



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**CIVIL CASE NO: 11 OF 2008**

**AMBETSA K. OSENA LUKOSE.....PLAINTIFF**

**VERSUS**

**1. THE HON. A.G**

**1. ASS. ADM GENERAL WESTERN PROVINCE.....RESPONDENT**

**R U L I N G**

The plaintiff is seeking to be paid interest of Ksh. 1,054,919/= by the Public Trustee. He seeks orders that the assets or properties of the Public Trustee be attached so as to satisfy the interest amount being claimed.

The court record shows that plaintiff was claiming Ksh 108,400 as the principal amount plus 15% interest. The amount was death gratuity for the plaintiff's daughter, Getrude Rebecca Mwanika Oseno who used to work with the Ministry of health as a registered nurse. The plaintiff's suit was not defended and the court awarded the plaintiff the sum of Ksh 108,400 that was being claimed plus interest at the rate of 5% for a period of twelve months. While testifying before the court, the plaintiff stated that the Ministry of health ought to have been enjoined as it released the death gratuity late.

Upon entering of the Judgment, the Public Trustee applied to the court to have the judgment set aside. **Justice Luka Kimaru** heard that application and dismissed it. In essence therefore, the defendants were to pay the Principal sum of Ksh 108,400 plus interest. **Justice Lenaola** who heard the case computed the decretal sum as Ksh 173,440. What this meant is as follows;-

- i. **Principal amount** - **Ksh 108,400/=**
- ii. **Interest at the rate of**
  - 5% for 12 months.** - **Ksh 64,040/=**
  - Total amount awarded** - **Ksh 173,440/=**

According to the Public Trustee the decretal sum was paid on 5/11/2007 vide cheque number for Ksh 183,488. According to the plaintiff, the Ministry of Health sent a cheque for Ksh 188,015/=. The public Trustee's position is that bank account and the payment to the plaintiff was less Ksh 4,527/=. The plaintiff's position is that the payment by the Ministry of Health was made on 9/10/2006. The Public Trustee paid him on 5.11.2007.

This was a period of about one year. The Public Trustee explained that the plaintiff had to obtain letters of administration before payment was made.

The suit herein was filed in March 2008; A period of about four months after the payment was made to the plaintiff. The plaintiff seems to claim that the Ministry of Health delayed the payment of the death gratuity. The plaintiff did not enjoin the Ministry of Health as a party to this suit. The defendant received the money in October 2006 and released it to the plaintiff in November 2007 after letters of administration were issued to the plaintiff. The defendant could not have simply paid the plaintiff without the letters of administration. It is not the Public Trustee who delayed the release of the death gratuity. The deceased died on 15/4/2001 and the payment was released in October, 2006. That delay cannot be attributed to the defendant.

I do find that the applicant's claim for Ksh, 1,054,919.00 is misplaced. The sum of Ksh 4,527 deducted by the defendant is justiceable. There was no delay on the part of the defendant to release the death gratuity. There are no funds due and payable to the plaintiff by the defendant. The decretal sum was paid even before the suit was filed. The defendant cannot be called upon to pay another sum of Ksh 173,400 as that amount had already been paid to the plaintiff before he filed the suit.

In the end, I do find that the applicant's claim lacks merit and the same is hereby dismissed with no orders as to costs.

Dated, signed and Delivered at Kakamega this 20<sup>th</sup> day of March 2014.

**SAID J. CHITEMBWE**

**JUDGE**