



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 3472 of 1994**

**GEOFFREY MUGUNA MBURUGU .....PLAINTIFF**

**V E R S U S**

**ATTORNEY GENERAL .....DEFENDANT**

**ASSESSMENT**

On 15<sup>th</sup> December, 2003 the court herein (Ojwang', J) entered judgment for the Plaintiff in the following terms:-

**“(a) I make the declaration that the retirement of the Plaintiff from the Public Service was wrongful and a nullity.**

**(b) I order that the Plaintiff shall be paid his arrears of salary and other benefits for the period dating back to 24<sup>th</sup> February, 1993. The exact amounts will be assessed by the Registrar or Deputy Registrar, taking into account the applicable terms of service.**

**(c) I order that the costs of this suit be borne by the (Defendant).”**

When the matter was placed before a Deputy Registrar, the Defendant raised objection to her jurisdiction, which was upheld. The matter was then referred back to Ojwang', J. Eventually, Ojwang', J moved to another division of this court before assessing the sum payable to the Plaintiff under the judgment. In the meantime the Plaintiff died; by an order entered on 15<sup>th</sup> April, 2005 his widow, JENNIFER NANJALA MBURUGU, was substituted in his place.

On 6<sup>th</sup> December, 2007 I heard the learned counsels for the parties on assessment of the sums due to the Plaintiff under the judgment. They referred me to the respective affidavits of each party filed setting out the computation of the sums payable. The one of the Plaintiff was filed on 27<sup>th</sup> May, 2004; it was sworn by the Plaintiff himself before he passed on. It discloses the sum of KShs. 4,257,368/35. The one for the Defendant was filed on 24<sup>th</sup> November, 2004; it was sworn by one J. K. MWALW'A, the Chief Personnel Officer in the Ministry of Water and Irrigation. It disclosed the sum of KShs. 2,489,826/95.

I have looked at the two rival computations. I have also considered the submissions of the learned counsels. It is conceded by the Defendants' learned counsel that the computation by the Defendant did not take into account some two items. These are the Plaintiff's annual leave commuted (KShs. 184,868/00) and his unpaid arrears (KShs. 120,718/35). This is a total of KShs. 305,586/35. But learned counsel also pointed out that the Plaintiff's computation did not factor in the usual statutory deductions from the Plaintiff's earnings. These are income tax (PAYE), health insurance, etc. The computation by

the Defendant took into account all these. Although this point was not conceded in terms by the Plaintiff's learned counsel, he did not gainsay it either. A perusal of the computation by the Plaintiff shows clearly that statutory deductions as above were not taken into account.

It was suggested by the Plaintiff's learned counsel that the court should award the average of the two computations as fair and just compensation to the Plaintiff. That average would be the sum of KShs. 3,373,597/60; but learned counsel would be happier with the round sum of KShs. 3.5 million. I see no cause at all to take averages; I have no power to award gratuitous amounts.

The computation by the Defendant is faulted only for omitting the two items indicated above, that is, the annual leave commuted (KShs. 184,868/00) and the unpaid arrears of salary (KShs. 120,718/35). With inclusion of those two items the Plaintiff ought to be happy as justice will have been done. As already noted, the computation by the Plaintiff omits all statutory deductions which the Plaintiff would have been bound to pay upon his earnings, and which the Defendant would have been bound under the law to collect for the relevant organs of Government like the Kenya Revenue Authority.

I shall in the circumstances award the Plaintiff the sum of KShs. 2,795,413/25 made up as follows:-

As computed by Defendant.....KShs. 2,489,826/95

**Add:** (i) annual leave commuted .....KShs. 184,868/00

(ii) unpaid arrears .....KShs. 120,718/35

**Total** .....**KShs. 2,795,413/25**

In reference to the judgement entered on 15<sup>th</sup> December, 2003 therefore, the sums due to the Plaintiff are hereby assessed at KShs. 2,795,413/25. That will be the order of the court.

**DATED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2007**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 20<sup>TH</sup> DAY OF DECEMBER, 2007**