De fato, é bem mais simples à Administração, que deve ter pleno controle dos dados relativos à vida funcional de todos os integrantes de seus quadros, fazer prova da inexistência de direito pleiteado por agentes públicos, ex vi:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “Ação de Cobrança – Saldo de verbas rescisórias – Ex-servidora estatutária do Município de Ferraz de Vasconcelos/SP – <strong style="mso-bidi-font-weight: normal;">Não se desincumbiu a ré, ora apelada, do seu ônus processual quanto à prova de fato impeditivo, modificativo ou extintivo do direito do autor, nos termos do art. 333, inciso II, do Código de Processo Civil – Impossibilidade de carrear à autora a produção de "prova diabólica" – Onus probandi que deve ser carreado àquele que tiver melhores condições de suportá-lo segundo a Teoria da Distribuição Dinâmica do ônus da prova. Atualização do débito nas condenações impostas à Fazenda Pública – Aplicação do disposto no art. 1º-F da Lei n.º 9.494/97, com redação determinada pelo art. 5.º da Lei n.º 11.960/09, observadas as determinações do C. Supremo Tribunal Federal. Sentença reformada – Recurso provido.”&#160;(TJSP - &#160;Apelação Cível 0006143-29.2014.8.26.0191; Relator (a):&#160;Renato Delbianco; Órgão Julgador: 2ª Câmara de Direito Público; Foro de Ferraz de Vasconcelos -&#160;3ª

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	Vara Judicial; Data do Julgamento: 01/09/2015; Data de Registro: 03/09/2015). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; line-height: 150%; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. VERBAS REMUNERATÓRIAS (13º SALÁRIO, FÉRIAS E LICENÇA-PRÊMIO). SERVIDOR PÚBLICO EFETIVO APOSENTADO. NECESSIDADE DE MELHOR INSTRUÇÃO DO FEITO, PELO MUNICÍPIO RÉU/APELADO. TEORIA DA DISTRIBUIÇÃO DINÂMICA DO ÔNUS DA PROVA. SENTENÇA CASSADA, DE OFÍCIO. RECURSO PREJUDICADO. <strong style="mso-bidi-font-weight: normal;">1. Embora, a priori, caiba ao autor o ônus de demonstrar o fato constitutivo do seu direito, tem entendido esta Corte, em situações como a dos autos, que ao ente público requerido torna-se mais fácil instruir o processo com cópias dos holerites e demais documentos funcionais do postulante, de forma a permitir a averiguação da regularidade ou não dos pagamentos, referentes ao período questionado. 2. À luz da teoria da distribuição dinâmica do ônus da prova (art. 373, §1º, CPC), deve ser cassada a sentença, ainda que de ofício, a fim de que o réu/apelado comprove a alegada quitação das verbas remuneratórias postuladas pelo autor/apelante, isto porque, em linha de princípio, quem afirma um fato positivo tem de prová-lo com preferência a quem sustenta um fato negativo. Sentença cassada, de ofício. Apelação cível prejudicada.” (TJGO, Apelação (CPC) 5216651-21.2017.8.09.0065, Rel. ZACARIAS NEVES COELHO, 2ª Câmara Cível, julgado em 30/08/2019, DJe &#160; de 30/08/2019). (destacado). </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; line-height: 150%; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 12pt 4cm; text-align: justify;"> “APELAÇÃO CÍVEL. DIREITO ADMINISTRATIVO. COBRANÇA. SERVIDOR MUNICIPAL COM VÍNCULO COMPROVADO. FALTA DE PAGAMENTO. ÔNUS DA PROVA QUE COMPETIA À ADMINISTRAÇÃO PÚBLICA. AUSÊNCIA PROBATÓRIA DA QUITAÇÃO DA DÍVIDA PELO MUNICÍPIO. DEVER DO ENTE PÚBLICO DE EFETUAR O PAGAMENTO DA CONTRAPRESTAÇÃO PELO TRABALHO DESEMPENHADO, SOB PENA DE ENRIQUECIMENTO ILÍCITO. CONSECTÁRIOS LEGAIS FIXADOS DE ACORDO COM OS PARÂMETROS ESTABELECIDOS PELO SUPREMO TRIBUNAL FEDERAL, NO JULGAMENTO DOS EMBARGOS DECLARATÓRIOS OPOSTOS NO RE 870.947, OBSERVADO PELO JUÍZO A QUO.&#160; APELO NÃO PROVIDO. SENTENÇA INTEGRADA. I - <strong style="mso-bidi-font-weight: normal;">Em ação de cobrança ajuizada por servidor contra Município, objetivando o pagamento de vencimento atrasado, comprovado o vínculo com a Administração, compete ao réu, a teor do inciso II, do artigo 373 do CPC, demonstrar a existência de fato impeditivo, modificativo, ou extintivo do direito vindicado, conceito no qual se inclui a demonstração, por via documental, da quitação da parcela trabalhista reclamada na presente demanda, ou de eventual afastamento temporário do demandante, o que, in casu, não ocorreu. II - Demonstrada a efetiva prestação de serviços pelo suplicante e não se desincumbindo a municipalidade de seu ônus probatório, é devida, ao servidor, a verba de ordem remuneratória pleiteada na inicial, sob pena de se configurar em enriquecimento sem causa da Administração &#160; Pública, em detrimento do particular. III - Tratando-se de condenação imposta à Fazenda Pública, os consectários legais devem ser fixados de acordo com os parâmetros estabelecidos pelo Supremo Tribunal Federal, no julgamento dos embargos declaratórios apresentados no RE 870.947, o que foi observado pelo Juízo a quo. IV - Apelo não provido. Sentença integrada.(APL nº 0500112-19.2013.8.05.0105,Relator: DINALVA GOMES LARANJEIRA PIMENTEL,Publicado em: 03/12/2019). (destacado) </p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, no presente caso, restou incontroverso nos autos não somente a existência do vínculo com o Município de Ibicuitinga/CE, mas também que o servidor público estava, realmente, auferindo uma remuneração em valor inferior a um salário mínimo, em clara e manifesta violação à CF/88, como visto. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Oportuno destacar, no ponto, que não existe qualquer exceção à regra que estabelece o piso (mínimo) destinado aos agentes públicos para subsistência digna, razão pela qual não pode a Administração deixar de observá-la, independentemente da carga horária de trabalho cumprida in concreto.</p><p class="MsoNormal" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Nesse sentido, dispõe a Súmula nº 47 do TJ/CE que:</p><p class="MsoNormal" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 11.35pt; margin-left: 4.0cm;

Processo	0000112-37.2012.8.06.0088
	text-align: justify; text-autospace: ideograph-numeric;"> Súmula 47, TJCE – " A remuneração total do servidor público não poderá ser inferior ao salário mínimo vigente no País, independentemente da carga horária de trabalho por ele cumprida." (destacado) &#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Assim, dúvida não há de que, realmente, assiste ao servidor público, in casu, o direito à complementação de sua remuneração em relação aos meses nos quais esta não atingiu um salário mínimo, e ao pagamento dos valores que lhe são retroativamente devidos pelo Município de Ibicuitinga/CE, com reflexo nas demais verbas trabalhistas (v.g., décimo terceiro, férias, e adicional de 1/3).</p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, por se tratar aqui de uma relação de trato sucessivo, em que não houve a negativa do próprio direito em si, a prescrição atinge apenas as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação.</p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inteligência da Sumula nº 85 do STJ, <em style="mso-bidi-font-style: normal;">ex vi</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-autospace: ideograph-numeric;">Súmula 85 do STJ - "Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação." (destacado)&#160;</p><p class="MsoNormal" style="text-indent: 4cm; line-height: 150%; text-align: justify;"> Permanecem, então, totalmente inabalados os fundamentos do decisum proferido pelo Juízo a quo, devendo ser confirmado por este Tribunal <em style="mso-bidi-font-style: normal;"> . &#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: justify;">&#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 8.5pt 0cm 6pt; text-indent: 111.85pt; line-height: 150%; text-align: justify;"> Isto posto, conheço d <strong style="mso-bidi-font-weight: normal;">o recurso, mas para lhe negar provimento, confirmando a sentença, por seus próprios termos.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, in casu, o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3 º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, não sendo líquido o <em style="mso-bidi-font-style: normal;">decisum, a definição do percentual dos honorários advocatícios, bem como o <em style="mso-bidi-font-style: normal;">quantum a ser suportado por cada um dos litigantes parcialmente sucumbentes, somente deverá ocorrer na fase de liquidação, a teor do que preconiza o art. 85, § 4º, inciso II, do CPC. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 114.75pt; line-height: 150%; text-align: justify;"> É como voto. </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 <span

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	class="Fontepargpadro7">&#160; </p><p class="MsoNormal" style="margin-bottom: 6pt; text-align: center;"> R elatora </p><p> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	175
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A) MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	OLGA MEIRE LOURENCO DUARTE ROCHA
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

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	servidora pública ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 6. Ademais, em se tratando de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Súmula nº 85 do Superior Tribunal de Justiça. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> IV. DISPOSITIVO </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 7. Recurso conhecido e não provido.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> ______</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Dispositivos relevantes citados: CF/88, arts. 7º, XVII e 39, §3º; Lei Municipal nº 081-A/1993, art. 47. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> Jurisprudência relevante citada: Súmula nº 85 do STJ. <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> &#160; </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> ACORDÃO </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000606-03.2024.8.06.0160, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em <strong style="mso-bidi-font-weight: normal;">conhecer do recurso, mas para lhe negar provimento, confirmando integralmente a sentença, nos termos do voto da e. Relatora.</p><p class="Recuodecorpodetexto21" style="margin: 11.35pt 0cm 11.35pt 0.55pt; text-indent: 112.85pt; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> R elatora &#160; </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;">&#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de Apelação Cível, adversando sentença proferida pelo M.M. Juiz de Direito da 1ª Vara Cível da Comarca de Santa Quitéria/CE, que deu parcial procedência a ação ordinária. &#160;</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária: Olga Meire Lourenço Duarte Rocha moveu ação ordinária, aduzindo, em suma, que têm sido excluídas, da base de cálculo do seu terço de férias, algumas vantagens que deveriam integrá-la, em afronta aos arts. 7º, inciso XVII, e 39, §3º, ambos da Constituição Federal de 1988.</p><p class="MsoNormal" style="margin: 5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Diante do que, requereu a condenação da Administração na imediata correção de tais falhas/omissões e, consequentemente, ao pagamento dos valores retroativamente devidos, in casu, acrescidos dos consectários legais. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> <span style="text-decoration:

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	underline;">Em sede de contestação (ID 15547041), o Município de Santa Quitéria/CE enfatizou que seus atos estariam amparados por lei e, portanto, não haveria nenhuma lesão a direito a ser afastada pelo Judiciário. &#160;</p><p class="MsoNormal" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sentença proferida pelo magistrado de primeiro grau (ID 15547049), dando parcial procedência a ação. Transcrevo seu dispositivo <em style="mso-bidi-font-style: normal;">:</p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> “Ante o exposto,&#160; JULGO PROCEDENTE&#160;a pretensão inaugural, com a resolução do mérito, na forma do art. 487, I, do CPC, para o fim de&#160; DETERMINAR&#160;que o requerido proceda ao pagamento do terço de férias à parte autora com incidência sobre sua remuneração integral, bem como&#160; CONDENÁ-LO&#160;ao pagamento das diferenças do terço de férias dos anos anteriores,&#160; ressalvada a prescrição quinquenal, e prestações vincendas, com juros e correção monetária na forma exposta na fundamentação.” (sic) </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Santa Quitéria/CE interpôs Apelação Cível (ID 15547053), buscando a reforma do referido decisum monocrático, basicamente, pelas mesmas razões outrora expostas nos autos. &#160; </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foram ofertadas contrarrazões (ID 15547056). &#160; </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça <strong style="mso-bidi-font-weight: normal;"> como custos legis, na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, como visto . </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;">&#160;</p><p class="Texto" style="margin: 5.95pt 0cm 11.35pt; text-indent: 0cm; text-align: center;"> VOTO </p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos todos os requisitos legais, conheço da apelação cível, e passo, a seguir, ao enfrentamento de suas razões. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> A principal questão discutida nos autos é sobre qual seria a base de cálculo correta a ser utilizada pelo Município de Santa Quitéria/CE, para fins de pagamento do terço de férias aos seus servidores públicos, como visto.</p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, nos termos do art. 39, §3º, c/c art. 7º, inciso XVII, da Constituição Federal de 1988, são garantidos a todos aqueles ocupantes de cargos públicos, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores em geral, entre eles, o terço de férias, in verbis: </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas.&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> [...]&#160; <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> § 3º Aplica-se aos servidores

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	ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social: &#160; </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 120.5pt; text-align: justify;"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal" <strong style="mso-bidi-font-weight: normal;"> ; (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vê-se, portanto, o terço de férias constitui um direito fundamental dos servidores públicos, que deve ser pago, a cada ano, com base na remuneração integral (que corresponde ao vencimento do cargo, somado a outras vantagens previstas em lei), como bem ensina a melhor doutrina, ex vi:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> "Remuneração, do latim remunerado, de <em style="mso-bidi-font-style: normal;">remunerare, originariamente indica qualquer tipo de retribuição monetária correlata à prestação dos serviços efetuada. O termo, em sentido amplo, corresponde a toda e qualquer verba contra prestativa atribuída aos agentes do Estado em virtude do seu labor. Mas, <em style="mso-bidi-font-style: normal;">stricto sensu, tal como empregado no artigo 37, X, da Constituição, <strong style="mso-bidi-font-weight: normal;">remuneração é sinônimo de vencimentos do servidor, correspondendo ao somatório do vencimento – retribuição em dinheiro pelo exercício do cargo ou função pública com valor fixado em lei – e das demais vantagens inerentes ao cargo ou aos seus respectivos ocupantes (vantagens de caráter individual)." (DI PIETRO, Maria Sylvia Zanella, MOTTA, Fabrício, FERRAZ, Luciano de Araújo. Servidores Públicos na Constituição Federal. 3ª Ed. – São Paulo: Atlas, 2015, p. 113). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, no âmbito do Município de Santa Quitéria/CE, a matéria se encontra disciplinada pela Lei nº 081-A/1993 (Estatuto dos Servidores Públicos), mais especificamente, em seu art. 47, que assim dispõe:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> " Art. 47. Remuneração é o vencimento de cargo efetivo acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei." (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Facilmente se extrai que a base de cálculo do terço de férias deve ser mesmo a remuneração integral, que sempre corresponderá ao vencimento do cargo, somado às outras vantagens – permanentes ou temporárias - recebidas, à época, pela servidora pública (exceto as de natureza indenizatória). </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Aliás, este tem sido o posicionamento da 3ª Câmara de Direito Público do TJ/CE, em casos praticamente idênticos ao dos autos: <em style="mso-bidi-font-style: normal;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <em style="mso-bidi-font-style: normal;">" EMENTA: APELAÇÕES CÍVEIS. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA. SERVIDORES PÚBLICOS DO MUNICÍPIO DE CATUNDA/CE. ADICIONAL POR TEMPO DE SERVIÇO. BASE DE CÁLCULO. &#160;REMUNERAÇÃO INTEGRAL. IMPOSSIBILIDADE. EFEITO "CASCATA". VEDAÇÃO PREVISTA NO ART. 37, INCISO XIV, DA CF/88. VANTAGEM INCIDENTE APENAS SOBRE O VENCIMENTO DO CARGO. COM REFLEXOS NO 13ª (DÉCIMO TERCEIRO) E NO 1/3 (TERÇO) DE FÉRIAS. PRECEDENTES DESTE TRIBUNAL. RECURSOS CONHECIDOS E NÃO PROVIDOS. SENTENÇA MANTIDA.&#160; 1. Foi devolvida a este Tribunal, em sede de Apelações Cíveis, a controvérsia em torno de base de cálculo correta, para fins de pagamento do adicional por tempo de serviço aos servidores públicos do Município de Catunda/CE. &#160; 2. Atualmente, tem prevalecido, entre as Câmaras de Direito Público do TJ/CE, a orientação no sentido de que os percentuais relativos aos "anuênios" somente devem incidir sobre o vencimento do cargo, sob pena de ofensa ao art. 37, inciso XIV, da Constituição Federal de 1988. &#160;3. E foi exatamente isso o que estabeleceu o Juízo &#160; a quo no presente caso, não havendo, portanto, qualquer reparo a

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	ser feito por este Tribunal, em seu &#160; decisum. 4. Aqui, vale destacar que, diversamente do que sustenta o Município de Catunda/CE, não configura “efeito cascata” a inclusão de tal vantagem (“anuênios”) no cálculo do 13º (décimo terceiro) e do 1/3 (terço) de férias, porque estes, sim, são pagos com base na remuneração integral dos servidores públicos (art. 7º, incisos VIII e XVII, c/c art. 39, §3º, ambos da Constituição Federal de 1988). 5. É bom ressaltar, ainda, que não houve, propriamente, a declaração de inconstitucionalidade Lei Complementar nº 001/1993, mas apenas foi dada ao seus arts. 47 e 68 uma interpretação conforme a CF/88, o que afasta a necessidade de observância da cláusula de reserva de plenário, segundo o Supremo Tribunal Federal. 6. Permanecem, então, inabalados os fundamentos da sentença, devendo ser confirmada neste azo. - Precedentes. - Recursos conhecidos e não providos. - Sentença confirmada. &#160;(APELAÇÃO CÍVEL - 30006470420238060160, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 05/05/2024) (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Consequentemente, era mesmo o caso de condenação do Município de Santa Quitéria/CE à efetivação do direito da servidora pública ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, em se tratando, aqui, de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Sú mula nº 85 do STJ, in verbis:</p><p class="MsoNormal" style="margin: 6pt 0cm 12pt 4cm; text-align: justify;"> Súmula 85 do STJ - “Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação.”</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Também há precedentes deste Tribunal no mesmo sentido:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <span style="font-family: arial, helvetica, sans-serif;"> <span style="color: black; background: white;"> <span style="font-size: small;">“CONSTITUCIONAL E ADMINISTRATIVO. REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL. AGENTE DE ENDEMIAS. ARGUMENTO RECURSAL DE QUE O "INCENTIVO FINANCEIRO" NÃO DEVE SER CONSIDERADO NO CÁLCULO DA REMUNERAÇÃO INTEGRAL. INOVAÇÃO RECURSAL. APELO NÃO CONHECIDO NESTE PONTO. DÉCIMO TERCEIRO SALÁRIO E FÉRIAS COM BASE NA REMUNERAÇÃO INTEGRAL (ARTS. 7º, VIII E XVII E 39, § 3º, DA CF E ARTS. 46, 47, 64 E 80 DA LEI MUNICIPAL Nº 081-A/93). ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. SENTENÇA ILÍQUIDA. HONORÁRIOS SUCUMBENCIAIS A SEREM DEFINIDOS APENAS POR OCASIÃO DA LIQUIDAÇÃO. CONDENAÇÃO DA FAZENDA PÚBLICA EM DESPESAS PROCESSUAIS. DESCABIMENTO. REEXAME CONHECIDO E PARCIALMENTE PROVIDO. APELO CONHECIDO EM PARTE E, NESTA EXTENSÃO, PROVIDO. 01. A municipalidade alega que a vantagem intitulada "incentivo financeiro" não deve ser considerada na base de cálculo da "remuneração integral" da promovente, por ser transitória e possuir caráter indenizatório, nos termos do art. 3º da Lei Municipal nº 862/2015. Contudo, tal argumento não foi submetido ao crivo do juízo de 1º grau em sede de contestação, tampouco consiste em matéria cognoscível ex officio, configurando, portanto, inovação recursal. Assim, não conheço do apelo nesse ponto. 02. Aduz, ainda, que a sentença hostilizada merece reparo no tocante à fixação dos juros e correção monetária, com o fito de observar a orientação do Superior Tribunal de Justiça vertida no Tema nº 905. De fato, assiste razão ao ente apelante, quando se insurge contra os parâmetros dos encargos financeiros decorrentes da condenação, fixados no decisum. 03. Em reexame necessário, forçoso manter a condenação do ente federado ao pagamento das diferenças do décimo terceiro salário e do terço constitucional de férias com base em sua remuneração integral, com a ressalva da prescrição quinquenal. 04. Precedentes. 05. Por fim, a sentença merece reparos, ainda em sede de reexame necessário, no que diz respeito aos honorários de sucumbência, porquanto referida decisão é ilíquida, de maneira que a fixação dessa verba somente ocorrerá na fase de liquidação [art. 85, § 4º, II, do CPC.] 06. Reexame necessário conhecido e parcialmente provimento e apelação parcialmente conhecida e provida, no sentido de determinar que: a) os encargos legais decorrentes da condenação sejam fixados em observância à orientação do STJ (REsp 1.495.146/MG), b) a verba honorária sucumbencial seja fixada apenas por ocasião da liquidação do julgado e c) seja decotada da condenação o pagamento do ente requerido em despesas processuais.” (Apelação / Remessa Necessária&#160;- 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 11/07/2022, data da publicação:&#160; 11/07/2022)

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	(destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Permanecem, portanto, totalmente inabalados os fundamentos do decisum proferido pelo Juízo a quo, devendo ser confirmado por este Tribunal.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> <br /> </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, <strong style="mso-bidi-font-weight: normal;">conheço do recurso, <strong style="mso-bidi-font-weight: normal;">mas para lhe negar provimento, confirmando integralmente a sentença, por seus próprios termos.</p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, <em style="mso-bidi-font-style: normal;">in casu, o disposto no Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o previsto no art. 3 º da EC nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, não sendo líquido o <em style="mso-bidi-font-style: normal;">decisum, a definição do <em style="mso-bidi-font-style: normal;">quantum dos honorários devidos pelo réu/apelante aos advogados da autora/apelada fica postergada para a fase de liquidação (CPC, art. 85, §4º, inciso II), oportunidade em que o Juízo a quo deverá levar em consideração, inclusive, o trabalho adicional realizado em sede de recurso, nos termos do art. 85, § 11, do CPC.</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É como voto.</p><p class="Recuodecorpodetexto21" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 0cm; line-height: 150%; text-align: center;"> R elatora </p><p style="text-align: justify;"> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Adicional por Tempo de Serviço
Polo ativo	MARIA DE FATIMA LIMA DE ARAUJO
Advogado(s) - Polo ativo	RONALDO FARIAS FEIJAO - (CE24951-A)
Polo passivo	MUNICIPIO DE SANTA QUITERIA Procuradoria do Município de Santa Quitéria
Advogado(s) - Polo passivo	MANUELITO MELO MAGALHAES - (CE41127-A) ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A)
Terceiros	Não informado

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="text-align: center;"><span style="font-size: medium;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5/Zs5emQv33zzzzdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79u+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWcWMhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4d4P0P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmXbnH6YX+8u7H77L/bHBMXvNmv3NHGb3RnDk6TawjnlJJTnEpw1mfEhQsYs3ychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3Ta

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4VNtHZ3W/Met/g2X/6yapyu9BUy9JWrp4MR8eep/szCw+OfzbVPFv/5nW/73y/wnAFFMa2H
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AAAAAASUVORK5CYII=

" alt="" /> </p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ <br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;">   <br /> </p><p> PROCESSO:&#160;3000705-70.2024.8.06.0160 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MARIA DE FATIMA LIMA DE ARAUJO.</p><p> APELADO: MUNICIPIO DE SANTA QUITERIA. <br /> </p><p align="center">&#160;</p><p align="center">&#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-autospace: none;"> EMENTA: CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. PRELIMINAR.   CERCEAMENTO DE DEFESA. AFASTADA. MÉRITO. SERVIDORA PÚBLICA DO MUNICÍPIO DE SANTA QUITÉRIA/CE. ADICIONAL POR TEMPO DE SERVIÇO. PREVISÃO NO ART. 68 DA LEI Nº 0081-A/93. AUTO-APLICABILIDADE DA NORMA. REQUISITOS ATENDIDOS   IN CONCRETO. DIREITO À IMPLANTAÇÃO DE TAL VANTAGEM, EM SEU CONTRACHEQUE, SOB A FORMA DE “ANUÊNIOS”. RELAÇÃO DE TRATO SUCESSIVO. PRESCRIÇÃO QUINQUENAL (DECRETO Nº 20.910/1932, ART. 1º). INCIDÊNCIA APENAS NO QUE SE REFERE AOS SEUS EFEITOS FINANCEIROS. BASE DE CÁLCULO. VENCIMENTO DO CARGO. INTERPRETAÇÃO CONFORME A CONSTITUIÇÃO FEDERAL DE 1988. PRECEDENTES DO TJ/CE . RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE.</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .25pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: none; text-autospace: none; mso-vertical-align-alt: auto;">   - Precedentes. </p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .25pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: none; text-autospace: none; mso-vertical-align-alt: auto;">   - Recurso conhecido e parcialmente provido. </p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .25pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: none; text-autospace: none; mso-vertical-align-alt: auto;">   - Sentença reformada em parte. </p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .25pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: none; text-autospace: none; mso-vertical-align-alt: auto;">   &#160; </p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: .25pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: none; text-autospace: none; mso-vertical-align-alt: auto;">   &#160; </p><p class="Standard" style="margin-bottom: .25pt; text-align: center; mso-pagination: none; text-autospace: none; mso-vertical-align-alt: auto;" align="center">   <span style="text-

Processo	3000705-70.2024.8.06.0160
	decoration: underline;"> ACORDÃO </p><p class="Standard" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000705-70.2024.8.06.0160, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, <strong style="mso-bidi-font-weight: normal;">conhecer do recurso, para afastar a preliminar suscitada e, no mérito, dar-lhe parcial provimento, reformando, em parte, a sentença proferida pelo magistrado de primeiro grau, nos termos do voto da Relatora.</p><p class="Standard" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center">&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="MsoNormal" style="margin-top: 6.0pt; text-align: center; text-autospace: none;" align="center"> R elatora </p><p class="MsoNormal" style="margin-top: 6.0pt; text-align: center; text-autospace: none;" align="center"> <br /> </p><p class="Text" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; text-indent: 0cm; line-height: 150%; text-autospace: none;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 112.85pt; line-height: 150%; text-align: justify;"> Trata-se, no presente caso, de Apelação Cível, adversando sentença proferida pelo magistrado de primeiro grau, que teve por improcedente ação ordinária (Processo nº 3000705-70.2024.8.06.0160).</p><p class="Text" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária: a Sra. Maria de Fátima Lima de Araújo ingressou com ação ordinária em face do Município de Santa Quitéria/CE, aduzindo que, enquanto servidora pública, teria direito à implementação, em seu contracheque, do adicional por tempo de serviço (ATS), sob a forma de “anuênios” (e não de “quinquênios”), como previsto no art. 68 da Lei nº 081-A/1993.</p><p class="Text" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Enfatizou, ainda, que a base de cálculo de tal vantagem deveria ser a remuneração integral, e não apenas o vencimento do seu cargo. </p><p class="MsoNormal" style="margin: 5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Requereu, então, a condenação da Administração na correção de sua falha/omissão, inclusive, com efeitos financeiros retroativos.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Em contestação (ID 15551421), o ente público suscitou, preliminarmente, a incidência da prescrição quinquenal (Decreto n.º 20.910/1932, art. 1º) e, com relação ao mérito, a impossibilidade de concessão dos benefícios ora requeridos por sua agente in concreto, por absoluta falta de amparo legal.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Réplica (ID 15551426).</p><p class="Standard" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> A sentença : o Juízo a quo decidiu pela improcedência da ação (ID 15551431). Transcrevo seu dispositivo, no que interessa:</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “Ante o exposto, JULGO IMPROCEDENTES os pedidos formulados na exordial, com a resolução do mérito, na forma do art. 487, I, do CPC. &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span style="font-size:

Processo	3000705-70.2024.8.06.0160
	small;">Em face da sucumbência, condeno a parte autora ao pagamento das despesas processuais e dos honorários advocatícios, estes fixados em 10% sobre o proveito econômico obtido, observando-se a condição suspensiva de exigibilidade, na forma do art. 99, § 3°, do Código de Processo Civil. &#160;</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> Não apresentado recurso no prazo legal, certifique-se o trânsito em julgado e, nada sendo postulado após 10 (dez) dias, arquivem-se os autos.” (sic)</p><p class="MsoNormal" style="margin-bottom: 11.35pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformada, a servidora pública interpôs Apelação Cível (ID 15551432), buscando, preliminarmente, a nulidade do referido decisum, por cerceamento de defesa, e, no mérito, a sua integral reforma por este Tribunal.</p><p class="Standard" style="margin-bottom: 11.35pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Contrarrazões ofertadas pelo ente público (ID 15551440).</p><p class="MsoNormal" style="margin-bottom: 11.35pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça como custos legis, na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, não havendo, portanto, eventual interesse público a ser tutelado pelo Parquet, o que, inclusive, consta do parecer exarado no processo de nº 3000175-66.2024.8.06.0160 (ID 13602930), que versa sobre um caso praticamente idêntico ao dos autos. </p><p class="Text" style="margin-bottom: 11.35pt; text-indent: 4.0cm; line-height: 150%; text-autospace: none;"> É o relatório. </p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 113.95pt; line-height: 150%; text-autospace: none;">&#160;</p><p class="Standard" style="margin-bottom: 11.35pt; text-align: center; line-height: 150%; text-autospace: none;" align="center"> VOTO </p><p class="Text" style="margin-bottom: 11.35pt; text-indent: 4.0cm; line-height: 150%;"> Por partes e em tópicos, segue este voto. </p><p class="Text" style="margin-bottom: 11.35pt; text-indent: 4.0cm; line-height: 150%;"> - Preliminar. </p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%; tab-stops: 163.05pt;"> Preliminarmente, a servidora pública sustentou que seria o decisum nulo de pleno direito <em style="mso-bidi-font-style: normal;">, por cerceamento de defesa.</p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%; tab-stops: 163.05pt;"> Razão, porém, não lhe assiste.</p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> De fato, ao conduzir o processo, deve o Órgão Julgador observar os princípios do contraditório e da ampla defesa, sempre franqueando aos litigantes o poder/dever de contribuir para a correta compreensão da matéria controvertida e, consequentemente, para a formação de sua convicção.</p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Ocorre que, <em style="mso-bidi-font-style: normal;">in casu, a documentação acostada pelas partes se mostrou satisfatória, não demandando a produção de quaisquer outras provas em audiência, como, <em style="mso-bidi-font-style: normal;">v.g., depoimentos pessoais e oitivas de testemunhas.</p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Isso significa dizer, pois, que a hipótese dos autos era, realmente, de resolução antecipada da lide, nos termos do art. 355, inciso I do CPC/2015, porque desnecessária a realização de dilação probatória, <em style="mso-bidi-font-style: normal;">in verbis:</p><p class="artigo" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 0cm; mso-list: l0 level1 lfo2;"> “ Art. 355. O juiz julgará antecipadamente o pedido, proferindo sentença com resolução de mérito,

Processo	3000705-70.2024.8.06.0160
	quando: </p><p class="artigo" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.35pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 0cm; mso-list: l0 level1 lfo1;"> I - não houver necessidade de produção de outras provas;” </p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%; tab-stops: 163.05pt;"> Reunidas as condições exigidas na lei, é obrigação do Órgão Julgador enfrentar, assim que possível, o mérito da causa, predominando seu prudente arbítrio, ao aferir se há ou não necessidade dilação probatória, em cada caso, para evitar a realização de medidas inúteis e/ou procrastinatórias.</p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%; tab-stops: 163.05pt;"> Logo, não há que se falar, aqui, em cerceamento de defesa, porque a documentação existente no processo se apresentou apta para persuasão racional Juízo a quo, estando seu decisum de acordo com art. 355, inciso I do CPC.</p><p class="Recuodecorpodetexto22" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.35pt; margin-left: 0cm; text-indent: 4.0cm; line-height: 150%;"> Este é o posicionamento adotado pelo STJ, <em style="mso-bidi-font-style: normal;">ex vi:</p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DE INDENIZAÇÃO. DANOS MATERIAIS. 1. PRETENSÃO DE EXPEDIÇÃO DE OFÍCIO À VARA CRIMINAL PARA OBTENÇÃO DE CÓPIA INTEGRAL DE AÇÃO PENAL. APLICAÇÃO DO PRINCÍPIO DA LIVRE PERSUASÃO RACIONAL. REVISÃO. INADMISSÍVEL. SÚMULA 7/STJ. &#160; 2. &#160; REQUERIMENTO DA PARTE AGRAVADA DE APLICAÇÃO DA MULTA PREVISTA NO § 4º DO ART. 1.021 DO CPC/2015. 3. AGRAVO IMPROVIDO. 1. Deve ser ratificado o afastamento de cerceamento de defesa, pois, como ressaltado na decisão monocrática, cabe ao magistrado verificar a existência de provas suficientes nos autos para ensejar o julgamento antecipado da lide ou indeferir a produção de provas consideradas desnecessárias, conforme o princípio do livre convencimento motivado ou da persuasão racional. 2. A aplicação da multa prevista no § 4º do art. 1.021 do CPC/2015 não é automática, não se tratando de mera decorrência lógica do não provimento do agravo interno em votação unânime. A condenação do agravante ao pagamento da aludida multa, a ser analisada em cada caso concreto, em decisão fundamentada, pressupõe que o agravo interno mostre-se manifestamente inadmissível ou que sua improcedência seja de tal forma evidente que a simples interposição do recurso possa ser tida, de plano, como abusiva ou protelatória, o que, contudo, não se verifica na hipótese ora examinada. 3. Agravo interno a que se nega provimento.” (AgInt no AREsp 949.788/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 02/02/2017, DJe 10/02/2017) (destacado) </p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: center;" align="center"> * * * * * </p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “AGRAVO INTERNO NO AGRAVO EM RECUSO ESPECIAL. PROCESSUAL CIVIL. CONTRATO BANCÁRIO. JULGAMENTO ANTECIPADO DA LIDE. INDEFERIMENTO DE PROVA PERICIAL. CERCEAMENTO DE DEFESA. INOCORRÊNCIA. APRECIAÇÃO DE PROVA. PRINCÍPIO DO LIVRE CONVENCIMENTO. ART. 131 DO CÓDIGO DE PROCESSO CIVIL DE 1973. TAXA DE JUROS ANUAL SUPERIOR AO DUODÉCUPLO DA MENSAL. CAPITALIZAÇÃO PACTUADA. JUROS REMUNERATÓRIOS. TAXA MÉDIA DE MERCADO. &#160; JURISPRUDÊNCIA DO STJ. ABUSIVIDADE NO PERÍODO DA CONTRATUALIDADE. INOCORRÊNCIA. MORA CARACTERIZADA. &#160; INTERESSE DE AGIR. REDUÇÃO DOS HONORÁRIOS. INVIABILIDADE. SÚMULA 7 DO STJ. AGRAVO INTERNO DESPROVIDO.” (AgInt no AREsp 923.772/PR, Rel. Ministro PAULO DE TARSO SANSEVERINO, TERCEIRA TURMA, julgado em 13/12/2016, DJe 01/02/2017) (destacado) </p><p class="Standard" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Fica, então, afastada essa preliminar. </p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> - Mérito. </p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-

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	justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Já no mérito, foi devolvida a este Tribunal a controvérsia em torno: (a) da forma correta de implantação do adicional por tempo de serviço (ATS) que é devido aos servidores públicos do Município de Santa Quitéria/CE (“quinquênios” ou “anuênios”), e (b) da base de cálculo a ser utilizada para essa finalidade (a remuneração integral ou apenas o vencimento do cargo).</p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> A matéria se encontra disciplinada pela Lei nº 081-A/1993 (R.J.U), mais especificamente, em seu art. 68, que assim dispõe: </p><p class="Text" style="margin-left: 4.0cm; text-indent: 0cm;"> “Art. 68. <strong style="mso-bidi-font-weight: normal;">O adicional por tempo de serviço é devido à razão de 1% (um por cento) por ano de serviço público efetivo, incidente sobre a remuneração de que trata o art. 47. </p><p class="Text" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.35pt; margin-left: 4.0cm; text-indent: 0cm;"> Parágrafo único – <strong style="mso-bidi-font-weight: normal;">O servidor fará jus ao adicional a partir do mês que completar o anuênio ” (destacado)</p><p class="Standard" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, facilmente se infere, a partir de sua mera leitura, que consiste em norma auto-aplicável, prescindindo de regulamentação por qualquer outro ato (v.g., lei, decreto, etc.) para que possa produzir efeitos, e que assegura a implantação de tal vantagem, sob a forma de “anuênios” (e não de “quinquênios”).</p><p class="Text" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Assim, dúvida não há que a Sra. Maria de Fátima Lima de Araújo tem sim direito à integralidade do adicional por tempo de serviço (ATS) que lhe é devido pela Administração, à razão de 1% (um por cento) para cada ano de efetivo exercício do seu cargo, como previsto no art. 68 da Lei nº 081-A/1993 (R.J.U.). </p><p class="Text" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Com efeito, incumbe ao Município de Santa Quitéria/CE, em hipóteses como a dos autos, demonstrar, v.g. <em style="mso-bidi-font-style: normal;">, que os servidores públicos não exerceram seus cargos ininterruptamente, ou que existe alguma outra causa legítima para não ser concedida tal vantagem, o que, entretanto, não ocorreu. </p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> É válido destacar, nesse ponto, que a Lei nº 647/2009, ao instituir o Plano de Cargos e Carreiras do Magistério, não revogou aqueles benefícios previstos n a Lei nº 081-A/1993 (R.J.U.), que são extensíveis a todos os servidores públicos (como é o caso, v.g., do adicional por tempo de serviço). </p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Foi exatamente isso o que decidiu a 3ª Câmara de Direito Público do TJ/CE, no âmbito do Processo nº 3000924-20.2023.8.06.0160), quando aprovou o voto da Relatora, Desa. Maria do Livramento Alves Magalhães, ex vi: </p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> “Outra alegação do município de Santa Quitéria é de que a Lei nº 647/2009 revogou, em seu artigo 50, os incentivos e gratificações de leis ordinárias destinados aos profissionais do magistério. No entanto, como bem disse o juízo primevo, o mencionado artigo revoga apenas as gratificações previstas que se destinavam ao magistério e não as que abrangem todos os servidores do município. Portanto, o adicional por tempo de serviço continua sendo garantido a todos os servidores da municipalidade.” &#160;(destacado)</p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Por outro lado, em se tratando aqui de uma relação de trato sucessivo, a prescrição atinge apenas as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, permanecendo totalmente incólume, porém, o direito da servidora pública à implementação, em seu contracheque, do adicional por tempo de serviço (“anuênios”), em percentual correspondente ao número de anos efetivamente trabalhados para o Município de Santa Quitéria/CE. </p><p

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	class="Recuodecorpodetexto21" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Nesse sentido, dispõe a sumula nº 85 do STJ, <em style="mso-bidi-font-style: normal;">ex vi:</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; text-autospace: none;"> Súmula 85 do STJ - “Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação.”</p><p class="Text" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ademais, no que se refere à sua base de cálculo, tem prevalecido, ultimamente, a orientação no sentido de que os percentuais relativos aos “anuênios” somente devem incidir sobre o vencimento do cargo ocupado pelo agente nos quadros da Administração, para que não ocorra um indevido “efeito cascata”, que é vedado pelo art. 37, inciso XIV, da Constituição Federal, in verbis: </p><p class="Text" style="margin-left: 4.0cm; text-indent: 0cm;"> “Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios de legalidade, impessoalidade, moralidade, publicidade e eficiência e, também, ao seguinte: </p><p class="Text" style="margin-left: 4.0cm; text-indent: 0cm;"> [...] </p><p class="Text" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 11.35pt; margin-left: 4.0cm; text-indent: 0cm;"> XIV - os acréscimos pecuniários percebidos por servidor público não serão computados nem acumulados para fins de concessão de acréscimos ulteriores ;” (destacado)&#160;&#160;&#160; </p><p class="Text" style="margin-bottom: 11.35pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, este importante dispositivo da CF/88 tem por finalidade evitar o que também é conhecido como “repicão”, onde cada novo acréscimo vai incidindo sobre o total de ganhos do agente, o que gerava, no passado, situações absurdas, com o pagamento de altíssimas remunerações pela Administração. </p><p class="Text" style="margin-bottom: 11.35pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Acerca do tema, ensina José dos Santos Carvalho Filho que: “ <strong style="mso-bidi-font-weight: normal;"> no inciso XIV do art. 37, o Constituinte, mais uma vez, a exemplo do que fizera no inciso anterior, procurou impedir o chamado efeito cascata. Para tanto, consignou que os acréscimos pecuniários recebidos pelo servidor não podem ser computados nem acumulados para fins de concessão de acréscimos ulteriores. O que o mandamento deixa claro é que, se o servidor faz jus a determinado acréscimo pecuniário, deve ele incidir sobre a parcela que constitui seu vencimento-base (ou vencimento-padrão), não se podendo considerar, para tanto, outros acréscimos já acoplados ao referido vencimento. Em outras palavras, é o vencimento-base (ou equivalente) que serve de base de cálculo para a inclusão de vantagens pecuniárias, e não o somatório dele com vantagens existentes anteriormente .” (CARVALHO FILJO, José dos Santos, Constituição Federal Comentada / Alexandre de Moraes ... [et al.]; [organização Equipe Forense]. 1. Ed. – Rio de Janeiro: Forense, 2018, p. 53)</p><p class="Standard" style="margin-bottom: 11.35pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> E outra não tem sido a linha ultimamente adotada por este Tribunal, em contextos praticamente idênticos ao dos autos, <em style="mso-bidi-font-style: normal;">ex vi: </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span style="font-size: small;"> <span style="color: black;">“DIREITO ADMINISTRATIVO. SERVIDOR PÚBLICO. ADICIONAL POR TEMPO DE SERVIÇO. DIREITO À INCORPORAÇÃO DO ADICIONAL POR TEMPO DE SERVIÇO. RELAÇÃO DE TRATO SUCESSIVO. OBSERVÂNCIA À PRESCRIÇÃO QUINQUENAL. AUTOAPLICABILIDADE DA NORMA QUE PREVÊ O PAGAMENTO DO ADICIONAL EM COMENTO. INOCORRÊNCIA DE VIOLAÇÃO AO PRINCÍPIO DA LEGALIDADE. PEDIDO DE REFORMA PARA PAGAMENTO SER CALCULADO SOBRE A REMUNERAÇÃO, NOS TERMOS DO ART. 47 DA LEGISLAÇÃO MUNICIPAL. BASE DE CÁLCULO PARA INCLUIR TODAS AS VANTAGENS PECUNIÁRIAS. IMPOSSIBILIDADE. VEDAÇÃO CONSTITUCIONAL. EFEITO CASCATA. ART. 37, XIV, DA CF. CONDENAÇÃO NAS

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	PARCELAS VENCIDAS E VINCENDAS DO ADICIONAL POR TEMPO DE SERVIÇO COM REFLEXOS SOBRE FÉRIAS, 13º SALÁRIO E TERÇO CONSTITUCIONAL. APELOS CONHECIDOS. PARCIAL PROVIMENTO DO RECURSO DE APELAÇÃO DA AUTORA E DESPROVIMENTO DO RECURSO DO MUNICÍPIO DE SANTA QUITÉRIA. 1. Na espécie, a discussão principal gira em torno do direito da autora, servidora pública do Município de Santa Quitéria à incorporação do adicional por tempo de serviço no percentual de 1% (um por cento) por ano de efetivo trabalho exercido, a contar da data de ingresso no serviço público, bem como a condenação do ente municipal ao pagamento das parcelas pretéritas não pagas,&#160;com os reflexos devidos em férias, 13º salário e terço constitucional. 2. No caso em análise, o direito versado nos autos, está previsto no Artigo 68. da Lei Municipal nº. 081-A de 11 de outubro de 1993, que instituiu o Estatuto dos Servidores Públicos Municipais de Santa Quitéria (R.J.U.) 3. Desse modo, verifica-se que o dispositivo é autoaplicável não havendo dúvidas de que o servidor que se enquadra em tal situação têm direito subjetivo ao benefício, inexistindo óbice ou condição ao seu deferimento, não caracterizando ofensa ao princípio da legalidade. 4. No que tange à prescrição, esta incide somente sobre as parcelas vencidas antes do quinquênio imediatamente anterior à propositura da ação, e não sobre o fundo de direito, por se tratar de relação jurídica de trato sucessivo. É o que preconiza a Súmula nº 85 do Superior Tribunal de Justiça. 5. Embora prescritas as parcelas vencidas antes do quinquênio que precedeu o ajuizamento da demanda, a servidora faz jus à incorporação de um anuênio a cada ano de serviço público prestado. Precedentes TJCE. 6. Verifica-se que o Ente Público não juntou aos fólios processuais qualquer documento capaz de provar fato que modificasse, impedisse ou mesmo extinguisse o direito vindicado, não se desincumbindo do seu ônus. Desta feita, inexistem razões para modificação da decisão prolatada anteriormente, eis que não há argumentos para infirmar a fundamentação adotada. 7. Quanto ao pleito da autora de reforma da sentença para pagamento do adicional por tempo de serviço sobre a remuneração integral, nos termos do art. 68 da Lei Complementar Municipal de n.º 0081-A/93, não merece prosperar, tendo em vista que o juízo sentenciante observou o disposto no art. 7º, incisos VIII e XVIII, e o art. 39, § 3º, combinado com o disposto no inciso XIV do art. 37, todos da Constituição Federal. 8. Ademais, a jurisprudência do STJ orienta-se no sentido de que o cálculo das vantagens pecuniárias deve ser realizado sobre o vencimento básico do cargo efetivo, desconsiderando-se todas as demais vantagens do cargo, de natureza temporária ou permanente, sob pena de escalonamento de vantagem geradora de efeito cascata, que onera ilegalmente os cofres públicos. 9. Assim, a sentença merece ser reformada apenas para incluir na parte dispositiva a condenação do Município de Santa Quitéria ao pagamento das parcelas vencidas e vincendas do adicional, com reflexos em férias, 13º salário e terço constitucional, sem que influa em outras verbas que não as previstas constitucionalmente. 10. Apelações cíveis conhecidas. Apelo da autora parcialmente provido e apelo do município desprovido.” (APELAÇÃO CÍVEL - 30008670220238060160, Relator(a): JOSE TARCILIO SOUZA DA SILVA, 1ª Câmara de Direito Público, Data do julgamento: 21/06/2024) (destacado)</p><p class="Standard" style="margin-left: 4cm; text-align: center; text-indent: 0cm;"> &#160; * * * * *</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;">“APELAÇÕES CÍVEIS. CONSTITUCIONAL E ADMINISTRATIVO. AÇÃO ORDINÁRIA JULGADA PARCIALMENTE PROCEDENTE. IRRESIGNAÇÃO DE AMBAS AS PARTES. SERVIDORA PÚBLICA DO MUNICÍPIO DE SANTA QUITÉRIA. DIREITO À PERCEPÇÃO DO ADICIONAL POR TEMPO DE SERVIÇO SOB A FORMA DE ANUÊNIO. LEI MUNICIPAL Nº 081-A/1993. NORMA AUTOAPLICÁVEL E DESTINADA A TODOS OS SERVIDORES. PRESSUPOSTOS LEGAIS ATENDIDOS. VERBA DEVIDA. IMPOSSIBILIDADE DA BASE DE CÁLCULO SER SOBRE A REMUNERAÇÃO INTEGRAL. VEDAÇÃO AO EFEITO “CASCATA”. ART. 37, INCISO XIV, DA CF/88. INCIDÊNCIA SOBRE O VENCIMENTO DO CARGO. RECURSOS DE APELAÇÃO CONHECIDOS E DESPROVIDOS. SENTENÇA MANTIDA. 1. Trata-se de Apelações Cíveis interpostas por ambas as partes, Damisa Braga Araújo Viana e o Município de Santa Quitéria, com o propósito de reforma da sentença proferida pelo juízo da 2ª Vara Cível da Comarca de Santa Quitéria, que julgou parcialmente procedente a pretensão autoral, reconhecendo o direito da demandante ao recebimento do adicional por tempo de serviço na forma de anuênio, tendo por base de cálculo o vencimento base. 2. Insurge-se a autora contra a sentença, requerendo que o adicional seja calculado sobre a remuneração integral e não sobre o vencimento base, enquanto que o promovido pugna pela improcedência da ação, aduzindo, em suma, não ter a autora direito ao adicional por tempo de serviço na forma de anuênio. 3. O Estatuto Geral dos Servidores Públicos Municipais de Santa Quitéria (Lei Complementar Municipal de n.º 0081-A/ 93) se trata de norma autoaplicável. Portanto, comprovado o preenchimento dos requisitos legais pela servidora, esta faz jus ao

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	pagamento do anuênio desde o seu ingresso no serviço público, mostrando-se manifestamente constitucional o reconhecimento do direito da postulante à referida vantagem, observada a prescrição quinquenal, conforme previsto na sentença. 4. O artigo 50 da Lei 647/2009 revogou apenas as gratificações previstas que se destinavam ao magistério e não as que abrangem todos os servidores do município. Portanto, o adicional por tempo de serviço continua sendo garantido a todos os servidores da municipalidade. <strong style="font-size: small;"> 5. Atualmente, entre as Câmaras de Direito Público do TJ/CE, prevalece o entendimento de que os percentuais relativos ao adicional por tempo de serviço devem incidir sobre o vencimento do cargo e não sobre a remuneração, para que não ocorra o indevido “efeito cascata”, em flagrante violação ao art. 37, inciso XIV, da Constituição Federal de 1988. 6. Recursos conhecidos e desprovidos. Sentença mantida.” (APELAÇÃO CÍVEL - 30009242020238060160, Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHAES, 3ª Câmara de Direito Público, Data do julgamento: 10/07/2024) (destacado).</p><p class="Text" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Bom deixar claro, ainda, que não há aqui, propriamente, a declaração de inconstitucionalidade da Lei nº 081-A/1993 (R.J.U.), mas apenas é dada aos seus artigos uma interpretação conforme a CF/88, o que, segundo o STF, afasta a necessidade de observância da cláusula de reserva de plenário, ex vi: </p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph;"> <span style="font-size: 10pt;"> <span style="font-size: small;">“APELAÇÕES EM MANDADO DE SEGURANÇA (EX OFFICIO E DOIMPETRADO). PRELIMINARES DE ILEGITIMIDADE PASSIVA AD CAUSAM E INCOMPETÊNCIA ABSOLUTA DO JUÍZOREJEITADAS. MÉRITO: ALEGAÇÃO DE AUSÊNCIA DE DIREITOLÍQUIDO E CERTO DA IMPETRANTE. SENTENÇA A QUOFAVORÁVEL À IMPETRANTE. RECURSO DO IMPETRADO. LEI 9394/96 REGULADORA DE IDADE PARA CURSAR SUPLETIVO. APROVAÇÃO EM VESTIBULAR. GARANTIA DE SE MATRICULAR E FREQÜENTAR AS AULAS CONCEDIDA EMLIMINAR E EM SENTENÇA A QUO. SITUAÇÃO FÁTICA CONSOLIDADA DEVENDO TORNAR-SE DEFINITIVA A MATRÍCULA. APELAÇÕES CONHECIDAS E IMPROVIDAS. PRECEDENTES” (fls. 121-122). Os embargos de declaração opostos foram rejeitados (fls. 139-143).2. Inadmitido o recurso na origem (fls. 168-170), subiram os autos em virtude de provimento do agravo de instrumento.3. A parte recorrente, com fundamento no art. 102, III, a e b, alega ofensa ao art. 97 da Constituição Federal (fls. 146-155).4. O Ministério Público Federal opinou pelo não conhecimento do recurso e, caso superada esta fase, pelo seu desprovimento (fls. 178-181).5. Preliminarmente, verifico que o acórdão recorrido não declarou a inconstitucionalidade de lei ou tratado federal, sendo, portanto, incabível a interposição do recurso extraordinário com fundamento na alínea b do inciso III do artigo 102 da Constituição Federal. Não houve, portanto, julgamento contrário ao disposto no art. 97 da Constituição Federal, que cuida da denominada “reserva de plenário”, para fins de possível declaração de inconstitucionalidade de lei ou ato normativo do poder público. Sem margem ao cabimento do presente recurso. Sobre tal ponto, aliás, reporto-me ao decidido no RE 184.093/SP, rel. Min. Moreira Alves, 1ª Turma, DJ 05.09.1997.6. Corroborando esse entendimento, cito o parecer do Ministério Público Federal na parte que interessa: “Consoante a jurisprudência dessa Corte Suprema, “a decisão impugnável pelo RE, 'b', é a que se fundamenta, formalmente, em declaração de inconstitucionalidade de tratado ou lei federal, feita em conformidade com o disposto no art. 97, da Constituição”, o que não se verifica na hipótese dos autos. Portanto, por não ter ocorrido qualquer declaração de inconstitucionalidade de lei ou ato normativo federal, descabida, também, uma eventual submissão ao plenário ou corte especial do Tribunal a quo, pelo que a irresignação, ao sustentar a afronta ao art. 97 da Carta Magna, padece de vício argumentativo insuperável, devendo incidir a Súmula nº 284/STF” (fl. 180). 7. Ante o exposto, com fundamento no art. 557, caput, do CPC, nego seguimento ao recurso. (RE 566502 BA, Relator: Min. ELLEN GRACIE, Data de Julgamento: 15/10/2010, Data de Publicação: 05/11/2010). (destacado) </p><p class="Text" style="margin: 12pt 0cm 5.65pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Por tudo isso, deve, então, ser dado parcial provimento ao recurso, para fins de reforma, em parte, do decisum oriundo do Juízo a quo. </p><p class="Text" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; text-indent: 0cm; line-height: 150%;" align="center">&#160;</p><p class="Text" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; text-indent: 0cm; line-height: 150%;" align="center"> DISPOSITIVO </p><p class="MsoNormal" style="text-indent: 4cm; line-height: 150%; text-align: justify;"> <span

Processo	3000705-70.2024.8.06.0160
	style="color: black;"> Isto posto, <strong style="mso-bidi-font-weight: normal;">conheço da apelação cível, para afastar a preliminar suscitada e, no mérito, dar-lhe parcial provimento, reformando, em parte, a <strong style="mso-bidi-font-weight: normal;">sentença proferida pelo magistrado de primeiro grau, no sentido de condenar o Município de Santa Quitéria/CE (i) à implementação do adicional por tempo de serviço (ATS) em favor da servidora pública, sob a forma de “anuênios” (Lei nº 081-A/1993, art. 68), tendo por base de cálculo o vencimento do cargo (e não sua remuneração integral), e (ii) ao pagamento de valores retroativamente devidos, desde que, por óbvio, não atingidos pela prescrição (Decreto nº 20.910/32, art. 1º). </p><p class="Standard" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%; text-autospace: none;"> Já no que se refere aos índices de atualização da dívida em aberto, há ser observado, <em style="mso-bidi-font-style: normal;"> in casu , o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3 º da EC nº 113/2021.</p><p class="Standard" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%; text-autospace: none;"> Ademais, não sendo líquido o <em style="mso-bidi-font-style: normal;">decisum, a definição do percentual dos honorários advocatícios, bem como o <em style="mso-bidi-font-style: normal;">quantum a ser suportado por cada um dos litigantes parcialmente sucumbentes, somente deverá ocorrer na fase de liquidação, a teor do que preconiza o art. 85, § 4º, inciso II, do CPC. </p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> É como voto. </p><p class="Standard" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 4.0cm; line-height: 150%;"> Local, data e hora informados pelo sistema.</p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center">&#160;</p><p class="Standard" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORT. 1.550/2024 </p><p class="Standard" style="margin-top: 8.5pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; text-autospace: none;" align="center"> Relatora</p><p> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	177
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Licença-Prêmio
Polo ativo	MUNICIPIO DE CAMOCIM
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA JOSE FONTENELE DO NASCIMENTO CAMPOS
Advogado(s) - Polo passivo	ITALO SERGIO ALVES BEZERRA - (CE23487-A)
Terceiros	Não informado

Processo	3000486-87.2024.8.06.0053
Acordão	<p style="text-align: center;"> <img style="font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3TaQ+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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	class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 4. É inconteste que cabe à Administração, <em style="mso-bidi-font-style: normal;">a priori, a escolha do momento mais adequado para a concessão das licenças-prêmio adquiridas pelos seus agentes, de acordo com a necessidade de serviço e o interesse público.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 5. Tal discricionariedade, entretanto, não é absoluta, podendo a Administração ser submetida ao controle realizado Poder Judiciário, quando seu comportamento extrapolar os limites da proporcionalidade e razoabilidade, <em style="mso-bidi-font-style: normal;">in concreto, malferindo direitos e garantias fundamentais estabelecidos pela CF/88.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 6. Sucede que, até 17/05/2021, a servidora pública contava com mais de 18 (dezoito) anos de efetivo exercício em seu cargo, possuindo, com isso, tempo suficiente para usufruir d e 03 (três) licenças-prêmio adquiridas ainda durante vigência dos arts. 102 e s.s. da Lei nº 537/1993.</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 7. E, por sua vez, o Município de Camocim/CE não demonstrou satisfatoriamente, <em style="mso-bidi-font-style: normal;">in casu, a existência de qualquer fato impeditivo, modificativo ou extintivo do direito vindicado, deixando, por conseguinte, de se desincumbir do seu ônus probatório, de que trata o art. 373, inciso II, do CPC. &#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 8. Assim, não se mostrando proporcional ou razoável comportamento adotado pelo Município de Camocim/CE, procedeu corretamente o Juízo a quo, ao determinar, em seu decisum, a elaboração de um cronograma para fruição das licenças-prêmio adquiridas pela servidora pública, não havendo, aqui, ofensa ao princípio da separação dos poderes.</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">IV. DISPOSITIVO &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 9. Reexame Necessário e Apelação Cível conhecidos, mas não providos. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> 10. Sentença confirmada.</p><p class="MsoNormal" style="margin-left: 4cm; text-indent: 0cm; text-align: justify;"> ______ </p><p class="western" style="margin: 0cm; text-indent: 0cm; text-align: justify;"> &#160;</p><p class="western" style="margin: 0cm 0cm 0cm 4cm; text-indent: 0cm; text-align: justify;"> Dispositivo relevante citado : Lei nº 537/1993, art. 102.</p><p class="MsoListParagraph" style="text-align: justify;"> &#160;</p><p class="western" style="margin: 0cm 0cm 0cm 4cm; text-indent: 0cm; text-align: justify;"> &#160; &#160; </p><h3 style="margin: 6pt 0cm; text-align: center;"> ACÓRDÃO </h3><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Reexame Necessário e de Apelação Cível nº 3000486-87.2024.8.06.0053, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Reexame Necessário e da Apelação Cível, mas para lhes negar provimento, <strong style="mso-bidi-font-weight: normal;">mantendo totalmente inalterada a sentença, nos termos do voto da e. Relatora.</p><p class="Recuodecorpodetexto21" style="margin: 11.35pt 0cm 11.35pt 0.55pt; text-indent: 112.85pt; line-height: normal; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 &#160; </p><p class="MsoNormal" style="text-align: center;">

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	R elatora </p><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; text-indent: 4cm; line-height: normal; text-align: justify;"> &#160;</p><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 117pt; line-height: 150%; text-align: justify;"> Cuida-se, na espécie, de Reexame Necessário e Apelação Cível adversando sentença proferida pelo magistrado de primeiro grau, que deu total procedência a ação ordinária movida por servidora pública em face do Município de Camocim/CE (Processo nº 3000486-87.2024.8.06.0053)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária : Maria José Fontenele do Nascimento Campos moveu ação ordinária em face do Município de Camocim/CE, requerendo a concessão de 03 (três) licenças-prêmio a que teria direito, na forma dos arts. 102 e s.s. da Lei nº 537/1993, por contar com mais de 18 (dezoito) anos de efetivo exercício no cargo de professora, até sua revogação em 17/05/2021. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> Em contestação (ID 15555646), o Município de Camocim/CE sustentou, em suma, que não haveria mais embasamento para concessão de licenças-prêmio à servidora pública, desde a revogação da Lei nº 537/1993.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sentença proferida pelo o magistrado de primeiro grau (ID 15555649), dando total procedência à ação ordinária , <em style="mso-bidi-font-style: normal;">in verbis:</p><p class="MsoBodyText" style="margin-left: 4cm; text-align: justify;"> “DIANTE DO EXPOSTO, considerando a argumentação supra citada, entendo por bem julgar PROCEDENTE o pleito autoral, extinguindo o feito com resolução do mérito, nos moldes do art. 487, I, CPC, de modo que deve a parte promovida, em 30 (trinta) dias, após o trânsito em julgado da ação, apresentar calendário de fruição da licença prêmio. </p><p class="MsoBodyText" style="margin-left: 4cm; text-align: justify;"> Caso o (a) REQUERIDO não apresente o referido calendário no lapso temporal supracitado, fica, de logo, concedida a licença prêmio prevista no art. 102 do RJA, no caso dos autos ao autor que faz jus à três períodos de licença-prêmio. </p><p class="MsoBodyText" style="margin-left: 4cm; text-align: justify;"> Requerido isento de custas.&#160;Com base no art. 85, parágrafo 8º, CPC, condeno o Município sucumbente em honorários advocatícios que fixo em R$ 2.000,00 (dois mil reais). </p><p class="MsoBodyText" style="margin-left: 4cm; text-align: justify;"> Sentença não sujeita à remessa necessária .” (sic)</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Camocim/CE interpôs Apelação Cível (ID 15555651), sustentando que seria indevida a intervenção do Poder Judiciário, in concreto, porque a efetiva fruição das licenças-prêmio pelos servidores se encontra submetida à conveniência e oportunidade da Administração, que sempre deve ter sua atuação pautada pela supremacia do interesse público. &#160;</p><p class="Texto" style="margin: 12pt 0cm 8.5pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foram ofertadas contrarrazões (ID 15555656). <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessária a intervenção da PGJ como custos legis, na

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	medida em que não há interesse público a ser tutelado pelo Parquet, o que, inclusive, consta do parecer exarado no processo de nº 3000944-07.2024.8.06.0053 , que versa sobre a mesma questão de fundo . &#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É o relatório.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> &#160;</p><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> VOTO </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Presentes os requisitos legais, conheço da Apelação Cível.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E mais, também deve ser revista a sentença, em sede de Reexame Necessário, por não se mostrar evidente, de plano, nenhuma das hipóteses de dispensa do Duplo Grau de Jurisdição (art. 496, §§ 3º e 4º, do CPC).</p><p class="MsoNormal" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Pois bem.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foi devolvida a este Tribunal a controvérsia em torno do direito de servidora pública do Município de Camocim/CE de usufruir de 03 (três) licenças-prêmio adquiridas ainda durante a vigência dos arts. 102 e s.s. da Lei nº 537/1993 (posteriormente revogados pela Lei nº 1.528/2021) , <em style="mso-bidi-font-style: normal;">in verbis:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “Art. 102. <strong style="mso-bidi-font-weight: normal;">Após cada qüinqüênio do efetivo exercício, o servidor fará jus a 03 (três) meses de licença, a título de prêmio por assiduidade, sem prejuízo de remuneração.” (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, pelo que se extrai do texto legal vigente até 17/05/2021, o direito à fruição de tal benefício surgia a partir do mês subsequente àquele em que a servidora pública completasse 05 (cinco) anos de exercício no seu cargo.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É inconteste que cabe à Administração, <em style="mso-bidi-font-style: normal;">a priori, a escolha do momento mais adequado para a concessão das licenças-prêmio adquiridas pelos seus agentes, de acordo com a necessidade de serviço e o interesse público.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Tal discricionariedade, entretanto, não é absoluta, podendo a Administração ser submetida ao controle do Poder Judiciário, quando seu comportamento extrapolar os limites da proporcionalidade e razoabilidade, i <em style="mso-bidi-font-style: normal;">n concreto, malferindo direitos e garantias fundamentais estabelecidos pela CF/88.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Nesse sentido, há diversos precedentes do STJ, ex vi:</p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “PROCESSUAL CIVIL E TRIBUTÁRIO. VIOLAÇÃO AO ART. 535 DO CPC. INOCORRÊNCIA. IPI. ALÍQUOTA ZERO. NECESSIDADE DE COMPROVAÇÃO DA COMPOSIÇÃO QUÍMICA DA MATÉRIA-PRIMA UTILIZADA NA INDUSTRIALIZAÇÃO DE PRODUTOS. REQUERIMENTO DE PROVA PERICIAL NO PROCESSO ADMINISTRATIVO FISCAL. DEFERIMENTO OU INDEFERIMENTO. PODER DISCRICIONÁRIO DA ADMINISTRAÇÃO PÚBLICA. ART. 18 DO DECRETO N. 70.235/72. POSSIBILIDADE DE CONTROLE PELO JUDICIÁRIO. (…) <strong style="mso-bidi-font-weight: normal;">2. Hoje em dia, parte da doutrina e da jurisprudência já admite que o Poder Judiciário possa controlar o mérito do ato administrativo (conveniência e oportunidade) sempre que, no uso da discricionariedade admitida legalmente, a Administração Pública agir contrariamente ao princípio da razoabilidade. Lições doutrinárias. 3. Isso se dá porque, ao extrapolar os limites da razoabilidade, a Administração acaba violando a própria legalidade, que, por sua vez, deve pautar a atuação do Poder Público, segundo ditames constitucionais (notadamente do art. 37, caput). (...) 8. Recurso especial não-provido (REsp 778.648/PE, Rel. Min. MAURO CAMPBELL MARQUES, SEGUNDA TURMA, DJe 01/12/2008). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm;

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	line-height: 150%; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “ADMINISTRATIVO E PROCESSO CIVIL AÇÃO CIVIL PÚBLICA ATO ADMINISTRATIVO DISCRICIONÁRIO. <strong style="mso-bidi-font-weight: normal;">1. Na atualidade, a Administração pública está submetida ao império da lei. 2. O Poder Judiciário não mais se limita a examinar os aspectos extrínsecos da administração, pois pode analisar, ainda, as razões de conveniência e oportunidade, uma vez que essas razões devem observar critérios de moralidade e razoabilidade. 3. O Ministério Público não logrou demonstrar os meios para a realização da obrigação de fazer pleiteada. 4. Recurso especial improvido” (REsp 510.259/SP, Rel. Min. ELIANA CALMON, SEGUNDA TURMA DJ 19/09/2005). (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Assim, não é ilimitada a margem de liberdade que tem Administração para conceder licença-prêmio a seus agentes, possuindo, além da lei, a proporcionalidade e a razoabilidade como parâmetros de controle.</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Sucede que, até 17/05/2021, a servidora pública contava com mais de 18 (dezoito) anos de efetivo exercício em seu cargo, possuindo, com isso, tempo suficiente para usufruir d e 03 (três) licenças-prêmio adquiridas ainda durante vigência dos arts. 102 e s.s. da Lei nº 537/1993, como visto.</p><p class="Texto" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, por sua vez, o Município de Camocim/CE não demonstrou, <em style="mso-bidi-font-style: normal;">in concreto, a existência de qualquer fato impeditivo, modificativo ou extintivo do direito ora vindicado nos autos, deixando, por conseguinte, de se desincumbir do seu ônus probatório, de que trata o art. 373, inciso II, do CPC, <em style="mso-bidi-font-style: normal;">in verbis: </p><p class="Texto" style="margin: 12pt 0cm 0.0001pt 4cm; text-indent: 0cm; text-align: justify;"> Art. 373. O ônus da prova incumbe: </p><p class="Texto" style="margin-left: 4cm; text-indent: 0cm; text-align: justify;"> [...] <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="Texto" style="margin: 0cm 0cm 8.5pt 4cm; text-indent: 0cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;">II - &#160; ao réu, quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor. (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Com efeito, incumbia-lhe demonstrar, por exemplo, que a servidora pública não teria exercido suas atividades, ininterruptamente, desde que tomou posse no cargo, ou qualquer outra razão legítima para que não lhe fosse concedido o benefício, apesar de atendidos os requisitos legais para tanto.</p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 113.85pt; line-height: 150%; text-align: justify;"> Não foi isso, porém, o que ocorreu in casu, em que o Município de Camocim/CE apenas fez alegações genéricas, sem qualquer prova da impossibilidade efetiva de conceder as licenças-prêmio ou, pelo menos, de estabelecer os períodos em que poderiam ser usufruídas oportunamente.</p><p class="MsoNormal" style="margin: 8.5pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Assim, não se mostrando proporcional ou razoável comportamento adotado pelo Município de Camocim/CE, procedeu corretamente o Juízo a quo, ao determinar, em seu decisum, a elaboração de um cronograma para fruição das 03 (três) licenças-prêmio adquiridas pela servidora pública.</p><p class="MsoNormal" style="margin: 8.5pt 0cm 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Oportuno destacar que inexiste, aqui, qualquer ofensa ao princípio da separação dos poderes, porque tal medida não só garante a efetividade de um direito legalmente adquirido, como também resguarda discricionariedade da Administração, que poderá compatibilizar suas necessidades com o cumprimento do <em style="mso-bidi-font-style: normal;">decisum, no ato de elaboração do cronograma.</p><p class="Texto" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Acerca do tema, não é outra a orientação das 03 (três) Câmaras de Direito Público do TJ/CE, como bem retratam os precedentes abaixo: </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> <span style="font-size: medium;"> <span style="color: black; background: white;"> <span style="font-size: small;">“REMESSA NECESSÁRIA E APELAÇÃO CÍVEL EM

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	AÇÃO DE ONRIGAÇÃO DE FAZER C/C COBRANÇA. <strong style="mso-bidi-font-weight: normal;">LICENÇA PRÊMIO. SERVIDOR PÚBLICO DO MUNICÍPIO DE CAMOCIM. PREVISÃO CONTIDA NA LEI MUNICIPAL Nº 537/1993. COMPROVAÇÃO DO PREENCHIMENTO DOS REQUISITOS EXIGIDOS NA LEI. INEXISTÊNCIA DE PROVA DESCONTITUTIVA DO DIREITO DO AUTOR. ÔNUS DA PROVA QUE CABIA AO MUNICÍPIO. ART. 373, II, DO CPC. ELABORAÇÃO DE CRONOGRAMA PARA FRUIÇÃO DA LICENÇA PRÊMIO. DISCRICIONARIEDADE DA ADMINISTRAÇÃO RESGUARDADA. OCORRÊNCIA DE SUCUMBENCIA RECÍPROCA. DISTRIBUIÇÃO DOS HONORÁRIOS ADVOCATÍCIOS DE FORMA IGUAL ENTRE AS PARTES. APLICAÇÃO DA MAJORAÇÃO EM SEDE RECURSAL. 1. A licença-prêmio constitui um benefício do servidor estatutário que se revela assíduo no serviço, fazendo jus a três (03) meses de afastamento remunerado a cada cinco (05) anos ininterruptos de efetivo exercício, estando, no caso, previsto na Lei Municipal Nº 537, de 02 de agosto de 1993, que instituiu o Regime Jurídico Único para os servidores públicos da Administração Direta, das Autarquias e Fundações Públicas do Município de Camocim. 2. Na espécie, verifica-se que o autor comprovou que exerce cargo de agente administrativo no Município de Camocim desde a data de 03/02/2003, permanecendo-se na ativa, como servidor público municipal. Por outro lado, não há alegação, tampouco comprovação, de nenhum fato impeditivo, modificativo ou extintivo do direito da autora, capaz de obstar o gozo do benefício previsto na legislação local. 3. No que concerne a fruição da licença prêmio, ressalta-se que cabe à Administração, de acordo com a oportunidade e conveniência do serviço público, organizar escalas determinando os períodos em que cada servidor gozará do benefício, como previsto no art. 105, da Lei Municipal nº 537/93. Entretanto, essa discricionariedade não é absoluta. 4. Assim, o momento de fruição do benefício não pode ficar indefinido, ocasionando a judicialização do tema em virtude da omissão da Administração Pública sobre a concessão do benefício, assim, deve o Judiciário, nesses casos, controlar esse limite traçado pelo ordenamento jurídico, porventura haja comprovação de violação ao princípio da razoabilidade. 5. No presente caso, não se revela proporcional e razoável que o município demandado até a data do ajuizamento da ação e já tendo se passado mais de 15 anos de serviço público exercido pelo autor, não tenha concedido o benefício de licença prêmio ou estabelecido o período para a sua fruição. 6. Desse modo, agiu corretamente o magistrado sentenciante ao conceder um prazo de 30 (trinta dias) a fim de que o Município de Camocim estabelecesse um cronograma de fruição para o gozo da licença prêmio do promovente, visto que referida medida determina apenas que seja feita uma previsão, sem interferir, portanto, na discricionariedade do Município de verificar a melhor época para concessão, conforme seu interesse. 7. Em sede de reexame necessário, observa-se a necessidade de reforma parcial da sentença, apenas no que concerne aos honorários advocatícios, reconhecendo a ocorrência de sucumbência recíproca e fixando em 10% (dez) por cento do valor atualizado da causa, a serem rateados por igual entre os litigantes (5% para cada), conforme os incisos I a IV do § 2º, e inciso III do § 4º, ambos do CPC. Ficando, contudo, suspensa a exigibilidade em face do autor, tendo em vista a gratuidade da justiça. 8. Por fim, considerando os honorários recursais previstos no § 11 do mesmo dispositivo legal, eleva-se os honorários devidos pelo ente apelante para 8% (oito por cento) do valor atualizado da causa. (Processo nº 0002043-39.2019.8.06.0053; Relator:&#160;PAULO AIRTON ALBUQUERQUE FILHO; Comarca:&#160;Camocim; Órgão julgador: 1ª Câmara de Direito Público do TJ/CE; Data do julgamento: 09/11/2020; Data de registro: 09/11/2020) (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;"> * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “ADMINISTRATIVO E PROCESSUAL CIVIL. REMESSA NECESSÁRIA E APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. <strong style="mso-bidi-font-weight: normal;">SERVIDOR PÚBLICO DO MUNICÍPIO DE CAMOCIM. GOZO DE LICENÇA-PRÊMIO. ATO VINCULADO. OBRIGAÇÃO DE FAZER CONSUBSTANCIADA NA ELABORAÇÃO DE CRONOGRAMA DE FRUIÇÃO. OFENSA À SEPARAÇÃO DOS PODERES E INOBSERVÂNCIA DOS CRITÉRIOS DE OPORTUNIDADE E CONVENIÊNCIA DA ADMINISTRAÇÃO PÚBLICA. INSUBSISTÊNCIA. PREENCHIMENTO DOS REQUISITOS LEGAIS. DIREITO DO SERVIDOR. ATO DISCRICIONÁRIO QUANTO AO PERÍODO DE FRUIÇÃO DO BENEFÍCIO. INDEFINIÇÃO DO PERÍODO DE AFASTAMENTO PELO PODER PÚBLICO. IMPOSSIBILIDADE. DESRESPEITO À PREVISÃO EM LEI LOCAL. PRECEDENTES DO TJ/CE. HONORÁRIOS ADVOCATÍCIOS. SUCUMBÊNCIA RECÍPROCA. FIXAÇÃO EM 10%. MAJORAÇÃO DA VERBA EM DESFAVOR DO ENTE APELANTE (ART. 85, § 11, CPC). REMESSA E APELAÇÃO CONHECIDAS. RECURSO DESPROVIDO E REMESSA PARCIALMENTE PROVIDA. SENTENÇA REFORMADA EM PARTE (Processo nº 0029695-65.2018.8.06.0053; Relator (a):&#160;TEREZE NEUMANN DUARTE CHAVES; Comarca:&#160;Camocim; Órgão julgador: 2ª Câmara de Direito Público do TJ/CE; Data do julgamento: 10/02/2021; Data de registro: 10/02/2021) (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: center;">

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	 * * * * * </p><p class="MsoNormal" style="margin: 6pt 0cm 6pt 4cm; text-align: justify;"> “REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. CONSTITUCIONAL. ADMINISTRATIVO. PRELIMINAR DE ILEGITIMIDADE ATIVA RECURSAL. REJEIÇÃO. MÉRITO. <strong style="mso-bidi-font-weight: normal;">SERVIDOR PÚBLICO DO MUNICÍPIO DE CAMOCIM. LICENÇA-PRÊMIO. PREVISÃO EXPRESSA NA LEI ORGÂNICA MUNICIPAL. FRUIÇÃO. DEVER DE ELABORAÇÃO DE CRONOGRAMA EM PRAZO RAZOÁVEL. PRECEDENTES DO STJ E DESTE EGRÉGIO TRIBUNAL DE JUSTIÇA. SENTENÇA MANTIDA. 1. Tratam os autos de reexame necessário e apelação cível interposta com o objetivo de reformar sentença que concedeu a segurança pretendida, no sentido de assegurar ao servidor público do Município de Camocim o direito de usufruir a licença-prêmio garantida por Lei Orgânica Municipal, de acordo com cronograma a ser elaborado pela edilidade. 2. Não há que se falar em ilegitimidade ativa recursal do Município de Senador Pompeu, por ser a pessoa jurídica quem suportará o ônus da condenação. Precedentes do STJ. Preliminar afastada. 3. Mérito. Implementados os requisitos necessários à concessão, possui o servidor direito subjetivo à fruição da licença, que não pode ser tolhida por simples vontade do ente público em detrimento de previsão legal. 4. A despeito de a administração possuir discricionariedade para a concessão de tal direito, afigura-se razoável a fixação de prazo para elaboração de cronograma destinado à sua fruição, notadamente quando verificada a reiterada omissão do promovido em momento pretérito. - Reexame necessário conhecido. - Preliminar rejeitada. - Apelo conhecido e não provido. - Sentença mantida. (Processo nº 0016447-03.2016.8.06.0053; &#160; Relator (a):&#160;ROSILENE FERREIRA FACUNDO - PORT. 1392/2018; Comarca:&#160;Camocim; Órgão julgador: 3ª Câmara de Direito Público do TJ/CE; Data do julgamento: 24/09/2018; Data de registro: 24/09/2018) (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Permanecem, então, totalmente inabalados os fundamentos da decisão ora adversada, impondo-se sua confirmação por este Tribunal. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; line-height: 150%; text-align: center;">&#160;</p><p class="Recuodecorpodetexto22" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, conheço do Reexame Necessário e da Apelação Cível, para lhes negar provimento, mantendo inalterada a sentença proferida pelo magistrado de primeiro grau, por seus próprios termos.</p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Por fim, aplico o § 11 do art. 85 do CPC/2015 à hipótese dos autos, e segundo orientação do Superior Tribunal de Justiça (EDcl no AgInt no REsp 157373/RJ), elevo os honorários advocatícios a serem suportados pelo Município de Camocim/CE, <em style="mso-bidi-font-style: normal;">in casu, para R$ 2.200,00 (dois mil e duzentos reais), tendo em vista o trabalho adicional realizado em sede recursal.</p><p class="MsoNormal" style="text-indent: 4cm; line-height: 150%; text-align: justify;"> É como voto.</p><p class="Recuodecorpodetexto21" style="margin: 11.35pt 0cm 11.35pt 0.55pt; text-indent: 112.85pt; line-height: normal; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;">&#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> R elatora </p><p> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	178
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	ANTONIO MATHEUS MORORO RODRIGUES - (CE52135-A)
Polo passivo	VERA LUCIA FARIAS DE MESQUITA
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

Processo	3000537-68.2024.8.06.0160
Acordão	<p style="text-align: center;"> <img style="font-size: medium;" 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	efetivação do direito da servidora pública ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify;"> 6. Ademais, em se tratando de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Súmula nº 85 do Superior Tribunal de Justiça. &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify;"> IV. DISPOSITIVO </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify;"> 7. Recurso conhecido e não provido.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify;"> ______</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify;"> Dispositivos relevantes citados: CF/88, arts. 7º, XVII e 39, §3º; Lei Municipal nº 081-A/1993, art. 47. &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify;"> Jurisprudência relevante citada: Súmula nº 85 do STJ. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-left: 99.25pt; text-align: justify; mso-line-height-alt: 5.0pt; text-autospace: ideograph-numeric;"> <strong style="mso-bidi-font-weight: normal;"> &#160; &#160; </p><p class="MsoNormal" style="margin-left: 106.35pt; text-align: justify; mso-hyphenate: auto; text-autospace: ideograph-numeric;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; mso-hyphenate: auto; text-autospace: ideograph-numeric;" align="center"> ACORDÃO </p><p class="MsoNormal" style="margin-top: 12.0pt; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000537-68.2024.8.06.0160, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em <strong style="mso-bidi-font-weight: normal;">conhecer do recurso, mas para lhe negar provimento, confirmando integralmente a sentença, nos termos do voto da e. Relatora.</p><p class="Recuodecorpodetexto21" style="margin-top: 11.35pt; margin-right: 0cm; margin-bottom: 11.35pt; margin-left: .55pt; text-indent: 112.85pt; line-height: 150%;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center">&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> <strong style="mso-bidi-font-weight: normal;"> &#160; R elatora</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> <br /> </p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; text-indent: 0cm; line-height: 150%; text-autospace: ideograph-numeric;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> Cuida-se, na espécie, de Apelação Cível, adversando sentença proferida pelo M.M. Juiz de Direito da 2ª Vara Cível da Comarca de Santa Quitéria/CE, que deu parcial procedência a ação ordinária. &#160;</p><p class="MsoNormal" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-indent:

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	4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> O caso/a ação originária: Vera Lúcia Farias de Mesquita moveu ação ordinária, aduzindo, em suma, que têm sido excluídas, da base de cálculo do seu terço de férias, algumas vantagens que deveriam integrá-la, em afronta aos arts. 7º, inciso XVII, e 39, §3º, ambos da CF/88.</p><p class="MsoNormal" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: 5.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Diante do que, requereu a condenação da Administração na imediata correção de tais falhas/omissões e, consequentemente, ao pagamento dos valores retroativamente devidos, in casu, acrescidos dos consectários legais. <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> Citado, o ente público apresentou <strong style="mso-bidi-font-weight: normal;"> contestação (ID 15560177).</p><p class="MsoNormal" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> Sentença proferida pelo magistrado de primeiro grau (ID 15560182), dando parcial procedência a ação. Transcrevo seu dispositivo <em style="mso-bidi-font-style: normal;">:</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; mso-hyphenate: none;"> “Diante do exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão autoral para condenar o Município de Santa Quitéria-CE à obrigação de implementar o pagamento do terço constitucional tendo como base de cálculo todas as parcelas de natureza remuneratória, com pagamento da diferença das parcelas vencidas, desde o início do vínculo com o requerido, de forma simples, e vincendas até a implementação na remuneração, observando a prescrição relativa aos 05 (cinco) anos anteriores ao ajuizamento da presente ação.” (sic) </p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-indent: 4.0cm; line-height: 150%;"> Inconformado, o Município de Santa Quitéria/CE interpôs Apelação Cível (ID 15560187), sustentando que seria o caso de reforma do referido decisum, porque seus atos estariam amparados por lei e, portanto, não haveria nenhuma lesão a direito do servidor público in concreto. &#160;</p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-indent: 4.0cm; line-height: 150%;"> Foram ofertadas contrarrazões (ID 15560189). &#160; </p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-indent: 4.0cm; line-height: 150%;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça <strong style="mso-bidi-font-weight: normal;"> como custos legis, na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, como visto . </p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-indent: 4.0cm; line-height: 150%;"> É o relatório. </p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-indent: 4.0cm; line-height: 150%;">&#160;</p><p class="Texto" style="margin-top: 5.95pt; margin-right: 0cm; margin-bottom: 11.35pt; margin-left: 0cm; text-align: center; text-indent: 0cm;" align="center"> VOTO </p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos todos os requisitos legais, conheço da apelação cível, e passo, a seguir, ao enfrentamento de suas razões. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> A principal questão discutida nos autos é sobre qual seria a base de cálculo correta a ser utilizada pelo Município de Santa Quitéria/CE, para fins de pagamento do terço de férias aos seus servidores públicos, como

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	visto.</p><p class="Texto" style="margin: 8.5pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, nos termos do art. 39, §3º, c/c art. 7º, inciso XVII, da Constituição Federal de 1988, são garantidos a todos aqueles ocupantes de cargos públicos, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores em geral, entre eles, o terço de férias, in verbis: </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas.&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> [...]&#160; <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.&#160; </p><p class="MsoNormal" style="margin-left: 120.5pt; text-align: justify;"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social: &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 120.5pt; text-align: justify;"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal” <strong style="mso-bidi-font-weight: normal;"> ; (destacado)</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vê-se, portanto, o terço de férias constitui um direito fundamental dos servidores públicos, que deve ser pago, a cada ano, com base na remuneração integral (que corresponde ao vencimento do cargo, somado a outras vantagens previstas em lei), como bem ensina a melhor doutrina, ex vi:</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify;"> “Remuneração, do latim remunerado, de <em style="mso-bidi-font-style: normal;">remunerare, originariamente indica qualquer tipo de retribuição monetária correlata à prestação dos serviços efetuada. O termo, em sentido amplo, corresponde a toda e qualquer verba contra prestativa atribuída aos agentes do Estado em virtude do seu labor. Mas, <em style="mso-bidi-font-style: normal;">stricto sensu, tal como empregado no artigo 37, X, da Constituição, <strong style="mso-bidi-font-weight: normal;">remuneração é sinônimo de vencimentos do servidor, correspondendo ao somatório do vencimento – retribuição em dinheiro pelo exercício do cargo ou função pública com valor fixado em lei – e das demais vantagens inerentes ao cargo ou aos seus respectivos ocupantes (vantagens de caráter individual).” (DI PIETRO, Maria Sylvia Zanella, MOTTA, Fabrício, FERRAZ, Luciano de Araújo. Servidores Públicos na Constituição Federal. 3ª Ed. – São Paulo: Atlas, 2015, p. 113). (destacado) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> E, no âmbito do Município de Santa Quitéria/CE, a matéria se encontra disciplinada pela Lei nº 081-A/1993 (Estatuto dos Servidores Públicos), mais especificamente, em seu art. 47, que assim dispõe:</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify;"> “Art. 47 . Remuneração é o vencimento de cargo efetivo acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei.” (destacado)</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Facilmente se extrai que a base de cálculo do terço de férias deve ser mesmo a remuneração integral, que sempre corresponderá ao vencimento do cargo, somado às outras vantagens – permanentes ou temporárias - recebidas, à época, pela servidora pública (exceto as de natureza indenizatória). </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;">

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	Aliás, este tem sido o posicionamento da 3ª Câmara de Direito Público do TJ/CE, em casos praticamente idênticos ao dos autos: <em style="mso-bidi-font-style: normal;">&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify;"> <em style="mso-bidi-font-style: normal;">“ EMENTA: APELAÇÕES CÍVEIS. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA. SERVIDORES PÚBLICOS DO MUNICÍPIO DE CATUNDA/CE. ADICIONAL POR TEMPO DE SERVIÇO. BASE DE CÁLCULO. &#160;REMUNERAÇÃO INTEGRAL. IMPOSSIBILIDADE. EFEITO “CASCATA”. VEDAÇÃO PREVISTA NO ART. 37, INCISO XIV, DA CF/88. VANTAGEM INCIDENTE APENAS SOBRE O VENCIMENTO DO CARGO. COM REFLEXOS NO 13ª (DÉCIMO TERCEIRO) E NO 1/3 (TERÇO) DE FÉRIAS. PRECEDENTES DESTE TRIBUNAL. RECURSOS CONHECIDOS E NÃO PROVIDOS. SENTENÇA MANTIDA.&#160; 1. Foi devolvida a este Tribunal, em sede de Apelações Cíveis, a controvérsia em torno de base de cálculo correta, para fins de pagamento do adicional por tempo de serviço aos servidores públicos do Município de Catunda/CE. &#160; 2. Atualmente, tem prevalecido, entre as Câmaras de Direito Público do TJ/CE, a orientação no sentido de que os percentuais relativos aos “anuênios” somente devem incidir sobre o vencimento do cargo, sob pena de ofensa ao art. 37, inciso XIV, da Constituição Federal de 1988. &#160;3. E foi exatamente isso o que estabeleceu o Juízo &#160; a quo no presente caso, não havendo, portanto, qualquer reparo a ser feito por este Tribunal, em seu &#160; decisum. 4. Aqui, vale destacar que, diversamente do que sustenta o Município de Catunda/CE, não configura “efeito cascata” a inclusão de tal vantagem (“anuênios”) no cálculo do 13º (décimo terceiro) e do 1/3 (terço) de férias, porque estes, sim, são pagos com base na remuneração integral dos servidores públicos (art. 7º, incisos VIII e XVII, c/c art. 39, §3º, ambos da Constituição Federal de 1988). 5. É bom ressaltar, ainda, que não houve, propriamente, a declaração de inconstitucionalidade Lei Complementar nº 001/1993, mas apenas foi dada ao seus arts. 47 e 68 uma interpretação conforme a CF/88, o que afasta a necessidade de observância da cláusula de reserva de plenário, segundo o Supremo Tribunal Federal. 6. Permanecem, então, inabalados os fundamentos da sentença, devendo ser confirmada neste azo. - Precedentes. - Recursos conhecidos e não providos. - Sentença confirmada. &#160;(APELAÇÃO CÍVEL - 30006470420238060160, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 05/05/2024) (destacado) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Consequentemente, era mesmo o caso de condenação do Município de Santa Quitéria/CE à efetivação do direito da servidora pública ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%; text-autospace: ideograph-numeric;"> Ademais, em se tratando, aqui, de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Sú mula nº 85 do STJ, in verbis:</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 12.0pt; margin-left: 4.0cm; text-align: justify; text-autospace: ideograph-numeric;"> Súmula 85 do STJ - “Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação.”</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Também há precedentes deste Tribunal no mesmo sentido:</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify;"> <span style="font-family: arial, helvetica, sans-serif;"> <span style="color: black; background: white;"> <span style="font-size: small;">“CONSTITUCIONAL E ADMINISTRATIVO. REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL. AGENTE DE ENDEMIAS. ARGUMENTO RECURSAL DE QUE O "INCENTIVO FINANCEIRO" NÃO DEVE SER CONSIDERADO NO CÁLCULO DA REMUNERAÇÃO INTEGRAL. INOVAÇÃO RECURSAL. APELO NÃO CONHECIDO NESTE PONTO. DÉCIMO TERCEIRO SALÁRIO E FÉRIAS COM BASE NA REMUNERAÇÃO INTEGRAL (ARTS. 7º, VIII E XVII E 39, § 3º, DA CF E ARTS. 46, 47, 64 E 80 DA LEI MUNICIPAL Nº 081-A/93). ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. SENTENÇA ILÍQUIDA. HONORÁRIOS SUCUMBENCIAIS A SEREM DEFINIDOS APENAS POR OCASIÃO DA LIQUIDAÇÃO. CONDENAÇÃO DA FAZENDA PÚBLICA EM DESPESAS PROCESSUAIS.

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	DESCABIMENTO. REEXAME CONHECIDO E PARCIALMENTE PROVIDO. APELO CONHECIDO EM PARTE E, NESTA EXTENSÃO, PROVIDO. 01. A municipalidade alega que a vantagem intitulada "incentivo financeiro" não deve ser considerada na base de cálculo da "remuneração integral" da promovente, por ser transitória e possuir caráter indenizatório, nos termos do art. 3º da Lei Municipal nº 862/2015. Contudo, tal argumento não foi submetido ao crivo do juízo de 1º grau em sede de contestação, tampouco consiste em matéria cognoscível ex officio, configurando, portanto, inovação recursal. Assim, não conheço do apelo nesse ponto. 02. Aduz, ainda, que a sentença hostilizada merece reparo no tocante à fixação dos juros e correção monetária, com o fito de observar a orientação do Superior Tribunal de Justiça vertida no Tema nº 905. De fato, assiste razão ao ente apelante, quando se insurge contra os parâmetros dos encargos financeiros decorrentes da condenação, fixados no decisum. 03. Em reexame necessário, forçoso manter a condenação do ente federado ao pagamento das diferenças do décimo terceiro salário e do terço constitucional de férias com base em sua remuneração integral, com a ressalva da prescrição quinquenal. 04. Precedentes. 05. Por fim, a sentença merece reparos, ainda em sede de reexame necessário, no que diz respeito aos honorários de sucumbência, porquanto referida decisão é ilíquida, de maneira que a fixação dessa verba somente ocorrerá na fase de liquidação [art. 85, § 4º, II, do CPC.] 06. Reexame necessário conhecido e parcialmente provimento e apelação parcialmente conhecida e provida, no sentido de determinar que: a) os encargos legais decorrentes da condenação sejam fixados em observância à orientação do STJ (REsp 1.495.146/MG), b) a verba honorária sucumbencial seja fixada apenas por ocasião da liquidação do julgado e c) seja decotada da condenação o pagamento do ente requerido em despesas processuais.” (Apelação / Remessa Necessária&#160;- 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 11/07/2022, data da publicação:&#160; 11/07/2022) (destacado) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Permanecem, portanto, totalmente inabalados os fundamentos do decisum proferido pelo Juízo a quo, devendo ser confirmado por este Tribunal. &#160;</p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; text-indent: 0cm; line-height: 150%;" align="center">&#160;</p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; text-indent: 0cm; line-height: 150%;" align="center"> DISPOSITIVO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Isto posto, <strong style="mso-bidi-font-weight: normal;">conheço do recurso, <strong style="mso-bidi-font-weight: normal;">mas para lhe negar provimento, confirmando integralmente a sentença, por seus próprios termos.</p><p class="MsoNormal" style="margin-top: 12.0pt; text-align: justify; text-indent: 4.0cm; line-height: 150%; tab-stops: 0cm;"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, <em style="mso-bidi-font-style: normal;">in casu, o disposto no Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o previsto no art. 3 º da EC nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p class="Recuodecorpodetexto21" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Ademais, não sendo líquido o <em style="mso-bidi-font-style: normal;">decisum, a definição do <em style="mso-bidi-font-style: normal;">quantum dos honorários devidos pelo réu/apelante aos advogados da autora/apelada fica postergada para a fase de liquidação (CPC, art. 85, §4º, inciso II), oportunidade em que o Juízo a quo deverá levar em consideração, inclusive, o trabalho adicional realizado em sede de recurso, nos termos do art. 85, § 11, do CPC.</p><p class="Recuodecorpodetexto21" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> É como voto.</p><p class="Recuodecorpodetexto21" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 0cm; text-align: justify; text-indent: 4.0cm; line-height: 150%;"> Local, data e hora informados pelo sistema. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;" align="center"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center;"

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	align="center"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="Texto" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 8.5pt; margin-left: 0cm; text-align: center; text-indent: 0cm; line-height: 150%; text-autospace: ideograph-numeric;" align="center"> R elatora </p><p> &#160; </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	179
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Unidade de terapia intensiva (UTI) / unidade de cuidados intensivos (UCI)
Polo ativo	MUNICIPIO DE FORTALEZA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA LEUDIMAR ALVES DEFENSORIA PÚBLICA GERAL DO ESTADO DO CEARÁ
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3003144-46.2024.8.06.0001
Acordão	<p style="text-align: center;"> <img style="font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAFxEAABcRAcom8z8AAEulSURBVHhe7b11YFbH1vZNcZdCqRfquMfdiOGQhLi7IEmIu5OEKIEEd3cpbqXUKFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY+lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z+6OXXcf/CQH69dIcZnBKlBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJXi0CT6jrYmfHMVDacfDRw/5+puvOXRoL998+Qk/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+neiDlF93mX5X/GLAnT57w8OEDPjv2CUvnVlFZGEfyBBcifO0ZZtWXccMsSY6dxIZVK1g+v5KkMHvemT+RXQuj2L1kIjOzXUiNHEWo1xhKc7PZvmoBaSFOrCwLYPeicHbP9efdBeHMz/MgO96LbRsWkhTtj88IM0oSPNg2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8TOVOCqa0qYM3KhVy9elnX/l8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mkIARS3q4NRnR40iK8MTJtC9eToMoix/GvgVRHFwUwfvLY9haF0jRRFsS/S1JC3UiM3wos7LGsHdRJO+tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFwqT875oYTPXYwrlb98R5uQmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsylOt2LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXeLCoZz4JiN+YVujEn35XZ+fI5byyL8kYJw8YwX863aJoPS8u8WVHhzbrpfnIOP7bPDmDXvGD2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm/YvylwC7c/sWs6cXkD1pFAfXJLJzXhCbavxYVR7AUmFcXZYLlamjKE0cRsEkW/Im2AhTLEgJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUid6D9HqJF894gP0SQ0zFhabkxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+X8EmCp7d23Ce4wp6dEOZESYkRpsQEqgKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHEBRmSGGLGlGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDIjzt+cWH8rrcb5WzDBx5gYXyMivfSI8BhChLsAPl6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsMPl89r7RYXXF/Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAIyYECDv8hRnyPc7PjDA3PWGPPrF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6uDv2FEYJcEEWJAYYCxsNtf1j/U3lWDlXoBnB4wcJ+AbEBuuuNdlXzissnCiDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335NQX4qoYGj8B0jrHIdSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA21UawcWYom6RumTWBqhQ3IscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafb93Q2qvarQtcDdt/v/wlhilaKz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElbBRJgXaUT3GSwGBJofih/FB7ckPMyQszoUC+x3qa4W37NlkhduSLv8sNNyYn3EyqDQXRdpTEOpAeaktKqCMFsS7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZoczidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXnyUHRlhlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cznlkFbuJ7LPAdOUDqIEJcBlMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50HIlhI4kYN5hMYVdKoLBrfH8KYoYS4qrHtII4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAIUTRFuFWotEcCczxom0GB9sDAYwzsGIqpwoMRsHDq7NpjjOQRjpzDuL4ylJHUlZpj8l2REUpIVQlR9JQaILC8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVnRElHNWFwSLBJnHFEu/SVS+lKbN56UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkopIts6LIV2iU260tWgxZ3HI5hSkRNPjledFPOoLMIEES2pUIDIj3nsgCX7i0CUIpISrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzIyJ7gNJkizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqhr6F8sfw0wMUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBIiV6Ts2I4u1uHXAbYUBZhg81mePYWCdaqTaQjeJ70sRXTc8Lxc6wNy906sgLHTrwxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNJiRpBkJcTfd56jox4f8lTh1CV7kpV6jgKJzoIw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLz49QlBbGnIIgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJj5X9XajNGsvMLA9ivIwoSPbDsP9bvNilC92fe56XOnfC3rQfpekBJIdZy34uzMgYQ22uu4hcExIjXHFxNCYvIUj8lZGAGsSaylBWi2hdWyORVa6/ec4EUiIlR10849cBboju/0n5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60uThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9lSLI/PS+G6flR+IzqL6DrkSNyJkdlAhJxyxKHMzNTkvyIoaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoSbFlYMJ4EL2PRUiMl8Y1ivWisrEhrEgJMpMPWJIfYUpHswsqyQJaW+IsgNSIrZiQThXWOZgN59dnOPNOhE107Pk3nNm3o/2Y3onxHSkQcLtHQTlS8CWvET1anukumYMMkyQCifUT8SnRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFrxuzcukrarpOqj9W2ATn1w7+J4D9nWP0JdULvz8v+HZtICHFhw+wkFpf5MavQn9BxAkKEEzPSPQQ4qek+lCX7MjXJj6IkfwoSAsiXmjPFj7jwcaRM9GVSqBeBnuPEL3ng7+1NgK8vQT5SvbyI8PMiOSaI5Am+JEWNJ1/OkZsQSH5iCEWis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrl+6UN/y34oII22e7N8p/wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUIe7OIgGiKUr1Ii85gLS4UHLT4ygtzGR6eRFL5tWxfuVydmzewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6+ZNbvx0ixvXb0pHr/DDhQtcOv8tZ05/xpdffsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5FOUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+OcP8hQuZPWsOc2tnM72ymnK5+Iy6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFkBY8ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fHf2DN98L/W7M3x79nu+P3eec+fPcUHYcenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yppqKqurqa2bJbWWDRvWCSl0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdffsVN+e3RY+XHdPsIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQIRhbEE50/ALzsaD3HuHplReKRF4J4aLjUMz/QIvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDtk1RZTMrWTuuoWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTnMtjryc7OYePGjfI3+atIJFX/UfmXDFOXmFVbS13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGbwjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfNvXvS3Kc3TaQ+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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	TEDNsFW3E0279sYsYyewNC/n27DeaNLpz7wGnPvuKGWXV2hPGu/bv4YerMrD1RVt/r/5XX/+d8m8zTCsNZ9Uu8NsV7gjVjx8/wdzZcyjML2TXzl3aO1kfiej94eaP7PrkICH5cbzqIeYSZEDLeGGFSng1ExXAtDXzRrRKNMd9QzbRqwuJXJFL3P5KOqWoNEuZtfJfaom4sEyOaSVRuH20IZ299TAIHUH5whmc/voU90SlqxkY9azU7LlzNaDe2bKVSxcv1rf2r5X/O8B+Vxqc4++BU6OqlpOrhyJKiqdy6P2DXLmmgHvET5Kfbd6zGZcpfrzsPoT24UPE3yhFLmapZIiAolKcF4tH0y7VVqoNzxU600bErUri1Y1lNYGpWNVisj5Pi0rv521J+owCjn71GT/LtdXzQd9++63kxKvIyMjQtmop1z+Lev+35T8GrKH8me3fFcYdPXKYwqJ8Kqoq+ej9D7l5WSLUgwdcu36JeRsXYR4xgmd99GgdZahJA7XITfko3dvslEBVEVXMUAJCc2Ffa/lbi0QDWocN4RVvE0IKY7X3m6nX3zy8c5/vvz/H+s0qpcnUnpO6cOHCH4D6s3b+J+UvA/b78oeRFEd6+/Ytdu7ZI6lGEXPmzOPjjz/mp1s3RPc/5IuzX2pLvPv52UgqJGxTgUGioZYkS6ag/JQCS03ytRSn3zZCjxc9B+E80Y1lO9by0x1R6I8ec+G7s+x4ZztlJSXMmD6dM6fP/B2j/qfAUuV/FLAGE9U1UDVa19Drt26xStKrnNx8li5ZxqlPJalXr0SWZHfboV24JAaKXhpCO8kZW6aYignqCWB6NBWwWiVLBPQbTF8/O3JmTOWbsyptecKP166xf+9eKirF/MtLOXr0E7ncbwFJlf9JoBrK/yhgvy8C26//GsrlcxdZXDePitypbFu3kYuXdJNy5y+epah2Kr191QscJbEXjdVSzLFlvBHtPAYwbKInW/fu4MHDRzyUSH3s+CfMqZ1JiXobpjBYTQ6oov5rhP/t8t8DTHDSwrZW1evXfzOT458cpax8GmXi3z748DCCggSG+yzdvgqzqFG09x5AJ78hPOcymKjSJE59o3t28eqla6xZv07zjcsWL9HejK6KOrWaNW540fh/s/wXAVOI6dil/bcoparXtDR06ed7d9iwcSO5uXmsW7ueGzd+4uEvD9l3+F1GRXsxeLgFedOLufLTD9r+Z778iurySu2dEifqXxeqirqCdhlV//t4/fcA+3eLmlYpKy9jujhsLbJJwq/en/rO9m3aa+bV208+eO8Q+Tm5rJHE/6efftKO+2/4p3+n/K8ApjqrTLTBTK9KUjxr1izKyso4e/aspttUVauW9+3bR052Nnv36J5/UuVvj/9/Wf5XAWvYqqKmxtWDrSUiDy5fvMSDe/f58P0PSE5Kkgh4VNtHZ3W/Met/g2X/6yapyu9BUy9JWrp4MR8eep/szCw+OfzbVPFv/5nW/73y/wnAFFMa2HLlyhUS4qfg7+MrwC3Rfmsoao//H7D60gCY2u7asZPioqmSf+pkw/+G6f15gf8DLlMncTlWGuAAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;"> <br /> </p><p> PROCESSO:&#160;3003144-46.2024.8.06.0001 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICIPIO DE FORTALEZA <br /> </p><p> APELADA: MARIA LEUDIMAR ALVES .</p><p align="center"> <br /> </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 0cm; line-height: 150%; mso-list: l0 level1 lfo1; tab-stops: list 0cm;"> Ementa: APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. PACIENTE HIPOSSUFICIENTE E PORTADORA DE DOENÇA/LESÃO GRAVE. FORNECIMENTO DE LEITO DE UTI EM HOSPITAL PÚBLICO. DEVER DA ADMINISTRAÇÃO. CONDENAÇÃO DO ESTADO DO CEARÁ, JUNTAMENTE COM O MUNICÍPIO DE FORTALEZA/CE, NO PAGAMENTO DE HONORÁRIOS À DEFENSORIA PÚBLICA. TEMA Nº 1.002 DO STF. PROVEITO ECONÔMICO INESTIMÁVEL. REDIMENSIONAMENTO DO QUANTUM ARBITRADO PELO MAGISTRADO DE PRIMEIRO GRAU. APLICAÇÃO DO CRITÉRIO DA EQUIDADE (CPC/2015, ART. 85, §8º).&#160; EXCEÇÃO PREVISTA NO TEMA Nº 1.076 DO STJ. PRECEDENTES DO TJ/CE. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA APENAS NESTA PARTE.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 0cm; line-height: 150%; mso-list: l0 level1 lfo1; tab-stops: list 0cm;"> I. O CASO EM EXAME </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 1. Cuida-se, na espécie, de Apelação Cível, adversando sentença proferida pelo magistrado de primeiro grau, que deu total procedência a ação ordinária, condenando o Estado do Ceará e o Município de Fortaleza/CE à efetivação do direito fundamental à saúde e à vidade da Sra. Maria Leudimar Alves, paciente hipossuficiente e portadora de doença/lesão grave, mediante o imediato fornecimento de leito de UTI em hospital público, conforme prescrito pelos seus médicos.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> II. QUESTÃO EM DISCUSSÃO </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 2. Foi devolvida a este Tribunal apenas a controvérsia sobre se os honorários devidos à Defensoria Pública foram ou não corretamente arbitrados pelo Juízo a quo, em seu decisum, de acordo com os parâmetros estabelecidos na lei.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> III. RAZÕES DE DECIDIR </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 3. Ora, com o advento do Tema nº 1.002 do STF, não há mais dúvida de que, além do Município de Fortaleza/CE, também o Estado do Ceará deve arcar com esse ônus da sucumbência, na forma do art. 87, §§ 1º e 2º, do CPC.</p><p class="MsoNormal" style="margin-left:

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	4.0cm; text-align: justify; line-height: 150%;"> 4. Todavia, não se fazendo possível mensurar, in concreto, o proveito econômico obtido, deveria o magistrado de primeiro grau ter se utilizado da equidade, para a fixação do seu quantum (CPC, art. 85, §§2º e 8º) .</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 5. Hipótese dos autos que se enquadra, precisamente, na exceção prevista no Tema nº 1.076 do STJ, porque, ainda que se admita a relevância da questão de fundo discutida na ação (direito fundamental à saúde e à vida), não se pode absolutamente estimar o(s) ganho(s) auferido(s) pela parte, e, diversamente do que sustenta a Defensoria Pública, o valor atribuído a causa é meramente simbólico.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 6. Daí que, em homenagem aos princípios da razoabilidade e da proporcionalidade, somente resta a este Tribunal reduzir, equitativamente, seu valor para R$ 1.000,00 (mil reais), que se mostra adequado à peculiaridade do caso, especialmente, se levado em consideração o tempo de duração e a baixa complexidade do processo em si.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 7. Consequentemente, a reforma da sentença é medida que se impõe, mas apenas nesta parte, permanecendo, de resto, totalmente inalterados seus fundamentos.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> IV. DISPOSITIVO </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> 8. Recurso conhecido e parcialmente provido.</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 150%;"> ______</p><p class="MsoNormal" style="margin-left: 21.6pt; text-align: justify; text-indent: -21.6pt; line-height: 150%; mso-list: l0 level1 lfo1; tab-stops: list 0cm;"> &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 0cm; line-height: 150%; mso-list: l0 level1 lfo1; tab-stops: list 0cm;"> Dispositivos relevantes citados: CPC, arts. 85, §§2º e 8º, 87, §§ 1º e 2º. &#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 0cm; line-height: 115%; mso-list: l0 level1 lfo1; tab-stops: list 0cm;">&#160;</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-indent: 0cm; line-height: 150%; mso-list: l0 level1 lfo1; tab-stops: list 0cm;"> Jurisprudência relevante citada: Tema nº 1.002 do STF e Tema nº 1.076 do STJ . &#160; </p><p class="MsoNormal" style="margin-left: 21.6pt; text-indent: 91.8pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-left: 21.6pt; text-indent: 91.8pt; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 12pt; line-height: 150%; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> ACÓRDÃO </p><p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3003144-46.2024.8.06.0001, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em <strong style="mso-bidi-font-weight: normal;">conhecer do recurso , para lhe dar parcial provimento, reformando, em parte, a sentença, nos termos do voto da Relatora. &#160; </p><p class="Recuodecorpodetexto21" style="margin: 0cm 0cm 12pt 0.55pt; text-indent: 112.85pt; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUIZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 &#160; </p><p class="MsoNormal" style="margin-

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	bottom: 6pt; text-align: center;"> Relatora </p><p class="MsoNormal" style="margin-top: 6pt; text-align: center;"> &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm 12pt; text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Trata -se , no presente caso, de Apelação cível, adversando sentença proferida pelo magistrado de primeiro grau, que deu total procedência a ação de ordinária (Processo nº 3003144-46.2024.8.06.0001). &#160;</p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> O caso/a ação originária: a Sra. Maria Leudimar Alves moveu ação ordinária contra o Estado do Ceará e o Município de Fortaleza/CE, aduzindo, em suma, que foi diagnosticada com doença/lesão grave – infecção no pé esquerdo com drenagem de secreção purulenta (CID: S91.3) – e que, por isso, necessitava ser transferida, urgentemente, para um leito de UTI em hospital público, sob pena de piora de seu quadro, conforme prescrito pelos médicos </p><p class="MsoNormal" style="margin-top: 6pt; text-indent: 113.95pt; line-height: 150%; text-align: justify;"> Diante do que, requereu, inclusive liminarmente, a condenação dos entes públicos à efetivação do seu direito fundamental à saúde e à vida. &#160; </p><p class="MsoNormal" style="margin-top: 6pt; text-indent: 113.95pt; line-height: 150%; text-align: justify;"> Liminar deferida (ID 15572369). </p><p class="MsoNormal" style="margin-top: 6pt; text-indent: 113.95pt; line-height: 150%; text-align: justify;"> Apenas o Município de Fortaleza/CE apresentou contestação (ID 15572388), suscitando o risco de quebra da isonomia, se priorizado o atendimento um paciente, em detrimento de outros na fila de espera do SUS, e a necessidade de ser observada a reserva do possível pelo Poder Judiciário. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> A sentença: o Juízo a quo decidiu <strong style="mso-bidi-font-weight: normal;">pela total procedência da ação (ID 15572395) <strong style="mso-bidi-font-weight: normal;">. Transcrevo abaixo o seu dispositivo, no que interessa: &#160;</p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> “ Face o exposto, ratifico a decisão liminar e julgo procedente o pedido autoral, extinguindo o processo com julgamento do mérito (art. 487, I, CPC), condenando ESTADO DO CEARÁ e o MUNICÍPIO DE FORTALEZA a fornecerem a internação em LEITO DE UNIDADE DE TRATAMENTO INTENSIVO UTI – PRIORIDADE 1 para MARIA LEUDIMAR ALVES. </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> &#160;Defiro a gratuidade de justiça. </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> &#160;Sem condenação em custas (art. 5º, lei estadual nº 16.132/16).&#160;&#160;&#160; </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> &#160; Fixo o valor da causa em R$ 84.725,00 (oitenta e quatro mil, setecentos e vinte e cinco reais) </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> &#160; Condeno, de forma rateada em partes iguais, o Estado do Ceará e o Município de Fortaleza ao pagamento, pro rata, dos honorários advocatícios,&#160;a serem apurados no cumprimento de sentença, visto que restou superada a Súmula nº 421 do STJ pelo julgado do

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	STF, Plenário. RE 1.140.005/RJ, Rel. Min. Roberto Barroso, julgado em 26/06/2023 (Repercussão Geral – Tema 1.002), a qual vedava a condenação do Estado do Ceará em demandas propostas pela Defensoria Pública Estadual.&#160; &#160;&#160; </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> &#160;Diante do caráter ilíquido da condenação na obrigação de fazer, pois não se pode atestar o valor do proveito econômico, número de dias que a parte fruirá do bem jurídico visado, leito,&#160;deixo de arbitrar a percentagem dos honorários a incidir sobre o proveito econômico, o que deve ser definido em liquidação, quando do&#160; cumprimento de sentença, nos termos do inc. II do §4º do art. 85 do CPC. </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> (1) Intimem-se as partes&#160; e o Ministério Público. </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> (2) Publique-se, registre-se, intimem-se. </p><p style="margin: 0cm 0cm 0cm 4cm; text-align: justify;"> (3) Se transcorrido o prazo para recurso voluntário sem manifestação, autos ao arquivo com o devido trânsito em julgado. </p><p style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> Expediente(s) necessário(s)” (sic) </p><p class="Standard" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Inconformado, o Município de Fortaleza/CE interpôs Apelação Cível (ID 15572400), sustentando que, como não se faz absolutamente possível mensurar, in casu, o(s) ganho(s) auferido(s) pelo paciente, e o valor atribuído à causa é simbólico, seria o caso de utilização do critério da equidade, para fins de arbitramento dos honorários devidos à Defensoria Pública, de acordo com o CPC. </p><p class="Standard" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E, ao final, pugnou pelo provimento do seu recurso. &#160; </p><p class="Standard" style="margin: 6pt 0cm; text-indent: 113.95pt; line-height: 150%; text-align: justify;"> Foram ofertadas contrarrazões (ID 15572404). &#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Desnecessária a intervenção da Procuradoria-Geral de Justiça <strong style="mso-bidi-font-weight: normal;"> como custos legis, na medida em que a questão devolvida a este Tribunal, em sede de recurso, é de natureza eminentemente patrimonial (honorários), não havendo, pois, interesse público a ser tutelado pelo Parquet. </p><p class="Standard" style="margin: 6pt 0cm; text-indent: 113.95pt; line-height: 150%; text-align: justify;"> É o relatório. </p><p class="Standard" style="margin: 6pt 0cm; text-indent: 113.95pt; line-height: 150%; text-align: justify;">&#160;</p><p class="Standard" style="margin: 6pt 0cm; line-height: 150%; text-align: center;"> VOTO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Preenchidos os requisitos legais, conheço do recurso. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Foi devolvida a este Tribunal apenas a controvérsia sobre se os honorários devidos à Defensoria Pública foram ou não corretamente arbitrados pelo Juízo a quo, em seu decisum, de acordo com os parâmetros estabelecidos na lei. </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Ora, com o advento do Tema nº 1.002 do STF, não há mais dúvida de que, além do Município de Fortaleza/CE, também o Estado do Ceará deve arcar com esse ônus da sucumbência, na forma do art. 87, §§ 1º e 2º, do CPC: </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <span

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	style="font-size: medium;"> “Art. 87. Concorrendo diversos autores ou diversos réus, os vencidos respondem proporcionalmente pelas despesas e pelos honorários. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> § 1º - A sentença deverá distribuir entre os litisconsortes, de forma expressa, a responsabilidade proporcional pelo pagamento das verbas previstas no caput. &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> § 2º - Se a distribuição de que trata o § 1º não for feita, os vencidos responderão solidariamente pelas despesas e pelos honorários.” (destacado) </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> É válido destacar, porém, que o STJ proferiu decisão, na sistemática dos arts. 1.036 e s.s. do CPC, pondo fim em antiga discussão que havia em torno da possibilidade de fixação dos honorários, por apreciação equitativa do Órgão Julgador, também nas ações em que o valor da condenação, do proveito econômico obtido ou da causa fosse bastante elevado, in verbis: &#160; </p><p class="Standard" style="margin: 6pt 0cm 0.0001pt 4cm; text-align: justify;"> “(1) A fixação dos honorários por apreciação equitativa não é permitida quando os valores da condenação ou da causa, ou o proveito econômico da demanda, forem elevados. É obrigatória, nesses casos, a observância dos percentuais previstos nos parágrafos 2º ou 3º do artigo 85 do Código de Processo Civil (CPC) a depender da presença da Fazenda Pública na lide , os quais serão subsequentemente calculados sobre o valor: (a) da condenação; ou (b) do proveito econômico obtido; ou (c) do valor atualizado da causa. &#160; </p><p class="Standard" style="margin-left: 4cm; text-align: justify;"> (2) Apenas se admite o arbitramento de honorários por equidade quando, havendo ou não condenação: (a) o proveito econômico obtido pelo vencedor for inestimável ou irrisório; ou (b) o valor da causa for muito baixo.” (Tema nº 1.076 do STJ): </p><p class="MsoNormal" style="margin-top: 12pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Pelo que se extrai, ficou expressamente vedada a interpretação extensiva do art. 85, §8º, do CPC e, desse modo, só se pode admitir, atualmente, o arbitramento dos honorários por equidade, “ nas causas em que for inestimável ou irrisório o proveito econômico ou, ainda, quando o valor da causa for muito baixo”. &#160; </p><p class="Standard" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> E a hipótese dos autos se enquadra, precisamente, nessa exceção prevista no Tema nº 1.076 do STJ, porque, ainda que se admita a relevância da questão de fundo discutida na ação (direito fundamental à saúde e à vida), não se pode estimar o(s) ganho(s) auferido(s) pela paciente in concreto, e, diversamente do que sustenta a Defensoria Pública, o valor atribuído à causa é meramente simbólico (por falta de conteúdo econômico direto). </p><p class="Standard" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Logo, de acordo com a ordem de gradação da base de cálculo estabelecida no CPC (art. 85, §§2º e 8º) , deveria o magistrado de primeiro grau, realmente, ter se utilizado da equidade para a fixação de tal verba , ex vi : </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> “Art. 85. A sentença condenará o vencido a pagar honorários ao advogado do vencedor. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> (…) &#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> &#160; § 2º Os honorários serão fixados entre o mínimo de dez e o máximo de vinte por cento sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa, atendidos: <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> <span style="mso-spacerun:

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	yes;">&#160; <strong style="mso-bidi-font-weight: normal;">I - o grau de zelo do profissional; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> II - o lugar de prestação do serviço; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> III - a natureza e a importância da causa; </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> IV - o trabalho realizado pelo advogado e o tempo exigido para o seu serviço. </p><p class="MsoNormal" style="margin-left: 4cm; text-align: justify;"> (...) <strong style="mso-bidi-font-weight: normal;">&#160;</p><p class="MsoNormal" style="margin: 0cm 0cm 11.35pt 4cm; text-align: justify;"> <strong style="mso-bidi-font-weight: normal;"> § 8º Nas causas em que for inestimável ou irrisório o proveito econômico ou, ainda, quando o valor da causa for muito baixo, o juiz fixará o valor dos honorários por apreciação equitativa, observando o disposto nos incisos do § 2º.” (destacado)</p><p class="MsoNormal" style="margin: 12pt 0cm 6pt; text-indent: 113.2pt; line-height: 150%; text-align: justify;"> Inclusive, não é outra a orientação que tem sido adotada, ultimamente, pelas 03 (três) Câmaras de Direito Público do TJ/CE, ex vi:</p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> <span style="font-size: small;">“REEXAME NECESSÁRIO. AÇÃO DE OBRIGAÇÃO DE FAZER. TRATAMENTO DE HEMODIÁLISE. TRATAMENTO FORA DO DOMICÍLIO. HIPOSSUFICIÊNCIA. TRANSPORTE DEVIDO. DEVER DO ENTE PÚBLICO DEMANDADO. DIGNIDADE DA PESSOA HUMANA, DIREITO À VIDA E À SAÚDE. HONORÁRIOS SUCUMBENCIAIS DEVIDOS. FIXAÇÃO POR EQUIDADE. REMESSA NECESSÁRIA CONHECIDA E DESPROVIDA. SENTENÇA CONFIRMADA. 01. Cuida-se de Reexame Necessário que visa dar eficácia à sentença que condenou o Município de Independência na adoção de providências necessárias para o transporte do requerente até o Município de Crateús (CE) (ida e volta), enquanto estiver fazendo tratamento de hemodiálise. 02. A não consagração da saúde gera, de fato, um problema atinente à inconstitucionalidade por omissão, já que há um dever específico, emanado do próprio texto constitucional, de realizar políticas públicas, inclusive o fornecimento de medicamento, tratamento e meios de acesso para a efetivação de uma vida digna, consoante dispõe o art. 196, CF. 03. A saúde do promovente e a sua qualidade de vida restarão ameaçadas se lhe for imposto pela edilidade que ele se desloque, às suas espeças e de forma precária, a outro município ou ao centro da cidade de Independência, a fim de realizar o tratamento de hemodiálise, necessário em razão de ter sido diagnosticado com insuficiência renal crônica em estágio terminal (CID N 18.0). 04. Acertadas as colocações apresentadas pelo magistrado de piso quanto a existência de programa federal, vinculado ao SUS, que garante aos necessitados uma ajuda de custo para arcar com as despesas decorrentes do transporte para tratamento médico em outro município (TFD). 05. Quanto aos honorários advocatícios sucumbenciais, acertada a sentença ao fixar o montante da condenação da parte requerida por equidade, nos termos do art. 85, §8º, do CPC, posto que nas ações em face da Fazenda Pública cujo objeto envolva a tutela do direito à saúde o proveito econômico é inestimável. 06. Reexame Necessário conhecido e desprovido.” (Remessa Necessária Cível&#160;-0017638-29.2017.8.06.0092, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento:&#160; 12/12/2022, data da publicação:&#160; 13/12/2022). (destacado)</p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: center;"> * * * * *</p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> <span style="font-size: 10pt;"> <span style="font-size: small;">APELAÇÃO CÍVEL. DIREITO CONSTITUCIONAL. FORNECIMENTO DE CIRURGIA. ILEGITIMIDADE PASSIVA AD CAUSAM DO MUNICÍPIO. INOCORRÊNCIA. CHAMAMENTO AO PROCESSO DO ENTE ESTADUAL. DESNECESSIDADE. LITISCONSÓRCIO PASSIVO NECESSÁRIO INEXISTENTE. RESPONSABILIDADE SOLIDÁRIA DOS ENTES DA FEDERAÇÃO. DIREITO À SAÚDE. DEVER DO PODER PÚBLICO. CF/88 ART. 1º, III; ARTS. 5º, 6º, 196. RESERVA DO POSSÍVEL. SÚMULA Nº 45 TJ-CE. CONDENAÇÃO EM HONORÁRIOS ADVOCATÍCIOS APRECIAÇÃO EQUITATIVA. LIDE COM VALOR INESTIMÁVEL. HONORÁRIOS RECURSAIS. CPC ART. 85, §§ 8º E 11. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA PARCIALMENTE REFORMADA DE OFÍCIO. 1. O funcionamento do Sistema Único de Saúde – SUS é de responsabilidade solidária da União, Estados-Membros, Distrito Federal e Municípios, de maneira que quaisquer dessas entidades possuem legitimidade ad causam para figurar, isoladamente ou conjuntamente, no pólo passivo de demanda que objetive a garantia do acesso à medicação para pessoas desprovidas de recursos financeiros. Preliminar de ilegitimidade passiva afastada. 2. Inexiste hipótese de litisconsórcio passivo necessário

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	neste caso, pois a teor do art. 23, II, da Carta Magna é competência comum da União, Estado, Distrito Federal e Município zelar pela saúde, sendo solidária, portanto, a responsabilidade entre os entes da federação. 3. Resta perfeitamente assente na jurisprudência do STF, do STJ e desta Augusta Corte Especial, que a responsabilidade entre os entes da Federação no que concerne ao fornecimento de medicamento a quem tenha parcos recursos financeiros é solidária, razão pela qual, cabe ao credor impetrante escolher contra qual ente público deseja litigar, tendo demandado, no caso destes autos, contra o Município de Viçosa do Ceará, sendo desnecessária a inclusão do Estado do Ceará e da União no pólo passivo da lide. Preliminar afastada. 3. O direito à saúde tem assento constitucional no direito à vida e na dignidade da pessoa humana, detendo absoluta prioridade e ostentando categoria de direito fundamental, devendo os entes da federação instituir políticas públicas para a promoção, proteção e recuperação da saúde da pessoa natural, incumbindo ao Judiciário determinar o cumprimento das prestações contidas nas políticas públicas que garantam acesso universal e igualitário aos serviços criados para atender ao dever do Estado. CF/88 art. 1º, III; arts. 5º, 6º, 196. 4. O Poder Público costumeiramente se ampara na tese da necessidade de previsão orçamentária como um limite à atuação do Estado para a efetivação de direitos sociais, a chamada reserva do possível. Ocorre em demandas desse jaez, aparente colisão/antinomia de princípios/direitos, quais sejam, o direito à vida dos pacientes de um lado e, do outro, a separação de poderes e a reserva do possível no aspecto limitação orçamentária do Poder Público, devendo o Judicante ponderar sua hermenêutica, assegurando o direito fundamental à vida. 5. A responsabilidade do Poder Público em fornecer medicamentos, materiais ou tratamentos médicos necessários, não disponíveis na rede pública, para assegurar o direito à saúde foi firmada neste e. Tribunal de Justiça pela Súmula nº 45. 6. Nas demandas que versam sobre a defesa dos direitos à saúde, onde se tutela bem jurídico indisponível, o proveito econômico tem valor inestimável, devendo a fixação dos honorários se dar de forma equitativa, nos termos do §8º, com observância ao §2º, incisos I a IV, do art. 85 do CPC, eis que se trata somente de obrigação de fazer visando o fornecimento do medicamento ou do tratamento pretendido para a remissão e cura da saúde da parte, sem conteúdo econômico. 7. Desse modo, deve ser desprovido o apelo e, tratando-se de matéria de ordem pública, deve ser corrigida, ex officio, a condenação do Município réu em honorários advocatícios para fixá-la de forma equitativa, majorando-a a título de honorários recursais, nos termos do art. 85, §§8º e 11 do CPC. 8. APELAÇÃO CONHECIDA E DESPROVIDA. SENTENÇA PARCIALMENTE REFORMADA DE OFÍCIO.” (Apelação Cível&#160;- 0050745-80.2020.8.06.0182, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento:&#160; 24/08/2022, data da publicação:&#160; 24/08/2022). (destacado) </p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: center;"> * * * * *</p><p class="MsoNormal" style="margin: 0cm 0cm 12pt 4cm; text-align: justify;"> <span style="font-size: 10pt;"> <span style="font-size: small;">“CONSTITUCIONAL E PROCESSUAL CIVIL. APELAÇÃO E REMESSA EM AÇÃO EM AÇÃO DE OBRIGAÇÃO DE FAZER. MEDICAMENTO COM REGISTRO NA ANVISA NÃO FORNECIDO PELO SUS. TEMA 793/STF. DIREITO FUNDAMENTAL À SAÚDE (ART. 196/CF). DEVER DO PODER PÚBLICO. NECESSIDADE DE RENOVAÇÃO PERIÓDICA DA PRESCRIÇÃO MÉDICA. PREJUDICADO O ENVIO DOS AUTOS À JUSTIÇA FEDERAL (IAC/14 DO STJ). HONORÁRIOS ADVOCATÍCIOS FIXADOS POR EQUIDADE. APELAÇÃO E REMESSA CONHECIDAS E PARCIALMENTE PROVIDAS QUANTO AOS HONORÁRIOS E COMPROVAÇÃO PERIÓDICA DA NECESSIDADE DO TRATAMENTO. 01. A autora, hipossuficiente, comprovou, conforme documento médico fl. 21, a sua necessidade de uso do medicamento LIRAGLUTIDA 6,0mg/mL e da agulha Pen Needle (ou equivalente), em razão de ser portadora de obesidade grau III (CID E66), associada a dislipidemia e hipertensão arterial. 02. Não se olvida do princípio da separação de poderes e da necessidade de respeito ao princípio da universalidade, o qual orienta as prestações positivas referentes a direitos sociais de responsabilidade do Poder Público. Contudo, in casu, sobrepõe-se a necessidade da intervenção do Judiciário com vistas a concretizar o próprio fundamento da dignidade humana, estatuído no art. 1º, III, CF/88, não se tratando, pois, de ofensa aos princípios da isonomia, da tripartição de funções estatais e da discricionariedade da Administração, mas sim de implementação de um direito fundamental. 03. Assim, considerando que o medicamento foi prescrito de forma fundamentada (fl. 21), imprescindível para o tratamento em razão do "risco de complicações futuras para paciente, incluindo o aumento da mortalidade", considerando a condição de saúde da autora, somando-se ao dever de abstenção de envio dos autos à Justiça Federal, deve-se manter o seu fornecimento pelo Estado demandado. 04. Todavia, tendo sido concedida medida judicial de prestação continuativa, devidamente confirmada no julgamento da demanda, é imprescindível que o jurisdicionado promova a renovação periódica da prescrição médica, a fim de comprovar a permanência da necessidade da prestação determinada, conforme Enunciado n° 2 da I Jornada de Direito da Saúde do CNJ. 05. Em relação à verba sucumbencial, considerando que a ação versa sobre direito à saúde, cujo proveito econômico é inestimável, os honorários advocatícios

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	devem ser fixados por apreciação equitativa, no montante de R$ 800,00 (oitocentos reais), considerando o grau de zelo do profissional, o lugar da prestação do serviço, a natureza e importância da causa, o trabalho por ela desempenhado e o tempo exigido para seu serviço, consoante disposição do art. 85, §§ 2º e 8º do CPC/15. 05. Recursos conhecidos e parcialmente providos. Sentença parcialmente reformada, para acrescer a determinação de que a parte autora comprove, semestralmente, por meio de prescrição médica, a necessidade do medicamento requerido e para fixar, por equidade, o valor dos honorários advocatícios, os quais arbitro em R$ 800,00 (oitocentos reais), com fulcro no art. 85, § 2º e 8º do CPC. “(Apelação / Remessa Necessária&#160;- 0202709-53.2022.8.06.0117, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento:&#160; 12/12/2022, data da publicação:&#160; 12/12/2022). (destacado) </p><p class="Alnea" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Por tudo isso, em homenagem aos princípios da &#160;&#160;razoabilidade e proporcionalidade, somente resta a este Tribunal reduzir, equitativamente, o valor dos honorários a serem suportados, pro rata, pelo Estado Ceará e pelo Município &#160;de Fortaleza/CE, para R$ 1.000,00 (mil reais), que se mostra, ao meu ver, &#160;bem &#160;mais adequado às peculiaridades do caso, especialmente, se levado em consideração o tempo de duração e a baixa complexidade do processo em si.</p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Oportuno destacar, ademais, que os Órgãos Julgadores, em geral, não estão vinculados aos valores previstos em tabelas das Seccionais da OAB em situações como a dos autos, porque o regime jurídico da Advocacia não se aplica à Defensoria Pública, conforme precedentes deste Tribunal, in verbis: </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm 6pt 4cm; line-height: normal; text-align: justify;"> “DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO. DIREITO À SAÚDE. DEFENSORIA PÚBLICA ESTADUAL. HONORÁRIOS DE SUCUMBÊNCIA FIXADOS POR APRECIAÇÃO EQUITATIVA (§ 8º, ART. 85, CPC). PRETENSÃO DE APLICAÇÃO DA TABELA DE HONORÁRIOS DA ORDEM DOS ADVOGADOS (§ 8-A, ART. 85, CPC). IMPOSSIBILIDADE. REGIMES JURÍDICOS DISTINTOS (TEMA 1074/STF). PRECEDENTES DO TJCE. AGRAVO INTERNO CONHECIDO E DESPROVIDO. DECISÃO MONOCRÁTICA MANTIDA. 1. Trata-se de agravo interno interposto em face de decisão monocrática desta relatoria rejeitou os embargos de declaração opostos pela ora agravante, que pretendia o saneamento de suposta omissão no decisum desta relatoria quanto à fixação dos honorários sucumbenciais de acordo com a regra do art. 85, § 8º c/c o § 8º-A, do CPC, observando os valores recomendados pelo Conselho Seccional da Ordem dos Advogados do Brasil. 2. O Supremo Tribunal Federal, ao julgar o Tema 1074 (RE 1240999, com repercussão geral), firmou a tese jurídica segundo a qual ¿é inconstitucional a exigência de inscrição do Defensor Público nos quadros da Ordem dos Advogados do Brasil¿, oportunidade em que também se manifestou no sentido de que a Defensoria Pública e a Advocacia possuem regimes jurídicos distintos. 3. Inaplicável a primeira parte do § 8º-A, do art. 85, do CPC, aos membros da Defensoria Pública, porquanto a tabela de honorários da OAB não lhes pode servir de parâmetro para a remuneração e tampouco para o arbitramento da verba sucumbencial, considerando a ausência de conformidade entre os regimes jurídicos da advocacia (privada e pública) e da Defensoria Pública. 4. Recurso conhecido e não provido.” (Agravo Interno Cível&#160;- 0272137-82.2022.8.06.0001, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 19/02/2024, data da publicação:&#160; 19/02/2024) (destacado) </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm 6pt 4cm; line-height: normal; text-align: center;"> * * * * * </p><p class="Recuodecorpodetexto21" style="margin: 6pt 0cm 6pt 4cm; line-height: normal; text-align: justify;"> EMBARGOS DE DECLARAÇÃO . Apelação cível. AÇÃO DE OBRIGAÇÃO DE FAZER. PACIENTE PORTADOR DE DOENÇA GRAVE. FORNECIMENTO DE ALIMENTAÇÃO ESPECIAL. TUTELA DA SAÚDE. DEVER DA ADMINISTRAÇÃO. CONDENAÇÃO DO ESTADO DO CEARÁ AO PAGAMENTO DE HONORÁRIOS À DEFENSORIA PÚBLICA. POSSIBILIDADE. MUDANÇA DE ORIENTAÇÃO NO ÂMBITO DESTE TRIBUNAL. APLICAÇÃO DO TEMA Nº 1.002 DO STF AO PRESENTE CASO. FORÇA VINCULANTE (CPC, ART. 927, INCISO III). PROVEITO ECONÔMICO INESTIMÁVEL. UTILIZAÇÃO DO CRITÉRIO DA

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	EQUIDADE PARA O ARBITRAMENTO DO SEU VALOR (CPC, ART. 85, §§ 8º E 11). PRECEDENTES. DESCABIMENTO DA APLICAÇÃO DO DISPOSTO NO ARTIGO 85, § 8º-A, DO CPC. VALORES RECOMENDADOS SERVEM APENAS COMO PARÂMETRO. INEXISTÊNCIA DE OMISSÃO, CONTRADIÇÃO, OBSCURIDADE OU ERRO MATERIAL NO ACÓRDÃO. REDISCUSSÃO DA MATÉRIA NESTA VIA. IMPOSSIBILIDADE. SÚMULA Nº 18 DO TJ/CE. RECURSO CONHECIDO E NÃO PROVIDO. 1. Trata-se, no presente caso, de Embargos Declaração interpostos pela Defensoria Pública, apontando a existência de omissão no Acórdão da 3ª Câmara de Direito Público, que concedeu provimento a apelação, reformando, em parte, a sentença, apenas para determinar o pagamento de honorários à Defensoria pública e fixá-los, equitativamente. 2. Ocorre que foram enfrentadas, no decisum, todas as questões relevantes para o caso, estando sua fundamentação perfeitamente compatível com a orientação predominante no âmbito deste Tribunal. 3. Inclusive, ficou bem claro que a utilização do critério da equidade para majoração dos honorários devidos pelo Estado do Ceará se deu, única e tão somente, porque não se faz absolutamente possível mensurar, in casu, os ganhos auferidos pelo paciente, e o valor atribuído à causa pela Defensoria Pública é meramente simbólico, pela falta de conteúdo econômico direto da lide. 4. Exceção prevista no Tema nº 1.076 do STJ (REsp 1.850.512/SP e REsp 1.877.883/SP), não havendo, pois, que se falar em violação à ordem de gradação da base de cálculo estabelecida no CPC (art. 85, § 2º e 8º). 5. Vale salientar que, a despeito do disposto no § 8º-A no art. 85 do Código de Processo Civil, a tabela de honorários recomendados pelo Conselho Seccional da OAB deve ser utilizada apenas como parâmetro para fixação dos honorários por equidade. Entretanto, não há qualquer vinculação, e o valor efetivamente arbitrado pelo magistrado deverá considerar outros critérios, tais como complexidade da causa e conteúdo econômico da demanda. 6. Em verdade, a suposta ¿omissão¿ apontada pela Defensoria Pública revela apenas o propósito de voltar a discutir a matéria, sob o viés dos próprios interesses. 7. Os embargos de declaração, porém, têm por finalidade a integração ou aclaramento da decisão, sendo absolutamente vedada sua oposição, para rediscussão de matérias apreciadas e resolvidas pelo Órgão Julgador (Súmula nº 18 do TJ/CE). 8. Assim, não se constatando, no acórdão, qualquer vício, deve ser negado provimento ao recurso. 9. Ausentes os vícios insertos no art. 1.022 do CPC, torna-se despicienda a declaração requerida pela parte embargante para fins de prequestionamento. - Embargos de declaração conhecidos e desprovidos.” (Embargos de Declaração Cível&#160;- 0217066-61.2023.8.06.0001, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 18/12/2023, data da publicação:&#160; 18/12/2023) (destacado). </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 117pt; line-height: 150%; text-align: justify;"> E, não há que se falar, aqui, em “ reformatio in pejus”, uma vez que os honorários, enquanto consectários legais da condenação, possuem natureza de&#160;ordem&#160;pública, e, por conta disso, podem ser revistos a qualquer momento e até mesmo ex officio pelo Poder Judiciário (vide STJ, AgInt no REsp 1.722.311/RJ, Rel.: Mininistro Mauro Campbell Marques, Segunda Turma, DJe de 28.06.2018). </p><p class="Alnea" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Assim, a reforma da sentença é medida que se impõe apenas nesta parte, permanecendo , no mais, totalmente inalterados seus fundamentos . &#160;</p><p class="Alnea" style="margin: 18pt 0cm 6pt; line-height: 150%; text-align: center;"> DISPOSITIVO </p><p class="MsoNormal" style="margin: 6pt 0cm; text-indent: 4cm; line-height: 150%; text-align: justify;"> Isto posto, conheço e dou parcial provimento ao recurso, reformando, em parte, a sentença, apenas para reduzir, equitativamente, o valor dos honorários devidos pelo Estado do Ceará e pelo Município de Fortaleza/CE à Defensoria Pública, <strong style="mso-bidi-font-weight: normal;">ficando seu valor ora fixado em R$ 1.000,00 (um mil reais), <strong style="mso-bidi-font-weight: normal;">e distribuído, igualmente, entre os sucumbentes (50% para cada), nos termos dos arts. 85, §§ 2º e 8º, e 87, § 1º, do CPC.</p><p class="MsoNormal" style="margin-bottom: 6pt; text-indent: 4cm; line-height: 150%; text-align: justify;"> Para fins de atualização de tal verba , deve incidir a Taxa SELIC, sem cumulação com outros índices de correção monetária ou juros de mora (art. 3º da EC nº 113/2021), a partir do trânsito em julgado (art. 85, § 16, do CPC).</p><p class="MsoNormal" style="margin: 5.65pt 0cm; text-indent:

Processo	3003144-46.2024.8.06.0001
	4cm; line-height: 115%; text-align: justify;"> Permanece, no mais, inalterado o decisum.</p><p class="MsoNormal" style="margin: 5.65pt 0cm; text-indent: 4cm; line-height: 115%; text-align: justify;"> É como voto.</p><p class="Recuodecorpodetexto21" style="margin: 11.35pt 0cm 11.35pt 0.55pt; text-indent: 112.85pt; line-height: 150%; text-align: justify;"> Local, data e hora informados pelo sistema. <strong style="mso-bidi-font-weight: normal;">&#160; </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> <strong style="mso-bidi-font-weight: normal;"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p class="MsoNormal" style="margin: 6pt 0cm; text-align: center;"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	180
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	MARIA DE FATIMA ALVES DE FREITAS
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

Processo	3000633-83.2024.8.06.0160
Acordão	

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AAAAAASUVORK5CYII=" alt="" /> </p><p style="text-align: center;">   <strong style="font-size: medium;">ESTADO DO CEARÁ <br />   <strong style="font-size: medium;">PODER JUDICIÁRIO   <br />   <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA   <br />   <strong style="font-size: medium;">GABINETE DA DESEMBARGADORA MARIA IRACEMA MARTINS DO VALE </p><p style="text-align: center;">   <br /> </p><p> PROCESSO:&#160;3000633-83.2024.8.06.0160 -&#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MUNICÍPIO DE SANTA QUITÉRIA&#160;</p><p> APELADA: MARIA DE FÁTIMA ALVES DE FREITAS&#160; <br /> .</p><p align="center">   <br /> </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> Ementa: CONSTITUCIONAL. ADMINISTRATIVO. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. MUNICÍPIO DE SANTA QUITÉRIA/CE. TERÇO DE FÉRIAS. BASE DE CÁLCULO. REMUNERAÇÃO INTEGRAL. ART. 39, §3º C/C ART. 7º, INCISO XVII, DA CF/88. DIFERENÇAS DEVIDAS. PARCELAS VENCIDAS E VINCENDAS. PRESCRIÇÃO QUINQUENAL. INCIDÊNCIA. SÚMULA Nº 85 DO STJ. PRECEDENTES DO TJ/CE. RECURSO CONHECIDO E NÃO PROVIDO . SENTENÇA MANTIDA.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify">   I. O CASO EM EXAME </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 1. Apelação Cível interposta pelo Município de Santa Quitéria, buscando a reforma de sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação ordinária movida por servidora pública.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify">   II. QUESTÃO EM DISCUSSÃO </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 2. A principal questão discutida nos autos é sobre qual seria a base de cálculo correta a ser utilizada pelo Município de Santa Quitéria/CE, para fins de pagamento do terço de férias aos seus servidores públicos, como visto.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify">   III. RAZÕES DE DECIDIR </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 3. Ora, é dever da Administração realizar, anualmente, o pagamento do terço de férias aos seus agentes, com base na remuneração integral (que corresponde ao   vencimento do cargo, somado a outras vantagens previstas em lei), nos termos do art. 39, §3º c/c art. 7º, inciso XVII, da CF/88.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 4. E, no âmbito do Município de Santa Quitéria/CE, a matéria se encontra disciplinada pela Lei nº 081-A/1993 (Estatuto dos Servidores Públicos), em seu art. 47.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 5. Consequentemente, não há dúvida de que era mesmo o caso de condenação do Município de Santa Quitéria/CE à efetivação do direito da servidora pública ao recebimento do terço de férias, com base na sua

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	remuneração integral.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 6. Ademais, em se tratando de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Súmula nº 85 do Superior Tribunal de Justiça.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> IV. DISPOSITIVO </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> 7. Recurso conhecido e não provido.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> ______</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> <br /> </p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> Dispositivos relevantes citados: CF/88, arts. 7º, XVII e 39, §3º; Lei Municipal nº 081-A/1993, art. 47.</p><p class="western" style="margin-left: 4cm; margin-bottom: 0cm" align="justify"> Jurisprudência relevante citada: Súmula nº 85 do STJ.</p><p align="center"> <br /> </p><p class="western" style="line-height: 0.18cm; margin-left: 3.5cm; margin-bottom: 0cm" align="justify"> <br /> </p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000633-83.2024.8.06.0160, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, mas para lhe negar provimento, confirmando integralmente a sentença , nos termos do voto da e. Relatora.</p><p style="line-height: 150%; orphans: 0; widows: 0; margin-left: 0.02cm; text-indent: 3.98cm; margin-top: 0.4cm; margin-bottom: 0.4cm"> Local, data e hora informados pelo sistema.</p><p class="western" style="text-transform: uppercase; margin-top: 0.21cm" align="center"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0.3cm" align="center"> R elatora </p><div> <br /> </div><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center"> RELATÓRIO </p><p align="center"> <br /> </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> Cuida-se, na espécie, de Apelação Cível, adversando sentença proferida pelo M.M. Juiz de Direito da 1ª Vara Cível da Comarca de Santa Quitéria/CE, que deu parcial procedência a ação ordinária.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> O caso/a ação originária: Maria de Fátima Alves de Freitas moveu ação ordinária , aduzindo, em suma, que têm sido excluídas, d a base de cálculo do seu terço de férias, algumas vantagens que deveriam integrá-la, em afronta aos arts. 7º, inciso XVII, e 39, §3º, ambos da Constituição Federal de 1988. </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.18cm; margin-bottom: 0.18cm" align="justify"> Diante do que, requereu a condenação da Administração na imediata correção de tais falhas/omissões e, consequentemente, ao pagamento dos valores retroativamente devidos, in casu, acrescidos dos consectários legais.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> Citado, o ente público apresentou contestação (ID 15578792), enfatizou que seus atos estariam amparados por lei e, portanto, não haveria nenhuma lesão a direito a ser afastada pelo Judiciário.</p><p

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	class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> Sentença proferida pelo magistrado de primeiro grau (ID 15578799), dando parcial procedência a ação. Transcrevo seu dispositivo :</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm" align="justify"> “ Ante o exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão inaugural, com a resolução do mérito, na forma do art. 487, I, do CPC, para o fim de DETERMINAR que o requerido proceda ao pagamento do terço de férias à parte autora com incidência sobre sua remuneração integral, bem como CONDENÁ-LO ao pagamento das diferenças do terço de férias dos anos anteriores, ressalvada a prescrição quinquenal, e prestações vincendas, com juros e correção monetária na forma exposta na fundamentação; </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Deixo de condenar o demandado ao pagamento de custas processuais ante a isenção legal do ente público concedida no art. 5º, I, da Lei estadual nº. 16.132/2016.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Condeno a parte requerida ao pagamento dos honorários advocatícios sucumbenciais à contraparte, os quais fixo desde já no percentual de 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, § 3º, I, do CPC.</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify"> Deixo de promover a remessa necessária, uma vez que é possível antever que o proveito econômico referente às prestações vencidas não ultrapassará 100 (cem) salários-mínimos, conforme preconizado no artigo 496, §3º, inciso I, do CPC.”</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; margin-bottom: 0cm;"> <br /> </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> Inconformado, o Município de Santa Quitéria/CE interpôs Apelação Cível (ID 15578804), buscando a reforma do referido decisum monocrático, basicamente, pelas mesmas razões outrora expostas nos autos</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> Foram ofertadas contrarrazões (ID 15578807). </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Desnecessária a intervenção da Procuradoria-Geral de Justiça como custos legis , na medida em que a questão devolvida a este Tribunal é de natureza eminentemente patrimonial, não havendo, portanto, interesse público a ser tutelado pelo Parquet, o que, inclusive, consta do parecer exarado no processo de nº 3001577-22.2023.8.06.0160 (ID 14291542), que versa sobre um caso absolutamente idêntico ao dos autos.

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	 </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> É o relatório.</p><p align="center">&#160;</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0.3cm" align="justify"> <br /> <br /> </p><p align="center"> <br /> </p><p style="margin-top: 0.21cm; margin-bottom: 0.4cm" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> Preenchidos todos os requisitos legais, conheço da apelação cível, e passo, a seguir, ao enfrentamento de suas razões.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> A principal questão discutida nos autos é sobre qual seria a base de cálculo correta a ser utilizada pelo Município de Santa Quitéria/CE, para fins de pagamento do terço de férias aos seus servidores públicos, como visto.</p><p style="line-height: 150%; text-indent: 4cm; margin-top: 0.3cm; margin-bottom: 0.3cm" align="justify"> Ora, nos termos do art. 39, §3º, c/c art. 7º, inciso XVII, da Constituição Federal de 1988, são garantidos a todos aqueles ocupantes de cargos públicos, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores em geral, entre eles, o terço de férias, in verbis :</p><p class="western" style="margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas.&#160;&#160;&#160;&#160;&#160;&#160;</p><p class="western" style="margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> [...]&#160;</p><p class="western" style="margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.&#160; </p><p class="western" style="margin-left: 4.25cm; margin-bottom: 0cm" align="justify"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social:</p><p class="western" style="margin-left: 4.25cm; margin-bottom: 0.42cm" align="justify"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal” ; (destacado) </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Vê-se, portanto, o terço de férias constitui um direito fundamental dos servidores públicos, que deve ser pago, a cada ano, com base na remuneração integral (que corresponde ao vencimento do cargo, somado a outras vantagens previstas em lei), como bem ensina a melhor doutrina, ex vi:</p><p class="western" style="margin-left: 4cm; margin-top: 0.21cm" align="justify"> “ Remuneração, do latim remunerado, de remunerare , originariamente indica qualquer tipo de retribuição monetária correlata à prestação dos serviços efetuada. O termo, em sentido amplo, corresponde a toda e qualquer verba contra prestativa atribuída aos agentes do Estado em virtude do seu labor. Mas, stricto sensu , tal como empregado no artigo 37, X, da Constituição, remuneração é sinônimo de vencimentos do servidor, correspondendo ao somatório do vencimento – retribuição em dinheiro pelo exercício do cargo ou função pública com valor fixado em lei – e das demais vantagens inerentes ao cargo ou aos seus respectivos ocupantes (vantagens de caráter individual).” (DI PIETRO, Maria Sylvia Zanella, MOTTA, Fabrício, FERRAZ, Luciano de Araújo. Servidores Públicos na Constituição Federal. 3ª Ed. – São Paulo: Atlas, 2015, p. 113). (destacado)</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> E, no âmbito do Município de Santa Quitéria/CE, a matéria se encontra disciplinada pela Lei nº 081-A/1993 (Estatuto dos Servidores Públicos), mais especificamente, em seu art. 47, que assim dispõe:</p><p class="western" style="margin-left: 4cm; margin-top: 0.21cm" align="justify"> “ Art. 47. Remuneração é o vencimento de cargo efetivo acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei. ”

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	(destacado)</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Facilmente se extrai que a base de cálculo do terço de férias deve ser mesmo a remuneração integral, que sempre corresponderá ao vencimento do cargo, somado às outras vantagens – permanentes ou temporárias - recebidas, à época, pelo servidor público (exceto as de natureza indenizatória).</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Aliás, este tem sido o posicionamento da 3ª Câmara de Direito Público do TJ/CE, em casos praticamente idênticos ao dos autos:</p><p class="western" style="margin-left: 4cm; margin-top: 0.21cm" align="justify"> “ EMENTA: APELAÇÕES CÍVEIS. CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA. SERVIDORES PÚBLICOS DO MUNICÍPIO DE CATUNDA/CE. ADICIONAL POR TEMPO DE SERVIÇO. BASE DE CÁLCULO. &#160;REMUNERAÇÃO INTEGRAL. IMPOSSIBILIDADE. EFEITO “CASCATA”. VEDAÇÃO PREVISTA NO ART. 37, INCISO XIV, DA CF/88. VANTAGEM INCIDENTE APENAS SOBRE O VENCIMENTO DO CARGO. COM REFLEXOS NO 13ª (DÉCIMO TERCEIRO) E NO 1/3 (TERÇO) DE FÉRIAS. PRECEDENTES DESTE TRIBUNAL. RECURSOS CONHECIDOS E NÃO PROVIDOS. SENTENÇA MANTIDA.&#160; 1. Foi devolvida a este Tribunal, em sede de Apelações Cíveis, a controvérsia em torno de base de cálculo correta, para fins de pagamento do adicional por tempo de serviço aos servidores públicos do Município de Catunda/CE. 2. Atualmente, tem prevalecido, entre as Câmaras de Direito Público do TJ/CE, a orientação no sentido de que os percentuais relativos aos “anuênios” somente devem incidir sobre o vencimento do cargo, sob pena de ofensa ao art. 37, inciso XIV, da Constituição Federal de 1988. &#160;3. E foi exatamente isso o que estabeleceu o Juízo a quo no presente caso, não havendo, portanto, qualquer reparo a ser feito por este Tribunal, em seu decisum. 4. Aqui, vale destacar que, diversamente do que sustenta o Município de Catunda/CE, não configura “efeito cascata” a inclusão de tal vantagem (“anuênios”) no cálculo do 13º (décimo terceiro) e do 1/3 (terço) de férias, porque estes, sim, são pagos com base na remuneração integral dos servidores públicos (art. 7º, incisos VIII e XVII, c/c art. 39, §3º, ambos da Constituição Federal de 1988). 5. É bom ressaltar, ainda, que não houve, propriamente, a declaração de inconstitucionalidade Lei Complementar nº 001/1993, mas apenas foi dada ao seus arts. 47 e 68 uma interpretação conforme a CF/88, o que afasta a necessidade de observância da cláusula de reserva de plenário, segundo o Supremo Tribunal Federal. 6. Permanecem, então, inabalados os fundamentos da sentença, devendo ser confirmada neste azo. - Precedentes. - Recursos conhecidos e não providos. - Sentença confirmada. &#160;(APELAÇÃO CÍVEL - 30006470420238060160, Relator(a): MARIA IRACEMA MARTINS DO VALE, 3ª Câmara de Direito Público, Data do julgamento: 05/05/2024) (destacado) </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Consequentemente, era mesmo o caso de condenação do Município de Santa Quitéria/CE à efetivação do direito da servidora pública ao recebimento do terço de férias, com base na sua remuneração integral.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Ademais, em se tratando, aqui, de uma relação de trato sucessivo, em que não há prova da negativa do próprio fundo de direito, a prescrição atinge sim as parcelas vencidas antes dos 05 (cinco) anos que precederam a propositura da ação, conforme Súmula nº 85 do STJ, in verbis:</p><p class="western" style="margin-left: 4cm; margin-top: 0.21cm; margin-bottom: 0.42cm" align="justify"> Súmula 85 do STJ - “Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação.”</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Também há precedentes deste Tribunal no mesmo sentido:</p><p class="western" style="margin-left: 4cm; margin-top: 0.21cm" align="justify"> “ CONSTITUCIONAL E ADMINISTRATIVO. REEXAME NECESSÁRIO E APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. SERVIDOR PÚBLICO MUNICIPAL. AGENTE DE ENDEMIAS. ARGUMENTO RECURSAL DE QUE O "INCENTIVO FINANCEIRO" NÃO DEVE SER CONSIDERADO NO CÁLCULO DA REMUNERAÇÃO INTEGRAL. INOVAÇÃO RECURSAL. APELO NÃO CONHECIDO NESTE PONTO. DÉCIMO TERCEIRO SALÁRIO E FÉRIAS COM BASE NA REMUNERAÇÃO INTEGRAL (ARTS. 7º,

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	VIII E XVII E 39, § 3º, DA CF E ARTS. 46, 47, 64 E 80 DA LEI MUNICIPAL Nº 081-A/93). ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. SENTENÇA ILÍQUIDA. HONORÁRIOS SUCUMBENCIAIS A SEREM DEFINIDOS APENAS POR OCASIÃO DA LIQUIDAÇÃO. CONDENAÇÃO DA FAZENDA PÚBLICA EM DESPESAS PROCESSUAIS. DESCABIMENTO. REEXAME CONHECIDO E PARCIALMENTE PROVIDO. APELO CONHECIDO EM PARTE E, NESTA EXTENSÃO, PROVIDO. 01. A municipalidade alega que a vantagem intitulada "incentivo financeiro" não deve ser considerada na base de cálculo da "remuneração integral" da promovente, por ser transitória e possuir caráter indenizatório, nos termos do art. 3º da Lei Municipal nº 862/2015. Contudo, tal argumento não foi submetido ao crivo do juízo de 1º grau em sede de contestação, tampouco consiste em matéria cognoscível ex officio, configurando, portanto, inovação recursal. Assim, não conheço do apelo nesse ponto. 02. Aduz, ainda, que a sentença hostilizada merece reparo no tocante à fixação dos juros e correção monetária, com o fito de observar a orientação do Superior Tribunal de Justiça vertida no Tema nº 905. De fato, assiste razão ao ente apelante, quando se insurge contra os parâmetros dos encargos financeiros decorrentes da condenação, fixados no decisum. 03. Em reexame necessário, forçoso manter a condenação do ente federado ao pagamento das diferenças do décimo terceiro salário e do terço constitucional de férias com base em sua remuneração integral, com a ressalva da prescrição quinquenal. 04. Precedentes. 05. Por fim, a sentença merece reparos, ainda em sede de reexame necessário, no que diz respeito aos honorários de sucumbência, porquanto referida decisão é ilíquida, de maneira que a fixação dessa verba somente ocorrerá na fase de liquidação [art. 85, § 4º, II, do CPC.] 06. Reexame necessário conhecido e parcialmente provimento e apelação parcialmente conhecida e provida, no sentido de determinar que: a) os encargos legais decorrentes da condenação sejam fixados em observância à orientação do STJ (REsp 1.495.146/MG), b) a verba honorária sucumbencial seja fixada apenas por ocasião da liquidação do julgado e c) seja decotada da condenação o pagamento do ente requerido em despesas processuais." (Apelação / Remessa Necessária&#160;- 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 11/07/2022, data da publicação:&#160; 11/07/2022) (destacado) </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Permanecem, portanto, totalmente inabalados os fundamentos do decisum proferido pelo Juízo a quo, devendo ser confirmado por este Tribunal.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0.3cm" align="center"> DISPOSITIVO </p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.21cm" align="justify"> Isto posto, conheço do recurso, mas para lhe negar provimento, confirmando integralmente a sentença , por seus próprios termos.</p><p class="western" style="line-height: 150%; text-indent: 4cm; margin-top: 0.42cm; margin-bottom: 0cm" align="justify"> Já no que se refere aos índices de atualização dos valores devidos, há ser observado, in casu, o disposto no Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o previsto no art. 3 º da EC nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021).</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="justify"> Ademais, não sendo líquido o decisum, a definição do quantum dos honorários devidos pelo réu/apelante aos advogados da autora/apelada fica postergada para a fase de liquidação (CPC, art. 85, §4º, inciso II), oportunidade em que o Juízo a quo deverá levar em consideração, inclusive, o trabalho adicional realizado em sede de recurso, nos termos do art. 85, § 11, do CPC.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="justify"> É como voto.</p><p style="line-height: 150%; orphans: 0; widows: 0; text-indent: 4cm; margin-top: 0.2cm; margin-bottom: 0.2cm" align="justify"> Local, data e hora informados pelo sistema.</p><p class="western" style="text-transform: uppercase" align="center"> <br /> <br /> </p><p class="western" style="text-transform: uppercase; margin-top: 0.21cm" align="center"> JUÍZA CONVOCADA elizabete silva pinheiro – PORTaria 1.550/2024 </p><p align="center"> R elatora </p><p align="center"> <br /> </p><p style="text-indent: 8%; text-align: justify;">&#160;</p><p style="text-indent:

Processo	3000633-83.2024.8.06.0160
	8%; text-align: justify;">&#160;</p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	181
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	REGINA DE MESQUITA MUNIZ
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong id="docs-internal-guid-3321390b-7fff-f9b9-cdb0-73d4b1a53af8" style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 3000644-15.2024.8.06.0160 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelante: Município de Santa Quitéria</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Apelado: Regina de Mesquita Muniz</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Custos Legis: Ministério Público Estadual</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito constitucional e administrativo. Apelação. Ação ordinária. Servidora pública. Município de Santa Quitéria. Terço constitucional de férias. Base de cálculo. Remuneração. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 13.999999999999998pt; font-

Processo	3000644-15.2024.8.06.0160
	family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: small-caps; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">1. Apelação cível interposta pelo ente público, contra sentença que julgou parcialmente procedente a pretensão, condenando o ente requerido a implementar, em favor da autora, o pagamento do terço constitucional de férias tendo como base de cálculo a remuneração, bem como ao pagamento das diferenças das parcelas vencidas e das vincendas, observada a prescrição quinquenal, devidamente corrigidas.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. Verificar se o cálculo do terço constitucional de férias deve incidir sobre a remuneração integral do servidor público municipal ou apenas sobre o seu salário-base.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. A CF/1988, em seu art. 39, § 3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito pleiteado na presente demanda, qual seja, o terço constitucional de férias. A Lei Municipal nº 081-A/93 prevê expressamente que a parcela deve ser calculada com base na remuneração integral do servidor.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. Conjugando o texto constitucional, a norma de regência local e os elementos de prova coligidos, restam comprovados os fatos constitutivos do direito da autora. A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral. Nesse contexto, escorreita sentença, pelo que deve ser mantida.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. Apelação desprovida.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">_________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Dispositivos relevantes citados: CF/1988, arts. 7º, XVII, e 39, §3º; CPC/2015, art. 373; Decreto Lei nº 20.910/1932, art. 1º; Lei Municipal nº 81-A/1993, arts. 46, 47 e 80.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: STF, RE nº 1400787, Rel. Min. Presidente. Tribunal Pleno, j. 15/12/2022; TJCE, AC nº 3000883-53.2023.8.06.0160, Rel. Desa. Maria Iraneide Moura Silva, 2ª Câmara Direito Público, j. 22/04/2024; TJCE, RN nº 0001925-04.2017.8.06.0160, Rel. Des. José Tarcílio Souza da Silva, 1ª Câmara Direito Público, j. 12/09/2022; TJCE, AC nº 30010385620238060160, Rel. Desa. Joriza Magalhães Pinheiro, 3ª Câmara de Direito Público, j. 12/08/2024.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer da Apelação, para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.&#160;</p><p style="line-height: 1.2; text-indent: 72pt; text-align: justify; margin-top: 0pt; margin-bottom: 12pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family:

Processo	3000644-15.2024.8.06.0160
	'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> </p><hr /><p style="text-align: center;"> <strong style="font-weight: normal;"> <br /> RELATÓRIO </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> Cuida-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE SANTA QUITÉRIA contra a sentença proferida pelo Juízo da 1ª Vara da Comarca de Santa Quitéria que, em Ação de Cobrança c/c Obrigação de Fazer ajuizada por REGINA DE MESQUITA MUNIZ em desfavor do ente público, julgou parcialmente procedente a pretensão autoral, nos termos do dispositivo abaixo (ID nº 15579151):</p><p style="line-height: 1.2; margin-left: 144pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 10pt 0pt;" dir="ltr"> Ante o exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão inaugural, com a resolução do mérito, na forma do art. 487, I, do CPC, para o fim de DETERMINAR que o requerido proceda ao pagamento do terço de férias à parte autora com incidência sobre sua remuneração integral, bem como CONDENÁ-LO ao pagamento das diferenças do terço de férias dos anos anteriores, ressalvada a prescrição quinquenal, e prestações vincendas, com juros e correção monetária na forma exposta na fundamentação;</p><p style="line-height: 1.2; margin-left: 144pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 10pt 0pt;" dir="ltr"> Deixo de condenar o demandado ao pagamento de custas processuais ante a isenção legal do ente público concedida no art. 5º, I, da Lei estadual nº. 16.132/2016.</p><p style="line-height: 1.2; margin-left: 144pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 10pt 0pt;" dir="ltr"> Condeno a parte requerida ao pagamento dos honorários advocatícios sucumbenciais à contraparte, os quais fixo desde já no percentual de 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, § 3º, I, do CPC.</p><p style="line-height: 1.2; margin-left: 144pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 10pt 0pt;" dir="ltr"> Deixo de promover a remessa necessária, uma vez que é possível antever que o proveito econômico referente às prestações vencidas não ultrapassará 100 (cem) salários-mínimos, conforme preconizado no artigo 496, §3º, inciso I, do CPC.</p><p style="line-height: 1.2; margin-left: 144pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 10pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr"> Transcorrido o prazo recursal sem impugnação das partes, certifique-se o trânsito em julgado e, após as cautelas de praxe, arquive-

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	se.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; background-color: #ffffff; margin-top: 12pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 0pt;" dir="ltr">Em suas razões recursais (ID nº 15579156), o ente municipal alega que o terço constitucional deve incidir sobre o salário base e não sobre a remuneração. Defende que “deve ser destacado o fato da norma contida nos dispositivos da Lei Municipal n.º 081-A/1993, que prevê o referido direito, é de eficácia limitada, o que torna indispensável a edição de uma norma regulamentadora que define, efetivamente, quando e como deverá ser concedida aos servidores públicos.” Pugna pela reforma do julgado e improcedência da pretensão.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 6pt 0pt 6pt 0pt;" dir="ltr"> Em sede de contrarrazões (ID nº 15579159), a parte adversa defende o acerto da sentença, requerendo o desprovimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 57pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 6pt; padding: 6pt 0pt 6pt 0pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">De início, consigno que deixo de abrir vistas dos autos à Procuradoria-Geral de Justiça, uma vez que não há interesse público primário que justifique sua intervenção, conforme já reconhecido pelo próprio Parquet por meio de pareceres emitidos em processos análogos, envolvendo a mesma temática e município, que tramitam sob o crivo desta relatoria (ex vi dos processos de nº 3001038-56.2023.8.06.0160; 3000164-37.2024.8.06.0160; 3000155-75.2024.8.06.0160).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da Apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> O cerne da questão em deslinde consiste em analisar a higidez da sentença que julgou parcialmente procedente a pretensão autoral, condenando o ente requerido a implementar, em favor da autora, o pagamento do terço constitucional de férias tendo

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	como base de cálculo a remuneração, bem como ao pagamento das diferenças das parcelas vencidas e das vincendas, observada a prescrição quinquenal, devidamente corrigidas.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Em face do julgado, o ente público se insurgiu, sustentando a tese de que a base de cálculo do terço constitucional deve ser o salário-base e não a remuneração, bem como que a norma local que prevê o direito seria de eficácia limitada.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Já adianto que a sentença merece ser mantida.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Como se sabe, a Constituição Federal de 1988, em seu art. 39, § 3º c/c art. 7º, XVII, garante a todos os ocupantes de cargos públicos em geral, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre eles o de recebimento de férias acrescidas do terço constitucional. Vejamos:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal;</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas. [...]</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> § 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> No âmbito do Município de Santa Quitéria, a matéria se encontra disciplinada na Lei Municipal nº 81-A/1993, (Estatuto Jurídico dos Servidores Públicos do Município de Santa Quitéria), que assim dispõe:</p><p style="line-height: 1.2; margin-left: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 46 - Vencimento é a retribuição pecuniária pelo exercício de cargo público, com valor fixado em lei.</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.25pt; text-align:

Processo	3000644-15.2024.8.06.0160
	justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Art. 47 - Remuneração é o vencimento de cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em Lei.</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"><strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.2; margin-left: 113.25pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Art. 80 - Independente de solicitação, será pago ao servidor por ocasião de férias, um adicional correspondente a 1/3 (um terço) da remuneração do período das férias.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Verifica-se, assim, que o pagamento do terço constitucional de férias deve ter como base de cálculo a remuneração integral do servidor que, por sua vez, compreende o vencimento do cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Além do mais, diferentemente do alegado pelo ente público, a norma afigura-se plenamente aplicável, com carga normativa relevante e aptidão para produzir todos os efeitos, prescindindo da edição de qualquer outro diploma normativo para tanto. Nesse sentido: Apelação Cível - 3000658-33.2023.8.06.0160, Rel. Desembargador(a) LISETE DE SOUSA GADELHA 1ª Câmara Direito Público, data do julgamento: 10/05/2024.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Acerca da temática, cumpre registrar que o Supremo Tribunal Federal, ao concluir o julgamento do Leading Case RE 1400787 RG/CE (Tema nº 1241), sob a sistemática da repercussão geral, fixou a tese de que “o adicional de 1/3 (um terço) previsto no art. 7º, XVII, da Constituição Federal incide sobre a remuneração relativa a todo período de férias”.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Nessa perspectiva, conjugando o texto constitucional e a norma de regência local, tenho que os elementos de prova coligidos (notadamente as fichas financeiras, demonstrando que a autora é servidora pública municipal ativa no exercício do magistério e que o cálculo da verba requerida era efetuado sobre o seu salário-base), <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space:

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	pre-wrap;">comprovam o fato constitutivo do direito autoral (art. 373, I, CPC). A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral (art. 373, II, CPC), tendo se limitado a defender a tese de que o pagamento do terço de férias deve ser apenas sobre o salário-base, tornando, pois, o fato incontroverso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> Dessa forma, escorreita sentença que condenou o ente federado a efetuar o pagamento do terço constitucional de férias da autora com base na sua remuneração integral e ao pagamento das diferenças que lhe são devidas, observada a prescrição quinquenal. No ponto, vejamos o que dispõe o art. 1º, do Decreto Lei nº 20.910/32:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"> &#160;Art. 1º As dívidas passivas da União, dos Estados e dos Municípios, bem assim todo e qualquer direito ou ação contra a Fazenda federal, estadual ou municipal, seja qual for a sua natureza, prescrevem em cinco anos contados da data do ato ou fato do qual se originarem.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826785pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Perfilhando o entendimento ora esposado, colaciono precedentes das três Câmaras de Direito Público deste Tribunal de Justiça, referentes ao mesmo município e com causa de pedir semelhantes, in verbis:</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">EMENTA: CONSTITUCIONAL E ADMINISTRATIVO. APELAÇÕES CÍVEIS. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. MUNICÍPIO DE SANTA QUITÉRIA. TERÇO CONSTITUCIONAL DE FÉRIAS. REMUNERAÇÃO INTEGRAL. ART. 39, §3º C/C ART. 7º, INCISO XVII, DA CONSTITUIÇÃO FEDERAL. ARTS. 46, 47 E 80 DA LEI MUNICIPAL Nº 081-A/93. ADIMPLEMENTO NÃO DEMONSTRADO PELA MUNICIPALIDADE. VERBAS DEVIDAS. PRESCRIÇÃO QUINQUENAL. ART. 1º DO DECRETO Nº 20.910/32. PRECEDENTES DO TJCE. APELAÇÕES CONHECIDAS E DESPROVIDAS. SENTENÇA MANTIDA. 1. A Constituição Federal de 1988, em seu art. 39, § 3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito pleiteado na presente demanda, qual seja, o terço constitucional de férias. Por sua vez, a Lei Municipal nº 081-A/93 (Estatuto dos Servidores Públicos de Santa Quitéria) prevê expressamente que a parcela deve ser calculada com base na remuneração integral do servidor. 2. In casu, conjugando o texto constitucional, a norma de regência local e os elementos de prova coligidos, restam comprovados os fatos constitutivos do direito da autora. A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral. 3. Nesse contexto, escorreita sentença que condenou o ente federado a implementar o pagamento do terço constitucional de férias da autora com base na sua remuneração e ao pagamento das diferenças que lhes são devidas, das parcelas vencidas e vincendas até a efetiva implementação, observada a prescrição quinquenal contida no art. 1º, do Decreto Lei nº 20.910/32. 4. Apelações conhecidas e desprovidas. Sentença mantida. (APELAÇÃO

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	CÍVEL - 30010385620238060160, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 12/08/2024) (destacou-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">APELAÇÕES. CONSTITUCIONAL E ADMINISTRATIVO. COBRANÇA. SERVIDOR PÚBLICO EFETIVO. COBRANÇA DE DIFERENÇAS DE VERBA SALARIAL. ART. 7º, CF. OBRIGAÇÃO DE PAGAR. PRESCRIÇÃO QUINQUENAL. ENCARGOS LEGAIS RETIFICADOS. SENTENÇA POSTERIOR A EMENDA CONSTITUCIONAL Nº 113/2021. APELOS CONHECIDOS. DESPROVIDO O APELO DA PARTE AUTORA E PROVIDO EM PARTE O DO ENTE MUNICIPAL. 1.Trata-se de Apelações oriundas de Ação de Cobrança interpostas em desfavor do Município de Santa Quitéria, em cujos autos referido ente municipal restou condenado a pagar a autora a diferença do terço de férias, acrescido dos encargos legais, deixando a fixação da condenação honorária a ser arbitrada pelo juízo da liquidação. 2.Quanto a prejudicial de mérito, acertada a decisão do Juízo originário ao aplicar a prescrição quinquenal em observância à Súmula nº 85 da Corte Superior, segundo a qual: "Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação." Prejudicial rejeitada. 3. Não logrou êxito o ente promovido em trazer prova em seu favor, na forma do art. 373, II, do CPC, mediante apresentação de simples dados interna corporis. Na verdade, é entendimento pacificado nesta Corte de Justiça que em feitos desta natureza compete à Fazenda Pública comprovar os pagamentos solicitados, ao passo que ao autor compete demonstrar o vínculo funcional, o que restou cumprido pela promovente sob pena de locupletamento ilícito. 4.O novo índice (SELIC) instituído pela EC 113/2021 incide a partir do dia 9 de dezembro de 2021, data de sua publicação no Diário Oficial. Como no caso em exame a sentença fora proferida em 16.01.2024, resta alterado esse capítulo do julgado. 5. Apelos conhecidos. Desprovido o apelo da parte autora e provido em parte o do ente municipal. (Apelações cíveis - 3000883-

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	53.2023.8.06.0160, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 22/04/2024) (destacou-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165356pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">CONSTITUCIONAL, ADMINISTRATIVO E PROCESSO CIVIL. REEXAME NECESSÁRIO. APELAÇÃO CÍVEL. SERVIDOR PÚBLICO MUNICIPAL. DIFERENÇAS SALARIAIS. GRATIFICAÇÃO NATALINA E ADICIONAL DE FÉRIAS. COMPOSIÇÃO. VERBAS REMUNERATÓRIAS. PAGAMENTO DEVIDO SOBRE O VALOR TOTAL PERCEBIDO PELO SERVIDOR. REEXAME NECESSÁRIO NÃO CONHECIDO. RECURSO DE APELAÇÃO DESPROVIDO. 1. Trata-se de reexame necessário e de recurso de Apelação interposto contra sentença que condenou o município de Santa Quitéria/CE ao pagamento de diferenças salariais. 2. À luz das disposições da Constituição Federal de 1988, são garantidos aos servidores públicos em geral, efetivos ou temporários, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre os quais, a percepção de décimo terceiro salário e de férias remuneradas, acrescidas do terço constitucional. 3. Os valores devidos a título de gratificação natalina (décimo terceiro salário) e adicional de férias (terço constitucional) devem ser pagos em paridade com a remuneração do servidor, compreendida como o vencimento básico e as demais verbas remuneratórias a que faz jus.&#160; [...] Recurso de apelação conhecido e desprovido. (Remessa Necessária Cível - 0001925-04.2017.8.06.0160, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do

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	julgamento:&#160; 12/09/2022, data da publicação:&#160; 12/09/2022) (destacou-se)</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">E ainda: Apelações cíveis - 3000660-03.2023.8.06.0160, Rel. Desembargador(a)&#160; MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento:&#160; 20/05/2024; Apelação / Remessa Necessária - 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 11/07/2022, data da publicação:&#160; 11/07/2022; Remessa Necessária Cível - 0001898-21.2017.8.06.0160, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 1ª Câmara Direito Público, data do julgamento:&#160; 05/10/2020, data da publicação:&#160; 06/10/2020; Apelação / Remessa Necessária - 0001900-88.2017.8.06.0160, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento:&#160; 17/02/2020, data da publicação:&#160; 18/02/2020; Apelação / Remessa Necessária - 0001919-94.2017.8.06.0160, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento:&#160; 13/05/2020, data da publicação:&#160; 13/05/2020; Apelação / Remessa Necessária - 0050380-29.2019.8.06.0160, Rel. Desembargador(a) INACIO DE ALENCAR CORTEZ NETO, 3ª Câmara Direito Público, data do julgamento:&#160; 28/06/2021, data da publicação:&#160; 28/06/2021.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">No que se refere aos índices de atualização dos valores devidos, há ser observado, in casu, o Tema nº 905 do Superior Tribunal de Justiça (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3º da Emenda Constitucional nº 113/2021, que entrou em vigor na data de sua publicação, em 09/12/2021.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço da Apelação, para negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">Por fim, no tocante à fixação da verba honorária de sucumbência, tratando-se de sentença ilíquida imposta à Fazenda Pública, o percentual dos honorários de sucumbência, inclusive a majoração decorrente do trabalho adicional realizado em grau recursal, deverá ser definido por ocasião da liquidação do julgado, nos termos do art. 85, §4º, II c/c §11º, do CPC.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr">É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 12pt; margin-bottom: 6pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; margin-left: 1pt; text-indent: 2pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.3800000000000001; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.3800000000000001; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><div> <br /> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	182
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização / Terço Constitucional
Polo ativo	MUNICIPIO DE SANTA QUITERIA
Advogado(s) - Polo ativo	MANUELITO MELO MAGALHAES - (CE41127-A)
Polo passivo	MARCIANA MIRANDA DE SOUSA MEDEIROS
Advogado(s) - Polo passivo	RONALDO FARIAS FEIJAO - (CE24951-A)
Terceiros	Não informado

Processo	3000665-88.2024.8.06.0160
Acordão	<p style="text-align: center;"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Processo: 3000665-88.2024.8.06.0160 - Apelação Cível</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Apelante: Município de Santa Quitéria</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Apelado: Marciana Miranda de Sousa Medeiros</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ementa: Direito constitucional e administrativo. Apelação. Ação ordinária. Servidora pública. Município de Santa Quitéria. Terço constitucional de férias. Base de cálculo. Remuneração. Recurso desprovido.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> I. Caso em

Processo	3000665-88.2024.8.06.0160
	exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">1. Apelação cível interposta pelo ente público, contra sentença que julgou parcialmente procedente a pretensão, condenando o ente requerido a implementar, em favor da autora, o pagamento do terço constitucional de férias tendo como base de cálculo a remuneração, bem como ao pagamento das diferenças das parcelas vencidas e das vincendas, observada a prescrição quinquenal, devidamente corrigidas.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 2. Verificar se o cálculo do terço constitucional de férias deve incidir sobre a remuneração integral do servidor público municipal ou apenas sobre o seu salário-base.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">3. A CF/1988, em seu art. 39, § 3º, assegura aos servidores ocupantes de cargo público, sem nenhuma distinção, o direito pleiteado na presente demanda, qual seja, o terço constitucional de férias. A Lei Municipal nº 081-A/93 prevê expressamente que a parcela deve ser calculada com base na remuneração integral do servidor.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">4. Conjugando o texto constitucional, a norma de regência local e os elementos de prova coligidos, restam comprovados os fatos constitutivos do direito da autora. A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 5. Apelação desprovida.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ________________</p><p style="line-height: 1.2; margin-left: 3pt; text-

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	align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Dispositivos relevantes citados: CF/1988, arts. 7º, XVII, e 39, §3º; CPC/2015, art. 373; Decreto Lei nº 20.910/1932, art. 1º; Lei Municipal nº 81-A/1993, arts. 46, 47 e 80.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Jurisprudência relevante citada: STF, RE nº 1400787, Rel. Min. Presidente. Tribunal Pleno, j. 15/12/2022; TJCE, RN nº 0001925-04.2017.8.06.0160, Rel. Des. José Tarcílio Souza da Silva, 1ª Câmara Direito Público, j. 12/09/2022; TJCE, AC nº 3000883-53.2023.8.06.0160, Rel. Desa. Maria Iraneide Moura Silva, 2ª Câmara de Direito Público, j. 22/04/2024; TJCE, AC nº 3000660-03.2023.8.06.0160, Rel. Desa. Maria Iracema Martins do Vale, 3ª Câmara de Direito Público, j. 20/05/2024;&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer da Apelação, para negar-lhe provimento, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; background-color: #ffffff; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><hr /><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <br /> <br /></p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Trata-se de APELAÇÃO CÍVEL interposta pelo MUNICÍPIO DE SANTA QUITÉRIA em face da sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Santa Quitéria que, em sede de Ação de Cobrança ajuizada por MARCIANA MIRANDA DE SOUSA MEDEIROS em desfavor do recorrente,

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	julgou parcialmente procedente a pretensão autoral, nos termos do dispositivo abaixo transcrito (id. 15579321):</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ante o exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão inaugural, com a resolução do mérito, na forma do art. 487, I, do CPC, para o fim de DETERMINAR que o requerido proceda ao pagamento do terço de férias à parte autora com incidência sobre sua remuneração integral, bem como CONDENÁ-LO ao pagamento das diferenças do terço de férias dos anos anteriores, ressalvada a prescrição quinquenal, e prestações vincendas, com juros e correção monetária na forma exposta na fundamentação;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Deixo de condenar o demandado ao pagamento de custas processuais ante a isenção legal do ente público concedida no art. 5º, I, da Lei estadual nº 16.132/2016.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Condeno a parte requerida ao pagamento dos honorários advocatícios sucumbenciais à contraparte, os quais fixo desde já no percentual de 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, § 3º, I, do CPC.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Deixo de promover a remessa necessária, uma vez que é possível antever que o proveito econômico referente às prestações vencidas não ultrapassará 100 (cem) salários-mínimos, conforme preconizado no artigo 496, §3º, inciso I, do CPC.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Transcorrido o prazo recursal sem impugnação das partes, certifique-se o trânsito em julgado e, após as cautelas de praxe, arquive-se.</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582756pt; text-align: justify; margin-top:

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	0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em suas razões (id. 15579325), o ente público municipal alega, em suma: (i) a base de cálculo das férias e do terço constitucional é "salário", não "remuneração", nos termos do art. 7º, inciso XVII, da CF/88; (ii) as vantagens pecuniárias estão dispostas nos artigos 54 e 55 do Estatuto dos Servidores, os quais estabelecem que tais vantagens não podem acumular e somente se incorporam ao vencimento nas condições previstas em lei; (iii) o fato da norma contida nos dispositivos da Lei Municipal nº 081-A/93, que prevê o direito ao adicional, é de eficácia limitada, o que torna indispensável a edição de uma norma regulamentadora que define, efetivamente, quando e como deverá ser concedido aos servidores públicos; (iv) a Administração Pública é regida pelo princípio da legalidade; (v) não cabe ao poder Judiciário, que não tem função legislativa, aumentar vencimentos de servidores públicos sob o fundamento de isonomia, conforme dispõe a Súmula Vinculante n° 37. Ao final, pede pela reforma da sentença para julgar improcedente a pretensão autoral.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em contrarrazões (id. 15579328), a parte autora refuta as teses recursais e pede pelo desprovimento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> É o relatório, no essencial.</p><p style="line-height: 1.7999999999999998; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço da Apelação.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">De início, consigno que deixo de abrir vistas dos autos à Procuradoria-Geral de Justiça, uma vez que não há interesse público primário que justifique sua intervenção, conforme já reconhecido pelo próprio Parquet por meio de pareceres emitidos em processos análogos (nº 3001038-56.2023.8.06.0160; 3000164-37.2024.8.06.0160; 3000155-75.2024.8.06.0160), envolvendo a mesma temática e município, que tramitam sob o crivo desta relatoria.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Cuida-se o caso em questão de sentença que julgou parcialmente procedente a pretensão autoral, condenando o ente requerido a implementar, em favor da autora, o pagamento do terço constitucional de férias tendo como base de cálculo a remuneração integral da servidora, bem como ao pagamento das diferenças das parcelas vencidas e vincendas, observada a prescrição quinquenal.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Como se sabe, a Constituição Federal de 1988,

em seu art. 39, § 3º c/c art. 7º, XVII, garante a todos os ocupantes de cargos públicos em geral, efetivos ou comissionados, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre eles o de recebimento de férias acrescidas do terço constitucional. Vejamos:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Art. 7º São direitos dos trabalhadores urbanos e rurais, além de outros que visem à melhoria de sua condição social:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">(...)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">XVII - gozo de férias anuais remuneradas com, pelo menos, um terço a mais do que o salário normal; (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Art. 39. A União, os Estados, o Distrito Federal e os Municípios instituirão, no âmbito de sua competência, regime jurídico único e planos de carreira para os servidores da administração pública direta, das autarquias e das fundações públicas. (...)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">§ 3º Aplica-se aos servidores ocupantes de cargo público o disposto no art. 7º, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII e XXX, podendo a lei estabelecer requisitos diferenciados de admissão quando a natureza do cargo o exigir. (destaca-se)</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> No âmbito do Município de Santa Quitéria, a matéria se encontra disciplinada

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	na Lei Municipal nº 81-A/1993, (Estatuto Jurídico dos Servidores Públicos do Município de Santa Quitéria), que assim dispõe:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Art. 46. Vencimento é a retribuição pecuniária pelo exercício de cargo público, com valor fixado em lei.</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Art. 47. Remuneração é o vencimento de cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em Lei.</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Art. 80. Independente de solicitação, será pago ao servidor por ocasião de férias, um adicional correspondente a 1/3 (um terço) da remuneração do período das férias. (destaca-se)</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Verifica-se, assim, que o pagamento do terço constitucional de férias deve ter como base de cálculo a remuneração integral do servidor que, por sua vez, compreende o vencimento do cargo efetivo, acrescido das vantagens pecuniárias permanentes ou temporárias estabelecidas em lei.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Além do mais, diferentemente do alegado pelo ente público, a norma afigura-se plenamente aplicável, com carga normativa relevante e aptidão para produzir todos os efeitos, prescindindo da edição de qualquer outro diploma normativo para tanto. Nesse sentido: Apelação Cível - 3000658- 33.2023.8.06.0160, Rel. Desembargador(a) LISETE DE SOUSA GADELHA 1ª Câmara Direito Público, data do julgamento: 10/05/2024.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Nesse sentido, não merece acolhimento a argumentação de que o terço constitucional e demais benefícios previstos na Lei Municipal nº 81-A/93 não podem produzir efeitos por haver eficácia limitada, visto que o artigo 80 colacionado acima é inequívoco em sua determinação de que o terço de férias será pago, independentemente de solicitação, sobre o valor da remuneração. E outra interpretação não pode ser, senão a

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	de que será calculado sobre o valor dos vencimentos integrais da servidora.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Acerca da temática, cumpre registrar que o Supremo Tribunal Federal, ao concluir o julgamento do Leading Case RE 1400787 RG/CE (Tema nº 1.241), sob a sistemática da repercussão geral, fixou a tese de que "O adicional de 1/3 (um terço) previsto no art. 7º, XVII, da Constituição Federal incide sobre a remuneração relativa a todo período de férias".</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Nessa perspectiva, conjugando o texto constitucional e a norma de regência local, tenho que os elementos de prova coligidos (notadamente as fichas financeiras de id. 15579301/15579306), demonstrando que a autora é servidora pública municipal ativa no exercício do magistério e que o cálculo da verba requerida era efetuado sobre o seu salário-base) comprovam o fato constitutivo do direito autoral (art. 373, I, do CPC).</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> A municipalidade, por sua vez, não se desvencilhou do ônus de demonstrar a existência de fatos impeditivos, modificativos ou extintivos do direito autoral (art. 373, II, do CPC), tornando, pois, o fato incontroverso.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Cumpre ressaltar, ainda, que o presente caso não se trata de concessão de vantagem pecuniária à servidora pública ou aumento de vencimentos, nos termos da Súmula Vinculante nº 37 do Supremo Tribunal Federal, conforme aludido pela parte apelante. Isso porque a atuação do Poder Judiciário deu-se apenas no sentido de aplicar devidamente a legislação vigente sobre a matéria e garantir o direito já concedido à parte autora.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Em verdade, o descumprimento da lei municipal e da Constituição Federal pelo Município de Santa Quitéria é que ocasionou o ajuizamento da ação pela servidora prejudicada, não havendo que se falar em concessão de vantagem ou aumento de vencimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Dessa forma, considero escorreita a sentença que condenou o ente federado a efetuar o pagamento do terço constitucional de férias da autora com base na sua remuneração integral e ao pagamento das diferenças que lhe são devidas, tendo sido devidamente observada a prescrição quinquenal, conforme disposto no art. 1º, do Decreto Lei nº 20.910/32.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

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	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Perfilhando o entendimento ora esposado, colaciono precedentes das três Câmaras de Direito Público deste Tribunal de Justiça, referentes ao mesmo município e com causa de pedir semelhantes, in verbis:</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">APELAÇÕES CÍVEIS. AÇÃO ORDINÁRIA. SERVIDORA PÚBLICA. MUNICÍPIO DE SANTA QUITÉRIA/CE. TERÇO DE FÉRIAS. BASE DE CÁLCULO. REMUNERAÇÃO INTEGRAL. ART. 39, §3º C/C ART. 7º, INCISO XVII, DA CONSTITUIÇÃO FEDERAL. DIFERENÇAS DEVIDAS. PARCELAS VENCIDAS E VINCENDAS. JUROS DE MORA E CORREÇÃO MONETÁRIA. NECESSIDADE DE ADEQUAÇÃO AO TEMA Nº 905 DO STJ E AO ART. 3º DA EC Nº 113/2021. PRECEDENTES. SENTENÇA REFORMADA EM PARTE.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">1. Cuida-se, na espécie, de Apelações Cíveis, adversando sentença proferida pelo magistrado de primeiro grau, que deu parcial procedência a ação ordinária. 2. Ora, é dever da Administração realizar, anualmente, o pagamento do terço de férias aos seus agentes, com base na remuneração integral (art. 39, §3º c/c art. 7º, inciso XVII, da Constituição Federal de 1988). 3. Assiste razão à servidora pública, contudo, quando diz que seriam devidas, in casu, não somente as parcelas vencidas, mas também as vincendas, até a efetiva correção da falha/omissão, em seu(s) contracheque(s). 4. Ademais, em relação aos índices de atualização da dívida, há ser observado, in casu, o Tema nº 905 do STJ (REsp 1495146/MG) até 08/12/2021 e, após, o art. 3º da EC nº 113/2021, que entrou em vigor na data de sua publicação (09/12/2021), como dito pelo Município de Santa Quitéria/CE. 5. Merece, portanto, ser reformado o decisum proferido pelo Juízo a quo, mas apenas em parte, permanecendo, de resto, totalmente inalterados os seus fundamentos. - Precedentes. - Recursos conhecidos, e parcialmente providos. - Sentença reformada em parte. (Apelações cíveis - 3000660-03.2023.8.06.0160, Rel. Desembargador(a) MARIA IRACEMA MARTINS DO VALE, 3ª Câmara Direito Público, data do julgamento: 20/05/2024). (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">APELAÇÕES. CONSTITUCIONAL E ADMINISTRATIVO. COBRANÇA. SERVIDOR PÚBLICO EFETIVO. COBRANÇA DE DIFERENÇAS DE VERBA SALARIAL. ART. 7º, CF. OBRIGAÇÃO DE PAGAR. PRESCRIÇÃO QUINQUENAL. ENCARGOS LEGAIS RETIFICADOS. SENTENÇA POSTERIOR A EMENDA CONSTITUCIONAL Nº 113/2021. APELOS CONHECIDOS. DESPROVIDO O APELO DA PARTE AUTORA E PROVIDO EM PARTE O DO ENTE MUNICIPAL. 1. Trata-se de Apelações oriundas de

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	Ação de Cobrança interpostas em desfavor do Município de Santa Quitéria, em cujos autos referido ente municipal restou condenado a pagar a autora a diferença do terço de férias, acrescido dos encargos legais, deixando a fixação da condenação honorária a ser arbitrada pelo juízo da liquidação. 2. Quanto a prejudicial de mérito, acertada a decisão do Juízo originário ao aplicar a prescrição quinquenal em observância à Súmula nº 85 da Corte Superior, segundo a qual: “Nas relações jurídicas de trato sucessivo em que a Fazenda Pública figure como devedora, quando não tiver sido negado o próprio direito reclamado, a prescrição atinge apenas as prestações vencidas antes do quinquênio anterior à propositura da ação.” Prejudicial rejeitada. 3. Não logrou êxito o ente promovido em trazer prova em seu favor, na forma do art. 373, II, do CPC, mediante apresentação de simples dados interna corporis. Na verdade, é entendimento pacificado nesta Corte de Justiça que em feitos desta natureza compete à Fazenda Pública comprovar os pagamentos solicitados, ao passo que ao autor compete demonstrar o vínculo funcional, o que restou cumprido pela promovente sob pena de locupletamento ilícito. 4. O novo índice (SELIC) instituído pela EC 113/2021 incide a partir do dia 9 de dezembro de 2021, data de sua publicação no Diário Oficial. Como no caso em exame a sentença fora proferida em 16.01.2024, resta alterado esse capítulo do julgado. 5. Apelos conhecidos. Desprovido o apelo da parte autora e provido em parte o do ente municipal. (Apelações Cível - 3000883-53.2023.8.06.0160, Rel. Desembargador(a) MARIA IRANEIDE MOURA SILVA, 2ª Câmara Direito Público, data do julgamento: 22/04/2024) (destaca-se)</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">CONSTITUCIONAL, ADMINISTRATIVO E PROCESSO CIVIL. REEXAME NECESSÁRIO. APELAÇÃO CÍVEL. SERVIDOR PÚBLICO MUNICIPAL. DIFERENÇAS SALARIAIS. GRATIFICAÇÃO NATALINA E ADICIONAL DE FÉRIAS. COMPOSIÇÃO. VERBAS REMUNERATÓRIAS. PAGAMENTO DEVIDO SOBRE O VALOR TOTAL PERCEBIDO PELO SERVIDOR. REEXAME NECESSÁRIO NÃO CONHECIDO. RECURSO DE APELAÇÃO DESPROVIDO. 1. Trata-se de reexame necessário e de recurso de Apelação interposto contra sentença que condenou o município de Santa Quitéria/CE ao pagamento de diferenças salariais. 2. À luz das disposições da Constituição Federal de 1988, são garantidos aos servidores públicos em geral, efetivos ou temporários, alguns dos direitos assegurados aos trabalhadores urbanos e rurais, dentre os quais, a percepção de décimo terceiro salário e de férias remuneradas, acrescidas do terço constitucional. 3. Os valores devidos a título de gratificação natalina (décimo terceiro salário) e adicional de férias (terço constitucional) devem ser pagos em paridade com a remuneração do servidor, compreendida como o vencimento básico e as demais verbas remuneratórias a que faz jus. [...] Recurso de apelação conhecido e desprovido.&#160; (Remessa Necessária Cível - 0001925-04.2017.8.06.0160, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA,

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	1ª Câmara Direito Público, data do julgamento: 12/09/2022, data da publicação: 12/09/2022) (destaca-se)</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> E ainda: Apelação / Remessa Necessária - 0001921-64.2017.8.06.0160, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 11/07/2022, data da publicação: 11/07/2022; Remessa Necessária Cível - 0001898-21.2017.8.06.0160, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 1ª Câmara Direito Público, data do julgamento: 05/10/2020, data da publicação: 06/10/2020; Apelação / Remessa Necessária - 0001900-88.2017.8.06.0160, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento: 17/02/2020, data da publicação: 18/02/2020; Apelação / Remessa Necessária - 0001919-94.2017.8.06.0160, Rel. Desembargador(a) TEREZE NEUMANN DUARTE CHAVES, 2ª Câmara Direito Público, data do julgamento: 13/05/2020, data da publicação: 13/05/2020; Apelação / Remessa Necessária - 0050380-29.2019.8.06.0160, Rel. Desembargador(a) INACIO DE ALENCAR CORTEZ NETO, 3ª Câmara Direito Público, data do julgamento: 28/06/2021, data da publicação: 28/06/2021.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ante o exposto, conheço da Apelação, para negar-lhe provimento.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Por fim, tratando-se de sentença ilíquida imposta à Fazenda Pública, a majoração decorrente do trabalho adicional realizado em grau recursal deverá ser definido por ocasião da liquidação do julgado, nos termos do art. 85, § 4º, inciso II c/c § 11º, do CPC/15.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	183
Órgão julgador	1º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	MARIA IRACEMA MARTINS DO VALE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Efeito Suspensivo / Impugnação / Embargos à Execução
Polo ativo	ANA PAULA ALBUQUERQUE VIEIRA DE LUCENA
Advogado(s) - Polo ativo	EMANUEL RODRIGUES DA CRUZ - (CE30411-A)
Polo passivo	MUNICIPIO DE PEDRA BRANCA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3000141-45.2024.8.06.0143

Acordão

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	serif;color:#000000;background-color:transparent;font-weight:700;font-style:italic;font-variant:normal;text-decoration:none;vertical-align:baseline;white-space:pre;white-space:pre-wrap;">error in procedendo, porquanto não observada providência imprescindível à validade do provimento judicial, o caso é de anulação da sentença, com o retorno dos autos à instância de origem para que seja retomada a tramitação dos Embargos à Execução, intimando-se a parte embargante para indicar bens suficientes à garantia do juízo ou comprovar insuficiência patrimonial a justificar a excepcionalidade de dispensa da obrigação legal.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> - Precedentes do STJ.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> - Recurso conhecido e provido.</p><p style="line-height:1.38;margin-left: 113pt;text-align: justify;margin-top:0pt;margin-bottom:0pt;" dir="ltr"> &#160; - Sentença anulada.</p><p align="center"> <br /> </p><p align="center"> ACÓRDÃO </p><p align="center"> <br /> </p><p style="text-align: justify;"> Vistos, relatados e discutidos os presentes autos de Apelação Cível nº 3000141-45.2024.8.06.0143, em que figuram as partes acima indicadas. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do apelo interposto, para dar-lhe provimento, anulando a sentença de primeiro grau de jurisdição , nos termos do voto da Relatora.</p><div> <br /> </div><p style="text-indent: 8%; text-align: justify;"> Fortaleza/CE,&#160;data e hora indicadas pelo sistema. </p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO <strong style="font-size: small;">&#160;</p><p class="western" style="line-height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p align="center">

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	 RELATÓRIO </p><p align="center">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Tratam os autos de Apelação Cível interposta em face de sentença proferida pelo Juízo da Comarca de Pedra Branca, que decidiu pela extinção dos embargos sem resolução de mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">O caso/a ação originária: Ana Paula Albuquerque Vieira de Lucena promoveu Embargos à Execução Fiscal contra o Município de Pedra Branca, apontando irregularidades na certidão de dívida ativa que embasou a Execução Fiscal nº 3000633-71.2023.8.06.0143. Requereu, ao final, a procedência do pedido e a condenação do embargado nas custas e honorários advocatícios.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Sentença (ID 13265096), em que o magistrado de primeiro grau decidiu, liminarmente, pela extinção do processo sem resolução de mérito, sob o fundamento de que os embargos não restaram acompanhados da necessária garantia do juízo e de que não haveria nos autos elementos que comprovassem, de forma inequívoca, que o devedor não possui patrimônio para garantia do crédito exequendo. Transcrevo o dispositivo da sentença, no que interessa:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Ante o exposto, REJEITO liminarmente os embargos opostos no Id. 84423250, nos termos do art. 16, § 1º, da Lei 6.830/1980.”</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Inconformada, a embargante interpôs o presente recurso apelatório (ID 13265100) aduzindo a nulidade da sentença que rejeitou liminarmente os embargos, uma vez que não foi intimada do indeferimento do pedido de dispensa da garantia, não tendo sido dada a ela a oportunidade de oferecer bens à penhora ou requerer o que entendesse de direito.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr">Não foram apresentadas Contrarrazões <span style="font-size: 12pt; font-

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	family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">pelo Município de Pedra Branca/CE, consoante certidão (ID 13265105).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Parecer da Procuradoria-Geral de Justiça (ID 14050396) opinando pelo conhecimento do recurso, porém, deixando de opinar sobre seu mérito, por entender ser desnecessária a sua intervenção.</p><p align="center"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> VOTO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 12pt; margin-bottom: 5pt;" dir="ltr">Na hipótese, Apelação Cível em Embargos à Execução Fiscal nos quais o Juízo a quo houve por bem extinguir o processo sem resolução de mérito sob o fundamento de que ausente a garantia do juízo, requisito indispensável ao processamento da ação, ou de elementos que comprovassem, de forma inequívoca, que o devedor não possui patrimônio para garantia do crédito exequendo.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Com efeito, já se encontra assente na jurisprudência pátria entendimento no sentido de que as execuções fiscais possuem regramento próprio (Lei nº 6.830/80), de maneira que o Código de Processo Civil incide sobre tais procedimentos de maneira subsidiária.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Nestes termos, ainda que o Código de Processo Civil não mais preveja a garantia do juízo como condição de procedibilidade dos embargos do devedor (art. 914 do CPC/15), a disciplina processual dos feitos executivos ajuizados pela Fazenda Pública é diversa, consoante se depreende mediante simples análise do art. 16, §1º da Lei nº 6.830/80, que assim dispõe:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> “ Art. 16 - O executado oferecerá embargos, no prazo de 30 (trinta) dias, contados: (...)</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">§ 1º - Não são admissíveis embargos do executado antes de garantida a execução<span

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	style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">.” (destacamos)</p><p align="center"> <strong id="docs-internal-guid-118bd788-7fff-2f0e-e8d5-98a291608dd0" style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Decerto que se poderia afirmar que a Lei de Execuções Fiscais, ao prever a garantia da execução como requisito prévio ao processamento dos embargos, não teria se conformado às reformas processuais supervenientes, impondo-se, assim, uma interpretação sistemática das disposições legais, tendente a harmonizar a Lei nº 13.105/2015 e a Lei nº 6.830/80.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Entretanto, o Superior Tribunal de Justiça, Corte a quem compete a última palavra em matéria de cunho infraconstitucional, firmou posicionamento, sob a sistemática dos recursos repetitivos, no sentido de que a Lei de Execuções Fiscais, por se tratar de diploma normativo específico, deve prevalecer sobre as disposições gerais do Código de Processo Civil, subsistindo, desta maneira, a exigibilidade de apresentação de garantia para fins de admissibilidade dos embargos do devedor. Tema nº 526 (REsp n. 1.272.827/PE).</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Não é outro o entendimento adotado por esta egrégia Corte de Justiça:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">“APELAÇÃO EM EMBARGOS À EXECUÇÃO FISCAL. INSCRIÇÃO NA DÍVIDA ATIVA DECORRENTE DE INFRAÇÃO ÀS LEIS DO TRÂNSITO. INCIDENTE DESPROVIDO DA GARANTIA DA EXECUÇÃO. PRETENSÃO APLICAR O TEOR DO ART. 736 DO CPC/1973. IMPOSSIBILIDADE EM FACE DA ESPECIALIDADE DO ART. 16, § 1º, DA LEI DE EXECUÇÕES FISCAIS, QUE DISPÕE, LITERALMENTE, NÃO SEREM ADMISSÍVEIS EMBARGOS DO EXECUTADO ANTES DE GARANTIDA A EXECUÇÃO. PRECEDENTE UNIFORMIZADOR DA JURISPRUDÊNCIA INFRACONSTITUCIONAL EM FACE DO JULGAMENTO DO RECURSO EXTRAORDIÁRIO Nº 1.272.827/PE (REL. MIN. MAURO CAMPBELL MARQUES, PRIMEIRA SEÇÃO, DJE 31/05/2013) SOB O RITO DO ART. 543-C DO CPC/1973 SUPERANDO A LINHA JURISPRUDENCIAL ANTERIOR, ADOTANDO-SE A SEGUINTE TESE: "6. <span style="font-size: 10pt; font-family: Arial,sans-serif;

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	color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">EM ATENÇÃO AO PRINCÍPIO DA ESPECIALIDADE DA LEF, MANTIDO COM A REFORMA DO CPC/73, A NOVA REDAÇÃO DO ART. 736, DO CPC DADA PELA LEI N. 11.382/2006 - ARTIGO QUE DISPENSA A GARANTIA COMO CONDICIONANTE DOS EMBARGOS - NÃO SE APLICA ÀS EXECUÇÕES FISCAIS DIANTE DA PRESENÇA DE DISPOSITIVO ESPECÍFICO, QUAL SEJA O ART. 16, § 1º DA LEI N. 6.830/80, QUE EXIGE EXPRESSAMENTE A GARANTIA PARA A APRESENTAÇÃO DOS EMBARGOS À EXECUÇÃO FISCAL. A GARANTIA DO JUÍZO PARA A APRESENTAÇÃO DE EMBARGOS DO DEVEDOR EM SEDE DE EXECUÇÃO FISCAL É CONDIÇÃO DE PROCEDIBILIDADE. PREJUDICADAS AS DEMAIS ALEGAÇÕES RECURSAIS. (ALIENAÇÃO DO VEÍCULO ANTERIORMENTE À AUTUAÇÃO E QUE ESTA DECORRE DE ATO DE TERCEIRO; NULIDADE DA INSCRIÇÃO NA DÍVIDA ATIVA POR FALTA DE DUPLA NOTIFICAÇÃO, INVERSÃO DO ÔNUS DA PROVA. CABE À APELANTE POSTULAR NA VIA ORDINÁRIA A ANULAÇÃO DO ATO ADMINISTRATIVO E DA INSCRIÇÃO NA DÍVIDA ATIVA. RECURSO CONHECIDO, PORÉM, DESPROVIDO.” (APC 0003527-38.2013.8.06.0041; Relator (a): PAULO AIRTON ALBUQUERQUE FILHO; Comarca: Aurora; Órgão julgador: Vara Única; Data do julgamento: 28/08/2017; Data de registro: 28/08/2017) (destacamos) <br /> <br /></p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Vale destacar que o Superior Tribunal de Justiça manifestou entendimento relativizando a exigência da garantia do juízo, desde que comprovada a insuficiência de patrimônio do devedor, conforme a seguir transcrito:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">“PROCESSUAL CIVIL. EXECUÇÃO FISCAL. EMBARGOS DO DEVEDOR. EXECUTADO. BENEFÍCIO DA JUSTIÇA GRATUITA. PATRIMÔNIO. INEXISTÊNCIA. HIPOSSUFICIÊNCIA. EXAME. GARANTIA DO JUÍZO. AFASTAMENTO. POSSIBILIDADE. 1. "Aos recursos interpostos com fundamento no CPC/1973 (relativos a decisões publicadas até 17 de março de 2016) devem ser exigidos os requisitos de admissibilidade na forma nele prevista, com as interpretações dadas, até então, pela jurisprudência do Superior Tribunal de Justiça" (Enunciado Administrativo n. 2 – STJ). 2. Os embargos são o meio de defesa do executado contra a cobrança da dívida tributária ou não tributária da Fazenda Pública, mas que "não serão admissíveis ... antes de garantida a execução" (art. 16, § 1º, da Lei n. 6.830/80). 3. No julgamento do recurso especial n. 1.272.827/PE, Rel. Min. Mauro Campbell Marques, submetido ao rito dos recursos repetitivos, a Primeira Seção sedimentou orientação segunda a qual, "em atenção ao princípio da especialidade da LEF, mantido com a reforma do CPC/73, a nova redação do art. 736 do CPC dada pela Lei n. 11.382/2006 - artigo que dispensa a garantia como condicionante dos embargos - não se aplica às execuções fiscais diante da presença de dispositivo específico, qual seja o art. 16, § 1º, da Lei n. 6.830/80, que exige expressamente a garantia para a apresentação dos embargos à execução fiscal." 4. A Constituição Federal de 1988, por sua vez, resguarda a todos os cidadãos o direito de acesso ao Poder Judiciário, ao contraditório e à ampla defesa (art. 5º, CF/88), tendo esta Corte Superior, com base em tais princípios constitucionais, mitigado a obrigatoriedade de garantia integral do crédito executado para o recebimento dos embargos à execução fiscal, restando o tema, mutatis mutandis, também definido na Primeira Seção, no julgamento do REsp 1.127.815/SP, na sistemática dos recursos repetitivos. 5. Nessa linha de interpretação, deve ser afastada a exigência da garantia do juízo para a oposição de embargos à execução fiscal, caso comprovado inequivocadamente que o devedor não possui patrimônio para garantia do crédito exequendo. 6. Nada impede que, no curso do processo de embargos à execução, a Fazenda Nacional diligencie à procura de bens de propriedade do embargante aptos à penhora, garantindo-se posteriormente a execução. 7. Na hipótese dos autos, o executado é beneficiário da assistência judiciária gratuita e os embargos por ele opostos não foram

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	recebidos, culminando com a extinção do processo sem julgamento de mérito, ao fundamento de inexistência de segurança do juízo. 8. Num raciocínio sistemático da legislação federal aplicada, pelo simples fato do executado ser amparado pela gratuidade judicial, não há previsão expressa autorizando a oposição dos embargos sem a garantia do juízo. 9. In casu, a controvérsia deve ser resolvida não sob esse ângulo (do executado ser beneficiário, ou não, da justiça gratuita), mas sim, pelo lado da sua hipossuficiência, pois, adotando-se tese contrária, "tal implicaria em garantir o direito de defesa ao "rico", que dispõe de patrimônio suficiente para segurar o Juízo, e negar o direito de defesa ao "pobre". 10. Não tendo a hipossuficiência do executado sido enfrentada pelas instâncias ordinárias, premissa fática indispensável para a solução do litígio, é de rigor a devolução dos autos à origem para que defina tal circunstância, mostrando-se necessária a investigação da existência de bens ou direitos penhoráveis, ainda que sejam insuficientes à garantia do débito e, por óbvio, com observância das limitações legais. 11. Recurso especial provido, em parte, para cassar o acórdão recorrido.” (REsp 1487772/SE, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 28/05/2019, DJe 12/06/2019) (destacamos) <br /> <br /></p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Porém, conforme afirmou o STJ, não basta que o executado seja beneficiário da justiça gratuita para afastar a exigência legal, sendo imprescindível a devida comprovação. Veja-se:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; background-color: #ffffff; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">"DIREITO PROCESSUAL CIVIL E TRIBUTÁRIO. GARANTIA DO JUÍZO PARA EMBARGOS À EXECUÇÃO FISCAL. Não devem ser conhecidos os embargos à execução fiscal opostos sem a garantia do juízo, mesmo que o embargante seja beneficiário da assistência judiciária gratuita. De um lado, a garantia do pleito executivo é condição de procedibilidade dos embargos de devedor nos exatos termos do art. 16, § 1º, da Lei 6.830/1980. De outro lado, o art. 3º da Lei 1.060/1950 é cláusula genérica, abstrata e visa à isenção de despesas de natureza processual, como custas e honorários advocatícios, não havendo previsão legal de isenção de garantia do juízo para embargar. Assim, em conformidade com o princípio da especialidade das leis, o disposto no art. 16, § 1º, da Lei 6.830/1980 deve prevalecer sobre o art. 3º, VII, da Lei 1.060/1950, o qual determina que os beneficiários da justiça gratuita ficam isentos dos depósitos previstos em lei para interposição de recurso, ajuizamento de ação e demais atos processuais inerentes ao exercício da ampla defesa e do contraditório. Precedentes citados: AgRg no REsp 1.257.434-RS, Segunda Turma, DJe 30/8/2011; e REsp 1.225.743-RS, Segunda Turma, DJe 16/3/2011. REsp 1.437.078-RS<span style="font-size: 10pt; font-family: Arial,sans-serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal;

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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">, Rel. Min. Humberto Martins, julgado em 25/3/2014” (Informativo n.538). (destacamos).</p><p style="line-height: 1.7999999999999998; margin-left: 113pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 12pt 0pt 0pt 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> No presente caso, contudo, evidencia-se que o Juízo de primeiro grau não determinou a intimação da parte embargante, aqui recorrente, para sanar a omissão ou justificar a impossibilidade de fazê-lo por insuficiência de recursos, providência essencial à validade da decisão judicial vergastada, consoante entendimento desta egrégia corte de justiça:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">PROCESSUAL CIVIL E TRIBUTÁRIO. AGRAVO DE INSTRUMENTO. EMBARGOS À EXECUÇÃO FISCAL. PRÉVIA GARANTIA DO JUÍZO. NECESSIDADE. ART. 16, §1º, DA LEI Nº 6.830/80 (LEF). TEMA Nº 526 (RESP Nº 1.272.827/PE). FLEXIBILIZAÇÃO DA OBRIGAÇÃO MEDIANTE PROVA DE INSUFICIÊNCIA PATRIMONIAL. POSSIBILIDADE. RESP Nº 1.127.815/SP. RECURSO CONHECIDO E PROVIDO. DECISÃO REFORMADA. 01. Na espécie, o magistrado a quo recebeu os embargos à execução sem a prévia garantia do juízo, com o argumento de que o executado não possui bens passíveis de constrição, deixando de apontar, contudo, comprovação mínima fornecida pelo embargante para justificar a excepcionalidade. 02. Com efeito, o Superior Tribunal de Justiça firmou posicionamento, sob a sistemática dos recursos repetitivos, no sentido de que a Lei de Execuções Fiscais, por se tratar de diploma normativo específico, deve prevalecer sobre as disposições gerais do Código de Processo Civil, subsistindo, desta forma, a exigibilidade de apresentação de garantia para fins de admissibilidade dos embargos do devedor (REsp n. 1.272.827/PE – Tema nº 526). 03. Também entende a Corte Superior que a exigência de garantia, como requisito essencial ao processamento dos embargos à execução fiscal, pode ser flexibilizada, desde que comprovada a insuficiência patrimonial do devedor (REsp nº 1.127.815/SP), não sendo suficiente para esse desiderato, porém, a mera declaração de hipossuficiência econômica para fins da gratuidade judiciária. 04. Nessa premissa, cumpria ao magistrado, ao receber a inicial dos Embargos à Execução Fiscal, diante da ausência da garantia prévia do juízo, determinar a intimação da parte embargante para indicar bens suficientes ou comprovar insuficiência patrimonial a justificar a excepcionalidade, regra que foi olvidada no caso concreto. 05. Recurso conhecido e provido, para reformar a decisão agravada e determinar a suspensão dos Embargos à Execução, intimando-se o embargante, agravado, para, no prazo de 15 (quinze) dias, garantir o juízo ou comprovar a ausência patrimônio suficiente para tanto, sob pena de não conhecimento dos embargos à execução.” (Agravo de Instrumento - 0623391-24.2022.8.06.0000, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 12/12/2022, data da publicação: 12/12/2022) (destacamos)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Assim, evidenciado o error in procedendo, porquanto não observada providência imprescindível à validade do provimento judicial, o caso é de anulação da sentença, com o retorno dos autos à instância de origem para que seja retomada a tramitação dos Embargos à Execução, intimando-se a parte embargante para indicar bens suficientes à garantia do juízo ou comprovar insuficiência patrimonial a justificar a excepcionalidade de dispensa da obrigação legal. Nesse

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	sentido:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 9pt; margin-bottom: 9pt;" dir="ltr"> PROCESSUAL CIVIL E TRIBUTÁRIO. RECURSO DE APELAÇÃO EM EMBARGOS À EXECUÇÃO FISCAL. PRÉVIA GARANTIA DO JUÍZO. ART. 16, § 1º, DA LEI Nº 6.830/80 (LEF). TEMA Nº 526 DO STJ (RESP Nº 1.272.827/PE). FLEXIBILIZAÇÃO DA OBRIGAÇÃO MEDIANTE PROVA DE INSUFICIÊNCIA PATRIMONIAL. POSSIBILIDADE. RESP Nº 1.127.815/SP. EXTINÇÃO DO FEITO SEM PRÉVIA INTIMAÇÃO DO EMBARGANTE. ERROR IN PROCEDENDO. CONFIGURADO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. VOTO ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para DAR-LHE PROVIMENTO, nos termos do voto do relator. Fortaleza, data e hora indicados pelo sistema. DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES Relator (Apelação Cível - 0200667-37.2022.8.06.0115, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 15/07/2024, data da publicação: 17/07/2024)</p><p align="center"> <strong style="font-weight: normal;"> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 4pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> Diante do exposto, a anulação da sentença recorrida é medida que se impõe.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> <br /> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> DISPOSITIVO </p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr">Por tais razões, em face do firme posicionamento jurisprudencial a respeito da matéria, conheço do recurso, para dar-lhe provimento, com o fito de anular a sentença recorrida e determinar o retorno dos autos à primeira instância para regular processamento, no sentido de determinar a suspensão dos Embargos à Execução, intimando-se o embargante para, no prazo de 15 (quinze) dias, garantir o juízo ou comprovar a ausência de patrimônio suficiente para tanto, sob pena de não conhecimento dos embargos à execução.</p><p align="center"> &#160;</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.</p><p style="line-height: 1.7999999999999998; text-indent: 113.38582677165354pt; text-align: justify; margin-top: 6pt; margin-bottom: 12pt;" dir="ltr"> <br /> </p><p class="western" style="line-height: 16.5px; margin-top: 0.3cm; margin-bottom: 0.3cm;" align="center"> Juíza Convocada Dra. ELIZABETE SILVA PINHEIRO </p><p class="western" style="line-

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	height: 16.5px; margin-top: 0.21cm;" align="center"> Portaria&#160; 1550 /202 4 </p><p>&#160;</p><p style="text-indent: 8%; text-align: center;"> <strong style="font-size: small;">&#160; </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p style="text-indent: 8%; text-align: center;"> <br /> </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	184
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Antecipação de Tutela / Recebimento como Cautelar
Polo ativo	BANCO VOTORANTIM S.A.
Advogado(s) - Polo ativo	JOAO FRANCISCO ALVES ROSA - (BA17023-A)
Polo passivo	ESTADO DO CEARA
Advogado(s) - Polo passivo	Não informado
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ESTADO DO CEARÁ &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> PODER JUDICIÁRIO &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA &#160;</p><p style="line-height: 1.2; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> &#160;</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Processo: 3003192-08.2024.8.06.0000 - Agravo de Instrumento</p><p style="line-height: 1.2; text-align: justify; margin-top:

Processo	3003192-08.2024.8.06.0000
	0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravante: Banco Votorantim S.A</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Agravado: Estado do Ceará</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.728; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Ementa: Direito administrativo e do consumidor. Agravo de instrumento em ação anulatória. Decisão interlocutória que indeferiu o pedido de tutela de urgência. Suspensão da exigibilidade de multa arbitrada pelo Decon. Controle de legalidade pelo poder judiciário. Possível cerceamento de defesa no processo administrativo. Agravo de instrumento provido. Agravo interno prejudicado.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 1. Agravo de Instrumento interposto contra decisão interlocutória que indeferiu o pedido de tutela de urgência requerido pela parte autora, a qual busca a suspensão da exigibilidade da multa imposta nos autos de processo administrativo instaurado junto ao Programa Estadual de Proteção e Defesa do Consumidor - DECON.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 2. Verificar a existência de elementos que evidenciem a probabilidade do direito e o perigo de dano ou risco ao resultado útil do processo, consoante previsto no art. 300 do CPC, para conceder a tutela pretendida.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top:

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	0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">3. A inversão do ônus da prova, instituto aplicável ao processo civil, foi empregado no procedimento administrativo e sem qualquer ciência prévia do fornecedor, não sendo dada a oportunidade para a reclamada desincumbir-se de tal encargo.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 4. Outrossim, visualiza-se como impossível à empresa fazer prova negativa do cadastro que a consumidora apenas alega ter realizado, de modo que a inversão do ônus da prova, ainda que fosse compreendida como aplicável no procedimento administrativo, na particularidade do caso concreto, não se vislumbra adequada.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 5. Ademais, ao que parece, a sanção administrativa aplicada à parte reclamada fundamentou-se em postulados da responsabilidade civil, e não em ofensa aos direitos do consumidor, sob o entendimento de que há responsabilidade objetiva do banco por fraude cometida por terceiros, ainda que não se visualize, neste momento processual, inconteste nexo causal.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 6. Por essas razões, a&#160;probabilidade do direito da parte agravante se faz presente, porquanto se observa provável ofensa à salvaguarda do exercício do direito de defesa e contraditório no âmbito administrativo.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">7. O perigo de dano resta igualmente demonstrado, uma vez que a ausência da suspensividade da exigibilidade da multa pugnada possibilitará a adoção de medidas tendentes à cobrança do crédito impugnado.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> 8. Agravo de Instrumento provido. Agravo Interno prejudicado.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> <span style="font-size: 12pt; font-family: &quot;Times New Roman&quot;, serif; background-color:

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	transparent; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Dispositivos relevantes citados: CDC, art. 6º, inciso VIII.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">Jurisprudência relevante citada: STJ, AgInt no AREsp: 2162083 SP 2022/0203601-9, Rel. Ministro Raul Araújo, T4 - Quarta Turma, j. 24/10/2022.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.8; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer do Agravo de Instrumento para dar-lhe provimento, julgando, ainda, prejudicado o exame do Agravo Interno interposto, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.&#160;&#160;</p><p style="line-height: 1.8; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> &#160;&#160;</p><p style="line-height: 1.8; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO&#160;&#160;</p><p style="line-height: 1.8; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr"> Relatora&#160;</p><p style="line-height: 1.8; text-align: center; margin-top: 0pt; margin-bottom: 0pt; padding: 0pt 0pt 6pt 22.5pt;" dir="ltr">&#160;</p><hr /><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;" dir="ltr"> RELATÓRIO&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt; padding: 0pt 0pt 0pt 22.5pt;"

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	dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Trata-se de AGRAVO DE INSTRUMENTO COM PEDIDO DE ANTECIPAÇÃO DE TUTELA RECURSAL interposto pelo BANCO VOTORANTIM S.A. em face da decisão proferida pelo Juízo da 12ª Vara da Fazenda Pública que, nos autos de Ação Ordinária (processo nº 3034513-92.2023.8.06.0001) ajuizada pelo agravante em desfavor do ESTADO DO CEARÁ, indeferiu o pedido de tutela de urgência pleiteada, por entender ausentes os requisitos para tanto (id. 13399179).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Em suas razões (id. 13399170), o agravante requer a reforma da decisão recorrida com o fim de obter a suspensão da exigibilidade da multa arbitrada pela Secretaria Executiva do Programa Estadual de Proteção e Defesa do Consumidor - DECON, no importe de 10.000 (dez mil) UFIRCE, em seu desfavor, alegando, em suma: (i) que o ato administrativo sancionador fundamentou a aplicação da sanção administrativa em uma interpretação equivocada da responsabilidade por fraude aplicada por terceiro, caracterizando, pois, vício de motivação do ato administrativo; (ii) a nulidade do ato administrativo, ante a ausência de individualização da pena pecuniária aplicada; (iii) violação ao contraditório no processo administrativo, uma vez que os argumentos apresentados na defesa e no recurso da instituição financeira foram desconsiderados pelo julgador; (iv) ausência de proporcionalidade e razoabilidade da multa arbitrada, em ofensa ao art. 57 do Código de Defesa do Consumidor; (v) existência do perigo de dano, diante da possibilidade de o ente público adotar medidas tendentes à cobrança do crédito impugnado, o que acarretaria grandes prejuízos para a instituição financeira.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ao final, pugnou pela concessão de tutela de urgência, a

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	fim de suspender a exigibilidade da multa arbitrada na decisão administrativa proferida no processo administrativo FA nº 23.001.001.21-0008978. No mérito, pugnou pelo provimento do recurso, com a ratificação da tutela.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em anexo, documentação (id. 13399171 a 13399179).</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Preparo recolhido (id. 13399867).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Decisão interlocutória de minha lavra, indeferindo o pedido de antecipação da tutela recursal (id. 13440646).&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Em contrarrazões (id. 13722590), o Estado do Ceará refuta as teses recursais e pede para que seja negado provimento ao recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Agravo interno interposto no documento de id. 13843402.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Contrarrazões ao agravo interno do documento de id. 15264499.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Instada a manifestar-se (id. 14263454), a Procuradoria Geral de Justiça nada apresentou.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É o relatório, no essencial.</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Presentes os requisitos de admissibilidade, conheço do Agravo de Instrumento.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Cinge-se a controvérsia em aferir a higidez da decisão interlocutória que indeferiu a concessão da medida liminar requestada pela agravante, a qual objetiva a suspensão da exigibilidade da multa arbitrada em processo administrativo instaurado pelo Programa Estadual de Proteção e Defesa do Consumidor (DECON), no intuito de impedir que o agravado adote quaisquer atos atinentes à cobrança do crédito formado nos autos administrativos, até o trânsito em julgado da presente demanda.&#160;</p><p

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	style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Em seu arrazoado, a parte recorrente alega, em suma, (i) que o ato administrativo sancionador fundamentou a aplicação da sanção administrativa em uma interpretação equivocada da responsabilidade por fraude aplicada por terceiro, caracterizando, pois, vício de motivação do ato administrativo; (ii) a nulidade do ato administrativo, ante a ausência de individualização da pena pecuniária aplicada; (iii) violação ao contraditório no processo administrativo, uma vez que os argumentos apresentados na defesa e no recurso da instituição financeira foram desconsiderados pelo julgador; (iv) ausência de proporcionalidade e razoabilidade da multa arbitrada, em ofensa ao art. 57 do Código de Defesa do Consumidor; (v) existência do perigo de dano, diante da possibilidade de o ente público adotar medidas tendentes à cobrança do crédito impugnado, o que acarretaria grandes prejuízos para a instituição financeira.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Em que pese a argumentação exposta, e em atenção aos requisitos necessários à concessão da tutela de urgência — probabilidade do direito e o perigo de dano ou risco ao resultado útil do processo —, tenho que a decisão recorrida merece reforma.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> <span style="font-size: 12pt; font-family: &quot;Times New Roman&quot;, serif; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal;

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	font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">Conforme consignado em decisão interlocutória (id. 13440646), não se observou, em análise de cognição sumária, manifesta ilegalidade que justificasse a concessão da antecipação da tutela requerida, porquanto a decisão proferida no âmbito administrativo teria se mostrado fundamentada com as razões que levaram ao convencimento da Procuradoria.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Não obstante, em reexame da decisão proferida pelo DECON, observa-se provável ofensa ao direito de ampla defesa, em relação à distribuição do ônus da prova no âmbito do processo administrativo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Com efeito, o órgão de defesa do consumidor consignou que as afirmações da reclamante mostram-se verossímeis, sendo presumível a existência do cadastro que a servidora alega ter realizado, uma vez que o site da reclamada detém área destinada ao cadastro de não clientes que desejam contrair empréstimo pessoal. Com base nesse fato, entendeu que “decorrência lógica é que os fraudadores tiveram acesso às informações da reclamante a partir de tal cadastro”. Assim, aplicando a inversão do ônus da prova, consignou que caberia à reclamada comprovar de que não houve falha em seu sistema de segurança.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ocorre que a inversão do ônus da prova, instituto aplicável ao processo civil ¹ , foi empregado no procedimento administrativo sem qualquer ciência prévia do fornecedor, não sendo dada a oportunidade para a reclamada desincumbir-se de tal encargo.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Nessa toada, imperioso destacar que a jurisprudência do STJ vem se manifestando no sentido de que a aplicação do ônus da prova, no âmbito judicial, se trata de regra de instrução, cabendo ao julgador garantir a parte a quem foi imposto o ônus a oportunidade de apresentar provas, em momento anterior ao encerramento da instrução processual, sob pena de cerceamento de defesa. Vejamos:&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITO C/C REPETIÇÃO DO INDÉBITO. PRESTAÇÃO DE SERVIÇOS. INVERSÃO DO ÔNUS DA PROVA. RELAÇÃO DE CONSUMO. REGRA DE

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	INSTRUÇÃO. AGRAVO INTERNO DESPROVIDO. 1. A inversão do ônus da prova, nos termos do art. 6º, VIII, do Código de Defesa do Consumidor, não é automática, dependendo da constatação, pelas instâncias ordinárias, da presença ou não da verossimilhança das alegações e da hipossuficiência do consumidor. 2. Esta Corte Superior perfilha o entendimento segundo o qual "a inversão do ônus da prova prevista no art. 6º, VIII, do CDC, é regra de instrução e não regra de julgamento, motivo pelo qual a decisão judicial que a determina deve ocorrer antes da etapa instrutória, ou quando proferida em momento posterior, garantir a parte a quem foi imposto o ônus a oportunidade de apresentar suas provas" (REsp 1.286.273/SP, Rel. Ministro MARCO BUZZI, Quarta Turma, julgado em 8/6/2021, DJe de 22/6/2021). 3. Agravo interno desprovido.</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (STJ - AgInt no AREsp: 2162083 SP 2022/0203601-9, Relator: RAUL ARAÚJO, Data de Julgamento: 24/10/2022, T4 - QUARTA TURMA, Data de Publicação: DJe 28/10/2022)</p><p style="line-height: 1.2; margin-left: 113.38582677165351pt; text-indent: 2.842170943040401e-14pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Outrossim, faz-se dispendioso para a empresa fazer prova negativa do cadastro que a consumidora apenas alega ter realizado, de modo que a inversão do ônus da prova, ainda que fosse compreendida como aplicável no procedimento administrativo, na particularidade do caso concreto, não se mostra adequada.</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Perfilhando esse entendimento, colaciono julgados dos tribunais pátrios:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">APELAÇÃO CÍVEL. OBRIGAÇÃO DE FAZER. CONSUMIDOR. PROVA NEGATIVA. INVERSÃO DO ÔNUS. INDEVIDO. PROVA MÍNIMA DOS FATOS CONSTITUTIVOS DO DIREITO DO AUTOR. AUSÊNCIA. 1. A relação jurídica regida pelo Código de Defesa do Consumidor não impõe o deferimento automático da inversão do ônus da prova. 2. O art. 6º, VIII, do CDC estipula como requisito para o deferimento da inversão do ônus probatório a verossimilhança da alegação ou a hipossuficiência do consumidor, segundo as regras ordinárias de experiências. Cabe, portanto, ao juiz, destinatário da norma, inverter ou não, segundo as peculiaridades de cada caso. 3. Não é razoável exigir da parte contrária a prova de fato negativo por ser excessivamente difícil de ser produzida ou até mesmo impossível, sendo considerada pela doutrina como prova diabólica. 4. Não há que se falar em hipossuficiência probatória, tampouco consequente inversão integral do ônus da prova, quando possível à parte autora, por seus próprios meios, produzir as provas mínimas aptas à demonstração do direito pleiteado. 5. Recurso conhecido e improvido.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (TJ-DF 07022485920198070001 DF 0702248-59.2019.8.07.0001, Relator: ANA CANTARINO, Data de Julgamento: 27/11/2019, 5ª Turma Cível, Data de Publicação: Publicado no DJE : 17/12/2019 . Pág.: Sem Página Cadastrada.)</p><p>&#160;</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;"

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	dir="ltr">RECURSO INOMINADO. PROCESSO CIVIL E DIREITO DO CONSUMIDOR. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS EM RAZÃO DE DEFEITO NA PRESTAÇÃO DE SERVIÇOS. TESE DO AUTOR/RECORRENTE DE QUE A AUTOESCOLA RÉ/RECORRIDA TERIA FALTADO COM A OFERTA DE AGENDA PARA REALIZAÇÃO DE AULA PRÁTICA DE DIREÇÃO, SEM A QUAL NÃO PODERIA SUBMETER-SE A NOVA AVALIAÇÃO PERANTE O DETRAN ANTES DO ENCERRAMENTO DO RESPECTIVO PROCESSO ADMINISTRATIVO. IMPOSSIBILIDADE DE INVERSÃO DO ÔNUS DA PROVA NA HIPÓTESE. NÃO PREENCHIMENTO DOS REQUISITOS LEGAIS. INVIABILIDADE DE IMPUTAR A PRODUÇÃO DE PROVA NEGATIVA AO FORNECEDOR DE SERVIÇOS INDEPENDENTEMENTE DA APRESENTAÇÃO DE QUALQUER ELEMENTO PROBATÓRIO PELO AUTOR. AUSENTE A HIPOSSUFICIÊNCIA TÉCNICA DO CONSUMIDOR NESTE ÍNTERIM, QUE NÃO SE DESINCUMBIU DE PROVAR O FATO CONSTITUTIVO DO SEU DIREITO, LIMITANDO-SE A REQUERER O JULGAMENTO ANTECIPADO MEDIANTE REMESSA DA IMPOSSIBILIDADE DE DEFESA AO FORNECEDOR. ACERVO PROBATÓRIO INSUFICIENTE PARA RESPALDAR AS ALEGAÇÕES DA VESTIBULAR. SENTENÇA DE IMPROCEDÊNCIA MANTIDA POR SEUS PRÓPRIOS FUNDAMENTOS. RECURSO CONHECIDO E DESPROVIDO.</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> (TJ-SC - RI: 08053230420138240082 Capital - Continente 0805323-04.2013.8.24.0082, Relator: Cláudio Eduardo Regis de Figueiredo e Silva, Data de Julgamento: 10/08/2017, Primeira Turma de Recursos - Capital)</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Ademais, ao que parece, a sanção administrativa aplicada à parte reclamada fundamentou-se em postulados da responsabilidade civil, e não em ofensa aos direitos do consumidor, sob o entendimento de que há responsabilidade objetivo do banco por fraude cometida por terceiros, ainda que não se visualize, nesse momento processual, inconteste nexo causal.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Assim, compreendo que a probabilidade do direito da empresa agravante se faz presente, porquanto se observa provável ofensa à salvaguarda do exercício do direito de defesa e contraditório no procedimento administrativo. Perfilhando esse entendimento, trago à baila precedente desta Colenda Câmara de Direito Público:</p><p>&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">EMENTA: APELAÇÃO CÍVEL. DIREITO ADMINISTRATIVO, CONSUMIDOR E PROCESSUAL CIVIL. AÇÃO ORDINÁRIA. PRELIMINAR DE FALTA DE DIALETICIDADE. REJEIÇÃO. MÉRITO. ANULAÇÃO DE MULTA APLICADA PELO DEPARTAMENTO MUNICIPAL DE PROTEÇÃO E DEFESA DOS DIREITOS DO CONSUMIDOR - PROCON. NULIDADE DA DECISÃO ADMINISTRATIVA POR AUSÊNCIA FUNDAMENTAÇÃO. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. De início, rejeita-se a preliminar suscitada pela parte recorrida quanto à ausência de dialeticidade do instrumento recursal. Isso porque observa-se que o recorrente, ao elaborar o apelo, trouxe

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	em suas razões conteúdo que guarda pertinência com o abordado na decisão, demonstrando de forma objetiva os motivos do inconformismo, bem como os supostos desacertos da decisão recorrida.</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 2. No mérito, cinge-se a controvérsia em aferir higidez da sentença que julgou improcedente a pretensão autoral, por entender que a sanção aplicada à empresa foi devidamente motivada e fundamentada, não merecendo qualquer controle judicial quanto à sua legalidade.</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 3. No que concerne à legalidade dos atos praticados pela Administração Pública, é cediço que caberá ao Poder Judiciário a análise das matérias relativas à ampla defesa, ao contraditório e ao rito procedimental, ou seja, aos requisitos legais de validade do ato, sob pena de, assim não o fazendo, a decisão administrativa poder ser reduzida a mero arbítrio do julgador.&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 4. A par disso, observa-se que no caso dos autos foi instaurado, em desfavor da empresa recorrente, o procedimento administrativo referente a suposta abusividade de cláusulas no contrato de adesão firmado entre as partes, que colocariam o consumidor em situação de desvantagem em razão de prestações desproporcionais e extremamente onerosas.&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. A decisão administrativa, acolhendo a reclamação da consumidora, entendeu que as cláusulas contratuais previstas no contrato de adesão para a utilização do cartão de crédito guardariam obrigações abusivas, sendo nulas de pleno direito por força do disposto no art. 51, inciso IV, da Lei n.º 8.078/90, por violação aos direitos preconizados no art. 6º, inciso IV e V, do citado diploma, sujeitando-se a aplicação de multa, que ao final da dosimetria, restou fixada em 9.000 (nove mil), totalizando-se a pena em R$ 35.496,00 (trinta e cinco mil, quatrocentos e noventa e seis reais).</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 6. Não obstante, do exame acurado da decisão administrativa, denota-se que o órgão consumerista, ao reconhecer como abusivas as cláusulas do contrato de cartão de crédito, deixou de mencionar quais cláusulas seriam declaradas como nulas e por qual razão, fundamentando, de forma abstrata, que o contrato de adesão estaria incorrendo em excesso de cobrança, sem, contudo, demonstrar de que modo ou apontar casuisticamente a ilegalidade vislumbrada.&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 7. Imperioso destacar que não se discute, no presente momento, a (in)validade das cláusulas do contrato em questão, mas tão somente a deficiência na fundamentação da decisão administrativa que culminou em sanção de multa à recorrente.</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 8. Nessa toada, uma vez que a decisão do órgão consumerista não foi devidamente fundamentada, há de se considerar o malferimento aos princípios da ampla defesa e do contraditório no procedimento administrativo, demonstrando-se necessário, portanto, decretar a nulidade da sanção aplicada ao apelante.</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 10pt; font-family: &quot;Times New Roman&quot;, serif; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates:

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	normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">9. Apelação Cível conhecida e provida. Sentença reformada.&#160;</p><p style="line-height: 1.2; margin-left: 141.7322834645669pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">(APELAÇÃO CÍVEL - 02204685820208060001, Relator(a): JORIZA MAGALHAES PINHEIRO, 3ª Câmara de Direito Público, Data do julgamento: 19/02/2024)</p><p>&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Noutro giro, tenho que o perigo de dano resta igualmente demonstrado, uma vez que a ausência da suspensividade da exigibilidade da multa pugnada possibilitará a adoção de medidas tendentes à cobrança do crédito impugnado.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr">Ante o exposto, conheço do Agravo de Instrumento para dar-lhe provimento, no sentido de suspender a exigibilidade de crédito não tributário, referente à multa arbitrada na decisão proferida no procedimento administrativo n.º 23.001.001.21-0008978.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Por conseguinte, julgo prejudicado o Agravo Interno .&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> É como voto.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 71pt; text-align: justify; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema. <br /> <br /> </p><p style="line-height: 2.16; margin-left: 14pt; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 2.16; margin-left: 14pt; text-align: center; margin-top: 0pt; margin-bottom: 6pt;" dir="ltr"> Relatora</p><div> <hr /></div><div>

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	 <p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Art. 6º São direitos básicos do consumidor: </p> <p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; (...) </p> <p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; VIII - a facilitação da defesa de seus direitos, inclusive com a inversão do ônus da prova, a seu favor, no processo civil, quando, a critério do juiz, for verossímil a alegação ou quando for ele hipossuficiente, segundo as regras ordinárias de experiências; </p> <div> <br /> </div> </div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	185
Órgão julgador	2º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	WASHINGTON LUIS BEZERRA DE ARAUJO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	ESTADO DO CEARA
Advogado(s) - Polo ativo	Não informado
Polo passivo	ANTONIO BATISTA FILHO
Advogado(s) - Polo passivo	DANIEL BRAGA ALBUQUERQUE - (CE28282-A) MARINA MACEDO GOMES ALBUQUERQUE - (CE30084-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

Processo	3016536-87.2023.8.06.0001
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align: center;" align="center">   <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">ESTADO DO CEARÁ </p><p
style="margin: 0cm; text-align: center;" align="center">   <span style="font-size:
13.0pt; font-family: &quot;Arial&quot;,sans-serif; color: black;">PODER
JUDICIÁRIO </p><p style="margin: 0cm; text-align: center;"
align="center">   <span style="font-size: 13.0pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">TRIBUNAL DE JUSTIÇA
</p><p style="margin: 0cm; text-align: center;" align="center">   GABINETE
DESEMBARGADOR WASHINGTON LUIS BEZERRA DE ARAUJO
</p><p style="text-align: center;" align="center"> <span style="font-size: 8.5pt;
font-family: &quot;Arial&quot;,sans-serif; color: black;">&#160;</p><p style="text-
align: left;">&#160;</p><p style="text-align: left;"> <span style="font-size: 13.5pt; font-
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Verdana, sans-serif; font-size: 11px;">   <span style="font-size: 13.5pt; font-family:
&quot;Arial&quot;,sans-serif; color: black;">Processo: <span
style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">&#160;3016536-87.2023.8.06.0001 </p><p style="text-align:
left;"> <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">   <span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">[Indenização por Dano Material] </p><p style="text-align: left;">

<span style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">APELAÇÃO CÍVEL </p><p style="text-align: left;"> <span
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black;">Embargante:&#160; <span style="font-family: Arial, sans-serif; font-size:
18px;">ANTONIO BATISTA FILHO</p><p style="text-align: left;"> <span
style="font-size: 13.5pt; font-family: &quot;Arial&quot;,sans-serif; color:
black;">Embargado:&#160;ESTADO DO CEARÁ</p><p style="text-align:
left;">&#160;</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-
ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-
autospace: none; mso-vertical-align-alt: auto;">&#160;</p><p class="MsoNormal"
style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-
align: justify; text-justify: inter-ideograph; line-height: 150%;">   <span
style="font-size: 13pt; line-height: 150%; font-family: Arial, sans-serif; font-variant-numeric:
normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-
alternates: normal; font-variant-position: normal;">Ementa
   <span style="font-size: 13pt; line-height: 150%; font-family: Arial, sans-serif;
font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps;
font-variant-alternates: normal; font-variant-position: normal;">: Processual civil. Embargos
de declaração em apelação cível. Alegação de omissão no acórdão embargado. Erro
material detectado. Acolhimento dos embargos com efeitos infringentes.
</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-
justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">
   <span style="font-size: 13pt; line-height: 150%; font-family: Arial, sans-serif;
font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps;
font-variant-alternates: normal; font-variant-position: normal;">I. Caso em exame:

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	</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">1. Embargos de declaração apresentados contra acórdão desta Câmara de Direito Público que conheceu e deu provimento ao recurso de apelação interposto pelo Estado do Ceará no âmbito de ação ordinária de cobrança.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> II. Questão em discussão: Analisar se, no caso concreto, houve aproveitamento em dobro de período decorrente de férias não gozadas na formação do valor do benefício de aposentadoria.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> III. Razões de decidir: </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">3. O servidor averbou 2.098 (dois mil e noventa e oito) dias de serviços prestados junto a Prefeitura Municipal de Cascavel, que, apesar de desconsiderados para fins de tempo de contribuição, foram admitidos como tempo de serviço, e, inclusive, serviram para avançar em 5 (cinco) anos a progressão horizontal, pois perfazem um total 05 anos e 09 meses de serviço público.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">4. A quebra de padrão que outrora me levou a deduzir pelo aproveitamento, em dobro, de períodos de férias não gozadas, para fins de progressão na carreira (25% a 30%), agora, mostra-se justificada pelo averbamento de tempo de serviço proveniente de outro órgão, conforme permitia o art. 45 da Lei nº 9.826/1974, vigente à época. &#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> IV. Dispositivo: </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> 5. Embargos da parte autora conhecidos e acolhidos com efeitos infringentes.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> _____________</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-hyphenate: auto; text-autospace: none;">Dispositivos relevantes citados: CPC/2015, art. 85, § 4º, II c/c § 11; Lei nº 9.826/1974, art. 45.</p><p class="MsoNormal" style="page-break-before: always; mso-hyphenate: auto;"> &#160; </p><p class="Standard" style="text-align: center; line-height: 150%;" align="center"> ACÓRDÃO </p><p class="Standard" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height: 150%; text-autospace: none;"> Vistos, relatados e discutidos, acordam os integrantes da Terceira Câmara de Direito Público do Egrégio Tribunal de Justiça do Estado do Ceará, por uma de suas turmas julgadoras, à unanimidade, em conhecer dos embargos de declaração para acolhê-los, tudo nos termos do voto do relator, parte integrante deste.</p><p

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	class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; text-indent: 42.55pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; text-indent: 99.2pt;"> &#160;</p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; text-indent: 99.2pt;"> &#160;</p><p class="TableContents" style="text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="EmentadoAcrdo" style="text-align: center; text-indent: -7.1pt;" align="center"> Relator </p><p class="EmentadoAcrdo" style="text-align: justify; text-justify: inter-ideograph; text-indent: 99.2pt;"> &#160;</p><p class="Standard" style="margin-left: 5.0cm; text-align: justify; text-justify: inter-ideograph;"> &#160; </p><p class="Standard" style="margin-left: 99.2pt; text-align: justify; text-justify: inter-ideograph; text-indent: -99.2pt;"> &#160; </p><p class="Standard" style="text-align: center;" align="center"> &#160; </p><p class="EmentadoAcrdo" style="margin-left: 5.0cm; text-align: center;" align="center"> &#160;</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: center; line-height: 150%; page-break-before: always; tab-stops: 102.05pt;" align="center"> RELATÓRIO </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%; mso-hyphenate: auto; text-autospace: none;"> Têm-se embargos de declaração opostos contra acórdão desta Terceira Câmara de Direito Público.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Acórdão : conheceu e deu provimento ao recurso de apelação interposto pelo Estado do Ceará, reformando a sentença de primeiro grau no sentido de julgar improcedente o pleito autoral que visava conversão de licenças-prêmio em pecúnia.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Embargos de declaração : alega que “o acórdão é omisso por não fazer menção a qualquer documento integrante do processo de aposentadoria do autor, que aponte que houve a contagem em dobro dos períodos de férias não gozadas, para fins das progressões horizontais do autor”.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Contrarrazões : pugna pela manutenção do acórdão embargado.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Vieram os autos conclusos.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> É o relatório, no essencial.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;">&#160;</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: center; line-height: 150%;" align="center">&#160;</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: center; line-height: 150%; page-break-before: always;" align="center"> VOTO </p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Presentes os requisitos de admissibilidade, conheço do recurso integrativo.</p><p class="MsoNormal"

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	style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">Conforme brevemente relatado, cuidam os autos de Embargos de Declaração opostos contra acórdão desta Câmara de Direito Público no julgamento de apelação cível em que o colegiado conheceu do recurso do Estado do Ceará para dar-lhe provimento, reformando a sentença de primeiro grau.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Neste momento, alega o embargante que “o acórdão é omisso por não fazer menção a qualquer documento integrante do processo de aposentadoria do autor, que aponte que houve a contagem em dobro dos períodos de férias não gozadas, para fins das progressões horizontais do autor”.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Pois bem.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Os embargos de declarações são meios de impugnação recursal, com fundamentação vinculada, que visam esclarecer obscuridade, eliminar contradição, suprimir omissão ou sanar erro material evidente em decisões imperfeitas, tornando-as compreensíveis aos destinatários.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Corroborando essa definição, o Ministro MARCO BUZZI, do Superior Tribunal de Justiça, por ocasião do julgamento dos EDcl no AgRg no AREsp nº 708188/PR, ocorrido em 17/05/2016, assentou que “os embargos de declaração somente são cabíveis quando houver, na sentença ou no acórdão, obscuridade, contradição, omissão ou erro material, consoante dispõe o art. 1.022 do CPC/2015”.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> O acórdão embargado trouxe consigo a seguinte ementa:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 5.65pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none;"> EMENTA: CONSTITUCIONAL. ADMINISTRATIVO. AÇÃO ORDINÁRIA DE CONVERSÃO DE FÉRIAS NÃO GOZADAS EM PECÚNIA. SERVIDOR PÚBLICO ESTADUAL. UTILIZAÇÃO DOS PERÍODOS DE FÉRIAS NÃO GOZADAS, EM DOBRO, PARA PROGRESSÃO HORIZONTAL NA CARREIRA. GRATIFICAÇÃO QUE ACRESCE AOS PROVENTOS DE APOSENTADORIA. RECURSO CONHECIDO E PROVIDO. 1. Alega o Estado do Ceará que os períodos de férias não gozadas apontados na petição inicial foram averbados e levados em consideração na contagem de tempo de serviço do demandante, para fins do cálculo das parcelas que compõem seu benefício previdenciário. 2. A portaria de admissão do Autor foi publicada em 12 de janeiro de 1965, e já existia em norma anterior a Lei Estadual nº 9.826/1974, a previsão do direito à progressão, devendo ser considerado como data final da contagem do período exigido para progressão horizontal o dia 17 de junho de 1999, quando o direito foi revogado pela Lei Estadual nº 12.913/1999. 3. A partir das portarias analisadas, observei que o ex-servidor vinha progredindo horizontalmente a cada quinquênio em 5%, com exceção da Portaria nº 06/90, que elevou a gratificação por progressão horizontal de 20% para 25%, a partir de 10/02/1990, seguida pela Portaria nº 04/91, que a aumentou de 25% para 30%, a partir de 9/05/1989, e, finalmente, da Portaria 20/94, que elevou de 30% para 35% a partir de 14/05/1994. 4<span style="font-size: 11.0pt; font-family:

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&quot;Arial&quot;,sans-serif; mso-fareast-font-family: &quot;Courier New&quot;;">. A única possibilidade de se explicar essa alteração de padrão de portarias quinquenais seria o aproveitamento dos 1.448 dias de férias/licenças acrescidos ao período compreendido entre 22/01/1990 (Portaria nº 06/90) e 20/02/1991 (Portaria nº 04/91), totalizando exatos 1.841 dias, que correspondem aos 5 anos necessários para viabilizar uma nova progressão horizontal mediante aproveitamento em dobro do período de férias e licenças não gozadas. 5. Recurso conhecido e provido.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;">Esta relatoria, seguida pelos demais integrantes da turma que compõe a Terceira Câmara de Direito Público deste tribunal, entendeu que o servidor utilizou períodos de férias e/ou licenças especiais, contadas em dobro, para fins de progressão horizontal. Tal conclusão decorre da interpretação da sequência de portarias que versam sobre a aludida conversão e que constam nos assentamentos funcionais do servidor, reproduzo-as novamente a seguir:</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> <img

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0fZXCDgAAAABJRU5ErkJggg==" alt="" /></p><p class="Standard" style="margin-bottom:
6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;">
Conforme afirmado no acórdão embargado, a partir das portarias analisadas, observa-se que o ex-servidor vinha progredindo horizontalmente a cada quinquênio em 5%, padrão este que sofreu alteração com a Portaria nº 04/91, que elevou o percentual sobre o vencimento de 25% para 30%, a partir de 9/05/1989, influenciando as progressões seguintes.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Na oportunidade, deduziu-se que a única possibilidade de se explicar essa alteração de padrão seria o aproveitamento dos 1.448 dias de férias/licenças acrescidos ao período compreendido entre 22/01/1990 (Portaria nº 06/90) e 20/02/1991 (Portaria nº 04/91), totalizando exatos 1.841 dias, que correspondem aos 5 anos necessários para viabilizar uma nova progressão. Contudo, o embargante, neste momento, justifica razoavelmente a origem dos dias que serviram para a referida progressão. Seu registro encontra-se logo acima da referida Portaria nº 04/91, nos assentamentos funcionais do servidor; senão vejamos:</p><p

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nACAAAAElFTkSuQmCC" alt="" /> </p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Como se pode observar, o servidor averbou 2.098 (dois mil e noventa e oito) dias de serviços prestados junto a Prefeitura Municipal de Cascavel, que, apesar de desconsiderados para fins de tempo de contribuição, foram admitidos como tempo de serviço, e, inclusive, serviram para avançar em 5 (cinco) anos a progressão horizontal, pois perfazem um total 05 anos e 09 meses de serviço público.</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> Aliás, havia previsão expressa de aproveitamento de período de serviço em outros órgãos da Administração Pública direta ou indireta, o que se extrai da redação originária do art. 45 da Lei nº 9.826/1974;   in verbis:</p><p class="Standard" style="margin-bottom: 6.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.8pt; line-height: 150%;"> <span style="font-size: 13.0pt; line-height: 150%; font-family: &quot;Arial&quot;,sans-serif;">
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	af8pk90g24LK9s12BewKvHwKtHaVZJn6RxEBu/2+PxZ8PPhUch5873Ubs7IbZLdRMHtxuwJ2BX5PBVq9Sv6eQdr7titgV8CuwO+mgH2V/N2kt3dsV8CuwCuhgH2VfCWGyR6kXQG7Ar+bAvZV8neT3t6xXQG7Aq+EAvZV8pUYJnuQdgXsCvxuCvw/pq5pVcdCOYEAAAAASUVORK5CYII=" alt="" /> </p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;">Assim, a quebra de padrão que outrora me levou a deduzir pelo aproveitamento de período de férias não gozadas em dobro para fins de progressão na carreira (25% a 30%), agora, mostra-se justificada pelo averbamento de tempo de serviço proveniente de outro órgão, conforme permitia o art. 45 da Lei nº 9.826/1974, vigente à época.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Em arremate, inexiste nos autos qualquer elemento de prova produzido pelo Estado do Ceará que demonstre que o servidor utilizou o período de férias em dobro para fins de formação do valor do benefício de aposentadoria, devendo ser acolhidos os aclaratórios com efeitos infringentes, no sentido de se manter a sentença de primeiro grau.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;">Isso posto, conheço dos embargos para acolhê-los com efeitos infringentes, no sentido de negar provimento ao apelo, mantendo íntegra a sentença de procedência proferida pelo juízo da 4ª Vara da Fazenda Pública da Comarca de Fortaleza.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Honorários decorrentes da etapa recursal a serem considerados em eventual liquidação do julgado, nos termos do inciso II do § 4º c/c § 11 do art. 85 do CPC/2015.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> É como voto, submetendo à consideração de meus pares.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> Fortaleza, data informada pelo sistema.</p><p class="Standard" style="margin-bottom: 5.65pt; text-align: justify; text-justify: inter-ideograph; text-indent: 42.5pt; line-height: 150%;"> &#160;</p><p class="TableContents" style="text-align: center;" align="center"> Desembargador WASHINGTON LUÍS BEZERRA DE ARAÚJO </p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; line-height: 150%; mso-pagination: widow-orphan; mso-hyphenate: auto; text-autospace: none; mso-vertical-align-alt: auto;"> Relator </p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

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Número de ordem	186
Órgão julgador	5º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	JORIZA MAGALHAES PINHEIRO
Classe judicial	CONFLITO DE COMPETÊNCIA CÍVEL
Assunto principal	Conflito de Competência
Polo ativo	3ª Vara da Fazenda Pública da Comarca de Fortaleza
Advogado(s) - Polo ativo	Não informado
Polo passivo	JUIZ(A) DE DIREITO DA 13ª VARA DA FAZENDA PÚBLICA DACOMARCA DE FORTALEZA
Advogado(s) - Polo passivo	Não informado

Processo	3005790-32.2024.8.06.0000
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA FRANCISCA RANIELLE SILVA BRITO IANA SOBREIRA DA COSTA ERASMO ARAUJO SOBREIRA FRANCISCA RAQUEL PINHEIRO FRANCISCO VENECI SOUSA FERREIRA ESTADO DO CEARA DAVID PEREIRA DE SOUSA RODRIGO PINHEIRO NOBRE DIEGO NOGUEIRA KAUR

Processo	3005790-32.2024.8.06.0000
Acordão	<p style="text-align: center;">&#160;</p><p>&#160;</p><p style="line-height: 1.7999999999999998; margin-left: -28.346456692913385pt; text-align: center; margin-top: 12pt; margin-bottom: 3pt;" dir="ltr"> </p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> ESTADO DO CEARÁ</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> PODER JUDICIÁRIO</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> TRIBUNAL DE JUSTIÇA</p><p style="line-height: 1.2; margin-left: -28.346456692913385pt; text-align: center; margin-top: 0pt; margin-bottom: 3pt;" dir="ltr"> GABINETE DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Processo: 3005790-32.2024.8.06.0000 - Conflito de Competência</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Suscitante: Juízo da 3ª Vara da Fazenda Pública da Comarca de fortaleza</p><p style="line-height: 1.2; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Suscitado: Juízo da 13ª Vara da Fazenda Pública da Comarca de fortaleza</p><p> <br /> <br /> <br /> </p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Ementa: Direito processual civil. Conflito negativo de competência. Ação ordinária. Desmembramento de processo inicial. Prevenção. Conflito dirimido. Competência do juízo suscitado.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> I. Caso em exame</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 1. Conflito negativo de competência suscitado pelo Juízo da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, contrapondo-se ao entendimento do Juízo da 13ª Vara da Fazenda Pública da Comarca de Fortaleza, quanto ao julgamento da ação ordinária que busca a compensação do adicional de insalubridade em seu grau máximo e o respectivo pagamento das parcelas não prescritas.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify;

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	margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> II. Questão em discussão</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">2. Definir qual o juízo competente para conhecimento e processamento de ação ordinária decorrente de desmembramento por litisconsórcio facultativo multitudinário em feito anterior.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> III. Razões de decidir</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">3. Nos termos do art. 113, §1º, do CPC, o juiz pode limitar o litisconsórcio facultativo quanto ao número de litigantes, quando este comprometer a rápida solução do litígio ou dificultar a defesa ou o cumprimento da sentença.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">4. O art. 286, caput e inciso II, do CPC preceitua que serão distribuídas por dependência as causas de qualquer natureza quando, tendo sido extinto o processo sem resolução de mérito, houver reiteração do pedido, ainda que em litisconsórcio com outros autores ou que sejam parcialmente modificados os réus da demanda.&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> 5. A demanda desmembrada apresenta a mesma causa de pedir e o mesmo pedido da ação originária, denotando conexão. Ademais, o desmembramento do processo equivale à extinção da ação, sem resolução de mérito, não modificando a relação jurídica já estabelecida no feito de origem, cujo pedido, em caso de reiteração, deve ser distribuído por dependência àquele Juízo. Precedentes do TJCE.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> IV. Dispositivo</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">6. &#160;Conflito dirimido para declarar a competência do Juízo da 13ª Vara da Fazenda Pública da Comarca de Fortaleza (suscitado) para processar e julgar a ação.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> ________________</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

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	italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Dispositivos relevantes citados: CPC/2015, arts. 59, 113, §1º, e 286, caput e II.</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">Jurisprudência relevante citada: TJCE, CC nº 0004172-40.2023.8.06.0000, Rel. Des. Washington Luís Bezerra De Araújo, 3ª Câmara Direito Público, j. 27/11/2023; TJCE, CC nº 0002086-33.2022.8.06.0000, Rel. Desa. Maria Vilauba Fausto Lopes, 3ª Câmara Direito Público, j. 06/02/2023;&#160;</p><p style="line-height: 1.2; margin-left: 3pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> TJCE, CC nº 0002088-03.2022.8.06.0000, Rel. Des. José Tarcílio Souza Da Silva, 1ª Câmara Direito Público, j. 22/08/2022.</p><p> <br /> <br /> </p><p style="line-height: 1.2; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, em conhecer o conflito negativo, para reconhecer a competência do Juízo suscitado para processar e julgar o feito, nos termos do voto da relatora, parte integrante deste.</p><p style="line-height: 1.2; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> <br /> <br /> </p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.2; text-align: center; margin-top: 2pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p>&#160;</p><p> &#160;</p><hr /><p>&#160;</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p> <br /> <br />

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	</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr">Trata-se de CONFLITO NEGATIVO DE COMPETÊNCIA, tendo como suscitante o Juízo da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, e como suscitado o Juízo da 13ª Vara da Fazenda Pública da Comarca de Fortaleza, nos autos da Ação Ordinária nº 0211582-36.2021.8.06.0001, ajuizada por Erasmo Araújo Sobreira e outros em face do ESTADO DO CEARÁ.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr">Na ação originária, os autores ajuizaram ação requerendo, preliminarmente, a&#160; distribuição do feito por dependência ao processo nº 0188783-67.2019.8.06.0001, distribuído para a 13ª Vara da Fazenda Pública da Comarca de Fortaleza, da qual os requerentes foram excluídos por limitação de litisconsortes, com o intuito de promover maior celeridade processual. No mérito, requerem a condenação do ente público “à compensação do adicional de insalubridade, em seu grau máximo, ou seja, 40% (quarenta por cento), a ser calculado sobre o piso remuneratório da categoria profissional dos autores”, bem como o respectivo pagamento das parcelas vencidas e vincendas, respeitada a prescrição quinquenal (ID nº 15131383, págs. 04/25).</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr">Distribuído o feito inicialmente por prevenção/dependência ao Juízo da 13ª Vara da Fazenda Pública da Comarca de Fortaleza, o magistrado oficiante naquela unidade determinou a livre distribuição dos autos por não vislumbrar hipótese de conexão. Para tanto, assentou que, “diante da constatação de que os servidores públicos estabelecem relações próprias e autônomas com a Administração, inexiste in casu, a possibilidade de prolação de decisões conflitantes que pudesse ensejar a conexão entre as demandas propostas pelos mesmos.” (ID nº 15131383, págs. 27/29).</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr">Na sequência, redistribuídos os autos por sorteio ao Juízo da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, a magistrada assentou que “as partes presentes no atual feito, porventura, compuseram o litisconsórcio ativo do processo ao qual se buscava a distribuição por dependência até o momento em que foram excluídos levando em consideração um melhor andamento do processo.” Invocando o art. 286, II, do CPC, suscitou o presente Conflito de Competência. (ID nº 15131383, págs. 1/2).</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Despacho designando o Juízo suscitante para resolver temporariamente as medidas urgentes (ID nº 15159366).</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Instada a manifestar-se, a Procuradoria-Geral de Justiça deixou de apresentar análise de mérito, por entender desnecessária sua intervenção (ID nº 15556057).</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Feito que independe de inclusão em pauta (art. 282, § 5º do RITJCE).</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Atendidos os pressupostos legais, conheço do presente Conflito de Competência.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> O cerne da controvérsia cinge-se a definir qual o juízo competente para processar e julgar a Ação Ordinária nº 0211582-36.2021.8.06.0001, ajuizada por Erasmo Araújo Sobreira e outros em face do Estado do Ceará: se da 13ª Vara da Fazenda Pública da Comarca de Fortaleza, unidade para a qual o feito foi inicialmente distribuído por dependência, ou da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, para onde foi redistribuído.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Conforme relatado, os autores da ação de origem figuraram no polo ativo do Processo nº 0188783-67.2019.8.06.0001 (que tramitou perante o Juízo da 13ª Vara da Fazenda Pública), que foi desmembrado em razão do extenso número de servidores discutindo o direito ao adicional de insalubridade, com a finalidade de limitar o litisconsórcio facultativo multitudinário.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr">Como se sabe, nos termos do art. 59, do CPC, “o registro ou a distribuição da petição inicial torna prevento o juízo.” Ademais, consoante o art. 113, §1º, do CPC, “o juiz poderá limitar o litisconsórcio facultativo quanto ao número de litigantes na fase de conhecimento, na liquidação de sentença ou na execução, quando este comprometer a rápida solução do litígio ou dificultar a defesa ou o cumprimento da sentença.”</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr">Por outro lado, o art. 286, caput <span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-

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	wrap;">e inciso II, do CPC, preceitua que serão distribuídas por dependência as causas de qualquer natureza “quando, tendo sido extinto o processo sem resolução de mérito, for reiterado o pedido, ainda que em litisconsórcio com outros autores ou que sejam parcialmente alterados os réus da demanda.”&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> In casu , a demanda desmembrada apresenta a mesma causa de pedir (exposição dos autores/servidores a agentes/ambientes insalubres) e o mesmo pedido (compensação de adicional de insalubridade em seu grau máximo) da ação originária, denotando conexão entre elas. A relação jurídica estabelecida nas ações - que foram redistribuídas em virtude do desmembramento da ação inicial - se entremostra suficiente para fixação, por prevenção, da competência do juízo.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Ademais, o desmembramento do processo equivale à extinção da ação, sem resolução de mérito, não modificando a relação jurídica já estabelecida no feito de origem, cujo pedido, caso seja reiterado, deve ser distribuído por dependência ao mesmo Juízo. Assim, forçoso reconhecer a competência do Juízo suscitado, qual seja, da 13ª Vara da Fazenda Pública da Comarca de Fortaleza, para processamento e julgamento do feito em alusão.</p><p style="line-height: 1.7999999999999998; text-indent: 56.692913385826756pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> A temática em desate já foi objeto de apreciação por parte deste Tribunal de Justiça, oportunidade em que foi adotado o mesmo entendimento ora exposto, senão vejamos:</p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">CONFLITO NEGATIVO DE COMPETÊNCIA PARA O PROCESSAMENTO DE AÇÃO ORDINÁRIA QUE DISCUTE DIREITO A ADICIONAL DE INSALUBRIDADE. PROCESSO DESMEMBRADO. EQUIVALÊNCIA À EXTINÇÃO SEM RESOLUÇÃO DE MÉRITO. RENOVAÇÃO DO PEDIDO NA AÇÃO CONEXA DECORRENTE DO DESMEMBRAMENTO. PRECEDENTES DESTA CORTE. CONFLITO CONHECIDO E PROVIDO PARA DECLARAR A COMPETÊNCIA DO JUÍZO SUSCITADO. 1. Considerando que a demanda desmembrada apresenta o mesmo pedido (compensação de Adicional de Insalubridade em grau máximo) e mesma causa de pedir (exposição dos servidores a agentes ou ambientes insalubres), forçoso reconhecer a conexão entre as ações. 2. Para melhor aplicação do princípio constitucional que impõe celeridade à demanda, o Novo Código de Processo Civil permitiu ao magistrado o desmembramento dos autos ao determinar que ¿o juiz poderá limitar o litisconsórcio facultativo quanto ao número de litigantes na fase de conhecimento, na liquidação da sentença ou na execução, quando este comprometer a rápida solução do litígio ou dificultar a defesa ou o cumprimento da sentença.¿ (art. 113, § 1º, do CPC/2015). 3. O desmembramento do processo equivale à extinção da ação sem resolução de mérito e não modifica a relação jurídica já estabelecida no processo original, cujo pedido, se renovado, deve ser distribuído por dependência ao mesmo juiz (art. 286, II, do CPC/2015). 4.Conflito

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	conhecido e acolhido, reconhecendo-se a competência do Juízo suscitado, qual seja, o da 13ª Vara da Fazenda Pública da Comarca de Fortaleza para processar e julgar o feito. (Conflito de competência cível - 0004172-40.2023.8.06.0000, Rel. Desembargador(a) WASHINGTON LUIS BEZERRA DE ARAUJO, 3ª Câmara Direito Público, data do julgamento:&#160; 27/11/2023, data da publicação:&#160; 27/11/2023) (destacou-se)</p><p> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">CONFLITO NEGATIVO DE COMPETÊNCIA. JUÍZO DE DIREITO DA 13ª VARA DA FAZENDA PÚBLICA E JUÍZO DE DIREITO DA 3ª VARA DA FAZENDA PÚBLICA, AMBAS DA COMARCA DE FORTALEZA. AÇÃO ORDINÁRIA. DESMEMBRAMENTO DO PROCESSO INICIAL. PRINCÍPIO DA PERPETUAÇÃO DA JURISDIÇÃO. PREVENÇÃO DO JUÍZO SUSCITADO. PRECEDENTES DO TJCE. CONFLITO CONHECIDO E PROVIDO PARA DECLARAR A COMPETÊNCIA DO JUÍZO DA 13ª VARA DA FAZENDA PÚBLICA DA COMARCA DE FORTALEZA. 1. Segundo estabelece o art. 286, II, do CPC de 2015, é prevento o juízo que extinguiu, sem resolução do mérito, o processo relativo à ação idêntica àquela anteriormente ajuizada, não havendo, assim, que se falar em livre distribuição do feito. 2. Com efeito, firmada a competência pela distribuição da ação, e sendo hipótese de litisconsórcio ativo, o juiz pode determinar o desmembramento do processo quando o número de litigantes "comprometer a rápida solução do litígio ou dificultar a defesa" (art. 113, § 1º, do CPC), contudo o respectivo juízo permanece competente para todos os feitos desmembrados, com nova distribuição de cada um deles por dependência, em observância ao princípio da perpetuatio jurisdictionis (art. 43 do CPC). 3. Assim, a previsão do art. 286, inciso II, do CPC, amolda-se à hipótese dos autos, uma vez que a ação ordinária nº 0211585-88.2021.8.06.0001, objeto deste conflito, é originária do processo nº 0188783-67.2019.8.06.0001. A determinação de desmembramento do feito em ações distintas corresponde a extinção do processo, sem resolução de mérito, para os excluídos da demanda, a ensejar a distribuição da nova ação ao juízo prevento, no caso, aquele a quem inicialmente fora distribuída a demanda originária. 4. Conflito conhecido e acolhido, para declarar a competência do Juízo de Direito da 13ª Vara da Fazenda Pública da Comarca de Fortaleza para processar e julgar a presente ação. (Conflito de competência cível - 0002086-33.2022.8.06.0000, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Público, data do julgamento:&#160; 06/02/2023, data da publicação:&#160; 06/02/2023) (destacou-se)</p><p> <br /> </p><p style="line-height: 1.2; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr">CONFLITO DE COMPETÊNCIA. JUÍZO DA 3ª VARA DA FAZENDA PÚBLICA E DA 13ª VARA DA FAZENDA PÚBLICA, AMBOS DA COMARCA DE FORTALEZA/CE. AÇÃO ORDINÁRIA DE COMPENSAÇÃO DE ADICIONAL DE INSALUBRIDADE. DESMEMBRAMENTO DA AÇÃO INICIAL. PREVENÇÃO. REQUISITOS ESPECÍFICOS DE CONEXÃO. PEDIDO. CAUSA DE PEDIR. PROCESSAMENTO DO FEITO. COMPETÊNCIA DA 13ª VARA DA FAZENDA

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	PÚBLICA. 1. Trata-se de Conflito Negativo de Jurisdição suscitado pelo Juiz de Direito da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, com intuito de fixar a competência para processar e julgar demanda ordinária de compensação de Adicional de Insalubridade. 2. O desmembramento processual configura mera faculdade para maior celeridade em sua tramitação, devendo os autos resultantes serem redistribuídos ao juízo da ação inicial por prevenção. Precedentes. 3. A conexão será determinada por hipóteses específicas atinentes à identificação do pedido e da causa de pedir, provocando a redistribuição ao juízo prevento. 4. Independente da conexão, também serão reunidos os processos que possam causar decisões conflitantes ou contraditórias, para evitar violação à segurança jurídica. 5. Conflito de Jurisdição conhecido para fixar a competência da 13ª Vara da Fazenda Pública para processar e julgar o feito desmembrado. (Conflito de competência cível - 0002088-03.2022.8.06.0000, Rel. Desembargador(a) JOSÉ TARCÍLIO SOUZA DA SILVA, 1ª Câmara Direito Público, data do julgamento:&#160; 22/08/2022, data da publicação:&#160; 22/08/2022) (destacou-se)</p><p> <br /> </p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr">Diante do exposto, conheço do presente conflito negativo, reconhecendo a competência do Juízo suscitado, qual seja, o da 13ª Vara da Fazenda Pública da Comarca de Fortaleza, para processar e julgar o feito.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 56.69291338582677pt; text-align: justify; margin-top: 0pt; margin-bottom: 10pt;" dir="ltr"> Fortaleza, data e hora informadas pelo sistema.</p><p> <br /> </p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADORA JORIZA MAGALHÃES PINHEIRO</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relatora</p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3006830-49.2024.8.06.0000
Número de ordem	187
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	CONFLITO DE COMPETÊNCIA CÍVEL
Assunto principal	Conflito de Competência
Polo ativo	3ª VARA DE EXECUÇÕES FISCAIS DE FORTALEZA

Processo	3006830-49.2024.8.06.0000
Advogado(s) - Polo ativo	Não informado
Polo passivo	JUIZ DE DIREITO DA 14ª VARA DA FAZENDA DA COMARCA DE FORTALEZA
Advogado(s) - Polo passivo	Não informado
Terceiros	OI MOVEL S.A. - EM RECUPERACAO JUDICIAL ESTADO DO CEARA

Processo	3006830-49.2024.8.06.0000
Acordão	<p style="text-align: center;"> <span style="font-family: arial,helvetica,sans-serif;"> <span style="font-size: small;"> <img 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	style="font-size: 12pt;">da 3ª vara de execuções fiscais e juízo da 14ª vara da fazenda pública da comarca de fortaleza. Inexistência de execução fiscal prévia. Competência do juízo fazendário. Conflito conhecido e dirimido. i. C aso em exame 1. Os autos dizem respeito a conflito negativo de competência suscitado pelo Juízo da 3ª Vara de Execuções Fiscais da Comarca de Fortaleza em face do Juízo da 14ª Vara da Fazenda Pública da mesma comarca. 2. Inicialmente, a ação anulatória foi distribuída ao Juízo da Fazenda Pública, que declinou da competência em favor de uma das Varas de Execuções Fiscais, devido à inscrição do débito em dívida ativa. 3. O Juízo da 3ª Vara de Execuções Fiscais, por sua vez, entendeu que a ação anulatória foi ajuizada antes da execução fiscal, suscitando o presente conflito. ii. Q uest ão em discussão 4. A questão em discussão consiste em determinar se a competência para processar e julgar ação anulatória, quando inexistente execução fiscal previamente ajuizada, pertence às Varas de Execuções Fiscais ou às Varas da Fazenda Pública. iii. R azões de decidir 5. Nos termos da Lei de Organização Judiciária do Estado do Ceará (Lei nº 16.397/2017), compete às Varas de Execuções Fiscais processar e julgar ações decorrentes de execuções fiscais já ajuizadas, enquanto às Varas da

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	Fazenda Pública compete processar e julgar causas em que o Estado ou seus entes sejam parte, salvo as expressamente atribuídas a outro juízo.</p><p style="margin-bottom: 0.4cm; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; background: transparent;" align="justify"> 6 . Considerando que a ação anulatória foi proposta antes do ajuizamento da execução fiscal, a competência é da Vara da Fazenda Pública, conforme entendimento jurisprudencial pacificado desta Corte que afasta a competência das Varas de Execuções Fiscais quando não há ação executiva em andamento. </p><p style="margin-bottom: 0.4cm; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; background: transparent;" align="justify"> v. D ispositivo e tese </p><p style="margin-bottom: 0.4cm; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; background: transparent;" align="justify"> 7 . Conflito conhecido e dirimido, declarando-se competente o Juízo da 14ª Vara da Fazenda Pública da Comarca de Fortaleza para processar e julgar a ação anulatória nº 0217143-75.2020.8.06.0001. <br /> Tese de julgamento: "A competência para processar e julgar ação anulatória ajuizada antes de execução fiscal recai sobre o juízo da Fazenda Pública, não havendo razão para deslocamento à Vara de Execuções Fiscais." </p><p style="margin-bottom: 0.4cm; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; background: transparent;" align="justify"> ______________________________ </p><h3 class="western" style="margin-top: 0cm; margin-bottom: 0.4cm; line-height: 200%; background: transparent;"> Dispositivos relevantes citados: arts. 50, 56, 64 da Lei de Organização Judiciária do Estado do Ceará (Lei nº 16.397/17), arts. 43, 54, 62 do Código de Processo Civil. </h3><p style="text-align: justify;">&#160;</p><p style="margin-bottom: 0.4cm; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; background: transparent;" align="justify"> Jurisprudência relevante citada:&#160; TJCE -Conflito de competência cível - 0000259-55.2020.8.06.0000, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público, data do julgamento: 15/06/2020, data da publicação: 16/06/2020; TJCE - Conflito de competência cível - 0000289-90.2020.8.06.0000, Rel. Desembargador(a) ANTÔNIO ABELARDO BENEVIDES MORAES, <span style="font-size: 12pt; font-family: Arial, sans-serif; background-color: transparent; font-variant-caps: normal; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-

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	variant-emoji: normal;">3ª Câmara Direito Público, data do julgamento: 20/04/2020, data da publicação: 20/04/2020. &#160; &#160; ACÓRDÃO:&#160;Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,em conhecer do Conflito Negativo de Competência, declarando a competência da 14ª Vara da Fazenda Pública da Comarca de Fortaleza, para processar e julgar os autos de n° 0217143-75.2020.8.06.0001 , nos termos do voto do relator. &#160; Fortaleza/CE,&#160;data e hora indicadas pelo sistema.&#160; <br /> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> &#160; <strong style="font-size: small;"> Relator &#160; &#160; &#160; RELATÓRIO &#160; <br /> &#160; Tratam estes autos, de Conflito Negativo de Competência, suscitado pelo Juiz de Direito da 3 .ª Vara de Execuções Fiscais da comarca de Fortaleza-CE , em face da Juíza de Direito da 1 4 ª Vara da Fazenda Pública da mesma comarca. O feito fora distribuído à 1 4 ª Vara da Fazenda Pública da Comarca de Fortaleza, a qual, em decisão cuja cópia foi acostada às p.4/9 do Id 15967096 , que, após a inscrição do débito correlato em dívida ativa, entendeu por se declarar incompetente e remeter os autos a uma das varas de execuções fiscais. Distribuídos os autos à 4 ª Vara de Execuções Fiscais da Comarca de Fortaleza que determinou a remessa dos autos a <span style="color:

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	#000000;"> o j uízo suscitante , em razão da execução fiscal de n° 0609314.75.2020.8.06.0001 que se refere ao crédito impugnado na ação anulatória. O juízo da 3 .ª Vara de Execuções Fiscais da comarca de Fortaleza s uscitou o conflito, por considerar que, quando do ajuizamento da ação anulatória, a execução fiscal ainda não tinha sido proposta, sendo assim inexistia feito exacional distribuído. Dispensada a intima ção do Ministério Público , ante a ausência de interesse público no feito, assim como, à teor do enunciado de Súmula 189 do STJ (É desnecessária a intervenção do Ministério Público nas execuções fiscais.) &#160; É o relatório. &#160; &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> VOTO &#160; <strong style="font-size: small;"> <strong style="font-size: small; text-align: justify;"> <br /> O conflito de competência em tela satisfaz aos requisitos previstos no art. 953 do Código de Processo Civil para sua instauração, devendo, por essa razão, ser admitido. A ação de origem de n°

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	  n° 0217143-75.2020.8.06.0001 corresponde a Ação Anulatória com Pedido Liminar intentada pela OI MÓVEL S/A , sucessora da TNL PCS S/A, em desfavor do ESTADO DO CEARÁ , na qual busca, em sede de tutela antecipada, a suspensão da exigibilidade do débito descrito no auto de infração nº 201104202-1, determinando que a Fazenda Pública Estadual se abstenha de efetuar a inscrição do nome da autora no CADINE, bem como em dívida ativa estadual. A ação foi distribuída para o juízo da 14ª Vara da Fazenda Pública que, após a inscrição do débito correlato em dívida ativa, entendeu por se declarar incompetente e remeter os autos a uma das varas de execuções fiscais. Em decisão exarada nos autos, a magistrada da 3ª Vara de Execuções Fiscais considerou, em síntese, que o pleito refoge à competência do juízo de Execuções Fiscais, mormente porque a ação anulatória foi proposta em momento anterior a execução fiscal, pelo que, suscitou o presente conflito negativo. P ois bem! O cerne do Conflito de Competência restringe-se em decidir se a ação anulatória sem o prévio ajuizamento de ação de Execução Fiscal é questão a ser decidida pelo juízo de Execuções Fiscais ou pelo juízo Fazenda Pública. Dispõe a Lei de Organização Judiciária do Estado do Ceará: <span style="font-

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	family: Arial, sans-serif;"> Art. 50. Na Comarca de Fortaleza, a jurisdição será exercida de acordo com as atribuições e competências definidas nesta Lei e nas normas pertinentes editadas pelo Tribunal de Justiça, nos termos do art. 42, § 1º, contemplando as seguintes especialidades: (...) Art. 56. Aos Juízes de Direito das Varas da Fazenda Pública compete, por distribuição: I - processar e julgar com jurisdição em todo o território do Estado: a) as causas em que o Estado do Ceará, o Município de Fortaleza, as suas respectivas autarquias, fundações e empresas públicas, forem interessados, como autores, réus, assistentes ou oponentes, excetuadas as de competência dos Juizados Especiais da Fazenda Pública, as recuperações judiciais e falências, as sujeitas à Justiça do Trabalho e à Justiça Eleitoral, bem como as definidas nas alíneas “e” e “f”, do inciso I, do art. 102, da Constituição Federal; b) os mandados de segurança contra atos das autoridades estaduais, municipais, autárquicas ou pessoas naturais ou jurídicas que exerçam funções delegadas do Poder Público, no que se entender com essas funções, ressalvada a competência originária do Tribunal de Justiça e de seus órgãos em relação à categoria da autoridade apontada como coatora, bem como a competência dos Juízes de Direito das comarcas do interior onde a autoridade impetrada tiver sua sede; c) as medidas cautelares nos feitos de sua competência; II - dar cumprimento às precatórias em que haja interesse do Estado do Ceará ou do Município de Fortaleza, suas autarquias, fundações e empresas públicas, salvo se elas tiverem de ser cumpridas em comarcas do interior do Estado. § 1º Os atos e diligências dos Juízes das Varas da Fazenda Pública poderão ser praticados em qualquer comarca do interior do Estado pelos juízes locais ou seus auxiliares, mediante a exibição de ofício ou mandado em forma regular. <br />

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	<br /> § 2º É competente o foro da situação da coisa, nos casos definidos nas letras “a” e “c” do inciso I deste artigo, caso se cuide de ação fundada em direito real sobre imóveis. (...) Art. 64. Aos Juízes de Direito das Varas de Execução Fiscal e de Crimes contra a Ordem Tributária compete, por distribuição, processar e julgar: I - as execuções fiscais ajuizadas pelo Estado do Ceará, pelo Município de Fortaleza, e por suas respectivas entidades autárquicas, contra devedores residentes e domiciliados na Capital, observando-se a legislação processual específica; II - as ações decorrentes das execuções fiscais, como mandados de segurança, repetição do indébito, anulatória do ato declaratório da dívida, ação cautelar fiscal, dentre outras; III - as ações penais e demais incidentes quanto aos crimes contra a ordem tributária. Parágrafo único. Os atos e diligências dos Juízes de Direito das Varas de Execução Fiscal e de Crimes contra a Ordem Tributária poderão ser praticados em qualquer comarca do interior do Estado, pelos juízes locais ou seus auxiliares, mediante a exibição de ofício ou mandado em forma regular. O Código de Processo Civil também delineia o regramento da competência: <span style="font-family:

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	Arial, sans-serif;"> Art. 43. Determina-se a competência no momento do registro ou da distribuição da petição inicial, sendo irrelevantes as modificações do estado de fato ou de direito ocorridas posteriormente, salvo quando suprimirem órgão judiciário ou alterarem a competência absoluta. </p><p style="margin-left: 4cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 200%; background: transparent;" align="justify"> Art. 54. A competência relativa poderá modificar-se pela conexão ou pela continência, observado o disposto nesta Seção. </p><p style="margin-left: 4cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 200%; background: transparent;" align="justify"> Art. 62. A competência determinada em razão da matéria, da pessoa ou da função é inderrogável por convenção das partes. </p><p style="margin-left: 0.2cm; margin-right: 0.2cm; text-indent: 2.5cm; margin-top: 0.33cm; margin-bottom: 0.18cm; line-height: 200%; background: transparent;" align="justify"> Ao exame da legislação colacionada, constata-se que as Varas de Execuções Fiscais da Comarca de Fortaleza têm competência para julgar as ações de execução de dívida ativa do Estado do Ceará, do Município de Fortaleza e de suas respectivas autarquias, bem como as ações decorrentes dessas execuções fiscais. </p><p style="margin-left: 0.2cm; margin-right: 0.2cm; text-indent: 2.5cm; margin-top: 0.33cm; margin-bottom: 0.18cm; line-height: 200%; background: transparent;" align="justify"> No tocante às Varas da Fazenda Pública da Comarca de Fortaleza, a competência é para as causas em que o Estado do Ceará, o Município de Fortaleza, as suas respectivas autarquias, fundações e empresas públicas, forem interessados, como autores, réus, assistentes ou oponentes, ou seja, as ações decorrentes de lançamento de débito fiscal ou não fiscal que não foram previamente perseguidos em execução própria. </p><p style="margin-left: 0.2cm; margin-right: 0.2cm; text-indent: 2.5cm; margin-top: 0.33cm; margin-bottom: 0.18cm; line-height: 200%; background: transparent;" align="justify"> Considerando que não h avia o ajuizamento de Execução Fiscal do auto de infração em comento, a ação anulatória foi corretamente distribuída à 14ª Vara da Fazenda Pública. </p><p style="margin-left: 0.2cm; margin-right: 0.2cm; text-indent: 2.5cm; margin-top: 0.33cm; margin-bottom: 0.18cm; line-height: 200%; background: transparent;" align="justify"> Nesse sentido, colaciono jurisprudências desta Corte, cujo entendimento está pacificado em todas as Câmaras de Direito Público: </p><p style="margin-left: 4.18cm; margin-right: 0.24cm; margin-top: 0.08cm; margin-bottom: 0cm; line-height: 200%;"

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	align="justify">&#160; PROCESSUAL CIVIL. CONFLITO NEGATIVO DE COMPETÊNCIA. JUÍZOS DA 3ª VARA DE EXECUÇÕES FISCAIS E DA 3ª VARA DA FAZENDA PÚBLICA DA COMARCA DE FORTALEZA. MANDADO DE SEGURANÇA. LICENCIAMENTO DE VEÍCULO. DECLARATÓRIA DE NULIDADE DE MULTAS DE TRÂNSITO. INEXISTÊNCIA DE EXECUÇÃO FISCAL. AUSÊNCIA DE RISCO DE DECISÕES JUDICIAIS CONFLITANTES. PRECEDENTES DO STJ E DESTE TJCE. COMPETÊNCIA DO JUÍZO SUSCITADO. 1- Cuida-se de conflito negativo de competência entre os juízos da 3ª Vara de Execuções Fiscais (suscitante) e da 3ª Vara da Fazenda Pública (suscitado), ambos da Comarca de Fortaleza, os quais divergem quanto à competência para processar e julgar Mandado de Segurança (Proc. 0182838-02.2019.8.06.0001) impetrado contra ato ilegal do Diretor do Departamento de Trânsito do Estado do Ceará – DETRAN, com o fito de licenciar seu veículo sem pagar as multas constantes do extrato de licenciamento. 2- Na espécie, conquanto seja possível, em tese, futura execução fiscal movida pela Fazenda Pública contra a impetrante, por ora tal ação não foi ajuizada, inexistindo interdependência ou risco de decisões conflitantes. Logo, não há falar em conexão entre o mandamus e eventual execução fiscal, sequer formulada. Ademais, na forma dos arts. 56, inc. I, alínea "a", e 64, incs. I a III, do Código de Organização Judiciária do Estado do Ceará (Lei Estadual nº 16.397/2017), não há autorização legal para deslocar o writ para as Varas de Execuções Fiscais. Precedentes do STJ e do TJCE. 3- Conflito negativo de competência conhecido e dirimido, declarando-se competente para processar e julgar o mandado de segurança o juízo da 3ª Vara da Fazenda Pública da Comarca de Fortaleza . ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os Desembargadores integrantes da Primeira Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por julgamento de Turma e decisão unânime, em conhecer do conflito negativo de competência, para dirimi-lo e declarar competente o Juízo de Direito da 3ª Vara da Fazenda Pública da Comarca de Fortaleza, nos termos do voto do Relator. Fortaleza, 15 de junho de 2020. Desembargador FERNANDO LUIZ XIMENES ROCHA RELATOR (Conflito de competência cível - 0000259-55.2020.8.06.0000, Rel. Desembargador(a) FERNANDO LUIZ XIMENES ROCHA, 1ª Câmara Direito Público , data do julgamento: 15/06/2020, data da publicação: 16/06/2020) &#160; &#160; CONFLITO DE COMPETÊNCIA. AÇÃO ORDINÁRIA COM A FINALIDADE DE DECLARAR A INEXIGIBILIDADE DE CRÉDITO INSCRITO NA DÍVIDA ATIVA NÃO-TRIBUTÁRIA EM RAZÃO DAS MULTAS DE TRÂNSITO RELATIVAS AOS VEÍCULOS DA SUA PROPRIEDADE. AUSÊNCIA DE EXECUÇÃO FISCAL PRÉVIA OU DE CONEXÃO COM OUTRA AÇÃO JUDICIAL ANTECEDENTE. AFASTAMENTO DA COMPETÊNCIA DOS JUÍZOS DE EXECUÇÕES FISCAIS. ATRIBUIÇÃO JUDICANTE DAS VARAS QUE JURISDICIONAM O JUIZADO ESPECIAL DA FAZENDA PÚBLICA . - O art. 64, II, do Código de Organização Judiciária estadual dispõe competir aos Juízes de Direito das Varas de Execução Fiscal, processar e julgar: "as ações decorrentes das execuções fiscais, como mandados de segurança, repetição do indébito, anulatória do ato declaratório da dívida, ação cautelar fiscal, dentre outras;". - Competência definida em função do disposto no art. 56, I, al. "b", da Lei nº 16.397/2017, isto é, em razão da autoridade impetrada. - A ação ordinária ajuizada na origem não decorre de uma execução fiscal ou outra lide em curso perante o juízo de Execução Fiscal; ao contrário, a ação é anterior a outro litígio que possa vir a ser ajuizado em razão do mesmo crédito não-tributário. - Competência absoluta das Varas que jurisdicionam os Juizados Especiais da Fazenda Pública na Comarca de Fortaleza. - Solução que foi adotada em precedente deste órgão judiciário, quando julgado o conflito de competência nº 0004043-74.2019.8.06.0000, da relatoria do eminente Desembargador PAULO FRANCISCO BANHOS PONTE. CONFLITO DE COMPETÊNCIA CONHECIDO E PROVIDO. DECLARADA A ATRIBUIÇÃO JURISDICIONAL DO JUÍZO DA 6ª VARA DA FAZENDA PÚBLICA DE FORTALEZA PARA PROCESSAR E JULGAR A AÇÃO ORDINÁRIA. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer e prover o conflito de competência, declarando a atribuição jurisdicional do juízo

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	de Direito da 6ª Vara da Fazenda Pública da Comarca de Fortaleza, nos termos do voto do eminente Desembargador relator.(Conflito de competência cível - 0001224-33.2020.8.06.0000, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 1ª Câmara Direito Público , data do julgamento: 03/08/2020, data da publicação: 04/08/2020) &#160; CONFLITO NEGATIVO DE COMPETÊNCIA. VARA DE EXECUÇÃO FISCAL E VARA DA FAZENDA PÚBLICA (JUIZADO ESPECIAL), AMBAS DA COMARCA DE FORTALEZA. AÇÃO DECLARATÓRIA DE NEGATIVA DE PROPRIEDADE C/C ANULATÓRIA DE DÉBITOS. IPVA. MULTAS DE TRÂNSITO. INEXISTÊNCIA DE EXECUÇÃO FISCAL. AFASTAMENTO DA COMPETÊNCIA DA VARA DE EXECUÇÕES FISCAIS <span style="font-size: 10pt;">. COMPETÊNCIA ABSOLUTA DO JUIZADO SUSCITADO. REQUISITOS PREENCHIDOS. RISCO DE DECISÕES CONFLITANTES OU CONTRADITÓRIAS INEXISTENTE. PRECEDENTES. CONFLITO ACOLHIDO. 1.Tanto a competência da Vara de Execuções Fiscais quanto a da Vara do Juizado da Fazenda Pública, ambas da Comarca de Fortaleza, são absolutas, por critério objetivo, sendo definidas em razão da matéria (ratione materiae), e estão assentadas nas normas pertinentes dos artigos 64 e 75 da Lei 16.397/2017 que dispõe sobre o Código de Organização Judiciária do Estado do Ceará; destacando-se a competência absoluta dos Juizados Especiais Fazendários, por ser definida também em razão da qualidade dos litigantes ou da pessoa (ratione personae) e pelo valor da causa (ratione valoris), desde que não se enquadre nas exceções discriminadas no parágrafo único do supracitado art. 75 da Lei 16.397/2017, cujo dispositivo está em total harmonia com o § 1º do art. 2º, da Lei dos Juizados Especiais da Fazenda Pública (Lei nº 12.153/2009). 2.Da exegese dos dispositivos legais supramencionados, de forma restritiva, como o caso requer, denota-se que as Varas de Execuções Fiscais têm competência apenas para julgar as ações de execução de dívida ativa do Estado do Ceará e de suas autarquias, fundações e empresas públicas, assim como os feitos que se originam dessas execuções fiscais. Por sua vez, fica a cargo da Vara do Juizado Fazenda Pública as ações declaratórias ou anulatórias de lançamento de débito fiscal ou não fiscal, com o valor da causa até 60 (sessenta) salários mínimos, que não foram previamente perseguidos em execução própria. Precedente desta Corte. 3.Contendo a ação de origem uma demanda declaratória em face de um ente público com valor da causa inferior a 60 salários mínimos e não havendo uma execução fiscal previamente ajuizada, não há que se cogitar a competência da Vara de Execuções Fiscais, ora suscitante, para o julgamento do feito em que se discute a responsabilidade da autora sobre os débitos de IPVA e de multas de trânsito aplicadas em seu nome oriundas do veículo adquirido pela demandante. 4.Ainda que haja liminar ou garantia apresentada em ação anulatória ou declaratória ajuizada na VFP anteriormente à execução fiscal, a mera conexão em virtude da relação de prejudicialidade entre as demandas não ensejará a modificação da competência para reunião dos processos no juízo das Execuções Fiscais, uma vez que este poderá, se for o caso, determinar a suspensão do feito executivo até o deslinde da ação declaratória, com fulcro no art. 313, inciso V, letra "a", do CPC/2015, o que afasta o risco de haver decisões conflitantes ou contraditórias, conforme jurisprudência do STJ. 5.Conflito acolhido, reconhecendo-se a competência do Juizado suscitado, o fazendário. ACÓRDÃO ACORDA a 3ª CÂMARA DE DIREITO PÚBLICO DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ, por uma de suas turmas julgadoras, à unanimidade, em acolher o conflito negativo, reconhecendo a competência do Juízo suscitado, tudo nos termos do voto do relator, parte integrante deste. Fortaleza, 20 de abril de 2020. (Conflito de competência cível - 0000289-90.2020.8.06.0000, Rel. Desembargador(a) ANTÔNIO ABELARDO BENEVIDES MORAES, 3ª Câmara Direito Público , data do julgamento: 20/04/2020, data da publicação: 20/04/2020) &#160; PROCESSUAL CIVIL. CONFLITO NEGATIVO DE COMPETÊNCIA. AÇÃO ANULATÓRIA DE MULTAS DE TRÂNSITO. INSCRIÇÃO NO CADASTRO DA DÍVIDA ATIVA. INEXISTÊNCIA DE EXECUÇÃO FISCAL. COMPETÊNCIA DO JUÍZO FAZENDÁRIO. <span style="font-size: 10pt;">PRECEDENTES DO STJ E DESTA CORTE DE JUSTIÇA. 1. Tratam os autos de Conflito Negativo de Competência suscitado pelo Juízo da 2ª Vara de Execuções Fiscais em face do Juiz de Direito da 13ª Vara da Fazenda Pública, ambos da Comarca de Fortaleza, a partir de controvérsia surgida em ação anulatória de multas de trânsito já inscritas em dívida ativa. 2. Nos termos da regra prevista no art. 56, inciso I, alínea "b", do Código de Divisão e

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	Organização Judiciária do Estado do Ceará, compete aos Juízes das Varas da Fazenda Pública processar e julgar as causas em que o Estado do Ceará, o Município de Fortaleza, as suas respectivas autarquias, fundações e empresas públicas, forem interessados, como autores, réus, assistentes ou oponentes. 3. Verifica-se que a questão discutida na ação originária versa acerca da declaração de nulidade de multa de trânsito. 4. Analisando os autos, observa-se a inexistência de ação executória fiscal em tramitação perante o Juízo especializado da Vara de Execuções Fiscais, fato este a ensejar a competência do Juízo Fazendário. 5. Segundo a orientação jurisprudencial das 3 (três) Câmaras de Direito Público deste Sodalício, as Varas de Execuções Fiscais têm competência apenas para julgar execução de dívida ativa do Estado do Ceará e de suas autarquias, fundações e empresas públicas, assim como os feitos que se originarem a partir das executórias. - Conflito conhecido, declarando-se competente para julgar a ação originária o Juízo Suscitado da 13ª Vara da Fazenda Pública da Comarca de Fortaleza. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos de Conflito de Competência nº 0000579-08.2020.8.06.0000, em que figuram os Juízos acima indicados. Acorda a 3ª Câmara de Direito Público do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do conflito, a fim de declarar a competência do Juízo da 13ª Vara da Fazenda Pública da Comarca de Fortaleza para processar e julgar a ação ordinária em trâmite no Juízo a quo, nos termos do voto da Relatora. Fortaleza, 11 de maio de 2020 JUÍZA CONVOCADA ROSILENE FERREIRA FACUNDO - PORT. 1392/2018 Relatora (Conflito de competência cível - 0000579-08.2020.8.06.0000, Rel. Desembargador(a) ROSILENE FERREIRA FACUNDO - PORT. 1392/2018, 3ª Câmara Direito Público, data do julgamento: 11/05/2020, data da publicação: 11/05/2020) <br /> <br /> No mesmo sentido, sob a minha relatoria: (Conflito de competência cível - 0000084-22.2024.8.06.0000, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento: 04/03/2024, data da publicação: 04/03/2024). A demais, não obstante ter sido ajuizada a execução fiscal – referente ao auto de infração impugnado, esta situação não altero o fato que a ação anulatória foi proposta quando inexistia feito executivo em andamento. Desta forma, não restam dúvidas que foge a competência das execuções fiscais. Por todo o exposto, resolvo o conflito declarando a competência do juízo de Direito da 14ª Vara da Fazenda Pública da Comarca de Fortaleza para processar e julgar a ação anulatória de n° 0217143-75.2020.8.06.0001. É como voto. Fortaleza/CE,&#160; data e hora indicadas no sistema. <br /> <strong style="font-size: small;"> <br /> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <br /> <strong style="font-size: small;"> Relator <br /><br /> &#160; &#160; <span style="font-size:

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	medium;"> &#160; </p>

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Número de ordem	188
Órgão julgador	4º Gabinete da 3ª Câmara de Direito Público
Órgão julgador colegiado	3ª Câmara de Direito Público
Relator	FRANCISCO GLADYSON PONTES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Fornecimento de medicamentos
Polo ativo	INSTITUTO DE SAUDE DOS SERVIDORES DO ESTADO DO CEARA - ISSEC
Advogado(s) - Polo ativo	Não informado
Polo passivo	JOSE FABIO LIRA DO REGO
Advogado(s) - Polo passivo	EMILIA MARTINS CAVALCANTE - (CE26758-A)
Terceiros	MINISTERIO PUBLICO DO ESTADO DO CEARA

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4VNtHZ3W/Met/g2X/6yapyu9BUy9JWrp4MR8eep/szCw+OfzbVPFv/5nW/73y/wnAFFMa2H
LlyhUS4qfg7+MrwC3Rfmsoao//H7D60gCY2u7asZPioqmSf+pkw/+G6f15gf8DLlMncTlWGu
AAAAAASUVORK5CYII=" alt="" /></p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ <br /> <strong style="font-size: medium;">PODER JUDICIÁRIO <br /> <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA <br /> <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES </p><p style="text-align: center;"> <br /> </p><p>   PROCESSO:&#160;3035968-92.2023.8.06.0001 -&#160;APELAÇÃO CÍVEL (198) </p><p> APELANTE: INSTITUTO DE SAUDE DOS SERVIDORES DO ESTADO DO CEARA - ISSEC </p><p> APELADO: JOSE FABIO LIRA DO REGO </p><p> S2 </p><p style="text-align: justify;">&#160;</p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;">   EMENTA: Direito Processual Civil. Embargos de Declaração em Apelação Cível. Alegação de existência de vício de omissão no acórdão embargado. Não ocorrência. Alegação de ofensa ao art. 97 da Constituição Federal e à Súmula Vinculante nº 10 quanto à cláusula de reserva de plenário. Não ocorrência. Propósito de rediscussão.

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	Impossibilidade. Inteligência da súmula nº 18 desta Corte de Justiça. Prequestionamento. Desnecessidade de referência explícita aos dispositivos legais. Precedentes do STF, STJ e TJCE. Embargos de Declaração conhecidos e desprovidos. I. Caso em exame 1. Trata-se de Embargos de Declaração opostos pela parte apelante em face do acórdão Id. 15238963, por meio do qual objetiva a integração do julgado com alegação de omissão no acórdão embargado. &#160; II. Questão em discussão 2. Em síntese, a irresignação consiste em apontar a existência de omissão no julgado, sustentando, assim, a inaplicabilidade do art. 1º da Lei dos Planos de Saúde ao ISSEC, bem como a necessária observância à cláusula de reserva de plenário. &#160; III. Razões de decidir 3. Inexistência de vício a ser sanado. Pretensão recursal de rediscussão da matéria amplamente debatida no julgamento do apelo. 4. Não ocorrência de ofensa à cláusula de reserva de plenário, pois, de acordo com o entendimento dos tribunais superiores, para haver violação à referida cláusula, prevista no art. 97 da Constituição e na Súmula Vinculante 10 do STF, por órgão fracionário de Tribunal, é preciso que haja uma declaração explícita de inconstitucionalidade de lei ou ato normativo do poder público, ou implícita, no caso de afastamento da norma com base em fundamento constitucional. 5. Desnecessária a referência explícita, no acórdão, aos dispositivos legais indicados pelo recorrente, uma vez que, em consonância com o art. 1.025 do CPC “reputam-se incluídos na decisão os elementos que a parte suscitou para fins de prequestionamento, ainda que os aclaratórios sejam ao final inadmitidos ou rejeitados”, sendo pacífica a admissão do denominado " prequestionamento ficto". 6. Inexistindo vícios a serem supridos, o pedido de alteração do julgado revela pretensão de reanálise do mérito, não admitida por esta via, conforme já pacificado por esta Corte de Justiça por meio da Súmula nº 18, segundo a qual “São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada”. &#160; IV. Dispositivo e tese 7. Diante do exposto, rejeito os embargos de declaração, mantendo inalterado o acórdão embargado. Dispositivo relevante citado: CPC, arts.1.022 e 1.025. CF, art. 97. Jurisprudência relevante citada:

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	Súmula nº 18/TJCE. Súmula vinculante nº 10. </p><p style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> &#160; </p><p class="EmentadoAcrdo" style="text-align: justify; line-height: 200%;"> ACÓRDÃO : Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>&nbsp;MERGEFIELD &quot;&Oacute;rg&atilde;o Julgador#Retorna o nome da vara onde est&aacute; o processo=8@PROC&quot; <![endif]--> 3ª Câmara Direito Público<!--[if supportFields]><![endif]--> do Tribunal de Justiça do Estado do Ceará, por unanimidade, em rejeitar os embargos de declaração, nos termos do voto do relator.</p><p class="EmentadoAcrdo" style="margin-bottom: 12.0pt; line-height: 200%;"> Fortaleza, data e hora indicadas pelo sistema. &#160; </p><p class="EmentadoAcrdo" style="text-align: center; line-height: 200%;" align="center"><!--[if supportFields]>&nbsp;MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot; <![endif]--> DESEMBARGADOR FRANCISCO LUCIANO LIMA RODRIGUES <!--[if supportFields]><![endif]--> &#160; </p><p class="EmentadoAcrdo" style="text-align: center; line-height: 200%;" align="center"><!--[if supportFields]>&nbsp;MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC&quot; <![endif]--> Relator <!--[if supportFields]><![endif]--> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> &#160; </p><p class="MsoNormal" style="text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Trata-se de Embargos de Declaração opostos pela parte apelante em face do acórdão Id. 15238963, cuja ementa transcrevo a seguir: </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> EM ENTA:&#160;Direito constitucional e administrativo.&#160;Apelação cível. Ação de

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	obrigação de fazer. Fornecimento de medicamento. Direito à saúde. Demanda ajuizada em desfavor do instituto de saúde dos servidores do estado do ceará (issec). Aplicação das disposições da lei federal nº 9.656/1998. paciente diagnosticado com carcinoma escamoso de pele avançado. Necessidade de tratamento com medicação quimioterápica em ambiente ambulatorial. Ausência de cobertura expressa no art. 43 da lei estadual nº 16.530/2018. Negativa de cobertura indevida e abusiva. Precedentes do stj e tjce. Sentença que posterga a fixação dos honorários sucumbenciais para a liquidação de sentença pelo critério do proveito econômico. Impossibilidade de aferição do proveito econômico. Bem jurídico inestimável. Imperiosa modificação do critério de fixação. Necessidade de arbitramento mediante apreciação equitativa. Recurso de Apelação conhecido e parcialmente provido. Sentença parcialmente reformada. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> I. Caso em exame </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 1. Trata-se de Recurso de Apelação interposto pelo Instituto de Saúde dos Servidores do Estado do Ceará - ISSEC objetivando a reforma da sentença Id. 14006900, proferida pelo Juízo de Direito da 15ª Vara da Fazenda Pública da Comarca de Fortaleza, nos autos da Ação de Obrigação de Fazer proposta por José Fábio Lira do Rego em face do ora apelante. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> II. Questão em discussão </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 2. O cerne da controvérsia consiste em aferir se o ISSEC possui a obrigação de fornecer o fármaco Cemiplimabe ou Pembrolizumabe à apelada para fins de tratamento de carcinoma escamoso de pele avançado (várias lesões de pele e linfonodos positivos), bem como analisar a condenação da parte apelante ao pagamento de honorários de sucumbência a serem fixados na liquidação de sentença pelo critério do proveito econômico. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> III. Razões de decidir </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 3. O Superior Tribunal de Justiça tem entendido ser aplicável à pessoa jurídica de direito público de natureza autárquica que presta serviço de assistência à saúde de caráter suplementar a servidores públicos e seus dependentes as disposições da Lei de Planos e Seguros Privados de Assistência à Saúde, mediante interpretação sistemática do § 2º do seu art. 1º (REsp 1766181/ PR). </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 4. O ISSEC, pessoa jurídica de direito público de natureza autárquica, com finalidade de prestar assistência em saúde a servidores estaduais e seus dependentes, pode ser compelido a fornecer eventual medicamento ou serviço incluído na listagem de exigências mínimas do art. 12 da Lei que regula os planos de assistência à saúde. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 5. Sobre o tema, a Segunda Seção do Superior Tribunal de Justiça (STJ) no EREsp 1886929/SP entendeu ser taxativo, em regra, o rol de procedimentos e eventos estabelecido, todavia o colegiado fixou parâmetros para que, em situações excepcionais, os planos custeiem procedimentos não previstos na lista, a exemplo de terapias com recomendação médica, sem substituto terapêutico no rol, e que tenham comprovação de órgãos técnicos e aprovação de instituições que regulam o setor. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 6. No caso dos autos, os medicamentos requeridos, Cemiplimabe 350 mg e Pembrolizumabe 200 mg, tratam-se de fármacos antineoplásico administrados por perfusão intravenosa, pelo que, embora o art. 10, VI, da referida Lei nº 9.656/98, preconize que os planos de saúde não estão obrigados a fornecer medicamentos fora do ambiente hospitalar, estabelece exceções quanto ao atendimento ambulatorial e cobertura de tratamento antineoplásico domiciliar, conforme pode ser observado no art. 12 transcrito. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 7. Com isso, em que pese o art. 43, inc. VIII da

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	mencionada Lei 16.530/2018 (Lei ISSEC/FASSEC) exclua toda e qualquer medicação, salvo em regime de internação, tem-se que consiste em cláusula abusiva e ilegal, como é o caso dos autos, que se trata de situação de cobertura obrigatória. Outrossim, a medicação requerida se dá por perfusão intravenosa, não se enquadrando, assim, como de "uso domiciliar". </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 8. Ademais, não é razoável, tampouco factível, assim como seria bastante dispendioso para o próprio ISSEC/FASSEC, que em todos os tratamentos antineoplásicos (cobertura obrigatória) o paciente tivesse que entrar em regime de internação, quando a posologia se desse em regime ambulatorial (situação dos autos) e/ou nas situações que se desse em domicilio - de forma oral (“engolir o comprimido”). </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 9. Outrossim, como bem pontuou o magistrado&#160;a quo, embora a Nota Técnica nº 1658 (Id. 72862975) indique que o tratamento com fármacos pleiteados não demonstrem impacto sobre aumento de sobrevida global, por outro lado, constam outras Notas Técnicas acostadas aos autos (Id 71957807/71957811) que atestam a inexistência de opções terapêuticas disponibilizadas pelo SUS para tratamento de carcinoma escamoso de pele, bem como revelam a imprescindibilidade de ministração dos fármacos, com ressalvas em casos semelhantes. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 10. Quanto ao pleito recursal relativo aos honorários, é uníssono o entendimento desta Corte no sentido de que, em demanda de saúde, o arbitramento deve se dar por apreciação equitativa, visto que se trata de bem jurídico inestimável, isto é, sem proveito econômico, não podendo ser por fixação em percentual. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 11. Assim, considerando os julgados do TJCE, em especial desta 3ª Câmara de Direito Público, deve ser reformada a sentença recorrida em relação ao critério de fixação a ser adotado na fase de liquidação, razão pela qual arbitra-se os honorários sucumbenciais, de forma equitativa, em R$ 1.000,00 (mil reais), nos moldes do art. 85, § 8º do CPC, revelando-se como quantia razoável e proporcional. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> IV. Dispositivo e tese </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> 12. Recurso de Apelação conhecido e parcialmente provido, restando reformada a sentença recorrida somente no que diz respeito ao critério de fixação dos honorários advocatícios, arbitrando-se, de forma equitativa, em R$ 1.000,00 (mil reais), nos moldes do art. 85, § 8º do CPC. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Dispositivos relevantes: Súmula nº 608 do STJ; art. 2º e 43 da Lei Estadual nº 16.530/2018; art. 12 da Lei Federal nº 9.656/1998; Lei nº 14.454/2022; e, art. 85, § 8º do CPC. </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Jurisprudência relevante citada: REsp 1766181/PR, Rel. Ministra NANCY ANDRIGHI, Rel. p/ Acórdão Ministro RICARDO VILLAS BÔAS CUEVA, TERCEIRA TURMA, julgado em 03/12/2019, DJe 13/12/2019; AgInt no AREsp n. 1.601.205/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 5/6/2023, DJe de 13/6/2023; AgInt no REsp n. 1.989.033/DF, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 29/5/2023, DJe de 1/6/2023; AGRAVO DE INSTRUMENTO - 30010108320238060000, Relator(a): MARIA NAILDE PINHEIRO NOGUEIRA, 2ª Câmara de Direito Público, Datado julgamento: 18/12/2023; e, Apelação / Remessa Necessária – 0050213-22.2020.8.06.0013, Rel. Desembargador(a) JORIZA MAGALHÃES PINHEIRO, 3ª Câmara de Direito Público, data do julgamento 11/07/2022, data da publicação 12/07/2022. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Em síntese , a irresignação consiste em apontar a existência de omissão no julgado, sustentando, assim, a inaplicabilidade do art. 1º da Lei dos Planos de Saúde ao ISSEC, bem como a necessária observância à cláusula de reserva de plenário. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> <span style="font-size: 12pt; line-height: 200%; color:

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	black;"> Sem contrarrazões, por não ser o caso de aplicação do disposto no §4º <!--[if !supportFootnotes]--> [1] <!--[endif]--> do art. 1.024 do CPC. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Requer, então, a supressão de tal “vício”, com a atribuição de efeitos infringentes aos seus embargos de declaração e o prequestionamento da matéria. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> É o relato necessário. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; line-height: 200%; text-align: center;"> VOTO </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 200%;"> &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160; </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Nos termos do art. 1.022 do CPC, os embargos de declaração têm a finalidade de esclarecer obscuridade, eliminar contradição, suprir omissão e corrigir erro material. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Como se sabe, toda e qualquer sentença ou acórdão, independentemente do seu conteúdo, é passível de complementação ou integração pelo manejo de embargos de declaração, caso haja algum dos mencionados vícios, consistindo, pois, em espécie recursal com fundamentação vinculada. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt; line-height: 200%; tab-stops: 350.25pt;"> Conforme já relatado, sob o argumento de existência de vício no decisum, a parte recorrente opôs aclaratórios objetivando a supressão de suposta omissão, sustentando a inaplicabilidade do art. 1º da Lei dos Planos de Saúde ao ISSEC, bem como a necessária observância à cláusula de reserva de plenário. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Todavia, da detida análise do referido acórdão, não vislumbro no julgado a existência de vício a ser sanado. A questão em apreço foi devidamente analisada, concluindo que com as singularidades do caso em apreço, além das normas e especificidades fáticas apresentadas na decisão, são suficientes para reconhecer a imperiosa manutenção da obrigação imposta na decisão impugnada. </p><p class="Textbody" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Pelo que se depreende, o embargante entende que houve erro de julgamento e conclusão equivocada do julgador, sobretudo pelo fato de terem sido rejeitados os argumentos constantes no recurso, ou seja, questão que não se enquadra como omissão, contradição, obscuridade e/ou erro material, tratando-se, em essência, de insatisfação, que deve ser veiculada por meio do instrumento processual cabível. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Outrossim, importante frisar que o vício de omissão ocorre quando a decisão deixa de se manifestar sobre ponto ou questão relevante ao deslinde do feito, ainda que não tenham controvertido as partes sobre a matéria, não sendo o caso dos autos, visto que os argumentos foram devidamente enfrentados, conforme pode ser observado na ementa e ao longo do voto do acórdão. &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: 200%; mso-hyphenate: auto;"> <span

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	style="font-size: medium;">Dessa forma, o fato de o recorrente possuir outra percepção sobre o tema não torna o acórdão omisso, contraditório ou equivocado, apenas contrário ao seu interesse. Nesse sentido, são os julgados do STF <!--[if !supportFootnotes]--> <strong style="mso-bidi-font-weight: normal;"> [2] <!--[endif]--> [,] STJ <!--[if !supportFootnotes]--> <strong style="mso-bidi-font-weight: normal;"> [3] <!--[endif]--> e TJCE <!--[if !supportFootnotes]--> <strong style="mso-bidi-font-weight: normal;"> [4] <!--[endif]--> . </p><p class="MsoNormal" style="text-align: justify; text-indent: 70.85pt; line-height: 200%;"> Destaque-se que o presente recurso não poderá ser utilizado para a rediscussão de matéria trazida na sentença ou no acórdão, uma vez que as hipóteses restritas previstas na legislação tencionam, em suma, que não ocorram dilações indevidas para o trânsito em julgado das decisões judiciais, sob pena de comprometer a celeridade processual (art. 5º, LXXVIII, CF), segundo entendimento pacificado dos Tribunais Superiores, in verbis: </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: 200%;"> <span style="font-size: small;"> <span style="line-height: 200%; color: black; background: white;">EMBARGOS DE DECLARAÇÃO EM AGRAVO INTERNO. DIREITO PROCESSUAL CIVIL. HIPÓTESES RESTRITIVAS DO ART. 1.022 DO CPC/2015. AUSÊNCIA DE CONTRADIÇÃO, OBSCURIDADE E/OU OMISSÃO. IMPOSSIBILIDADE DE REDISCUSSÃO NESSA SEARA RECURSAL DE MATÉRIA JÁ PREVIAMENTE DECIDIDA. EMBARGOS DE DECLARAÇÃO REJEITADOS. SÚMULA 18 DO TJ/CE. Precedentes. Aclaratórios conhecidos, porém, Desprovidos. 01. Cuidam-se os presentes autos de Embargos de Declaração opostos pela parte recorrente, alegando suposta omissão no acórdão proferido pela Eg. 1ª Câmara de Direito Público que julgou o recurso interposto anteriormente. 02. Inconformado com esse decisum, a parte embargante opôs o presente recurso aclaratório, argumentando, em síntese e genericamente, que haveria omissão em relação ao fato de os documentos em anexo comprovarem que os ARs mencionados na sentença são referentes às multas questionadas na presente ação. 03. Os Embargos de Declaração, por expressa previsão contida no art. 1.022 do CPC/2015, servem para sanar uma obscuridade, contradição ou omissão existente na sentença ou no acórdão, o que não é o caso, tendo em vista a inexistência de omissão ou contradição no acórdão impugnado. 04. O que deseja a parte embargante, na verdade, é a rediscussão da causa, valendo-se de recurso integrativo onde não há qualquer falta a ser suprida, restando inclusive reproduzidas as partes do acórdão relativas às partes supostamente omissas. 05. Assim, o presente recurso não poderá, em situação alguma, ser utilizado para a rediscussão de matéria trazida na sentença ou no acórdão, ou mesmo as questões não suscitadas em sede de Apelação, uma vez que as hipóteses restritas previstas na legislação tencionam, em suma, que não ocorram dilações indevidas para o trânsito em julgado das decisões judiciais, sob pena de comprometer a celeridade processual (art. 5º, LXXVIII, CF), segundo entendimento pacificado dos Tribunais Superiores. Precedentes. Súmula 18 do

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	TJ/CE. 06. Aclaratórios conhecidos, porém desprovidos. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Público do Tribunal de Justiça do Estado do Ceará, unanimemente, em conhecer os Embargos de Declaração opostos e negar-lhes provimento, nos termos do voto do Relator. Fortaleza, 18 de dezembro de 2023 DESEMBARGADOR PAULO FRANCISCO BANHOS PONTE Relator (Embargos de Declaração Cível&#160;- 0068989-04.2009.8.06.0001, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento:&#160; 18/12/2023, data da publicação:&#160; 19/12/2023)</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Qua nto ao argumento de ofensa à cláusula de reserva de plenário, de acordo com o entendimento dos tribunais superiores, para haver violação à referida cláusula, prevista no art. 97 da Constituição e na Súmula Vinculante 10 do STF, por órgão fracionário de Tribunal, é preciso que haja uma declaração explícita de inconstitucionalidade de lei ou ato normativo do poder público, ou implícita, no caso de afastamento da norma com base em fundamento constitucional. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Com base nisso, verifica-se que não há que se falar em violação do art. 97 da CF, tampouco em aplicação da Súmula Vinculante 10, porquanto não houve declaração de inconstitucionalidade de lei ou ato normativo ou afastamento de norma em vigor no acórdão embargado, mas tão somente interpretação da legislação, sem declaração de inconstitucionalidade, expressa ou implícita. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Sobre o tema, destaco precedentes do STF e STJ: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> Ementa: AGRAVO REGIMENTAL EM RECURSO EXTRAORDINÁRIO COM AGRAVO. INFRAÇÃO DE TRÂNSITO. INDICAÇÃO DO CONDUTOR PELO PROPRIETÁRIO DO VEÍCULO. PRAZO DE 15 (QUINZE) DIAS. PRECLUSÃO TEMPORAL. INTERPRETAÇÃO DO ART. 257, § 7º, DO CTB. MATÉRIA INFRACONSTITUCIONAL. ALEGADA OFENSA AO ART. 97 DA CONSTITUIÇÃO FEDERAL E À SÚMULA VINCULANTE 10. IMPROCEDÊNCIA. PRECEDENTES. 1. Eventual divergência ao entendimento adotado pelo Tribunal de origem que concluiu, com apoio no art. 257, § 7º, do CTB, que o proprietário do veículo autuado tem direito a apresentar o condutor responsável pela infração, ainda que fora do prazo legal, por considerar que a preclusão temporal, na hipótese, é meramente administrativa, demandaria o exame da legislação infraconstitucional aplicável à espécie, revelando-se oblíqua ou reflexa eventual ofensa à Constituição Federal. 2. Inexistência de ofensa à cláusula da reserva de plenário, porquanto o Superior Tribunal de Justiça, ao analisar o caso concreto, não declarou inconstitucional a legislação aplicada, nem afastou sua aplicação por julgá-la inconstitucional, mas apenas interpretou a norma legal. 3. Nos termos da orientação firmada nesta Corte, para caracterizar violação à cláusula da reserva de plenário, é necessário que a decisão de órgão fracionário se fundamente na incompatibilidade entre a norma legal e o Texto Constitucional, o que não se verificou na hipótese em análise. 3. Agravo regimental a que se nega provimento, com previsão da multa do art. 1.021, § 4º, do CPC. Inaplicável o art. 85, § 11, do CPC, uma vez que a condenação em honorários advocatícios foi postergada para a fase de liquidação de sentença. (ARE 1287079 AgR-segundo, Relator(a): EDSON FACHIN, Segunda Turma, julgado em 04-04-2022, PROCESSO ELETRÔNICO DJe-077&#160; DIVULG 22-04-2022&#160; PUBLIC 25-04-2022)</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: 200%;"> TRIBUTÁRIO. AGRAVO INTERNO. CRÉDITO PRESUMIDO DE ICMS. BASE DE CÁLCULO DO IRPJ E DA CSLL. EXCLUSÃO. ENTENDIMENTO DA PRIMEIRA SEÇÃO DO STJ. CLÁUSULA DE RESERVA DE PLENÁRIO. NÃO VIOLAÇÃO. 1. Os créditos presumidos do ICMS não integram a base de cálculo do IRPJ e da CSLL, porquanto entendimento contrário sufragaria a possibilidade de a União retirar, por via oblíqua, o incentivo fiscal que o Estado membro, no exercício de sua legítima competência tributária, outorgou. Precedente: EREsp 1.517.492/PR, Rel. p/ Acórdão Ministra Regina Helena Costa, Primeira Seção, DJe 1º/2/2018. 2. Não há falar em ofensa à cláusula de reserva de plenário (art. 97 da CF) e ao enunciado 10 da Súmula Vinculante do Supremo Tribunal Federal quando não

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	haja declaração de inconstitucionalidade dos dispositivos legais tidos por violados, tampouco afastamento destes, mas tão somente a interpretação do direito infraconstitucional aplicável ao caso, com base na jurisprudência desta Corte. Precedentes. 3. Agravo interno não provido. (AgInt no REsp n. 1.884.489/PR, relator Ministro Sérgio Kukina, Primeira Turma, julgado em 21/2/2022, DJe de 24/2/2022.)</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Ad emais, é desnecessária a referência explícita, no acórdão, aos dispositivos legais indicados pelo recorrente, uma vez que, em consonância com o art. 1.025 do CPC “reputam-se incluídos na decisão os elementos que a parte suscitou para fins de prequestionamento, ainda que os aclaratórios sejam ao final inadmitidos ou rejeitados”, sendo pacífica a admissão do denominado "prequestionamento ficto". </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Inexistindo vícios a serem supridos, o pedido de alteração do julgado revela pretensão de reanálise do mérito, não admitida por esta via, conforme já pacificado por esta Corte de Justiça por meio da Súmula nº 18, segundo a qual “São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada”. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Diante do exposto, rejeito os embargos de declaração, mantendo inalterado o acórdão embargado. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> É como voto. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 200%;"> Fortaleza, data e hora indicadas pelo sistema. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Desembargador FRANCISCO LUCIANO LIMA RODRIGUES </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 200%;" align="center"> <strong style="mso-bidi-font-weight: normal;"> Relator </p><div style="mso-element: footnote-list;"><!--[if !supportFootnotes]--><br /> <hr size="1" /><!--[endif]--> <div id="ftn1" style="mso-element: footnote;"> <p class="MsoFootnoteText" style="margin-bottom: 0cm;"> <!--[if !supportFootnotes]--> [1] <!--[endif]--> Art. 1.024. O juiz julgará os embargos em 5 (cinco) dias.</p> <p class="MsoFootnoteText" style="margin-bottom: 0cm;">(...)</p> <p class="MsoFootnoteText">§ 4º Caso o acolhimento dos embargos de declaração implique modificação da decisão embargada, o embargado que já tiver interposto outro recurso contra a decisão originária tem o direito de complementar ou alterar suas razões, nos exatos limites da modificação, no prazo de 15 (quinze) dias, contado da intimação da decisão dos embargos de declaração.</p></div><div id="ftn2" style="mso-element: footnote;"> <p class="NotadeRodap" style="text-align: justify; line-height: 115%;"> <a id="_ftn2" style="mso-footnote-id: ftn2;" name="_ftn2" href="https://tjce365-

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	my.sharepoint.com/personal/50910_tjce_jus_br/Documents/IVO/NOVEMBRO%202024/em%20elab%203035968-92.2023.8.06.0001%20Ac%20ED%20-%20Inexist%C3%AAncia%20de%20v%C3%ADcio%20-%20Prop%C3%B3sito%20de%20rediscuss%C3%A3o%20-%20Hip%C3%B3tese%20de%20n%C3%A3o%20acolhimento%20-%20PJE.docx#_ftnref2"> <!--[if !supportFootnotes]--> [2] <!--[endif]--> (RE 194662 ED-ED-EDv, Relator(a): DIAS TOFFOLI, Relator(a) p/ Acórdão: MARCO AURÉLIO, Tribunal Pleno, julgado em 14-05-2015, DJe-151 &#160; DIVULG 31-07-2015 &#160; PUBLIC 03-08-2015 EMENT VOL-03992-02 &#160; PP-00196)</p></div><div id="ftn3" style="mso-element: footnote;"> <p class="NotadeRodap" style="line-height: 115%;"> <!--[if !supportFootnotes]--> [3] <!--[endif]--> (EDcl no REsp 1816628/SE, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 06/05/2020, DJe 14/05/2020)</p></div><div id="ftn4" style="mso-element: footnote;"> <p class="NotadeRodap" style="text-align: justify; line-height: 115%;"> <!--[if !supportFootnotes]--> [4] <!--[endif]--> Embargos de Declaração Cível&#160;- 0245006-69.2021.8.06.0001, Rel. Desembargador(a) FRANCISCO LUCIANO LIMA RODRIGUES, 3ª Câmara Direito Público, data do julgamento:&#160; 21/11/2022, data da publicação:&#160; 22/11/2022)</p></div></div><p>&#160;</p><br /><br /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>