



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.401 OF 2013

DAVID WANYONYI.....CLAIMANT

VERSUS

HON. ATTORNEY GENERAL.....1ST RESPONDENT

CHIEF OF DEFENCE FORCES.....2ND RESPONDENT

ARMY COMMANDER KENYA ARMY3RD RESPONDENT

RULING

Following the court ruling on 24th October, 2019 the respondent was directed as follows;

... *the respondents shall proceed and within the next 30 days tabulate the following dues owing to the claimant;*

(a) Pay for 17 days worked and not paid;

(b) Full Pension due with effect from 17th May, 2013 for a retired officer of the Kenya Defence Forces;

(c) File the tabulation with the court for the issuance and processing of the Certificate of order in accordance with the Government

(d) Mention of the matter on 17th December, 2019.

In this regard therefore the respondent filed the Affidavit of Major Frankline Oyese Omuse on the basis that following the court ruling, there was tabulation of the owing dues to the claimant. The respondents took into account that the claimant had worked for a total 186 months with a basic wage of ksh.42, 466 and thus the total pension lump sum due is Ksh.1, 184,861.40 with a monthly pension of ksh.14, 810.02.

That prior to dismissal from service the claimant had erroneously received UN/AU Mission allowances in October, 2012 at ksh.86,352 and November, 2012 to January, 2013 at ksh.87,380 each for 3 months all being ksh.348,492. The recovery of these monies was initiated in February, 2013 up and until April, 2013 at ksh.20, 000 each month all at ksh.60, 000 by the time he was dismissed from service on 17th May, 2013 and thus owes ksh.288, 492 as outstanding government liability. This is to be deducted from the total pension due leaving a balance of ksh.896, 309.40.

For the 17 days worked in May, 2013 the claimant is entitled to ksh31, 835.40.

Leave allowance was paid at Ksh45, 000 in December, 2012.

Transport entitlement is due at ksh.45, 000 upon termination of service.

What is therefore due is;

a) Pension Ksh.896,309.40;

b) 17 days' pay ksh.31,835.40;

c) Transport entitlement ksh.45,000 Total dues ksh.973, 144.80 And Monthly pension of ksh.14, 810.02.

In reply the claimant filed his **Replying Affidavit** and avers that the Kenya Defence Forces Act prohibits double punishment of officers. Upon dismissal, he should not be double punished for alleged overpayments as this is prejudicial and should be allowed to enjoy the benefits of the issued judgement.

That the alleged erroneous UN/AU mission allowances was a fault which should be borne by the 2nd respondent. the deduction of Ksh.60, 000 at the time to dismissal and the alleged balance should not be allowed as such is prejudicial due to the error of the 2nd respondent.

The claimant also avers that upon dismissal from service he was entitled to Ksh.45, 000 as leave allowance and ksh.45, 000 for transportation of his luggage and the total dues should be paid.

That the respondents are trying to review the judgement of the court by its tabulation of the owing dues which should not be allowed.

In the affidavit of Major Frankline Oyese Omuse he confirms that the claimant was dismissed from service on 17th May, 2013 having served for 15 years and 6 months, a total of 186 months with a basic salary of ksh.42, 466 and the pension lump sum payable at the date of dismissal as due is ksh.1, 184,861.40 and a monthly pension of Ksh.14, 810.02.

From the dues payable to the there is a deduction of funds received in error and amounting to Ksh.288, 492. Section 19(1) (e) of the Employment Act, 2007 allow an employer to deduct from the employee's wage any amount paid in error;

(1) Notwithstanding section 17(1), an employer may deduct from the wages of his employee—

...

(e) any amount paid to the employee in error as wages in excess of the amount of wages due to him;

any amount paid to the claimant in error is lawfully due. the deduction of ksh.288, 492 from the due terminal dues is per the applicable law. the claimant also contest that the leave allowance of ksh.45, 000 is due. however there is evidence in the payment statement of December, 2012 that such dues were paid in full as required under section 17 of the Employment Act, 2007. To insist on another payment of equal amount would be double payment and contrary to the judgement and the ruling of the court.

Accordingly, what is due to the claimant is as follows;

a) Pension Ksh.896,309.40;

b) 17 days' pay ksh.31,835.40;

c) Transport entitlement ksh.45,000 Total dues ksh.973, 144.80

And Monthly pension of ksh.14, 810.02.

d) The costs due to the claimant shall be addressed by the Taxing Officer as appropriate.

Delivered at Nakuru this 6th day of February, 2020.

M. MBARU

JUDGE

In the presence of: