



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL SUIT NO. 2230 OF 2001

LT. COL. BENJAMIN MUEMA.....PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL

MAJOR GENERAL HUMPHREY W. NJOROGE

COMMISSIONER OF POLICE.....DEFENDANTS

RULING

1. The Plaintiff, hereinafter referred to as the Applicant has filed the Notice of Motion dated **16th January, 2014** seeking for the following orders:
 - i. That this Honourable Court be pleased to quantify the amount payable under Head No. 6 of the decree of this Honourable Court issued on 21st July, 2006 at KShs.34,923,803/-.
 - ii. That this Honourable Court be pleased to quantify the amount payable under Head No. 7 of the decree of this Honourable Court issued on 21st July, 2006 at KShs. 13,632,800/-.
 - iii. That the costs of this application be borne by the Defendants (hereinafter referred to as the Respondents).
2. The Application is premised on the grounds on the face of the application and is supported by the affidavit of the Applicant sworn on 16th January, 2014.

The motion is opposed by the Defendants who relied on the replying affidavit sworn by **Lieutenant Colonel Sammy Kipng'etich** sworn on 30th July, 2014 and the grounds dated 12th June, 2014.

3. The applicant is an ex-army officer. Sometime in the year 1993, the applicant's employment with Kenya Army was terminated upon allegations of involvement in crime whereupon numerous criminal cases were filed against him. He felt aggrieved by the allegations and filed this suit seeking:-
 - i. A declaration that his removal from his employment was

unlawful, null and void, a finding that the police arrests and prosecutions were illegal, unprocedural and malicious.

- ii. General damages for illegal removal from office, illegal confinement, malicious prosecution and rape of reputation, general damages for unlawful termination of employment, costs and interest of the suit.
4. The suit was heard and Judge J.B. Ojwang' (*as he then was*) found in favour of the applicant and made orders among others:

“

1. ...
2. ...
3. ...
4. ...
5. ...
6. ***That the Defendants jointly and severally do pay to the Plaintiff general damages for the loss in career advancement to which the plaintiff was subjected by their acts in contravention of the protective statute law, in a figure equivalent to his net income from his employment as Lieutenant Colonel for the whole period running from the beginning of April,1993 to his 50th birthday, with appropriate adjustments made to reflect higher status to which he would have moved, in the normal course of military practice.***

This figure is to take into account any compensations such as may have already been paid to the Plaintiff; and the up-to-date figure of monies payable under this head is to be formulated by the parties and appropriate orders made by the Deputy Registrar, any further dispute on amounts is to be resolved through application before a Judge in Chambers, in the Civil Division of the High Court.

7. ***That the Defendants and in particular the Commissioner of Police shall, within fifteen days of the date hereof, restore to the Plaintiff his two motor vehicles, Isuzu Trooper Reg. No. KE70-01461 and Toyota Corona Reg. No. KAB 825Q.***
8. ...
9. ...
- 10....”

5. Despite the Court's order that the amount payable to the Applicant would be formulated by the parties, as at 18th March, 2009, the 1st Respondent had not taken any steps in compliance with the orders. This elicited the applicant's application dated 4th November, 2008 seeking to resolve the dispute on the amounts payable to the applicant and added that in the event the parties failed to reach a settlement, the applicant would be at liberty to apply to this Court for computation. On the said application Lady Justice Lesiit ordered that parties do agree on the amounts but this was in vain occasioning this application.
6. The Respondents contend that the orders of Judge J. B. Ojwang' are subject to appeal and the appeal may be rendered nugatory if this court goes ahead to compute the applicant's payable amount; that the applicant's computation has been done an incorrect assumption that the applicant would have automatically been progressively promoted to the rank of Major General which is untrue and misguided; that the applicant's prayer to compute what would have been due to him had he served until retirement age of 50 years at rank of Lieutenant Colonel, is immaterial and should not be considered as the applicant voluntarily resigned his commission on 27th July,1993; that upon his resignation being approved, the applicant's reckonable service was computed by the unit records office and forwarded to the pay office for assessment for pension; and that the said computation was done in accordance with the Armed Forces Officers and Servicemen (Pensions and Gratuities) Regulations at a lump sum of KShs.432,388.10 and a monthly pension of KShs. 7,206.45.
7. I have read the affidavits of the parties, I am of the view that what is for this court's determination

is whether the appeal will be rendered nugatory in the event this court goes ahead to compute. If this is answered in the negative what is the appropriate computation.

8. There is no stay in this suit and it is trite law that an appeal does not operate as stay. I am opined therefore that this court has the discretion to compute.
9. After a careful consideration of the grounds set out on the face of the summons and the facts deponed in the affidavits for and against the summons together with the grounds of opposition and the Learned Counsel's submissions, I have come to the conclusion that the proposed computation cannot be determined by way of an Application.

There is need to hear oral evidence which can be tested by way of cross-examination. The final order therefore is to the effect that this Court will only compute damages after receiving evidence from both sides. The application therefore succeeds to that extent.

Costs of the summons shall abide the outcome of the hearing.

Dated, Signed and delivered in open Court this 17th day of **October 2014**.

J.K.SERGON

JUDGE

In the presence of:

Malonza for the Applicant

Kamau for the Respondent