



REPUBLIC OF KENYA



**KENYA LAW**  
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**Makwacii v Kenya Defence Forces (Cause 1149 of 2017)  
[2024] KEELRC 711 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 711 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1149 OF 2017  
MA ONYANGO, J  
MARCH 14, 2024**

**BETWEEN**

**DAVID M'TTI MAKWACII ..... CLAIMANT**

**AND**

**KENYA DEFENCE FORCES ..... RESPONDENT**

**JUDGMENT**

1. The Kenya Defence Forces, the Respondent herein is a government institution under the Ministry of Defence. The Claimant was an employee of the Respondent from 1980 to 26<sup>th</sup> August 2016 when his employment was terminated. It is the Claimant's case that the termination was unfair as he was not subjected to due process.
2. In his Memorandum of Claim dated the 19<sup>th</sup> June 2017 and filed on the 21<sup>st</sup> June 2017, the Claimant seeks the following remedies:
  1. A declaration that termination of Claimant's employment was unlawful, illegal, null and void.
  2. Reinstatement to the employment or in the alternative:
    - a. The Respondent be ordered to pay Claimant Ksh. 3,203,148/= being benefits accrued so far for 34 years.
    - b. Compensation for the number of years Claimant would have worked at Ksh. 2,227,200/= being loss of future earning together with pending allowances.
    - c. One year salary which is 1,113,600/= being compensation for wrongful termination.
3. The respondent to pay costs of this claim.
4. The honourable Court to consider and grant any other remedy that it may deem fit to grant in the circumstances.



3. The Respondent entered appearance and filed a Statement of Defence both dated 26<sup>th</sup> September 2017. The Respondent denies the averments in the Memorandum of Claim. The Respondent contends that the Claimant was trained as a pay clerk and appointed as unit paymaster. That the Claimant was in charge of all funds in his unit. That as paymaster the Claimant made several commissions and omissions in his duties leading to the loss of Kshs. 1,666,832.80 which loss the unit never recovered.
4. It is averred that the Claimant was charged with nine offences under the *Kenya Defence Forces Act*, 2012 and appeared before his Commanding Officer for summary trial. That during trial the Claimant pleaded guilty to all the charges except the first and seventh charges for which he was acquitted.
5. It is contended by the Respondent that at all times during the summary trial, all the rights of an accused person as stipulated between sections 151 and 154 of the *Kenya Defence Forces Act* were observed and strictly adhered to.
6. The Respondents aver that following the Claimant's trial and having been found guilty of seven out of the nine charges on his own plea of guilty, and after considering the overwhelming evidence against him, he was given the award of dismissal from service, which is one of the sentences that the *Kenya Defence Forces Act* allows a trial authority to award an accused person under section 156.
7. The Respondent prayed that the suit be dismissed with costs.
8. At the hearing the Claimant testified on his behalf while the Respondent was not allowed to call any witness having not filed any witness statement. The documents filed by the Respondent on the morning of the hearing date without leave of court which included witness list and statements were expunged from the record.

### **The Claimant's Case**

9. The Claimant gave sworn testimony and adopted his witness statement dated the 19<sup>th</sup> June, 2017 as part of his evidence in chief. He also adopted the documents as contained in the list dated 19<sup>th</sup> June, 2017 as exhibits in the case. He was cross examined by counsel for the Respondent then re-examined. The parties were thereafter directed to file written submissions which both parties filed.

### **Claimant's Written Submissions**

10. The Claimant submitted that there is nothing to demonstrate that section 151 of the *Kenya Defence Forces Act* was complied with by the Respondent. That the Act requires that the accused be informed of his right to representation. That section 151(2)(b) of the *Kenya Defence Forces Act* also requires the accused to consent to a nomination of a representative. He submitted that this was not complied with. He submitted that the same is proof of failure to abide by the provisions of the law in the process leading to dismissal of the Claimant. The Claimant further submitted that it is apparent from the provisions of section 158(3)(d) that no award should be varied to the prejudice of an accused person unless the accused person has been given an opportunity of being heard or making written representations to the reviewing authority.
11. The Claimant relied on the case of National Bank of Kenya v Samuel Nguru Mutonya (2019) eKLR, and the decision in Jacob Mwema Malombe v Mombasa Maize Millers (NRB) Ltd 2021 where the court held that where an employer fails to follow the mandatory provisions of law, whatever outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing and the situation is dire, where such an employee is terminated after such a flawed process of hearing as such termination is ultimately unfair.



12. The Claimant submitted that he was never heard before the review and was never given an opportunity to make written representations before the review hence the dismissal was contrary to section 158(3)(d) of the [Kenya Defence Forces Act](#). That the process was flawed and unprocedural and his dismissal cannot be fair.
13. It was the submission of the Claimant that the action taken by the Army Commander was illegal, unlawful and did not only go against the provisions of section 158(3)(d) of the [Kenya Defence Forces Act](#) but also the provisions of Article 47 of [the Constitution](#). The Claimant relied on the case of Walter Ogal Anuro v Teachers Service Commission (2013) eKLR for the proposition that for a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness; substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.
14. The Claimant further submitted that pension benefits can only be withheld with the concurrence of the Public Service Commission. That in the instant case the Respondent decided to withhold the Claimant's pension without consultation or concurrence of the Public Service Commission and has not given any reason to date why others should be denied and if that would not amount to discrimination.
15. The Claimant further relied on the case of Lieutenant Colonel Lukale Moses Sande v Kenya Defence Forces & Another (2018) e KLR where it was held that termination of the Claimant's Commission was subject to his right to fair labour practices, fair administrative action, fair hearing, and right to protection from dismissal, removal from office, demotion or otherwise subjected to disciplinary action without due process of the law as guaranteed under Article 41, 47 50 and 236 (b) of [the Constitution](#), KDF Act and the rules of natural justice. That the said express constitutional provisions enshrined in the Bill of Rights supersede any statutory provisions and privileges and are thus binding on the Respondents. The court stated that the violation of the rights would attract a declaration and decree for compensation to the victims of the respective violations.
16. It was submitted that the law sets a template within which a case of termination must be looked at and the template in this case is provided for under Article 47 of [the Constitution](#) as well as the provisions of section 151, 158(3)(d) and 244(3) of the [Kenya Defence Forces Act](#). The Claimant submitted that he had proved his case on a balance of probabilities and urged the court to allow the claim as prayed and to award costs to the Claimant.

### **Respondent's Written Submissions**

17. The Attorney General on behalf of the Respondent submitted that in the month of February 2013, the unit of the Claimant suffered a loss of Ksh. 1,666,832.80 being public funds entrusted to the unit paymaster who was at the time the Claimant herein. That according to section 150 of the [Kenya Defence Forces Act](#), investigations were conducted by the military police as is the procedure and subsequently a total of 9 charges were proffered against the Claimant, all of them being service offences under the [Kenya Defence Forces Act](#), 2012. The Respondent submitted that after investigations, the abstract of evidence being a compilation of the investigation report containing compiled exhibits and recorded statements were then served on the Claimant on the 10<sup>th</sup> February 2014 as provided and he acknowledged receipt of the same.
18. The Respondent submitted that on the 4<sup>th</sup> of March 2014, the Claimant appeared before his Commanding Officer for summary trial, a standard disciplinary procedure in the Kenya Defence Forces as guided by sections 148 of the [Kenya Defence Forces Act](#) after being given sufficient time to prepare.



- That in total compliance with section 151 of the *Kenya Defence Forces Act*, the Claimant was informed of his rights during trial including his right for representation as well as to call witnesses in support of his defence. That the Claimant was found guilty of seven charges on his own guilty plea. The Commanding Officer then presented the abstract of the evidence together with the findings thereof to the Appropriate Superior Authority (ASA) of the Claimant for review. The Claimant having appeared before the ASA and having been given a chance to present his defence, the ASA reviewed the award in charge 8 to dismissal from service subject to Army Commander's approval, an award well contemplated under section 156(2) of the *Kenya Defence Forces Act*. The approval was granted and subsequently the Claimant was dismissed from service, the due process having been followed.
19. The Claimant thereafter wrote a redress to the Service Commander which was nothing but an admission of guilt. That the Claimant did not deny committing any of the offences but only asked for forgiveness.
  20. The Respondent relied on the case of Gift Kambu Marandu v Kenya Defence Forces Council & Another [2017] eKLR where the Court recognized summary trial before a Commander in the Kenya Defence Forces as a proper panel established by law and to be treated with the same dignity and respect as would other statutory authorities created for a similar purpose.
  21. The Respondent submitted that the claim before court is thus res judicata and an abuse of the court process in so far as the Claimant seeks a post mortem of the merits of the case and the evidence as well as the trial before the Commanding Officer. It submitted that the court thus has no jurisdiction to entertain the cause based on the facts set forth therein as doing so would amount to usurping the statutory role of the Commander as provided for by section 155 of the *Kenya Defence Forces Act*, No 25 of 2012 Laws of Kenya.

### **Claimant's Reply Submissions**

22. The Claimant filed a reply to the Respondent's submissions in which he argues that documents filed and not produced in court are not exhibits and the Court cannot rely on the same. To buttress the point, he cited the Court of Appeal decision in Kenneth Nyaga Mwigie v Austin Kiguta & 2 Others 2015 where the Court of Appeal held that the marking of a document is only for purposes of identification and is not proof of the contents of the document. That an invitation to the court to look at the documents referred to must be rejected as those documents are not exhibits before this court hence not part of the record.
23. The Claimant also sought to differentiate the instant suit from the case of Gift Kambu Marandu v Kenya Defence Force Council & Another (2017) e KLR pointing out that once a court of law has been called upon to make a decision on the illegality of an act, the Court cannot shy away from the same since that is its mandate. That where a decision has been made without jurisdiction the court must state so and cannot expect the Respondent who has made an arbitrary decision against the Claimant to be the one sitting on an appeal from its decision.
24. The Claimant further submitted that the issue of his pension was determined by the Respondent who lacked the jurisdiction to do so. That it is therefore not a matter where the Claimant can be told not to have exploited the doctrine of exhaustion. That the doctrine of exhaustion is only applicable where a decision has not been made. That in this case a decision has been made by a body which was supposed to consult another organ without such conclusion. The Claimant relied on the decision in Macfoy v United Africa Company [1961] 3 ALL ER 1169 as cited in the case of Onesimus Sintole Saidimu v Sane Olesaidimu & 5 others [2021] e KLR where the court held that if an act is void, then it is in law



a nullity. It is not only bad but incurably bad and there is no need for an order of the Court for setting it aside as it is automatically null and void.

### **Analysis and determination**

25. I have considered the pleadings and evidence before the court and the submissions by the parties. The Claimant's main contention is that the Respondent did not comply with the provisions of the [Kenya Defence Forces Act](#) and that his summary dismissal was irregular. The issues for determination are therefore whether the termination of the Claimant's employment was unlawful for failure to comply with the provisions of the [Kenya Defence Forces Act](#) and if he is entitled to the remedies sought.

26. The Claimant was subjected to summary disciplinary proceedings which are provided for under Part VIII of the Act. The Respondent filed the record of proceedings before both the Commanding Officer and the Appropriate Superior Officer (ASO) as documents 1 and 2 of the Respondents List and Bundle of Documents dated 26<sup>th</sup> September, 2017. From the said documents it is evident that the Claimant was subjected to summary proceedings. His trial took place on 4<sup>th</sup> March 2014. The charges against the Claimant were as follows:

#### Charge Sheet One

##### Negligently Performing Duties Contrary To Section 65 Of The Kdf Act

In That He The Accused, While Charged With The Duties Of The Paymaster Ikr Bn, Between 02 Feb 13 And 07 Feb 13, Paid To Defco 4bde Vide Payment Voucher Number 61 ... Overstated Items Which Had Been Previously Received In The Bar Stock Book And Creditors Book By The Bar Man And Yet Were Not Reflected In The Duplicate Indent Copy At The Unit Pay Office, An Act He Knew Or Ought To Have Known Constitutes An Offence.

#### Charge Sheet Two

##### Negligently Performing Duty Contrary To Section 65 Of The Kdf Act

In That He The Accused, While Charged With The Duties Of The Paymaster Ikr Bn, On 14 May 13, He Paid To Defco 4bde Vide Payment Voucher Number 103 A Bill Of Kshs. 61,858.40 Which Had Not Been Received At The Bar Stock Book Being Part Of Monthly Bill Of Kshs. 1,124,004, An Act he knew or Ought to have known Constitutes An Offence.

#### Charge Sheet Three

##### Negligently Performing Duty Contrary To Section 65 Of The Kdf Act

In That he the Accused, While Charged With The Duties of The Paymaster Ikr Bn, on 12 June, 13, He Paid To Defco 4bde Vide Payment Vouchers Number 123 A Bill of Ksh. 53,460.00 Meant for 900 Packets of Sportsman Cigarettes Which Had Not Been Received At The Bar Stock Book Being Part of Monthly Bill of Kshs. 1,553,148.00 An Act He Knew or Ought to have known Constitutes An Offence.

#### Charge Sheet Four

##### Negligently Performing Duty Contrary To Section 65 Of The Kdf Act

In That He The Accused, While Charged With The Duties Of The Paymaster Ikr Bn, On 13, He Paid To Defco 4bde Vide Payment Voucher Number 123 A Bill Of Ksh. 75,937.50 Meant For 45 Crates of White Cap Which Had Not Been Received At The Bar Stock Book Being Part of Monthly Bill of Kshs. 869,167.70 An Act he knew or Ought to have known Constitutes An Offence.

#### Charge Sheet Five



Negligently Performing Duty Contrary To Section 65 of The Kdf Act

In That He The Accused, While Charged With The Duties of The Paymaster 1kr Between 26<sup>th</sup> – 30<sup>th</sup> Feb, 12<sup>th</sup> June, 13<sup>th</sup> And 14<sup>th</sup> April During The Verification of 1kr Wos Sgts Mess Bar Sales Sheet Failed To Dutifully Observe Barmen's Fraudulent Deductions of Stock of Kshs. 1,331,550.00/= From The Bar Stock Book Contrary To Sec 65 of The Kdf Act 2012. An Act He Knew Or Ought To Have Known Constitutes An Offence.

Charge Sheet Six

Negligently Performing Duty Contrary To Section 65 of The Kdf Act

In That He (the Accused) While Charged With The Duties Of The Paymaster 1kr Bn Failed To Report The Sumission of Bar Sales Which Cpl Mutuku Made For A Duration of Six Days Between 4- 10/4/13) Thereafter Occassioning Loss of Ksh. 283,354.90 By The Barman During The Said Period An Act he knew or ought to have known Constitutes An Offence.

Charge Sheet 7

Negligently Performing Duty Contrary To Section 65 of The Kdf Act

In That He (the Accused) While Charged With The Duties of The Paymaster 1kr Bn He Failed To Rotate 73094 Cpl Stephen Mutuku From Wos/sgts Mess Thereby The Bar Man Overstayed For More Than 6 Months At One Mess Against The Stipulated Duration Of 3 Months, An Act He Knew Or Ought To Have Known Constitutes An Offence.

Charge Sheet 8

Negligently Performing Duty Contrary To Sec 65 Of The Kdf Act 2012

In That He (the Accused) While Charged With The Duties Of The Paymaster 1kr Bn, He Made Payments To Factious Goods Not Supplied To 1kr Bn Wos/sgts Mess Between 11 Jun 13 And 16 Jun 13 And 16 Jun 13 Thereby Leading To The Loss Of Ksh 1,834,981.81, An Act Knew Or Ought To Have Known Constitutes An Offence.

Charge Sheet 9

Negligently Performing Duty Contrary To Sec 65 of The KDF Act 2012

In That He (the Accused) While Charged With The Duties of The Paymaster 1kr Bn Made The Payments for the lost Containers worth Kshs. 898,872.00, An Act He Knew Or Ought To Have Known Constitutes An Offence.

27. The Claimant pleaded guilty to all the charges except No. 1 and 7 which were dismissed. Upon hearing the Claimant, the Commanding Officer issued the following verdict:
- a. Charge 1 - Case dismissed, no funds was lost.
  - b. Charge 2 - PUSP Ksh 61,858.40 (Sixty one thousand eight hundred and fifty eight and forty cent).
  - c. Charge 3- PUSP Ksh 53,460.00 (Fifty three thousand four hundred and sixty shillings only).
  - d. Charge 4 - PUSP Ksh 75,937.50 (Seventy five thousand nine hundred and thirty seven fifty cents).
  - e. Charge 5 - PUSP Ksh 266,310 (Two hundred and sixty six thousand three hundred and ten shillings).



- f. Charge 6 - Reprimand.
  - g. Charge 7 — not guilty - Case dismissed.
  - h. Charge 8 PUSP 458,745.25 (Four hundred and fifty eight thousand seven hundred and forty five and twenty five cents).
  - i. Charge 9 - PUSP Ksh. 208,745.00 (Two hundred and eight thousand seven hundred and forty five)  
Total Ksh. 1,125,056.15 (One Million, one hundred twenty five and fifty six and fifteen cents only)  
In addition, the Warrant Officer to be discharged from service subject to A/Comds approval. (Emphasis added)
28. The Claimant again appeared before the Appropriate Superior Authority (ASC) on 30<sup>th</sup> August 2013 who after hearing the Claimant, made the following award:
- a. Charge 1,2,3,4,5, 7 and 9 upheld.
  - b. Charge 6 PUSP Ksh 283,354.90
  - c. Charge 8
    - i. PUSP Ksh.717.167.00 including losses incurred by Pte Mutuku’s charges 3,4,5,6,9 and 10 Loss of Kshs. 777,263.49 to be shared among 14573 WO2 Miti, 56676 WO2 Muchunku, and 55196 Sgt Wambugu.
    - ii. Reduction of Rank to Ssgt subject to Army Commander’s approval. (Emphasis added)
29. There is no record of any other or further hearing or review of the Claimant’s case. Specifically, there is no record of a review of the Claimants case where a verdict of summary dismissal was awarded in place of the two sentences highlighted above at paragraphs 27 and 28 of this judgment. Section 158 of the Defence Forces Act allows a review to the detriment of the officer only after the accused has had an opportunity of being heard by, or of making written representation to, the reviewing authority.
30. There is no evidence of the Claimant having been given an opportunity of being heard or of making written representations before the enhancement of the two verdicts of “discharge” given by the Claimant’s Commanding Officer and the verdict of “reduction of rank to Ssgt” awarded by the Appropriate Superior Authority was given. There is no record of the proceedings where the verdict was enhanced or any mention of the officer who enhanced the verdict.
31. Section 158 of the Defence Forces Act provides for review of summary proceedings as follows:
- Review of summary findings and awards
- (1) If a charge has been dealt with summarily and has not been dismissed, the reviewing authority may at any time review the finding or award.
  - (2) If, on a review under this section, it appears expedient to the reviewing authority, by reason of any mistake of law in the proceedings or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding, and if the finding is quashed the authority shall also quash the award.
  - (3) If, on a review under this section, it appears to the reviewing authority that—



- (a) a punishment awarded was invalid;
  - (b) a punishment awarded was too severe;
  - (c) if the award included two or more punishments, those punishments or some of them could not validly have been awarded in combination or taken together, are too severe; or
  - (d) a punishment awarded was too lenient, the authority may vary the award by substituting such punishment or punishments as the authority thinks proper, being a punishment or punishments which could have been included in the original award, but no award shall be varied under this subsection to the prejudice of the accused unless the accused has had an opportunity of being heard by, or of making written representation to, the reviewing authority.
- (4) In this section, “the reviewing authority” means—
- (a) the officer superior in command to the officer who dealt summarily with the charge;
  - (b) the Service Commander;
  - (c) the Chief of the Kenya Defence Forces, if the Commander was involved in the summary proceedings; or
  - (d) the Defence Council.

[Emphasis added]

32. It is clear from the foregoing that the punishment meted out to the Claimant by his Commanding Officer at the summary proceedings on 4<sup>th</sup> March 2014 was “DISCHARGED FROM THE SERVICE SUBJECT TO A/COMDS”
33. The review of the summary proceedings was done by the Appropriate Superior Authority whose verdict was “reduction of rank to Ssgt”.
34. It is therefore clear that the decision to enhance the punishment and to dismiss the Claimant from service was done without giving him a hearing as provided under section 158(3)(d) which is explicit that no award shall be varied to the prejudice of the accused without the accused being given an opportunity of being heard by, or making written representation to, the reviewing authority.
35. The reduction in rank to Ssgt as recommended by Appropriate Superior Authority when reviewing the decision of the Commanding Officer during the summary proceedings was also in contravention of section 156 is also set aside as the Claimant has already been punished by the discharge and this would be double jeopardy against section 156(3) and (4) of the Act which provides:

156. Charges against service member

- (1) After investigating a complaint against a service member, the officer or service member shall forward the investigation report in the form of an abstract of evidence and appropriate charges, if any, to the commanding officer, who—
- (a) shall deal summarily with the charge if the charge is one that the commanding officer has power to deal with summarily and the commanding officer considers that the charge should be so dealt with;



- (b) may dismiss the charge if the commanding officer considers that it ought not to be proceeded with further; or
  - (c) shall refer the abstract of evidence and the charge in the prescribed manner to the Director of Military Prosecutions, in any other case.
- (2) If the commanding officer deals with a charge summarily and records a finding of guilt, the punishments that may be awarded are, subject to the limitations hereinafter provided, those set out in the following scale—
- (a) if the accused is a warrant officer or a non-commissioned officer—
    - (i) dismissal from the Defence Forces;
    - (ii) reduction in rank by one rank;
    - (iii) forfeiture of seniority of rank for up to a maximum of six months;
    - (iv) a fine of a sum not exceeding one month's pay;
    - (v) severe reprimand;
    - (vi) reprimand;
    - (vii) such minor punishments as may be prescribed;
    - (viii) admonition; or
    - (ix) where the offence has occasioned any expense, loss or damage, stoppages;
  - (b) if the accused is a service member other than a warrant officer or non-commissioned officer—
    - (i) .....
- (3) The punishment of—
- (a) dismissal;
  - (b) reduction in rank of a warrant officer, senior sergeant or sergeant, or corresponding rank, shall be subject to confirmation by the Service Commander.
- (4) Except where expressly provided by this Act, not more than one punishment shall be awarded under this section for one offence.
- (5) In the case of a warrant officer or non-commissioned officer, a severe reprimand or reprimand may be awarded in addition to forfeiture of seniority of rank or a fine.
- (6) If an offender is on active service on the day of the sentence, a fine may be awarded in addition to active service punishment.
- (7) Stoppages may be awarded either in addition to or without any other punishment.
- (8) Minor punishments may be awarded in addition to a fine.
- (9) Notwithstanding the above provisions, the recovery under this section, in any one instance, shall not be more than half of the basic salary.



36. As provided in section 156(3) of the Act, a punishment of dismissal or reduction in rank cannot be meted out to an accused officer without confirmation of the Service Commander which the Respondent did not produce. Further as provided in 156(4) of the Act not more than one punishment can be awarded for one offence. In the instant case the Claimant was punished by PUSP (the parties did not disclose what the letters mean to the court) and in addition he was discharged from service by the Commanding Officer. Upon review by the ASA a verdict of reduction in rank was awarded. It is not clear from the disciplinary proceedings whether the reduction in rank was in addition to or in place of discharge from service. It is further not clear whether the further review of the verdict to dismissal was in place of or in addition to all the previous verdicts.
37. From the foregoing it is clear that the Respondent did not comply with the provisions on review of verdict and on punishments as provided in the *Kenya Defence Forces Act*. It is for these reasons that I find the dismissal of the Claimant to have been in contravention of the Act and therefore unlawful. I accordingly declare the summary dismissal of the Claimant unlawful.

#### DIVISION - Remedies

38. The Claimant made two separate sets of prayers. At paragraph 14 of the Memorandum of Claim he prayed for:
- a. The minimum salary he would have earned is Ksh. 92,800/= multiplied by 2 years and the same amounts to Ksh. 2,227,200/=.
  - b. 1 year compensation for wrongful dismissal being Ksh. 1,113,600/=
  - c. Pension Benefits
39. Again in the last page of the Claim the Claimant prayed for:
1. declaration that termination of Claimant's employment was unlawful, illegal, null and void.
  2. Reinstatement to the employment or in the alternative:
    - a. The Respondent be ordered to pay Claimant Ksh. 3,203,148/= being benefits accrued so far for 34 years.
    - b. Compensation for the number of years Claimant would have worked at Ksh. 2,227,200/= being loss of future earning together with pending allowances.
    - c. One year salary which is 1,113,600/= being compensation for wrongful termination.
  3. The respondent to pay costs of this claim.
  4. The honourable Court to consider and grant any other remedy that it may deem fit to grant in the circumstances.
40. The Claimant had worked for the Respondent from 1980 to 2016, a period of 36 years. As is evident from the Respondent's documents he had a comparatively clean record. He was set to retire in 2 years upon attaining the mandatory retirement age of 60. The remedy of reinstatement is obviously not available to him.
41. Taking all these factors into account it is my view that the most appropriate award in the circumstances would be to set aside the award of summary dismissal and in place thereof order that the Claimant be discharged from service with full terminal benefits effective from the date of dismissal, which I hereby do.



42. Upon discharge the Claimant will be paid all withheld salary, if any, from the date of summary proceedings to the date of dismissal.
43. The verdict of reduction in rank is set aside and the Claimant will be discharged at his substantive rank of Warrant Officer II.
44. The Respondent shall pay Claimant's costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 14TH DAY OF MARCH 2024**

**MAUREEN ONYANGO**

**JUDGE**

