

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**ELRC CAUSE NO. E690 OF 2016**

**DANIEL NJOROGI WAITHAKA AKA ALIAS WAITHAKA...**  
**CLAIMANT**

**VERSUS**

**KENYA FORESTRY RESEARCH INSTITUTE.....1<sup>ST</sup>**  
**RESPONDENT**  
**ATTORNEYGENERAL-----2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

The claimant is a small-scale farmer in Nyandarua. The claimant was employed as a clerk by the Ministry of Environment and Natural Resources and later transferred to the 1<sup>st</sup> respondent upon its establishment in 1983. He earned a monthly gross salary of Kshs. 18,500.

By a letter dated 6/11/2003 the claimant was suspended on allegations of loss of institute's revenue. The suspension was to last until criminal case no. 2729 of 2003 he had been charged in was finalized.

On 19/2/2013, the claimant was convicted by the Chief Magistrate Court. He appealed the decision against the conviction at the High Court, in Criminal Appeal no. 77 of 2013 and he was acquitted of all charges on 31/10/2019.

Upon acquittal the claimant, through his advocates wrote a demand letter dated 12/11/2019 demanding his salary arrears and pension dues. The claimant had attained his retirement age on 20/8/2019. The

respondent had not taken the claimant through any disciplinary hearing and waited for the criminal trial to be finalized. The respondent did not respond to the demand letter hence this suit.

The claimant (CW1) testified to the aforesaid facts under oath and adopted witness statement dated 20/8/2020 as his evidence in chief.

The claimant seeks the following reliefs;

- a. A declaration that the claimant is entitled to payment of withheld salaries and pension.
- b. Payment of Gross salary at Kshs. 18,500 per month from the date of suspension on 19/2/2013 to date of retirement in August 2019.
- c. Accrued pension up to retirement age of 60 years.
- d. Interest and costs of the suit.

## **Defence**

The 1<sup>st</sup> respondent filed a reply to the memorandum of claim in which it admitted the particulars of employment of the claimant in response to paragraphs 1, 2 and 3 of the memorandum of claim.

The respondents also admitted that the claimant was suspended pending conclusion of the criminal case in which he was charged for theft of funds.

The respondents admitted contents of paragraph 8 of the memorandum of claim that the High Court delivered Judgment in Criminal Appeal No. 77 of 2013 (consolidated) on 31<sup>st</sup> October 2019 in which the claimant was acquitted of the criminal charges.

Respondents called RW1, Philip Gichana who testified in defence of the case and stated he was a corporation secretary and legal officer of the 1<sup>st</sup> respondent for the past 7 years. RW1 adopted a witness statement dated 15/2/2022 as his evidence in chief. RW1 admitted that the claimant was not subjected to any disciplinary hearing upon being charged with a criminal offence but was suspended pending the hearing and determination of the criminal case.

Under cross examination, RW1 said the suspension of the claimant was on 6/11/2003. RW1 said he had no legal view on the matter since he was only employed on 1/3/2019. RW1 however said upon suspension or interdiction, an employee is entitled to half salary and all benefits pending hearing and determination of a criminal case as per the respondent's HR manual of 2020 which was not applicable to this case.

## **DETERMINATION**

The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. The issues for determination are;

- i. Whether the claimant is entitled to payment of all his arrear salaries and pension having been suspended on no pay pending hearing and determination of the criminal case upon being acquitted by the High Court.
- ii. What other reliefs is the claimant entitled to.

The claimant adduced uncontroverted evidence that he was employed in 1981. That he earned Kshs. 18,500 per month. That on 6<sup>th</sup> November 2003, he was suspended by the 1<sup>st</sup> respondent upon being charged with

a criminal offence in criminal case no. 2729 of 2003. That on 19/2/2013 he was convicted by the Magistrate Court. That the claimant appealed the decision in High Court Criminal Appeal No. 77 of 2013 and was acquitted of all charges on 31/10/2019. The Judgment of the High Court was produced by the Claimant before Court. The High Court found that the Claimant (3<sup>rd</sup> Appellant) in his defence stated that there were 8 cashiers at the office including himself. That they all collected revenue and banked the same. That at times he would hand over the cash collected to the 2<sup>nd</sup> Appellant accompanied by a bank deposit slip when revenue was collected past the bank operating hours.

The Court found that there was doubt as to whether the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants received all the proceeds collected as revenue at the cash office. The court went on to state-;

*“this court holds that the investigation zeroed in on the appellants without considering the probability that other employees in the finance section of the complainant could have been involved in the loss of funds.”*

With that the High Court acquitted the claimant of all charges.

In the case of **Karuga versus Nairobi City Water and Sewerage Company Limited and Another (Civil Appeal 193 of 2019) (2021) 109 (KLR) (22 October 2021)** (Judgment) where the appellant had been suspended as a result of criminal charges of fraud levelled against him and was acquitted after about 8 years, the court of appeal held;

***“.....we hold that the appellant was entitled to his salary for the period of suspension after his acquittal”.***

In the case of ***Grace Gatheri Muriithi versus Kenya Literature Bureau (2012) eKLR***, the Court held-: ***“the court considered that an employee on interdiction or suspension has a legitimate expectation that at the end of the disciplinary process he or she will be paid by the employer all the dues if the employee is exculpated”***.

In the present case, no disciplinary action was taken, the claimant patiently waited for the criminal process to be concluded. Unfortunately, this came after his retirement date. This however did not deprive him of the right to his arrear salaries from date of suspension on 6<sup>th</sup> November 2003 to the date of retirement in August 2019.

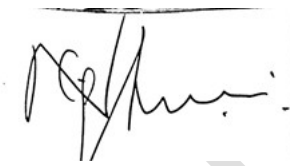
The claimant could not move on when his employer had suspended him pending conclusion of the criminal case against him. The 1<sup>st</sup> respondent chose its bed and must live the consequences of its decision by choosing not to take any disciplinary action against the claimant and kept him in limbo for an dis-ordinately long period of time.

In the final analysis judgment is entered against the respondent in favour of the Claimant as follows;

- a. A declaration that the claimant is entitled to payment of withheld salaries and pension.
- b. The 1<sup>st</sup> respondent to pay the Claimant all arrear salaries at Kshs. 18,500 per month from the date of suspension being 6<sup>th</sup> November 2003 until the retirement age at 60 years on 20<sup>th</sup> August 2019.
- c. The respondents to cause the processing and payment of the Claimant’s Pension with effect from 20<sup>th</sup> August 2019.

- d. The Respondent to compute and file the award in (b) and (c) above within 60 days of this Judgment and pay the Claimant accordingly. The Claimant is at liberty to file a counter Computation within 30 days upon expiry of the 60 days above.
- e. The amount in (b) above is payable with interest at Court rates from the date of filing suit till payment in full.
- f. Costs of the suit

Dated at Nairobi this **9<sup>th</sup> day of February 2026**



**Mathews Nduma**  
**JUDGE**

**Dated, signed and delivered in open court at Nairobi this 16<sup>th</sup> day of February 2026**

**J. W. KELI**  
**JUDGE**

**In the presence of:**

Mr. Ongeru for Claimant

Mr. Kioko for Respondent

Mr. Kemboi – Court Assistant