



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
CIVIL SUIT 1197 OF 2005

STEPHEN MUNGA MWANGI APPLICANT

VERSUS

THE GOVERNMENT OF THE

UNITED STATES OF AMERICA 1ST RESPONDENT

UNITED STATES OF AMERICA AGENCY

FOR INTERNATIONAL DEVELOPMENT (USID) 2ND RESPONDENT

RULING

This court on 14th day of February 2008, pronounced judgment in favour of the plaintiff/applicant along the following terms:

1. *3 months salary in lie of notice 75,347.00/-*
2. *Severance pay Ksh.134,099.88.*
3. *The claim for general damages for wrongful dismissal is dismissed.*
4. *The claim for damages for interfering with the plaintiff on the contractual rights is dismissed.*
5. *The claim for salary for the lost remainder of 6 years up to the retirement age of 60 years is dismissed.*
6. *The amount in No.1 and 2 above will carry interest at court rate from the date of filing till payment in full.*
7. *The plaintiff will also have the costs of the suit with interest at court, rate.*

Thereafter it is on record that the plaintiff/applicant an presented an application for review dated 10th day

of March 2008 subsequently amended on the 17 day of April 2008. The judgment, the initial application for review and the amendment annexed to the current application as annexures SMMI,1 and 3. The said application for review a subsequently amended was ... role of ruling of this court dated 11th day of July 2008 on technical grounds as explained in the said ruling with leave to the applicant to present a proper application by way of chamber summons dated 22nd day of July 2008 and filed the same date brought under the same provisions of Order XLIVI (1) (2), 2, 4(1) and 2 of the Civil Procedure Rules. Section 3 and 3A of the Civil Procedure Act Cap.21 Laws of Kenya pursuant to leave granted by this court on 11th July 2008. That application was heard on merit and it gave to this courts ruling of 31st day of October 2008. The orders made by this court in relevance as follows.

1. *3 months salary in lieu of notice is revised to read Ksh.36,642.00 which comes to Ksh.109,926.00*
2. *Severance pay revised to read Ksh.36,642.00 x 21 x 3.5% which comes to Ksh.269,318.70.*
3. *3 years loss of future employment as per reasons given Ksh.36,642.00 x 12 x 3 Ksh.1,328,812.00.*
4. *The sums will carry interest at court rates from the date of filing. Interest will not run from the date of dismissal because the plaintiff is not being compensated for sums which he had expended.*
5. *The order on costs still remains as previously ordered, that the plaintiff will have costs of the proceedings.*

The plaintiff/applicant has come here to this court by way of a notice of motion dated 13th day of January 2009 and filed the same date. It is brought under section 3,3A and 99 of the Civil Procedure Act. It seeks 4 prayers.

1. *That the sums Ksh.269,318.70 being the amount awarded in the favour of the plaintiff as severance pay and appearing in the Ruling/judgment dated 31.10.2008 of Lady justice R.N. Nambuye be corrected to read Ksh.323,182.44.*
2. *That the name of the 1st defendant The Government of the United States of America be added to the Ruling/Judgment dated 31.10.2008 of Lady Justice R.N. Nambuye.*
3. *That interest on the sums awarded to the plaintiff to run from the date of wrongful dismissal and not from the date of filing of the suit.*
4. *That costs of this application be provided for.*

The grounds in support are set out in the body of the application and supporting affidavits held on oral submissions in court in the grounds in the body of the application as well as the supporting affidavit, the applicant simply stated that the court should rectify arithmetical errors apparent in the face of the record and that this court has jurisdiction to correct the same. However in the said submissions in court the applicant added the following:-

1. *That exhibit 6 is proof that the defendants legal officer interfered with his contractual rights.*
2. *Since the amount for 3 months salary in lieu of notice as well as severance pay was due to him as at the time of the wrongful dismissal, interest on the sums awarded should run from the date of the said wrongful dismissal.*
3. *That cost should not have reduced the statutory deductions from the amount of the figure used to compute the 3 months salary lieu of notice as well as severance pay. The court should have used a consolidated figure of Ksh.50,000,00 per month as shown by the pay slip.*
4. *How applicant is also entitled to the loss of pension which was discontinued by reason of*

wrongful dismissal.

On the costs as assessment of the facts herein, it is clear that what the court is being called upon to do is to arithmetical errors in the computation. This being the case, this court cannot embark on any new issues which go to filing on the merits of the judgment and the ruling on

review as provided for under XLIV rule 7, Civil Procedure Rules which provides:-

“Order. XLIV rule 7. No application to review an order made on an application for a review of a decree or order passed or made on review should be entertained.”

For two reasons the court has to confirm its own documentation of clerical and or arithmetical errors. The section directing the power to correct in the cited section 99 of the Civil Procedure Act. It reads:-

“If clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental omissions may at any time be corrected by the court either of its own motion or on the application of any of the parties.”

This court has given due consideration of the above provisions of law and applied them to the applicants application and it proceeds to make the following finding on the same.

1. *Prayer 1 is allowed as the Deputy Registrar of this court has confirmed the calculations. The amount for severance pay to read Ksh.323,182.44.*
2. *Prayer 2 is also allowed and the name of the government of the United States of America is to be added in the heading of the ruling.*
3. *Prayer 3 is disallowed. The reason is that the court gave its reasons in the judgment as well as the application for As to why interest has been awarded to run from the date of filing the suit. Section 26 of the Civil Procedure Rules denotes, power to award interest state clearly that the power to award interest on the part of the court discretion. There is jurisdiction in the part of the court to award interest before filing the suit but the court has to give reason. There is also jurisdiction to award interest from the date of filing and the date of assessment. This court though exercised its discretion judicially and gave reason when it awarded that interest should run from the date of filing. For this reason this court cannot revisit that problems. If the plaintiff applicant is aggrieved by that issue, he is at liberty to move to the court of appeal over the same.*
- 4) *On costs for the application it should be noted that cost have already been taxed by the taxing master of the court and for this reason, the award of costs will be made.*
- 5) *The plaintiff/applicant also pleaded the issue of pension which was discontinued because of the wrongful dismissal. This courts findings on this is that this was not raised in the plaint in the evidence at the trial and it cannot be revisited in application to correct arithmetical errors as it is a new issue.*
- 6) *Also not to be considered at this point in time is the issue of the court being invited to use Ksh.50,000/- as basic salary in its computation of salary in lieu of notice, salary for last year and severance pay, because if this court made any apprehensions on the workings on the plaintiffs pay slip exhibit 4, this court should be corrected by the Court of Appeal.*

Secondly the plaintiff pleaded Ksh.42,000.00 as his pay and not Ksh.50,000.00 and so this is a new issue which cannot be dealt with under section 99, 3 and 3A of the Civil Procedure Act.

DATED, READ AND DELIVERED AT NAIROBI THIS 8TH

DAY OF MAY 2009.

R.N. NAMBUYE

JUDGE