



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL CASE NO. 51 OF 1997

WILLIAM MWANGI NGURUKI.....PLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LTD.....DEFENDANT

RULING

The Applicant has moved this court in its inherent jurisdiction seeking an interpretation of the decree herein to the parties.

He has a second prayer to the effect that the court adopt the calculated sum of KShs.2,194.978.40 from April 1992 to December 2008 and 8,823.40 from January onwards as monthly pension. I have considered the application along with the written submissions of both counsel herein. I would like to state from the outset that the decree herein was drawn and extracted from the Judgment of Hon. G.A. OMWITSA then commissioner of Assize. I would not alter the said decree, nor would I have jurisdiction to vary it or calculate any figures because his order does not give any figures. The order ought to be interpreted as

“That the defendant do pay to the plaintiff all his dues including his salary, leave allowance, fringe and terminal benefits plus his last pension, if any, which were due at the time of his dismissal and which he would have been entitled to upon retirement”.

To start with, when the commissioner rendered his judgment in favour of the plaintiff, the intent was that the said judgment/decreed unless appealed against would naturally proceed to execution if not settled. No court of law will award damages to a party with the intention that the same would be paid in future unless of course there is an express provision to that effect.

The commissioner of Assize specifically ordered that the dues including the salary, leave allowances, fringe and terminal benefits, if any, which were due at the time of dismissal. – This bit meant the dues already earned but unpaid as at the time of dismissal which would include his terminal benefits. That was in the present. The order nonetheless captured the pension (if any). The words “if any” here refer only to the pension and not to the other benefits because if there were none that were due by the time of this dismissal, then payment of the same did not arise.

I have perused the record herein and I have observed that indeed Judge Khaminwa had ordered for the computation of the pension. The same was done and the figures were given. Other than for the monthly payment of KShs.8,823.40 which accrues monthly, the rest of the money should have been payable as the amount said to be ‘due’ by the Commissioner of Assize in his judgment. My interpretation of that decree without computing the figures therefore is that all the money owing to the plaintiff/Applicant as at the time of the decree was supposed to be paid instantly and the only money payable as it falls due is the 8,823.40 which should be paid monthly. There should be no problem with that computation or compliance.

I hope that this lays that matter to rest and the plaintiff will be able to enjoy the fruits of his judgment which he has not been able to do for a long time.

**W. KARANJA
JUDGE**

Delivered, signed and dated at Embu this 6th day of December 2010

In presence of:- Mr. Waweru for defendant's counsel and Plaintiff/Applicant in person.