



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Jobita v Public Service Commission (Cause 298 of 2012)
[2023] KEELRC 477 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 477 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 298 OF 2012
MN NDUMA, J
FEBRUARY 23, 2023**

BETWEEN

MICHAEL ODONGO JOBITA CLAIMANT

AND

PUBLIC SERVICE COMMISSION RESPONDENT

RULING

1. The applicant in the application dated October 1, 2021 prays for an Order in the following terms:
 1. Spent
 2. That the computation of the Claimant's full salary and allowances, including annual increments, for the period between May 2, 1995 and June 28, 2008 when the claimant attained 55 years old and could have retired under the Government retirement age policy then of 55 years, and the claimant's pension as adjusted accordingly as directed by this Court's judgment dated December 7, 2018, amounts to Kshs 29,688,958,11/= as particularized hereunder, and or as shall be deemed fit and just by this Court:-
 - a. Full salary and allowances including annual increments:-
 - (i) Full salaryKshs 2,340,645.00
 - (ii) House allowance..Kshs 1,484,988.00
 - (iii) Medical allowance..Kshs 209,960.004,035,593.00
 - b. Arrears in pension lumpsum....1,581,390.00
 - c. Sub- total.....5,616,983.00



- (d)) Interest at 12% w.e.f 2nd May, 1995 to 30th September, 2021.....17,805,836.11
23,422,819.11
- d. Monthly pension at Kshs 19,767/- x 26 years, 5 months (May, 1995 till September 30, 2021.....6,266,139.00
- e. Total due.....29,688,958.11
- 3. That monthly payment of Kshs 19,767/- shall be paid to the claimants by the respondent till its lawful lapse under the Public Service Commission Act and Regulation, and any other relevant law and policy.
- 4. That this Court may deem fit and just.
- 5. That cost be to the claimant/applicant

2. The application is premised on grounds set out in the supporting affidavit of the applicant to wit that the Court entered judgment in this matter on December 7, 2018 by Abuodha, J In paragraph 18 of the judgment, the court held:-

“ 18. In this regard, the Court holds and finds that the claimant is entitled to full salary and allowances including annual increments for the period between 2nd May, 1995 and June, 2005 when the claimant attained 55 years and could have retired under the Government retirement age policy then of 55 years.

3. At paragraph 19, the Court held:-

“ 19. The claimant’s pension due be also adjusted accordingly. The claimant shall further have costs of the suit.”

- 4. The applicant has in the application and supporting affidavit computed the dues payable in terms of the judgment of the Court because a demand to compute the dues and to settle the amount directed to the respondent has born no fruit.
- 5. The judge did not give directions regarding computation in the judgment delivered on December 7, 2018. The judgment however directed the respondent to make good payments stated but not computed in paragraph 18 and 19 of the judgment.
- 6. The respondent filed grounds of opposition stating that the respondent have not refused and/or neglected to pay the applicant the decretal amount. That the Attorney General is in the process of doing an advisory to the Public Service Commission with a view of settling the decretal amount.
- 7. That the applicant needs to provide Kenya Revenue Authority Tax Compliance Certificate, Order against Government, Certified copies of the judgment and Certificate of costs to facilitate the payment.
- 8. That the decretal amount must be factored in the respective Government Ministry financial year budget to facilitate the settlement of the decretal amount.
- 9. That the Attorney General has filed a Notice of Appeal and registered copies of certified proceedings. That the Court has no jurisdiction over personal matters.



Determination

10. This suit was heard and determined by Justice Jorum Abuodha, vide the judgment of the Court dated December 7, 2018.
11. The respondent is bound by the terms of the said judgment provided the same have not been overturned by a superior Court.
12. The applicant needs to move the Court to enforce the judgment if the respondent is unwilling to settle the same.
13. The respondent has clearly expressed its intention to settle the judgment as directed by the Court and have made steps in that direction.
14. The matter is res-judicata and the Court is functus officio on the matters determined in the judgment of the Court dated December 7, 2018. The application before Court is not a proper manner of enforcing the judgment of the Court but is revisiting matters already determined in the judgment.
15. The respondent is bound by the judgment to compute and pay the decretal sum as set out under paragraphs 18 and 19 of the Judgment and should haste to comply with the judgment accordingly.
16. This Application is however unsuited for the intended purpose and is dismissed with no order as to costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF FEBRUARY, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Obwayo for claimant

Mr. Kioko for Respondent

Ekale – Court Assistant

