



**Kiama v Attorney General & 2 others (Cause 203 of 2019)
[2025] KEELRC 1623 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1623 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 203 OF 2019
S RADIDO, J
MAY 29, 2025**

BETWEEN

BENSON MAINA KIAMA CLAIMANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

**PERMANENT SECRETARY, MINISTRY OF STATE FOR
DEFENCE 2ND RESPONDENT**

OWARA 3RD RESPONDENT

RULING

1. In a judgment delivered on 6 December 2019, the Court entered judgment for Senior Private Benson Maina Kiama (the Claimant) and awarded him:
 - (a) Pension and/or gratuity.
 - (b) Unpaid salaries Kshs 35,580/-.
2. On 10 July 2024, the Claimant filed a Motion seeking orders:
 - i. That the sum payable to the Claimant on pension and gratuity be computed at Kshs 2,700,000/- as provided under Kenya Defence Forces (Pension and Gratuity Regulations) 2021 and judgment entered in favour of the Claimant as against the Respondents as awarded by the Court on 6/12/2019.
 - ii. That interest at court rates of 14% on the said sum be awarded from 6/12/2019 being the date of judgment until payment in full.
 - iii. That the costs of this application be met by the Respondents.



3. The main grounds in support of the Motion were that the Court had ordered the Respondents to pay the Claimant's pension/gratuity; the pension/gratuity was payable under the Kenya Defence Forces (Pension and Gratuity Regulations) 2021, and that the Respondents had failed to compute and pay the pension/gratuity despite numerous requests.
4. The Respondents caused a replying affidavit sworn by Major Bernard Mwenda to be filed on 21 March 2025 in opposition to the Motion.
5. In the affidavit, the Major Mwenda deponed that the Kenya Defence Forces (Pensions and Gratuity Regulations) 2021 were not applicable in the case since the Claimant exited service in 2006; that the relevant regulations were the Armed Forces (Officers and Servicemen) (Pension and Gratuities) Regulations, 1980; the Claimant's accrued cumulative pension up to the time February 2025 was Kshs 1,106,419/50; the Claimant was also entitled to a lump sum payment of Kshs 393,393/- under Regulation 10(3) and (4) of the Armed Forces (Officers and Servicemen) (Pension and Gratuities) Regulations, 1980; the Court did not award interest; the Claimant had failed or neglected to clear with the Kenya Defence Forces; the Claimant had failed to provide a Certificate of Order against the Government and other documents; the computation of pension by the Claimant was grossly exaggerated and that instructions for payment had not been issued to the National Treasury because the Claimant had not yet cleared with the Kenya Defence Forces.
6. The Claimant's submissions were not on record (should have been filed and served before 18 April 2025). The Respondents submissions were filed on 20 May 2025.
7. The Court has given due consideration to the Motion, affidavits and submissions.
8. The Respondents have not declined to pay the Claimant's pension. The handicap is that the Claimant has not cleared with the Kenya Defence Forces and failed to provide relevant records being certified copies of judgment and decree, Certificate of Costs and Certificate of Order against the Government.
9. The Claimant was serving in a disciplined force, and it is imperative that he clears with his former employer, and the Clearance in his case is not like that of an ordinary employer/employee. There could be security implications in his clearance with the Kenya Defence Forces.
10. Further, the 3 records demanded by the Respondents are ordinarily required before an execution can issue.
11. The Respondents' advocate explicitly stated in Court that the Respondents were ready and willing to pay the Claimant immediately he fulfilled the requirements which have a basis in law.
12. On the question of interest, the Court did not award any in the judgment and no exceptional circumstances have been shown by the Claimant why interest should be awarded. It even appears that the Claimant has not been paid because of delays to supply records to the Respondents.

Conclusion and Orders

13. Considering the above, the Court declines to grant the orders sought by the Claimant and the Motion dated 8 July 2024 is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 29TH DAY OF MAY 2025.

RADIDO STEPHEN, MCIARB

JUDGE



Appearances

For Claimant Ms Simiyu instructed by L.W. Wang'ombe & Co. Advocates

For Respondents Ms Mjomba instructed by the Hon Attorney General

Court Assistant Wangu

