



**Boma v Kenya Defence Forces (Cause 891 of 2015)  
[2023] KEELRC 1672 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1672 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 891 OF 2015**

**M MBARŪ, J**

**JULY 6, 2023**

**BETWEEN**

**IBRAHIM OMAR BOMA ..... CLAIMANT**

**AND**

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

**JUDGMENT**

1. The claimant is an adult. The respondent is a national security organ established under article 241 of [\*the constitution\*](#).
2. The claimant was an employee of the respondent until 29 January 2015 when he was discharged from service by the respondent on medical grounds. As a consequence of the discharge from duty, the claimant was entitled to the following benefits;
  - a. Gratuity for 12 years served;
  - b. Pension monthly payments;
  - c. Leave allowances of Ksh.45,000;
  - d. Compensation for injury sustained while on duty.
3. The claim is for payment of these dues and benefits and since there has been demand and no payment, the respondent should meet the costs of this suit.
4. The claimant relied on rule 25 of the [\*Employment and Labour Relations Court \(Procedure\) Rules, 2016\*](#) and did not call any evidence.
5. In response, the respondent's case is that all dues owed to the claimant were paid via discharge letter dated 17 October 2014 and his leave allowance was paid in December 2014 as it is common practice in the Defence Forces that all leave allowances for all personnel is paid out in December.



6. The claimant went through a medical assessment and an examination report and recommendations were given which eventually led to his discharge from service. All his documents were forwarded to the Director of Pension but were returned due to an error in the claimant's bank particulars. Payment of disability pension is assessed by the Pension Assessment Board which is established under the Armed Forces (Officers & Service Members) (Pension & Gratuities) Regulations. The respondent called the claimant through his phone number to attend and rectify the error in his bank details but in vain. The disability pension is intended to compensate ex-service member for the disability suffered and the claim made is premature since the claimant has not exhausted the available forum. The suit should be dismissed.
7. In evidence, the respondent called Major Frankline Oyese Omuse the staff officer II Records who testified that the claimant was a service member of the respondent and was discharged from service on medical grounds. The medical board recommended his discharge and assessed his disability at 30% but the claimant appealed and this was reviewed to 20% and all his records placed with director of Pensions for payment of pension which has since been paid.
8. The payment of disability pension is assessed and reviewed by the Pension and Assessment board.
9. Leave allowance of Ksh.54,000 was duly paid to the claimant as is the case for all ex-service members and he was granted his terminal leave.
10. At the close of the hearing, only the respondent filed written submissions which are put into account and the single issue for determination is whether the claims made are justified.

#### **Determination**

11. On the record, on 12 November 2019 the claimant withdrew prayers (1) and (2) of his claims. That is, the claim for gratuity pay and pension pay. the only claim outstanding is that of leave allowance and compensation for injury sustained while in service.
12. Ordinarily, work injury claims ought to commence with the Director of Occupational Safety and Health at the shop floor pursuant to the [Work Injury Benefits Act, 2007 \(WIBA\)](#). The claimant, an ex-service member with the disciplined forces and service was regulated under the [Kenya Defence Forces Act](#), a disciplined service, regulated under a different regime separate from WIBA and the requirements therefrom with regard to work injury and benefits.
13. In his case, the claimant, with regard to his service under the respondent was regulated under the Armed Forces (Officers & Service Members) (Pension & Gratuities) and the benefits thereof, and for any injury during service, he was subject to the assessment of the Pension Assessment Board similar to the role undertaken by the Director under WIBA.
14. On the assessment by the Pension Assessment Board under the regulatory framework for the claimant as an ex-service member, his appeal to the Pensions Appeal Board issued and he cannot file suit in this court as the original forum. Similar to claims from WIBA. This court can only hear appeals. This is not one such appeal. The claimant cannot initiate a claim upon the benefit awarded by the Pension Assessment Board.
15. With regard to leave allowance of Ksh.45,000, the response that the due leave allowance was payable every year at the start to allow service members to enjoy the take their annual leave within a given year was not controverted by the claimant. The practice to pay such an allowance in advance so as to allow the claimant discretion to take his annual leave entitlement taken into account, the claimant did clear



with the respondent and was discharged without any pending claim save for his gratuity and pension which are admitted to having been paid in full.

16. Under the *Kenya Defence Forces Act* which regulated the service of the claimant, leave allowance is not a right. Where such benefit was the norm, the claimant failed to demonstrate that this accrued to him under his service.
17. Accordingly, the outstanding claims for leave allowance and compensation for injury while in service are hereby found without merit. The respondent did not claim costs. However, This court finds an award in costs necessary which are hereby awarded.

The claim is hereby dismissed with costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 6 DAY OF JULY, 2023.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

.....and.....

