



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT MOMBASA
CAUSE NO. 370 OF 2013

CHARLES ONYINGE ABUSO.....CLAIMANT

VERSUS

KENYA PORTS AUTHORITY

ATTORNEY GENERAL.....RESPONDENTS

J U D G M E N T

INTRODUCTION

The Plaintiff brought this suit on 24/8/2009 claiming compensation for breach of employment contract plus damages for unlawful arrest, imprisonment and malicious prosecution. In total he seeks to recover ksh.27,022, 700 plus general damages and interest. He also prays for any other relief which the court may deem fit and just to grant.

The first respondent (KPA) filed her defence on 11/12/2009 denying liability totally with respect to the claim for compensation for breach of employment contract and damages for unlawful arrest, imprisonment and malicious prosecution. According to KPA, the employment contract was terminated through a fair procedure as provided by the respondent's staff regulation in force then. In addition, she denied the plaintiff's allegation that his arrest and prosecution was unlawful. Lastly, she raised a preliminary objection to the suit on the ground that the suit was time barred by dint of Section 66 of the Kenya Ports Authority Act Cap 391 Laws of Kenya.

The second respondent (Attorney General) filed defence on 25/11/2010 denying liability for the damages sought. He averred that the arrest and the subsequent charging of the plaintiff was done upon the probable cause being established that the respondent had committed a crime. In addition the AG raised preliminary objection to the suit on two grounds. Firstly, he averred that the suit was filed without first serving Notice of intention to sue as provided under Section 13A of the Government Proceedings Act, Cap 40 Laws of Kenya. Secondly, he contended that the suit is time barred by dint of Section 3(1) of the Public Authorities Act Chapter 391 Laws of Kenya.

None of the defendants prosecuted the preliminary objection raised in the respective defences. Instead the objection by KPA was included in her list of the issues for determination by the court. The suit was heard on 4/6/2014 and 30/6/2014 when the plaintiff testified as CW1 and KPA called Michael Ngugi RW1, Sylvester Ndongoli (RW2), Yabesh Oyaro (RW3) and Prisca Atieno Rabongo (RW4) as her defence witnesses but the AG called no witness.

CLAIMANT'S CASE

CW1 told the court that he was employed by KPA on 18.3.1992 as a Management Trainee and later confirmed as a management personnel in 1994. On 24/9/2003 he was promoted to be the Principal Operations Officer (offshore) Mombasa. His salary was ksh.138,153.76 made up of basic salary of kh.72,000, house allowance of ksh.25,000, on call allowance of ksh.405, commuter car allowance of ksh.20,100, mobile telephone allowance of ksh.10,714, landline telephone allowance for ksh.6,960 and security allowance of ksh.12,300 but as at November 2005 his salary had been reviewed to ksh.182,109.97 gross.

CW1 explained that on 21/2/2005, KPA security officers made a report to the police to the effect that CW1 had been involved in a fraud and as such CW1 was arrested, confined and maliciously prosecuted for charges of abuse of office and conspiracy to defraud KPA (CMCR No. 1198 of 2006). CW1 was however acquitted on 7/10/2008 of all the charges as per the trial court proceedings and ruling produced in court by the CW1.

CW1 further explained that while the case was pending police investigations, he was interdicted on 13/4/2005 and later dismissed wrongfully on 30/11/2005. The grounds for the interdiction and dismissal was that he endorsed on a letter allowing goods to leave the port without authenticating its validity and without payment of the port charges. CW1 was also accused of failure to authenticate MPRO No. 0516838 before endorsing the release letter.

CW1 denied the accusations and averred that no goods left the port using the said letter and the MPRO. According to CW1 the procedure for the release of goods at the port is not done using letters. He added that there are several Agencies controlling the exit gates including Kenya Revenue Authority (KRA), police and port security of which KRA was the key Agency.

CW1 contended that he received the alleged fraudulent letter in his capacity as the Principal officer and endorsed it to his junior officer to verify the documentation. He denied ever instructing any one to release the goods. The letter in issue was annexing a copy of the MPRO but his junior officer to whom he endorsed the letter for action had the original MPRO. CW1 clarified that MPRO is a document that contains the information of the cargo for removal from the port and the charges payable.

According to CW1, the duty to verify documents was on the Junior officers to whom he endorsed the letter. CW1 appealed against his dismissal but the appeal was dismissed on ground that CW1 did not give any fresh evidence. CW1 was thereafter charged with the aforesaid criminal case but later he was acquitted. He told the court that he paid ksh.200,000 to his lawyer to represent him in the said criminal case.

CW1 was interdicted and dismissed when he was 39 years. According to him the retirement age then was 55 years. He prayed for ksh.216,000 being half salary that accrued during his 6 months of interdiction at the rate of ksh.,36,000 per month. He also prayed for ksh.120,600 being commuter motor mileage during the said 6 months interdiction. He further prayed for ksh.106044 for house telephone and mobile phone during the said 6 months interdiction. He also prayed for lost pension of Ksh.1,351,584 which he could have earned had he worked until his retirement age of 55 years. In addition he prayed for ksh.16,416,000 being the last salary he would have earned until retirement had he not been dismissed. He calculated the lost future salary at the rate of ksh.72000x16 years. He further claimed ksh.8,612,472 being his lost future house allowance for 16 years he would have worked until retirement at 55 years. The aggregate special damages sought by the CW1 is ksh.26,822,700. In addition thereto CW1 prayed for general damages for unlawful arrest, illegal confinement and malicious prosecution.

On cross examination by the counsel for KPA, CW1 stated he had worked in the operations office for 2 years before his interdiction. CW1 admitted that the letter he endorsed was by Taki freight services dated 21/2/2005 which was requesting for the loading of containers at the customs protection services (CPS). CW1 explained that he endorsed the letter to his junior the Superintendent Manifest one Rose Nyalwal vide note 2 asking her to raise extra loading charges times two. He explained that the extra

charges accrued after the Customs intercepted the cargo and returned it to KPA yard. CW1 further explained that by note 2 he endorsed the letter to Superintendent CFS & RORO under whose custody the containers were. He contended that all the officers to whom the letter was endorsed worked under CW1's instructions in relations to verifications of documents and raising of charges. CW1 maintained that the Taki's letter annexed a letter from Customs, a seizure letter and the MPRO.

According to CW1, there was no requirement to verify with customs before releasing the cargo because the exit gate is manned by KRA and police. CW1 admitted that before dismissal he was accorded a disciplinary hearing.

On cross examination by the AG's counsel, CW1 explained that he was arrested by the police following a report made to them by the KPA's security officers. That he was released on police bond and forced to report to the police once per week for a whole years after he had been dismissed from employment.

On re-examination, CW1 explained that he endorsed the Taki's letter to Superintendent Manifest, Port Security and Superintendent CFS & RORO because the exercise was not a one man's duty. He further explained that he instructed the said officers to exercise close supervision. CW1 clarified that by endorsement under note 3 on the Taki's letter, he instructed the Superintendent CFS & RORO to ensure that all charges were paid and KRA agreed.

He concluded by stating that KRA officers were present at all the port areas to which the Taki's letter was endorsed.

DEFENCE CASE

RW2 is a security officer for KPA since 1989. He told the court that the matter in dispute herein was investigated by his boss Cyrus Njoroge who has since left KPA. RW2 produced the investigations report as D.exhibit 1. Before continuing any further with his evidence in chief, objection as to his competence to produce or testify on the investigation was raised by the claimant's counsel which prompted the counsel for KPA to drop RW2 as his witness.

RW2 is the head of Ethics and Integrity for KPA but between 2004 and 2006 he was head of the Port Security for KPA. Before joining KPA, RW2 had worked for 8 years as a police officer. He told the court that his security department did investigations on an alleged fraudulent attempt to remove 7 containers from the port of Mombasa. He confirmed that the investigation was done by his juniors in the department led by Mr. Njoroge who has since left KPA after being involved in suspicious dealings.

RW2 contended that he moderated the investigations to ensure that the necessary witnesses were interviewed. After the investigations report was prepared, RW2 signed it after discussing it with this officers. The report is dated 18/3/2005. The report refers to letter from Taki Freight Services seeking removal of containers from the port. RW2 told the court that CW1 did wrong by asking for double extra charges before receiving clearance to release the cargo from KRA. RW2 explained that after receiving the letter from Taki Freight, CW1 should have first contacted KRA in writing before issuing instructions to impose double extra charges. RW2 produced the letter from Taki Feight as D. Exhibit 1. RW2 explained that MPRO stands for Mombasa Port Release Order and it is used for clearing goods by clearing Agents. The MPRO is the evidence of payment of all taxes and it is lodged with KPA to claim release of cargo. He said that the letter by Taki had annexed an MPRO. He explained that once the MPRO is received by KPA it is circulated to verify that taxes have been paid. He produced a copy of the MPRO in issue as D. Exh 2.

RW2 told the court that the containers listed in the Taki's letter (D.exh 1) are the same as the ones in the MPRO (D. Exh. 2). The findings of the investigations were that on 14/9/2004, Taki Freight Services was charged for mis-declaration on 28/10/2004 which offence was admitted and KRA charged her ksh.400,000. However with intent to evade the penalty, Taki Freight wrote the letter dated 21/2/2005 (d. exh.1) to KPA seeking release of the containers while pretending that she had cleared with KRA.

RW2 then recommended in the report that action should be taken against the officers who negligently failed to verify with KRA whether Taki freight had cleared with KRA before proceeding to charge Taki freight double handling charges. He produced the investigation report as D. Exh. 3.

On cross examination by the counsel for the claimant, RW2 admitted that he received the initial investigations report from Mr. Njoroge and after going through it RW2 signed it. He confirmed that CW1's endorsement on the Taki's letter was only instruction to raise extra charges but not for the release of the containers. According to RW2 CW1's endorsement could not release the containers from the port. He further confirmed that CW1 was within his mandate to raise the charges on behalf of KPA because KPA charges fees for keeping custody of cargo until the consignee claims it. He also confirmed that there are KRA officers at the container terminal and at the container handling yard. He further confirmed that it was the duty of the CW1 to collect duty for the KRA. He further confirmed that CW1 referred the Taki's letter (D. exh.1) to the security department according to the stamped endorsement on the letter. RW2 confirmed that CW1 was charged with a criminal case but he was not sure whether that happened after his investigations report.

On cross examination by counsel for the AG, RW2 confirmed that police are always at the port with KPA staff and as such they must have been notified of the offence. He however contended that the responsibility to investigate lies with the police. On re-examination he maintained that cargo cannot be released before contacting KRA.

RW3 is the Head of Procurement and Supplies for KPA. He was a member of the committee of inquiry that conducted a disciplinary hearing for the CW1. The committee prepared a report on the inquiry and signed it on 22/6/2005 (D. exh.4). According to RW3, the committee heard 12 witnesses and made reference to several documents including letter by Taki (D. exh. 2). He explained that, the committee made several findings one of which was that the claimant was wrong in issuing instructions to raise extra handling charges. The committee consequently found CW1 guilty as charged and recommended for his dismissal from employment. According to RW3, CW1 was given a fair hearing before dismissal from service because the hearing went on for some time and CW1 was allowed to call witnesses.

On cross examination by the claimant's counsel, RW3 admitted that while the committee inquiry was going on, the claimant had already been interdicted and matter reported to the police. RW3 also confirmed that the Superintendent Manifest was the person in charge of documentation. RW3 described a manifest as a document issued by the shipping company which gives details of the cargo, the consignees and the ship that delivered the cargo. He added that one portion of the manifest deals with the release of the cargo in relation to taxes. According to RW3, the Superintendent Manifest is the one who ensures that the details in the manifest tally with the details in the MPRO but does not deal with payments.

RW3 further explained that the Superintendent manifest was supposed to verify the details of the container and revert to the CW1. RW3 clarified that CW1 could not access documents but only endorse the Taki's letter to the Superintendent Manifest. According to RW3, CW1 gave a conditional order for the release of the cargo by endorsing the Taki's letter to the Superintendent Manifest, Port Security Officer and Superintendent CFS and RORO to verify and ensure that all conditions were met. RW3, was however not aware that CW1 was charged in court and finally acquitted.

On re-examination, RW3 maintained that CW1 instructed superintendent Manifest to raise extra handling charges and also instructed Superintendent CFS and RORO to allow delivery after all conditions were met. RW3 concluded by saying that the committee convicted the CW1 and recommended for his dismissal after receiving letter from Taki freight services admitting the offence.

RW4 is the HR officer for KPA since 2004. She explained that the security department gave report of investigation (D. Exh 3) to the MD of KPA who in return instructed HR department to issue an interdiction letter to the CW1. She further explained that CW1 responded to the interdiction and requested for a hearing. The MD allowed a committee to conduct a hearing. After the hearing the committee prepared a report and gave it to the MD who escalated it to the board which approved the

dismissal of the CW1. Thereafter the MD signed the dismissal letter for the CW1 dated 30/11/2005 (d.exh.5). The dismissal took effect on the same date of the letter according to the RW4.

RW4 explained that Clause G2 (X1) of the KPA Staff Regulations 2002 (d.exh 6). provides for the disciplinary action for offences which leads to loss of property and which leads to summary dismissal. RW3 contended that the figure of Ksh.138,153.71 was the genuine salary for CW1 as per his payslip produced by CW1 as exhibit 2. She however clarified that the figure contained in the payslip for November 2005 produced as exhibit 3 by CW1 was the accrued half salary withheld during the period of interdiction. According to her the dismissal of the claimant was fair because due process was followed.

On cross examination, by the claimant's counsel, RW4 confirmed that she never participated in the disciplinary process of CW1. She further confirmed that Rose Nyalwal who was recommended for dismissal succeeded in her appeal. RW4 confirmed that Rose Nyalwal was CW1's junior who was instructed by CW1 to raise extra handling charges. According to RW4, Rose was found innocent because she gave instructions to clerk to act on the CW1's instructions. RW4 further opined that the committee of inquiry properly convicted CW1 because he had committed a criminal offence.

She however acknowledged that CW1 was subsequently charged in court and later acquitted by a competent court.

In re-examination, RW4 contended that CW1's dismissal was based on the KPA Staff Regulations and Employment Act and that as an employer KPA was not bound to rely on court decision in determining her internal disciplinary hearings.

After the close of the hearing, the counsel for the 3 parties filed written submissions and the court wishes to sincerely thank the counsel for their wider research which yielded relevant judicial precedents.

ANALYSIS AND DETERMINATION

The court has read the pleadings and considered the evidence and the submissions made. It is not disputed that CW1 was employed by KPA between 1994 and November 2005 when he was dismissed from service. It is also not disputed that the dismissal was for the reason that CW1 performed his duty negligently by acting on a request by Messers Taki freight services, a clearing agency, to release some containers from KPA yard before consulting KRA.

It is also not in dispute that the said containers were detained at the KPA yard by KRA after the said clearing agent mis-declared the cargo and were fined ksh.400,000. It is also not in dispute that KPA made a report to the police after which CW1 was arrested and confined and thereafter released on police bond. It is also not disputed that CW1 was interdicted and later dismissed from services after a disciplinary hearing before a committee of inquiry constituted under KPA's staff regulations. It is also not disputed that CW1 was made to continue staying in Mombasa and continue reporting to the police once every week for over a year before he was finally charged with criminal case in 2006. Finally it is also not denied that CW1 was acquitted from the said criminal charges by a competent court and no appeal was preferred against the said acquittal.

The issues in dispute filed by the parties separately and which the court must determine relate to the validity of the reason for the dismissal, liability for the tort of unlawful arrest and confinement and malicious prosecution and finally the remedies sought.

The court has therefore summarized the issues for determination as follows:

- a. **Whether CW1 was dismissed for a valid reason.**
- b. **Whether the dismissal of CW1 was wrongful.**
- c. **Whether the arrest and imprisonment of the CW1 by the police was unlawful.**
- d. **Whether the prosecution of CW1 in criminal case No. 1198 of 2006 was malicious.**
- e. **Whether CW1 is entitled to the reliefs sought.**

The issues of Limitation of actions which had been pleaded and raised as an issue for determination was not prosecuted by the defence. No evidence was led to prove that issue and the defence failed to submit on it. The court will therefore treat that issue as having been abandoned.

Valid Reason for dismissal

The reason for the dismissal of CW1 from service is captured in the following except of the dismissal letter

“The committee of inquiry has established that as the Principal Operations Officer (shore) you irregularly gave instructions for the removal of the said containers without an authority letter from the Kenya Revenue Authority as the containers were in the CPS yard. The irregular removal of the containers would have cost the Authority US\$52,380.00. Your actions and/or omission are contrary to Section G2(i),(Xi) and (XVii) of the Revised Regulations and Section 17(c) and (g) of the Employment Act Cap 226 of the Laws of Kenya”.

Clause 2G(a) of the Revised Staff Regulations 2002 provides that disciplinary action will be taken against any employee who

“(i) Neglects, disregards or without sufficient reason fails to comply with an order, regulation, standing order or departmental instructions; or

(Xi) commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to a substantial detriment of his employer or his employers property or

(XVII) willfully neglects to perform any work which it was his duty to have performed, or he carelessly and improperly performs any work which from its nature it was his duty, under his contract to have performed carefully and properly; or”

CW1 denied the allegation by KPA that he committed the offences charges and maintained that his dismissal was wrongful. He was consistent both in his evidence in chief and in cross examination that he never gave any instructions to anyone to release the alleged containers to Taki freight services. According to him, he only initiated a lawful process by endorsing the Taki's letter to his junior officers to verify the documentation related to the said letter and raise extra handling charges. He further maintained that he instructed the said officers who were in charge of 3 departments not to release any cargo unless all the requirements were met.

The only evidence by the defence to prove that CW1 committed the offences leading to his dismissal was the letter by Taki freight services Ltd

(D.Exh 1). It is alleged that CW1 endorsed the letter to his junior officers instructing them to raise double extra charges and release the 8 containers impounded by KRA. KPA filed two different copies of the said letter. The first copy was filed on 27/3/2012 and it bears two endorsements by CW1 being Note 2 and Note 3 which are not legible. It also has another endorsement to the Revenue Clerk by Revenue Accounts Officer. All the endorsements are authenticated by official stamps.

The second copy of the same letter was filed in court on 30/5/2014 and it is materially tampered with most probably to suit KPA's defence case. It bears the CW1's endorsement note 2, which is also duly stamped but not legible. The endorsement by the Revenue Accounts officer to Revenue Clerk lacks the official stamp. The copy bears no endorsement note 3 by CW1 but instead there is new endorsement by unknown person stating:

“no charges raised. Customs to clear first”.

Strangely the new endorsement is done at the same position of the letter where CW1's endorsement note

3 appears on the copy of the letter filed on 27/3/2012!

The court has not taken the conduct of KPA and her counsel lightly in the above regard. The two copies of the same letter with one deliberately tampered with raises more questions than answers. The court however believes that such unlawful tampering or forgery of the letter by KPA and/or her counsel is the reason why they deliberately failed to produce the original copy of the letter. Even if this court is not bound by the strict rules of evidence or legal technicalities, it is bound by the constitution and the rules of natural justice to accord parties fair hearing. Fair hearing in the court's view includes deciding cases based on valid, genuine and legible documentary evidence. Consequently, a party shall not be expected to use all criminal tricks to manufacture documentary evidence through forgery and withholding the genuine documents. If he or she does so, like KPA has done in this case, this court will disallow it. The court may also punish the party for interfering with administration of justice.

In view of the foregoing observation, the court finds that KPA did not prove that CW1 committed the offences provided for under Clause G2(a) (i), (Xi) and XVii) of the KPA Revised Staff Regulations 2002 and cited by the dismissal letter. Without the genuine and legible copy of the Taki's letter upon which the reason for dismissal was anchored, the KPA's defence has crumbled down. The matters were even made worse by the production of forged and illegible copies.

The foregoing observation and finding notwithstanding, even if the court was to accept the forged illegible photocopies of the Taki's letter, the court would still find that CW1 did not commit the offences cited by the dismissal letter. The reason for this observation is that the defence witnesses admitted that the endorsement done by CW1 did not amount to an order for the release of the said containers and could not be used to effect any release of the cargo. The defence witnesses also admitted that CW1 acted within his mandate to instruct his junior officers in the respective departments to verify the documentations and raise extra handling charges for the said containers. RW3, specifically admitted that CW1 did not have close proximity to documents for verification and as such he had the right to instruct the Superintendent Manifest who was the custodian of documents in her department.

Wrongful dismissal

In view of the foregoing finding that the dismissal was based on an invalid reason, the court finds, on a balance of probability, that the dismissal of CW1 from his employment was wrongful. There being no valid reason to terminate CW1's services under Section 17 of the Employment Act and Clause G2 of the Revised Staff Regulations 2002, KPA was bound to serve 3 months prior termination notice to the claimant or pay salary in lieu of notice as provided under Clause 13(b) (I) of the Revised Staff Regulation 2002. KPA did not comply with the foregoing contractual obligation as a consequence of which the dismissal was rendered wrongful.

Unlawful Arrest and Imprisonment

This claim is only directed against the AG. The AG did not call any witness to contest the evidence by CW1 or KPA. CW1 accused the police for arresting him following a report made by KPA security officer that CW1 had committed an offence. CW1 confirmed in his evidence that he was arrested on 21/2/2005 and detained overnight for interrogation. He was released on bond after one day but for a whole year he was bound to report to the police station once per week for a whole year even after he was dismissed from work before he was charged in court.

The question to answer is whether the arrest and confinement for interrogation by the police was unlawful. No evidence was adduced by the claimant to prove that the arrest and the confinement for interrogation for one day was unlawful. No law or judicial precedent was cited to show that the police have no power to arrest and confine for 24 hours a person who is reasonably suspected of having committed a criminal offence. As much as this court would not entertain arrests for mere witch hunting, the burden is upon the claimant to prove the ingredients of the tort complained of. The burden can never shift to the alleged tortfeasor to prove that he did not commit the tort although he may be required to justify the tort once all the ingredients are proved by the claimant.

Consequently the court finds on a balance of probability that the tort of unlawful arrest and imprisonment was not proved.

Malicious Prosecution

The claimant also brought this claim against the 2nd respondent only. He alleged that he was arraigned in court on 4/4/2006 to face charges of conspiracy contrary to Section 395(a) of the Penal Code which was over one year since his arrest on 21/2/2005. The criminal case was No. 1198 of 2006 as per the proceedings produced. The case was heard and ended with an acquittal in his favour. He contended that the said prosecution was malicious but nothing more was said by CW1 in evidence towards proving the tort of malicious prosecution.

The court agrees with the AG's submissions that the claim for malicious prosecution was not properly pleaded in that the particulars of malice were not pleaded. As much as this court is not bound by the rules of procedure under the Civil Procedure Rules, it must be appreciated that the suit was originated at the High Court which had jurisdiction under the repealed constitution to try it then.

The parties were therefore bound by the said civil procedure rules when the pleadings were originated in the High Court.

In addition to the foregoing observations, the court has been treated by the AG in his submissions with many judicial precedent relevant to the said tort. In GITAU VS EAST AFRICAN POWER & LIGHTING CO. LTD [1986] KLR pg 365, the High Court held that in a claim alleging malice, the facts constituting malice must be particularized as per the civil procedure rules and specifically proved by the plaintiff.

In this case the claimant neither pleaded the particulars of malice nor proved the same in evidence. The burden of proof is always on the plaintiff in a case founded on this tort to prove that the criminal prosecution against him was without proper factual basis but for ulterior motive or improper purpose. CW1 did not do so and as such the court finds that the tort of malicious prosecution was not proved on a balance of probability.

Reliefs

In view of the finding above that the tort of unlawful arrest and imprisonment and malicious prosecution was not proved, the prayer for general damages is dismissed.

Likewise the prayer for ksh.200,000/ being the cost of hiring a defence lawyer in the criminal case No, 1198 of 2006 is dismissed. The reason being that no receipts to support such expenses were produced. It is cardinal principle of procedural law that special damages must not only be pleaded, but that they must also be strictly proved.

The claimant is however entitled to salary in lieu of notice of 3 months as provided under Clause 13 of the KPA Revised Staff Regulations 2002. The court has noted from the said regulation that the party terminating is bound to issue 3 months notice or pay salary for one month. That was not a proper termination clause and the court must interfere with it. It is trite that damages for wrongful termination or breach of contract is equal to the salary for the notice period. For that

reason, the court awards the claimant 3 months salary in lieu of 3 months notice. As at the time of his dismissal CW1's gross salary was ksh.138,153.71 making the 3 months salary in lieu of notice to be ksh.504,461.13. In making this award the court has considered the prayer (e) in the plaint and Section 12(3) (viii) of Industrial court Act.

The claimant has proved his claim for Ksh.216000 for his half salary (ksh.36000 per month) withheld during his 6 months interdiction period. No evidence was adduced by KPA to prove that the sum was paid and received by CW1. CW1 is also awarded ksh.120,600/ being his commuter millage

allowance for the 6 months interdiction period calculated at the rate of ksh.20,110/ per month.

He is also entitled to ksh.106,044 being the unpaid house telephone and mobile phone allowance for the 6 months of interdiction at the rate of ksh.12,614.00/. He is also awarded ksh.1,352,584 being lumpsum pension calculated at the rate of ksh.5928 per month. The figure was not contested in evidence.

Lastly, the prayer for lost future salary and emoluments is dismissed for lack of legal basis. The relief of future earning is a remedy mainly for victims of occupational accidents which compromise an employees capacity to continue earning a living. That is not the case in this suit.

DISPOSITION

In consideration of all the reasons and findings made above, judgment is entered for the claimant against the 1st respondent (KPA) for ksh.2,298,689.15/ plus interest from the date of termination. The claim against the 2nd respondent AG, is dismissed with no order as to costs. The 1st respondent will pay the costs and interest to the claimant.

Orders accordingly.

Dated, Signed and delivered this 5th September 2014

O. N. Makau

Judge