



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 49 OF 2013**

**MICHAEL KAGOMA MAINA.....CLAIMANT**

**-VERSUS-**

**KENYA POLICE SERVICE.....1<sup>ST</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION.....2<sup>ND</sup> RESPONDENT**

**HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 20<sup>th</sup> December, 2013)**

**JUDGMENT**

The Claimant **Michael Kagoma Maina** filed the memorandum of claim on 19.02.2013 and appeared in person throughout the proceedings. The claimant prayed for:

- a. A declaration that the verbal interdiction was wrongful, in breach of the law and the regulations and therefore illegal.
- b. A declaration that the claimant's discharge or retirement before attaining of the amended age of 60 years was unjustifiable, malicious, illegal and a breach of the claimant's rights under the Constitution and the law.
- c. A declaration that the investigations and the consequent prosecution were malicious and that the same inhibited the claimant's promotional progression.
- d. An order that the respondents do pay the claimant damages for intentionally, in breach of the law and without any justifiable cause inhibiting the claimant's promotional progression by instituting malicious investigations and prosecution.
- e. An order that the respondents jointly and severally do pay the claimant Kshs.51,170 x 12 x 5 years being salary for the 5 years he ought to have worked before retirement at the age of 60 years or any reasonable figure the honourable court may deem fit to grant.
- f. An order that the respondents jointly and severally do pay the claimant Kshs.51,170 x 12 = Kshs.614,040.00 being general damages for illegal and unlawful termination.
- g. Costs of the claim.

The 3<sup>rd</sup> respondent entered appearance for all the respondents and filed the respondents' memorandum of response on 20.03.2013. The respondents pleaded that the claimant was not entitled to any of the prayers in the memorandum of claim and prayed that the claimant's suit be dismissed with costs. The claimant further filed a list and copies of documents on 30.10.2013.

The claimant filed the reply to the respondents' memorandum of response on 10.4.2013. The claimant also filed his affidavits to support his pleadings together with relevant documents. On 10.04.2013, the claimant filed volume I, volume II and volume III of lists and copies of his documents. On 22.04.2013, the claimant filed a further list and copies of documents. On 21.06.2013, the claimant filed a notice of motion together with his supporting affidavit seeking to amend the prayers in the memorandum of claim and leave was granted on 4.7.2013 for the claimant to adapt the prayers as set out in the notice of motion. The court has perused the prayers and considers that they are substantially similar to the prayers made in the memorandum of claim. The claimant further filed on 3.07.2013 a document headed "**Executive Summary**" and which he adopted as his final submissions as he opted to rely on the filed documents and not to give oral testimony to urge his case.

Learned Senior Litigation Counsel for the respondents Mr. E.N. Njuguna opted to rely on documents on record and filed the respondents' submissions on 26.11.2013.

The claimant was employed as a police constable on 19.07.1971. In 1983, he was promoted to the rank of Chief Inspector and in 1996 to the gazetted rank of Superintendent.

In October, the claimant was posted to Mwingi Police Division as the Deputy Officer Commanding Police Division and in November, he was appointed the acting Officer Commanding Police Division, Mwingi. In that capacity, he was the District Security Committee's secretary responsible for implementing decisions of the Committee. In December 2000, it was the claimant's case, some Somali herdsmen invaded inhabitants of his area of jurisdiction and it fell upon him to implement the Committee's decision to flush out the herdsmen and their thousands of camels. Despite request for funds from the Commissioner of Police at Vigilance House in Nairobi to carry out the operation orders to flush out the herdsmen, the claimant did not receive the funds. The claimant, therefore, took initiative in consultation with the District Accountant's Office to mobilize necessary funds from the local traders and the police officers involved were accorded sufficient supplies. The Police Department subsequently availed the funds in May of 2001 and all debts accruing to the local traders were defrayed and allowances due paid to the police officers involved through the District Treasury. The claimant's further case was that the Commissioner of Police issued the Force Order No. 1 of 2001 prescribing training events which were carried out in Embu and the expenditure paid through the District Treasury.

On 17.05.2001, the claimant received a posting letter from Mwingi to Embu as a Staff Officer Quarter Master. He handed over and the relevant handing over report was executed as required and he proceeded as redeployed. On 29.06.2001, he was arrested by the Provincial Criminal Investigation Officer, Eastern Province and later released as the investigations did not establish his culpability. Subsequently, the investigations continued and the claimant recorded cautionary statements including on 5.08.2001.

The claimant was later deployed to Vigilance House, Nairobi in May, 2004. He was summoned to Embu on 12.10.2004 and bonded to appear in court on 19.10.2004 in criminal case No. 3034 of 2004 latter consolidated with No. 1309 of 2004 in Senior Principal Magistrate Court at Embu. The claimant was charged with the offences of stealing by persons employed in the public service contrary to section 280 of the Penal Code; 3 counts of false claims by persons employed in the public service contrary to section 100 of the Penal Code; and 2 counts of stealing by persons employed in the public service contrary to section 280 of the Penal Code. Prior to the institution of the criminal proceedings, the investigations had taken 3 years and the trial took 8 years. The claimant was acquitted in the criminal proceedings as per exhibit **MKM13** after a full hearing. The trial magistrate found that the witnesses who testified had established that the payment vouchers went through processing properly in accordance with the Government procedures and as such the prosecution had failed to prove the case and the accused persons including the claimant were acquitted on all the three charges.

Consequential to the criminal charges, the claimant was interdicted from the police service verbally on 22.10.2004 with effect from 19.10.2004. The interdiction was verbal and conveyed to the claimant by the Deputy Commissioner of Police in charge of complaints and customer care. Exhibit **MK11 (a)** is the internal memorandum conveying the verbal interdiction and exhibit **MK 11(b)** is the letter dated 18.03.2011 addressed to the claimant.

The letter lifting the interdiction stated that the interdiction had been lifted with effect from 19.10.2004, the effective date of the interdiction, and in view of the acquittal in the criminal case. The letter continued to state, thus:

**“The Commissioner of Police has further noted that you attained the then mandatory retirement age of 55 years on 27.9.2007. Your effective retirement date will be 28/9/2007. You will therefore forward to this Headquarters the following documents to enable the processing of your final dues:**

1. **National Identity card.**
2. **PIN Certificate.**
3. **Official Secrets Act Declaration forms for officers leaving the service.**
4. **Two Commutation forms (original not copies).**
5. **Government Liability Clearance Certificate.**
6. **Kit clearance certificate.**

**GEORGE K.O. OMWOYO**

**FOR: COMMISSIONER OF POLICE”**

The claimant wrote to the 1<sup>st</sup> and 2<sup>nd</sup> respondents the letter dated 22.03.2011 and raised the following pertinent concerns:

1. The letter ref. No. PF/213020/81 dated 21.10.2004 referred to in the first paragraph of the letter lifting the interdiction and allegedly being the letter that conveyed to the claimant the interdiction decision had not been delivered to the claimant. The claimant lamented that the interdiction had been verbal as per the signal or internal memorandum being exhibit **MK11 (a)**. Accordingly, it was his case that the interdiction was not procedural as was against the rules and the Constitution. In the claimant’s opinion, the resultant error meant authorities could not be trusted to tell the truth.
2. Upon attaining 55 years of age on 28.09.2007, the Commissioner of Police had taken no action other than stopping the half salary pay the claimant was entitled to while on the interdiction. On 14.11.2006, the claimant stated that he had presented the application to retire at 55 years of age (being letter dated 25.10.2006 and Appendix 2 on respondents’ list of documents) and prior to attaining the age of 55 years but the 1<sup>st</sup> respondent’s director of operations declined to process the documents and directed the claimant they would be stayed pending discharge after determination of the criminal case. While on interdiction, the relevant Force Standing Orders and Civil Service Code of Regulations applied and the claimant’s case was that he was precluded from seeking alternative employment. The claimant further stated that he was calm under honest consideration that he was still in the service and on interdiction because the retirement age of civil servants like him had been increased from 55 years to 60 years.

The claimant’s case was that he was irregularly retired effective 27.09.2007 when he attained 55 years of age instead of being allowed to retire on 27.09.2012 upon attaining 60 years of age and in accordance with the new civil service retirement age of 60 years. It was his evidence in exhibit **MKM14** that in October 2004, his last gross monthly pay was Kshs.51,170.00.

The court has considered the pleadings, the affidavits and documents on record and the submissions made. The following are the key issues for determination:

1. **Whether the interdiction was procedural.**
2. **Whether the claimant was entitled to remain in service up to attainment of 60 years.**

3. **Whether the retirement at 55 years of age was unfair termination of claimant's employment.**
4. **Whether the claimant is entitled to the remedies as prayed for.**

On the first issue, the respondents submitted that interdiction was a temporary measure pending finalization of the investigations into the alleged misconduct. The respondents urged the court to take judicial notice that the communication by way of a signal or internal memorandum as was read to the claimant to convey the interdiction was the commonest and quickest way of communicating in disciplined forces like the police service. Further, it was true that the investigations in view of the interdiction took place. Thus, the interdiction was procedural or regular.

The claimant has taken issue and submitted that he was not given the interdiction letter and it was suspect and improper for the letter lifting the interdiction to have referred to the letter imposing the interdiction but in fact never delivered to the claimant.

The court finds that both parties are not in dispute that an interdiction was imposed. The court finds that the claimant was entitled to receive the letter of interdiction over and above the verbal communication. However, the failure to deliver the letter was a procedural irregularity that did not impair or render the interdiction null and void. In particular, the internal memorandum or signal as it is called evidenced the interdiction decision and the half pay salary as prescribed in the regulations for officers on interdiction was imposed. The court finds that the interdiction was procedurally impaired to the extent that the interdiction letter was not delivered to the claimant but that procedural irregularity was not such that the interdiction would be null and void. The procedural irregularity did not occasion substantial injustice and did not go to the foundational jurisdiction of the Commissioner of Police to make the interdiction decision. The court holds that where, like in this case, a procedural irregularity in administrative decision making does not occasion substantial injustice or does not impair or go to the jurisdiction of the decision maker to make the decision, the decision may be allowed to stand as not null or void.

The second issue for determination is whether the claimant was entitled to remain in service up to attainment of 60 years. It is not disputed that while the claimant was serving the interdiction, the Government introduced a new policy increasing the retirement age from 55 years to 60 years.

The respondent has submitted that the increase in mandatory retirement age was introduced under the circular **OP.CBA.2/7A** of **20.03.2009** as per appendix 3 on the respondents' list of documents. The circular addressed to chief executive officers of all Government departments including public or statutory bodies and signed by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service Amb. Francis K. Muthaura stated as follows:

#### **“REVIEW OF THE MANDATORY RETIREMENT AGE FOR PUBLIC SERVANTS**

**The current policy on retirement of Public Servants provides for a mandatory retirement age of 55 years. This is with the exception of Judges, Academic staff in Public Universities, Research Scientists and Public Servants with disabilities whose retirement ranges from 60 years to 74 years.**

**Due to the current retirement age at 55 years, the Public Service has continued to lose employees with critical skills while they are still productive. This is particularly so with regard to employees in the professional and technical areas in whom the Government has invested considerable resources in training and capacity building, and, who have several years of hands-on-experience in their respective professions. Their retirement has in most cases left succession gaps in key areas, necessitating requests for retention beyond retirement age or re-engagement on contract.**

**The current policy has also had the effect of rendering employees who would otherwise be productive, largely unproductive and reliant on the tax payer for funding of their pension when they should be contributing to the economy.**

**Further, the East African Community (EAC) of which Kenya is a member and a signatory to the**

EAC Treaty, has adopted an official retirement age of 60 years.

In order to address the above challenges and in the spirit of harmonizing the retirement age applicable to the East African Community Countries, the Government has decided to raise the mandatory retirement age for all Public Servants from 55 years to 60 years with effect from 1<sup>st</sup> April, 2009. The provisions in the Pensions Act Cap.189, various Pension Schemes and other Policy Guidelines governing the Civil Service, Disciplined Services, Teachers, State Corporations, Public Universities and the Armed Forces regarding compulsory and voluntary retirement will remain.

Employees serving on contracts as at 5<sup>th</sup> March, 2009 after attainment of the age of 55 years will however continue to serve for the duration of these contracts. Contracts expiring before the attainment of the age of 60 years will be renewed in accordance with the provisions of the contracts.

Employees who had already received retirement notices or had their pension claims already prepared, but had not attained the age of 55 years as at 5<sup>th</sup> March, 2009, will continue to serve until they attain the age of 60 years if they so wish.

All authorized officers, Chief Executive Officers of State Corporations, Vice-Chancellors of Public Universities and Clerks to Local Authorities are required to note and implement this Policy Accordingly.

Signed

Amb.Francis K. Muthaura, E.G.H

**PERMANENT SECRETARY, SECRETARY TO THE CABINET AND HEAD OF THE PUBLIC SERVICE”**

The claimant’s submission was that in view of the circular, he was entitled to retire upon attaining 60 years of age especially that in anticipation of attaining 55 years of age and before the policy, he had applied to retire but he was declined the opportunity in view of the pending criminal case.

The court has evaluated the evidence and finds that if the claimant had been convicted, most invariably the respondents would have dismissed him from the service on account of such culpability. The converse is that if he was not convicted but was acquitted as events turned out in his favour, he would be entitled to benefits of a good, diligent, hardworking and ethical officer. The court considers that during the interdiction, the claimant remained in the full service of the respondents, he had not been terminated, he was on temporary absence from duty and as submitted by the respondents, to facilitate investigations into the alleged misconduct. He was therefore entitled to benefit from the provisions of the circular. To answer the second issue, the court finds that the claimant was entitled to remain in public service up to attainment of 60 years of age and in view of the provisions of the circular. The court holds that in absence of the general constitutional or statutory mandatory retirement age in public or private sectors or any other employment, the age of mandatory retirement is a term of the contract of employment to be agreed between the parties or varied by the employer in consultation with the employee as envisaged in **section 10(5) of the Employment Act, 2007**. Further, the court holds that termination of contract by way of retirement demands of the employer to make a decision in that regard failing which the employee would be entitled to consider that the employment relationship has not come to an end.

The third issue for determination is whether the retirement at 55 years of age was unfair termination of claimant’s employment. First, the court has found that the claimant was entitled to retire at 60 years in view of the provisions of the circular. Second, the court finds that the respondents were bound to determine the fate of the claimant’s employment based on the outcome of the criminal proceedings, the ground that led to the interdiction. Thus, it was not open for the respondents to determine (and the respondents could not legitimately determine) the employment relationship one way or the other until the criminal case had been determined except by agreement between the parties.

As regards disciplinary cases in the employment relationship and where in the opinion of the employer there exist a criminal element, this court set out the guiding applicable principles in the case of **Mathew Kipchumba Koskei –Versus- Baringo Teachers SACCO, Industrial Cause No. 37 of 2013 at Nakuru**. At page 13 to 14 of the judgment, the court stated as follows:

**“Nevertheless, such circumstances have never ceased to occasion complex considerations that must be taken into account to ensure that justice is done in every individual case. It is the opinion of the court that the following general principles would apply in assessing the individual cases:**

- a. **Where in the opinion of the employer the employee’s misconduct amounts to a criminal offence, the employer may initiate and conclude the administrative disciplinary case and the matter rests with the employer’s decision without involving the relevant criminal justice agency.**
- b. **If the employer decides not to conclude the administrative disciplinary case in such matters and makes a criminal complaint, the employer is generally bound with the outcome of the criminal process and if at the end of the criminal process the employee is exculpated or found innocent, the employer is bound and may not initiate and impose a punishment on account of the grounds similar to or substantially similar to those the employee has been exculpated or found innocent in the criminal process.**
- c. **If the employer has initiated and concluded the disciplinary proceedings on account of a misconduct which also has substantially been subject of a criminal process for which the employee is exculpated or found innocent, the employee is thereby entitled to setting aside of the employer’s administrative punitive decision either by the employer or lawful authority and the employee is entitled to relevant legal remedies as may be found to apply and to be just.**
- d. **To avoid the complexities and likely inconveniences of (a), (b) and (c) above, where in the opinion of the employer the employee’s misconduct amounts to a criminal offence, the employer should stay the administrative disciplinary process pending the outcome of the criminal process by the concerned criminal justice agency. In event of such stay, it is open for the employer to invoke suspension or interdiction or leave of the affected employee upon such terms as may be just pending the outcome of the criminal process.”**

The court upheld the opinion in the case of **John Kirui Torongei –Versus- National Cereals and Produce Board [2013]EKL.R**. The opinion in upheld in this case.

The claimant has made the submission that under regulation R 20 (4) of the Civil Servants Code of Regulations, retirement under 55 years of age required the 1<sup>st</sup> respondent to serve the claimant a reasonable notice of not less than 3 months. The claimant’s case was that he was irregularly retired effective 27.09.2007 when he attained 55 years of age instead of being allowed to retire on 27.09.2012 upon attaining 60 years of age and in accordance with the new civil service retire age of 60 years. The letter of retirement was dated 18.03.2011 when the Constitution of Kenya, 2010 was already in force. The claimant therefore submitted that he was entitled to the right to a fair administrative action that was expeditious, efficient, lawful, reasonable, and procedurally fair but was not accorded to him as per Article 47 of the Constitution.

The court has found that the reason for termination namely attaining 55 years of age was invalid in view of the circular increasing retirement age to 60 years. The court further finds that the claimant was not accorded due process as submitted. Accordingly, the court finds that the termination was unfair.

The final issue for determination is whether the claimant is entitled to the remedies as prayed for. The court makes the following findings:

1. The court finds that the claimant is entitled to the declaration that the retrospective termination of his employment by way of retirement on account of attaining the age of 55 years as conveyed in the letter dated 18.03.2011 was unfair and the claimant was entitled to retire upon attaining 60 years of age effective 27.9.2012 with due pension benefits.

2. The court has found that the claimant was entitled to continue in employment up to the age of 60 years. He was paid half salary withheld during the interdiction period up to 27.09.2007 when he attained 55 years. The court has found that after 27.09.2007, the interdiction was not lifted and at the retrospective lifting on 18.03.2011, the circular for 60 years was in force and the legitimate action was for the 1<sup>st</sup> and 2<sup>nd</sup> respondents to retain the claimant in service until the age of 60 years under the new policy. The court finds that the claimant is entitled to **Kshs.3,070,200.00** as prayed for being salary for 5 years from 27.09.2007 to 27.09.2012 at Kshs.51,170.00 per month. In making the finding, the court upholds its opinion in **Kenya Union of Printing, Publishing, Paper Manufacturers and Allied Workers –Versus- Timber Treatment International Limited, [2013]eKLR, Industrial Cause No. 21 of 2012 at Nakuru, page 10-11**, where the court stated as follows:

**“In making the findings the court considers that the employee is entitled to pay for the period he or she is kept away from work due to unlawful and unfair suspension or termination. In such cases, the employee is entitled to at least partial reinstatement, and therefore compensation whose measure is the proportionate unpaid or withheld salary throughout that period of unlawful or unfair suspension or termination. During such period, the court considers that the employee carries a valid legitimate expectation to return to work and not to work elsewhere until the disciplinary or the ensuing conciliatory and legal proceedings are concluded. In arriving at the finding of entitlement to reinstatement during unlawful or unfair suspension and termination, the court has taken into account the provisions of subsection 49(4) (f) which states that in arriving at the proper remedy, there shall be consideration of, ‘(f) the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for termination;’. The court is of the opinion that for the period the question of unfairness or fairness of the suspension or termination has not been determined, the employee carries a reasonable expectation that for the period pending the determination of that question, the employment has not validly terminated and the employee is entitled to reinstatement during that period provided the employee is exculpated; with pendency of such serious question, the employee is validly expected to pursue the resolution with loyalty not to work for another employer. It is the further opinion of the court that where the court finds that the suspension or termination was unlawful or unfair, the employee is entitled to at least partial reinstatement, and therefore, a total of the salaries due during that period. The exception (to such entitlement to partial reinstatement for the period pending a final decision on the dispute) is where it is established that during that period, the employee took on other gainful employment or the employee fails to exculpate oneself as charged.”**

It is the opinion of the court that the quoted opinion applies to interdiction as much as it applies to suspension or termination situations. In this case, the claimant submitted that under regulation 8 (5) of the Public Service Commission (Police Force) Regulations, while under interdiction, he was not allowed to leave his station without permission of the Commissioner of Police and further, under regulation 8 (7) while on interdiction he continued to be a gazetted officer in the police service. It was his case that in the circumstances, he was precluded from taking on any other alternative and productive engagement. The claimant further reinforced his submission with reference to the then prevailing **section 44 of the Police Act Cap 84 Laws of Kenya** which provided that where any police officer in accordance with the force standing orders or any other written law has been interdicted from duty, he shall not by reason of such interdiction cease to be a police officer. Accordingly, the court finds the claimant was entitled as claimed.

In addition, the court upholds its opinion in **Grace Gacheru Muriithi –Versus- Kenya Literature Bureau (2012) eKLR, Industrial Cause No. 44 of 2011, pages 36 and 37** in which the court stated thus:

“The respondent terminated the claimant’s service by the letter dated 20<sup>th</sup> December 2010 received on 30<sup>th</sup> December 2010 and with effect from 18<sup>th</sup> May 2010, the effective date of the suspension. The issue before the court is whether the claimant is entitled to be paid for the period between the date of suspension and the date of conclusion of the disciplinary case being the date the letter of termination was delivered, that is, 30<sup>th</sup> December 2010. In opposing this claim, counsel for the respondent has cited paragraph 6.2.4 of the respondent’s terms and conditions of service, 1999 which provides, thus, ‘An employee under suspension will not be entitled to any salary, but may, in case of hardship, and on request be granted an alimentary allowance in such amount and such terms as may be determined by the Managing Director.’

The court considers that an employee on interdiction or suspension has a legitimate expectation that at the end of the disciplinary process he or she will be paid by the employer all the dues if the employee is exculpated. Conversely, if the employee is proved to have engaged in the misconduct as alleged and at the end of the disciplinary process the employee has not exculpated himself or herself, the court considers that the employee would not be entitled to carry a legitimate expectation to be paid for the period of suspension or interdiction. Thus, the court holds that whether an employee will be paid during the period of interdiction or suspension will depend upon the outcome of the disciplinary proceedings. It would be unfair labour practice to deny an employee payment during the period of interdiction or suspension if at the end of the disciplinary process the employee is found innocent. Similarly, it would be unfair labour practice for the employer to be required to pay an employee, during the suspension or interdiction period if at the end of the disciplinary process the employee is found culpable. Accordingly, the court finds paragraph 6.2.4 of the respondent’s Terms and Conditions of Service to be unfair labour practice to the extent that the provisions deny the employees payment even in instances where they exculpate themselves at the end of the disciplinary process. To that extent the provision offends Sub-Articles 41(1) of the Constitution; it is unconstitutional.”

3. The claimant has prayed for a declaration that the abrupt severance of the claimant’s half salary with effect from 27.9.2007 which he used to earn while in the police service and on interdiction was illegal and unlawful. The claimant has already shown that under the applicable regulations, he was entitled to half pay throughout the interdiction period. The court has further found that the interdiction subsisted beyond 27.9.2007. Accordingly, the court finds that the claimant is entitled to the declaration as prayed for.
4. The claimant has prayed for payment by the respondents of Kshs.51,170 x 12 = **Kshs.614,040.00** for unfair termination. The court has already found that the reason for the termination was not valid and the claimant was not accorded the due process of fairness. In the circumstances, the court finds that the prayer as made will meet the ends of justice in this case.
5. The claimant has pleaded for the declaration that the investigations were a fraud leading to his arrest and malicious prosecution was unlawful and calculated to kill his ambition and inhibit the claimant’s promotional progression in the police force. The claimant has not opposed the respondent’s submission that this remedy is in issue in the pending High Court Petition No. 20 of 2013 at Nakuru. Thus, the court finds that the prayer shall fail especially that the allege fraud, inhibition and malicious prosecution were not specifically established in this case.
6. The claimant has prayed for costs. The court finds that the claimant has substantially succeeded and is entitled to the costs. The court has considered that the claimant acted in person, he filed voluminous and relevant documents in neatly bound volumes and made elaborate well researched submissions. Taking all the circumstances of complexity, presentation and prosecution of the case into consideration, the costs of this suit are fixed at **Kshs.200,000.00**.

In conclusion, judgment is entered for the claimant against the respondents jointly and severally for:

1. A declaration that the retrospective termination of the claimant’s employment by way of retirement on account of attaining the age of 55 years as conveyed in the letter dated 18.03.2011 was unfair and the claimant was entitled to retire upon attaining 60 years of age effective 27.9.2012 with due pension benefits.

2. A declaration that the abrupt severance of the claimant's half salary with effect from 27.9.2007 which he used to earn while in the police service and on interdiction was illegal and unlawful.
3. The respondents to pay the claimant **Kshs.3,884,240.00** by 1.3.2014, failing interest to be payable at court rates from the date of the judgment till full payment.

**Signed, dated and delivered** in court at **Nakuru** this **Friday, 20<sup>th</sup> December, 2013.**

**BYRAM ONGAYA**

**JUDGE**