



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 54 OF 2014

DAVID G. KABUYA.....CLAIMANT

v

THE ATTORNEY GENERAL.....RESPONDENT

JUDGMENT

1. David G. Kabuya (Claimant) was appointed as a member of the Provincial Land Disputes Appeals Committee, Rift Valley Province through Gazette Notice No. 2651.
2. Through a letter dated 20 June 2011, the then Provincial Commissioner, Rift Valley Province informed him and 12 others that their services had been discontinued because their term had expired. The letter thanked him and the others for their good work and diligence and assured them that the Provincial Commissioner's office would pursue for the payment of their remaining allowances from the Ministry of Lands.
3. It appears the payments were not paid and on 7 March 2014, the Claimant instituted legal proceedings against the Attorney General on behalf of the Office of the President seeking a total of Kshs 163,400/- being outstanding allowances.
4. The Respondent was served and after getting leave more than once to file a Response out of time did file a Defence on 28 May 2014.
5. On 28 May 2014, the Court fixed the Cause for hearing on 17 July 2014, but the hearing did not proceed on that day. Parties agreed by consent to have the Cause proceed for hearing on 27 October 2014.
6. On 27 October 2014, I heard the Cause. The Respondent did not call any witness.

Claimant's case

7. The Claimant's case is rather straight forward. He was appointed as a member of the Provincial Lands Disputes Appeal Committee as already indicated. His term and that of other members expired and the then Provincial Commissioner, Rift Valley informed them of the discontinuance of their services through a letter dated 20 June 2011.
8. The letter advised that the office of the Provincial Commissioner would follow up the issue of allowances. The Claimant now seeks Kshs 163,400/- and he produced a Payment Schedule showing the number of sittings, dates of sittings, outstanding sitting allowances, subsistence allowances, lunch allowance and transport allowance.

Respondent's case

9. In the Defence filed on 28 May 2014, the Respondent proffered only one line of defence

The contents of paragraphs (3-7) of the memorandum of Claim are denied in toto and the claimant

is put to strict proof thereof.

Evaluation

10. The Respondent has not demonstrated that it had any or any reasonable defence to the case put forth by the Claimant. The appointment was not denied. The discontinuance of services was not denied.
11. The Respondent did not suggest that the Claimant as a member of the Committee was not entitled to allowances claimed.
12. The Claimant did his part in serving the nation in a sensitive and critical Committee. Three years down the line he has not been paid the allowances which in effect were meant to facilitate him in serving his country. In all probability he used his own monies eagerly waiting to be paid for his services.
13. It is very unfortunate that this type of claim was allowed to reach the Court. Despite the finite resources of the State, the Claimant and others who served with him should have been paid. Failing to pay him was failing to recognise his services and contribution to society.
14. The Court finds the Claimant has made a case for the reliefs sought.

Conclusion and Orders

15. The Court finds and holds that the Claimant is entitled to the sum of Kshs 163,400/- and the Court orders the Respondent to pay him Kshs 163,400/- together with interest from 7 March 2014.
16. The Court further awards the Claimant costs of the Cause assessed at Kshs 25,000/-.

Delivered, dated and signed in open Court in Nakuru on this 21st day of November 2014.

Radido Stephen

Judge

Appearances

For Claimant Ms. Wanjiru instructed by Nderitu Komu & Co. Advocates

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