



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO 1794 OF 2015**

**JOHN G. THUMBI.....CLAIMANT**

**VERSUS**

**KENYA AIRPORTS AUTHORITY.....RESPONDENT**

**RULING**

1. By a judgment delivered on 6<sup>th</sup> May 2020, **Abuodha J** awarded the Claimant Kshs. 11, 142, 024 being 12 months' salary in compensation for unfair termination of employment, in addition to terminal benefits as per letter of termination. Costs were taxed at Kshs. 737,393.97.

2. According to the Claimant, the Respondent settled the decretal sum partially, leaving a balance of Kshs. 1,765,073. The Claimant commenced execution proceedings to recover the outstanding amount, prompting the Respondent to file the present application dated 23<sup>rd</sup> July 2021, seeking the following orders:

a) Stay of execution of the judgment dated 6<sup>th</sup> May 2020;

b) Declaration that the Respondent has satisfied the decree herein and the execution against the said decree dated 30<sup>th</sup> April 2021 and the proclamation and attachment of the Respondent's goods is therefore illegal and capricious;

c) That the costs of the application and that of the auctioneer, if any, be borne by the Claimant's Advocates.

3. The application is supported by an affidavit sworn by the Respondent's Acting Corporation Secretary, Margaret Munene and is based on the following grounds:

a) That the Court delivered judgment herein on 6<sup>th</sup> May 2020, awarding the Claimant 12 months' salary in compensation, together with any other benefits as contained in the letter of dismissal, less statutory deductions;

b) That the Respondent did not challenge the said judgment but proceeded to calculate the benefits and paid through the Claimant's Advocates, including party and party costs;

c) That the Advocate for the Claimant, despite being paid the entire decretal sum has instructed a firm of auctioneers who have proclaimed and attached the goods belonging to the Respondent, without any justification at all.;

d) That it is in the interest of justice that this application be allowed to avoid further loss and damage to the Respondent.

4. The Claimant responded to the Respondent's application by a Replying Affidavit sworn on 27<sup>th</sup> September 2021.

5. He depones that the judgment sum of Kshs. 11,142,024 was based on his gross pay, inclusive of all allowances. He adds that the Respondent only paid Kshs. 10,902,024 based on the basic pay and housing allowance.

6. The Claimant states that the amount of Kshs. 11,142,024 was expressly awarded by the Court and it was not open to the Respondent to recalculate the award and pay as per their calculation.

7. The Claimant further states that the terminal benefits mentioned in the termination letter being, 3 months' salary in lieu of notice, accrued salaries and allowances plus unutilised leave days were based on his gross pay and not basic pay as alluded by the Respondent.

8. The Respondent adds that the judgment delivered in his favour included interest on both the compensation sum and the terminal benefits.
9. As I understand it, the point of departure in this application is the factor used by the parties in tabulating the awards in the judgment delivered on 6<sup>th</sup> May 2020. The Claimant faults the Respondent for excluding allowances in tabulating the said awards.
10. According to the judgment, the award of 12 months' salary in compensation was expressly stated as Kshs. 11, 142, 024 based on gross monthly salary, inclusive of allowances. Having thus supplied the monthly salary factor to be applied in tabulating the awards, it was not open to any of the parties to apply a different factor in tabulating the award, either on compensation or terminal benefits.
11. That said, the Respondent having neither appealed the judgment nor applied for review, was bound by the monthly salary factor applied by the trial Judge. The Respondent's attempt to re-tabulate the award, which led to the execution proceedings now being challenged, was therefore ill advised.
12. In its final submissions filed on 26<sup>th</sup> October 2021, the Respondent suggests that it is immune to these proceedings pursuant to Section 21(1) of the Government Proceedings Act, which controls execution proceedings against the Government.
13. In response, the Claimant submits that the Respondent is not a government institution or department as contemplated under the Government Proceedings Act. Relying on Section 3(2) of the Kenya Airports Authority Act, the Claimant points out that the Respondent is a body corporate, capable of subsisting independently.
14. The Claimant drew a parallel from the decision in *Ikon Prints Media Company Limited v Kenya National Highways Authority & 2 others [2015] eKLR* where it was held that the Respondent, being a body corporate, was not part of Government or an agent of Government.
15. The Claimant further relied on *Kenya National Highways Authority v Ahmednassir Maalim Abdullahi [2021] eKLR* where it was held that Section 68 of the Kenya Roads Act, which is similar to Section 35 of the Kenya Airports Authority, does not render execution proceedings illegal.
16. In the end, I find and hold that the Respondent's application dated 23<sup>rd</sup> July 2021 is without merit and proceed to dismiss it with costs to the Claimant.
17. The interim orders granted on 26<sup>th</sup> July 2021 are vacated.
18. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 11<sup>TH</sup> DAY OF NOVEMBER 2021**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Orenge for the Claimant

Mr. Masese for the Respondent