



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

JUDICIAL REVIEW NO. 3 OF 2015

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF NAKURU INDUSTRIAL CASE NO. 401 OF 2013

BETWEEN

REPUBLIC	APPLICANT
VERSUS	
HON. ATTORNEY GENERAL	1st RESPONDENT
CHIEF OF DEFENCE FORCES	2nd RESPONDENT
ARMY COMMANDER KENYA ARMY	3rd RESPONDENT
AND	
DAVID WANYONYI	SUBJECT

JUDGMENT

1. David Wanyonyi (*ex parte* applicant) filed a Motion under certificate of urgency on 26 July 2016 seeking an order

1. THAT this Honourable court be pleased to issue an order of Mandamus compelling and/or commanding the Respondents to pay to the subject the sum of Kshs 15,672,537 being the decretal amount in Industrial Cause No 403 of 2013, interest arising thereon at court rates from the 17th May 2013 up to date and/or in the alternative reinstate the subject back to Kenya Defence Forces.

3. The Court had earlier granted leave to the *ex parte* applicant to commence judicial review proceedings on 15 July 2016, after an initial application had been dismissed when the *ex parte* applicant's advocate failed to attend Court to prosecute the same (the summons was reinstated after a formal application was filed and urged).

3. A brief background is that Ongaya J pronounced a judgment on 17 October 2014 in which the Court ordered that the Respondents do re-engage the *ex parte* applicant into the service of the Kenya Defence Forces or in the alternative retire him with full pension/benefits.

4. It appears that the Respondents failed to comply with the terms of the judgment hence the judicial review application.
5. The Court has duly considered all the material placed before it as well as the written submissions.
6. The Court has noted that the Statement of Facts filed together with the summons seeking leave did not have an alternative relief of reinstating the *ex parte* applicant back to the Kenya Defence Forces, and therefore that limb of the prayer is incompetent and cannot be granted.
7. As to the merits of the motion, the Court has reluctantly come to the conclusion that the motion must fail.
8. The conclusion is reached on the premise that none of the parties sought to be compelled have been shown to be the proper and correct party(ies) in respect of the statutory function sought to be performed.
9. It is doubtful in the mind of the Court whether the Chief of Defence Forces or the Army Commander act as accounting officers of the Kenya Defence Forces as distinct from their operational functions.
10. It was incumbent upon the *ex parte* applicant to show the legal nexus between compliance with the Court's decree and the statutory duties of the Respondents, but he has dismally failed in that obligation.
11. The authorities cited by the *ex parte* applicant cannot help his case as they are clearly distinguishable on the basis of the correct and proper parties having been sued.
12. The motion is dismissed with costs to the Respondents.

Delivered, dated and signed in Nakuru on this 2nd day of November 2016.

Radido Stephen

Judge

Appearances

For *ex parte* applicant

Mr. Simiyu instructed by Simiyu & Co. Advocates

For Respondents

Mr. Kirui, Litigation Counsel, Office of the Attorney General

Court Assistant

Nixon