



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1209 OF 2014
FORMERLY HIGH COURT CIVIL CASE NO 115 OF 2013
JAMES ALIELO suing through his brother and next friend
ANTHONY SHIVEKA ALIELO.....CLAIMANT
VS
THE HON. ATTORNEY GENERAL.....RESPONDENT

RULING

Introduction

1. The claim in this case is brought by Anthony Shiveka Alielo in his capacity as the next friend of his brother James Alielo who is incapacitated by reason of illness. When the matter came up for hearing on 26th January 2016, the parties agreed to proceed by way of written submissions.

The Claimant's Case

2. James Alielo was enlisted in the Kenya Army on 23rd September 2003. After his military training, he was attached to the 7th Battalion of the Kenya Army (Lang'ata Barracks) as a serviceman. He was earning a monthly salary of Kshs. 31,453. On 7th February 2007, while on a military assignment in Isiolo, James was captured by alien forces who subjected him to torture.
3. It is the Claimant's case that as a result of the torture, James became permanently incapacitated. The Kenya Armed Forces Medical Board reached the conclusion that he would be on medication for the rest of his life and on 23rd September 2009, he was discharged from service on medical grounds.
4. The Board recommended a 20% permanent disability allowance. On 28th January 2011, the Pensions Department wrote to James informing him that he had been granted a 20% permanent disability allowance with treatment from the date of discharge. The Claimant challenges the 20% degree of disability adopted by the Armed Forces Pension Assessment Board.
5. The Claimant further contends that the conclusion that James was unfit to work and that he would be on medication for the rest of his life was inconsistent with a 20% disability allowance awarded to him by the Armed Forces Pension Assessment Board.
6. The Claimant's claim is as follows:

- a. Special damages in the sum of Kshs. 9,357 per month;
- b. General damages for permanent disability;
- c. 80% permanent disability allowance backdated to the date of discharge from service;
- d. Costs plus interest

The Respondent's Case

7. In its Statement of Defence filed on 2nd May 2013, the Respondent denies liability and states that James was duly compensated for the disability caused to him.

Ruling by the Court

8. I have looked at the pleadings and submissions filed by the parties in this case and have formed the opinion that neither the decision to award James a 20% disability allowance nor the Claimant's claim for enhancement of the disability allowance is adequately supported by evidence. Consequently, I direct the Respondent to facilitate the setting up of an independent Medical Board made up of specialists outside the Defence Forces to review James' case and submit a full medical report to this Court within the next sixty (60) days from the date of this ruling. The final award of the Court is withheld pending receipt of the medical report.
9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF APRIL 2016

LINNET NDOLO

JUDGE

Appearance:

Anthony Shiveka Alielo (Claimant in person)

Miss Chesinya for the Respondent