



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 78 OF 2016

(Before Hon. Justice Mathews N. Nduma)

EDWIN MUBINYA MUREMACLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL ON BEHALF

OF THE REPUBLIC OF KENYA.....1ST RESPONDENT

INSPECTOR GENERAL NATIONAL POLICE SERVICES.....2ND RESPONDENT

THE DIRECTOR OF PENSIONS, KENYA3RD RESPONDENT

J U D G M E N T

1. The suit was filed on 29th March, 2016. The claimant seeks payment in respect of –

- a. Underpayments for 35 years in the sum of Kshs.567,420.
- b. An order for payment of the correct monthly pension per month taking into account the period worked in Uganda.
- c. An order for correct calculation of the Claimant's dues as at the time of retirement and refund of under payments.
- d. Interest and costs.

2. The Claimant testified under oath to the effect that he was a retired police officer having joined the police force on 28th February, 1959 to 1st July, 1994. That he performed his duties diligently for 35 years, 4 months and 3 days until when he honorably retired.

3. That during that period he worked for both Uganda Government and Kenyan Government. That Kenyan Government got him out of Uganda Government on transfer basis. That Kenyan Government failed to pay him for the period worked in Uganda between the years 28th February, 1959 to 14th January 1964, a period of 4 years, 10 months and 14 days. He seeks payment of terminal benefits for that specific period. He further states that Kenyan Government underpaid him for the period worked between 15th April 1964 to 1st July 1999, a total of 30 years, 5 months and 19 days.

4. The Claimant received lump sum pension of Kshs.338,940 on 28th April 1994 and a further Kshs.160,000 on 26th July, 1994. He states there was gross underpayment as the services offered to Uganda Government were overlooked and not taken into account.

5. The Claimant states that in many correspondence with Government of Kenya the Government admitted 100% liability and agreed to pay all pension dues with effect from 28th February, 1959 to 1st July, 1994.

6. The Respondent filed a reply to statement of claim in which it denied any liability in respect of underpayments of salary for 35 years and underpayment of pension dues. The Government admits however particulars of employment of the Claimant in both Kenya and Uganda. The Respondent did not call any witness to rebut the claim by the Claimant.

7. The court has on its own motion noted that the claim was filed more than 52 years from when the claim for under payments by Kenyan Government arose between 15th April 1964 to 1st July, 1994 and more than 22 years from when the claim for underpayment of pension dues

arose.

8. In terms of section 4(1) of the Limitation of Actions Act, Cap 22 Laws of Kenya, any claim arising from a contract must be filed in court before expiring of six (6) years from the date the course of action arose. This suit was filed without first seeking leave of court to file the suit out of time.

9. This court has consistently followed the decision by the Court of Appeal in Devicon case to the effect that no extension of time to file a suit based on contract may be granted upon expiry of six (6) years period regardless of the reason for the delay. No reason has been advanced in any event for the delay in filing the suit.

10. It is the court's finding that it lacks jurisdiction to hear and determine this suit and strikes out the entire suit at the outset.

11. A determination on the merits of the case is therefore unnecessary in the circumstances of the case.

12. The final effect of the above finding by the court is that the suit is dismissed with no order as to costs

Dated, Delivered and Signed in Kisumu this 20th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Nyaga for Claimant/Applicant

Mr. Q for Respondent

Chrispo – Court Clerk