



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL CASE NO. 11 OF 2008

AMBETSA K. OSENA LUKOSE.....PLAINTIFF

VERSUS

**THE HON. A.G &
THE ASSISTANT ADMINISTRATOR GENERAL, WESTERN
PROVINCE.....DEFENDANTS**

JUDGMENT

1. I must begin by stating that this case caused me a little difficulty. I say so because the Plaintiff, a layman was acting in person and the Plaint dated 10.3.2008 was a rumbling document with annexures or appendices and although it may well fit the requirements of Order 3 Rule 2 of the Civil Procedure Rules, 2010, it was infact filed under the old and repealed Rules which had no such procedure.
2. Further, it is unfortunate that the Plaintiff is able to speak and write but completely unable to hear and so communication in court was strained.
3. In any event, what I can gather from the Plaint aforesaid is that the deceased's daughter, Getrude Rebecca Mwanika Osen (deceased) died on 15.4.2001. She was a registered nurse and an employee of the Ministry of Health and the Plaintiff was recorded in her official records, as the next of kin. Upon her death, the gratuity payable to the next of kin was duly processed but that it took five (5) years for the Public Trustee to release Kshs.108,400/= to him and after holding the money for over (12) months. The specific prayers that he now seeks are the following;

“i) The interest accrued on the money while it was held in the second Respondent’s bank account for over (12) months as demanded 5% of the Principal sum – i.e Kshs.108,400/=(sic)”

4. The Plaintiff’s claim is not denied because the Attorney-General filed no response to the suit and so

to be fair to the Plaintiff, his assertions have not been contested and whereas the basis for the 5% interest is not given, I see it as fair when he has given a chronology of the suffering he has undergone in trying to get what was due to him upon the death of his daughter.

5. In the event, I will order the Attorney-General to pay the Plaintiff the sum of Kshs.173,440/= being $108,400 \times \frac{5}{100} \times 12 = 173,440$.

6. As the suit is undefended, I will make no order as to costs.

7. Orders accordingly.

Delivered, dated and signed at Kakamega this 14th day of April, 2011.

ISAAC LENAOLA

J U D G E