



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 62 OF 2018

(Originally Kisumu High Court Petition No. 19 of 2015)

**IN THE MATTER OF APPLICATION UNDR ARTICLES 2(1), (5) AND (6), 21(2), 22 AND 23
OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 70, 72, 74, 78, 81 AND 82 OF THE CONSTITUTION OF
KENYA (NOW REPEALED), ARTICLES 27, 28, 29, 41, 47 AND 50 OF THE CONSTITUTION
OF KENYA**

BETWEEN

CHARLES OTOK OLIECH.....PETITIONER

VERSUS

HON ATTORNEY GENERAL.....RESPONDENT

RULING

1. In a judgment delivered on 9 October 2019, the Court entered Judgment in favour of Charles Otok Oliech (the Petitioner) as follows:

(a) The Court declares that the Petitioner's human rights and fundamental freedoms protected under sections 72(1) & (3), 74(1), 77(1) & (2) of the Constitution of Kenya 1969 (now repealed) were violated by the Armed Forces employer of the Respondent.

(b) The Petitioner is awarded general damages in the sum of Kshs Six Million (6,000,000) for the violations of his human rights and violation of fundamental freedoms, which violations included torture, detention without trial, denial of food and water for prolonged periods, degrading and inhuman treatment by being kept in filthy waterlogged cells and being beaten severely to extract confessions from him, being made to walk on his knees on tarmac and grounds with stone pebbles for long distances and being kept incommunicado and denied access to family and legal assistance amongst other violations proved by the Petitioner in this case.

(c) The Petitioner's rank, benefits, honours and decorations are hereby restored.

(d) The Petitioner is also to be paid the costs of the suit.

2. The Respondent was aggrieved with the Judgment but did not file a Notice of Appeal in time.
3. The Respondent, therefore, prepared an application seeking leave of the Court of Appeal to file an Appeal out of time (the Respondent stated in his submissions that a Notice of Appeal dated 13 March 2021 has been filed).
4. On 27 May 2020, the Petitioner filed a Motion seeking orders:
 - (i) **THAT** this Honourable Court be pleased to compute the benefits accrued that are due and payable to the Petitioner in term of prayer (c) of the Judgment of this Honourable Court dated 9th October 2019.
 - (ii) **THAT** this Honourable Court be pleased to award the Petitioner his benefits compensated as below:
 - (i) Salary arrears accrued from the date of discharge to date of retirement 1.8.1982 – 2006; $23 \times 12 \times 88,000 = 24,288,000/-$.
 - (ii) Pension based on current regulations commutation of pension rate of pension $1/400 \times \text{Basic pay} \times 420 \times \frac{3}{4}$, monthly pension $1/400 \times 179 \times 420 \times \frac{3}{4} = 47,390/-$.
 - (iii) Withheld pension as from the date of retirement (proposed) to date of judgment 2006 October 2019 – 352,000/-.
 - (iii) **THAT** costs of this application be provided for.
5. The Petitioner filed a further supporting affidavit on 2 October 2020.
6. When the parties appeared before the Court on 20 January 2021, the Court directed the filing and exchange of a further affidavit by the Respondent and submissions.
7. The Respondent filed the further replying affidavit on 21 January 2021, and the Petitioner filed his submissions on 22 March 2021 (should have been filed and served before 20 February 2021). The Respondent's submissions were filed on 13 March 2021.
8. The Court has considered the Motion, affidavits and submissions.
9. In the Judgment delivered on 9 October 2019, the Court expressly ordered that the Petitioner's rank, benefits, honours and decorations be restored.
10. The Respondent has not complied or made any attempts to comply with the order.
11. The reasons given for the non-compliance being that there is an intended Appeal, the Court did not compute what would have accrued on the restoration of rank and benefits, the Petitioner's computations are not supported by the law or fact; that after the lapse of 9 years, the Petitioner could only be re-engaged on 3-year contracts and that the award of damages adequately compensated the Petitioner.
12. The parties did not address the Court on the question of whether restoration of rank, benefits, honours and decorations is tantamount to an order of reinstatement or re-engagement as understood in ordinary employment law to warrant payment of remuneration which had been lost but for the unlawful discharge, or would mean that the Petitioner is entitled to all benefits accruing to a Senior Sergeant who was discharged honourably (the interpretations may be many).
13. Nevertheless, since there is Judgment which has not been satisfied by the Respondent and there is no order of stay either from this Court or the Court of Appeal, the Court is constrained to allow the application, albeit with an order to the Respondent, to compute what is due to the Petitioner in terms of prayer (c) of the Judgment and pay the same within 60 days.

14. In default of the Respondent complying, the Petitioner be at liberty to apply.

15. The Court makes the order because the Petitioner did not set out in the Motion or supporting affidavit the legal and factual basis of the formula he used to compute the amounts prayed for.

Delivered through Microsoft teams, dated and signed in Nairobi on this 14th day of April 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Petitioner	Ms Bagwati instructed by Olel, Onyango, Ingutiah Advocates LLP
For Respondent	Ms Essendi/Capt Cheserem instructed by the Hon Attorney General
Court Assistant	Chrispo Aura