



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Case 1736 of 1994**

**JOEL KIPKORIR KENIK & ROBERT KIPLAGAT as administrators of the  
estate of the late ANDREW KIPNGENO KENIK.....PLAINTIFF**

**VERSUS**

**TELCOM KENYA LIMITED..... DEFENDANT**

**JUDGEMENT**

By a plaint dated 9<sup>th</sup> May 1994 filed in this court on 11<sup>th</sup> May 1994, the plaintiff **Andrew Kipng'eno Arap Kenik** (hereinafter referred to as the deceased) instituted these proceedings against Kenya Posts and Telecommunications Corporation (hereinafter referred to as the Corporation) for judgement against the defendant for the following orders:

- 1. That the Defendant/Respondent Kenya Posts and Telecommunication Corporation limited by itself, its servants, agents or otherwise howsoever be restrained by injunction from taking or retaking possession of or giving to any other person in any manner howsoever, dealing with or renting or taking any step whatsoever in regard to the suit land known as L.R. No. 209/5658, Flat No. 28, PARK COURT NAIROBI, until the final determination of this suit or further orders of this Honourable Court.**
- 2. That the defendant either by itself, its servants, agents or otherwise be restrained from retiring and/or interfering with the Plaintiff's employment until further orders of this Honourable Court.**
- 3. That the service upon the Defendant be dispensed with.**
- 4. That the costs of this application be provided for.**

The cause of action arose from the defendant's termination of employment of the plaintiff's contract of employment by way of compulsory retirement vide a letter dated 28<sup>th</sup> April 1994, an act which the plaintiff deemed illegal and unlawful.

By a consent recorded in this suit on 13<sup>th</sup> May 1996, the plaintiff and the Corporation agreed as follows:

- 1. That the arrears of salaries upto and including May 1996 amounting to Kshs. 246,935/- be paid to the Plaintiff on or before 31<sup>st</sup> May 1996.**
- 2. That the defendant/Respondent hereby agrees to retire the Plaintiff applicant with full benefits.**
- 3. That the matter be mentioned on 13<sup>th</sup> June 1996 when the Defendant/Respondent is expected to**

**provide figures.**

It is important to note that the said plaint was amended vide an amended plaint dated 28<sup>th</sup> August 2001 by which Telkom Kenya Limited, Communications Commission of Kenya and Postal Corporation of Kenya were substituted in place of the Corporation herein. From the said pleading it is stated that the said sum was duly paid although the benefits were not paid. Therefore the plaintiff also prayed for an order compelling the Defendants to comply with the said consent order.

On 11<sup>th</sup> May 2006, a further amended plaint dated 5<sup>th</sup> May 2006 was filed by which the deceased was substituted by **Joel Kipkorir Kenik** and **Robert KLiplangat Ngeno** the administrators of the estate of the deceased, who are now the current plaintiffs.

When the matter came up for hearing on 31<sup>st</sup> July 2012, the plaintiff called one witness, **Joel Otieno Oboge** as PW-1 who testified that he is registered Public Accountant by profession. According to him, his firm was approached by the deceased to draw up a projection to determine what the deceased should have been paid at retirement age by Telkom (K) Ltd. He accordingly produced a report which was prepared by him in which he indicates what the deceased was entitled.

In his submissions, counsel for the plaintiff submits that the defendant is by virtue of legal notice no. 132 of 2001 Telkom (K) Ltd having inherited legal proceedings which were pending against its predecessor. It is further submitted that save for the prayer for an order compelling the defendant to comply with the said court order most of the prayers sought are spent and as the defendant has not complied with the said order it is necessary that the court gives timelines within which the said order is to be complied with.

I have considered the foregoing. In my view the Court retains inherent jurisdiction to ensure that its orders are complied with and has the powers to make the necessary orders for the implementation of its decision. In this suit the parties agreed by consent that the deceased's terminal dues were to be provided by the defendant. There is no evidence that the defendant has done so and the plaintiff's contention that the same has not been complied with has not been controverted.

In line with the overriding objective stipulated in sections 1A and 1B of the Civil Procedure Act which requires the court ensure the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties, I am satisfied that the plaintiffs are entitled to prayer (f) of the further amended plaint filed on 11<sup>th</sup> May 2006.

Accordingly the first defendant Telkom Kenya Limited is hereby directed to compute the retirement benefits of the deceased **Andrew Kipngeno Arap Kenik** from the deceased's employment with Kenya Posts & Telecommunications Corporation for the purposes of settling the same. A report containing the said benefits to be filed in Court within forty five days from the date of service of this decision.

Dated at Nairobi this 11<sup>th</sup> day of October 2012

**G V ODUNGA**

**JUDGE**

Delivered in the absence of counsel for the parties.